

# The Administration of *Halalan Tayyiban* Products and Services in the Era of Islamic Caliphates under *Hisbah* Institution

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## Abstract

*A caliphate is a territory under the leadership of an Islamic steward known as a caliph, a person considered a religious successor to the Muhammad and a leader of the entire Muslim community. Historically, the caliphates were polities based in Islam which developed into multi-ethnic trans-national empires. During the medieval period, three major caliphates existed: the Rashidun Caliphate (632–661), the Umayyad Caliphate (661–750) and the Abbasid Caliphate (750–1258). The fourth major caliphate, the Ottoman Caliphate, established by the Ottoman Empire in 1517. One of the duties of a caliph is to administer and control the market which was included in Hisbah system. The Hisbah is a religious institution under the authority of the state that appoints people to carry out the responsibility of enjoining what is right, whenever people start to neglect it, and forbidding what is wrong, whenever people start to engage in it. The purpose of this is to safeguard society from deviance, protect the faith, and ensure the welfare of the people in both religious and worldly manners according to the Law of Allah. Allah has made it obligatory upon all Muslims to enjoin good and forbid wrongdoing to the extent of their knowledge and abilities. Halalan Tayyiban products and services were controlled under this institution. And this paper is an attempt to highlight such control in the history of Islam. How were Halalan Tayyiban products and services administered and controlled?*

**Keywords:** Caliphate – Hisbah – Control - Halalan Tayyiban

## Introduction

From its earliest emergence, Islam has strongly emphasized the necessity of maintaining the halalan tayyiban products and services to avoid muslim societies all types of forbidden products and services. The Prophet himself was reported to have affirmed this issue in his *ahadtih* to make sure that people adhere

to Islamic teachings in halalan tayyiban products and services, no pork no lard, no forbidden activities, no cheating and no fraudulence. Maintaining halalan tayyiban products and services are absolutely a prerequisite for establishing prosperity.

Historically, Islamic state has been monitored the public law and order situation and the maintenance of public facilities to protect the individuals against physical injuries in public places. According to Institute of Policy Studies, Pakistan “The medieval Islamic state developed three institutions of judicial and quasi-judicial nature i.e. *qadā*, (judiciary), *mazālim* and *hisbah* or *ihtisāb*. *Hisbah* or *ihtisāb* was by and large a practical form of the Qur’ānic injunctions of *da’wah ila al-khayr* (call to the good) and *amr bi al-ma’rūf wa-nnahī ‘an al-munkar* (enjoining the doing of all that is *ma’rūf* and forbidding all that is *munkar*).

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.<sup>1</sup>

After revealing a hadith which says ‘When there are three on a journey they should appoint one of them their commander,’<sup>2</sup> Mustansir Mir stated: “This tradition of the Holy Prophet spotlights the importance that Islam attaches to organized activity in human life. A religion that induces administrative order in a group of three persons cannot fail to appreciate the need for regulating human behaviour on a wider scale. In fact, Islam is by nature administration-oriented, as is borne out by its rituals like daily congregational prayers and the annual pilgrimage to Mecca. All kinds of practices in Islam receive their sanction from certain fundamental value-principles.<sup>3</sup>

In Islamic view, for Muslims, the consumption of halalan tayyiban products is not just to satisfy physical needs but also to fulfill spiritual needs. In Islam, it is an obligation for every Muslim

<sup>1</sup> <http://www.ips.org.pk/politics/1185-the-institution-of-hisbah-and-demand-for-its-revival>

<sup>2</sup> Abu Daud, Sulaiman Ibn al-Ash’ath. (2009) *Sunan Abi Daud*. Dar al-Risalah al-Alamiyyah.

<sup>3</sup> “Value-Principles of Islamic Administration”, <http://www.monthly-renaissance.com/issue/content.aspx?id=1117>

to pursue a set of dietary laws. In this law, Muslim must consume *halal* (lawful and permitted) products.

Thorough history of Islamic states, the administration of halalan tayyiban products and services were under the control of its institution of *Hisbah*. This paper attempts at highlighting such task and duties by concentration the study on caliphate, what is *Hisbah* institution, its responsibilities and the administration of halalan tayyiban products and services at the Caliphates era as an appraisal.

## Caliphate

In Islam, compliance and obedience of subordinates to their superiors not only by virtue of legal rules but also because it is a divine requirement. Allah says in the Holy Quran to the effect: “*O ye who believe! Obey Allah, obey the apostle and those charged with authority among you.* (Surah Al-Nisa: 59)

The Islamic Caliphate (*Khilafah*) is the way of ruling the Islamic *Ummah* after the death of the Prophet *Sallallahu Alaihi Wasallam*. It can be rightly guided, i.e., it is according to the Prophet’s method. The rightly-guided Islamic Caliphate was established at the times of the rightly-guided Caliphs after the Prophet *Sallallahu Alaihi Wasallam*. These Caliphs were rightly called “the rightly-guided *Khalifahs*” because one of their unique situation was that they were chosen by the *Ummah* to rule.

