

**EHTESAB: THE ONLY WAY TO
SALVATION**

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A dynamic and just society is characterized by its spirit of accountability (Ehtesab) and the institution which it has for the purpose. Hazrat Ali (R.A.) summed up the essence of human history when he said: "Nations can survive in infidelity but not with injustice". (Arabic version). Emperor Jahangir who is acknowledged by friends and foes as a symbol of justice says in his Tuzk-e-Jahangiri "An unjust society and an unjust government are like moth-eaten wood that may fall down any time, bring down with it everything, the ruler, the ruled and the kingdom."

The general calamity that engulfed the entire nation and has afflicted every individual in Pakistan stems primarily from the repudiation of our covenant with Allah. As a result, we find ourselves in the stronghold of an all-pervading system of tyranny. And then we evaded the struggle for getting rid of the tyrants and blood-suckers and making them to pay the penalty for their evil deeds. It is a stark reality that compromise with tyranny is no less a crime than tyranny itself. Praising the oppressor and the transgressor incites the terror of Allah. There is the well-known saying of the holy Prophet (s.a.w.) that proclaiming the truth in the face of a tyrannical and coercive regime is a superior form of 'Jihad'. (Mishkat) Further, he (s.a.w.) says "Help your brother whether he is the oppressed or the oppressor". He (s.a.w.) was questioned, "O' Apostle of Allah, I can help certainly him when he is oppressed, but how can I help him when he is himself the oppressor". He (s.a.w.) replied, "Your restraining him from tyranny amounts to helping him: (Mishkat). He (s.a.w.) advised, "Keep away from repression because repression shall lead to darkness for its perpetrator on the Doomsday." He (s.a.w.) further sermonized, "Whosoever helps the oppressor and enables him to subjugate the truth with his tyranny, loses the protection of Allah." (Al Maujgin Alssaghir Lil Tibrani). He (s.a.w.) has warned, "Whosoever occupies a span of land unjustly shall find the weight of seven such pieces of land hanging around his neck on the Doomsday." (Mishkat).

The holy Prophet (s.a.w.) forewarned, "Keep away from embezzlement and pay up even trivials like needle and thread because such a defalcation shall warriors (Mujahid) of an encounter wherein the holy Prophet (s.a.w.) also took part, who took away only one cloak without permission, lost his recompense for the grand virtue of Jihad. The holy Prophet (s.a.w.) remarked that he was dead and stands consigned to hell-fire. Those accepting bribe and those offering it are all destined to hell. He (s.a.w.) declared that in nations where corruption and fraud is rampant, Allah puts awe and fear of their enemies in their hearts. Societies where debauchery is wide spread shall be obliterated. Societies tampering with their weights and measures shall be deprived of their prosperity and blessings (Barakah) and where judiciary awards unjust decrees, bloodshed shall be their doom. (Mishkat).

It is decreed by the holy Qur'an that when oppression, disorder, corruption, fraud and injustice become rampant in a society, even those who do not commit any wrong are not spared from the general calamity, because they do not rise up against these evils to confront the oppressor and do

not care to take the wrong-doers to task. They think themselves safe until the fire engulfs them, but in reality they are not safe and cannot be safe unless they rise against the forces of evil and put their life and money at stake for the dominance of justice and truth:

"And guard yourselves against a sedition which will not afflict the wrong doers alone. Know that Allah's punishment is stern."
(Anfal 8: 25)

For that reason, the health and progress of the Muslim society depends on rule of law. Enjoining justice and forbidding evil, upholding justice and enforcing the law in all matters including those relating to one's own self or to one's relations and friends with absolute equality and uniformity and without differentiation of high or low, strong or weak, is an outstanding feature of the Muslim polity:

"O' believers, be dutiful to Allah and bearers of just witness. Do not allow your hatred for other men and turn you away from justice. Deal justly; justice is nearer to true piety."
(Al-Maida 5: 8)

