

The Development of Institution of Ḥisbah and its Role in the Administration of Markets in Islamic Civilizations

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ABSTRACT

The Institution of ḥisbah has gained significance in the modern-day. The institution of ḥisbah performs different important tasks including the administration of marketplace. This Institution of has acquire its legacy from the verses of the Holy Qur'an, which order to enjoin good and forbid evil and Ahadith of the Holy Prophet (Peace Be upon Him. Foundation of ḥisbah is based on the practical examples of the Holy Prophet, (ﷺ) and his companions.

This article will discuss the role and responsibilities of the Muḥtasib in the State and the Scholar's views on the functions of ḥisbah. This study will focus on the evolution of the institution of ḥisbah its role in the administration of markets in Muslim societies. This research will also discuss the techniques of market supervision implemented by various muslim societies concentrating on ottoman pricing policy because Ottoman price system was a replication of Hisbah and it developed the foundation for controlling commercial activities and public administration. The ottoman pricing policy established his independent commercial policy and Nerkh System due to which ottoman administration was a big supplier of finish goods and as well as raw material. This study will also highlight the Nerkh System of Ottoman administration and the effective role of the Islamic organization in its development and Qāḍī and Muḥtasib managed institution of nerkh system and Ottoman pricing policy. The paper will also explore the role different institutions and authorities established under the institution of Ḥisbah; this study will also draw a comparison between the roles of various institutions like ḥisbah Mazalim courts wafāqi Muḥtasib etc.

Key Words: *Ḥisbah, Administration of the market, pricing policy, Nerkh System, enjoining good.*

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INTRODUCTION

“The Term Ḥisbah extracted from hasaba, which literally means to calculate, to count, to control and to account etc. Ihtisāb means, calculation, concern, etc. Moreover, Muhasaba means accounting, clearing, bookkeeping, examination of conscience etc. And Muhasib means accountant, certified public accountant, auditor etc.”⁽¹⁾

The scholars have defined ḥisbah in different like Al-Māwardī, said “to enjoin good if it is ignored, and to forbid evil, if it is dominant in the society”⁽²⁾. It means that enjoining good when it has ceased to be the custom and forbidding evil when that has become the custom. Another prominent scholar, Muhammad al Mubarak believed it is a responsibility of the ruler to promote the behavior and ethics of society and introduce reforms in financial system.

The Ḥisbah is an autonomous branch of government in Islamic state. It administers the market and ethic of people. The officer who administers the ḥisbah is *Muhtasib*. Regulation of the market was one of the main duties of the *Muhtasib*,

“In fact, however, the scholars describe its basis from the verses of the Holy Qur’an and practical sunnah of the Holy Prophet, (peace be upon him). Al-Māwardī quoted following verses of the Qur’an in this regard.”⁽³⁾

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ﴾⁽⁴⁾

“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.”⁽⁵⁾

According to Ibn Taymmiyah Islam established all public offices to command good and forbid evil including *ḥisbah*. The Holy Prophet himself, (peace be upon him) always used to control the markets. There is a hadith that

“Once prophet passed by the grain and putt his hand into it found it liquid then he said: Why did you not put the soaked grain on top so

(1) Hans Wehr, *A Dictionary of Modern Written Arabic ,Madjamul-lughah Al-arabiy-yah Al-muasirah* (Beirut: Maktabat Lubnan, 1980)., p.175-76

(2) ‘Alī Ibn-Muḥammad Al- Māwardī and Asadullah Yate, *Al-Ahkam As-Sultaniyyah: The Laws of Islamic Governance* (London: Ta-Ha Publ., 1996).

(3) Abdul Azim. Islahi, *Economic Concepts of Ibn Taimiyah* (Markfield: Islamic Foundations, 1988).). Vol.12: 187.

(4) Al- Quran : 3/104

(5) Al- Quran : 3/104:

that people might see it."Those who cheat us are not among my people".⁽¹⁾

This case is strong evidence on existence of *hisbah* in the period of Holy Prophet (peace be upon him). This example set by him for the caliphs to hold this office. These institutions remain functional throughout in the Muslim world until the beginning of the twentieth century. During the Mamluk period, it assumed great significance, as evident from the different works in that period. In Egypt, the system existed until the regime of Muhammad Ali in Morocco; it exists until the beginning of this century. The Roman East also adopted the institution of *hisbah* after the interaction with Muslim world.

Importance of Hisbah

Hisbah is a very significant institution in Islamic society. The word hisbah means accountability. The Holy Qur'an and Sunnah has used word hisbah in the meaning of accountability, as Allah, the Exalted, said:

"Whether you reveal or conceal it what is in your minds Allah will account for it."⁽²⁾ "Read your book. You yourself are sufficient as a reckoner against you this day"⁽³⁾

"O you who believe! Fear Allah and keep your duty to Him, and let every person look to what he has sent forth for the tomorrow, and fear Allah verily, Allah is all-aware of what you do. So, none can hide his action from the eyes of Allah.

