

Amr makruf nahi mungkar and social order: how far should moral policing be allowed in modern society?¹

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Abstract

The objective of this paper is to discuss the true concept of *amr makruf nahi mungkar* based on shariah and the interpretation of the Muslim scholars, particularly in the light of modern application. According to Ibn Taimiyyah and other scholars, *amar makruf nahi mungkar* is a collective effort of the people to maintain order in the society and this includes the responsibility of the state as well. *Amar makruf nahi mungkar* and the concept of *hisbah* cover both the responsibility of *ummah* in general as well as the government. In today's society, where individualistic attitude and economic drive are more prevalent than concern for societal well-being, the government shows the concern by establishing an institution to enjoining the good and forbidding the wrong. The question is, how far can it be enforced using the legalistic approach? Or, should such effort be limited to societal mechanism involving parents, teachers and community leaders in an informal way? How does we tackle the claims that *amar makruf nahi mungkar* lead to transgression to privacy, challenging the freedom of expression and targeting moral behavior and manner of female rather than male. In Malaysia, the formal *hisbah* or the work on *amar makruf nahi mungkar* focuses on Muslims only conducted by Religious Enforcement Unit under State's Religious Department with power and jurisdiction accorded by the law. The paper will be focused on the scope it can be applied in the current situation and then discusses the challenges of that duty in the Malaysian society today.

Keywords: *amar makruf nahi mungkar*, obedience, policing, morality

Introduction

One of the general duties of the state and Muslim society is in the process of ensuring obedience to Allah. It is consistent with the principle of *hisbah* rendered as "enjoining virtue and prohibiting vice". Long before becoming part of a state's duty, it was an exemplary move established by the Prophet Muhammad (p.b.u.h) (612-632 AD) as an endogenous process in social change to improve the manner of the people among themselves. Law can also be used as a

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mechanism and part of the societal well-being is the maintaining of law and order within the public sphere through social institution.

The concept of *hisbah* is about raising consciousness of discipline in life through guidance and social correction. *Hisbah* is based on the Quranic notion and encouragement for Muslims described as the best ummah (*khayr ummah*) compared with other. One of the criteria for being the best of the people is the caring attitude to the extent of enjoining the good deed and forbidding the wrongs. As an example, there is the hadith in which the Prophet (p.b.u.h) saw a vendor selling golden fresh wheat in the Madinah market. When the Prophet slipped his hand inside the layer of wheat, he found the wheat was wet underneath. Obviously the vendor was cheating in his sale of fresh wheat: a basic food item. The Prophet reprimanded this practice. Thus a consciousness was raised by the practice of guidance. This article begins by evaluating the concept of *hisbah* and the role of *muhtasib* as a template and how religion of Islam is administered for Muslims in Malaysia through various laws. Then I go on analyzing the position of state-based religious enforcement authority as modern *muhtasib*, tasked with ensuring obedience of so-called "ethics and religious practices". I then evaluate the challenges in performing this duty.

Amar makrif nahi mungkar, moral policing and the significance of hisbah

The concept of *amar makruf nahi mungkar* is based on the Quranic *ayat* which shows the significance of Muslim's duty towards one another by becoming the best of *ummah* in this world. The *ayat* of 104 in Surah aal-Imran comes to the effect as below:

*And let there be (arising) from you a nation inviting to (all that is) good,
enjoining what is right and forbidding what is wrong, and those will be the successful.*

