

OPENING ADDRESS BY DR MOHAMED FATRIS BAKARAM, MUFTI OF SINGAPORE AT THE CONFERENCE ON FATWA IN CONTEMPORARY SOCIETIES, ORGANISED BY THE ISLAMIC RELIGIOUS COUNCIL OF SINGAPORE (MUIS), SATURDAY, 11 FEBRUARY 2017, 9:00AM, ORCHARD HOTEL, SINGAPORE

Our Guest of Honour, Deputy Prime Minister, Mr. Tharman Shanmugaratnam

Minister for Communications and Information, Minister-in-charge of Cybersecurity and Minister in-charge of Muslim Affairs, Dr Yaacob Ibrahim,

Members of the MUIS Council and Fatwa Committee,

Faith and community leaders,

Distinguished guests,

Ladies and gentlemen

Assalaamu'alaikumwarahmatullahwabarakatuh and good morning.

1 On February 22nd 1997, the world was caught off guard by the official announcement of the birth of Dolly, the first mammal to have successfully been cloned from an adult cell. Ethical, social and even religious debates throughout the globe quickly ensued with opposing voices, between those who were anxious about the unknown risks that might arise from the advancement of such a technology, and those who were excited with the prospect of countless possibilities that such a scientific breakthrough might bring to benefit the human race.

2 The Islamic world was not spared of the debate. In a matter of days after the announcement of Dolly's birth was made to the world, Singapore's Fatwa Committee received a query on cloning. On March 20th 1997, less than a month after the announcement, the Committee in its meeting opined that:

"It is understood from this issue of cloning that it is not restricted to animals and plants. There is a concern that it will one day be done onto humans. This Fatwa Committee would want to focus its attention to the issue of cloning to produce humans. In this regard, the Fatwa Committee is of the view that a procedure to produce offspring not by way of nature, or not through an Islamically valid marriage, is prohibited. This cloning procedure will result in the birth of a group of creatures that are in the form of human beings but without clear lineage, which will cause calamity to the world. This will pose problems to individuals and society."

3 The apprehension in this fatwa can clearly be felt, about the great harm that might befall the world if cloning were to result in the production of humans with no clear lineage. Such was also the general position taken then by institutions of fatwa and Islamic research in other parts of the world. This is totally comprehensible due to the fact that the shari'ah law gives significant emphasis to the preservation of human lineage.

4 Despite having already issued this fatwa, the Committee did not let this subject on cloning pass. As it turned out, the 1997 position was not taken as final. Debates around it continued around the globe while new

information on the various aspects of cloning were made available for public knowledge. In addition to this, the Singapore Government gave clear indication that the country's economic development would have to shift from being a capital intensive in the 80s and a technology intensive in the 90s to one that is knowledge and innovation intensive for the new millennium. For that, the Government embarked aggressively on plans to thrust the bio-science and biomedical industries as one of the main pillars for Singapore's new economy. Billions of Dollars were heavily invested to place Singapore at the forefront of the industry globally.

5 Fully aware of the immense impact this would have on the life of the Muslim community, the Fatwa Committee took the initiative to better understand the scientific and technological advancements that have been made in the field. In 1999, a special session was organized for the Committee where a research scientist in embryology and genetics was invited to share on his research and his thoughts on the subject matter. This has provided the Fatwa Committee with a clearer and broader understanding with regard to the cloning technology that was already available, together with the various prospects of potentials and risks that come with it.

6 Thereupon, the Fatwa Committee received a fresh set of questions on cloning that was tabled for deliberation in its meeting on February 15th, 2000. This fatwa can be found in Chapter Four of the fatwa compilation. In summary, the Committee decided that:

- Cloning for the purpose of choosing a preferred gender for an unborn child is permissible, although discouraged.

- *Cloning for the purpose of giving birth to identical twins is permissible.*
- *Cloning for the purpose of having the child carrying only the DNA of either parents is prohibited.*
- *Cloning in the form of harvesting human organs for therapeutic purposes is permissible.*

7 As compared to the first fatwa issued in 1997 on cloning, this second fatwa that was issued three years later shows evidence of greater confidence and better appreciation on the part of Fatwa Committee of what cloning entails. Supporting arguments for each of the four specific issues raised are more elaborate and thus a variegated approach was taken.

