THE ROLE OF THE INSTITUTION OF HISBA IN THE SHARIA IMPLEMENTING STATES IN NORTHERN NIGERIA

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DECLARATION

I hereby declare that this thesis has been produced by me and is a record of my own research work. It has not been presented in any previous application for a higher degree by anybody. All quotations and references are indicated in the footnotes and sources of information are specifically acknowledged by means of a list of references and a bibliography.

……..

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CERTIFICATION

This thesis entitled "The Role of the Institution of Hisba in the Sharia Implementing States in Northern Nigeria" meets the regulation governing the award of the Degree of Master of Laws – LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I express my gratitude to Allah The Almighty Who taught me what I did not know and Who bestowed on me His endless bounties. I dedicate this thesis to my father, late **Kadi Barkindo Alkali** who dedicated his life and took pains to train me as a Sharia jurist and prepared me to serve Sharia with absolute loyalty. *Allah yafe baba am*.

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In the name of Allah, the Most Gracious, the Most Merciful. All praises are due to Allah the Sustainer and Nourisher of the worlds, may Allah's Blessings and Mercy be on Prophet Muhammad SAW, his family, his companions and his followers to the end of the world, Aamiin.

I extend my gratitude to my parents for upbringing me in an Islamic manner and for training me; may Allah reward them abundantly and may He provide me with an opportunity and ability to do the same to my children.

I am grateful to my lecturers particularly Prof. Ibrahim Ahmad Aliyu who had been fatherly in his training of me, in inculcating in me the qualities of scholars and in correcting my mistakes with utmost sincerity, *jazakalLahu khairan*. I am also grateful to my minor supervisor, Dr. Muhammad Bello Uthman for his kind and useful mentoring and encouragement; I had been a very slow writer and the two had really helped me. *jazakumalLahu khairan*.

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ABSTRACT

This research is concerned with the role Hisba is expected to play regarding Sharia implementation in some states of Northern Nigeria and the extent that the Hisba played the role. Hisba evolved during the time of the Prophet SAW and it developed during the time of the classical Caliphs and later generations particularly the Umayyad and Abbasid dynasties. It was during the Umayyads that Hisba became an independent constitutional agency and this continued up to this moment. The Hisba existed alongside the police, the army as well as the ombudsman institution (Mazalim) throughout Islamic civilization including (lately) the Sokoto Caliphate, where Hisba was not a prominent feature of that government as a Constitutional agency. Sharia was part of Muslim life in Nigeria prior to British colonization which gradually eroded Sharia till it was finally restricted to personal law. In 1999, Zamfara State enacted a Law that enables courts to apply Sharia Criminal law and in 2003 the State established the Hisba with the aim to enhance Sharia implementation in the State and nine other states followed Zamfara, they include Kano and Jigawa. Ten states in Nigeria established Hisba because they thought it was imperative for a proper implementation of Sharia and because it was obvious that Nigeria Police was not willing to implement the provisions of the Sharia Penal Codes. Three out of these ten states enacted laws to establish Hisba as Commission, Board and Committee respectively; they are Zamfara, Kano and Jigawa. In five of the remaining seven states, the Hisba functions as a sub-committee under the Sharia Commissions of the states and in the last two states, the Hisba operates as a voluntary organization. The laws of Zamfara, Kano and Jigawa detailed the organizational structure of the Hisba agencies, the functions or powers of the Hisba operatives or corps as well as their specific roles regarding Sharia implementation. Kano Hisba is the most organized in the country and it has recorded successes like reduction in sale and consumption of liquor, reduction on prostitution, lost people found and returned home, increase in the number of public lectures and the impact it had on the morale of people amongst others. Sharia implementation hinges on Hisba, however, the Hisba in the respective states do not have uniform policies, approaches and legislations despite the fact that an opportunity exists for closer cooperation between the Hisba and other law enforcement and regulatory agencies. The Hisba needs continued support from the states, harmonization of laws to reflect Sharia implementation, vibrant working relations between the Hisba and NDLEA, NAFDAC, etc. Finally the Hisba should devise ways to build its capacity to deliver well, secure continued support from the government and confidence in the public and most importantly to serve Sharia most.

ABBREVIATIONS

Abbreviation	Meaning
NDLEA	National Drug Law Enforcement Agency
NAFDAC	National Food and Drug Administration and Control
OC	Officer in Charge
ACG	Assistant Commander General
CG	Commander General
OPS	Operations
GC	Guidance and Counseling
RD	Research and Documentation
SS	Special Services
SON	Standard Organization of Nigeria
CPC	Consumer Protection Council
COSIS	Conference of Sharia Implementing States
NISACORA	Niger State Advisory Committee on Religious Affairs

GLOSSARY

Word	Meaning
Muhtasib	The one engaged in Hisbah activity
Muhtasib Mutadawwi'	Voluntary Muhtasib
Muhtasib Muwazzaf	Official Muhtasib
Ihtisab	The activity of commanding good and forbidding Evil
Hisbah	Commanding Good and forbidding Evil/ the institution that does that
Ijtihad	Exertion of effort to arrive at a legal solution to a problem
Ma'ruf	Good/Right
Munkar	Evil/Wrong
Al-amr bil ma'ruf wan-nahy anil Munkar	Commanding Good and Forbidding Evil
Maratibul-Ihtisab	Degrees of Hisbah (activity)
Taklif	Legal responsibility
Khilafah	Caliphate, statehood or the office of the head of state
Hadd (pl. Hudud)	Specific offences
Imam	The head of state
Wilayah	Government agency
Jizyah	Taxation imposed on non-Muslims in Muslim territory
Zakah	Compulsory alms
Amir	Governor or commander
Jund	Military
Diwan	Ministry
Imarah	Emirate, state or governorate
Hijrah	Migration
Sadaqat	Charity
Qisas	Law of retaliation
Ta'zir	Discretionary punishments
Ibadat	Rituals
Mu'amalat	Transactions
Adalah	Justice
Wajib	Mandatory
Mandub	Recommendatory
Mubah	Allowed; lawful
Haram	Prohibited
Makruh	Disliked or abominable
Ummah	Nation; used to refer to the Muslim community or nation
Fard ain	Individual obligation
Fard kifayah	Collective obligation
Khulafa'ur Rashidun	The four rightly guided Caliphs
Mujtahid	The one who exercises *Ijtihad*

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Chapter 1 **INTRODUCTION**

1.1 Introduction of the Research Topic

Sharia was introduced to places now forming Nigeria as far back as the 9th century (AD) and it remained with the people till when the British colonialists gradually removed the public aspect of Islamic law from the lives of Muslims. In 1999, Zamfara State passed a law which restored certain crimes into the criminal legislation in the state; the law[1] primarily established Sharia Courts to replace Area Courts and empowered these Sharia Courts to apply the Sharia. Later, various Sharia-related laws followed this including the Sharia Penal Code and the Sharia Criminal Procedure Code.

Later the state established the institution of Hisba[2] with the aim to support Sharia implementation in the state. Other bodies or agencies were also established in the state.

Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, and Yobe states followed Zamfara in the restoration of Sharia and most of these states also established the Hisba, whether the objectives of the establishment of the Hisba are stated or not.[3]

Hisba is of Classical origin in Islamic Constitutional and Administrative arrangement. The Sokoto Caliphate established and maintained the Hisba and the institution continued through the colonial period in different names and was finally disused.[4]

[1] Administration of Justice and Certain Consequential Changes Law, 1999
[2] Established by virtue of the Zamfara State Hisba Commission (Establishment) Law No.17 of 2003 which came into force on 20th July 2003
[3] Chapter 4. infra
[4] Chapter 3. infra

The function of the Hisba in an Islamic environment is to command the doing of good work, prohibit the doing of evil work and to reconcile disputes. What is good and what is evil is clearly spelt out in the Sharia and the entirety of Islamic teachings is an embodiment of good and evil.

The textual authority for the establishment of the Hisba is in the Qur'an as follows:

﴿وَلْتَكُن مِّنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُوْلَـئِكَ هُمُ الْمُفْلِحُونَ﴾

(Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Al-Ma`ruf (all that Islam orders) and forbidding Al-Munkar (all that Islam has forbidden). And it is they who are the successful)[5]

Popular perception and presumption of Nigerian Muslims have it that proper **implementation of the Sharia** entails the establishment of the Hisba and the committees shouldered with the responsibility to "restore" the Sharia considered the institution of Hisba either as of necessity or desirability (part or ancillary) to the Sharia implementation process[6].

[5] Qur'an 4:104 (later in this research, the Qur'an will be referred to as Q.) the translation used is Mubarakpuri, S. (ed) *Tafsir Ibn Kathir(Abridgment and Translation)*. Al-Haramain Islamic Foundation, Riyadh. (2000) vol.3 pp. 253-263

[6] Ostein, P. *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*. (Ibadan) Spectrum Books, 2007, S.8 (f) of the Katsina State Sharia Commission Law 2000, P.212 of the Report of the Committee for the Implementation of Sharia In Kebbi State 2001; Vol.2, Chapter 2, part 4, ; recommendation No. 7.0 (a) of the Report at p. 219; Recommendations 2.3.8 and 2.3.9 on p.185 of the White paper on the Report of the Committee on the Implementation of Sharia in Kebbi State June, 2000. Recommendation 23.37 at p.187; Recommendation 23.66 at p.190

Apart from perception, legal material relied upon by Muslims in this country[7] do mention the institution of Hisba or the office of the Muhtasib and the activity of Ihtisab as necessary components of the Muslim environment or the constitutional order and failure to maintain *Ihtisab* (activity; not necessarily the agency) as not only a sin but an indicator that the state or community is neglecting one of the most vital duties of an Islamic Government.

1.2 Statement of the problem:

In Islam, good is embodied in whatever is right and the law commands everybody to do it and support it by asking others to do it and taking every step necessary to see that it is not only done but encouraged[8].

Evil or wrong on the other hand is embodied in whatever the law prohibits everybody to do and carry out all necessary things to discourage it, eradicate it and make it disliked among the people.[9]

Commanding good and prohibiting evil are the two sides of a coin regarding enforcing the wish of the Law-Maker. An individual is expected to command good and prohibit evil which may be simultaneously or otherwise. The Muslim community as a unit is expected

[7] Books of *Tafsir*, *Fiqh* and Procedure. Mawardi's *Al-Ahkamus Sultaniyyah* is widely read in Nigeria. So Also the works of the Fodio family, *Diya'ul Ihtisab*, *Diya'ul Umara'* and *Diya'us Siyasat* all mention Hisbah. *Diya'ul Ihtisab,* Iqra'Book Series, (no daate) is specifically on Hisba.
[8] Al-Amri, J. *al-Amru bil Ma'ruf wan Nahyu anil Munkar.* IIFSO, Beirut, 1984 PP.15-49
[9] ibid

to do these and authorities in Muslim communities are required to establish an agency that will discharge this function.[10]

The agency stated above is the Hisba and if the agency discharges this function, it relieves the responsibility from each and every Muslim. The authorities therefore must enlist qualified members of the *Ummah* to field the job.[11]

The functions of the Hisba cover all aspects of life and are not restricted to criminal law or the public sphere. Although the Hisba in Nigeria is 'reactivated' following Sharia implementation with the objective to support Sharia implementation, its application or area of operation is not restricted to crimes and punishments. 'Restoration of Sharia' itself was not intended to cover only criminal aspects and in fact, it transcends criminal aspects.

This research is concerned with the **question** whether the Hisba has any role to play regarding Sharia implementation in present day Nigeria? And if yes, to what extent had it played this role?

Put in another way; does Sharia implementation include the establishment and maintaining of Hisba despite the fact that there is the Nigeria Police Force which is saddled with the responsibility of law enforcement in the nation. What does it take to have an effective Hisba? Another question is will a community automatically transform

[10] ibid
[11] Ibnu Taimia, A. A. *Al-Hisba fil Islam.*Darul Kutubil Ilmiyyah, Beirut, no date pp.11-13

into a Sharia-compliant community with just the establishment of the Hisba or the community itself is expected to act in pro-Shariah ways?

1.3 Objectives of the research

The objectives of this research are:

1.3.1 To study the correct legal and constitutional position of the Hisba in classical Islamic law in order to appreciate its applicability in the today's Nigeria having in view the different political and jurisdictional arrangements;

1.3.2 To study the Islamic juridical method of enforcement of rights and duties as embodied in the Sharia so as to distinguish it from conventional methods and to show some mechanisms in Islamic law on enforcement of right and wrong particularly as juxtaposed to what is referred to as 'enforcement of morals' in Western jurisprudence;

1.3.3 To study the Hisba in Nigeria and its role regarding Sharia implementation in the states that implement the Sharia;

1.3.4 To evaluate by way of comparison the legislations, agencies and powers of the respective Hisba institutions in the Sharia states with a view to identify good practices for the purposes of replication in other states and restructuring where standard is comparatively low, and

1.3.5 To evaluate the work of the Hisba in Kano State with a view to proffering recommendations on ways to better the service delivery of the Hisba across the states.