Such command generally reminds Muslim people at large—including authorities—of their moral responsibility and obligation to ensure adherence to religion while also maintaining order and justice in the society. The concept of enjoining virtue and forbidding vice shows that Islam puts a strong emphasis on the duties of every individual in their capacity to remove all kinds of vice (*munkar*) by encouraging acts of virtue (*makruf*). The example given by the Prophet as mentioned above was corrective measure to enhance the ethics and public morality. Advisory approach was taken and became effective. However, it does not mean that members of the public can go to the extent of confiscating property or invading other people's privacy by spying on or entering any private premise without permission just in order to fulfill the obligation of forbidding vice in the society. Ordinary people do not have any power and can only give encourage and advice. According to al-Ghazali (d.1111 A.D), a great theologian and the writer of landmark book, *Ihya' Ulum al-Din* (rendered into English as *The Revivication of the Religious Sciences*), vice (*munkar*) includes not only sinful act but anything harmful to the

public at large.² A famous Baghdad scholar, Ali bin Muhammad al-Mawardi (d.450H/1058) started the theory of *hisbah* where he devoted a chapter on *hisbah* in his book, *Ahkam al-Sultaniyyah* and discussed about the duty of the Muslims in general to enjoin good virtue and to forbid vicious act. Another famous scholar is the Egyptian Ibn al-Ukhuwwah (d.728/1329) through his infamous creation of manual for *muhtasib*, *Maalim al-Qurbah fi Ahkam al-Hisbah*. What started as regulators for market surveillance to avoid fraud and unjust transaction between traders and consumers in conducting business, had developed into the wider sphere of the activities from public morality and performing Friday prayer to conducting vehicles on the public roads.

Hisbah is said to be in line with the contemporary concept of ombudsman. Regulators, inspectors, reviewers and auditors are all *muhtasibs* in terms of name and operation, in the modern nation-state administration entrusted with ensuring check and balance. It exists in all ministries and government agencies in today's administration, ensuring obedience and compliance to the regulations applied to their scope of application, thus bearing equivalent functions of the *hisbah*. However, the religious inspectorate was not considered as municipal institution within the framework of a central government, where all other agencies possessing public authority were integrated within the central hierarchy of executive power. The religious and direct function of *hisbah* have been specifically dedicated for religious authority mandating with the power to enforce among others, social ethics and religious obedience among the Muslim general public. The current context has seen the institutionalization of *hisbah* where public can lodge complaint and the officer entrusted with the function of *muhtasib* can take action against the complaint as well as patrolling the area of their jurisdiction. The level of action depends on the position or authority *hisbah* institution has in one country. The officer entrusted with the duty of *hisbah* must also adhere to the established regulations and standard procedures in their effort to alleviate *munkar*. Policing or *hisbah* in the realm of public morality and in the sphere of economic activities are capable of becoming a symbol of state's emerging Islamicization.³

The sphere of modern-day *hisbah*: Religious Police, Religious Offences and Public Morality of the Muslim Society

According to Ibn Taimiyyah, there are two types of *hisbah*. One is the endogenous effort by people at large and second, the governmental institution to enforce the law. What we have today is the institutionalization of *hisbah* and *muhtasib* within the specific context of legal enforcement, particularly of religious offences and public behavior. In terms of policing and

² Ali Muhammad Mustafa & Said al-Mahasini, *Ihya' Ulum al-Din li Hujjatul Islam Abu Hamid al-Ghazzali* (6 volumes). Damsyik: Dar al- Faiha' (2010)

³ Ahmad Bello Dogarawa, "Role of Hisbah Institution in Ensuring Ethical Business Practices: Reflection for Shariah Implementing States in Nigeria, (2013) *International Journal of Islamic and Middle Eastern Finance and Management*, Vol. 6 Iss: 1, pp.51-63, Azrin Ibrahim, "Accountability (*Hisbah*) in Islamic Management: The Philosophy and Ethics Behind Its Implementation", *International Journal of Humanities and Soc Sci*, (2015), Vol.5, No 8, 184-190; RK Salma, NM Abdul Raheem, *Hisbah* Institution and Protection of Islamic Human Rights in Nigeria: Congruence or Conflict. (<https://www.researchgate.net/publication/265427447>)

