

☆ إذا كان رب البيت بالف مائة درهم من الخبز كان ربحه مائة درهم من الخبز ☆

What is being delivered by the ombudsman now is just a part of the traditional *Muh}tasib's* functions. The office of the ombudsman has nothing to do with functions such as inculcation of proper belief system, the eradication of *bid'ahs* related to marriages or funerals, the regularity of congregational prayers, maintenance of the mosques, and superintending public moral conduct in daily life.

Why were these and such other functions left out of the ombudsman's jurisdiction? The simple answer is that the concept of the office of ombudsman was taken from the West with its specific functions.

The military regime took the issue of the regularity in performance of obligatory prayers separately. The heads of the government offices were instructed to take care of the performance of prayers during office timings. Outside the government offices *s}alāt* committees were formed on voluntary basis at the level of neighborhood to persuade people to be regular in their obligatory congregational prayers.

Functions of *h}isbah* pertaining to purely religious matters and moral conduct of the people were not directly touched. In this respect media, print and electronic, was instructed to present Islamic morals, and itself to follow a code of conduct. It was supposed to get the desired results in matters of morality through persuasion. It did work to an extent, but the political change at the top in 1988, with a different agenda upset whatever was in place. The *s}alāt* committees were no more there, and the dress code (for example prescribed for the artists, program producers and telecasters) became redundant. On the other hand liberal and secular values were encouraged through media, especially through television, and sports etc, and the debate and development, whatsoever, was about the role of ombudsman or *h}isbah* institution went to the back burner.

beyond the constitutional declarations. Experimentation of prevailing ideologies of different sorts failed to deliver good to the people of Pakistan. Their social and economic problems aggravated and the rhetoric of the rulers failed to pacify them.

That was the perspective that a protest movement against rigging of the general elections of 1977 turned into *Nizām-i-Mustafa* (The Order of Prophet Muhammad Mustafa [PBUH]) Movement. It was an expression of the masses but their desire was shattered when democratic process was once more halted by Martial Law (5th July 1977). The leaders of *Nizām-i-Mustafa* Movement failed to take the country ahead as they had talked, but the military ruler posed himself as the true servant of Islamic cause. There may be two opinions, but it is a fact that the military ruler took a few steps towards application of *Sharī'ah*. Questions about what must be done to shape Pakistan's state and society in accordance with Islam and the material that the intellectuals, from pre-independence days to 1977 contributed on the nature of the Islamic state and its institutions in historical and juristic background became an important subject in the political debates and academic discourse.

**The Hisbah Institution:** Establishment of the institution of *h}isbah* and its working also came up as an important element of Islamization among other things. The military regime established the office of the ombudsman. (8th August 1983). Such institutions are working in several Western countries. The ombudsman was also called the *Wifāqī Muh}tasib*, but it fell short of the traditional concept of *muh}tasib*, emerging from historical studies. The jurisdiction of the *Wifāqī Muh}tasib* is to rectify the excesses of the government functionaries against the public, due to interpretation of rules and regulations.

1969 forced him not to contest the next election of the President. He left the office in the wake of the second country-wide Martial Law imposed (28th March 1969) by General Muhammad Yahya Khan, a trusted fellow of Muhammad Ayub Khan.

Muhammad Yahya Khan promulgated Legal Framework Order and made some constitutional decisions of crucial nature, such as the dissolution of One Unit, that resulted in the revival of the previous four provinces in West Pakistan. He annulled the parity between the two wings of Pakistan maintained in the constitutions of 1956 and 1962 respectively with the introduction of the principle of one man one vote. Under his rule, general elections were held (December 1970) but the results were not of his choice. He did not like to hand over power to the elected leader of the majority party in the National Assembly, the Awami League of Shaikh Mujibur Rahman from East Pakistan. The situation of law and order deteriorated in East Pakistan. Muhammad Yahya Khan opted for an army action to quell the uprising but he failed.

On the secession of East Pakistan, Muhammad Yahya Khan was forced by his fellow generals to hand over power to Z. A. Bhutto, whose party had won majority in National Assembly from West Pakistan in December 1970 election. Z. A. Bhutto faced the task of the constitution-making. In spite of all of his liberalism and commitment to socialism, the constitution under him not only retained all the Islamic clauses of the previous constitutions of 1956 and 1962, but it went ahead even to declare Islam as the state religion. The constitution was formally adopted unanimously by the National Assembly (14th August 1973).

So far as the journey towards the transformation of Pakistan into Islamic state was concerned, it did not go

constitution of the state. The process slowly went on, but often it was derailed.

