

REVIVAL OF THE HISBAH SYSTEM IN  
FORNTIER PROVINCE: WHY THIS  
HULLABALOO?

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## REVIVAL OF THE HISBAH SYSTEM IN FRONTIER PROVINCE: WHY ALL THIS HULLABALOO?

By Professor Khurshid Ahmad

On 11 July, 2005, the MMA Government of the NWFP finally introduced the HISBAH Bill in the Provincial Assembly. The step was taken following a protracted process of dialogue and discussions and patient efforts of over two-and-a-half years, in the face of an extremely adverse attitude of the Federal Government and the non-cooperation of the opposition parties against the MMA program of Islamic reforms and social uplift in the Province. The introduction of the Bill instantaneously alarmed a section of the people both in the Government and the opposition throughout the country. It appeared as if somebody has disturbed the hornet's nest. Disparaging remarks were voiced in chorus by the Government minions at the Center and the Governor of the Province, expected in all fairness to rise above party-considerations in such matters, down to every big or small office-bearers of the ruling coalition. The Government-controlled media, the pro-Government newspapers and news channels and the entire secular and liberal forces and NGOs 'valiantly' joined hands in this 'noble cause', actively supported by the 'Islam-friendly' media of the West. Toeing the official line of the Presidency, the main thrust of their arguments can be summed up as follows:

- i. The HISBAH Bill is in violation of the recommendations of the Council of Islamic Ideology.
- ii. It strikes at the very roots of human rights.
- iii. It tends to set up a parallel system of Government, and is likely to lead to the Talibanization of the Province, and then to anarchy.

By the grace of God, the people of the Frontier Province have stood like a solid rock behind their elected representatives. They have lent it their unflinching support and expressed total solidarity with the yet another and the most far-reaching people-friendly move of their Government. They have withstood all the hostile attacks with courage, which in itself was a greatly disturbing signal to the Federal Government and its allies. The HISBAH Bill was passed by the Provincial Assembly after a four-day long debate with the thumping majority of 68 votes in favour, with 34 against. The Bill is now with the Governor for ratification, who is bound under the law to either ratify the Bill, or return it with his objections to the Assembly within 30 days. The Provincial Assembly in turn has the powers to resubmit the Bill after necessary deliberations to the Governor, who has then no option under the law but to ratify it by putting his signature. The NWFP Government has shown exemplary courage and sagacity by patiently facing all the threats of its dissolution, which the Provincial Governor and the Federal Ministers have since repeatedly hurled. It offered every opportunity to the opposition parties to freely present their points of view both within the Provincial Assembly and outside. This was in glaring contrast to the Federal Government's attitude,

which so far has the record of bulldozing every Official Bill through the National Assembly and the Senate and showing utter disregard to the national Opposition. The ball is now in the NWFP Governor's Court, while the Federal Government has hurriedly referred the HISBAH Bill to the Supreme Court of Pakistan for its legal opinion under Clause 186 of the Constitution. The Court has been requested to give its opinion on an eight-point query.

The way the attack has been launched on the HISBAH Bill by the Federal Government and some opposition parties, and the issues being raked up by them, all of this point out to the one and only conclusion:

The real target is not the hisbah bill, but islam itself as also the proposed introduction of the islamic shariah in the province!

There has in the past been a lot of lip service to Islam and repeated pronouncements for the introduction of the Islamic system in the country. But the MMA Government's HISBAH Act is the first-ever serious and sincere attempt to set up a really effective mechanism for the enforcement of the Islamic system and the Shariah law at least at the Provincial level. In our view, the proposed Bill is an initial step of great practical value in that direction and that is the reason why it has been taken by its detractors as an extremely dangerous initiative. They are afraid that if the MMA Government of the NWFP practically takes steps to effectively introduce the Shariah system in the Province, the entire edifice of their so-called 'enlightened moderation' would crumble to dust.

The Western media has now frankly revealed that the term 'enlightened moderation' was first whispered into the ears of Gen. Pervez Musharraf by the former US Secretary of State Henry Kissinger and the motive was to divide the Muslims into different groups of 'Moderates', 'Extremists', 'Liberals' and 'Fundamentalists'. It is no secret now that the war between Islam and Secularism has already begun and all the secular forces today stand united and hand in glove against Islam and the Muslims.

Before critically examining the factual position about the HISBAH Bill and the real worth of the objections raised against it, let me briefly review certain facts in perspective.

### The Centre's Undemocratic Conduct:

The first noteworthy aspect is the hostile attitude of the Federal Government towards the NWFP Government and its reforms program. This hostility may be noted as growing with each passing day. Such interference by the Centre into the affairs of the Province is a big threat to the Provincial autonomy, and is a cause of serious strain in their bilateral relations, understanding and goodwill. The Federal Government is using extremely short-sightedly the institution of the Provincial Governor to harass and destabilize the Provincial Government. The Centre is busy in a thoughtless

army action in our most sensitive tribal belt just to please the US and prove its loyalty as their henchman. According to the area's Corp Commander, the Army has so far lost its 251 soldiers, 550 of them seriously injured. Administratively, the Centre is trying to keep the NWFP under its thumb, as demonstrated by the transfer of the Province's Chief Secretary and Inspector General of Police without taking the Provincial Government into confidence, and replacing them by a new team of the Federal Government's choice. The Province is suffering from a virtual financial blockade due to the willful delay of the NFC Award. The moves to financially cripple the Provincial economy include the Centre's denial of its legitimate rights, like the payment of royalty on power generation and the release of the much-needed resources to meet the challenges of relief operation for the recent flood victims.