1.4 Scope and Limitations of the research

1.4.1 Substance: the research is on Islamic Administrative and Constitutional Law (*Ahkamus-Sultaniyyah*) with particular reference to the application of Islamic Law in Northern Nigeria. The research also has a bearing on Islamic Criminal Law in Nigeria and Nigerian Constitutional Law. The fact that Hisba is a constitutional body in Islamic constitutional law is evident from *Mawardi*'s[12] and *Farra'*s[13] *al-Ahkamus-Sultaniyyah*. It relates to Nigerian constitutional law because the Hisba is established in today's Nigeria as a commission or board and it has some elements of policing in its powers; it also has Para-military element; all these aspects relate to the executive arm of government.

1.4.2 Geographical limitation: the research covered the 10 states in Northern Nigeria where the institution of Hisba exists. More narrowly, the thesis in chapter five dwelled more on Kano state which has the best practice on the practice of Hisba for evaluative purposes.

1.4.3 Timeframe: the time covered by the research is 1999 to date. Chapter three is on historical antecedent while chapters four and five are within 1999 and to date.

The research addressed the theory of enforcement of right and wrong in Islam, it discussed also the historical development of Hisba and the organization of the office of the Muhtasib or the agency of the Hisba in **classical times**. The research also enquired in detail the Sharia states in Nigeria that established and maintain

[12] Mawardi, AM.H. *Al-Ahkamus Sultaniyyah wal Wilayatud-Diniyyah*. Tawfiqiyyah Press, Cairo, no date, chapter 20, pp. 406-430

[13] Al-Farra', M.H. *Al-Ahkamus-Sultaniyyah*. Darul Kutubil Ilmiyyah, Beirut, 2000, (the last chapter) pp. 284-308

Hisba, including organizational structures, personnel, legislations, budget as well as government control and oversight over the Hisba.

In chapter 5, the research narrowed to Kano state and reported on facts and figures regarding the Hisba and more particularly facts and figures regarding commanding of good and prohibiting evil in the state for three months in **2008**. An evaluation of the activities was also made.

1.4.4 Limitations of the research: The research does not include opinions or perceptions, whether of groups or individuals, as a result of this, most newspaper comments, despite the fact that they talk on the Hisba are ignored. These areas that are not covered by this research are open for further enquiry either by the current writer or others who are interested in Hisba. However, there must be separate studies on them.

1.5 Methodology:

The methodology adopted in this research is both Doctrinal and Empirical.

1.5.1 Doctrinal: library work on text books on Hisba and Islamic Constitutional and Administrative Law, including current literature on the topic; Laws and Bye-Laws on Hisba. The theoretical aspects of the Hisba are covered by this approach including practical aspects in classical period. The writer used mainly classical literature for most of the legal theories on the Hisba. Modern literature was also used, including the Saudi Arabian Hisba magazine. *Mawardi*'s *Ar-Rutbah fi*

Talabil-Hisba was used as the prime source of information on theory and procedure of the Hisba by the writer.

1.5.2 Empirical: the research is empirical because it is enquiring into the role played by the Hisba regarding Sharia implementation. The methods employed in the research include gathering and analyzing data on Hisba activities: evaluating adherence to the Laws and By-Laws as well as profiling typology of crimes and social disorders handled by the Hisba. The Hisba in Kano makes monthly reports on its activities; these are used for the purposes of factual and evaluative aspects in chapter five.

1.5.3 Comparative: the research compares the policies, laws, functions and powers of the Hisba of Zamfara, Kano and Jigawa states.

The analysis covered the social control achieved through the institution of Hisba. Social control, regulation and order are all functions of law. The orientation of the researcher has bias to the functional context of law.[14]

1.6 Justification for the Research:

The research will fill in the gap in the literature on the Hisba by providing new knowledge on the establishment, legal position and activities of the Hisba, especially regarding Sharia implementation in Nigeria. Once the research is completed, the knowledge and best practices will be incorporated in recommendations and suggestions which will be disseminated both to the public as well as to government agencies with the aim of enhancing the Hisba.

[14] Aboki, Y. *Introduction to Legal Research methodology*, Zaria, Tamaza Press, 2009, pp. 77-85

1.6 Organizational Layout of the Research

Zamfara State in 1999 introduced a Law that establishes Sharia Courts to replace Area Courts thus ushering in Sharia in the State. It later enacted other laws to further implement the Sharia and established agencies among which is the Hisba Commission.

Hisba in Islam is the commanding of good and the prohibition of evil and it is required of every Muslim though in varying degrees. The research is concerned with the question whether Hisba has any role to play regarding Sharia implementation in Nigeria and how far had it discharged the role. The methodology used in the research is both doctrinal and empirical, chapters four and five in particular are empirical.

Chapter two reviewed the related literature on the field. The literature was categorized as classical and modern; further categorization was made as text books, journal articles, reports as well as legislations and government policies. The literature was then reviewed thematically and gaps in the area were identified.

Chapter three traced the evolution and development of the Hisba from the time of the Prophet SAW to the time of his companions and up to the Umayyad Dynasty when *Abdulmalik b. Marwan* introduced far reaching changes in the constitutional order and made Hisba a government agency. The Abbasid Dynasty strengthened it and it continued through the Ottoman Empire and later in Sokoto Caliphate. It continued even during colonial administration in Nigeria and was later disused. This chapter also discussed the components of the Hisba and gave examples of model Hisba organizations.

Chapter four discussed Sharia in Nigeria 1999 to date and discussed Sharia-related legislations and agencies. Among the legislations enacted are the various Hisba legislations and Hisba Commissions/Boards were among the agencies established. The chapter talked on the Hisba outfits found in Nigeria both as independent or enjoying the patronage of the government. The chapter then dwelled into three states that enacted laws and agencies on Hisba; they are Zamfara, Kano and Jigawa and evaluated the powers, functions and structures of the Hisba in these three states.

Chapter five studied Kano Hisba as a case because the state renders necessary and adequate support to the Hisba. Activities for four years were evaluated and another three months in 2008 were also evaluated. The evaluation seeks to reveal the role Kano Hisba played regarding Sharia implementation in the state. Facts and figures were demonstrated on the various themes the Kano Hisba chose to intervene in to support Sharia implementation.

Chapter six concludes the research by making a brief summary, a summary of findings, observations and recommendations. The major recommendations include a call to the Sharia implementing states to continue their support for Hisba, a call to Conference of Sharia Implementing States (COSIS) to arrange workshops for harmonization of Hisba laws in the country and also the policies and activities and for the preparation of detailed work-plans aimed at enhancing the quality of Hisba in Nigeria.

Chapter 2 **REVIEW OF RELATED LIETRATURE**

This chapter reviews some of the literature available on the subject of this thesis and the chapter is sub-divided into three parts, the first on what literature is available, the second part reviews five works on Hisba and the third part identifies the gaps that need to be filled in the body of works on Hisba.

2.1 Types of literature available

There are three types of literature on the Hisba and they are classical, modern and legislations and these come in forms of books, manuals, articles in books and journals, newspaper and magazine articles and pamphlets, both published and unpublished.

2.1.1 Classical Literature:

There are two types of classical literature on Hisba and they are general and special books. General literature that incorporates Hisba as a chapter or even a part and literature written specifically on Hisba or *amr bil ma'ruf wan nahy anil munkar*. They will be merged in this writing for coherence purposes.

General works that touched on Hisba include literature on constitutional and administrative law. It should be noted that every *Tafsir* and book of *Hadith* contains material on the Hisba as the verses dealing with *amr bil ma'ruf wan nahy anil Munkar* are explained in the *Tafsir* while the books of *Hadith* contain *ahadith* on *amr bil ma'ruf wan nahy anil Munkar*. This theme is integral to Islam that it was extensively provided in the textual authorities. *Tafsir ayatul Ahkam* specifically is valuable regarding expositions on *ayat* on *amr bil ma'ruf wan nahy anil Munkar*. Some books on *fiqh* also contain chapters or sections on Hisba but very rarely.

Several books were written **specifically** on Hisba in the classical period and most of them are identical. It seems Islamic constitutional law is uniform across the *Mazahib* because irrespective of one's *Mazhab*, political and constitutional set up is the same.

There are virtually two major **themes** in these writings which are the **theoretical** aspects of Hisba (*al-Hisbatun-Nazariyyah*) which includes the imperative of the Hisba as well as the *fiqh* of Hisba, i.e. who does it, who is the subject, what are the objects and the ethics of *Ihtisab* and the other theme is **practical** aspects of Ihtisab (*al-Hisbatul amaliyyah*) which are normally in form of manuals.

Al-Mawardi was the one who started writing on the Hisba both as a chapter in a constitutional treatise[15] as well as a separate book[16]. Although Farra'[17] was Mawardi's contemporary, Mawardi preceded him in writing al-Ahkamus-Sultaniyyah. It has been reported though that al-Utrush's[18] book preceded Mawardi; Mawardi's was the first to be published.

Mawardi's *Al-Ahkamus-Sultaniyyah* recognized Hisba as an independent constitutional body and distinguished it from both the judiciary as well as *Mazalim*. It occurs in the last chapter of the book and written in the same tone with the rest of the constitutional agencies listed. This means that Hisba is not less important than the army, the Imammate or the Mazalim.

[15] Mawardi, AM.H. *Al-Ahkamus Sultaniyyah wal Wilayatud-Diniyyah* infra
[16] *Ar-Rutbah* infra in chapter 3
[17] *Al-AhkamusSultaniyah*, infra chapter 3
[18] Al-Utrush, H. *Al-Ihtisab*. Manuscript with the British Museums. Att.413, Oriental manuscripts 3/3804; papers 285-292. See Arif, N.M. *Fi Masadirit-Turath as-Siyasi al-Islami*. IIIT Publications, Herndon, Virginia. 1994, p.120

The chapter was the pioneer because distinguished Hisba from both the Judiciary (Qada') and the Mazalim, it laid down the major distinctions of Voluntary and Appointed Muhtasibs and in all these, scholars later followed him and adopted his definitions and classifications.

Farra's *Ahkamus-Sultaniyyah* is almost a copy of Mawardi's *Ahkam*, only differing on *Furu'* (legal principles as opposed to jurisprudence) aspects of Hambali/Shafi'i dichotomies, he also made Hisba an independent constitutional body. The two books are an innovation in Islamic constitutional treatises to include the Hisba in the list of government agencies or *wilayat*; Hurvitz[19] was definite it was an innovation by both of them; ibnul-Arabi[20] also argues on the innovations of Mawardi and others regarding *wilayat*.

Al-Ghazali[21] in his Ihya' dedicated a chapter on Hisba. The value of this chapter is the detail he made on the Degrees of Hisba. He also gave accounts of some prominent Muhtasibs and how they carried out Ihtisab even when political leaders were the targets of Ihtisab. **Al-Ghazali** also discussed Hisba as an integral part of Muslim societies, albeit in a social or mystical way, he however explained the necessary nexus with the police and the government, including the demarcation of rights and duties which are all constitutional theories.

[19] Hurvitz, N. *Competing Texts: The Relationship between Al-Mawardi's and Abu Ya'la's Al-Ahkamus-Sultaniyyah*, Islamic Legal Studies Program, Harvard Law School, Occasional Publication 8, October, 2007.
[20] Ibnul-Arabi, A. *Ahkamul Qur'an*. Darul Fikr, no date. Vol. 3 p. 482
[21] In his *Ihya*'

While Mawardi and Farra' tackled the issue from constitutional and administrative perspectives, al-Ghazali tackles it in a mystical way. All the three discussed the components or pillars of *Ihtisab*, Mawardi and Farra' discusses from technical perspectives, drawing from their vast experiences as judges. Mawardi was also a *Muhtasib*. Al-Ghazali was a jurist of a high degree as well as a mystic, hence the restriction of the powers of the *Muhtasib*. Al-Ghazali wrote with the voluntary *Muhtasib* in mind hence the eight degrees of Hisba which enjoyed wide acceptance among Muslims and non Muslims alike.

Mawardi has a second book on Hisba, ***Ar-Rutbah fi Talabil Hisba*** which is more specific on the agency and which was prepared as a manual for a practicing *Muhtasib*. The book started with a definition of Hisba, the qualities and ethics of a Muhtasib and ventures into sections of areas where the Muhtasib intervenes. In each section, Mawardi states what is required of the Muhtasib including how he informs the subject, the oaths he administers on them and when physical intervention is allowed and how to do it. The book is made up of seventy sections and most of the sections are special rules on the professions and crafts. They are like, Hisba in the markets, Hisba on medical practitioners, Hisba on builders, Hisba on teachers, etc.