After the lapse of about nine years, the constitution of the Islamic Republic of Pakistan was framed (23rd March 1956) with the Objectives Resolution as its preamble, but the forces, unwilling to honour the will of masses hatched conspiracies to obstruct the democratic process. Martial Law was imposed on 8th October 1958 and the Constitution was abrogated. A new constitution was drafted by the Martial Law regime with all powerful indirectly-elected President and void of Islamic emphasis of the previous constitution (1st March 1962). Now Pakistan's official name was Republic of Pakistan instead of Islamic Republic of Pakistan. The compilers of the constitution did not qualify Islam with the words of the *Qur'ān* and *Sunnah*. In short the thrust for Islamic cause was diluted.

With the promulgation of the new constitution, Martial Law was lifted and Chief Martial Law Administrator Muhammad Ayub Khan took the oath as the President of Pakistan on October 27, 1958. The masses of the country ventilated their anger against the modernist compilers of the constitution and demanded the restoration of Islamic thrust and commitment in the constitution. The President had to accept the masses' demand, but their strength had been nipped with the introduction of Basic Democracies system, in which they were deprived of the right to elect their legislative representatives and the President of the country. The masses were to elect 80 thousand members of the Basic Democracies (BDs) and in turn they were supposed to elect the president and the members of National and Provincial assemblies from respective constituencies. The sitting President, manipulated the system in his favour in 1964 to continue the office, but the popular movement prior to the presidential elections of

with God in His divinity). The inscription of talismans, the practices of sorcerers, soothsayers, astrologers and the magicians are discussed and judgments are strictly made in accordance with the Qur'ān and *Sunnah*. The thrust of the author is to practice *Sunnah*, and reject the practices based on *bid'ah*. Apart from condemnation of *bid'ah* in general terms, *bid'ahs* connected with funerals and marriages are elaborately discussed. *Al-Sunāmī* also discusses the importance of the observance of congregational prayers, and takes it as the foremost duty of the *muh}tasib* to be accomplished. Along with all these duties with respect to eliminate *munkar*, he talks about the prohibition of gambling, and consumption of wine, drugs and all *h}arām* (religiously prohibited) things. *Al-Sunāmī* talks about the games, dress code and hair styles of the people in the context what is *ma'rūf* and what is *munkar*.

The institution of *h}isbah* in the subcontinent lost its vitality as the political incompetence and moral degeneration set in during the Mughal dynasty in the 12th century AH/18th century CE, followed by British colonial rule. During the colonial rule (1170-1367 AH/1757-1947 CE) the Muslim institutions became almost defunct.

### **Pakistan's Journey towards Islamic State**

The colonial rule ended in 1947 with the emergence of India and Pakistan as two independent states. Pakistan, a separate homeland for Muslims, came into being with sheer commitment of the subcontinent Muslims to shape their lives in accordance with Islam. The journey towards realization of the objectives of the achievement of Pakistan started with the passage of the Objectives Resolution (12 March 1949) being the first major step. It was a guideline by the Constituent Assembly of Pakistan for the future

*mu'azzins* (persons who call to the congregational Prayers) etc. were among the duties of *muh}tasib*. Similarly the observance of Friday congregational prayer and *Eids* (two annual festivals, one at the end of the month of fasting, and the other on the 10th of the last month of the Muslim lunar calendar). Prayers were to be ensured where those prayers were theologically obligatory. Along with prayers, the payment of *zakāh* by those who owned financial assets up to the level of *nis}āb* (the minimum amount of wealth in form of cash and kind fixed for the payment of *zakah*) was to be ensured by the *muh}tasib*.

**Taking care of public interests:** The *h}isbah* was to guard the public interest as well. By curbing the malpractices of the market, like hoarding and adulteration, public interest was served. The rights of weaker sections of society (daily wage-earners, children etc.) were to be looked after by the *muh}tasib* against the excesses of the rich and powerful. The *muh}tasib* was also empowered to admonish those who committed cruelty to animals.

### **Institution of *Hisbah* in the subcontinent**

In the context of the subcontinent, 'Umar b. Muhammad al-Sunāmī, an 8th Century AH/14th century (C.E.) *muh}tasib* of *Tughlaq* dynasty (1320 to 1413 C.E.) discussed in detail the functions of *muhtasib* in his *Nis}āb al-Ih}tisāb*, a manual of *h}isbah*.