This hostile attitude of the Centre is a flagrant violation of the Federal Constitution and an instrument of coercion to vitiate the political climate. It also poses a great hurdle in the way of the Provincial Government's efforts to implement its program of socio-economic and moral reforms in spite of the challenges facing it from the Centre and the paucity of funds at its disposal. With the Center's opposition to the HISBAH Bill, the conflict has come to a point where it may lead to far-reaching consequences. The opposition parties of the Province do not appear to have understood the big game due perhaps to their own limited political vision or emotional biases. They are now unwittingly serving as pawn into the Centre's game-plan.

### The Provincial Government and its Pragmatic Approach:

As against the bizarre attitude of the Centre, the Provincial Government has been handling its affairs with utmost caution, patience and care. The Province has a well-represented and broad-based Shariah Council, which includes the Ulama and intellectuals from all Schools of Thought, including those of the *Shia* School. The plan of action, prepared by the Council for the enforcement of Shariah in the Province in pursuance of the ruling MMA's election manifesto, included the Shariah Bill, the HISBAH Bill and a comprehensive program of economic, social and cultural reforms. The Council's recommendations represented the consensus of all its members. The Council had admirably completed its job within the very first year of the new Government's induction in power. The Provincial Assembly then adopted the Shariah Bill unanimously, followed by the approval of the HISBAH Bill after careful studies and deliberations and incorporating necessary amendments to further improve it. The HISBAH Bill is intended to provide the common man with the much-needed relief and make it easier for him to get justice and protection against the socio-economic and administrative exploitation and injustices. The MMA Government had to wait for over one and a half year with a view to get maximum meeting of the minds over the Bill through discussions and dialogue. But when it finally realized that all the doors of cooperation had been shut, it went ahead with confidence in the Divine Providence, as well as in its own electorate to fulfill its yet another pledge to the people.

The Draft Bill was sent to the Provincial Governor at the very outset with a view to initiate the process of understanding and dialogue. The Governor, on his turn, instead of inviting the Provincial Government to the conference table, forwarded it to the Council of Islamic Ideology for comments. The CII, it may be recalled, was reconstituted by the Government of Gen. Pervez Musharraf in line with his particular political agenda and to which all the leading religious organizations and scholars of the country had expressed their serious reservations. It is obligatory for the CII under Article 230 (2) of the Constitution to give its opinion within 15 days of the submission of any Bill by the President, the Governor, or the Federal or Provincial Assembly. The Bill was sent to the Council by the NWFP Governor on 14<sup>th</sup> of October, 2003 and the CII took 11 months to formulate its views and returned it to the Governor on 04 September, 2004. The CII transgressed not only the deadline allocated to it for such cases, it also went beyond its terms of reference by ignoring the Shariah perspective and dilating upon the points having no relevance constitutionally or otherwise with the Draft Bill.

The Provincial Government then took into confidence the three prominent personalities of the ruling Muslim League. During its session of 5 July, the three key figures of PML (Q), including the Party President Chaudhry Shujaat Hussain and Secretary General Mushahid Hussain Syed, expressed their surprise over the extent of opposition to the HISBAH Bill. One of them went to the extent of declaring that: "There was nothing wrong with your Bill but in your failure to communicate". The Provincial Government similarly took into confidence the leaders of the opposition parties in the Province and advised them to come out with concrete recommendations, in case they had any. All its attempts at compromise and consensus, nevertheless, were disdainfully turned down. The obvious reason for this unrealistic attitude was nothing but the fact that nobody had any strong ground to reject the Bill, or any worthwhile recommendation to make for amendments, except for the over-powering fear of the US and the West, which made them raise the bogey of '*Talibanization*' hitting the Province. The fact of the matter is that the proposed HISBAH Bill has nothing to do with the experience of Afghanistan under Taliban, as we would explain it later on, and each and every Clause of the Bill is in conformity with the Constitution of the Islamic Republic of Pakistan. The Bill is also in consonance with the recommendations of Pakistan's Second Prime Minister, Khawaja Nazimuddin Committee's Report, the Objectives Resolution of the Constitution, as well as the recommendations of the Report submitted by the Council of Islamic Ideology in 1996. Various points of the Bill, targeted for criticism, are practically part of the country's legal system and so many rules and regulations now in force in the country have clauses similar to those proposed in the HISBAH Bill. The bias, however, knows no reason!

### The HISBAH: Its Historical Perspective and Ideological Significance:

Let us first see what the institution of HISBAH stands for?