Thus, a caliphate is a territory under the leadership of an Islamic steward known as a caliph, a person considered a religious successor to the Muhammad and a leader of the entire Muslim community. Historically, the caliphates were polities based in Islam which developed into multi-ethnic trans-national empires. During the medieval period, three major caliphates existed: the Rashidun Caliphate (632–661), the Umayyad Caliphate (661–750) and the Abbasid Caliphate (750–1258). The fourth major caliphate, the Ottoman Caliphate, established by the Ottoman Empire in 1517.

In *Al-Ahkam as-Sultaniyyah* which was written in the fifth Century Hijri and perhaps the single most comprehensive account of the workings of Islamic governance and equally a highly influential theoretical outline of the nature of that governance. It covers all the various aspects of the religion of Islam which are the

concern and responsibility of the Caliph, his amirs, his wazirs (ministers) and deputies as well as the rights and duties of these persons.

In such book, the caliphate or *Imamah* is prescribed to succeed prophethood as a means of protecting the religion and of managing the affair of this world. Establishing the Islamic *Khilafah* is an obligation upon every Muslim. It is in the category of obligations of *Kifayah*, which means if it is established by a group of Muslims, the Muslims will be free of this obligation and they are not sinful. If it is not established, all Muslims will be sinning. The Muslims will be free of this great sin only if they work hard and make their utmost efforts to establish the Islamic *Khalifah*.<sup>4</sup>

Imam Ibn Khaldun said: "Appointing the Imam is obligatory which was known to every one with the consensus of the companions and their followers. The companions of the prophet *Sallallahu Alaihi Wasallam* hurried to appoint Abu Bakr *Radiallahu Anhu* as their *Khalifah* after the death of the Prophet *Sallallahu Alaihi Wasallam*. The Muslims had a *Khalifah* in every age afterwards, and they were not left in chaos (without a *Khalifah*) in any age. This was viewed as a consensus among the scholars that the Imam (*Khalifah*) must be appointed."<sup>5</sup>

Imam Ibn Taimiyah also says: "It is essential that we know that leadership is one of the most greatest obligators of religion. As a matter of fact, there is no religion without it. The children of Adam will not fulfill their needs unless they get together for their needs. And when they get together, they must have a leader. For this reason, the prophet (S.A.W.) says: "If three are travelling, there must be a leader amongst them." So, the prophet (S.A.W.) mandated that one is to be appointed as the leader in a simple situation where three people are travelling. This is to make us aware of other important types of get-togethers."<sup>6</sup>

The importance of appointing a *Khalifah* becomes so clear when we know that a great percentage of the *Deen* can not be implemented except with the presence of a *Khalifah*. Many types

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<sup>4</sup> Al-Mawardi, Abu al-Hasan, Ali ibn Muhammad. (n.d). *Al-Ahkam al-Sultaniyyah the Law of Islamic Governance*. (Asadullah Yate Ph. D, trans.) London: Ta-Ha Publisher Ltd, 10.

<sup>5</sup> *Al-Muqadimah*, 210.

<sup>6</sup> Ibn Taimiyyah, *al-Siyasa al-Shar'iyah fi Islah al-Ra'i wa al-Ra'iyyah*, 138-139.

of obligations are not performed like implementing the punishment system, and protecting the *Ummah* internally through the security system and externally through Jihad and carrying the *Da'wa* to the whole world. We know that if an obligation can be performed only with the presence of something, that something becomes obligatory. Ali *Radiallahu Anhu* said: "The people must have an *Imarah* good or bad. They asked: "We recognize a good *Imarah*, what about the bad one?!" He replied: "With it, the punishment system is implemented, the roads become safe, the enemies are fought, and the bounties are well divided."<sup>7</sup>

It is clear from all the evidence that appointing a *Khalifah* is one of the most important divine obligations. It is a great sin not to establish it, and a waste for Islam, and a waste for the Muslim *Ummah*. The period allowed for not having a *Khalifah* is only three days. This is based on the evidence that the companions of the prophet *Sallallahu Alaihi Wasallam* were busy for three days trying to appoint a *Khalifah* after the death of the prophet *Sallallahu Alaihi Wasallam*. Also, Omar *Radiallahu Anhu* entrusted the people of *As-shurah* to appoint the *Khalifah* after his death and that they have only three days to do so. He also told them that if you could not agree on the *Khalifah* after three days, then kill the one who is not in agreement. This was heard by a lot of companions who did not object. This is an indication of a common consensus, which is evidence that the *Khilafah* is obligatory.

Imam Al-Mawardi said: "*Khalifah* must to fulfil ten duties in the affairs of the *Ummah*."

1. Protect the *Deen* and the consensus of all the *Salaf* generation of this *Ummah*.
2. Implement the rules amongst those who are in conflict and removing the conflict so Justice will prevail
3. Protect the internal affairs of the *Ummah*.
4. Implement the punishment system to deter the criminals from attacking the rights of other people.
5. Beef up the borders with deterring force so that no Muslim or non-Muslim living amongst the Muslims is harmed.

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<sup>7</sup>Friday speech delivered by Imam Mohamed Baianonie at the Islamic Center or Raleigh, NC on April 7, 2000.

