

The Bauchi State Criminal Justice System Does Not Empowered Hisbah to File a Criminal Complaint against Offenders

Sabo Karabi Giade Esq

School Of Legal Studies

A.D. Rufa'i College For Legal And Islamic Studies, Misau, Bauchi State, Nigeria.

Abstract: This research work is aimed at elaborating and pin-pointing the duties of a Hisbah Command vis-à-vis the analysis to show whether they have the power to institute criminal proceedings in Bauchi State Shari'ah Courts. In 2001, Shari'ah was introduced in Bauchi State of Nigeria that led to the establishment of Hisbah Command. However, before the introduction of the Shari'ah, the courts in Bauchi state were guided by the Doctrines of common law of England, the constitution of the Federal Republic of Nigeria and other sources of law applicable in the country. With the introduction of Shari'ah therefore, Hisbah Command was established and charged with responsibilities as laid down by the Shari'ah. They (Hisbah Command) in violation of their powers used to file complain before the Shari'ah Courts but in real sense they don't have such powers. In this research work is clearly shown their limits for proper guidance.

I. INTRODUCTION

Hisbah is an Islamic Institution capable of enjoining what is good and forbidding what is bad. The History of the institution could be traced back right from the time of the Holy Prophet (P.B.U.H) who took all necessary measures to ensure that individual and public conducts of the Ancient Society of Medina conform to the morals and legal injunctions of Islam both spiritually and practically.

Muhtasib is a name given to a member of this institution, who register himself as such and accordingly undertook to carry out the duties efficiently and without fear or favour.

He should do his work in the interest of Islam. In the discharge of his duties, he should be just and God fearing. He should not be biased in it's entire ramification. There should be no distinction between the rich and the poor, or between Rulers and the Followers.

Thus the Qurán specifically in some of its verses pointed out the importance of doing justice and also the Hadith of the Holy Prophet (P.B.U.H). To start with the Quránic verses, Allah the Omnipotent God in Suratul Nisaí, verse 135 says:-

"O you who believe standout firmly for justice, as witnesses to Allah, even though it be against yourselves or your parents, or your Kin be he rich or poor, Allah is a better protector to both (than you). So follow not the lust (of your hearts), lest you avoid justice, and if you distort your witness or refuse to give it, verily Allah is well-acquainted with what you do."

On the same vein, the Holy prophet is reported to have said: -

"Join yourself with those who separate from you and do good deeds to he who does bad to you, and speak the truth even though it kicks against you".

From the above verse of the Holy Qurán and the Hadith of the Holy Prophet (S.A.W) all Muslims, Hisbah included, are enjoined to do justice even if it will kick against them.

II. DUTIES OF A MUHTASIB

Among his duties and functions include the following: -

- To enjoin what is good and forbid what is bad.
- To ensure that Muslims attend Friday prayers punctually and regularly as well.
- To see to it that Muslims are adhering to Islamic rules and injunctions thoroughly.
- To stop the act of mingling between men and women in the same place.
- To stop people from selling and or drinking alcohol openly or in public.
- To ensure the smooth running of all businesses in the market with due adherence to Rules of shariah.

- To take care of mosques and all places of worship.
- To ensure the payment of Zakat when due.
- To promote brotherhood, peace and unity among the Ummah etc.

III. LEGALITY OF THE INSTITUTION

The institution of Hisbah derives its legality from the Glorious Qurán and the Hadiths of the Holy Prophet (P.B.U.H). When we talk of legality we mean the Islamic injunctions and authorities that mention the Hisbah either by its name or by inference. This, with a view not to live the institution without any authority as to its existence. To start with the Glorious Qurán Allah says in chapter 3 verse 104.

"Let there arise out of you group of people inviting to all that is good (Islam) Enjoining Al-ma'ruf (i.e. Islamic monotheism and all that Islam orders one to do) and forbidding Al-munkar (polytheism and disbelief and all that Islam has forbidden. And it is they who are successful".²

In another development, Allah the Almighty says in the Qur'an:

"You are the best of people evolved for mankind enjoining what is right, forbidding what is wrong and believing in God. And had the people of the scripture (Jews and Christians) believe, it would have been better for them. Among them are some who have faith, but most of them are Al-fasiqun, disobedient to Allah and rebellious against Allah's command".³

In Suratul Hajj verse 41 Allah says:-

"Those (Muslim rulers) who, if we give them power in the land (they) enjoin Iqamat – as – salat Qurán 22 – V – 41."⁴

The Sunnah of the Holy Prophet (P.B.U.H) also gave a legal backing to the institution of Hisbah where the prophet is reported to have said:-

"Whoever sees an abominable, let him change it with his hand, and if he could not, then with his tongue, and if he could not then with his heart, and that is the weakest of the faith."