The social system of every nation is based on certain principles or ideology. There was a time when religion was viewed as opium and the moral principles were held in disdain. There are those now who consider religion as an individual's personal affair, having no concern with his social and political life. They think that it should be restricted strictly to the confines of homes and the mosque, while the people's social life should be governed in the light of the secular sciences and experience and personal ambitions and interests. If we are prepared to subscribe to such a vision of life, then there would be naturally no scope for the concept of HISBAH as offered to us by Islam and which has been part of the Muslim history's glorious tradition and social values. But if we are sincere in our claim of being Muslims and if the meaning of being a Muslim is that every individual member of the society is bound in his personal as well as social life to follow the dictates of the Holy Quran and the Sunnah of the Holy Prophet (PBUH), then our individual and collective life would have to be an embodiment of those values and traditions which are the hallmark of Islam as a way of life. A Muslim, if he is actually a Muslim, cannot live a life of rebellion and deviation from his religion. He will revert to check each and every step he takes and move resolutely forward on to the road of Islamic glory. He will have to forbid himself from vice, follow the path of virtue and try to ensure that his entire environment is that of virtue and not that of vice. The institution of HISBAH seeks to inculcate and properly promote the same feeling in the society, individually and collectively.

The Holy Prophet (PBUH) has enjoined upon us even to observe our regular Prayer and *Fast* with the spirit of self-introspection and accountability. We have been asked to live a life of vigilance and self-criticism. He said: "حاسبوا قبل ان تحاسبوا", which means: 'Go on reappraising yourself, before you are reappraised'. That is the reason why the Muslim Ummah, which stands for the collective social order of the Muslims, and the Islamic state, which is a symbol of the Muslims' strength as a community and of their leadership, are duty-bound to uphold the principles of 'Enjoining the Right and Forbidding the Wrong' (امر بالمعروف والنهي عن المنكر). It is this difference of attitude towards the vice and virtue, the good and the bad that draws a line of distinction between the Believer and the Un-Believer, the Muslim and the *Munafiq* (Hypocrite). The Holy *Qur'an* makes this distinction crystal clear:

"The Hypocrites, men and women, (have an understanding) with each other: they enjoin evil and forbid what is just, and are close with their hands. They have forgotten God; so He hath forgotten them. Verily the Hypocrites are rebellious and perverse."  
(S. IX: *Al-Taubah*, 67)

As for the Believers, their position is entirely different:

"The Believers, men and women, are protectors, one of another: they enjoin what is just and forbid what is evil: they observe regular Prayers, practice regular charity

and obey God and His Apostle. On them will God pour His Mercy: For God is exalted in power, wise.”  
**(S. IX: Al-Taubah, 71)**

This is the responsibility of each and every individual Muslim, man and woman, and collectively of the entire Ummah, and when the Believers are in a position of authority in the land, then this becomes the responsibility of the Muslim state and its coercive power:

“Ye are the best of Peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in God.”  
**(S. III. Al-i-Imran, 110)**

This is the struggle and that is the objective for which we have been asked to collectively engage ourselves:

“Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong; they are the ones to attain felicity.”  
**(S. III. Al-i-Imran, 104)**

When the Muslims get the authority in the land, they carry out the same task in a more organized manner and as their state’s prime objective:

“(They are) those who, if we establish them in the land, establish regular Prayer and give regular charity, enjoin the right and forbid wrong: with God rests the end (and decision) of (all) affairs.”  
**(S. XXII. Al-Hajj, 41)**

The HISBAH system is the name of an organized institutionalized effort to discharge the responsibility of enjoining what is right and forbidding what is wrong. Started during the days of the Holy Prophet (PBUH), the institution remained in one form or the other as an integral part of the Government throughout the Islamic history. The Holy Prophet (PBUH) discharged this responsibility himself and also deputed his representatives in various fields for this purpose. It was the state responsibility during Khilafat-i-Rashidah, or the glorious reign of the four Caliphs, who also assigned this responsibility to the Governors of each Wilayah (Province). As the time progressed and the social life got more and more diversified, different individuals and institutions were assigned the task of HISBAH in their respective spheres of activities.

During the first century *Hijrah*, Market Inspectors were appointed; the institutions of Magistracy (Qadhi) and Police (Shurtah) came into being. Subsequently, a formal set-up was established for HISBAH and the system continued till over 1300 years throughout the length and breadth of the Islamic World under various nomenclatures. Imam Ghazzali has discussed the various social, economic and moral aspects of HISBAH in his book *Ihya ul-Ulum*. Another noted Muslim social scientist Al-mawardi, in his “*Al-Ahkam Al-Sultaniyah*”, has devoted a complete chapter to describe



the political, social and administrative sides of this institution. The Father of Sociology *Allama Ibn Khaldun* in his *Muqaddimah* discussed HISBAH as a basic social institution. Another great Islamic thinker *Allama Ibn Taimiyah* wrote an exclusive treatise “*Al-Risalah Fil HISBAH*”, in which he presented the conceptual framework of this institution. Another eminent Muslim social scientist *Allamah Ibn Hazm* treated the subject in depth in his “*Al-Fasl Fil Milal*”.

In short, there is nothing new or politically motivated about the institution of HISBAH. It can be seen both in theory and practice almost everywhere and all the time as part of the Muslim Statecraft, with the Muslim scholars and intellectuals making it a subject of their studies. We can see this institution in action during the Umayyads, the Abbasids, and the Ottoman Empire, the Safavids, the Tughlaq and the Mughal rules in India upto the times of Aurangzeb Alamgir. It was there in one form or the other in Egypt, Syria, Iran, Maghreb (the North-African Arab states from Libya to Morocco) and the Trans-Oxus region of Central Asia. There is no reason now to take this concept as a concoction of the MMA. It is part of our intellectual, ideological and historical tradition and what we are trying to do is nothing more than an endeavor to revive this time-tested system and an institution which the world later on learnt to pick up from us and follow.