It is the first Hisba manual that is readily available as a published book. Later, many Hisba manuals followed Mawardi, sometimes word to word varying only occasionally and slightly in *Mazhab* differences. These manuals include *Nihayatur-Rutbah fi Talabil*

Hisba by Abdur-rahman b. Nasr ash-Shaizari[22] (d. 1193 Gregorian calendar)and *Ma'alimul Qirbah fi Talabil Hisba* by Muhammad b. Muhammad b. Ahmad ibnul-Ukhuwwah al-Qurashi[23] (both of the Shafi'i school) and *Nisabul Ihtisab* by Umar as-Sunami (translataed by H. Samarra'i). A different manual is also entitled *Nihayatur-Rutbah fi Talabil Hisba* by ibn Bassam al-Muhtasib. Others include *Ar-Rutbah fil-Hisba* by Imam ibnur-Rif'ah and *Risalah fi Akhamis-Suq* by Yahya b. Umar.

Ibnu Taimiah's *Al-Hisba fil-Islam* represents theoretical material on the topic so also his *al-amr bil ma'ruf wan nahy anil Munkar*[24]. This book starts with the fact that humans are social animals and the need for government and a social order. He states that whether a community is Islamic or not, there must be some set of social norms and there must be an enforcement mechanism. He then dwelt on Qur'anic and Sunnah authorities requiring Ihtisab and talked on the ethics of a Muhtasib as well as what sort of Ta'azir can a Muhtasib impose.

2.1.2 Modern Literature

Modern Literature is divided into four; general works that contain a part or section on Hisba, special works on Hisba, articles or papers on Hisba and finally legislations on or affecting the Hisba.

[22] Shaizari, A. *Nihayatur-Rutbah fi Talabil Hisba*. Publication, translation and distribution press,. N.D.
[23] Ibnul Ukhuwwah Al-Qurashi, M. *Ma'alimul Qirbah fi Talabil Hisbah*. Cambridge press.
[24] Ibnu Taimia, A.A. *Al-Amru bil-Ma'ruf wan-Nahyi anil-Munkar*, Maktabatus Sunnah, Cairo, 1997. see also Morgan, S. *Enjoining Right and Forbidding Wrong*. (Translation of Ibnu Taimia's AlAmr bil ma'ruf…)

General works: the theme of the general works in modern literature is the same with the theme of classical literature. Examples are *Usulud-Da'wah* by Abdulkarim Zaidan[25] and books on *Siyasah Shar'iyyah*.

Special works: some literature depart from the style used in the classical times and narrow down to certain aspects of life, i.e. Hisba on bribery, *Ihtisab* in the propagation of Hassan Al-Banna[26], Methodology of ibn Taimiah's *Ihtisab* etc. still, most of the literature carry the title al-Hisba or *al-amr bil ma'ruf wan nahy anil munkar*. An important point that is worth noting is that at this stage, certain works were written which focus specifically on a particular era in Islamic history, like Hisba during the *Umayyad* era, or the Abbasid or *Mamluki* era; *al-Hisba fi Asril-Umawi* by Fadl Ilahi Zahir, *al-Hisba fil-Asril Mamluki* by Haidar A. As-Safih and *al-Hisba fi Misral Arabiyyah* by Suham Mustafa Abu Zaid.

Another important feature of special works on Hisba in the modern period is that some of these explain the imperative for the Hisba and defend the institution from misconceptions and distortions by Orientalists and Western-oriented Muslims.

Articles, papers and periodicals: this includes separate write ups in forms of papers or articles, published and unpublished on, about or related to the Hisba. Under this category, periodicals on the Hisba and reports by the Hisba agencies are categorized. Newspaper articles, magazines and pamphlets fall under this category.

[25] Chapter 3 infra
[26] Al-Mas, A. *Al-Ihtisab fi Da'watil Imam Hassan Al-Banna*. Almanar Press, Kuwait, 1987

2.2 Themes of the Literature

For the purposes of clarity and in order to avoid mix up, the major themes in Hisba are itemized and related literature is reviewed per item, which is considered by the writer as desirable in order to identify gaps.

2.2.1 Epistemology:

Name: Hisba, *Ihtisab* or *amr bil ma'ruf wan nahy anil munkar* signifies the Hisba. At some time, Andalusian authorities called the *Muhtasib Sahibus-Suq* or *Amil alas-Suq*. No other nomenclature is used throughout the literature, both classical and modern although in Saudi Arabia, the agency is referred to *Hai'atul amr bil ma'ruf wan nahy anil Munkar* or **Commission to Promote Virtue and Prevent Vice (CPVPV)**.

Unfortunately, a report issued by some Saudi scholars in defence of Hisba translated the Hisba as Religious Police in "**Religious Police in Saudi Arabia"**[27]. The author views this as only a bad translation and lack of proper grasp of the gravity of words used to describe constitutional bodies.

Nature of Hisba in classical literature is associated with the enforcement of good and bad (good and evil or right and wrong). Mostly in general works refers to activity or *Ihtisab* in which case voluntary *Ihtisab* is either contemplated or exclusively intended. Al-Ghazali always meant the voluntary man or *Muhtasib Mutadawwi'*.

[27] Al-Bishr, M. *Religious Police in Saudi Arabia*. Riyadh, Ghainaa Publications, First Edition, 2008.

In special works however, the official *Muhtasib* or the agency is always meant. Mawardi in both works, Farra', Shaizari and ibnul-Ukhuwwah meant (but did not state that it is only) the constitutional agency; their definitions (*wilaya*) and the *Muhtasib Muwalla* or *Muhtasib Muwazzaf*. Murtuza[28] discusses the definition for Hisba which is philological. Though he claims the philology of Hisba is 'hsb' to calculate or to account, which makes the meaning accounting. Modern writers came up with definitions qualifying Hisba from the definitions of the classical period. Haji Khalifah and Maraghi[29] defined Hisba only partly while Murshid[30] followed ibn Khaldun in defining Hisba as a government agency that it is a constitutional agency; he says that Hisba is an **Administrative** supervision that the government does through a specific official (wali) over activities of individuals towards conformity to Islamic injunctions by commanding good and prohibiting evil in accordance with Sharia principles. Ibnul-Qaiyim defined it as a **religious duty** in commanding good and forbidding evil. Zarqa'[31] defined it as an **executive duty** to support the duty of commanding good and prohibiting evil, the protection of public interests and maintaining law and order.

The above theses support the definition of the Hisba by the Kano Law where Hisba means the Board and the Corps. Therefore, the board is Hisba and the corps are the Muhtasibs and they are Hisba. The classical definition that focuses on activities is not left behind in the sense that the activities are incorporated into the roles or functions of the Hisba.

[28] Murtuza, A. *Exploring Islamic Antecedents for Financial Accountability*, (unpublished) p.10, see also Murtuza, A. Hisba: *The Islamic Variation for the Regulation of Marketplace and Commerce.* Unpublished paper presented at the Sixth Interdisciplinary Perspective on Accounting Conference, Manchester, 10-12 July, 2000
[29] *Al-Hisba fil islam*
[30] Murshid, A. *Nizamul Hisba fil-Islam.* Al-Madinah Press, Riyadh, 1393(H)
[31] Az-Zarqa', M.A. *Al-Madkhalul Fiqhiyy al-Am*. Beirut, darush-Shuruq. 1967

2.2.2 Imperative for the Hisba

The most important aspect of classical writings on Hisba is the imperative of the Hisba both from doctrinal as well as practical perspectives. Every book reiterates the imperative for the Hisba emphasizing either the institution as a government agency or the activity of Ihtisab as the imperative. The quality of *Tafsir* and *Hadith* resources are mostly to the effect of the imperative of the Hisba. **Al-Ghazali**'s theses on Hisba which is in his *Ihya' Ulumuddeen* centered on the activity rather than the institution. Some of the modern writers, mainly Orientalists and incapable Muslim law students and commentators tend to argue against the imperative for the Hisba as an institution, relying mostly on al-Ghazali's eight degrees of Hisba. It should be pointed out bluntly that none among those saying that Hisba institution is not imperative today are scholars in Islamic law even if they profess to be. **Vogel**,[32] calls them religious police and is happy to see its powers curtailed; other **Orientalists** see the imperative to the extent of mysticism only and find it very strange that 'morals' are enforced. Even though they read al-Ghazali, they only digest the portions curtailing the powers of a voluntary Muhtasib. No study specifically tackles the imperative from constitutional perspectives, i.e. since there is the police and other law enforcement agencies, and in particular in countries where the Sharia is the dominant legal system like Saudi Arabia and Pakistan, is there an imperative for the Hisba? Because the entire government apparatuses apply or implement the Sharia and whichever agency that does so satisfies the Qur'anic duty provided in Q3:104

[32] E.g. Vogel, F. "The Public and Private in Saudi Arabia: Restrictions on the powers of committees for ordering the good and forbidding the evil-part II: Islamic Law: Boundaries and rights" in *Social Research.* Fall, 2003 See also *Diversity in Classical Islamic Civilisation: The Case of Al-Ghazali-Mystic, Jurist, Theologian.* Lecture by Prof. J. Lowry at the Middle East Centre, University of Pennsylvania, Middle East Lecture series, Thursday, November 7, 2002.

Mawardi and others who wrote manuals and constitutional treatises only referred to the police but do not categorize it as a necessary agency in a constitutional set up; ibn Taimiah is more specific in *al-Hisba fil-Islam* where he categorically stated that powers, duties and functions of government agencies (*wilayat*) are specified by the instruments[33] creating them because such things vary by time, locality and jurisdiction. During his time, the police do not execute *Hudud* penalties; instead, it is the army (*jund*) that does so.

Muhtasib or Monster[34] reviewed the Pakistani Hisba Act by a retired Inspector General of police in Pakistan who argues that the Hisba duplicates the police because the constitutional set up there is in favour of a unified police. In his words, "NWFP hesba Act 2005 is ultra Shariat, ultra constitutional, illegal, childish, outlandish and conflicting even within absolutely". Although he claims, in his words that "I have gone through the Act independently and unbiasedly, for it is a matter that is related to our religion and region… hence now I can give my findings about the Act without prejudice and as eloquently as possible".

The Pakistani Supreme Court held in a referral case that the establishment of the Hisba is overboard, unconstitutional because it *inter-alia* suffers from excessive delegation. However, even under this Act, a Hisba police is created which is a police deputed to the Muhtasib from the general police. The draftsmen of the Act perfectly created the Hisba that will work in a modern constitutional set up where the police, judiciary and other

[33] Like warrants, laws and regulations creating agencies today.
[34] http://dailymailnews.com/

government agencies have constitutional roles. Newspaper reviews demonizes the Hisba as interfering in the private lives of individuals.

Liman[35] argues that since in Nigeria, post Sharia restoration, the police were at one time reluctant to enforce the Sharia Penal Codes which necessitated the establishment of the Hisba in Zamfara State. He however admits that the police also have a role regarding Sharia implementation. To what extent and how are they performing appears not to have been studied. **Olaniyi**[36] claims that Hisba was established to enforce a distinctive Islamic government. He tackles Hisba from law enforcement perspectives particularly policing. He claims that the colonial pattern of administration provided **dualism in policing** and in the administration of justice. Olaniyi agrees to the claim of some Western scholars on the Hisba that Hisba became imperative because the Nigerian Police lacked the prerequisite training on Sharia and that it involves non-Muslims. However, if the Hisba involves non-Muslims, will it lose its value? **Glick**[37] gives account of the presence of Hisba in non-Muslim communities in *Andalus* where the office existed as *Mostasaf* (from *Muhtasib*), *Al-Mo'tacen* (*Al-Muhtasib*). He also gave an account of the existence of the Hisba in Lyon, France when no Muslim lived there. The question is therefore, is there an imperative for the Hisba in non-Muslim communities?

[35] Liman, A.A. *The Roles of Ministries of Justice and the Nigeria Police in the Implementation of Sharia*. Unpublished paper delivered during the 10th Annual Judges' Conference organized by the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria (30-31 October, 2008).
[36] http://www.ifra-nigeria.org/IMG/pdf/Rasheed_Olaniyi_-_Hisba_and_the_Sharia_Law_Enforcement_in_Metropolitan_Kano.pdf
[37] Glick, T.F. *Islamic and Christian Spain in the Early Middle Ages* Glick, T.F. *Islamic and Christian Spain in the Early Middle Ages* (The Library of Iberian Resources online) http://libro.uca.edu/ics/emspain.htm last visited 7th June, 2011 chapter 3, Urbanisation and Commerce. It was stated there that Raymond Deslluch was the *Mustasaf* of Christian Valencia.

