

Enforcing the Shariat

Law & Justice

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IN Muslim writings *hasba* (or *nisba*) refers to an inspectorate whose business it was to see that conduct in the public realm conformed to Islamic criteria. The MMA government in NWFP plans to establish such an inspectorate and, to this end, it intends to bring a bill to the provincial assembly. Mr Akram Khan Durrani, the chief minister, says that he and his associates were elected to Islamize governance and society. Furthermore, the Quranic injunction to enjoin right and forbid wrong ("*amr bil maroof, wa nahi anil munkar*") requires them to launch this project.

The text of the proposed bill has not been published, but its contents appear to have been leaked out to certain newspapers. It is said to authorize the chief minister to appoint an inspector, to be known as *mohtasib*, at the provincial level and one in each district. He will be an *alim* (learned in theology and law), with a diploma from a recognized seminary. He will be empowered to force persons to do what they are required to do, and desist from doing or saying that which, in his judgment, is unIslamic. He will have a body of policemen under his command to carry out his orders.

Beyond enforcing piety among the generality of Muslim citizens, the *mohtasib* will function as an overseer of probity and propriety in government. He may undertake investigations on his own initiative or on the basis of complaints filed with him. He may require persons to appear before him to testify or answer questions. Disregard of his summons or orders will be treated as contempt of his office, and punished, as contempt of the superior courts is.

The *mohtasib* may impose penalties (fine, flogging, imprisonment) on the spot, so to speak. Some reports have it that his findings and decrees will not be subject to judicial review. It is said also that the *hasba* law will override all other laws to the extent that they may conflict with it.

In addition to his general authority to

Let us move on to some of the more serious problems.

First, it should be noted that the injunction in the Quran (III, 110, 114) to enjoin right and forbid wrong is not addressed specifically, or exclusively, to governments; it is addressed equally to all believers. True, the Quran says also (III, 104) that the believers should let a "band of people" arise who will enjoin what is right and forbid what is wrong. Such a "band of people" we have indeed allowed to arise, and it is called the National Assembly. None of these verses can be invoked to justify a band of men who will go out and flog, fine, or imprison Muslims whom they, in their discretion, consider to be wrongdoers.

The office of the *mohtasib* is by no means an integral part of an Islamic administration. We encounter no such official in the Prophet's (*pbuh*) time or during the pious caliphate. He is at work in the earlier period of Abbasid rule, trying (in vain) to stop drinking and gam-

check and establish that each one of them is a Shia before shoving him into a mosque or a jail?

Islam concedes the individual a private domain that remains beyond the reach of public authorities. Private is that which the individual wants to keep hidden from others and, in addition, that which he alone has the right to decide or settle. His home is his private space and, at initial consideration, it may be said that whatever he does within its four walls, including neglect of divinely ordained duties, is his affair and none of anyone else's business. Any sin committed in private is between him and God; for him to repent and for God to forgive. This position is fortified by the injunction that one is not to probe into another person's private affairs and, further, that if one does come to know of his/her sins one is not to spread this information to others.

Even if we make the improbable assumption that the MMA's *mohtasib* will honour Islam's stipulations on behalf of

the individual's right to privacy, it has to be noted that the domain of one's home is very small. It can be made even smaller if the *mohtasib* suspects that a crime, or something hurtful to the public interest, is being done there.

The private domain extends to public places with regard to matters which are within the individual's right to settle: for instance, his choice of a field of study, occupation, spouse and, to some degree, the clothes he will wear, the food he will eat (in a restaurant), the means by which he will travel. But even here

the *mohtasib* may bring his interpretations of the public interest, morality, or modesty to interfere with the individual's right to choose.

The proposition that "Islam is a complete code of life," including the most private of relationships and interactions, should not be interpreted to mean that all of this "code" is left to the public authority to enforce. The great bulk of it is in the nature of advice and suggestion, not law, and it is for the individual to follow as best as he can. But unless matters subject to government regulation are specified and enumerated, the danger is clear and present that the *mohtasib* will regard all aspects of a person's life as being open to his inspection.