### The Objections Reviewed:

Let us now have a look at the objections, which are more in the nature of the specter to raise alarm, and the alarm bells are being sounded since the day the HISBAH Bill was introduced in the Provincial Assembly. Perhaps the HISBAH-detractors believe in the Gobble’s dictum that a lie should be repeated so many times that it may sound as true.

- Violates the Constitution: The first objection raised is that the HISBAH Bill is in violation of the Constitution. There cannot be a bigger lie than this. The Constitution’s Preamble, which contains the Objectives Resolution and now forms part of the substantive provisions of the Constitution as its Article 2-(a), clearly states the following in respect of the State’s responsibilities:

“Wherein the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam, as set out in the Holy Qur’an and Sunnah.”

This has further been explained in Article 31. Article 37(g) seeks to prevent the social and moral ills and Article 38(f) aims at the elimination of Riba.

It has been claimed that the Bill is in conflict with the fundamental rights and in this context Articles 19 and 20 of the Constitution have been mentioned. But the factual position is that these Articles do provide guarantees for Fundamental Rights, but with the Proviso that these were



subject to conformity with the State religion Islam and the dictates of national solidarity, security, defence, foreign relations, law and order and the nation's moral conduct.

The Council of Islamic Ideology in its report of September 2004 has opined that the Bill violated Article 175 (c) of the Constitution. The fact of the matter is that the above Article relates to of the separation of the Judiciary from the Executive — a provision still awaiting enforcement. The HISBAH system, on the other hand, is essentially an administrative set-up and is to function in close coordination with the Province's entire administrative machinery, including the Judiciary, while the Judiciary itself would be outside its purview (Article 2/3).

➤ Objections on Modus Operandi: A lot many misgivings are being spread against the modus operandi of the HISBAH system. According to the Bill, the HISBAH Authority is proposed to function in the following manner:

- (i) Education and Persuasion;
- (ii) Administrative check and taking measures through concerned department, including the Police and other agencies.
- (iii) Investigation and enquiry on the people's complaints, or suo-moto, and taking corrective measures under the law.
- (iv) Vigilance against the Provincial Administration, other than the Judiciary and the Assembly, and to check the misuse of power and provide the aggrieved his due. The HISBAH Authority will get the concerned agency do its job by issuing directive, as done elsewhere in the world by the Ombudsman's office, or Administrative Tribunals.

It may be added that the proposed HISBAH system is the exclusive prerogative of the Provincial Assembly under the Constitution. The Federal List of the Constitution includes only the office of the Federal Ombudsman and it is not there in the Concurrent List. The HISBAH system, therefore, comes under the exclusive jurisdiction of the Province and any interference by the Centre in this regard would lend a fatal blow to the provincial autonomy and would have far-reaching consequences.

➤ Violation of Privacy: It is further claimed that the HISBAH system seeks to interfere in the individual's private life. When one goes through the Bill, he finds the apprehensions utterly misplaced and ill-founded. The institution concerns entirely with the social aspect of the people's lives and their fundamental rights. Islam has provided safeguards to the individual's privacy, hearth and home and this is part of the fundamental Islamic values. The HISBAH system is the guardian of the sanctity of

this privacy and not its violator. Its responsibilities undoubtedly include the reformation of the social evils and the promotion of healthy conduct. But the real message of the Bill is that the fundamental rights are to be protected, the oppressed are to get their due, the women and children must get fair deal; and above all, the justice is to be quick and cheap and the essential facilities must reach all and sundry wherever they may be. It seeks, therefore, to right the wrong at the district as well as Tehsil levels and promote the time-tested system of Jirga and mutual consultations, instead of the curse of litigations and law-suits.

### The functions of the Provincial Muhtasib

(Ombudsman) include the following:

- (i) to ensure observance of the Islamic social values at public places;
- (ii) to discourage extravagance, specially on the occasions of wedding and family functions;
- (iii) to strictly follow the parameters defined by Islam for Dowry;
- (iv) to discourage beggary;
- (v) strict observance of the Islamic ethics and values in respect of Iftar and Tarawih Prayers;
- (vi) to discourage sports and commercial activities near the places of Jumah and Eidain congregations;
- (vii) to check administrative slackness regarding the arrangements for the observance of Jum'ah and Eidain Prayers;
- (viii) to ensure proper maintenance of the mosques;
- (ix) to ensure strict observance of the Azan and Salah timings and proper respect for the Islamic norms and values;
- (x) to prevent misuse of loudspeakers and its abuse in mosques for sectarian purposes;
- (xi) to discourage un-Islamic social customs and traditions;
- (xii) to discourage the incidence of child labour;
- (xiii) to prevent delay in the payment of dues and provide necessary succor;
- (xiv) to prevent cruelty to animals;

- (xv) to prevent the innocent people's exploitation by the sorcerers, palmists, and those who indulge in various un-Islamic superstitious practices;
- (xvi) to safeguard the rights of the minorities' and preserve the sanctity of their places of worship;
- (xvii) to protect and safeguard the women's rights and take steps against the un-Islamic customs of honor-killing, forced and uneven marriages and the incidence of depriving them from their right of inheritance, as also to assure the availability of the rights guaranteed to them by the Qur'an and Sunnah;
- (xviii) to protect the healthy market-values, prevent adulteration and other corrupt practices and supervise the accuracy of weights and measures;
- (xix) to check hoarding and manipulated inflation; and
- (xx) To stop corruption and bribery in Government offices.