2.3 Gaps to be filled

2.3.1 Time factor

Most of the literature on Hisba are of classical origin which apart from stating or restating the theories on Hisba may tackle social problems that were prevalent at the times the literature were written. A volume of literature was also written in the modern time mostly styled in the classical style of writing.

The Saudi Arabian Hisba agency publishes a monthly magazine [38] with two main themes; the *fiqh* of Hisba and reports of Hisba activities. It should however be noted that in Saudi Arabia, constitutional powers are clearly demarcated and the Hisba is aware of their jurisdiction and the powers of the police and other agencies.

Although Abdullahi b. Fodio's **Diya'ul Ihtisab** is of local content (Nigerian area) it is 200 years old, though translated into English[39]. General write ups talk on the Hisba on peripheral levels. Post Sharia implementation however, various conferences called for the establishment of the Hisba and the reports of the committees for Sharia implementation discussed the imperative and the modalities of the Hisba. They are not academic works.

Special writings of the Hisba were also found which are recent. AbdulWahhab[40], though in Hausa describes the evolution and development of the Hisba up to current years and

[38] Al-Hisbah. Available at www.hisbah.gov.sa . now the website is www.pv.gov.sa the current issue of Al-Hisbah is No. 98. Website last visited 28th August 2010.
[39] Iqra'book series.
[40] Abdallah, A. *Hisbah: Manufarta da Ka'idodinta da Muhimmancinsa*. Kano, Majlisu Ahlus-Sunnah wal-Jama'ah. 2008.

the role of the Hisba in assisting the police, security agencies, NDLEA, Customs and other law enforcement agencies.

2.3.2 Local factors

Most Hisba literature are not of Nigerian authorship, particularly the Arabic literature on *Ihtisab*, *amr bil ma'ruf wan nahy anil munkar*. The Al-Hisbah magazine of Saudi Arabian Hisba agency is also not Nigerian. Hence the discussions, manifestations of *ma'ruf* and *munkar* may to some extent be different.

Nigerian legislations are available as well as reports of the Hisba bodies particularly Kano where monthly reports of the Local Government Hisba Committees and of the headquarters are prepared. They occur in Hausa and in a special format. Though they are public documents, they are not published and are not readily available to the public. They are also not academic and no external or expert analysis is made.

2.3.3 Political factors

Classical literature and some literature written in Arabic either ignore constitutional arrangements or are meant for the voluntary *Muhtasib*. Very few of the literature discuss in detail and having legal implications of overlapping jurisdictions or where an agency may have an exclusive jurisdiction over an issue. Al-Ghazali's eight degrees alludes to the fact that there is the police and the army which has more ready 'hands' to correct wrongs; Mawardi's ar-Rutbah depicts Hisba as a more independent organization that will be able to combine the functions of virtually of law enforcement agencies, regulatory

agencies as well as supervisory agencies currently available put altogether. Very few instances in ar-Rutbah recognize the police. AbdulWahhab recognizes the constitutional roles of the Police, Security Service, Customs Service, National Drug Law Enforcement Agency (NDLEA) and others and the workability of the Hisba within the Nigerian political set up. He even recognizes the role of the Hisba regarding parliamentarians.

It should be noted that in countries like Saudi Arabia, Pakistan, Sudan and recently Yemen where Hisba exists, the countries are either purely Muslim or have overwhelming Muslim population. In the case of Saudi Arabia, the constitution of the country (Basic Law of Governance) under section 3 states that the Qur'an and Sunnah are the sources of law in the country and form the country's constitution. Therefore whatever is done in the country is done in the furtherance of Islam and Sharia and whichever agency in the country is committed to *amr bil ma'ruf wan nahy anil munkar*. The same applies to Pakistan which is also by its constitution an Islamic country and all laws must or are deemed to conform to the Qur'an and Sunnah. The constitution of the Sudan provides for the Board of Hisba and Ombudsman (*Diwanul-Hisba wal Mazalim*)[41].

Therefore books written in these countries do not address the political realities of Nigeria and cannot be a benchmark for assessing Hisba in Nigeria. Instead, a Nigerian writing is required that will answer questions about constitutional harmony, the instruments available and facts and figures about the Hisba in Nigeria.

[41] Article 130 of the 1998 Constitution and the Judiciary Act of 1986 (Sudan)

Chapter 3 **EVOLUTION AND DEVELOPMENT OF THE HISBA**

In this chapter, the research will study how Hisba evolved, the textual authorities from the Qur'an and Sunnah on the Hisba, how Ihtisab was practiced by the Prophet SAW and the Classical *Caliphs* and how the *Umayyads* transformed it till it later became on of the most important constitutional agencies during the *Abbasid* era and traced its continuance up to the Sokoto Caliphate.

3.1 Law in Islam

Islam being a complete way of life covers every aspect of Human endaevour which include *Tauhid* that deals with belief and the other segments in Sharia which are the practical aspects of Islam. Sharia literally means a path to a watering place and technically, it is the set of Rules or Laws that regulate every conduct of Muslims. It will then be safely said that the Sharia is the normative aspects of Islam.

Law in Sharia is the "Statement of Allah the Al-Mighty, directed to the subjects (His Servants) concerning their conduct to do or not to do something or giving a choice to either."[42] Therefore, once there is a statement of Allah concerning the conduct of humans on whatever point, it is Law.

3.1.1 Rules of Law in Sharia

Communication from Allah to the Mukallaf comes in one of the following ways:

[42] Abu Zahra, M. *Usulul Fiqh*. Darul Fikr, Cairo, no date. P.27. this definition is originally Ibnul Hajib's, a classical Maliki jurist.

Wajib: is demand from the Law-Giver in a binding nature addressed to the *Mukallaf* in respect of doing something. Acting upon the Wajib leads to reward and omitting it leads to punishment in this world or in the hereafter or both.

Mandub: is the demand from the Law-Giver asking the *Mukallaf* to do something which is however not binding on the latter. To comply with the demand earns the *Mukallaf* spiritual reward, but no punishment is inflicted upon him due to non-performance.

*Haram***:** is a binding demand from the Law-Giver in respect of abandoning something. Committing the act forbidden is punishable and omitting it is rewarded.

*Makruh***:** is a demand of the Law-Giver which requires the *Mukallaf* to avoid something, but not in strictly prohibitory terms. The perpetrator is not liable to punishment.

*Mubah***:** is communication from the Law-Giver concerning the conduct of the *Mukallaf* which gives him option to do or not to do something.[43]

3.1.2 Means of Knowing the Law

Sources of law in Sharia are the Qur'an, Sunnah and *Ijma'*, as the Principal sources. Qur'an is a Statement of Allah while the Sunnah is the sayings, deeds and approvals of the Prophet SAW. ***Ijma'*** is a **Consensus** of Muslim Jurists of a particular time on an issue not covered by Qur'an and Sunnah. The ***Ijma'*** has to be based on the Qur'an and Sunnah or even *Ijtihad*.[44]

[43] Ibid, Pp. 28-50
[44] Ibid Pp. 197-211

From the two sources i.e. Qur'an an d Sunnah, communication is made in the form of commands and stories implying commands. *Usuliyyun* derive rules of law from the sources and tell whether a particular communication is *Wajib, Mandub, Haram, Makruh or Mubah*. The expert who does that is called **Mujtahid**[45] while *Ijtihad* is another source of Law. *Mujtahid* can venture into *Qiyas* (analogical deduction from the principal sources), *Istihsan*, Blocking the ways, and a host of sources are arrived at through *Ijtihad*. Any of the sources can lead to finding the rule of law in every issue.[46]

3.2 Good and Evil or Ma'ruf and Munkar

Whatever Allah commands us to do, whether it is *Wajib* or *Mandub* is *Ma'ruf* or Good. It is good because a healthy conscience agrees with it. *Munkar* on the other hand is whatever Allah asks us to refrain from doing, whether it is *Haram* or *Makruh*, it is Evil and Wrong because a healthy conscience abhors it. Mere liking or disliking does not make a thing *Ma'ruf* or *Munkar*, but how Allah labeled it. Human intellect only confirms and understands what is transmitted as such.[47]

3.2.1 Types or Categories of Ma'ruf

Good or *Ma'ruf* includes *Iman* which is the most paramount in ***Ma'rufat***: belief in Allah, His angels, His revealed books, His prophets, and the Judgment Day, belief in the pre-destination, *Ihsan*. In **Ibadat**, the five prayers, *Zakat*, fasting, and *Hajj*. All other forms of

[45] Ibid P.379
[46] ibid
[47] Ibnu Taimia, A.A. *Al-Amru bil-Ma'ruf wan-Nahyi anil-Munkar*, Maktabatus Sunnah, Cairo, 1997. Pp.10-111 see also Morgan, S. *Enjoining Right and Forbidding Wrong.* (Translation of Ibnu Taimia's AlAmr…)

Ibadat, whether *Wajib* or *Mandub* form part of *Ma'ruf*. *Ma'ruf* also includes everything, both internal and external which has been enjoined by Allah and His Prophet. These include: absolute sincerity to Allah *(Ikhlas*), dependence on Allah (*Tawakkul*), that Allah and His Prophet be more beloved to the believer than anyone else, hope for Allah's mercy and fear of His punishment, patience with the decree of Allah and complete surrender to His order.[48]

In **Mu'amalat** (dealings among people), truthfulness (justice and fairness) of speech and action, fulfilling of obligations, returning trusts to their owners, good behavior toward parents, maintaining of family ties, cooperation in all acts of righteousness and good, benevolence and generosity toward one's neighbors, orphans, poor people, stranded travelers, companions, spouses, and servants, calling people to good character, and acts of forbearance such as establishing relations with those who cut you off, giving those who deny you, and forgiving those who oppress you. Enjoining people to be close together and cooperative, and forbidding them differing and dividing themselves is also a part of enjoining what is right; Lawful acquisition, management and disposal of property, engagement in trade and gainful occupations.[49]

Inflicting of punishments prescribed by Allah on whoever transgresses the bounds of the *Sharia* is a part of prohibiting wrong. It is obligatory upon those in authority (*Ulul-amr*) i.e. the scholars from each group or nation, and their *Amirs*, and their elders, to stand over the general population enjoining good and prohibiting wrong, thus ordering them with all

[48] ibid
[49] Ibid t PP.19

that which Allah and His Prophet have enjoined, loyalty to the State and the duly constituted leaders, *Jihad*, which is one of the most paramount obligations of this **Ummah**, etc[50]

3.2.2 *Types or Categories of Munkar*

As for *Munkar*, it includes whatever Allah has forbidden and in its worst form is associating partners with Allah (i.e. ***Shirk***). Every innovation in the religion, which is technically called *Bid'ah* is also *Munkar*. In the field of **ethics**, pride, eye-service or ear service, hypocrisy, anger, hatred, jealousy, is all part of *Munkar*.

In **Mu'amalat**, acquiring and disposing property unlawfully, cheating, gambling, Usury, adulteration of food or commodities, selling sub-standard commodities, price hike, hoarding etc are all part of *Munkar*.

Unjustified killing, theft, robbery, *Zina* and rape, homosexuality, causing injuries to others, damage to property, rebellion against the constituted authorities, disobedience to the leader, causing division among people, breaking of family ties, cruelty to parents, lack of maintenance to wife and children, seclusion, any form of transgression on the rights of others.[51]

[50] ibid
[51] ibid

3.3 Enjoining Good and Eradicating Evil

The entire message of Islam is to do and enjoin good, and to eradicate evil.[52] The entire Messengers of Allah had enjoined good and prohibited wrong or evil, and were all striving for good work. Some Israelites were cursed by Allah because they were not enjoining good and forbidding evil.

﴿لُعِنَ الَّذِينَ كَفَرُواْ مِن بَنِى إِسْرَءِيلَ عَلَى لِسَانِ دَاوُودَ وَعِيسَى ابْنِ مَرْيَمَ ذلِكَ بِمَا عَصَوْا وَّكَانُواْ يَعْتَدُونَ – كَانُواْ لاَ يَتَنَـــهَوْنَ عَن مُّنكَرٍ فَعَلُوهُ لَبِئْسَ مَا كَانُواْ يَفْعَلُونَ ﴾

"Cursed were those who disbelieved among the children of Israel by the tongue of David and Jesus, the son of Mary. That was because they disobeyed and [habitually] transgressed. They used not to prevent one another from wrongdoing that they did. How wretched was that which they were doing"[53]

However, some of them were enjoining good and forbidding evil, and they are the ones that accepted Islam by the manifestation of the prophet SAW, as they are "striving for righteous deeds" (*ya'muruna bil-Ma'rufi wa yanhauna anil-Munkari wa yusari'una fil-Khairat)*Q. 3:114.[54] The text of the verse is below:

﴿يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الاٌّخِرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُسَـــرِعُونَ فِى الْخَيْرَتِ وَأُوْلَـــئِكَ مِنَ الصَّـــلِحِينَ ﴾

Moreover, this *Ummah* had been described in the Qur'an as the best *Ummah* ever brought for mankind, and the reason for that is that the *Ummah* commands good, prohibit evil and believe in Allah. This description of the *Ummah* is the description given to our Prophet

[52] See Q. 3:`04, 3:110, 3:114, 4:411, 7:157, 9:67, 9:112, 22:41 and 31:17
[53] Q5:78-79
[54] Al-Amri, J. *al-Amru bil Ma'ruf wan Nahyu anil Munkar*. IIFSO, Beirut, 1984 PP.15-49

SAW, as, a prophet was promised by Allah since the time of the people of the book, in the *Taurah* and *Injeel*, that Prophet will enjoin good and prohibit evil, will make lawful for them all pure and pleasant things, and prohibit to them all impure things and will off-load their burdens and untie their shackles.