"Believers, conduct yourselves with justice and bear true witness before Allah even though it be against yourselves, your parents or your kinsfolk. Whether he be rich or poor, know that Allah has better right over both. So do not be led by passion, lest you should swerve from truth. If you distort your testimony or decline to give it, know that Allah is cognizant of all that you do."
(Al Nisa 4: 135)

And then each and every individual of this Ummah has been assigned the responsibility of commanding virtue and justice and forbidding evil and vice and to make it the aim and mode of his life:

"You are the best of nations that have ever been raised up for mankind. You enjoy justice and forbid evil. You believe in Allah."
(Al-e-Imran 3: 110)

Enjoining to do what is right and forbidding from doing what is wrong has been made obligatory for every Muslim individually and in the case of Muslim Ummah, Muslim society and Muslim state collectively according to their capacity and authority. In an Islamic state and in a Muslim society the very aim of the authority and power is enjoining virtue and forbidding evil and establishing justice and balance in the society. Imam Ibn-e-Temia sums up this subject saying:

"The aim of all authority in an Islamic state is enjoining virtue and justice and forbidding evil and wrong, irrespective of the fact whether such authority is exercised on behalf of the state by the Judicial Departments of Defence, the police, the monetary agency e.g. the Department of Finance or the Department of Accountability (Ehtesab)."
(Fatawa Ibn-e-Temia, vol.28, p.66)

Every form of usurpation or encroachment is 'Zulm' (inequity) and it has been defined as an act of displacing anything from the place where it rightly belongs and what it ought to have been. Al Mawardi has defined Zulm saying:

"According to Shariah the purport of 'zulm' is to give up what is right and to adopt what is wrong maliciously. 'Zulm' (inequity) has also been described as encroachment into another person's domain without his consent and transcending reasonable limits." (Mohammed Ali Thanavi *Islahat ul Funoon*).

Whether these encroachments are on the possessions and rights of an individual or in the affairs relating to society, state or public property, as a whole, institutions like *Hasba* (accountability) and *Diwan-e-Mazalim* (courts against oppression) were created so as to purify the Muslim society from oppression and embezzlement. Besides the collective rights and etiquettes of the society, special significance was attached to the protection of rights of common people and particularly those of weak. In order to guard against the high handedness of oppressors, usurpers, unscrupulous rulers and corrupt officials in respect of the riches of the Millat and the personal property of the individuals and to ensure proper performance of their duties and obligations, Muslims had established a system unparalleled in history for its effectiveness and efficiency.

The holy Prophet (s.a.w.) himself declared: "Non-payment of debt by a moneyed person renders him liable to punishment and disgrace. (Sunan Abu Daud).

According to an incident, quoted in *Mousua Fiqa Umar*, one Ma'an bin Zaida got a counterfeited stamp of the Baitul Mal and prepared a forged document and drew some money from Baitul Mal. Hazrat Umar (R.A.) punished him with 100 lashes and imprisoned him. When someone tried to intercede on his behalf, Hazrat Umar (R.A.) punished him again with 100 lashes.

In this regard there is no distinction between high and low, rich and poor, resourceful and the under privileged. On the contrary, those who are higher in authority, status and power are liable to be judged more severely. Hazrat Aisha (R.A.) quoted an incident in which the Quraish had to suffer embarrassment in the case of a woman from Makhzoon tribe who had committed theft. They discussed the matter among themselves and decided to intercede on her behalf. They realized that only Hazrat Usama bin Zaid could venture to approach the holy Prophet (s.a.w.) in this regard as he was very dear and close to him (s.a.w.). Accordingly Hazrat Usama approached him (s.a.w.). The holy Prophet (s.a.w.) was visibly angry and said, "Earlier nations were destroyed because they punished only the weak by inflicting hadood in cases of theft and let off influential persons who committed the same offence. He (s.a.w.) swore by Allah and declared that even if his (s.a.w.) daughter Fatima (R.A.) would have committed theft, her hand would have been chopped off. (Mishkat) Imam Ghazali (R.A.) has described this matter in his treatise *Ahya ul Uloom* very succinctly and comprehensively.