The Messenger of Allah says:

"Assess yourself before you are to be assessed (by Allah)."⁽⁴⁾

Therefore, hisbah plays important role in the supervision of the market. The Islamic states has established institution of Hisbah to accomplish some important objectives most importantly for the protection and development of Islam law by enjoining good and forbidding evil, resolving of complaints of the public against the administrative departments of government. Hisbah also Protect public interest of community. It also keeps check on the functions of the civil servants and examines the policies of government regarding market supervision.

(1) Muslim: Book of Faith, Chapter on the Prophet's (peace be upon him) saying: "The one who cheats is not from us" # 102; Abu Dāwūd, # 3452; al-Tirmidhi, # 1315; Ibn Mājah, # 2224, and Ahmad, # 7290

(2) Al-Qu'an, Al-Baqarah, 2:284

(3) Al-Qu'an, Surah Al-Isra', (17:14).

(4) Sunan al-Tirmidhi.

Authority of the Institution of ḥisbah

The ḥisbah derives his authority from those general verses of Qur'an, which impose the duty to command good and prohibit evil.⁽¹⁾ This system based on the Qur'ānic verse and the Sunnah of Holy Prophet

"And from among you there should be a party that invites good and enjoins the right and forbids the wrong" ⁽²⁾

"Whoever sees a mischief culminate it by his hand, and if impossible, then by his tongue, and if not, by his heart and the last is the weakest weapon."⁽³⁾

There are many branches of this institution most important deals with the supervision of market it is a duty of Muḥtasib to supervise the markets. He should engage and hire the competent individuals for his assistance. His duty is to investigate the disputes of public, impose the appropriate punishments, and introduce the corrective measures,⁽⁴⁾ because the *Muḥtasib* is the administrator of the markets, weights and measures.

Historical Evaluation of the Institution of Ḥisbah

The Institution of Ḥisbah exists from the period of the Holy Prophet (ﷺ). It is evident from the prohibition of buying food grains from caravans on their way before reaching into market. The Holy Prophet forbade them from selling products before reaching in the market.⁽⁵⁾ The Holy Prophet and His Companions set an excellent example by appointing administrators for the supervision of markets. The best example is appointment of Umar Ibn Al-Khattāb and Abdullah Ibn Uqbah as an administrator of a market. The ḥisbah plays an important role in the construction a society. Hence, the other job of the *Muḥtasib* was to prevent the fraud in business and commercial transactions, particularly to regulate the weights and measures and check their standards and qualities, adoption of these parameters in Islamic societies shows that the Islamic civilization concentrates on two dynamics of human life of material as well as spiritual.

(1) Dr. S.M Nāz, *Islāmī Riyāsat Main Muhtasib kā kirdāar* (Islamabad: Islamic Research Institute), 54.

(2) Al-Qur'an; 3:104

(3) Yūsuf Rāḡib, "‘abdullāh ‘Alwī Hājī Ḥassan, Sales and Contracts in Early Islamic Commercial Law, Islamic Research Institute, International Islamic University, Islamabad: Publication No 92, 1994, XIX 266 Pp.," *Journal of the Economic and Social History of the Orient* 40, no. 3 (1997): 29, doi:10.1163/1568520972601620.

(4) Dr. S.M Nāz, *Islāmī Riyāsat Main Muhtasib ka kirdāar* (Islamabad: Islamic Research Institute), 58

(5) The practice was that a number of merchants used set up at the entrance of the city in which a public market was to be held. The merchants would circulate false news about the low prices of commodities so that they would purchase all the goods from those who would come to the market at lower prices. These transactions were outlawed by the Prophet.

The origin of *Hisbah* in the period of Holy Prophet's (ﷺ)

Initially the institution of *hisbah* was developed by the Holy Prophet (peace be upon him) in his life in the history of Islamic civilization. His practice was to visit marketplaces and instruct the traders about standards of commercial transactions. The Holy Prophet also apportioned some of his companions as a *Muhtasib* (market supervisor). *Sa'id bin Al-Aas* was *Muhtasib* in Makah, and *Umar Ibn Al-Khattāb* in *Madinah*, and he used to administer the market himself, by inspection of the equipment used for weighting and measuring of products, *Muhtasib* was accountable for the implement the Islamic commercial laws in marketplaces in accordance with the teaching of Prophet ﷺ.⁽¹⁾

As Abu Hurayrah (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) passed by a pile of food and then put his hand in it until his fingers wetted, he said: "What is this, O owner of the food?" He said: "It was wetted by rain, O Messenger of Allah." He said: "Would not you put it on top of the food so people can see it. The one who cheated is not of me."⁽²⁾

Hazrat Umar (May Allah be pleased with him) performed the job of the *Muhtasib* during his caliph. He urged the people to adopt the right and the straight path, prevent from wrong; his practice was to visit the markets and issue warning for those who increase price, involve in fraudulent transactions and cheats the public.⁽³⁾ The institution of *hisbah* started in the period of Prophet (ﷺ) and was remain dominant from the era of four Rightly Guided caliphs to Umayyad period. *Ziyad Ibn Abih* was a *Muhtasib* of Basra in Umayyad period.

