

HISBAH BILL AND HOLLOW CRITICISM

Reference to be provided by Prof. Khurshid

PROF. KHURSHID AHMAD



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The NWFP Provincial Assembly is expected to consider the Hisba Bill in the next week. The secular lobby has opened up a crusade against this bill based unfortunately on ignorance, prejudice and misreading of the Constitution as well as that of the Hisba Bill. We have always welcomed serious debate on this and other issues. The Provincial Government had already organized a number of seminars in different parts of the country to have open debate on the Hisba Bill.

I am sorry to say it seems that either those who are criticizing the bill have not read it carefully or they are not aware of the Islamic position on this institution as well as the role and practice of the institution of (Hisba) OMBUDSMAN in at least some 30 countries of the world, including Pakistan. Some of them are making laughable claims about the Constitution and the way in which the proposed bill flouts the Constitution and the Fundamental Rights. Let me clarify the issues raised:

1. The concept of Hisba comes from the Quranic injunction which clearly states that "When Muslims are given power in the land they establish prayer and Zakat, and promote what is good and forbid what is evil" (امر بالمعروف ونهى عن المنكر)-

(Surah al-Haj 22:41).

This is supported by a clear Prophetic injunction i.e.:

"The worst of people are those who do not establish justice and do not enjoin good and prohibit evil".

The institution of Hisba had its beginnings in the Madani period of the Prophet (saw) and was further developed during the period of Sayyidena Umar Farooq, the second Caliph. From Khilafat-e-Rashida till the disintegration of the Ottoman Rule the institution of Hisba was one of the effective institutions that functioned throughout the length and breadth of the Islamic World. Even the institution of OMBUDSMAN as it has developed in Europe in the late nineteenth and early twentieth century was derived from the Muslim experience. The Encyclopedia of Islam produced by Orientalist scholars sums up the concept succinctly when it says that Hisba means "On one end the duty of every Muslim to do good and avoid evil and the other function of the person who is effectively entrusted the duty with the application of this role in the supervision of moral behavior and more particularly about the markets; this person entrusted with the Hisba was called the Muhtasib." This institution has a long history and is not an innovation of the MMA or NWFP.

2. The institution of Hisba (Ombudsman) has been operating in Pakistan at the Federal level. Three provinces — Punjab, Sindh and Baluchistan — legislated Ombudsman laws in 1984 and the institution was established although its operation remained ineffective. At the Federal level OMBUDSMAN has done a good job. The NWFP Government is doing nothing more than legislating for their Province what exists in other provinces in the form of laws relating to provincial ombudsmen. However, the NWFP legislation has materially improved on the model of other Provinces by (i) widening the scope of the activities of Ombudsman (ii) extending it to the district level, over and above the provincial (iii) giving it a more operational role, although that role has to materialize through the authorities and agencies of the provinces and in pursuance of laws operating in the province and (iv) along with lawyers, civil servants and dignitaries including those Ulama who are qualified to become judge of the Federal Shariah Court in the category of persons who can be appointed Muhtasib or Member of the Hisba Council.

The Bill does not give any discretionary authority to Ombudsman over and above the law of the land. Its instructions would be implemented through the administrative machinery of the province — judiciary, police and others. It is totally incorrect to suggest that this Bill envisages establishing a parallel system. In fact the institution of Hisba would be an integral part of the Provincial Administrative machinery and would be one more Wing of the system.

This is the factual position. However, at the theoretical level even presence of more than one judicial stream is not foreign to Pakistan's legal system. Along with the High Courts and the Supreme Court a Federal Shariat Court and Shariat Bench of the Supreme Court already exist and are functioning without conflict. There are Banking Tribunals, Terrorist Courts, Special Administrative Tribunals and what not. In other parts of the world multiple systems operate. Malaysia and Nigeria have Special Courts under their Constitutions, including Shariah Courts. Even the example of UK is instructive where for centuries mainstream law courts and equity courts have operated concurrently. But as for as the Hisba bill is concerned it is not suggesting a separate judiciary or policing system.

3. The Constitution has also been misquoted by these critics. Let me remind them that Pakistan is an Islamic Republic and the Objectives Resolution clearly states that "wherein the Muslims shall be enabled to order their lives in the *individual* and *collective* sphere in accordance with the teachings and *requirements* of Islam as set out in the Holy Quran and Sunnah".(emphasis added). Article 19 and 20 which have been referred to by these critics, but only partially. Article 19 lays down that "every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the

interest of the glory of Islam or the integrity, security or defence of Pakistan." This Article also provides for respect for "decency or morality". (Emphasis added). Article 20 also make it very clear that "Subject to *law*, public order and morality every citizen shall have the right to profess, practice and propagate his religion", (emphasis added) The Directive Principles of the State Policy also make it very clear in Article 37 that it would the responsibility of the State to ensure "promotion of social justice and eradication of social evils". The Hisba Bill is only an effort to implement these clear Constitutional provisions and there is not an iota in the Bill which goes against the Constitution. In fact it is an effort to implement the Constitutional imperatives in letter and spirit, with which perhaps our secular stalwarts are so uncomfortable. The real issue is relevance of Islam to our collective life and its observance. This seems to be the real anathema to them.

But this is what the Constitution demands and what the Islamic Ummah believe to be a Divine Command.

4. It is height of dishonesty and irresponsibility that some of the critics have brought in the red herring of "Hisba Bill envisaging enforcement of interpretation of any particular school of thought". The Hisba Bill makes it very clear that those Islamic injunctions on which there is consensus would be the concern of the Muhtasib and that the Muhtasib will ensure that the society is cleansed of "sectarianism and intolerance". This Bill also ensures protection of human rights for all including Minorities and particularly the protection of rights of the women is its main concern. It represents a concrete step towards the elimination of honor killings, Sora and other un-Islamic social evils. Is this that these protagonists of fundamental rights are worried about— one may ask?
 5. Finally Hisba Bill represents an effort to legally and morally institutionalize a healthy practice of the Pashtoon society i.e. Jirga. The purpose is to ensure establishment of justice in society and in all walks of its life. Those who are opposing the Hisba Bill are actually trying to perpetuate the injustices and inequities which the Hisba Bill aims at eliminating from the society.
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