To enjoin doing what is right and to forbid doing what is wrong, is a comprehensive and all-embracing duty and is the bedrock of Deen (Islamic way of life). Ignoring or discarding it amounts to abandoning the primary duty. It undermines the Islamic system and weakens the faith. In such a situation it is but sure that ignorance and chaos shall prevail and human society shall perish.

Today our country is afflicted with oppression, tyranny, aggrandizement, injustice, dishonesty, corruption and denial of rights. As a result, social life is being buffeted with waves of disorder, chaos, insecurity and fear. Its basic reason is the disregard of our primary duty, namely to enjoin the doing of what is right and to forbid the doing of what is evil.

To add to it is our compromising with injustice, giving free-hand to tyrants and usurpers and a license to those in power the authority to commit any act of tyranny and excess and allowing exploitation of the weak and the resource less to the last drop of their blood. The one and only solution lies in real, effective and impartial Ehtesab. Nature sometimes condones the individuals but does not forgive the collective sins of nations.

The Ehtesab Bench of the Supreme Court of Pakistan has announced its verdict against the leader of Peoples Party, Benazir Bhutto, and her husband Asif Ali Zardari on the charges of bribery, receiving commissions, misuse of their authority and unlawfully receiving money outside the country, sentencing them to five years imprisonment, and fine and disqualifying them from the membership of the Assembly and debarring them from holding public office. It has led to war of words duels between the ruling the party and the opposition, each making onslaughts on the other in a language speeded in political, racial and regional prejudices. The tenor style of debate is no "less criminal" than the crime itself and the audacity to Allah's wrath. There is one sided action on the one hand to proceed against members of the opposition only, while protecting their own people, and on the other hand, the impartiality of the judiciary itself is being assailed by raising the bogey of federation versus regional and whipping up regional prejudices, totally ignoring the facts of this infamous case, and disregarding the reality of the crime and the seriousness of the misdemeanor. One can only say that the criminals are most brazen faced. This is nothing but a mockery of truth, justice and Ehtesab. Evidently the society and the ruling elite have reached a stage where they cannot even realize the extent of their loss. It is the last stage of disorder and malaise. It is time now the forces of virtue rise up for the cause of justice and righteousness, lest Allah's wrath comes on us all. (May Allah forgive us)

Undoubtedly, justice should be impartial and transparent and it should also be seen to be in an impartial and transparent manner. But the system presently functioning is not adequate for the purpose. Saner elements in the society and particularly in the Islamic Movement had declared in clear terms that whenever in power every political group without exception looted and plundered the country ruthlessly and at the same time it did its best to render the process of Ehtesab ineffective. Four governments were dismissed during the period from 1988 to 1996. The main changes against all of them, particularly the Peoples Party in 1990, the Muslim League in 1993 and

the Peoples Party again in 1996 were involved in rampant corruption, misuse of authority and plundering of public funds. The charge sheet against the Benazir government was issued in 1996 by the then President of Pakistan, who was a nominee of the PPP and the Supreme Court (whose Chief Justice belonged to Benazir's province and was appointed by her) confirmed prima facie the allegations of corruption and defalcations against her. The dismissal of her came about after the countrywide Ehtesab movement of Jamaat-e-Islami and its "Dharna" in Islamabad (June 1996). The whole nation demanded Ehtesab before Elections but the demand was ignored and the entire political process was put in jeopardy.

The then President of Pakistan and his interim government committed a blunder and wasted a historic opportunity for Ehtesab, merely for the sake of expediency and some misapprehended political risks. That was the most opportune time for Ehtesab as it could have been done effectively under an impartial set up with the guidance of the Supreme Court. Then a new leadership could emerge through elections according to Clauses 62 and 63 of the Constitution. The interim government amended its own Ehtesab Ordinance and thus provided an opportunity to the plunderers of the nation to adorn the Assembly seats once again. It has become absolute clear during the last two years or so that the corrupt leadership has made matters worse and that there is no way to put things right except through a genuine 'Ehtesab'.