Hisbah under the Abbasids period

The institution of *hisbah* was present in the Abbasid period. Abbasid Caliph Abu Ja`far al-Mansur draw special attention for its growth and played a significant role for its expansion of this institution. He assisted the *Muhtasib* by providing guidance for regulation of the markets; he introduced the reforms by separating the commercial areas of city and its public offices from residential areas and shifted the markets into distant,

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- (1) Abdul A. Islahi, *Economic Concepts of Ibn Taymiyah* (UK: Islamic Foundation, 1988), 187.
 - (2) Muslim: Book of Faith, Chapter on the Prophet's (peace be upon him) saying: "The one who cheats is not from us" # 102; Abu Dāwūd, # 3452; al-Tirmidhi, # 1315; Ibn Mājah, # 2224, and Ahmad, # 7290
 - (3) Ṭabarī, *Ta'riḫ Al-Ṭabarī: (tārīḫ Al-umam Wa-al-mulūk)* (Bayrūt: Mu'assasat 'Iz Ad-dīn, 1992), vol 2: 578.

particular areas. He also appointed *Muhtasib* to regulate these markets according to Islamic law and report violations.

The role of *Hisbah* was expanded from regulating weights and measures, to preventing monopoly in this period, *Muhtasib* was by empower to hire specialists of relevant field to increase productivity and professionalism in the business skills. ⁽¹⁾ The institution of "hisbah" was prevalent in Egypt and Andalusia.

Scope and functions of the institution of hisbah and Muhtasib

Due to gradual, development of the institution the scope and functions of *hisbah* never remain static. The Muslim word was consists of on different areas from Indonesia to Morocco, and their structure was different, so the steps taken by the *hisbah* officials constant to variation due to local customs and cultures.

In the medieval Islamic states sometimes, duties of *hisbah* officials transferred to the judiciary and some other times to the police. However besides institution gradual developed it covered many areas of public administration most important is the administration of markets. It plays a significant role in the development of the balance Islamic society. The purpose of *hisbah* is to guide the people in religious, social and economic affairs. The sphere of *hisbah* is therefore, essentially dealing with observing marketplaces, and ensuring the quality and standards of products. Through this department of state exercises a comprehensive socio-economic control on trade and business. The *Muhtasib* (official in charge of al-*hisbah*) functions included prevention and punishment on all sort of fraudulent and dishonest dealings and control over the trade unions and artisans and other classes of businesspersons. ⁽²⁾ The *Muhtasib* has the functions to protect the rights of people, especially in markets, and to examine the work of Municipal administration, by checking the cleanliness of the highways and streets.

Muhtasib was required to visit the market on daily basis and spend most of his time in resolving the disputes among the parties at the spot, and controlling actions of injustices and checking the weights and measures to avoid cheating in the business community. He is also responsible for examining the documentation of notaries engage in the formation of contracts between the parties, and different types of deeds.

(1) Ibn Abi Usaybi'ah, *Muwaffaq Al-Din Abi Al-'Abbas `Uyun al-anba' fi tabaqat al-atibba'*, Dar Maktabat Al-Hayat, 1965 vol.1:112.

(2) Najjar, Fauzi M. "Islamic Society and the West: The Pre-Modern Phase * H. A. R. Gibb and Harold Bowen: *Islamic Society and the West*, Vol. 1, Part 2. (Oxford University Press, 1957. Pp. 285. \$5.60.)." *The Review of Politics* 20, no. 04 (1958): 688. doi:10.1017/s0034670500034355.vol. 1, 2:80

He will observe the implementation of Islamic principle regarding quality of goods and services to avoid dishonesty in the transaction and quality or measurement, by keeping the standard units of measurement in his office. The *Muhtasib* has the power to regulate production and supply of goods and services as well. He would examine that subject matter of transaction should be lawful and should not *harām* or prohibited. He will control the supply of important objects, especially food items. He will control the artificial increase in prices. The urban traders prohibited to purchase from the rural trader before reaching to market at cheaper rates. The intermediaries were banded. The interest of traders protected against dumping in the market. The traders forbidden from concealing the defects in a product.⁽¹⁾ The *hisbah* was responsible for curbing misconducts like hoarding and corruption. The rights of weaker sections of society were protected.⁽²⁾

The role of the *Muhtasib* in the State

Islam recognizes the open market mechanism, based on a natural supply and demand principle as Holy Prophet said, “It is Allah who fixes the price”. Therefore, Islam prohibits the interference in a free market mechanism, and complete honesty in trade is mandatory. There is always the probability of dishonesty and deception in business due to human nature. Thus, it is compulsory for the government to confirm that businesspersons’ do their businesses according to Islamic business law. The government has to work hard for eradication of misconduct in the markets, for fulfilling this responsibility Islamic state established the institution of *hisbah*.