﴿الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِندَهُمْ فِي التَّوْرَاةِ وَالإِنجِيلِ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالأَغْلاَلَ الَّتِي كَانَتْ عَلَيْهِمْ﴾

"Those who follow the Messenger, the unlettered prophet, whom they find written [i.e. mentioned] in what they have of the Torah and of the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden…"[55]

Because of the good qualities of this promised Prophet, people of the book had, for centuries been waiting for this Prophet and they even migrated to Arab lands in order to join him if he is sent. When Allah told the Prophet and Muslims that He had perfected their religion and fulfilled his favors on them and chosen Islam for them as religion, the Jews understood the sophistication in this system and said, had it been unto them, they would have celebrated that day.[56] The text of the verse is:

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلاَمَ دِيناً﴾

(This day, I have perfected your religion for you, completed My favor upon you, and have chosen for you Islam as your religion).

[55] Q.7:157
[56] Ibid, see also Ibnu Taimia, A. A. *Al-Hisba fil Islam.*Darul Kutubul Ilmiyyah, Beirut, n.d. pp.11-13

The religion had been completed,[57] as the former Prophets had not the privileges given this *Ummah*. Not all good was asked of them, not all evil was prohibited to them, in fact, some good were prohibited to them, their form of Jihad was only defensive, it was not offensive as our's, it is through our Prophet SAW that all good is commanded and all evil prohibited, it is by our Prophet the religion is completed. Since Adam to the Prophet preceding our's, Islam has been good, but there was a lacuna, and it has been filled by our Prophet. *Ijma'* is also agreed as a source of Law because the *Ummah* cannot agree on evil.[58]

The Islamic Nation (*Ummah*) described as the best nation produced for mankind because it does two things: it perfects itself and it perfects others. It does good to itself and to others. Both internally and externally, it ensures that good is done and promoted and evil is abandoned and abhorred. Islam, preaches and transforms people, it ensures that they are in paradise, it does not leave any good without ensuring that people do it and promote it, it likewise leaves no evil without ensuring that people do not do it, abandon and abhor it till it is eradicated, as if Islam is **dragging them to paradise in shackles**.[59]

The *Ummah* is so described because it will be good in a world that is full of evil, it then guides the world to the straight path. The *Ummah* will be fully obedient to Allah. These two qualities places the Ummah in a high position not attainable by other nations, as the

[57] Reference to Q.5:4
[58] Ibnu Taimia, Al-Amru bil Ma'ruf supra at P.16 see also Suyuti, infra at P. 255
[59] Ibid p.13 the saying of Abu Hurairah. It is reported in Sahihul Bukhari, book of Tafsir 6:37-38 and Tafsir Ibnu Kathir on verse Q2:77

Ummah resembles the Prophets. It resembles Prophets because it is guided in itself and guiding others. **Qurtubi** says "…is a praise for this nation so long as they did that and are described by it. If they however stop changing people and participate in evil, the praise will abate and curse replace the praise and this will be a cause for their doom". **Al-Alusi** says while interpreting "…those who enjoin what is right and forbid what is wrong and those who observe the limits (set by Allah)"[60] 'as if it is said: the perfected in themselves, and perfecting to others'.[61]

Owing to the importance of these two qualities, **Razi** sees it not as an ordinary form of worship, but the most difficult. **Hassanul-basri** narrated that the prophet SAW said "whoever commands good and prohibits evil becomes a vicegerent of Allah on earth and a successor to the Prophet and Allah's book"[62]

Sharia is revealed to divorce man from his self inclinations (*Hawa*), so Messengers were sent by Allah as **changers** (*Mubasshirina wa Munzirin*), for one who does good the paradise awaits him, but for the one who does evil, hell will be his abode. In the preceding nations, many were doomed for their engagement in evil and neglect of good. For, sins are the cause of Allah's wrath and punishment, while obedience is the cause for pleasure and enjoyment, both in this life and the hereafter,[63]

[60] Q. 9:112
[61] Al-Amri supra, at Pp.35-43
[62]
[63] ibid

By human nature, both good and evil are innate. Some souls inspires evil (*Ammaratun bis-su'*), others criticizes itself after doing evil, it repents and hold to account (*Lawwamah*) while the third one is at peace, it obeys Allah without any inner contradictions (*Mutma'innah*).[64]

﴿...فَمِنْهُمْ ظَـــلِمٌ لِّنَفْسِهِ وَمِنْهُمْ مُّقْتَصِدٌ وَمِنْهُمْ سَابِقٌ بِالْخَيْرَتِ بِإِذْنِ اللَّهِ...﴾

"…and among them is he who wrongs himself and among them is he who is moderate, and among them is he who is foremost in good deeds by permission of Allah"**.** Q35:32

Since both good and evil are innate in all men, they are then **motivators**. If **additional motivators** are provided, i.e. encouragement either by word or attraction by conduct due to environmental influence like peers and an enabling environment, the good or evil will be promoted or enhanced, it will be practiced and it will spread. Good is supported and evil as well is supported, by adherents, admirers and sympathizers. So Islam is working on **both motivators**, the first internal and the second external. Commanding good and prohibiting evil is the external.[65]

The situation that Islam wants is where Allah alone is worshipped, in belief, Ibadat, human transactions, commerce, in the public sphere, what one does, has to be with **intention** to please Allah and **in accordance with what Allah reveals**.[66]

[64] Ibnu Taimia, Al Amru bil Ma'ruf supra P.55-58 reference to Q. 89:27
[65] Ibid pp.59-66
[66] Ibid. pp.29-35

3.4 The Legal Position of "Amr" and "Nahy"

Many verses in the Qur'an state that Muslims should enjoin good and forbid evil, the Muslim nation has been, in many places in the Qur'an described as one that commands good and forbids evil[67] such as Q. 3:19

In Q3:19, Allah commands that there should be a group of people among Muslims who call to the religion, command good and prohibit evil. This is an imperative command, because any command is deemed imperative until it is proven to be otherwise.[68]

In the *Sunnah*, the prophet SAW was reported to have said "The best of men is the one that reads the Qur'an most, fears Allah most, commands good most and forbids evil most"[69], in another *Hadith*, "You should command good and forbid evil otherwise Allah will send His punishment on you all" and **" whoever sees an evil (perpetrated) should change (remove) it by his hand, if he cannot, then by his mouth, if he cannot, then by his heart (and he is the least in reward)".**[70] The text of the Hadith in Arabic is below:

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ»

This is the most striking *Hadith* in the sense that it classified people into three groups: those in authority and have **executive powers**, those who can preach, advise, make

[67] ibid
[68] Al-Amri pp.31-53, for an Usuli analysis of "Amr" i.e. command, see Al-Khudari Bek, M. *Usulul Fiqh*. Darul Hadith, Cairo, 2003 Pp.192-193
[69] Reported by Imam Ahmad in his Musnad (6:432), see Al-Amry p. 44
[70] Hajjaj, M. *Sahih Muslim*. Darul Fikr, Beirut. 2000, P. 52, Hadith No.82 *Sunan Abi Dawud* 1:406; *Sunanut Tirmizi* 3:318-319; *Sunan ibn Majah* 1;406

recommendations, condemn or guide, and those who have neither executive authority nor ability, knowledge or opportunity to speak. They only control their hearts. All of the three categories are duty bound to command good and forbid evil, and that doing so by the heart is compulsory under any circumstance.[71]

An *Ijma'* has been reported by many jurists such as ***Jassas***, ***Ibnu-Hazm*** and ***Nawawi***[72]that *al-amr bil-Ma'ruf wan-nahy anil-munkar* is *Wajib* and ***Ghazali*** on this issue says "It is the main pivot of the religion and the high purpose for which Allah sent His prophets…".[73]

3.4.1 The Nature of the obligation of al-Amr bil-Ma'ruf wan-Nahy anil-Munkar:

The Qur'an in 3:19 provides that a group from amongst the Muslims must stand up to the task of promoting the religion, commanding good and forbidding evil. The majority of jurists interpret the verse to imply that it is only a group of Muslims that will discharge this duty and not the entire Muslim *Ummah*.

This is a general duty called ***Fard-Kifayah***[74], once a group of Muslims performs it, the duty stands discharged on the entire *Ummah*, where however nobody from the *Ummah* performs it then the entire *Ummah* is blamable for the omission[75].

[71] ibid
[72] ibid
[73] Ghazali, ihya' Ulumiddin, vol. 2. P.428
[74] Ibid pp.55-98, see also Ibu Taimia *Al-Hisba fil Islam* P.23-29, see also Ibnu Taimia *Al-Amru bil Ma'ruf* supra p.18. for an Usuli analysis of Fard Kifayah, see Al-Khudari Bek supra Pp. 41-44

However, some jurists hold that it is ***Fard-Ain***, as such each and every person is duty bound to command good and forbid evil. Because the qualities found in the verses describing this *Ummah* as one that commands good and forbids evil should be found in every Muslim, and that in whatever situation a Muslim finds himself, he must support what is good through call for it by physically involving himself in it or by words of mouth i.e. suggesting, preaching, recommending, condemning and even motivating. However, when he cannot do either of the two as the case may be, he must like good in his heart. The same applies to evil, he uses his hand, or mouth or even hate it in his heart. In each case, a Muslim have an obligation to do one of the above activities. Among the proponents of this view are **Abdul-Qadir Audah** and **Sheikh Muhammad Abduh**.[76]

3.5 Degrees of Correction

The fact that a person who sees an evil done should correct it either by his hand, his mouth or his heart clearly shows that there is a hierarchy in the modes of correcting evil in the *Ummah* and that some are better than others. In this section, the degrees of correcting evil are examined in relation to the Hadith mentioned in the previous pages on the three degrees of correcting evil.

3.5.1 The Three Degrees

[75] See Kamali p. 441
[76] Al-Amri supra Pp.63-84

In the preceding *Hadith*, there are three degrees of correction, i.e. hand, mouth and lastly heart. By order of preference, as in the *Hadith*, hand is the highest degree, it means authority or ability to physically bring about change, i.e. ensure that good is done and evil is avoided and abandoned. Thus, whoever sees a *Haram* or *Makruh* being committed or *Wajib* or *Mandub* being neglected, should ensure that he changes it, by hand. If he however does not have the physical ability or authority, then he should change it by his words, namely, by telling, reminding, discouraging, cursing and even appealing to the person concerned. He should educate people on good so that it will be performed and on evil so that it will be abstained. If he cannot, still do that for any other justifiable reason, then he should come down to the lowest level by hating, avoiding and thinking of what ways to employ to change it and to ensure that rules of Shariah are not violated by commission or omission.

3.5.2 Methods of Correction

Some Jurists laid down **five steps** to be followed in changing evil, according to the following order:

- Informing the transgressors of the unlawfulness of their action.
- Reprimanding them with soft words as to soften the heart or instill fear of Allah in them
- Using harsh words on them, not cursing and insulting them
- Preventing the deeds by physical intervention such as smashing musical instruments or spilling or throwing away the intoxicants.

- T**hreatening** harm **or actually** inflicting harm upon them until they desist from what they are doing. This level requires sanction of the authorities. [77]

As for correcting the child and the wife, they must start with (1) informing and (2) reminding with good words and may reach the level of (4) by breaking the instruments or destroying the means of disobedience.

As for the citizens with their ruler, their situation is more restricted than the child. What is available to them is only (1) clarifying and(2) reminding.

In cases where the person effecting the change knows that his action will be of no benefit, there are four possible conditions:

1. His conviction that the evil will be removed by his action and no harm greater than the one he is trying to remove will come back upon him. In this case, action is obligatory without doubt.
2. His conviction that the evil will not be removed and he will be harmed by physical abuse or other means. In this case, the obligation is entirely lifted.
3. His conviction that the evil will not be removed, but he fears no harm from his action. In this case, it is not obligatory because of the lack of benefit but is preferred (*Mustahab*) in order to manifest the signs of this religion, as an act of worship from him and in case he might be wrong and the benefit manifests to his surprise.