8 However, the most important point that I believe worth mentioning is the earnestness shown by the Fatwa Committee to not only protect the community from possible harm or probable transgression of their religious injunctions that can be caused by uncertainties and sense of anxiety, but also the Committee's desire to provide religious guidance that would propel them forward in riding the waves of scientific and technological advancements.

9 This is a departure from the approach still taken by many muftis or fatwa institutions, where in situations of uncertainty and probable occurrence of both benefit and harm, the general tendency is to emphasize on the obligation to avoid harm first and foremost. A legal maxim widely utilized to justify this approach is *dar' al-mafasid muqaddam 'ala jalb al-masalih*, or "the evasion of harms is to take precedence over establishing benefits". This legal maxim is useful, as the failure to eliminate dangers or harms would normally impede the realization of benefits in the lives of

individuals and communities. The indiscriminate application of this principle, however, is the issue that warrants further deliberation. It is the outright indifference to fulfill the need of weighing between possible harms and possible benefits in the process of formulating religious opinions that has developed a culture of impulsiveness seen in many Muslim communities. Constant changes in the social, cultural, economic and political realms of these communities are often met with suspicion and fear that their religious identity and values may consequently be eroded, hence the perceived need for wholesale rejection of every thing "harmful".

10 Such an assumption that the single right thing to do to protect the faith of Muslims is to surround their world with walls of exclusion is counter productive to the very objective it was set to achieve. Self exclusion can never be the answer to build religious resilience. Similarly, in facing the enormous and rapid advancements in the frontiers of science and technology, Muslims must develop a high degree of confidence to not only be consumers of these scientific achievements, but as active contributors that effectively take part in their further developments. And this is one of the central teachings of Islam, as Prophet Muhammad once said that the best of peoples are those who bring the most benefits to others.

11 In the midst of uncertainties from uncharted perils of cloning, the Fatwa Committee decided to stay true to the spirit of bolstering scientific discoveries, that has long been the tradition of Islamic scholarship that shaped its history for centuries. This is evident in the fatwa on cloning issued in February 2000, where the Committee laid an important foundation in addressing issues of new scientific discoveries. In the

concluding part of the fatwa text, the Fatwa Committee advises the Muslim community against assuming that there exists a contradiction between Islam and new scientific discoveries. It further highlights that God is the source of all knowledge, and that it is revealed to man for the purpose of establishing general benefit and good. It should not be wrongfully utilized to cause harm. Such scientific discoveries, the Fatwa Committee suggests, should rather strengthen the faith of a Muslim as they resonate with the verses of Quran that make mention of creation.

12 This willingness on part of the Fatwa Committee to view cloning in particular, and scientific discoveries in general, with positivity and conviction in its potential, continues to be the approach taken in making fatwa decisions on similar issues. Notwithstanding, there are guidelines and principles of the shari'ah that the Fatwa Committee cannot ignore in the process of formulating fatwas. However, the Committee is fully conscious to have these principles play a constructive role, rather than a restrictive one that will suppress its development.

13 If we examine the evolution of Islamic law throughout its history, we would be able to identify the expansion of focus by Muslim scholars from individual rulings on specific issues that constitute Islamic positive law, or fiqh, to the systematic construction of principles and legal framework, or *usul al-fiqh*. Al-Shafi'i, who is widely acknowledged as the pioneer in this field through his monumental work *al-Risalah*, indicated that the motivation behind this project is the strong sense of responsibility to jealously guard the sanctity of *shari'ah* from unmethodical reading of its primary texts. This introduction of *usul al-fiqh* and its subsequent development has categorically provided jurists with a legal framework that

instrumentally acts as a tool in deriving positive rulings from the texts, and also in formulating fresh rulings for emerging issues that the existing texts have not made any mention of.

14 The scholars, however, did not stop at *fiqh* and *usul al-fiqh*, the positive law and its jurisprudential framework. There was a realization that this vast body of shari'ah law must possess broad principles that take into cognizant its foundations, fundamentals and objectives. The introduction of the *al-kulliyat al-khams*, or the five fundamentals of *shari'ah*, by al-Ghazzali, quickly captured Muslim legal minds. This legal theory introduced by al-Ghazzali that defines the general objectives of the *shari'ah* as in the preservation of one's religion, life, intellect, progeny and wealth, was soon accepted as the golden standard in the realm of Islamic law, specifically in the discussion on its primary objectives. It has since witnessed scholars and jurists actively applying it in their legal thought processes, while continuously making refinements and extensions to it.