The Holy Prophet (peace be upon him) acted as a first *Muhtasib*. Afterward, he employed some of his companions to accomplish this duty, including Said Ibn Al-‘As in *Makkah* and Umar Al-Khaṭṭāb in *Madinah*.⁽³⁾ Caliphs have always appointed competent, skilful persons on the post of *Muhtasib*. The position of *Muhtasib*, was therefore, extremely important in times of emergency and inflation. In 307, AH prices extremely rose in Baghdad due to which public disappointed, broke podiums, interrupted prayers, and burned bridges.⁽⁴⁾ *Ibrāhim Ibn Baltha*, fixed the prices of some important goods. He fixed prices of commodities to save the society from public disorder.

(1) Ibn al-Ukhuwwa, *Ma’ālim al Qurbā* 1938

(2) <http://www.ips.org.pk/politics/1185-the-institution-of-hisbah-demandmand-for-its-revival.html> accessed 25 Nov/ 2011

(3) <http://www.mia.org.m y accessed at/2010/04/04.pdf>

(4) Muhammad Ibn `Abdul-Malik al-Hamadhānī, *Takmilat Tarikh al-Tabary* (Completion of al-Tabary's Book of History), 21.

Responsibilities of Muhtasib

There must be some requirements for appointment of Muhtasib; he must fulfill some qualifications to certify that he can accomplish his duties in accordance with Islam. The following attributes must be present in the *Muhtasib* that is honesty and neutrality, fairness, knowledge of Islam and vision, and mild temper. The *Muhtasib* has to administer functions relating to the protection of interest of people by market supervision. Most part of his day, he spent in the marketplace, in resolving the quarrels and preventing injustices. He has also to inspect the weights and measures to prevent cheating.

His responsibility is to address the grievances of the business community and solve them on the spot. He checks schools, the courts, and all places where people assemble to enforce observance of Islamic law and ethics. He has to examine suppliers of goods to prevent cheating in their quality. The *Muhtasib* had the authority to regulate production and supply of goods according to Islamic law. He would assure that assets did not flow to the category of *harām* (Prohibited). He will check that business should be done in an open market and there shall not be artificial price hike. The traders should not form association against new traders. There trader should be protected from dumping in the market. The merchants were bound to disclose the defects of a product. Independent institution *Hisbah* is essential for the promotion of business organizations.

Administration of markets

The basic function of *hisbah* was supervision and administration of market; the one responsible for this function was called *Sāhib al-Sūq* at that time and after that, the term Muhtasib or price magistrate is used in Pakistan. He was supposed to supervise the market in fair pricing and prohibit illegal practices. There are *Hisbah*, which include the discussion on misconducts in manufacturing and trade of goods. *Muhtasib* have adequate knowledge of business law. He is empowered for the appointment of professionals of different fields for his support to identify the malpractices used in manufacturing of goods and raw material.

Price control

Generally, Islamic law does not allow that price control in normal situations, but exceptionally some jurists allowed it in the circumstances of market inflexibilities when there is artificial increase in prices by holding back supplies, reducing production or by mere agreement for their benefit. Thus, the *Muhtasib* is empowered to introduce mechanism in similar cases; the Muhtasib may fix the prices. The prices will be determined periodically in the light of overall financial situations and cost structures in

the economy, the price lists will be circulated publically in markets. In case of violation, traders were also to be penalized.⁽¹⁾

Scholar's views on functions of ḥisbah

There is two types of literature available on the topic ḥisbah one is descriptive which describe its structure generally its virtues and obligations and its religious aspect. The second type of writings describes the practical and technical details of supervision. Ibn Taymiyyah book *al ḥisbah fil' Islam* is different from other books it linked the institution of the ḥisbah with the state. He deals mainly with theoretical matters concerning the nature of the institution. His book is exclusively valuable because it discuss the number of economic problems, which are relevant today, for example, he systematically highlighted the issue and scope of state intervention in private enterprise, and discuss the parameters of imposing restrictions on the rights of the individual.