[77] Al-Amri at PP.289-308

4. His conviction that he will be harmed but that the evil will also be removed. For example, a wife who destroys her husband's intoxicants knowing that he will inflict harm on her for doing so. In this case also, the obligation is removed but it is still a desired good deed based on the statement of the Prophet (SAW), "The best *jihad* is a word of truth in the face of an oppressive authority."[78]

Detailed however, the Degrees are eight, as propounded by **al-Ghazali**[79] and followed by many jurists.[80] The following is as summarized by **Jalaluddeen al-Amry:**

First Level: Knowledge correctly obtained on the evil perpetrated or good neglected. The source of knowledge should not be gossip or uncover that which is covered in order to know the misdeeds of another. Manifests actions are the target of correction. The stage requires understanding of the problem by the one seeking to correct. The stage is called "*Ta'arruf*"

Second Level: Informing the individual, as one who is ignorant of something may do it without believing that it is *munkar*, but upon gaining the knowledge may quit. This stage is called "*Ta'rif*"

*Third Level***:** Prohibiting via advice, preaching and reminding one to fear Allah. He should use the texts from Qur'an and Sunnah which both impart the knowledge of the wrongdoing and inspire the fear of Allah's punishment as well as the ways of the *Salaf*.

[78] Hadith reported by Baihaqi in '*Shu'abul Iman*', see Suyuti, A. *Ad-Durarul Muntatharah fil Ahadithil Mushtaharah*. Darul Kutubul Ilmiyyah, Beirut, 1988. P. 37
[79] Al-Ghazali, M.M. *Ihya' Ulumiddin*. Darul Kutubul Arabiyyah, Cairo, 1334 (AH) vol.2 Pp. 289-292
[80] See also Hudairi, N. *Al-Hisbatun-Nazariyyah wal Amaliyyah indal-Imam Ibnu Taimia*. Darul Fadilah, Riyadh. 2005 Pp.142-146 who divided the three steps into ten, so also Al-Hamar, A. *The Islamic Perspective on enhancing Ethics in the private Sector* available at http://islamic-world.net/economic/hisbah_institution/hisbah_ethics.html last visited 1st April, 2011

That must be done with compassion and kindness and without anger or severity. Pride in himself and his knowledge, disdain and ignorance is like one who saves another from the fire but burns himself up. This is the height of ignorance, a great humiliation and deception by *Shaitaan*.

Fourth Level: Rebuke and harsh words. This is only resorted two when there is not result from the previous levels and they are only met with clear signs of determination to continue in sin and mocking the advice given.

*Fifth Level***:** Physical intervention: This includes smashing the instruments of disobedience, disposing of intoxicants, expelling one from stolen property, etc. The damage must never exceed that necessary to prevent the disobedience. The physical intervention is restricted to the evil done and does not extend to the (person of the) perpetrator of the evil or the one neglecting the good.

Sixth Level: Threats of use of force against the person: Here it is not allowed to threaten something which it is not allowed to commit, he may be told that he may be flogged.

Seventh Level: Actual use of force, e.g. striking with hand or foot without showing or using weapons. This stage has conditions: (a) force can only be used when necessary (b) the force used must be reasonable in the circumstance (c) enforcement should stop as soon as evil ceases (a) objects like weapons should not be used in this stage

*Eighth Level***:** If he is unable to accomplish it himself and needs Law enforcement agents to use even weapons if necessary, the Police, the army should be called upon because the sinner will also seek aid from his companions with weapons, then the only correct course

is to do this with the permission of the Imam or ruler. Other than this would lead to chaos and much bloodshed.[81]

Many writers have written on these eight steps, analyzing, summarizing and even expanding. The Orientalists are however obsessed with these steps, particularly those curtailing the powers of an individual.[82]

3.6 The Need for Government

The Qur'an in Chapter 4:59 enjoin obedience to leaders and those in authority among Muslims. As humans are naturally social and live within communities, there must be friction, hence the need for a leader who will be an arbiter amongst them. [83] Thus, they are bound to differ.

In every society, there must be some people with anti-social behavior. If an individual is affected by this behavior, he may seek redress. Some wrongs are by nature public, in the sense that more people fall victim of the act or omission, or that the behavior offends Allah the Al-mighty. In this case, as it is a public duty, people should not take the law

[81] Ibid, see also Reza, S. "Islam's Fourth Amendment: Search and Seizure in Islamic Doctrine and Muslim Practice", 40, *Georgetown Journal of International Law*, 703 (2009)

[82] E.g. Vogel, F. "The Public and Private in Saudi Arabia: Restrictions on the powers of committees for ordering the good and for bidding the evil-part II: Islamic Law: Boundaries and rights" in *Social Research*. Fall, 2003, *Diversity in Classical Islamic Civilization: The Case of Al-Ghazali-Mystic, Jurist, Theologian*. Lecture by prof. J. Lowry at the Middle East Centre, University of Pennsylvania, Middle East Lecture series, Thursday, November 7, 2002, available at http://www.sas.upenn.edu/mec/resources/freematerials and another is Zubaida, http://www.aku.edu/ismc/pdfs/samizubaida.pdf, last visited 1st April, 2011. Another is S. Vogel and Mottahedeh, R.P. *The Public and the Private in Islamic Law and Society*. "Public and Private as Viewed through the Work of the *Muhtasib*,", 70(3) *Social Research Journal* (fall 2003). Also available at http://findarticles.com/p/articles/mi_m2267/is_3_70/ai_110737776/, last visited 2nd April, 2011, see also http://www.thefreelibrary.com/Public+and+private+as+viewed+through+the+work+of+the+muhtasib.-a0110737776 last visited 2nd April, 2011.

[83] Ibnu Taimia, Al-Hisba supra Pp. 5-9, see also its translation: Holland, M. *Public Duties in Islam: The Institution of Hisba*., The Islamic Foundation, Leicester, 1992, PP.19-24

into their hands.[84] The prophet SAW specifically said that executing *Hadd* punishments, collecting the *Zakat*, *Eid* prayers are for the *Imam* (the duly constituted political authorities).[85]

The Sunnah provides that even if only three people are traveling, one of them must be made the leader[86], which means that the obligation is stronger when people are sedentarized and live in towns made up of thousands, not even millions.

The Prophet was the leader of the Islamic State during his lifetime and after his demise, *Khilafah* was institutionalized to guard the religion and livelihood of subjects.[87]

3.7 Important Agencies in an Islamic Government

Government under Islamic Law comprises many agencies or departments, which vary with consideration to time and circumstances. During the lifetime of the Prophet SAW, he was the head of State and he had governors, ambassadors, *Zakat* and *Jizyah* collectors, etc. There was no conventional army (in this sense that where there is a need for military service, people volunteered) and there was also no permanent structure for Law enforcement like police or prison, there were of course judges.

[84] ibid
[85] The Hadith is reported by Tirmizi in Kitabul hudud
[86] Sunan Abi Dawud 2:34, see Abu-Faris, M.A. *An-Nizamus Siyasi fil Islam*, IIFSO Publications, Kuwait, 1984, p. 157
[87] Mawardi, AM.H. *Al-Ahkamus Sultaniyyah wal Wilayatud-Diniyyah*. Tawfiqiyyah Press, Cairo, no date.P.15

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

The agencies are as follows:

3.7.1 The great Imamate: the office of the head of State

3.7.2 Governors of Provinces

3.7.3 *Imamate* of prayers

3.7.4 Leadership of *Hajj*

3.7.5 *Wilayah* of *Sadaqat*: *Zakat* ministry

3.7.6 The Judicature

3.7.7 The *Amir* of *Jund* (Military)

3.7.8 *Imarah* for suppressing insurrection and mutiny

3.7.9 Public grievances Board (*Mazalim*)

3.7.10 *Wilayah* on clans and tribes

3.7.11 The *Diwan*

3.7.12 The *Wilayah* of Hisba[88]

3.8 The Institution of Hisba[89]

As one of the agencies of an Islamic Government, this agency serves as a body for Law enforcement generally and specifically, especially for the enforcement of public morals.

[88] Mawardi supra, see also Al-Farra', M.H. *Al-Ahkamus-Sultaniyyah*. Darul Kutubul Ilmiyyah, Beirut, 2000.
[89] Mawardi supra Pp.406-433, Al-Farra' supra at PP.284-308 chapters of both on Hisba

Some writers call it public duties in Islam[90]. The agency, either in conjunction with or independent of the police encourages, promotes and observes the enforcement of all laws. Al-Amry says that "*Amr*" and "*Nahy*" are the duties of an Islamic Government.[91]

3.8.1 Definition and Nature of Hisba

Literally, Hisba mean calculation, consideration or reckoning. Technically, Hisba denotes commanding good when it is neglected, prohibiting evil when it is practiced and reconciling people. This is done in anticipation of a reward from Allah (*Ihtisab*).[92]

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

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

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

[90] Holland, M. *Public Duties in Islam: The Institution of Hisba*. The Islamic Foundation, Leicester, 1992 (a Translation of ibn Taimiah's *Al-Hisbah fil Islam*)
[91] Al-Amry supra P.35
[92] ibid

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

The main concern of the Hisba is the enforcement of Allah's rights. Rights are divided into three, *viz* Rights of Allah, Rights of Individuals and the combination of the two. Rights of Allah can be on *Ibadat* or *Mu'amalat*. *Ma'ruf* can be the right of Allah, of an individual or a combination of both while *Munkar* is the violation of it.

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

An example of the enforcement of Allah's right is from the time of the Prophet SAW, when some people neglected praying in congregations, the Prophet SAW wanted to gather some people and instruct another person to lead the prayers, he will then go round to those who do not attend congregational prayers and force them to attend or face severe property deprivation.[93] Abu Bakr fought those who withheld *Zakat* and those who reverted after the demise of the Prophet SAW.

Hudud offences are prescribed to safeguard Allah's rights. *Qisas* is a combination of both rights of Allah and rights of individuals but the rights of individuals are higher, hence the

[93] Muslim, supra Book of mosques, Hadith No.252 and 253, Bukhari 5/74

importance of their discretion in *Qisas* offences. In the field of *Ta'zir*, an individual enforces his rights while Allah's rights are public rights, enforceable by anybody. The bulk of *Muhtasib's* work on *Munkarat* is in the field of *Ta'zir*.

3.8.2 Essentials of Hisba[94]:

Hisba has four essentials:

The Muhtasib: i.e. the actor, the one engaged in the activity of Hisba or *Ihtisab*, which is commanding good and forbidding evil. *Muhtasib* is the most popular name; he is also called ***Walil-Hisba***, *Muhtasibul-Balad*, *Sahibus-Suq*, *Amil Alas-Suq* etc, referring to government officials appointed to discharge this duty (***Muhtasib Muwazzaf***) hereinafter called *Muwazzaf*. However, the one not appointed but only volunteers (***Muhtasib Mutadawwi'*** hereinafter called *Mutadawwi')* differ from the appointed in nine ways as stated by Mawardi as follows:[95]

First, the obligation of the *Muhtasib* is by way of his appointment decided by the authorities, whereas the obligation on others is a shared obligation incumbent on the community as a whole;

Second, the *Muhtasib's* undertaking of the task is a necessary part of his appointment, which he is not allowed to transfer to another, whereas the undertaking of individuals is done voluntarily by way of supererogatory action which they are permitted to pass on to others;

Third, the *Muhtasib's* post is set up so that people may have recourse to him concerning matters which must be discouraged, whereas the one who does it voluntarily does not occupy a post set up for this;

Fourth, the Muhtasib has to respond to people's complaints, whereas others do not;

[94] Zaidan, A. *Usulud-Da'wah*. Mu'assatur-Risalah, Beirut, 2001, Pp.173-202, see also Hudairi, Pp: 83-152
[95] Yate, A. *al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance*, Taha Publishers, London, 1996, pp. 337-338

Fifth, the *Muhtasib* has to watch out for manifest incidents of evil, so that he may denounce them, and to investigate those acts of good behavior which have been abandoned, so that he command that they be renewed, whereas the ones who do it voluntarily do not have to search for or investigate these matters;

Sixth, the *Muhtasib* has to have assistants to participate in denouncing evil, as he will be better able to do the task for which he has been appointed, if he is in a stronger and more powerful position, whereas the ones who do it voluntarily may not seek the assistance of helpers;

Seventh, he may impose discretionary punishments in matters of manifest evil, as long as they do not surpass the limits of the *hadd* punishments, whereas the one who undertakes hisbah voluntarily may not do this;

Eighth, he may be paid for his hisbah from the bait al-mal, whereas the one who voluntarily undertakes hisbah may not be paid for denouncing evil, and