6. *Jihad* fighting against those who reject Islam until they accept Islam or live under the rules of Islam.
7. Collect *Zakat* and charities and another finance revenues.
8. Decide the amount of salaries to who works for the state without over spending or stinginess and give the salaries on the due time.
9. Compensate the employees, and appointing the right people entrusted with jobs or with financial resources, and
10. To look after the affairs of the Muslim *Ummah* by himself, and not to appoint someone else to do it for him because he is too busy enjoying this life or worshipping Allah.<sup>8</sup>

In item no 3, we read that the responsibility of the Caliph i.e Islamic government is to protect internal affairs which among its institutions is Hisbah institution. The overall objective of the Hisbah is to facilitate society to perform the 'Ibadat (i.e. worshipping Allah swt). This "Ibadat can be categorized into 3 categories as given below with the respective *Hisbah* functions:<sup>9</sup>

1. Those relating to the rights of God such as religious/ritualistic activities – punctuality of prayers, organization of Jumaah/ Friday congregations and maintenance of mosque.
2. Those relating to the rights of people such as community affairs and behaviour in the market like accuracy of weights and measures and honesty in dealings
3. Those related to both such as municipal administration such as keeping the roads and streets clean and preventing the building of a factory or dwelling place that may damage community interest.

In the next discussion, the paper mentions this institution in brief for the purpose of its discussion.

### *Hisbah* Institution

Government under Islamic Law comprises many agencies or departments, which vary with consideration to time and circumstances. During the lifetime of the Prophet SAW, he was the head of State and he had governors, ambassadors, *Zakat* and

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<sup>8</sup> Al-Mawardi, *al-Ahkam al-Sultaniyyah*. 27-28.

<sup>9</sup> See: al-Mawardi, *al-Ahkam al-Sultaniyyah*, 342-344.

*Jizyah* collectors, etc. There was no conventional army (in this sense that where there is a need for military service, people volunteered) and there was also no permanent structure for Law enforcement like police or prison, there were of course judges.

Later as the Caliphate enlarged and needs arose, departments or agencies were established. Al-Mawardi listed these agencies which were in place during the *Abbasid* era when he was the Chief Judge (*Qadi al-Qudah*).

The agencies are as follows:

1. The great Imamate: the office of the head of State
2. Governors of Provinces
3. *Imamate* of prayers
4. Leadership of *Hajj*
5. *Wilayah* of *Sadaqat*: *Zakat* ministry
6. The Judicature
7. The *Amir* of *Jund* (Military)
8. *Imarah* for suppressing insurrection and mutiny
9. Public grievances Board (*Mazalim*)
10. *Wilayah* on clans and tribes
11. The *Diwan*
12. The *Wilayah* of Hisba.<sup>10</sup>

In an LLM thesis titled “The Role of the Institution of Hisba in the Sharia Implementing States in Northern Nigeria” by Ibrahim Bakindo submitted to Department of Islamic Law, Faculty of Law, Ahmadu Bello University, Nigeria in 2011 the following discussion as an introductory highlight occurs:

As one of the agencies of an Islamic government, this agency serves as a body for law enforcement generally and specifically, especially for the enforcement of public morals. Some writers call it public duties in Islam.<sup>11</sup> The agency, either in conjunction with or independent of the police encourages, promotes and observes the enforcement of all laws.

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<sup>10</sup> Al-Mawardi, *al-Ahkam al-Sultaniyyah*

<sup>11</sup> Holland, M. *Public Duties in Islam: The Institution of Hisbah*. The Islamic Foundation, Leicester, 1992 ( a Translation of ibn Taimiah’s *Al-Hisbah fil Islam*).

Al-Amry says that “*Amr*” and “*Nahy*” are the duties of an Islamic government.<sup>12</sup>

### Definition and Nature of Hisbah

Literally, Hisbah mean calculation, consideration or reckoning. Technically, Hisbah denotes commanding good when it is neglected, prohibiting evil when it is practiced and reconciling people. This is done in anticipation of a reward from Allah (*Ihtisab*).<sup>13</sup>

The technical meaning likewise refers to two things: Hisbah as the institution that oversees commanding good and prohibiting evil and Hisbah as an activity, i.e. commanding good and prohibiting evil. The first sense may be qualified by adding board or commission “*Wilayah al-Hisbah*”.

Formerly, the institution consists mainly of activities and fewer officials, or only one who does the “Hisbah” in almost every aspect. He is the *Muhtasib*.

This institution is responsible for the Qur’anic duty of commanding good and eradicating evil. The terminology in its technical connotation emerged in the late first *Hijra* century.

The activity however, was practiced by the Prophet SAW, the four Caliphs and the early Umayyad Caliphs.

The main concern of the Hisbah is the enforcement of Allah’s rights. Rights are divided into three, *viz* Rights of Allah, Rights of Individuals and the combination of the two.

Rights of Allah can be on *Ibadat* or *Mu’amalat*. *Ma’ruf* can be the right of Allah, of an individual or a combination of both while *Munkar* is the violation of it.

Since individuals enforce their rights, the entire community should enforce Allah’s rights. Any person can volunteer to enforce it. However, problems may be caused by the enforcement; physical intervention may cause rancor in some cases, that is why the need for government officials to do the enforcement.