Ibn Taymiyah analysis critically the views of different scholars, and present his own opinion persuasively with the support of evidences from the Qur'an and the *Sunnah*. He summaries and describes many modern' economic concept and terminology, including law of supply and demand, price regulation, fixing of wage, competition laws, monopoly, etc.⁽²⁾

Abdul Azim Islahi⁽³⁾ says:

“The writing on al ḥisbah started in the 3rd century to 9th century (A.D).⁽⁴⁾ Writings related to institution of ḥisbah are relevant with social and economic control, morality and market regulation, and measures for prevention of monopolies, cheating and fraud another is relevant to corruption, and improvement of standards and quality of products, and smooth of supply of items, etc. As for works concerning to al-Syāsah al-Shar'iyah are commonly dealt with the governance, economy, sources of public revenue and expenditure, maintenance of law and order, internal and external defense are dealt under the Principles of al-Syāsah al-Shar'iyah.”⁽⁵⁾

(1) <http://fasleh2010.blogspot.com/2010/08/institution-of-hisbah.html>

(2) Abdul Azim Islahi, *Economic Concepts of Ibn Taymiyah*, (Islamic Foundation, 1988), Vol.12:186,187

(3) Abdul Azeem Islahi was born in Azam Garh (U.P) India in the year 1950. He completed his Ph.D. in economics from Ali Garh Muslim University. He has worhis as Assistant Professor in Shah Abdul UniversJeddahddah, Saudi Arabia. He also wrote many articles and books on Islamic Economics.

(4) Abdul Azim Islahi (2006) Article, Work on Market supervision and Sharī'ah. governance by the Sixteenth Century Scholars, http://mpa.ub-unimuenchen.de/18445/1/market_supervision.pdf:2.

(5) Abdul Azim Islahi (2006) Article, Work on Market supervision and Sharī'ah. governance by the Sixteenth Century Scholars, http://mpa.ub-unimuenchen.de/18445/1/market_supervision.pdf:2.

“*Muhtasib* was concerned with the provision of the Justice in the community. He would play a role for fair production in the business and establish harmony among different economic factors to reduce factors exploitation in the business community.”⁽¹⁾

Application of Islamic Pricing Policy

Ottoman has adopted Islamic pricing policy that was a reproduction of Islamic economic principles; it is the main source of public administration in an Islamic State consisting of a period of six centuries.⁽²⁾

Commercial Policy

Ottoman government established its Commercial Policy based on Islamic tradition, they inspired from Islamic law, under this policy merchants were take part in business without any fear. Ottoman administration took measures to control monopoly and provided Incentives to traders, and established a control mechanism to protect a customer as well as the manufacturer. The administration was responsible to provide security Stability in markets. There was ban on Foreign merchants to do business and to purchase some specified goods, due to export ban for those goods.

After the discovery of American continent, basic foodstuff, defense items, industrial raw materials and semi-finished resources were smuggled. Ottoman state imposed a ban on exportation of some merchandise including weapons they inspired by the *hadith* of the Holy Prophet (ﷺ) which prohibits the sale of merchandise and weaponry to the enemy Although the Ottoman provinces were becoming a large market for final goods while it remained as a supplier of raw materials. Their exports were bigger then total import ⁽³⁾ Some Turkish goods were effectively competing with European goods at that time.⁴

Because of the importance of transit trade, Ottomans kept custom duties very low. war and conflict was threat to the security of trade at this time they emphasis in peace treaties, on reviving trade and other international trade, which were interrupted due to wars and conflicts.⁽⁵⁾ They demanded from countries with which they fought, not to block trade, if all customs

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- (1) M Akram Khan (2009) Article, The Hisba, Electronic standard website, http://unitedagainstislamism.wordpress.com/the_hisba:2.
 - (2) Orhan Oguz and Ahmed Tabakoglu, "An Historical Approach to Islamic Pricing Policy: A Research on the Ottoman Price System and Its Application," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 67, doi:10.4197/islec.3-1.4.
 - (3) *Ibid*
 - (4) *Ibid*
 - (5) Emine Zeytinli, "The Effect Of Trade Agreements: The Case Of International Trade Of Europe And Turkey," *Economics And Management* 17, no. 4 (2012): 69, doi:10.5755/j01.em.17.4.3038.

duties were paid, foreign traders were free to do trade They were granted many protections and exempted from Jizyah.⁽¹⁾