public morality, shariah policing conjures up images of so-called moral policing in certain countries—that is, religious police and vigilante squads patrolling the streets. Not only that, they also cater for the religious offences including contempt of religion, blasphemy, etc. The subject of implementation is mostly provisions under the Shariah Penal Code where various offences are provided. Examples of religious squads enforcing what is deemed to be Islamic regulation can be seen in Afghanistan⁴, northern states in Nigeria,⁵ the Middle East,⁶ autonomous province of Aceh in Indonesia,⁷ and Malaysia.⁸ Approaches taken in order to “enjoining the good and prevent the harmful” are various. For example in Kano, Nigeria the police-public partnership was used to form a vigilante group as it is considered the best way to tackle the so-called communal conflict⁹ while Malaysia, Aceh, Brunei, Saudi Arabia and Pakistan establish a special division of religious enforcement. In all of these places, criminal offences as per *hudud*, *qisas* and *taazir* exists as part of the national or states’ legal system. The difference in policing from one country to another lies in the power and jurisdiction given by the country’s legal system. For example, in Afghanistan, the Department for the Preservation of Virtue and Prevention of Vice was established at national level, whereas in Saudi Arabia, the Committee for the Promotion of Virtue and Prevention of Vice is tasked with the role of preserving morals.¹⁰ In the Aceh province of Indonesia, *Wilayahul Hisbah* (the so-called religious police) has the autonomy since its first establishment in 2006 to implement shariah offences laws in particular the laws on *mesum* (or *khalwat*: the act of a man and a woman being together in a close and suspicious manner), public indecency, drinking and gambling.¹¹ In Pakistan, some provincial governments introduced a law named the *Hisbah Act* (the *Accountability Act*) to ensure enforcement of Islamic laws.¹²

Nowadays, the term “*hisbah*” is used in a limited context of the promotion of ethics and manifested in the sphere of public morality. In the context of enforcing the so-called ‘moral’ offences, which is the focus of this paper, *hisbah* is in line with the principle of eradicating *munkar* behavior and encouraging obedience toward the enacted (shariah) law. An established system of *hisbah* is needed to ensure a proper implementation of the law, particularly the eradication of moral offences, just as the prime objective of the enforcement is to encourage obedience to Islam and the law in general, which, in turn, results in public order and safety.

The framework for *Hisbah* in Malaysia

⁴ Fida Mohammad and Paul Conway, “Justice and Law Enforcement in Afghanistan under the Taliban: How Much Is Likely to Change?” *Policing: An International Journal of Police Strategies and Management* 26, no. 1 (2003):162-67.

⁵ Vincent O. O. Nmehielle, “Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality Is the Question,” *Human Rights Quarterly* 26, no. 3 (2004): 730–59.

⁶ Jill Crystal, “Criminal Justice in the Middle East,” *Journal of Criminal Justice* 29 (2001): 469–82.

⁷ Siti Zubaidah Ismail & Samsul Bahri Zakaria, “Wilayahul Hisbah Dalam Penguatkuasaan Qanun Jenayah Syariah Di Aceh: Isu dan Cabaran” (*Wilayahul Hisbah in the Enforcement of Qanun Jenayah Syariah in Aceh: Issues and Challenges*) Proceeding Aceh Development Conference 2016, pp.125-137.

⁸ Siti Zubaidah Ismail, *Jurnal Syariah*

⁹ See for details in A . Hills, Partnership Policing: Is it relevant in Kano, Nigeria? (2014) *Criminology and Criminal Justice*, vol.145:1:8-24

¹⁰ Mohammed al-Bishr, ed., *The Religious Police in Saudi Arabia* (Riyadh: Ghainaa Publication, 2008).

¹¹ Since 2015 though, the amendment was made to the *Qanun* and now it contains thirteen offences applicable to Aceh. See Siti Zubaidah Ismail & Samsul Bahri Zakaria, *supra* note. 6

¹² Kuwait News Agency, “Pakistani Provincial Govt. Introduces Taliban-Style Hisbah Act Law,” news release, November 7, 2005, <http://www.kuna.net.kw/ArticlePrintPage.aspx?id=1571717&language=en>.

The Federal Constitution states clearly under article 3(1) that Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. States in Malaysia are also given power to enact laws as far as Islam is concerned as clearly provided under List 2 State List as below:

Except with respect to the Federal territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.