Now, it is for everybody to see and then ask: "Are these measures, envisaged under the proposed HISBAH Bill contrary to the human rights and if implemented would they lead to more corruption and oppression, or provide justice and fairplay to the people — men, women and children?"

- The Talibanization Phobia: Yet another objection being leveled against the Bill is that it would lead to the *Talibanization* of the Province. Without entering into any debate about the merits and demerits of the phenomenon called *Talibanization*, we would like to stress once again that the HISBAH concept is much older than the *Taliban* era. As mentioned earlier, the Objectives Resolution of 1949, followed by the Khawaja Nazimuddin Committee Report of 1953, had recommended HISBAH measures long ago. The latter, in Chapter 2 on the 'Guiding Principles of the State Policy'<sup>1</sup> inter-alia said:
  - (i) The state will seek guidance from the principles identified in the Objectives Resolutions for all its activities and policies.
  - (ii) Steps as mentioned below will be taken in different spheres of the Government activities to enable the Muslims fashion their individual and collective lives in accordance with the injunctions of the Qur'an and the Sunnah:

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1. Constitutional Foundations of Pakistan, by Dr. Safdar Mahmood, P-24.

- a) Facilities will be provided to help them understand what does it mean by leading a life according to the dictates of the Holy Quran and the Sunnah and instructions in the Qur'an will be made obligatory.
  - b) Drinking of wine, gambling and all forms of prostitution will be banned.
  - c) Elimination of Riba (Interest) as soon as possible.
  - d) Propagation and maintenance of Islamic moral values.
  - e) Proper management of Zakah, Auqaf and the mosques.
- (iii) In order to educate the Muslim masses about the Islamic teachings an organization will be set up for 'امر بالمعروف والنهي عن المنكر' (Enjoining the Right and Forbidding the Wrong).

Repeated reference has been made to the CII comments of 2004. We would discuss these in detail later on, but let us see first what the Council of Islamic Ideology has itself earlier said regarding the HISBAH institution. In its Recommendations of December 1996, submitted to the Parliament, the CII had proposed the establishment of the HISBAH institutions not only at the Centre but also at the Provincial level to discharge its responsibilities of امر بالمعروف والنهي عن المنكر.

The Council in its 1996 Report had interalia said:

Responsibilities of HISBAH Institution (CII Recommendation — 1996:

Keeping in view the fact that the basic objective of HISBAH as an institution is to carry out the joint responsibility of the Muslim community (Ummah) and the Islamic state in respect of enjoining the right and forbidding the wrong, and the role that the HISBAH institutions have played in this regard during the various periods of Islamic history, it would be essential to determine the following functions of the institution if established in Pakistan today:

- (i) Prevention of the social evils and wrong-doings not covered under Pakistan's Penal and Criminal Laws.
- (ii) To make the traders and those engaged in commercial activities at the shopping centers and market places observe the Islamic moral conduct.
- (iii) To supervise the observance of collective acts of worship, such as Eidain and Jum'ah Prayers.

- (iv) To prevent the activities and measures responsible for the growth and development of the ills and vices disapproved by the Shariah.
- (v) Prevention of the evil practices of daily occurrence in commercial dealings, like adulteration, fraudulent activities and mischief.
- (vi) To check the people from the oppressive treatment of the weak and those under their charge, including their subordinates, servants and animals.”

### HISBAH Institution at the Federal Level:

In order to avoid unnecessary duplication and complication, it was recommended in the CII Report of 1996 that: “The name of *Muhtasib* (Ombudsman) and his Secretariat may be retained for the time being and an independent and autonomous HISBAH set up may be established to look after such matters and petty crimes which have so far gone unnoticed and unchecked.

On the national level, a Federal HISBAH Authority may be set up under the Presidential directive to supervise the work concerning accountability and fulfill the responsibility of coordination and cooperation in this respect. The Authority may be headed by an eminent religious scholar who may be well-qualified for appointment as a Member of the Supreme Court’s Shariah Bench, or by some senior judge, with leading Ulama and senior officials of the Federal Government at its panel.

### Provincial HISBAH Board:

At the Provincial level, the Governors will set up ‘HISBAH Board’ in each Province, in consultation with the Federal HISBAH Authority, to look after the responsibilities of HISBAH in the Provinces and for a better coordination and cooperation in this regard and also to establish rapport with the Provincial Government and its various agencies.

The Provincial HISBAH Board may be headed by a qualified religious scholar, capable of becoming the Judge of the Federal Shariah Court, with senior Ulama as its members. Similarly, HISBAH Councils may be set up in each district, to be headed by an eminent local figure and called ‘Muhtamim HISBAH’. The District HISBAH Council would look after the activities of the Believers in the light of the Islamic social and moral norms and would facilitate the observance of the good and prevention of the bad. Similarly, a ‘Tehsil HISBAH Committee’ would be set up, which would appoint ‘Nazir HISBAH’ in sufficient numbers in consultation with the District HISBAH Council. The Nazir HISBAH; supported by necessary staff, would carry out his function. His staff would also include some armed men, to be called the ‘HISBAH Force’. Nazir HISBAH’ and his staff members would be treated as public servants, with Nazir enjoying the status of Magistrate Class-III. Nazir HISBAH would be authorized to use his powers under the law on the complaint of a citizen, the

information of some public office-bearer or according to his own information and knowledge in respect of the following matters.”