Nerkh System

The principle of price control under imperfect competition was very effective in the Ottoman economics. The structured of Ottoman economy necessitated price control. Ottoman applied it throughout the history. They used to determine the Price basis of nerkh system. They used to modify nerkh system according to requirements. The uncertainty of agricultural supplies mainly required price adjustments. In addition, they made regular adjustments in response to seasonal or anticipated demand side changes such as the usual demand increases during the month of Ramadan. The submission of price list was mandatory by the *Muhtasib* to the *Qāḍī* of Istanbul every month.⁽²⁾ They are administering this institution effectively prices were increased in case of decrees in supply, or In case of devaluation of domestic currency. Generally, prices were increased as a whole, however sometimes prices were increased due to increases in cost if cost increases were genuine. There committee was formed consisting of relevant associations, economic experts, scholars and some other people, for determining prices under the leadership of *Qāḍī*. If there is a demand for price increase, the committee used to approve after conducting detailed discussion on costs, if profit is insufficient for traders. Actual profit rates varied from 10 to 20 percent depending on the characteristics of goods approved price list kept in official records of *Qāḍī* and announced to the public.⁽³⁾ Nerkh system deals separately for the wholesaler and retailer. Wholesalers were not allowed to run retailer shops the flow of goods was regulated.⁽⁴⁾

Role of Islamic Organizations in Nerkh System

The Islamic organizations⁽⁵⁾ in the Ottoman economy had an unlimited authority on business. They adopted measures to control unemployment and extra supply circumstances. The number of workshops, machinery and equipment were limited. No one could open a workshop without approval before fulfill certain criteria one of them is competence and completion of training period is mandatory. It is consists of various trade organizations,

(1) *Ibid. Emine Zeytinli, "The Effect Of Trade Agreements: The Case Of International Trade Of Europe And Turkey," Economics And Management 17, no. 4 (2012): 69, doi:10.5755/j01.em.17.4.3038.*

(2) *Ibid*

(3) *Ibid 70*

(4) *Emine Zeytinli, "The Effect Of Trade Agreements: The Case Of International Trade Of Europe And Turkey," Economics And Management 17, no. 4 (2012): 70 doi:10.5755/j01.em.17.4.3038.*

(5) A medieval association of artisans or merchants, often having considerable power called guild.

and *Qāḍī* was the authority in auditing. The contribution of *Qāḍī* indicates the central administration controlled organizations and market; this close control authorized *Qāḍī* to block unnecessary interferences. Trade routes Shifted from Ottoman land to the ocean was the first attack to Ottoman organizations when army officers and soldiers too started to enter in domestic market for business, ignoring the ban which prohibited soldier involvement in anything except national defense.⁽¹⁾

The Administration of the Nerkh System

The Administration of the Nerkh System was in accordance with early Islamic practices, *Qāḍī* and *Muhtasib* were regulating markets. They established self-sufficient mechanism for the production by giving incentive to producers to form up their own capital stock and avoid using credit. They advise to undertake their activities in their own shops not in rented places. All this was due to establishing an internal control mechanism. The Ottoman Administration aimed and achieved price stability because of maintaining a stable and balanced overall supply. They effectively utilized nerkh system to control monopoly.

They efficiently tackled the issue of Resource allocation and inflation, which kills competition and finally brings monopoly. In other words, the nerkh system was used to establish market prices; Black-market was not a common practice.⁽²⁾ The ruler himself sometimes contributed in price and Quality control. This shows the importance attached to stability and justice by the state. The standards were well defined and mandatory for producers. For the protection of customers, quality controls were undertaken and violators were punished.⁽³⁾

Regulation of Markets:

The purpose of regulation was always to maintain price stability and flexibility and change in price should depend on changes in supply. However, extreme and constant price rise not permitted due to imperfect competition.

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- (1) Orhan Oguz and Ahmed Tabakoglu, "An Historical Approach to Islamic Pricing Policy: A Research on the Ottoman Price System and Its Application," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 70, doi:10.4197/islec.3-1.4.
 - (2) Orhan Oguz and Ahmed Tabakoglu, "An Historical Approach to Islamic Pricing Policy: A Research on the Ottoman Price System and Its Application," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 71, doi:10.4197/islec.3-1.4.
 - (3) Orhan Oguz and Ahmed Tabakoglu, "An Historical Approach to Islamic Pricing Policy: A Research on the Ottoman Price System and Its Application," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 71, doi:10.4197/islec.3-1.4,74

The new markets established by the approval of central administration and work under its supervision, merchants used to be transferred from one market to another according to need of community. The strict control over markets empowered the administration to conduct its fiscal policy.⁽¹⁾ Thus, tax avoidance was controlled and there was prohibition of selling of illegal drugs and dumping. There can be differences in price in certain markets in different localities. However, prices in the countryside were kept in line with the prices prevailed in big cities.⁽²⁾

Conclusion

There are the some important points and suggestions on this subject of administration of markets

➤ In Islamic law, general rule is that intervention in the market is prohibited according to the Islamic law. There is difference of opinion among scholars on this issue there are two opinions, one of them it is allowed on the basis of public interest in exceptional cases subject certain conditions.