Ninth, he may use his *Ijtihad*-judgment concerning matters regarding customary practice- but not matters of Shariah-such as layouts in the markets, and setting up of projecting sections; thus he affirms or rejects such matters in accordance with the results of his Ijtihad, whereas the one who voluntarily undertakes hisbah may not do this.

a) Qualifications of a *Muhtasib*: the most important qualities of a *Muhtasib* are as follows:

   i. He must have complete legal capacity (*Taklif)*

   ii. He must be a Muslim which is in accordance with Q4:141

   iii. He must be learned in Sharia because his activity involves implementing rules an principles of Sharia regarding what is right and what is wrong

   iv. He must be able to execute his duty in enforcing good and eradicating evil either by words of mouth or by physical intervention

   v. *Adalah*: upholding Islamic teachings and moral uprightness

   vi. He must be a male: as the activity involves going out to work on a day to day basis and inspections in markets and streets. It also involves physical intervention. However, a woman *Muhtasib* may oversee women unions,

trades and activities. The **report** that Umar appointed Umm Shifa' as the first *Muhtasib* in Madina was said to be in-accurate.[96]

vii. He must be formally appointed by the authority: his appointment and jurisdiction, both territorial and (where necessary) subject matter must be specified by the appropriate political authority, so that he can be assisted by law enforcement agents in cases of need.

b) Ethics that a *Muhtasib* must abide by:

i. Faith in Allah: the *Muhtasib* must be discharging his duties because of Allah, not because of salaries, fear or favour.

ii. Work with knowledge, what he does must tally with what he knows and preaches,

iii. Being gentle, soft and lenient,

iv. Wisdom in his activities: he should be harsh where necessary, lenient and jovial where necessary, punish or pardon where necessary,

v. Justice in executing his duties; he must recognize and accept good irrespective of whoever has performed it and must never exaggerate the evil of irrespective of whoever commits it

vi. Patience in executing his duties: because promoting good and eradicating evil is full of blames, dangers and harm,

vii. Overlooking certain evils under certain circumstances

viii. Being exemplary: he must also ensure that the members of his household are also exemplary.

[96] Ibnul Arabi supra vo.3 P. 482

Al-Muhtasab alaih: i.e. the subject of the Hisba.

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

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

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

3.8.3 Philosophy and the Need for the Hisba

The Islamic *Ummah* has been described by Allah the Al-Mighty as the best nation ever produced for mankind; this is because it (the nation) commands good, prohibits evil and

believes in Allah. The *Ummah* is instructed to have a portion of it devoted to commanding good, prohibiting evil and calling to good i.e. Islam. [97]

Commanding good and prohibiting evil are secondary. The primary things are doing good and eschewing evil. If they are done or avoided internally, the secondary aspects strengthen it.

Others are motivated to change towards good and away from evil so that good covers every aspect and that people are of different nature; some do good most and runs away from evil often, his life is replete with good deed, their souls are in tranquility (*mutma'innah*); some others do good things but also do evil, a mixture of both; while others does sin most, little good deeds.[98]

People are motivated to do, increase in doing good by peers and other motivators. Likewise evil, if it is neglected and people indulge in it, the second and even the first above may fall into evil. The people in the third group promote evil, invite people into it, wish that everybody does evil so that they become equal. The Muslims however, should drag others into paradise by motivating good, discouraging the path to evil.[99]

3.8.4 Evolution of the Hisba:

The Prophet SAW himself practiced Hisba by inspecting the markets to be sure traders do not adulterate their commodities and that they are not sub-standard or unwholesome. He once dipped his hands into a food item for sale and discovered that it was adulterated. He

[97] Al-Amri supra at PP.15-49, Ibnu Taimia, Al-Amru bil Ma'ruf at PP.49-67
[98] ibid
[99] Ibid, see also Hudairi supra PP.124-125

likewise informed the traders that they should not withhold the milk of animals they intend to sell, so as to show to the prospective buyer that the animal is always full of milk. He also informed Muslims that whoever sees an evil committed, he should transform it by his hands, or by his mouth if he does not have authority or ability, and lastly, he should dislike the evil done if he can't even speak against it.[100]The prophet also once threatened to enforce attendance to congregational prayers, he would even burn down the houses of those absenting from it. [101]

During the time of *Khulafa'ur-Rashidun*, Abubakr fought those who apostated after the demise of the prophet SAW till he brought them back to Islam; he also forcibly collected Zakat from those who refused to give it out. He likewise fought those who claimed prophet-hood and also banished some homosexuals from Madinah. Umar used to patrol the streets and markets to command good and prohibit evil by words and deed, he once inspected some milk offered for sale and found it to be adulterated, he therefore spilled it. It has been said that he appointed some people to oversee the markets in order to command good and prohibit evil. Uthman and Ali also practiced Hisba; Ali used to inspect the market holding a whip and telling the traders "fill your measures properly and weigh correctly…".

These are only a few examples and the entire work of Islam is *Hisba*, and it is impossible to enumerate the deeds of the prophet and of the *Sahaba* representing *Amr bil ma'ruf* and *Nahy anil Munkar*.

[100] Al-Amri supra, P.43,
[101] Ibnu Taimia Al-Amru bil Ma'ruf supra, at PP. 9-30

3.8.5 *Consolidation of the Hisba*

As Islamic expansion took place, the Caliphate became large, commerce thrived and cities expanded, some Islamic institutions developed while some others sprang up either independently or adapted from other civilizations like the Persian, Greek, Egyptian and Roman civilizations; *Hisba* was among the institutions that developed. The areas under the jurisdiction of the *Muhtasib* widened and Rules developed regulating its activities were developed. [102]

The Caliphs that came after the *Khulafa'ur-Rashidun* also engaged themselves in the activities of Hisba. It was during the *Umayyad* dynasty that the term *Hisba* was first used to denote *Amr* and *Nahy*. It was reported that it was the time of ***Abdul Malik b. Marwan*** that an institution with that name and portfolio was created.[103]

During the Abbasid dynasty, *Hisba* became an important institution with portfolio and Rules and Regulations. The heads are appointed by the governors of districts and their jurisdictions spelled out. It is important to note that at that time, there also existed the police and sometimes the *Muhtasib* is given double job of being a *Muhtasib* and head of the police.[104]

[102] Mawardi, AM.H. *Ar-Rutbah fi Talabil-Hisba*, Darur-Risalah, Cairo, 2002. Edited by Badran, A.J. pp.28-48 editorial comments
[103] Ibid t p. 29
[104] ibid

Government staff at that time used to have distinctive dresses including judges.[105] It may be that the *Muhtasib* also had a distinctive dress so that people identify and approach him for redress. The *Muhtasibs* appointed were jurists; some of them were even *Mujtahids* like Abu Sa'id al-Isdakhry and Mawardi.

Ottoman Empire also maintained the *Hisba* as an institution, so also the other empires that existed along it. In **Andalus** for example, the term used there at the beginning was *Amil alas Suq* or *Sahibus Suq*[106] and from there, the institution diffused into Europe.

Muhtasib existed in non-Muslim areas in *Andalus* by the name *Mostasaf and al-Motacen*, and at another time Sahibus-Suq became *Zabazoque*. There existed the Hisba in Lyon, France prior to the Crusades; that was before Islam reached there.[107] It may be suggested that the institution penetrated Europe and that may be the law enforcement agencies in Europe owe their origin from the *Hisba* institution.[108]

In the Sokoto Caliphate, Sheikh Abdullahi b. Fodio wrote on Hisba. His book, Diya'ul Ihtisab[109] is among the manuals written for the institutional building/strengthening of the Caliphate during its consolidation stage. It may be that the system existed, at that time by

[105] ibid
[106] Ibid at p.33
[107] Glick, T.F. *Islamic and Christian Spain in the Early Middle Ages* (The Library of Iberian Resources online) http://libro.uca.edu/ics/emspain.htm last visited 7th June, 2011 chapter 3, Urbanization and Commerce. It was stated there that Raymond Deslluch was the Mustasaf of Christian Valencia.
[108] Ibid, the chapter on Movement of ideas and cultural diffusion
[109] Now edited, translated into English and Hausa and published by Iqra book series.

that name or under a different name. In Adamawa for example, Lamido Zubairu revived the office of the *Muhtasib* in Yola.[110]

When the British conquered the area of Northern Nigeria, they inherited an excellent political structure; The emirs and hierarchy of chiefs, the prison, police or palace guards (*Dogarai*), the judiciary, the system of taxation etc. They were later converted into the Native Authorities under the Indirect Rule system, and at that time, they had officials performing the duties of a *Muhtasib*. It may be that *Hisba* existed all the way through till independence and the abolishing of the Native Authority system.

3.8.6 The influence of European colonialism on the Institution of Hisba

In the Muslim world, the European colonization brought about the death of many Islamic institutions including the *Hisba*. In Egypt for example, the system was abolished during the time of Mohammad Ali Pasha[111] and up till today, it has not been revived; only the Hisba proceedings in courts is retained.

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

[110] Abba, I.A. *Islam in Adamawa in the 19th and 20th Centuries.* Unpublished M.A. Thesis, Ahmadu Bello University, Zaria, 1976, P. 135

[111] Mawardi, Ar-Rutbah Pp.28-48, editorial comments.

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

3.9 Model Hisba Organization

The discussion here is the exposition of the history in the organization of the *Hisba;* only the *Muhtasib* represents the Institution. He is appointed either by a Caliph, provincial Governor or a District head and there was no hierarchy of *Muhtasibs*, i.e. no Grand *Muhtasib* for the entire Caliphate and Muhtasibs under him for the states and still junior ones for the districts[113] or sub-provinces, instead, each and every locality will have its *Muhtasib*.[114]

The *Muhtasib* had "assistants" in each sector of human life particularly the commercial sector. The assistants were of two categories, the duties of the **first** category involved investigations, supervision and regulation while the duties of the **second** category includes enforcement works of impounding, seizure, confiscation, destruction of sub-standard, counterfeit and adulterated goods as well as whipping of the culprits.[115] Below is an illustration of how the *Hisba* was organized:

[112] Hudairi, Pp.325-336
[113] However, Hudairi at P.95 talks of head of Muhtasibs or Chief Muhtasib.
[114] Al-Mawardi, Ar-Rutbah supra
[115] Ibid at P.39: editorial comments of Badran.

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

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

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

The *Muhtasib* and his Assistant acquaint themselves with the trades, activities and crafts and all the mischief and good connected with it, they then inform those concerned to abide by the ethics of their particular professions as well as the general aspects of Shariah and keep reminding them these injunctions. They persist on those who neglect,

sometimes, they administer oath on craftsmen that they will abide by the rules and ethics of their particular profession.[116]

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

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

The *Muhtasib's* jurisdiction covers everybody, including the *Caliph* or *Imam*, illustrations on how some *Muhtasibs* destroyed wine belonging to a regional leader and how musical instruments were smashed are replete in *Hisba* manuals.[117]

[116] ibid

Chapter 4 **ESTABLISHMENT OF HISBA IN THE SHARIA STATES**

In this chapter, the research will discuss the reintroduction of Sharia in Nigeria and the laws enacted and agencies established for the purposes of Sharia and will dwell more on the establishment of Hisba as one of the institutions aimed at supporting the Sharia.

4.1 Sharia in Nigeria before 1999

4.1.1 Introduction of Islam into the places now forming Nigeria:

Islam was first introduced into the Nigerian area as early as the 9th Century (Gregorian) by Arab Traders. Shariah being part of Islam necessarily supplanted local customs.

The Borno Empire was governed by Shariah, so was the other States in Hausa-land. During the time of Muhammadu Rumfa (Ruler of Kano), *Al-Maghili*, upon visiting Kano wrote a constitutional treatise for the King which was in accordance with Shariah.

Gradually, syncretism crept in and people mixed paganism with Islam. Thus, in the early 19th century (1804-1817) a reformation *Jihad* was carried out in West Africa which was itself a ripple of a bigger one in North Africa.[118]

The reformation *Jihad* was directed at purifying Islam from the syncretism earlier mentioned. Shehu Usmanu led the *Jihad*. Two other *Jihads* followed, led by *Seku Amadu* at *Macina* and *Alhaj Umar El-Futi* in *Tukulor* lands also in West Africa.

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[117] Ibid at P.65-66

[118] Bugaje, U.M. *A Comparative Study of the Movements of Uthman Dan Fodio in Early Nineteenth Century Hausa-land and Muhammad Ahmad Al-Mahdi in Late Nineteenth Century Sudan* (unpublished Masters Thesis in African and Asian Studies, University of Khartoum, 1981) pp. 20-73

The territories affected by the *Jihad* became a Caliphate, made up of a capital at Sokoto and Emirates forming what is now Nigeria, some parts of Niger and Camerouns, each headed by an *Amir* which makes it more or less a federation.