### The Council of Islamic Ideology Objections – 2005:

One may easily compare the HISBAH model contained in the above-mentioned CII Report of December, 1996 and the Draft HISBAH Bill of the NWFP Government. How surprising that the very measures recommended by the Council earlier have now been dismissed as objectionable.

Now, let us examine the CII objections one by one.

The first objection raised is that the proposed HISBAH Authority, instead of fulfilling the Shariah objectives may make controversial the injunctions of the Qur’an and the Sunnah and instead of resolving the problems open up the doors for more disruption and chaos. But the argument has been substantiated neither from the Shariah point of view, nor rationally. Article 227 (1) of the Constitution makes it clear that for each School of Thought only that interpretation of the injunctions of the Qur’an and the Sunnah would be deemed as authentic which that particular School regards as authentic. Following this explanation, can there remain any cause for controversy over the explanation of ‘M’aruf’ (Right) and ‘Munkar’ (Wrong)?

It may be added that the HISBAH Bill has clearly specified “the uncontroversial rights and obligations” proposed to be enacted. As for the question of the abuse of power for political purposes, its most glaring example are the present CII comments, in which the Council has negated, without assigning any reason, its own official stand of 1996.

The second objection raised by the CII relates to what has been seen as the inclusion of extraneous matters not directly related to HISBAH into its jurisdiction. The CII has, however, been unable to identify those matters and on what legal (Shariah) grounds, they consider these to be outside the purview of the HISBAH system.

The CII has also observed that instead of setting up a new institution, the existing laws could be made use of. But this observation is in the nature of an administrative advice and has no relevance with the main issue, i.e. whether the proposed Bill is in consonance with the Shariah or in conflict with it. It is beyond the purview of the Council of Islamic Ideology to comment on the organizational or administrative aspects of a case sent to it for review. Its sole responsibility is to offer its considered opinion about a certain legislation being in conflict with the Shariah, or not.

There exists not a single point in the CII observations to confirm that the Draft HISBAH Bill violates even slightly any injunction of the Islamic Shariah. It may not be out of place to recall that in its 1996 Report, the CII had advised for setting up the HISBAH institution both at the Centre and in the

Provinces, side by side with the existing Muhtasib Secretariat. So far as the Frontier Province is concerned, they do not have even the Muhtasib set-up and their keenness to establish a broad-based HISBAH apparatus is, therefore, but natural.

One is at a loss how to describe the professional and religious standing of the Honorable Judge who wrote the CII report. He observes that there are no injunctions concerning HISBAH in the Jafari Fiqh (School of Jurisprudence). The 1996 Report of the CII was based on the recommendations jointly formulated by the Sunni as well as the Shia Ulama. During the Safavid and Ismaili rule, the HISBAH institution was functioning in Iran the way it was operational in the Ottoman and Tughlaq Empires. It has existed all along in Iran, Yemen, Syria, Iraq, Turkey and the Trans-Oxus region, as also in Egypt and the North African principalities of Maghreb. The system was lauded by all Muslim thinkers from Imam Ghazzali to Nizamul Mulk Tusi. What historical evidence the Honorable Judge, who wrote the CII remarks, can claim to have to support his statement? Moreover, the Shariah Council of the NWFP has on its panel both the Sunni as well as the Shia Ulama, who were jointly engaged in the preparation of the Draft of the HISBAH Bill.

Yet another objection raised by the Council concerns the question of the Governor's consent with the Chief Minister on the appointment of the *Muhtasib*. This has been claimed to be in conflict with the Objectives Resolution and Article 175 (3) of the Constitution. There can perhaps be nothing more funny than this observation and that too from a Judge on the panel of the Council.

Firstly, according to the basic principle of the Parliamentary system, the Governor is bound to consult the Chief Minister in all matters except for the discretionary powers granted to him in certain cases. Even if it had not been written in the HISBAH Bill, the Governor would have been bound under Article 105 of the Constitution to consult the Chief Minister. Secondly, the three Provinces where the institution of Muhtasib is functioning, his appointment is made by the Governor, but in consultation with the Chief Minister, as required under Article 105. If the independence of the Judiciary from the Executive is not affected there, how can this be affected in case of the NWFP? Perhaps the Honorable Judge has forgotten that the Judges are appointed both at the Centre and the Provinces not through any independent judicial channel, but it is done by the President in consultation with the Prime Minister. The President appoints the Chief Justice and he is not bound in this by any order of seniority. He has to consult the Chief Justice for the appointment of the judges, but then who does not know how our judges are inducted. Even in the United States the judges are appointed on the recommendation of the President, while the Senate, which is again a political body, ratifies their appointment. If the Judiciary has not been made independent of the Executive in all such matters, why ask for an exception in case of the HISBAH Bill and why the provision of the Governor consulting the Chief Minister for the appointment of the Muhtasib be taken as a political intervention?