An example of the enforcement of Allah’s right is from the time of the Prophet SAW, when some people neglected praying in congregations, the Prophet SAW wanted to gather some people

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<sup>12</sup> Al-Amri, J. *Al-Amr bi al-Ma’ruf wa al-Nahy an al-Munkar* (Beirut: IIFSO, 1984), 35.

<sup>13</sup> *Ibid.*



and instruct another person to lead the prayers, he will then go round to those who do not attend congregational prayers and force them to attend or face severe property deprivation.<sup>14</sup> Abu Bakr fought those who withheld *Zakat* and those who reverted after the demise of the Prophet SAW. *Hudud* offences are prescribed to safeguard Allah's rights. *Qisas* is a combination of both rights of Allah and rights of individuals but the rights of individuals are higher, hence the importance of their discretion in *Qisas* offences. In the field of *Ta'zir*, an individual enforces his rights while Allah's rights are public rights, enforceable by anybody. The bulk of *Muhtasib's* work on *Munkarat* is in the field of *Ta'zir*.

### Essential Requirement of Hisbah<sup>15</sup>

Hisbah has four essential requirements (*arkan*):

*First: The Muhtasib:* i.e. the actor, the one engaged in the activity of Hisbah or *Ihtisab*, which is commanding good and forbidding evil. *Muhtasib* is the most popular name; he is also called *Wali al-Hisbah*, *Muhtasib al-Balad*, *Sahib al-Suq*, *Amil Ala al-Suq* etc, referring to government officials appointed to discharge this duty *Muhtasib Muwazzaf* hereinafter called *Muwazzaf*. However, the one not appointed but only volunteers *Muhtasib Mutatawwi'* hereinafter called *Mutatawwi'* differ from the appointed in nine ways as stated by Mawardi as follows:<sup>16</sup>

- i. the obligation of the *Muhtasib* is by way of his appointment decided by the authorities, whereas the obligation on others is a shared obligation incumbent on the community as a whole;
- ii. the *Muhtasib's* undertaking of the task is a necessary part of his appointment, which he is not allowed to transfer to another, whereas the undertaking of individuals is done voluntarily by way of supererogatory action which they are permitted to pass on to others;

<sup>14</sup> Hajjaj, Muslim. *Sahih Muslim* (Beirut, Dar al-Fikr, Book of mosques, 2000) Hadith No.252 and 253.

<sup>15</sup> Zaidan, Abdul Karim. *Usul al-Da'wah*. (Beirut, Mu'assah al-Risalah, 2001),173-202; see also Hudairi, N. *Al-Hisbah al-Nazariyyah wa al-Amaliyyah inda al-Imam Ibn Taimia* (Riyadh, Darul Fadilah, 2005),83-152.

<sup>16</sup> Al-Mawardi, *al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance*, 337-338.

- iii. the *Muhtasib's* post is set up so that people may have recourse to him concerning matters which must be discouraged, whereas the one who does it voluntarily does not occupy a post set up for this;
  - iv. the *Muhtasib* has to respond to people's complaints, whereas others do not;
  - v. the *Muhtasib* has to watch out for manifest incidents of evil, so that he may denounce them, and to investigate those acts of good behavior which have been abandoned, so that he command that they be renewed, whereas the ones who do it voluntarily do not have to search for or investigate these matters;
  - vi. the *Muhtasib* has to have assistants to participate in denouncing evil, as he will be better able to do the task for which he has been appointed, if he is in a stronger and more powerful position, whereas the ones who do it voluntarily may not seek the assistance of helpers;
  - vii. he may impose discretionary punishments in matters of manifest evil, as long as they do not surpass the limits of the *hadd* punishments, whereas the one who undertakes hisbah voluntarily may not do this;
  - viii. he may be paid for his hisbah from the bait al-mal, whereas the one who voluntarily undertakes hisbah may not be paid for denouncing evil, and
  - ix. he may use his *Ijtihad*-judgment concerning matters regarding customary practice- but not matters of Shariah- such as layouts in the markets, and setting up of projecting sections; thus he affirms or rejects such matters in accordance with the results of his *Ijtihad*, whereas the one who voluntarily undertakes hisbah may not do this.
- a) Qualifications of a *Muhtasib*: the most important qualities of a *Muhtasib* are as follows:
- i. He must have complete legal capacity (*Taklif*)
  - ii. He must be a Muslim which is in accordance with Surah al-Nisa ayat 141
  - iii. He must be learned in Sharia because his activity involves implementing rules an principles of Sharia regarding what is right and what is wrong