'Umar b. Muhammad al-Sunāmī, in the background of his own time, emphasized the eradication of all those additions and *bid'ahs* [innovations in Muslim beliefs and practices that were not sanctioned by the Qur'ān and the *Sunnah* of the Prophet Muhammad (PBUH)]. He points out that swearing in the name of someone or something other than God is reprehensible since it is *shirk* (association of others

their composition and complexities, and faced different kinds of problems. Moreover even the society of a region or a country did not remain static, so the nature of the steps taken by the *h}isbah* functionaries continued to change. Duties performed by the functionaries of the medieval Islamic state under the institution of *h}isbah* were sometimes transferred to the judiciary and some other times to the police. Apart from gradual development of the institution it, by and large, covered the following areas from the 1st Century AH/7th Century CE onward:

**Supervision of markets:** It was the foremost area of *h}isbah*. The earliest available writing in the form of a book (*Ah}kām al-Sūq*) on the *hisbah* is by the third century Andalusian jurist Yah}yā b. ‘Umar Kinānī (213-289 AH/828-902 CE). With respect to market supervision, the person in charge was named as *s}āhib al-sūq*. He was supposed to ensure the use of standard weights and measures. He used to ensure that commodities were sold at approved prices and prohibited practices like sale of wine, indulgence in usury and gambling were not committed. He had to look after the interests of all those concerned in trade and business and to ensure no one was duped or illegally benefited. That is why, the *h}isbah* manuals prepared from time to time included chapters on the malpractices used in manufacturing and sale of goods. *Muh}tasib* was therefore considered to be a person equipped among other things with sufficient knowledge of trade rules and regulations. He was also entitled to appoint professional experts for his assistance to detect the malpractices in manufacturing of goods.

**Performance of Congregational Prayers and payment of *Zakāh*:** The institution was meant to ensure that people were regular in offering five-times obligatory prayers at proper timings. In this respect ensuring of maintenance of mosques, cleanliness around them and the appointment of



What is meant by *ma'rūf* and *munkar*? Both the words are repeatedly used in Qur'ān. By examining all the verses, where these words are used, one may deduct that *ma'rūf* is an act or a process considered right and just by the common sense of a person of integrity and upright character, and *munkar* is something opposite to it.

Every Muslim is supposed to perform the duty of *da'wah* *al-khair* and *amr bi al-ma'rūfwa-nnahī 'an al-munkar* in his or her individual and social capacities. *Da'wah* (call or invitation) to the good may be extended to anyone irrespective of one's status, albeit within the limits of social norms. It does not need any authoritative force but so far as *amr bi al-ma'rūfwa-nnahī 'an al-munkar* is concerned, it does need one or the other sort of enforcing authority. The parents exercise moral, social and upto certain extent even economic levers to induce the children to follow certain acts and not indulge in some others. The executives enjoy administrative powers to bring their subordinates in line. The social relationship of the teacher-students or elder-youngsters may work for compliance of certain orders, but when it comes to the general public where no such official or social bonds exist, the injunctions of *amr bi al ma'rūfwa-nnahī 'an al-munkar* fail to materialize. In cognizance of such situation, the medieval Islamic state evolved the institution of *hisbah* or *ih}tisāb* from the time of second rightly-guided caliph 'Umar, the Great'.

### Scope and functions of the institution

The institution was developed over the centuries. The scope of the institution and the functions of its chief i.e. the *muh}tasib* were gradually established. Nevertheless, historical and juristic studies of the institution show that its scope never remained fixed; it is all but natural. The Islamic societies from Indonesia to Morocco differed in

## The Institution of Hisba.

[The state and society of Pakistan is supposed to be shaped in accordance with the injunctions of the Qur'an and Sunnah of the Prophet Muhammad (PBUH) since Pakistan is a constitutionally declared Islamic republic, but progress to this end remained slow. One of the difficulties in the way is the mindset that considers the format of certain institutions of the medieval Islamic state as the Islamic. In the recent past *H{isbah* Bill, passed by the Provincial Assembly of North West Frontier Province was such an example. Apart from criticism of the secular lobby, against *H{isbah* Bill, the Bill ignored that several functions of the *h{isbah* were already being performed by different departments of the state. In case of the implementation of the *H{isbah* Bill, clash between the new set up, as proposed in the Bill, and the existing one was inevitable. The problem, faced by Pakistan state and society is rather ineffectiveness of state apparatus. The only function that has not been properly taken carefully is the performance of the congregational prayers. While the state functionaries need to be revamped, there is no need to have a parallel institution. – Author]

### Introduction

The medieval Islamic state developed three institutions of judicial and quasi-judicial nature i.e. *qazā*, (judiciary), *mazālim* and *hisbah* or *ih}tisāb*. *Hisbah* or *ih}tisāb* was by and large a practical form of the Qur'ānic injunctions of *da'wahila al-khayr* (call to the good) and *amr bi al-ma'rūfwa-nnahī 'an al-munkar* (enjoining the doing of all that is *ma'rūf* and forbidding all that is *munkar*).

حضرت امام شافعی رحمۃ اللہ علیہ فرمایا کرتے ہیں کہ امام مالک اور سفیان بن عیینہ نہ ہوتے تو حجاز سے علم رخصت ہو جاتا۔