The objections raised by the CII are mostly of administrative nature. Some of these were already taken into consideration during the HISBAH Bill's review by the Provincial Government, while some may be useful for future guidance. But I would reiterate once again and with all humility that these recommendations are entirely administrative in nature, while the Council's responsibility under the Constitution's Articles 229 (b) and 230 is only to determine and identify if a proposed legislation is in consonance or in conflict with the Islamic injunctions. And this opinion too cannot be offered in the form of 'obiter dicta'. Every premise or objection has to be supported by the argument in favour or against from the Qur'an and the Sunnah. Surprisingly, the 11-point CII Report is supported by no argument from the Qur'an and the Sunnah, neither explicitly nor implicitly. It is difficult to decide, therefore, if the Council's Report could be taken as academic, legal, or political?

### Moral Values and Accountability:

The self-appointed champions of human rights, who have also jumped into the fray with great fanfare, are raising alarm that the proposed HISBAH system is a threat to personal freedom and a denial to the people of their fundamental rights. There can be nothing more far from true than this, as already discussed with reference to the relevant Articles of the Constitution. The fundamental rights everywhere in a civilized society are subject to a state's security, solidarity, national values, decency and the social norms. One fails to understand why all this fuss only for the rights of the criminals and the tyrants? Do the oppressed and the wronged have no rights to protect themselves from the tyranny and the exploitation, fraud, burglary, rape and murder by the criminals? The HISBAH Bill is to relieve the oppressed from the stranglehold of the oppressor and provide justice at the doorsteps of those who have neither the resources to buy it, nor the access to the lofty mansions of the government agencies.

The world has now come to realize at long last the significance of the moral values. Efforts are being made today almost everywhere to bring the socio-political and ethical issues back into the ambit of the law and revive the moral values of the society. Among the various Committees of the US Congress engaged in accountability within their spheres, there is one 'Ethics Committee' that keeps an eye on the moral conduct of the Congress Members. Corruption today is a world issue due to which ethical aspects have assumed the key position in respect of accountability. The business ethics is today an important topic for law and education in the wake of the phenomenal rise of corruption in big conglomerates and multi-national companies. New ethical and legal rules and regulations are being framed even for the accountants and auditors.

The Ombudsman's institution is functioning today in one form or the other in 120 countries of the world. It is engaged in checking not just the administrative malpractices, but its sphere of activities is expanding to also include the social and moral issues. For example, the Canadian Government has appointed as Ombudsman the 'Federal Correctional Investigator', with a wide range of

jurisdiction. In Washington D.C., the office of the 'Federal Students Aid Ombudsman' has been set up. Ombudsmen are being appointed also for redressal and reform in sectors like education, health, childcare, community welfare and family issues. Who can deny the need to safeguard and preserve the individual's personal freedom, self-respect and the sanctity of the hearth and home. Unnecessary witch-hunting and eavesdropping have never had the sanction of any civilized society. There is, however, no justification whatsoever to raise hue and cry over the Ombudsman's task of safeguarding the Islamic moral values. No sensible person can take it as an infringement of his personal liberty. Freedom and responsibility go hand in hand. Neither one extreme is correct, nor the other. Islam believes in 'Wasatiah' (Moderation) and it is very much expected that the institution of HISBAH, once revived, would follow the same glorious path of its predecessors in history.

### The Powers of the Muhtasib:

There has also been some criticism of the HISBAH Act's provisions to give the Muhtasib the same powers in respect of the contempt of court as available to the superior courts. Attempts are being made, on the other hand, to deny him even those basic rights, which the country's other courts routinely, enjoy. It is feared that if given those powers, the HISBAH Authority may give rise to fascist tendencies and oppression. Misgivings such as these are based on no reasonable grounds, but ill-will and are very much subjective in nature.

Let us take for example the Federal Ombudsman Act-1983. Its Article 14 provides all powers to the Ombudsman for access to information and cross-examination of the witnesses. Article 15 deals with the 'search of premises' and Article 16 with the 'power to punish for contempt'. The Article 29 on 'Bar of Jurisdiction' provides immunity to the Ombudsman disallowing any court or authority to issue stay order or take any measures against the decree issued by him. Article 37 has the clause on the 'order to override other laws'. The Punjab Office Ombudsman Order (1997) too includes all these Articles and clauses. The Baluchistan and Sindh Ombudsmen rules are also no different.

In addition to the authority and powers enjoyed by the offices of the Ombudsmen at the Centre and the three Provinces, similar provisions have been made in other legal bodies, like the Banking Tribunal and the Labour Tribunal. The Parliament and its Committees too have been given exclusive powers and exemptions from the jurisdiction of the superior courts. The Parliament is passing dozens of similar legislations every year providing for the 'Exclusion of Jurisdiction', or 'Overriding of Jurisdiction of Courts' in a number of cases. Under Act No. VII of 2004, even President Musharraf has been given the extraordinary and extra-constitutional powers of exemption from the jurisdiction of the Superior Courts to simultaneously retain both the offices of the Army's Chief of Staff and the President and it can be challenged under no law, Constitution, or the court. The Article 270 (a) of the Constitution also provides total amnesty to the President from all legal actions and nothing he does can be challenged in the country's any court of law.

If multitudes of such Articles and clauses elsewhere do not give rise to fascism or oppression, how can we expect the skies to fall by the HISBAH Bill alone?