- iv. He must be able to execute his duty in enforcing good and eradicating evil either by words of mouth or by physical intervention
  - v. *Adalah*: upholding Islamic teachings and moral uprightness
  - vi. He must be a male: as the activity involves going out to work on a day to day basis and inspections in markets and streets. It also involves physical intervention. However, a woman *Muhtasib* may oversee women unions, trades and activities as reported that Umar appointed Umm Shifa' as the first *Muhtasib* in Madina.<sup>17</sup>
  - vii. He must be formally appointed by the authority: his appointment and jurisdiction, both territorial and (where necessary) subject matter must be specified by the appropriate political authority, so that he can be assisted by law enforcement agents in cases of need.
- b) Ethics that a *Muhtasib* must abide by:
- i. Faith in Allah: the *Muhtasib* must be discharging his duties because of Allah, not because of salaries, fear or favour.
  - ii. Work with knowledge, what he does must tally with what he knows and preaches,
  - iii. Being gentle, soft and lenient,
  - iv. Wisdom in his activities: he should be harsh where necessary, lenient and jovial where necessary, punish or pardon where necessary,
  - v. Justice in executing his duties; he must recognize and accept good irrespective of whoever has performed it and must never exaggerate the evil of irrespective of whoever commits it
  - vi. Patience in executing his duties: because promoting good and eradicating evil is full of blames, dangers and harm,
  - vii. Overlooking certain evils under certain circumstances
  - viii. Being exemplary: he must also ensure that the members of his household are also exemplary.

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<sup>17</sup> Ibn al-Arabi. N.d. *Ahkam al-Qur'an*. Darul Fikr.

*Second: Al-Muhtasab alaih:* i.e. the subject of the Hisbah. Everybody is under the duty to do good and prevent evil and should be commanded and prohibited as such. The one neglecting the good and the one committing the evil are the subject of Hisbah. The subjects can be males, females, leaders or the led, rich or poor, young or adults, whether they are government officials or not, even the Caliph and his deputies, craftsmen like doctors, manufacturers and bakers.

*Third: Al-Muhtasab fihi:* the object which is the good or the evil itself. Whether the good is *Wajib* or *Mandub* or *Mubah*, whether the evil is *Haram* or *Makruh*, where to find them is covered by this part.

*Fourth: Al-Ihtisab:* the activity itself, i.e. commanding and prohibiting. Provided that the means of executing the activity must be lawful and must not result into a higher good neglected or a graver evil done thereby. Under this heading the degrees of Correction fall.

## Philosophy and the Need for the Hisbah

The Islamic *Ummah* has been described by Allah the Al-Mighty as the best nation ever produced for mankind; this is because it (the nation) commands good, prohibits evil and believes in Allah. The *Ummah* is instructed to have a portion of it devoted to commanding good, prohibiting evil and calling to good i.e. Islam.<sup>18</sup>

Commanding good and prohibiting evil are secondary. The primary things are doing good and eschewing evil. If they are done or avoided internally, the secondary aspects strengthen it. Others are motivated to change towards good and away from evil so that good covers every aspect and that people are of different nature; some do good most and runs away from evil often, his life is replete with good deed, their souls are in tranquility (*mutma'innah*); some others do good things but also do evil, a mixture of both; while others does sin most, little good deeds.<sup>19</sup>

People are motivated to do, increase in doing good by peers and other motivators. Likewise evil, if it is neglected and people

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<sup>18</sup> Al-Amri, *al-Amr bi al-Ma'ruf...*, pp. 15-49, Ibnu Taimia, A.A. *Al-Amr bi al-Ma'ruf wa al-Nahy an al-Munkar* (Cairo, Maktabah al-Sunnah, 1997), 49-67.

<sup>19</sup> Ibid

indulge in it, the second and even the first above may fall into evil. The people in the third group promote evil, invite people into it, wish that everybody does evil so that they become equal. The Muslims however, should drag others into paradise by motivating good, discouraging the path to evil.<sup>20</sup>

### Evolution of the Hisbah

The Prophet SAW himself practiced Hisbah by inspecting the markets to be sure traders do not adulterate their commodities and that they are not sub-standard or unwholesome. He once dipped his hands into a food item for sale and discovered that it was adulterated. He likewise informed the traders that they should not withhold the milk of animals they intend to sell, so as to show to the prospective buyer that the animal is always full of milk. He also informed Muslims that whoever sees an evil committed, he should transform it by his hands, or by his mouth if he does not have authority or ability, and lastly, he should dislike the evil done if he can't even speak against it.<sup>21</sup> The prophet also once threatened to enforce attendance to congregational prayers, he would even burn down the houses of those absenting from it.<sup>22</sup>

During the time of *Khulafa'ur-Rashidun*, Abubakr fought those who apostated after the demise of the prophet SAW till he brought them back to Islam; he also forcibly collected Zakat from those who refused to give it out. He likewise fought those who claimed prophet-hood and also banished some homosexuals from Madinah. Umar used to patrol the streets and markets to command good and prohibit evil by words and deed, he once inspected some milk offered for sale and found it to be adulterated, he therefore spilled it.

It has been said that he appointed some people to oversee the markets in order to command good and prohibit evil. Uthman and Ali also practiced Hisbah; Ali used to inspect the market holding a whip and telling the traders "fill your measures properly and weigh correctly...".

These are only a few examples and the entire work of Islam is *Hisbah*, and it is impossible to enumerate the deeds of the prophet

<sup>20</sup> Ibid, see also Hudairi, *al-Hisbah al-Nazariyyah*, 124-125

<sup>21</sup> Al-Amri, *al-Amr bi al-Ma'ruf*, 43.

<sup>22</sup> Ibnu Taimia, *Al-Amru bi al-Ma'ruf*, 9-30.

and of the *Sahaba* representing *Amr bil ma'ruf* and *Nahy anil Munkar*.