Values and principles, even more than

The proposed bill authorizes the NWFP chief minister to appoint an inspector, to be known as *mohtasib*, at the provincial level and one in each district. He will be empowered to force persons to do what they are required to do, and desist from doing or saying that which, in his judgment, is unIslamic. He will have a body of policemen under his command to carry out his orders.

bling, and monitoring the performance of Islamic duties such as fasting during Ramazan and joining the Friday prayers. But this role is gradually abandoned, and the *mohtasib* becomes primarily a "market supervisor" who monitors business transactions, weights and measures, and prices. He stops cruelty to animals that carry merchandise. He guards against cheating in the bazaar and fraudulent practices in the professions and crafts.

It should be understood that the shariat, as conceived by many of our professional theologians, is an unedited collection of laws, injunctions, recommendations, counsel, and expositions of values and principles. The binding authority of some of its provisions is eternal, while the relevance of others is situational, that is,

with it.

In addition to his general authority to spread virtue, the *mohtasib* will be asked to do the following: (1) discourage commercial activity or any kind of "fanfare" outside the places where Friday congregational prayers are held; (2) end negligence in performance of Friday prayers; (3) enforce respect for *azan* (call to prayers) and performance of obligatory prayers; (4) reform public servants and stop them from patronizing activities of which the Shariat does not approve (e.g., singing and dancing); (5) stop togetherness of unrelated men and women; (6) discourage ostentatious spending; (7) discipline those who disobey their parents; (8) require stores and other establishments to close at prayer times.

Organizations of lawyers are concerned that the project will create a parallel legal and judicial system. We already have three systems at work: statute law and a hierarchy of courts to enforce it; Shariat courts and benches; customary law and the "jirgas." One more system will, indeed, compound the existing confusion, but it is not anything catastrophic.

Other critics have cautioned that the *mohtasibs* and their enforcers will actually become "witch-hunting" vigilantes. This is a distinct possibility. Still others believe that the MMA wants, mainly, to create lucrative jobs for preferred members of the Islamic establishment (*ulema*). There may be some truth in that.

some of its provisions is eternal, while the relevance of others is situational, that is, addressed to a certain time and place. They derive from a variety of sources, namely: God, the Prophet (*pbuh*), jurists (*fuqaha*), consensus of the community (or the learned), and speculation. They cannot all be equally authoritative. They stand in need of reconciliation when they seem to point to different ways in regard to the same subject. Much of the Shariat is, thus, open to interpretation.

If the reports concerning the finality of the proposed *mohtasib's* decrees and actions are correct, he will be, at once, pope and Caesar; not the present pope but the one who for many centuries claimed supremacy and infallibility on issues of Christian doctrine, theology, and morality. Considering that Islam does not admit of an institutionalized church and, instead, contemplates something closer to a "priesthood of all believers," it would be preposterous for a *mohtasib*, or any *alim*, to arrogate to himself conclusive authority to interpret and enforce the Shariat.

We all know of the sectarian divide among Muslims. Let me mention just a couple of problems it poses. The Sunni pay Zakat to the government, the Shia don't. The latter combine the noon and mid-afternoon, and then again the evening and late evening prayers, but the Sunni don't. There may be people out on the street, or in places of work, at a prescribed prayer time. Will the *mohtasib*

to his inspection.

Values and principles, even more than law and injunctions, are open to interpretation. There is no reason to assume that the *mohtasib's* understanding of Islamic values (social justice, equality, accountability, moderation, brotherhood, neighbourliness, chastity, modesty, frugality and austerity among others) will be conclusive or any more reliable than that of many other Muslims. The way Mr Akram Khan Durrani envisages his *mohtasib's* role, this functionary may emerge as a vicious tyrant.

Mr Durrani says he wants to reform the society. Good idea, but he should first identify the specific wrongs that he wants to right. It would also be more effective to go one step at a time instead of adopting an open-ended agenda. We would recommend the eradication of bureaucratic and political corruption as the first object of his reforming zeal.

Want of precision and specificity can defeat the purposes of law and justice. Those who want to enforce the Shariat should select portions that are clearly meant to be enforced by governments and have them made into laws so that enforcers and judges have a settled text that enables them to exclude arbitrariness from its interpretation and application.

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