There is no doubt at all that Mrs. Benazir and her government and the present government, and particularly its Prime Minister and his family, are indulging in blatant acts of corruption. Being offenders of the nation, they do not deserve to be its leaders. Their hands are not clean. Crying thief, they are all thieves themselves. This stark fact cannot be obliterated through propaganda blitz or through legal hair-splitting and technical prevarications. The sentence in SGS and Cotenca cases is just like a drop in the ocean or the tip of the iceberg of criminality. Anybody who has studied the past events cannot deny the role played in them by the former Prime Minister and her husband. The court verdict has enumerated the entire sequence of events. As Chairman of the Finance Committee of the Senate, the writer had the opportunity to examine the matter and it was evident that gross irregularities were committed. The Senate Committee, it may be mentioned, at that time consisted of Senators of all the political parties, including those of the PPP, and in its report of March 17, 1997, which was presented to the Senate, the Committee had asked for further investigations. Serious discrepancies were pointed out in the report and it was observed that the documents presented to the committee revealed a close connection of all the companies with an important political personality.

It is regrettable that such a clear and obvious matter is being entangled in legal hair-splitting. Sanity demanded that the wrong done to the nation was admitted as was done in the recent past by the former Korean President, the former Japanese Prime Minister, the former Italian Prime Minister and even by the former Vice President of the USA, Mr Agino. It goes to demonstrate the moral degradation of our political leadership, political parties and of the society as a whole. It is a

pity that known offenders have adopted a position of defiance and are trying to hoodwink the nation and even the judiciary to escape punishment. Efforts are afoot to utilize the law and the judicial procedure for protecting the culprits instead of securing their conviction. While it is necessary that an innocent person is not punished, it is equally essential that the real culprits do not go scot free through legal rigmarole and political black-mailing. Justice is massacred in this way and the society cannot be saved from the high-handedness of oppressors and usurpers.

To say that the thieves that have been apprehended should be freed and not proceeded against, because other thieves are still at large, is simply absurd. The hue and cry which has been raised by fanning federation versus province prejudices amounts to treason against the state and the nation and amounts to rubbing salt into its wounds. A crime remains a crime whether it is committed by a person hailing from Larkana, Lahore or Raiwind. Pakistan is one country and a culprit residing anywhere in it can be prosecuted under its laws without regard to the place he belongs to. The principle that the provincial and regional demarcations cannot bar the legal prosecution was laid down by the Supreme Court in the case of Bizenjo during the regime of Zulfikar Ali Bhutto. Regional prejudices are being stirred up simply to cover up crimes. Justice should certainly be provided to everybody, but to provide an opportunity to the culprits to escape from law on the basis of such false pretext is in itself a crime that may tear apart the integrity and unity of the country and its institutions. The crux of the issue is whether national wealth was plundered and whether authority was misused? If that was the case, as indeed it was, then nobody should be spared from ambit of law and 'Ehtesab'. The whole nation should demand with one voice for the Ehtesab of all the culprits and the plunderers.

Our existing judicial system is very defective. The judicial process is abnormally delayed and the tactics adopted by the lawyers to delay and prolong the proceedings are so brazen that justice itself would blush in embarrassment. There is a time limit of 60 days for deciding a case by the Ehtesab Bench, but the only one reference against Mrs. Benazir lingered on for one year and one-and-a-half month. Still the defence counsel was insisting that he could not get sufficient time for defence. And now details about personal matters of the relatives of the judges are being presented and that too at the proceedings. We do not want to go into these matters. The newspapers have carried reports stating that while the brother of the judges is an office bearer of Muslim League, his one brother-in-law is the office holder of the Peoples Party and another brother-in-law is the relative of the former Foreign Minister of Muslim League faction which was a coalition partner of PPP. Further, another judge of this bench was an active PPP worker prior to his being exalted to this position. But we do not want to enter into this kind of discussion. What we want is that the court should in reality be impartial and should do justice and should be seen to be doing. They should not permit waste of time nor let the culprits go scot free due to legal quibbling and technical prevarications.