### Consolidation of the Hisbah

As Islamic expansion took place, the Caliphate became large, commerce thrived and cities expanded, some Islamic institutions developed while some others sprang up either independently or adapted from other civilizations like the Persian, Greek, Egyptian and Roman civilizations; *Hisbah* was among the institutions that developed. The areas under the jurisdiction of the *Muhtasib* widened and Rules developed regulating its activities were developed.<sup>23</sup>

The Caliphs that came after the *Khulafa'ur-Rashidun* also engaged themselves in the activities of *Hisbah*. It was during the *Umayyad* dynasty that the term *Hisbah* was first used to denote *Amr* and *Nahy*. It was reported that it was the time of Abdul Malik b. Marwan that an institution with that name and portfolio was created.<sup>24</sup>

During the Abbasid dynasty, *Hisbah* became an important institution with portfolio and Rules and Regulations. The heads are appointed by the governors of districts and their jurisdictions spelled out. It is important to note that at that time, there also existed the police and sometimes the *Muhtasib* is given double job of being a *Muhtasib* and head of the police.<sup>25</sup>

Government staff at that time used to have distinctive dresses including judges.<sup>26</sup> It may be that the *Muhtasib* also had a distinctive dress so that people identify and approach him for redress. The *Muhtasibs* appointed were jurists; some of them were even *Mujtahids* like Abu Sa'id al-Isdakhry and al-Mawardi.

Ottoman Empire also maintained the *Hisbah* as an institution, so also the other empires that existed along it. In Andalus for example, the term used there at the beginning was *Amil ala al-Suq* or *Sahib al-Suq*<sup>27</sup> and from there, the institution diffused into Europe.

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<sup>23</sup> Al-Mawardi, Ali bin Muhammad. *Al-Rutbah fi Talab al-Hisbah*, Cairo: Dar al-Risalah, (Badran, A.J. ed, 2002), 28-48 editorial comments.

<sup>24</sup> Ibid, 29.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid, 33.

*Muhtasib* existed in non-Muslim areas in Andalus by the name *Mostasaf and al-Motacen*, and at another time *Sahib al-Suq* became *Zabazoque*. There existed the *Hisbah* in Lyon, France prior to the Crusades; that was before Islam reached there.<sup>28</sup> It may be suggested that the institution penetrated Europe and that may be the law enforcement agencies in Europe owe their origin from the *Hisbah* institution.<sup>29</sup>

The influence of European colonialism on the Institution of *Hisbah*

In the Muslim world, the European colonization brought about the death of many Islamic institutions including the *Hisbah*. In Egypt for example, the system was abolished during the time of Mohammad Ali Pasha<sup>30</sup> and up till today, it has not been revived; only the *Hisbah* proceedings in courts is retained.<sup>31</sup>

Generally however, the *Hisbah* as an institution disintegrated and only few countries have revived it. However, al-Mawardi stated an important legal principle that “neglect of enforcing a Law or Rule does not render it dead” which means that the concept of “dead laws” is non-existent in Sharia.

In Saudi Arabia however, it has been revived under the name of the Board of Commanding Good and Prohibiting Evil. However, the jurisdiction of the Board is being gradually reduced in favour of the police, and other law enforcement agencies.

## Model *Hisbah* Organization

The discussion here is the exposition of the history in the organization of the *Hisbah*; only the *Muhtasib* represents the Institution. He is appointed either by a Caliph, provincial Governor or a District head and there was no hierarchy of *Muhtasibs*, i.e. no Grand *Muhtasib* for the entire Caliphate and *Muhtasibs* under him for the states and still junior ones for the districts<sup>32</sup> or sub-provinces,

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<sup>28</sup> Glick, T.F. *Islamic and Christian Spain in the Early Middle Ages* (The Library of Iberian Resources online) <http://libro.uca.edu/ics/emspain.htm> last visited 7th June, 2011 chapter 3, Urbanization and

Commerce. It was stated there that Raymond Deslluch was the *Mustasaf* of Christian Valencia.

<sup>29</sup> *Ibid*, the chapter on Movement of ideas and cultural diffusion.

<sup>30</sup> Al-Mawardi, *Al-Rutbah*, 28-48, editorial comments.

<sup>31</sup> Hudairi, 325-336

<sup>32</sup> However, Hudairi at P.95 talks of head of *Muhtasibs* or Chief *Muhtasib*.

instead, each and every locality will have its *Muhtasib*.<sup>33</sup>

The *Muhtasib* had “assistants” in each sector of human life particularly the commercial sector. The assistants were of two categories, the duties of the **first** category involved investigations, supervision and regulation while the duties of the **second** category includes enforcement works of impounding, seizure, confiscation, destruction of substandard, counterfeit and adulterated goods as well as whipping of the culprits.<sup>34</sup> Below is an illustration of how the *Hisbah* was organized:

The *Muhtasib* appoints from each profession an assistant who will represent him in the activity of *Ihtisab* within the profession. The assistant must be skilled in that particular profession, trustworthy, reliable and highly knowledgeable in its affairs and the Rules of the Shariah regarding it.