15 It is unfortunate, however, that there are those who view that al-Ghazzali's theory constitutes a definitive parameter that has imposed finality to the development of Islamic legal thought. This is misleading, for al-Ghazzali has never meant it to be as such. On the contrary, his theory on the general objectives of the *shari'ah* that revolve around the preservation of the five fundamentals provides the impetus for Islamic law to continue to develop. This was proven by the works of other giants of Islamic legal thought, like al-'Izz ibn 'Abd al-Salam in his *Qawa'id al-Ahkam fi Masalih al'Anam*, al-Shatibiy in his *al-Muwafaqat* and Ibn al-Qayyim al-Jauziyyah in his *I'lam al-Muwaqqi'in*.

16 The appreciation of these four pillars of Islamic law, namely: the primary texts which are the Quran and hadith; the legal framework of *usul al-fiqh* which acts as a guide in formulating rulings from the texts; the specific rulings that form the positive law (*fiqh*); and the broad objectives of the *shari'ah* with its legal maxims (*qawa'id fihiyyah*), is of utmost importance to ensure that the *shari'ah* law continues to be a living body of law that renders relevance in the lives of Muslims. This is especially true in the context of the world we are living today, as the pace at which new issues intensely emerge is unprecedented.

17 It is therefore critical to understand that finding answers to new questions is not as straightforward as conveniently saying, "let's go back to Qur'an and sunnah." The days of divine revelation have long been concluded. Nor can we feel contented with the voluminous compilations of positive law produced by classical scholars, however excellent these intellectual treasures might have been. A dignified and responsible fatwa authority is one that provides guidance to real challenges faced by the community in their respective world, within the temporal space and physical environment that they are in.

18 I hold the view that the ongoing project of developing the Islamic positive law, or al-fiqh, by being mainly dependent on the process of deriving rulings from the primary texts is a phase in Islamic legal history that has passed. This is the era of fatwas, where answers and guidance given in response to specific issues faced by individuals and communities should constitute the major source for the consecutive development of al-fiqh. The inability to progress in this regard will only cause Muslims to repeatedly seek legal inspiration in the classical treatises that were written

in a time and context totally different from theirs.

19 And this is where the need to uphold the principle of general good, or *al-maslahah al-'ammah*, becomes more significant than ever. In comparison to the traditional notion and practice of *al-fiqh*, the legal process of formulating a fatwa does not place emphasis solely on the strength of its textual evidence. Instead, establishing good in the best interest of the inquirer is central in the realm of fatwa. The existing literature on the legal theories on fatwa largely suggests that a particularly sound legal opinion that is supported by a strong textual evidence may not be taken as the basis for a fatwa by a mufti, if he perceives that it contradicts the interest of the inquirer.

20 One of the misconceptions still held by many is the assumption that the norms of Islamic law are limited to only what is there in the classical works of past jurists, whilst the products of contemporary legal thought, largely in the form of present day fatwas, are seen as legal exceptions. To a certain degree, this has created a sense of discontentment among some, who continue to feel that they are not able to live fully as good Muslims due to the perceived less than Islamically ideal environment that they are living in. This is an issue that Muslim scholars and leaders must continue to address. Muslims must be guided to understand and to accept that the centrality of establishing general good in the legal framework of fatwa formulation does not in any way reduce fatwa decisions to be less "Islamically sound" as compared to the classical fiqh.

21 Over the past five decades, the Fatwa institution in Singapore has been providing the Muslim community with religious guidance and

answers that they needed to practice their faith. The Fatwa Committee has come a long way in developing a progressive and constructive approach in formulating fatwas, that are firmly anchored to the principles and objectives of *shari'ah*. The confidence and conviction must continue. IN fact, it must be further nurtured. If in the past we have had the collection of Fatawa Hindiyyah or the compendium of fatwas by scholars from the South Asian region which has been referred too by scholars globally for inspiration, I envision and pray that this humble publication entitled Fatwas of Singapore will also contribute to the expansion and deepening of the global fatwa discourse.

Thank you and I wish you a fruitful conference.