➤ If administration wants to impose, price control, should conduct detail studies on the appropriate market and take advice from the economic experts and include all the stakeholders by taking suggestions and decide based on those recommendations.

➤ Women are equally qualified for the post of Muhtasib. It is evident from appointment Shifa bint Abdullah as a Muhtasib during the period of `Umar (R.A).

➤ The office of *Muhtasib* establishes since 1980 in Pakistan, to deal with public complaints against public offices and officers. Now its role should be expanded by including the task of market supervision.

➤ *Abbasid Caliphs apart from regular courts established Mazalim* courts. Syāsah (administrative laws) administered these courts.

➤ Procedural laws for these courts are in the books separate from Fiqh texts, usually along with statutory laws.

➤ Ibn Taymiyah tried to restructure the branch of law that was materialistic in nature, with Sharī'ah in his book *Al-Syāsah al-Sharī'ah*.

➤ during the Mamluk period in Egypt; that jurists were attached to these courts as jurist consult (muftis)

➤ There is similarity between the hisbah and Mazalim from two-perspective first both these departments take preventive measures to protect the public from harm, and secondly both can exercise a sou motto

(1) Orhan Oguz and Ahmed Tabakoglu, "An Historical Approach to Islamic Pricing Policy: A Research on the Ottoman Price System and Its Application," *Journal of King Abdulaziz University-Islamic Economics* 3, no. 1 (1991): 71, doi:10.4197/islec.3-1.4,71

(2) *Ibid.*, 72

jurisdiction to control the offenses and take actions for preservation of law and order.

➤ The Mazalim court can address the *Muhtasib* but *Muhtasib* cannot address the officer of Mazalim court.⁽¹⁾

➤ The responsibility of the *hisbah* is in-between between Qadi and those of the Mazalim tribunals. The jurisdiction of *hisbah* similar to the Qadi's court it has authority to deal three types of complaints in worldly matters, including cases, regarding short measure or weight, disputes relevant to fraud or concealment of defect in a the sold items or in its value. It also deals issues of withholding of a debt due.⁽²⁾ These three types of complaints indicate a clear wrong and are acknowledge with an apparent right, so these matters appropriate to dispense under a jurisdiction. The *Muhtasib* may force a defendant to discharge his liability, which comes under his jurisdiction because non-discharge is a wrong which it is his duty to eradicate.

➤ In Pakistan, police under the criminal procedure code⁽³⁾ and other relevant laws are now taking measures for prevention of crimes, the detection of narcotics; police also monitor weights and measures and removes nuisance from the society.⁽⁴⁾

➤ In Pakistan, government has established office of wafāqi *Muhtasib* through presidential order to make the *Muhtasib* functional and independent number of provisions have been incorporated it is not an addition of the executive of the government. It is established by law to perform his functions and exercise his authority independently without interference of the executive

➤ The *Muhtasib* has a distinct identity of its own, external to the administration. The functions of *Muhtasib* are allied to executive. In some cases, he acts as an assistant of it and in some situation as a supervisor.

Hisbah and Judiciary

Al Māwardī has discussed that the responsibility of the *hisbah* is in-between between Qadi and those of the Mazalim tribunals. The jurisdiction of *hisbah* similar to the Qadi's court in some aspects and it is different from each other in some respect. It has authority to deal three types of complaints in worldly matters, including cases, regarding short measure or

(1) Al Māwardī Ali bin Muhammad, *Al Ahkām al Sultāniyah* 3rd ed. (Egypt: Sharikaht al Hilbi,1973),247

(2) H. F. Amed roz, The Hisba Jurisdiction in the Ahkam Sultaniyya of Mawardi Source: The Journal of the Royal Asiatic Society of Great Britain and Ireland, (Jan., 1916),: Cambridge University Press p. 78 Stable URL: <https://www.jstor.org/stable/25189398> Accessed: 02-12-2018 08:26 UTC

(3) Criminal procedure code of Pakistan, 107-110,151,133

(4) Pakistan Penal Code, 1973, 4, 4 ,6 and 7,

weight, disputes relevant to fraud or concealment of defect in a the sold items or in its value. It also deals issues of withholding of a debt due.⁽¹⁾ These three types of complaints indicate a clear wrong and are acknowledge with an apparent right, so these matters appropriate to dispense under a jurisdiction. The Muhtasib may force a defendant to discharge his liability, which comes under his jurisdiction because non-discharge is a wrong which it is his duty to eradicate.

In two salutations, his jurisdiction is less than Qāḍī. He is not competent to deal with claims, which do not result from wrongful acts, whether they arise from commercial contracts or declarations of right and obligation. Muhtasib must not entertain or adjudicate dispute unless case referred to him in express terms extending his jurisdiction. In such cases, he will combine his powers with powers of a Qāḍī, assuming him himself judicially qualified person. Secondly, his authority is restricted to admitted liabilities only. Only a judge has authority to hear evidence on oath in case of denial or disputed, this Muhtasib cannot do⁽²⁾ whether for the purpose of proving a claim or shifting a liability.