If it is a manufacturing profession for example, like a food making or cakes industry or profession, the assistant should know what flour is used, from where, the various types of flours used, the good ones and the bad ones, the quantity used, where stored, what other ingredients to mix and the entire recipe, the time and quantity of the mixtures, the ovens used, what type of wood to be used, what type of material the oven made of; whether it is clay, bricks and what type, the amount of fire used to bake the cakes, hygiene of those who bake the cakes, even what type of food they eat so that sweat is regulated and also odor, what type of containers used, the proximity of the bakery to residential quarters, the chimneys of the bakeries, how waste is disposed of by the bakery and the neighbours of the bakeries, storage facilities, how to discover if it is rotten etc. it is amazing that the *Muhtasibs* who had written manuals on *Hisbah* knew these conditions, ingredients, recipes, tricks and mischief of many trades and crafts amongst other things.

The *Muhtasib* sometimes has powers to judicially try offenders summarily, particularly, in the market. Sometimes the Assistants have the same powers.

The *Muhtasib* and his Assistant acquaint themselves with the trades, activities and crafts and all the mischief and good connected with it, they then inform those concerned to abide by the ethics of their particular professions as well as the general aspects of Shariah

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<sup>33</sup> Al-Mawardi, *Al-Rutbah*

<sup>34</sup> Ibid, 39: editorial comments.



and keep reminding them these injunctions. They persist on those who neglect, sometimes, they administer oath on craftsmen that they will abide by the rules and ethics of their particular profession.<sup>35</sup>

The *Muhtasib* and his Assistant supervise traders, craftsmen within their jurisdiction; they patrol, inspect, test and oversee compliance with rules, regulations and ethics of each profession. The *Muhtasib* summarily punish offenders, and may shut down premises, impound products, destroy unwholesome or adulterated food or drugs. In the public sphere, the *Muhtasib* ensures public order, discourages mingling of the opposite sexes, oversees calls to prayer, attendance of congregational prayers, whatever good promoted and whatever evil discouraged and eradicated.

The *Hisbah* used to do the work of modern governmental regulatory agencies like Standard organization, Drug Administration, Police, Public Prosecutions, licensing authorities for professions etc. It also acted as regulatory agency for professions in the sense that apprentices who had undergone internment in a particular profession are examined by the *Muhtasib* and he takes oath and is licensed to practice the profession, these professions include medical profession, veterinary medicine, pharmacy and pharmacology, builders, manufacturers etc

The *Muhtasib's* jurisdiction covers everybody, including the *Caliph* or *Imam*, illustrations on how some *Muhtasibs* destroyed wine belonging to a regional leader and how musical instruments were smashed are replete in *Hisbah* manuals.

## Halalan Tayyiban products and Services under Caliphates Administration: An Appraisal

As stated earlier that the medieval Islamic state developed three institutions of judicial and quasi-judicial nature i.e. *qadā*, (judiciary), *mazālim* and *hisbah* or *ihttisāb*. In previous section we extracted a discussion on hisbah institution. The institution was developed over the centuries. The scope of the institution and the functions of its chief i.e. the *muhtasib* 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 their composition

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<sup>35</sup> Ibid.

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 *hisbah* functionaries continued to change. Duties performed by the functionaries of the medieval Islamic state under the institution of *hisbah* 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 *hisbah*. The earliest available writing in the form of a book (*Ahkām al-Sūq*) on the *hisbah* is by the third century Andalusian jurist Yahyā b. ‘Umar Kinānī (213-289 AH/828-902 CE). With respect to market supervision, the person in charge was named as *sāhib 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 *hisbah* manuals prepared from time to time included chapters on the malpractices used in manufacturing and sale of goods. *Muhtasib* 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 *mu’azzins* (persons who call to the congregational Prayers) etc. were among the duties of *muhtasib*. 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 *nisāb* (the minimum amount of wealth in form of cash and kind fixed for the payment of *zakāh*) was to be ensured by the *muhtasib*.

**Taking care of public interests:** The *hisbah* 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 *muhtasib* against the excesses of the rich and powerful. The *muhtasib* was also empowered to admonish those who committed cruelty to animals.<sup>36</sup>

Based on the study Hafas Furqani (2002)<sup>37</sup> mentions several al-hisbah functions, namely:

1. Keep an eye on the scales, sizes, and prices.
2. Oversee the sale of illegal, the practice of usury, gambling, gharar and fraud.
3. Supervise halal, health, and hygiene of a commodity.
4. Arrangement (layout) market.
5. Overcome disputes and injustice.
6. Intervening in the market.
7. Provide penalties for violations.

Halalan tayyiban products and services in its narrow meaning were included under the supervision of hisbah institutions as it was a kind of markets activities.

We found in an encyclopedia written by Ahmad al-Qalqashandi in 15<sup>th</sup> century some reports on the functions of hisbah institutions in Cairo, Egypt and Alexandria. In *Encyclopædia Britannica* under topic "History of Encyclopedia" it is stated "A third Egyptian, al-Qalqashandī (1355/56–1418), compiled a more important and well-organized encyclopaedia, *Ṣubḥ al-a'shā* ("The Dawn for the Blind"), that covered geography, political history, natural history, zoology, mineralogy, cosmography, and time measurement."