In yet another transmission, he prophet was reported to have said:-

"By Allah, in whose hand is my soul!! You enjoin righteousness and Forbid evils or Allah shall send down a punishment from him to you, Then you will supplicate to him, but he will not accept your supplication."⁵

Ahmad Vol. Five (5) page thirty eight (38).

To conclude this, it is important to make a reference to a verse where Luqman (Peace be Upon Him) when he was delivering a sermon to his son said:-

"O my son!! Establish regular prayer; enjoy what is just and forbid What is wrong. And bear patience constantly for whatever happens to you."⁶

IV. WHAT A MUHTASIB SHOULD NOT DO

The fact that a *Muhtasib* is given powers and is performing his functions, he is not to act outside his duties and responsibilities. That is to say he should not act beyond his limit. He should however in any case not spy on people in their houses or try to intrude into the privacy of people.

This is in line with the prophetic Hadith where the prophet is reported to have said:-

"Whoever conceits the vices of his Muslims brother shall have his Vices veiled in the hereafter".

The Bauchi State Criminal Justice System Does Not Empowered Hisbah To File A Criminal Complain

Therefore, the act of Hisbah is spying of people in their houses is wrong as enunciated by Ash-Sheikh Abubakar Al-Jazaírí in his book Minhaj-al-Muslim while addressing the Hisbah to the manners of their act and said:

“The members of Hisbah should avoid spying on people in their houses.”

He listed a good number of authorities from the Holy Qurán and the Hadith of the Holy Prophet (P.B.U.H) he cited Qurán 49 verse 12 where Allah the Almighty says: -

“And do not spy on one another.”⁸

He also quoted a number of prophetic traditions among others. He makes a reference when Abdullahi Ibn Masúd was told that:

“This is WalidIbnUqbah, his beared is wet with wine. IbnMasúd remarked that we have been forbidden to spy. If somebody appears in public, then we shall take notice of it.

Sayyidna Umar, the second Khalifah also remarked while deciding a case between two people as follows.

We only judge you from what appears openly, and Allah judge the hidden.

V. INSTITUTION OF CRIMINAL PROCEEDINGS IN THE SHARIÁH COURTS OF BAUCHI STATE NIGERIA

A criminal proceeding could be instituted by either of the following: -

- The Attorney General.
- The Police.
- Other Officers.

a) THE ATTORNEY GENERAL

The Attorney General of the Federation as provided under section 174 (1) of the 1999 constitution has the powers to institute Criminal Proceedings in respect of offences created by Federal Legislation in any Court established under any law in Nigeria except Court Martial. The Attorney General of the State also has the powers under section 211 (1) of the 1999 constitution to perform same functions in the state in respect of offences created by the state laws.

b) THE POLICE

Section 23 of the Police Act. Provides:

“Subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999, any Police Officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name.”⁹

c) OTHER OFFICERS

This include among others the following: -

- a) Custom Officers in respect of Custom Offences.
- b) Rate Collectors in respect of Rate Offences.
- c) Inspectors of Factory as provided under sect. 71 of the Factories Act. Etc.

It is important at this juncture to stress that private persons can also file information after they had made an application to the Attorney General and it is endorsed by him.

In Bauchi state however, a law was enacted and cited as Sharia Criminal Procedure Code Laws of Bauchi State of Nigeria 2001.

Thus section 2 provides: The provisions contained in the schedule to this law shall be the law of the state with respect to the several matters there dealt with and the said schedule may be cited as, and is hereinafter called, the Sharia Criminal Procedure Code.

Section 3 (1) (SCPC) further states: -

“All offences under the sharia penal code shall be investigated, enquired and Otherwise dealt with according to the provisions contained in the sharia criminal procedure code.”¹⁰

More so sub-section 4 of section 3 is specific on the application of the Shariá Rules where it states:

*"In any matter of criminal nature, the sharia courts shall be bound by the provisions of this Sharia Criminal Procedure Code and exclusive of any other system not being Islamic law."*¹¹

The Sharia Courts as provided by the above provisions are of course the Lower Sharia Courts, the Upper Sharia Courts and finally the Shariah Court of Appeal. They are the Courts that are given powers to follow and adjudicate cases based on the principles of Islam and Sharia laws generally. In other words they are the courts that have powers to order for the amputation of the hands of a Thief etc.