It was emphasised in the recent case by the Court of Appeal that the supremacy of Islam as the religion of the Federation imposes positive obligation on the Federation as well as states to protect, defend, promote as well as to give effect by appropriate state action, to the injunction of Islam and also to facilitate and encourage people to hold their lives according to the Islamic injunctions in daily life. According to the List above, state may enact “... *creation and punishment of offences by persons professing the religion of Islam against precepts of that religion...*”. Thus, the Syariah Criminal Offences Enactment was created. The enforcement of all offences under that law becomes the subject of *hisbah* in Malaysia.

Muhtasib: The Religious Enforcement Unit

The Religious Enforcement Division, a division under the state's Religious Department, is responsible for the enforcement of syariah law. Religious enforcement officers (REOs) are public servants appointed by state authority. Section 58(4) of the Administration of Islamic Law (Federal Territory) Act of 1993 states that:

“The *Majlis* may appoint from among the members of the general public service of the Federation a Chief Religious Enforcement Officer and Religious Enforcement Officers to

carry out the investigation of offenses under this Act or under any other written law prescribing offenses against precepts of the religion of Islam.”

As at December 2016, there are approximately 866 religious enforcement officers throughout the country of 30 million population, where 60% are Muslims.

The Scope of Moral Policing within the parameter of Syariah criminal offences as a Subject of Regulation

The Syariah Criminal Offences Act contains offences against religion and was enacted to be administered and enforced by the state’s authority and to be tried and heard in shariah courts. These offenses are not redundant with offenses listed in the Penal Code, which is the statute for general application. Due to limited jurisdiction bestowed by the Federal Constitution, the shariah criminal offenses cannot consist of juristic categories of *hudud*,¹³ *qisas*,¹⁴ and *taazir*,¹⁵ as provided in the Quran and Sunnah. For the past 40 years, Islamic offences have been implemented in its current form in Malaysia. Changes have taken place in the form and substance until the law has become what it is today: the Syariah Criminal Offences.

Offenses under the Syariah Criminal Offences Act (Federal Territories) Act 1997 (SCOA 1997) are divided into five categories: (1) *‘aqidah* (belief), (2) the sanctity of the religion and its institution, (3) decency and morality, (4) miscellaneous, and (5) abetment and attempt. The offenses that fall under the category of *‘aqidah* (belief) generally relate to deviant activities directed against Islam. *Deviation* is defined as any religious act that deviates from the teaching of Islam and that is not recognized by Islamic law according to any *madhhab* (sect). For example, section 4 of SCOA 1997 prohibits wrongful worship. That is, the offense of worshipping nature or committing any act that shows worship or reverence of anything in any manner contrary to Islamic law. Other offenses under this category include teaching or expounding false doctrine and propagating religious doctrines among Muslims other than the beliefs and doctrines of Islam as provided under section 5 of SCOA 1997. Likewise, if a person declares himself or any other person to be a prophet, *Imam Mahdi* or a *wali*, then action can be taken. Example is a case of *Abdul Kahar bin Ahmad v. Government of Selangor Darul Ehsan*.¹⁶ Abdul Kahar, the so-called *Rasul Melayu* (Malay Prophet), challenged his arrest and the charges used against him. Kahar claimed that he was a Malay prophet, an offense punishable under Section 6 of the SCOA 1997 (In this case, in Selangor, SCOE 1995).

The second category is offenses relating to the sanctity of Islam and its institution. It is an offence to insult al-Quran and Hadith, showing contempt or defying religious authority or court order, commit any act amounting to heresy, blasphemy, producing opinion contrary to

¹³ *Hudud* (plural of *had*, which means “limit”) means offenses as violations of God’s limits (*hudud al-Allah*). Punishments are mandatory and fixed, as derived from the Quran and Sunnah. There are seven *hudud*: (1) *sariqah* (theft), (2) *zina* (illicit sex), (3) *qadhif* (unfounded allegation of *zina*), (4) *hirabah* (highway robbery), (5) *shrub al-khamr* (intoxication), (6) *riddah* (apostasy), and (7) *bughah* (rebellion).