The present system of Ehtesab is also inefficient. Particularly the amendments that provide protection to all the bungling and defalcations committed prior to 1990 and the way in which the Ehtesab Commission has been made subservient to the Ehtesab Bureau set up in the office of the Prime Minister, are all against the principles of justice and fairness. That is why Ehtesab looks one-sided. The way the present government and its higher echelon are being protected, is grossly unfair. The way the Sharif family has built its industrial empire, and the way they tried to cover up their default on bank loans amounting to over rupees ten million, by offering some sick industries to the banks, is sheer fraud. The Raiwind palaces, the decree by a British court for the payment of \$ 32 million, corruption during the Chief Minister ship of Punjab, particularly the allotment of plots of land in bribe - all these are as cognizable as the cases of corruption and bribery of Benazir and Zardari.

It is obvious that this task cannot be carried out by the present Ehtesab Bureau and Ehtesab commission also does not find itself in a position to do it adequately. The Commission has received 3500 complaints. Of these 1400 are against the Federal Ministers and 650 against provincial ruling personalities. The Commission has been able to examine only 340 cases so far. Of these 245 cases have been assigned to Ehtesab Bureau for investigation - and that is the end of it!

How real Ehtesab would be possible in this state of affairs? That is why people are justified in saying: "Thieves have become guards!".

For real Ehtesab, the most appropriate measure would be the formation of an interim government whose task should be to carry out impartial and speedy Ehtesab within a prescribed time limit. The constitutional impediment for the establishment of such an interim government resulting from the 13th Amendment can be removed through a reference to the Supreme Court.

The image of both of the major political parties is thoroughly taunted and justice is not possible at their hands. Therefore, the only way to rectify the situation would be to have an interim set up wherein an Ehtesab Court is formed, comprising Supreme Court judges, serving or retired, for deciding the major cases within a specified period. For that purpose a simplified procedure may be evolved to fulfill the essential requirements of justice, and to provide a reasonable chance for defence to the accused party, fore-closing at the same time the possibility of willful delay and escape through legal quibbling. Further, the punishment should be exemplary and should ensure the return of the plundered wealth. The system of investigation should be a part of impartial Ehtesab. With that end in view, a comparatively easier way is suggested to be as under:

1. All the former members of the national and provincial assemblies since 1985 should be ordered to declare, within a prescribed period, all the assets in the country and outside the country with full details, belonging to them and their family members. The same may be demanded from senior bureaucrats and public sector executives.

2. This information should be published and the public be invited to provide any further information which may be in their knowledge.
3. If anyone conceals his assets and these are revealed after investigation, all such assets should be confiscated and person concerned be duly punished.
4. The declared assets should be examined by the Commission. In cases where the assets do not correspond to the known sources of income, the concerned persons should be asked to justify their wealth, instead of trying to prove the charge of defalcation against them. The affluent may be asked to establish the propriety of their wealth and assets in conformity with the Islamic tradition that was established in the case of Hazrat Umar (R.A.) when he was asked to explain wherefrom he got the cloth for his dress? That was the criterion in the Islamic society for the Ehtesab of government functionaries, particularly during the era of the Rightful Caliphs (Khulafa-e-Rashdeen). The same procedure can be followed even today, but it has to be through open Ehtesab so that people may not conceal their assets on the one hand and are required to justify their existing wealth and assets at the same time.
5. Everybody should be provided the opportunity to make available to the Commission information or proof about major cases of corruption of persons in authority that may come to their knowledge. The Commission should have it investigated through its own independent means. This arrangement may, after meeting the immediate requirement, become a permanent system for Ehtesab working independently of the government machinery through its own administration and investigation mechanism. The Commission should be financially autonomous and its members should serve for a fixed term and should not hold any office of profit after retirement.

Only a system of this type can adequately deal with the requirement of contingent as well as permanent Ehtesab. It is only through this way that this dirty scourge which is capping the strength and vitality of the nation can be eradicated. This is the only way to ensure health, prosperity and progress for our people.