The *Subh al-a 'sha* included a section on cryptology. This information was attributed to Ibn al-Durayhim who lived from 1312 to 1361, but whose writings on cryptology have been lost. The list of ciphers in this work included both substitution and transposition, and for the first time, a cipher with multiple substitutions for each plaintext letter. Also traced to Ibn al-

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<sup>36</sup> Institute of Policy Studies, "The Institution of Hisbah and Demand for its Revival" <http://www.ips.org.pk/politics/1185-the-institution-of-hisbah-and-demand-for-its-revival>

<sup>37</sup> An Academic Exercise at Universitas Islam Negeri Syarif Hidayatullah 2002.

Durayhim is an exposition on and worked example of cryptanalysis, including the use of tables of letter frequencies and sets of letters which can not occur together in one word.

*Subh al-A'sha* wrote:<sup>38</sup>

#### الوظيفة الثالثة الحسبة

وقد تقدم أن موضوعها التحدث على أرباب المعاش والصنائع والأخذ على يد الخارج عن طريق الصلاح في معيشته وصناعته وحاضرة الديار المصرية تشتمل على حسبتين الأولى حسبة القاهرة وهي أعلاهما قدرا وأفخمهما رتبة ولصاحبها مجلس بدار العدل مع القضاة الأربعة وقضاة العسكر ومفتي دار العدل وغيرهم.

(The Third Designation: Hisbah

As previously mentioned that its subject matter is description of employees, manufacturers, punishing outlaws peoples in their lives, works. In this period, Egypt land has two (2) hisbah institutions. First: Cairo Hisbah which is the highest, biggest and its Chief has an office at Justice Palace which four (4) Judges, Military Judge, Mufti and the others)

The encyclopedia adds:<sup>39</sup>

#### الوظيفة الثانية الحسبة بثغر الإسكندرية

ومحتسبها يمضي تحدته فيما يختص به قاضيها وليس له نواب فيما هو خارج عن ذلك من البلاد

(The Second Designation: Alexander Border Hisbah

The power of its *Muhtasib* is to act as its judge and he has not have any assistant outside that country)

<sup>38</sup> Al-Qalqashandi, Ahmad. *Subh al-A'sha fi Fann Sina'ah al-Insha* (Damascus: Dar al-Fikr, 1987), v. 11, 207.

<sup>39</sup> Ibid. v. 11, 208.

*Subh al-A'sha* reported<sup>40</sup>

وهذه نسخة توقيع من ذلك بحسبة الفسطاط المعبر عنه الآن  
بمصر.....وليحسن النظر في المطاعم والمشارب

(This manuscript is a memorandum of Fistat Hisbah which is called Egypt now..... (among the responsibilities of *muhtasib*).... Have proper control on restaurants and cafes)

ويعرفهم بالمحافظة على الحق في المعاملات قواعد تحريمها وتحليلها<sup>41</sup>

(Among the duties of *Muhtasib*) to introduce the people to uphold the truth in their transactions; prohibition and allowness principles)

Ibn Taimiyyah wrote the duties and responsibilities *muhtasib* among them is to control the works of the people. He stated in his book *al-Hisbah*:<sup>42</sup>

ويدخل في الصناعات مثل الذين يصنعون المطاعم من الخبز والطبخ والعدس والشواء وغير ذلك ، أو يصنعون الملابس كالنساءجين والخياطين ونحوهم ، أو يصنعون غير ذلك من الصناعات ، فيجب نهيهم عن الغش والخيانة والكتمان.

(The works of the people included who made foods from bread, cook, ads etc. or they who made clothes like dress makers and any other works. They are prohibited from cheating, betrayal and hiding the truth)

## Conclusion

Halalan tayyiban products and services are newly industry in which it was not touched by Islamic states in Caliphates era because Islam was superior and the leader of the world at that period. They strictly maintained their doctrine and religion. However, the nowadays so called halalan tayyiban products and services industry were narrowly under the control and

<sup>40</sup> Ibid, v. 11, 211.

<sup>41</sup> Ibid, v. 11, 209.

<sup>42</sup> *Al-Hisbah*, 22. Maktabah Shamilah, <http://www.al-islam.com>

administration of Hisbah institutions in Islamic Caliphates as we saw from al-Qalqashandi treatise and Ibn Taimiyyah.

Muslims are instructed by ALLAH, Subhanahu wa ta'ala, to eat only Halal foods and when in doubt to avoid its consumption. This incentive dates back to the time of Prophet Adam, alaihis salaam, when he was clearly instructed not to eat the fruits of the forbidden tree (haram). Prophet Adam, alaihis salaam, succumbed to the nafs (temptations) and ate the fruit for which he was chastised and punished by ALLAH. He was banished from heaven to Earth. Over the centuries the faithful prepared and consumed their own food. For the past few decades, food started to cross the borders from food surplus non-Muslim countries to food deficient Muslim countries. The early 1980's were important for Halal Certification for it saw the establishment of Halal authorities and committees in different Muslim countries to monitor and enforce Halal requirements in foods.<sup>43</sup>

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<sup>43</sup> Dr Muhammad Sodek. (2002). "Historical Perspective on Halal Certification", at <http://www.ifanca.org>

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