¹⁴ *Qisas*, which means “retribution,” covers bodily harm and homicide and is defined as matters of private claim. Punishments are fixed but not mandatory; the offender can waive the claim and obtain *diyat* (blood money) instead.

¹⁵ *Taazir* covers offenses other than *hudud* and *qisas*; punishments are discretionary and determined by lawmakers, members of the Parliament that pass the laws.

¹⁶ [2008] 4 *Current Law Journal* 309.

fatwa (religious edit), publishing religious materials contrary to *Hukum Syarak*, neglecting Friday prayer, disrespectful of Ramadan, drinking liquor, and gambling.

The third category, popularly known as moral offenses, is concerned with decency. This category draws the most attention from the public because it involves both public and private matters. For example, the offence of *khalwat* (close proximity, which is defined as a man and woman who are not related being together in a secluded place).¹⁷ Other offences included under this category are incest, prostitution, illegitimate sexual intercourse, heterosexuality, close proximity, and public indecency. It is interesting to note that statistics shown that there are more cases of *khalwat* than any other offenses charged and tried at the Shariah court throughout Malaysia. It will be explained further in the next section as it is the highlight of this paper.

Offences Relating to Decency

Under Part IV of the Syariah Criminal Offences Act (Federal Territories) 1997, there are ten offences namely:

No.	Name of offences	Definition
1	Incest	Sexual intercourse between a man and a woman who are prohibited from marrying each other under Islamic Law
2	Prostitution	Act of selling oneself for financial return
3	<i>Muncikari</i>	A person who acts as a procurer between a female and a male person for any purpose which is contrary to Islamic Law
4	Sexual intercourse out of wedlock	Equivalent to <i>zina</i>
5	An act preparatory to sexual intercourse out of wedlock	Any act of togetherness deemed as immediate action prior to sexual intercourse
6	Liwat	Sexual relations between male persons
7	<i>Musahaqah</i>	Sexual relations between female persons
8	<i>Khalwat</i>	A man and a woman not legally married being together in a suspicious manner in a secluded place
9	Male person posing as woman	Male wearing female dress

¹⁷ Siti Zubaidah Ismail, "The Legal Dimension of *Khalwat* Offence in Malaysia" [2016] *PERTANIKA JSSH*, 14(3):

10	Indecent act in public place	Indecent in terms of behaviour and dressing
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Out of ten provided offences, there are several offences that seem to be highlighted most of the times following controversial cases deemed as invasion to privacy, freedom of expression and basic human rights. The problems lie within the provision and its interpretation. They are as follow:

i. *Male posing as woman:*

Section 28 of the Shariah Criminal Offences Act (Federal Territories) 1997 (hereinafter SCOA 1997) stipulates that:

Any male person who, in public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

According to this provision, merely dressing up in a woman's dress in a public place will make a person liable if the act is done for immoral purpose. Immoral purpose is questionable as it is a situation which is not defined by the law. Immoral for whom and the definition of immoral are not clear. Therefore, a transgender "community" in Malaysia¹⁸ is in hot water over this provision, claiming that it is their rights to dress and behave. This basic rights is covered under the Federal Constitution which safeguards for personal liberty.¹⁹ So, when group of transvestite attending a fund-raising event in a hotel, they were caught by surprise when the religious enforcement officers (REOs) came and investigated them following a public complaint. They claimed that it was a private function and REOs had no rights whatsoever. The case is under investigation and nobody has been charged yet.

The case of cross-dressing went to the extend of questioning the legality of that law where a constitutional challenge was posed in n the case of *Mohd Juzaili Mohd Khamis & Others v. State Government of Negeri Sembilan and Others*.²⁰ Juzaili claimed to be suffering from a situation known as gender identity disorder (GID) and has begun hormone treatment as early as 2003. In 2010, he underwent a breast augmentation surgery in his effort to become a woman. Juzaili and two others were frequently arrested, charged and convicted under the above-stated section. Frustrated with the situation, they filed a judicial review asking for the interpretation of the law,

¹⁸ They form groups like Justice for Sisters, *Seksualiti Merdeka* and so on claiming to be representing lesbian, gay and transgender community.