It is very much evident from this review that the objections being raised against the HISBAH Bill have no leg to stand on. It is also confirmed that the provisions of the Bill are not at all in violation of any existing rules and regulations. There is definitely a room to further improve the Bill and we are sure that the NWFP Government, as well as the Provincial Assembly would not be unmindful of that. There is, nevertheless, no justification whatsoever for such a unilateral and extremely biased propaganda against the Bill. It is very much evident that the country's secular lobby, as well as the Federal Government are hell-bent to prevent any real headway towards the program of Islamic reforms as envisaged by the HISBAH Bill. The Federal Government is also motivated by a sense of revenge against the electoral defeat of its favorites in the NWFP at the hands of the MMA candidates. Let me tell them plainly that they are playing a dangerous game with the Constitution and the law, which would prove too costly for them. The MMA will not compromise on principles and would valiantly challenge its detractors in this politico-legal war. I am sure the right would win over might, In Sha Allah!

### The Challenges Ahead:

I take this opportunity to impress upon the MMA leadership and the workers that the current controversy over the HISBAH Bill has given rise to a political tug-of-war not only in the NWFP but throughout the country. This is a conflict that is of utmost importance for Pakistan's identity, its survival as an ideological state, our community life and in order to determine the state's role in the introduction of Islamic values and social order. The onus is now on all of us to prove with the power of arguments at our command the truth about our stand and convince in its favour those confused or skeptical. This is a challenge facing us from the Dawah point of view and on its success depends the successful future of the country and the nation.

Who knows, the HISBAH Bill passes through how many phases and what turn the ongoing conflict takes! We shall have to be prepared for all the eventualities. This is an academic as well ideological, political and practical tug-of-war. It is also a constitutional and legal battle. We will have to discharge our responsibilities correctly on all fronts and in all fields.

The second thing, which is even more important in my view than the first, is that when we succeed, by the Grace of God and with the active support of the people, to make the HISBAH Bill part of our statute-book — and succeed we will definitely, In Shaa Allah— our actual test would begin only then. Following the passage of the HISBAH Bill, it would be extremely essential to establish the HISBAH Authority on correct lines. The people of the Province must observe a

positive change in their lives and that is possible only if we work earnestly and with full devotion to achieve the following targets:

- (i) The selection of the manpower to occupy various positions of responsibility in the HISBAH system must be done purely on the basis of merit. The appointment of proper persons for the job is the first and the biggest challenge facing us and in fact that would be the real test of our earnestness and sincerity of purpose. Those so selected should work as a dedicated team to discharge their responsibilities with the spirit of Iman (Faith), Ilm (Knowledge), Taqwa and Service above Self.
- (ii) Sincere efforts should immediately be made to prepare detailed Rules of Business for the system's effective functioning at the Provincial, District and Tehsil levels. This is a must to run the HISBAH set up on correct lines and enable the people to properly reap its benefits.
- (iii) We must also learn from our current experience to further enhance our professionalism. The sincerity of purpose comes first and foremost. But it is equally important to have a total grasp and understanding of the ground-realities and evolve practical solutions for the issues and challenges facing us in the light of our experience and keeping in view the complexities of the human life. That is how we can turn the tide. For this we need to rise above narrow party considerations and take along with us the people as a whole. We need to move with full confidence and in close cooperation and consultation with all sincere elements of the society towards the attainment of our ultimate objectives.
- (iv) It is equally important not only to have a complete knowledge of the concept of HISBAH in Islam and its real spirit, but also to educate others in this respect. We must admit that we have been unable to timely and properly project many laudable projects we launched. To use the terminology of trade and commerce, the goodness of commodity alone is not enough for a successful marketing. The quality of the brand, its attractive packing, proper marketing techniques and effective publicity and projection are all equally important. The shortfall in one casts its adverse impact on the other.

These are some of the points which both our workers and leaders need to keep in view. As a Dai (Islamic Missionary), our position is that of a doctor, who has to fight against the disease and not against the patient. Our attitude even towards our opponents and detractors should be that of a

Missionary. Our responsibility is to give the aggrieved his due, regardless of the party or the group to which he may belong — whether he is from our own party or clan, or from that of our opponents. The responsibility of HISBAH cannot be discharged properly without self-introspection and social accountability. We have accepted a big challenge by entering into the arena and all of us are now on trial.

Let us pray to Almighty to show us the right path and help us in all our endeavors', for the success comes only through Him!

**P.S:** Dozens of books and publications are available on the various aspects of HISBAH. For those keen to know more can consult the following:

1. Encyclopedia of Islam (Leiden, Holland).
  2. Urdu Dairah Maarif Islamia (University of the Punjab, Lahore).
  3. Encyclopedia of Islam (Istanbul, Turkey).
  4. Ihya -Ulum, by Imam Ghazzali, Vol.II.
  5. Al-Fasl Fil Milal, by Ibn Hazm, Vol.iv.
  6. Al-Risalah Fil HISBAH, by Imam Ibn Taimiyah.
  7. Al-HISBAH Wal-Muhtasib Fil Islam, (Cairo, Egypt).
  8. Islami Riyasat Mein Muhtasib ka Kirdar, by Dr. S.M. Naz. IRI, IIU, Islamabad.
  9. The Financial and Administration Organization and Development in Ottoman Egypt, 1517-1798, by Stanford J. Shaw, 1962.
  10. The Social Structure of Islam, by R. Levy, Cambridge, 1957.
  11. The Administration of Justice in Medieval India, by M.B. Ahmad. 1941.
  12. Administration of Justice in Delhi Sultanate, by M.B. Hew.
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