When we still look at some of the provisions of the sharia criminal procedure code Bauchi state of Nigeria 2001, under trial generally, section 1 talked about initiating criminal proceedings, and it states.

Section 1 'A person shall be tried by the sharia court if

- a) A written complaint is made against him by the Attorney General
- b) Upon the receipt of complaint of fact which constitutes an offence by a victim of crime or his representative, if the court has reason to believe or suspect that an offence has been committed.
- c) Upon receiving police first Information Report (FIR).

The above three ways are therefore the only ways recognized by the Bauchi State Sharia Criminal Procedure Code 2001, for the institution of Criminal complaint in Bauchi State. It is also to be noted that they are direct replica of what is obtained under the Common Law as pointed out earlier.

The Hisbah command has therefore no place or locus standi to institute a direct criminal complaint in Bauchi State. They however have the power to investigate and collect data or necessary information and at the end report the matter either to the Attorney General or to the Police who can now validly institutes a proper action as provided by section 1 (a) and (c) respectively. When the matter is duly instituted however, they might be called as witnesses so that they can state what happened as a result of their investigation and findings.

It is very important at this juncture to quote the provisions of section 24, 25 and 26 of the Bauchi State Sharia Criminal Procedure Code 2001. Section 24 provides:

*"The court shall ascertain from the complainant the name of any person or persons likely to give evidence for the complaint/prosecution and such of them as the court deems necessary."*¹²

Section 25:

*"When a witness appears before the court he is to be questioned as to his name, religion, age, occupation and residence and his relationship with the party if any."*¹³

Section 26.

*"After a witness has given evidence for the complainant or prosecutor, the court may put such questions to him, as it may deem necessary."*¹⁴

The above three sections have spelt out the procedure at the hearing that after a witness has been called, his particulars should be written and the court has the power to ask the witness some questions as it may deem necessary. As I pointed out earlier, a member or members of Hisbah can now stand as witnesses for the complainant or for the prosecution and all necessary questions may be put to them by the court.

VI. CONCLUSION

In conclusion however, it is important to rightly say that the act of Hisbah in some places here in Bauchi State is not in line with the laws of the state that created them.

I would like to draw the attention of the Hisbah at this juncture to stick to and restrict themselves to their duties as provided by the sharia and the sharia laws of the state. They should not parade themselves as Police men. They should stick to and adhere to their duties and functions. Apart from their duties I stated at the beginning of this paper, they can as well perform some of the functions of the police, like searching and other investigations. While on the other hand, the police have no power to exercise most of the functions of the Hisbah as they are also guided by the laws and Acts that established them.

VII. RECOMMENDATIONS

This paper recommends among other things the following: -

- The Hisbah Command should be highlighted on their duties through workshops, seminars etc.
- Competent hands shall be appointed to serve as members of the command.
- Proper scrutiny and supervision shall be effected on all their activities.
- Whoever violates or acted ultra-vires shall be put to order or be punished if his acts were found to be deliberate.

NOTES

1. Qurán, Chapter 4 verse, 135
2. Qurán, Chaper 3 verse 104
3. Qurán, Chapter 3 verse 110
4. Qurán, Chapter 22 verse 41
5. Qurán, Chapter 9 verse 112
6. Musnad Ahmad Vol. 5 pg. 38
7. Qurán, Chapter 31 verse 17
8. Qurán, Chapter 49 verse 12
9. Section 23, Police Act.
10. Section 3 (i) S.C.P.C Bauchi State 2001
11. Section 3 (4) S.C.P.C. Bauchi State 2001
12. Section 24 S.C.P.C. Bauchi State 2001
13. Section 25 S.C.P.C. Bauchi State 2001
14. Section 26 S.C.P.C. Bauchi State 2001

REFERENCE

- [1]. Abdullahi, Y.A. (1977). *The Holy Qurán English Translation and Commentary* New York.
- [2]. Abdul, M.A., (1100 CE). *AL-Risalah Fi QadhaWal-Hisbah*
- [3]. Bauchi State Sharia Commission, (2002). *Guidelines on the formation of Hisbah Committeees Bauchi*, *Information Unity Press*.
- [4]. Bauchi State Shariah Criminal Procedure Code (2001).
- [5]. Federal Republic of Nigeria (1999). *Constitution of the Federal Republic of Nigeria*.
- [6]. Jazaíri, A.J. (1993). *Minhaj-al-muslim, Dar-al Fikr, Kano State*.
- [7]. Nawawi, I. (1983). *Riyadus-salihin. Kano. Dar-al-Fikr*,