¹⁹ Article 5. (1) no person shall be deprived of his life or personal liberty save in accordance with law.

²⁰ [2015] CLJ JT (2)

challenging the legality of the law prohibiting men to cross-dress, claiming that it is not immoral or cause any disturbance to anybody. However, the highest court decided that the law remains constitutional.

Another example of *munkar* is the recent case involving transgender activity where a group of transvestites attended a fund-raising event at a hotel. When REO was told of the event, they came and asked the organizer to stop the event. The case is not clear as to what offence has been committed.

ii. Indecent acts in public:

Section 29 provides that:

Any person who, contrary to Islamic Law, acts or behaves in an indecent manner in any public place shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

The ambiguity of the provision is very clear. The law does not define what amounts to an indecent manner in public place that warrant a conviction in the Syariah Court. Even though the Practice Direction of the Chief Syariah Judge elaborates that indecency is related to manner and attire, but still, it is debatable. Two cases are examples of the mess surrounding this provision: Siti Idayu Abdul Moin and Jeslina Hashim.

In the case of Siti Idayu, a 22-year old night club singer, she was arrested for sexy dressing and allegedly was encouraged immoral activity through her stage act in 2007.²¹ This case was heavily criticized by the public. Women's group alleged that the legal provision that makes indecent act an offence is targeting women (not men) and that the REO was using personal standards of indecency, i.e sexy dress as a proof of indecent behaviour. However, no further action was taken on this case. Another example is the 2005 celebrated case of Jeslina Hashim, an actress who was caught wearing revealing dress in a nightclub. This case was also closed after receiving public pressure. Is it the question of approach taken by the REO that was not right or is the fault lies in the ambiguity of law? What test should be applied by shariah court to determine indecency? In the author's opinion, this test must be objective, and the law should be clear in elaborating the elements that should be looked for in an offence. Thus, enabling the REO to determine whether an offence has been committed or not.

iii. *Khalwat* (close proximity)

²¹ "Singer held over dressing," July 6, 2007, <http://www.thestar.com.my/news/stories.asp?file=/2007/7/6/nation/>.

Section 27 of the Act provides that:

Any-

(a) man who is found together with one or more women, not being his wife or mahram; or

(b) woman who is found together with one or more men, not being her husband or mahram

in any secluded place or in house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts shall be guilty of an offence and shall on conviction will be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

The Rules and Operating Procedures

Shariah Criminal Procedure Act (Federal Territories) 1997 (hereinafter referred as SCPA 1993) outlines the powers and procedures for the REO, Prosecutor and Syariah judges and Syariah in conducting their specific duties. It has eight Parts namely:

- a. Part 1: Preliminary
- b. Part 2: General Provisions as to Criminal Court
- c. Part 3: Other General Provisions spelling out matters on arrest, warrant of arrest, summon, process to compel appearance, production of documents, search warrant and so on.
- d. Part 4: Information to the Religious Enforcement Officers and their Power to Investigate
- e. Part 5: Proceedings in Prosecutions
- f. Part 6: Appeal and Revision
- g. Part 7: Supplementary Provision concerning defences, bail, bonds, disposal of exhibits and of property, case transfer and of irregularities in proceedings.
- h. Part 8: General

The public, upon witnessing any immoral activities in the public places, can lodge a complaint to the Religious Enforcement Unit. Once the complaint is lodged by the public on a suspicion that a violation of (moral) law has been or about to be committed, the officer will carefully scrutinise the complaint to ensure that it falls within their scope of duty, not the other authorities like police etc. The SCPA 1993 outlines the procedures to handle complaint and investigation, how to handle arrest, re-arrest and escape and so on. Likewise are the procedures for the commencement of investigation, the power to arrest and detain, conducting searches of body and premise and to seize items related to any suspected crime. Similarly, the warrant of arrest can only be served within the state where the offense took place. Thus, if a witness to an offense live in another state, the chief REO must issue a reciprocal order to his colleague in the state of residence to request assistance with the calling of that witness. The power to detain a suspect for interrogation cannot exceed 24 hours, and suspects cannot be remanded for longer than that.