In some circumstance, powers of Muhtasib exceeds from Kadi: it is necessary for Kadi that a person must be a competent to file a case before him, and hearing of case must be in presence of complainant otherwise he is exceeding his jurisdiction.⁽³⁾ Muhtasib has power to investigate the matter in the absence of a plaintiff; whereas Muhtasib is invested with the extreme powers for repressing wrong, as a sovereign protector. His authority is a base on fear; to enforce it by means of fear is no excess of jurisdiction; whereas the Kadi's power bases on justice and sense of responsibility. There is difference in fields of action each should act according their limits.

Similarities between hisbah and judiciary

Muhtasib deals with three types of cases he will entertain grievances regarding defect in weights and measures and address the matters regarding pollution or cases of selling defective goods. Muhtasib will also resolve the issues of defaults in payments, refusal, or elusive denial of an admitted credit, so it is the responsibility of the *Muhtasib* to resolve them even with the assistance of law enforcement agencies if so essential. It is

(1) H. F. Amedroz, "X. The Hisba Jurisdiction in the Ahkām Sultaniyya of Māwardi," *Journal of the Royal Asiatic Society of Great Britain & Ireland* 48, no. 02 (1916): doi: 10.1017/s0035869x00067356.

(2) Ibid.

(3) Al Māwardi Ali bin Muhammad, *Al Ahkām al Sultāniyah*, 3rd ed.(Egypt: Sharikaht al hilbi,1973), 379

again analogous to judiciary *Qadā*) because it can enforce the admitted liability if matter falls under the jurisdiction of Hisbah.⁽¹⁾

Difference between *ḥisbah* and judiciary

Hisbah is inferior to Judiciary in that *Muḥtasib* is empowered to hear disputes in cases of breach of commercial transactions but he cannot try complicated criminal cases. He cannot deal with disputes relevant to duties, alleged contracts involve rights and obligations, and he cannot pass orders. Second difference is that a *Muḥtasib* only can try those cases in which defendant admits his liability. If there is a case that requires its proof on oath, declaration after proper hearing and evidence, the *Muḥtasib* is not empowered to take such a case as these are within the jurisdiction of judiciary.⁽²⁾ *Muḥtasib* can issue threat and use of force if necessary to settle a matter but reasonably, whereas *Qāḍī* is required to be calm, quiet, peaceful and neutral during trial. *Qāḍī* will perform his duties at a specific place for a specified time in the city while *Muḥtasib* will not. The jurisdiction of the *Muḥtasib* is broader than *Qāḍī*, he takes up the cognizance of matters, which usually are not presented in the courts.⁽³⁾ In some aspects, the institution has an extensive functional capability to handle complaints than the court. Both *ḥisbah* and judiciary are supposed to redress the wrongs but their spheres of action, approach and mode are different.

Ombudsman and *ḥisbah*

There are some differences and similarities between Ombudsman and *ḥisbah*. *Muḥtasib* is an Ombudsman but the Ombudsman is not the *Muḥtasib*. The job of *ḥisbah* is to spread good and restrict evil in the society but emphasis is on the correction of the public; the duty of the ombudsman is the correction of public officials, which also comes within the ambit of *ḥisbah*.

“Pakistan was also the first Muslim country which revived the old Islamic institution of *ḥisbah*, the office that administered markets, provided municipal services and resolved petty disputes. However, in its current shape the institution has a limited role of protecting ordinary citizens from administrative wrongs.”⁽⁴⁾

Currently in Pakistan, institutions of *ḥisbah* do not regulate the markets, but a magistrate of first class is empowered to deal with this issue. Special powers have been incorporated in criminal procedure

(1) Al Māwardī, Ali bin Muhammad, *Al Ahkām al Sultāniyah*, 3rd ed. (Egypt: Sharikaht al Hilbi, 1973), 378

(2) *Ibid.*

(3) The Encyclopedia of Islam, p. 4487

4 Muhammad Akram Khan, *An Introduction to Islamic Economics* (Islamabad: The International Institute of Islamic Thought and Institute for Policy Studies, 1994), 83.

code to empower Magistrate to regulate the market in accordance sections 262 to 265 the Code of Criminal Procedure, 1898. In Pakistan, the judiciary has powers to implement laws. However, merely fixation of price will not create any change at gross root level, without introducing effective financial policy regarding production and distribution of raw materials and giving incentives to the traders. There is need to enhance and expand jurisdiction of Ombudsman. It is useless to hope correction of public officials without correction of whole society.

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