The enforcement of law will involve five stages:

1. the identification and reporting of the violators to the authority. This might be carried out by private parties who happen to have the information regarding the violation or by enforcement agents themselves.
2. Preparation of investigation papers. Enforcement involving investigation, arrest, confiscation etc.
3. Prosecution
4. Adjudication by the court
5. Enforcement involving Imposition of monetary sanctions or imprisonment

If the accused are female, the female REO will deal with the accused including investigation, arrest, body search and so on. This is to protect the honor of a woman. If a moral "crime" like *khalwat* and attempted adultery is suspected, the owner of the house must allow the REP to enter the premise. Section 11 of the SCPA 1997 clearly spells the duty of the person in charge of the premises to allow free ingress to the Religious Enforcement Officer, and to afford reasonable facilities so as to allow the investigation to take effect. However, due care and respect must be observed during the investigation. The REO cannot simply raid the premise and enter into the private room without giving time for the suspect to properly dressed up.

Is Moral Policing an Invasion of Personal Liberty and Privacy?

How do we eradicate *munkar* in the age where human rights and personal liberty arguments prevail at all levels of life activities? Should we say that religion is a private matter and that state must not force the people to adhere to religious rules and it should remain as a private matter. NGOs and civil societies claim that there is an apparent invasion to privacy, over-criminalization and so on. NGOs like Group25 (better known as G25) argues the legality of certain offences under the Syariah Criminal Offences Enactment. One of them, Shad Salem Faruqi, a law professor writes that:

"... not everything that is sinful is criminalized in Islam. Islamic theory does not mandate criminal sanction against those who skip Friday prayers, who questions a fatwa, who enter non-Muslim places of worship for purposes other than worship (sic.), or who do not close down their restaurants and eateries during fasting time in the month of Ramadhan. In criminalizing conduct, State legislatures must confine themselves to offences against the "precepts of Islam" and must not be overzealous in creating new and newer offences in the name of Islam."

Perhaps the professor expects the Holy Quran to be like a book of law which dictates every single thing without any necessity to refer to hadith of the Prophet SAW, or to understand the interpretation of the *fuqaha* who use the *qiyas* and *ijmak* and other *usul fiqh* methods and Islamic jurisprudence in their analysis before coming up with a *hukm* on something. He also claims that state (Islamic) law on matters such as homosexual, incest, betting and lottery are a trespass on the federal jurisdiction and therefore *ultra vires*²² the power of the state.

²² *Ultra vires* means beyond one's legal power or authority.

Sisters in Islam (SIS) a celebrated women's group in Malaysia claims that the law was made "religious sin [that] has become a crime against state." They are very particular about the subject of choice and personal rights and blatantly criticize the existence of such laws and the manner of their enforcement by the REO.²³ Even a Mufti in one of the states in Malaysia directly accused the REO of conducting *tajassus* (peeping into people's private house) without verifying and understanding of the operating procedure practiced by the REO when dealing with the case of *khalwat* (close proximity).

The spirit of *hisbah* is to alleviate *munkar*. If the suspicion arise or complaints lodged by the public, the REO will firstly determine the scope of their duty, the gravity and the necessary provision related with the investigation. Some are related to privacy-related offences like *khalwat* (close proximity) or sexually-related offences like adultery or fornication. Critics of the enforcement of Islamic criminal law call it an encroachment into personal freedom and privacy. Incident involving REO officer alleged misconduct has created controversies in the country recently. For *khalwat* offence, once a complaint is lodged, they are bound to investigate, once the complaint is verified as true and has merit. The investigation is conducted outside the room or house after asking the suspect to properly dressed and come out to be interrogated. There is no raid whatsoever, or ambushing as claimed by irresponsible party. Thus, the persecution of shariah offenses is not an invasion of the private rights of Muslims in Malaysia. It is, most of the times, is this merely a misunderstanding by the public due to some irregular approaches by the enforcement officers of media misstatement. The point is, there is generally sufficient standard operating procedure (SOP) for the REO to initiate any action. Justice requires that there be independence for the enforcement agency to implement the regulation within their stated jurisdiction and at the same time maintain accountability.

Although there is an integration of law, religion, and morality in Islam and such a relationship justifies the sets of rules embodied for the protection of moral values, enforcing such a law is never easy and is never free from criticism. There is always a conflict of interest between upholding the law and justice and interpreting what constitutes personal freedom, choice, and rights. Opponents think that they are not supposed to adhere to rules and regulations that contradict their personal choice and preferences, and they protest under the premise of human rights, equality principles, and freedom of choice. In addition, these critics attempt to equalize between Muslim and non-Muslim in all matters, quoting the Federal Constitution (using Article 5(1)), the supreme law of Malaysia, which safeguards the freedom of choice, as a backdrop for their argument. For some quarters, it is not about the law but about the manner of legal enforcement. Usually, the religious enforcement officers are the target of criticism, accused of being "moral police" and being condemned as "Talibanist" and urged to leave the policing to the parents. The fact is that, these officers are duty-bound to enforce the law that was passed by the

²³ Zainah Anwar, "Enforcing Public Morality" (paper presented at the Public Forum, organized by Liberal Forum Malaysia and Friedrich Naumann Foundation, Kuala Lumpur, April 27, 2005). The text is available at <http://www.sistersinislam.org.my/news.php?item.470.10>.

Parliament, signed and sealed by the Royal Highness, the King of Malaysia (the *Yang Di-Pertuan Agong*).²⁴

Conclusion

While the principles of equality and justice are fundamental to the Qur'an, a deeper and broader understanding of both is critical at this point in time. But more than understanding the two principles, it is ensuring that they are put into practice that is the real challenge.

In a contemporary modern nation states, where institutionalization takes place, various government and state-sponsored agencies are established, the concept is still the same, that is, establishing mechanism to control violations and monitoring of rules. The question is, how far should moral policing be allowed in modern society? In my humble opinion, as far as provisions under Syariah Criminal Offences Enactment is concerned, there is a need to clarify the scope of the offence particularly those with ambiguous provisions so as to clarify the scope and nature of the offences. It would facilitate the enforcement officers to carry out their duty in a proper manner. Unless this takes place, the prejudice from the public will remain and this is not good for the country. We can all agree that this effort of enforcement is a specific context of enjoining what is good and forbidding what is wrong or unlawful, but the mechanism for combat vice and immoral activities in the public sphere must be clear and specific too. The standard operating procedure applied must be clear in order to avoid invasion to the privacy of the people. *Muhtasibs* are not just moral police, they are duty-bound to enforce the Syariah Criminal Offences Enactment which outlines the offences pertaining to deviant activities, offences against the sanctity of religion and its institution as well as moral offences.

²⁴ Siti Zubaidah Ismail and Muhamad Zahiri Awang Mat, "Polis Moral dan Masyarakat Sifar Jenayah: Cabaran Bahagian Penguatkuasaan dan Pendakwaan Jabatan Agama Islam Dalam Usaha Pencegahan Jenayah Syariah" [*Moral Police and Zero-Crime Society: The Challenges Facing Enforcement and Prosecution Division in Curbing Shariah Crimes*], in *Islam dan Isu-Isu Kontemporer: Respon Islam Terhadap Problematika Global dan Kearifan Lokal* [Islam and Contemporary Issues: Islamic Response Towards Global Problems and Local Understanding], ed. Hamadi Hussain, Jaffary Awang, and Suhermanto Jaafar (Surabaya, Indonesia: PT Sunan Ampel, 2007), 317–34.