4.1.2 Sharia in the Sokoto Caliphate:

By 1817, the *Jihad* was almost over in Hausa-land. The **Shehu** spread administrative duty and ventured into consolidating the Caliphate. Hundreds of treatises, Guidelines, Rules and Regulations were made. These steps helped in strengthening Islam over the area that is now Nigeria. Shariah controlled every aspect of the lives of Muslims and there was a coordination of intellectual, administrative, economic, social as well as military activities which were all within the ambit of the Shariah.

By that time, the applicable law was Islamic law. Thus, there were courts applying Shariah, the components of the legal system entirely serve/applies the Sharia; the prisons, the *Muhtasib*, the Ulama' and the *Dogarai* (palace police of the Emirs).

Abdullahi b. Fodio, (Shehu's brother) supported the Shehu all the way through (from preaching, prosecuting the *Jihad* and consolidating the Caliphate) and was responsible for making or writing many Guides and Manuals for the new state; the many ***Diya'at*** written were by him. He also wrote the ***Diya'ul-Ihtisab*** or the Guide for the Hisba activities which serve as a guide for the apparatus of the state in law enforcement.

The Caliphate or Sultanate system (Islamic government) continued up to the beginning of the 20th century when the European Colonial forces conquered the Caliphate. Britain, France and Germany participated in conquering the territories among other areas. The Caliphate finally fell by 1903 when ***Sultan Attahiru*** was killed at *Burmi*.[119]

By the conquest, the administrative and constitutional powers were vested in the colonial masters. The Sultanate, Emirates and their subordinate systems continued only as symbolic and were later incorporated into the **indirect rule system**. By it, the Emirates' paraphernalia (courts, prisons, police or Dogarai, the taxation system etc and all their staff) continued to function under the British colonial administration.

Islamic law continued to apply, both civil and criminal laws. There were however, restrictions placed, from time to time regarding its application. Between 1900 and 1960 various legislations were made in the forms of Proclamations and Ordinances which affected Islamic law adversely; some categorized it as Native law and custom and others established courts within the Caliphate with jurisdictions wider than Islamic courts, which practically relegated Islamic courts to the out-backs.

4.1.3 Sharia between 1960 and 1999:[120]

[119] Shea and Abba, "The Implacable Irreconcilables: The Movement of the people at the time of the British Conquest of the Sakkwato Caliphate". *FAIS Journal of Humanities*, vol.1 No. 2

[120] For this part, see generally Sulaiman, I. "The Application of Islamic Law in a Multi-Religious Society: The Case of Nigeria" *Journal of Islamic and Comparative Law*, Vol.22, 2000. Pp.1-6; Tabi'u *infra*, Yadudu *infra*, Chukkol, K.S. "The Penal Code: Its Genesis and Standing*" Journal of Islamic and Comparative Law*, Vol.s 11-14 (1981-1984) pp.15-22.

Nigeria became independent in October 1960. The British had enacted a Penal Code before they left, which abrogated the criminal jurisdiction of Islamic law, as nobody would after it be charged for any offence unless it was written as a statute.

From 1960, Muslims demanded to improve the state of Sharia in Nigeria by *inter-alia* renaming native courts as Area courts, restyling Moslem law/Moslem Court of Appeal as Islamic law/Sharia Court of Appeal, embarking upon an intensive study of Islam including Islamic law and calling for the total application of Sharia. The other demands include the establishment of a Federal Sharia court of appeal which culminated into the entrenchment of the Sharia Court of Appeal into the 1979 constitution and fought all the way through in defending its jurisdiction and calling for its enlargement.[121]

It is important to note that Muslims in the Southern part of Nigeria had been denied their rights to apply Sharia despite the fact that most of the inhabitants of South-Western Nigeria are Muslim. Demands were made time and again by the Southern Muslims but the governments, colonial and indigenous, denied them these rights.[122]

Between 1960 and 1999, particularly from 1972, any issue of Sharia was sensitive and can turn highly controversial and explosive at any time and the entire classes of Muslims in Nigeria follow Sharia issues closely and yearn for the day it will be fully applied.[123]

[121] Tabi'u, M. "Islamic Law in Nigeria: A Historical Perspective on some Basic Issues" *Journal of Islamic and Comparative Law*, Vol.19, 1993, pp.27-34
[122] Okunola, M. "The Position of Sharia in Southern Nigeria" *Journal of Islamic and Comparative Law*, vol. 18, 1999, pp.77-83
[123] Yadudu, A.H. "Constitution Making and the Politics of Sharia in Nigeria" *Journal of Islamic and Comparative Law*. Vol.18, pp.19-37

4.2 Shariah in Nigeria: 1999 to date

Between 1999 and 2001 twelve states reintroduced Sharia into their legal systems which had far-reaching consequences on the legal and political landscape in Nigeria.

4.2.1 The Zamfara Sharia Launch:[124]

The elected civilian Governor in Zamfara State, Alh. Ahmad Sani (*Yariman Bakura*) reintroduced Sharia in Zamfara State by enacting the Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999, which ushered in the Shariah. Other legislations were later made to further the application of the Shariah.

Before then, Alh. Ahmad Sani made promises during his election campaign that if elected, he will restore the Sharia in the State. He fulfilled this promise by enacting the above law and later in 2000, Sharia was launched in Gusau, the capital of the State. This declaration was attended by Muslims from all over Nigeria as well as from neighboring countries like Niger.

4.2.2 Other States

The Gusau Declaration aroused the desire in the minds of many Nigerians for the restoration of the Shariah fully. Muslims then started calling on their state governments to follow Zamfara's bold step of reintroducing the Sharia. Some of these calls turned into agitations and some still turned into threats. Eleven governments so far answered the calls and followed Zamfara's steps. Below is the list of the states, arranged in an alphabetical order:

[124] Ostein, P. *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*. (Ibadan) Spectrum Books, 2007, vol. 1 pp.ix-x

1. Bauchi,
2. Borno,
3. Gombe,
4. Jigawa.
5. Kaduna,
6. Kano,
7. Katsina,
8. Kebbi,
9. Niger,
10. Sokoto, and
11. Yobe,

These states took series of steps in the process of restoring the Sharia including the establishment of committees that looked into the matter, advised the government, prepared draft bills for the Sharia Penal Codes and bills on other matters.

The cross-cutting pattern in the triggering points in all the states is the enactment of a law that ushered in the Sharia Penal System. Some states call it "Sharia Penal System Adoption Law", others call it "Sharia Administration of Justice and Consequential Issues Law" while the majority have it as the "Sharia Courts Establishment Law".[125]

Difference between Declaration of Sharia and the enactment of a Sharia Penal Code:

[125] Kano: Sharia Administration of Justice Law 2000; Katsina: Islamic Penal System Adoption Law No.6 of 2000, and Kebbi: Sharia (Administration of Justice) Law 2000

Declaration of Shariah is merely an occasion during which declaration is officially made that the Shariah has been restored. This event is important in the sense that it satisfies public demands. But enacting Sharia Penal Code is a process of changing the criminal law which is part of Sharia implementation. Technically however, declaration of Islamic penal system alone is not enough to sustain criminal prosecutions in the current legal system, therefore the reality dictates the enactment of an entirely new Sharia Penal Codes.

All other steps taken by the various state governments regarding the Sharia are however either aimed at enhancing the Sharia implementation or to ensure that things are done in the proper way. Most people think that the restoration of the Sharia is just embodied in the "ceremonial declarations".

4.2.3 What amounts to Sharia Implementation:

Implementation of Sharia means the expansion of the applicable Islamic law in Nigeria to cover the criminal aspects. This is what it means to an ordinary man. Some do not even know that the civil aspects of Sharia were applied prior to the Zamfara declaration.

Enacting a Sharia Penal Code is definitely the most essential factor in Shariah Implementation. However, when most of the Sharia States declared that they are Sharia compliant, no Sharia Penal Codes were enacted; it was later that these codes came into existence. A state that has no Sharia Penal Code cannot be said to be a Sharia complaint state.

Borno State, to the knowledge of the writer, enacted only the Sharia Penal Code, no Sharia Criminal Procedure Code was enacted, no Sharia Courts established and no necessary steps were taken to further the implementation of Sharia.

In reality however, Sharia Implementation is an **Islamization** of some aspects of the legal system; not only the laws of the respective Sharia States. It however transcends the legal system; it touches the Economic, Social and even the political systems of these states because Zakat was also reintroduced and policies and laws that affect social life were also put in place.

The various legislations made that support the application of Sharia include the following:[126]

i. Sharia Penal Code: all the twelve Sharia States have the Sharia Penal Codes,
ii. Sharia Criminal Procedure Code, most of the Sharia States maintain a Sharia CPCs
iii. Sharia Court of Appeal (Amendment) Law, eg the jurisdiction of the Sharia Courts of Appeal by conferring appellate criminal jurisdictions from lower sharia courts,
iv. Sharia Courts (Establishment) Law that abolishes Area Courts and replaced them with Sharia Courts,
v. Liquor Laws, either as amendment to the Penal code or separate legislations. This law usually prohibits the brewing, distribution, consumption etc of liquors within the Sharia states,

[126] For this part see Ostien Vol.III, chapter 3 part IV PP.119-120

vi. Gambling and Prostitution Prohibition Laws,

vii. Laws on Islamic Mode of dressing,

viii. Transportation laws prohibiting the carrying of females on commercial motorcycles,

ix. Laws on film boards, prohibiting praise singing, begging and playing cards,

4.3 Sharia supporting bodies:

The respective Sharia states established several bodies primarily to serve or support the application of Sharia in the states. The bodies established include the various **Sharia Commissions**, **Zakkah Commissions**, **Anti-Corruption Commissions**, **Sharia Implementation Advisory Commissions**, **Shura Councils**, ***A Daidaita Sahu***, ***Zauren-Sulhu*** and ***Hisba Commissions***. These are described in the table below:

Table 1: Sharia Supporting Bodies[127]

S/N	STATE	SHARIA COMM.	ZAKKAH COMM.	HISBA	OTHERS
1.	ZAMFARA	✓	Zakkah & Endowment Board	Hisba Comm.	anti-Corruption; Sharia Research & Dev. Commission, council of Ulama'
2.	KANO	✓	Zakkah & Hubusi Comm.	Hisba Board	Shura Council; A Daidaita Sahu; Zauren Sulhu (under the Hisba); Public Complaints & Anti-Corruption
3.	NIGER	✓		Operates under the Sharia Comm.	(NISACORA) Niger State Advisory Council on Religious Affairs
4.	KATSINA	✓		Voluntary Hisba	-
5.	KEBBI	✓	**?**	Under Sharia Comm	Committee for the implementation of Sharia
6.	SOKOTO	✓	Sadaqah Cmt (b4 Sharia)	Independent Hisba (Rundunar Adalci)	Sharia Commission,
7.	KADUNA	Sharia Implementation committee	Zakkah & Waqafi Committee	Independent	
8.	JIGAWA	✓		Hisba Coordination Committee	Sharia Commission
9.	YOBE	Sharia Implementation, Monitoring & Advisory Comm.	Zakkah & Waqf Comm.	Hisba Aid Group (under SIMAC)	Sharia Commission
10.	BORNO		Zakkah & Endowment Board	?	Sharia Implementation Committee, council of Ulama'
11.	BAUCHI	✓	Zakat & Endowment Comm. Under the Sharia Commission	Enforcement Committee, under the Sharia Commission	A Daidaita Sahu, Zauren Sulhu,
12.	GOMBE	NIL	NIL	NIL	NIL

[127] References for this table are Kolo, M.A. *The Economic Dimensions of Sharia in Northern Nigeria: Case Studies: Borno and Yobe*. (Paper presented at the 5th In-house Forum on Sharia information and Documentation Project (SIDOP) organized by Development Research and Projects Centre) held at the Nassarawa Guest Palace, Kano on 29th May, 2004) unpublished, available at www.boelnigeria.com ; Aliyu, C.U. *The Economy and Sharia in the North-West Zone with particular References to Sokoto and Zamfara States*. (unpublished paper of SIDOP above, 29th May, 2004); Ostien, P. *Sharia Implementation in Northern Nigeria 1999-2006: A Source Book*, (Ibadan) Spectrum Books Ltd., 2008, vol.2 Chapter 2, part 4, pp. 171-176; Peters, R. *Islamic Criminal Law in Nigeria*. (Ibadan), 2003,Spectrum Books ltd. Pp.51-53;

Below is a concise introduction of some of these bodies and their roles in Sharia implementation.

4.3.1 Sharia Commissions:

Sharia Commissions are established to *inter-alia* coordinate Sharia Implementation processes. In Katsina State, the Commission[128] is empowered to prepare draft bills for Sharia Penal Codes and other laws on Sharia, to coordinate the Sharia process and to advise the government on the Implementation of Sharia.

4.3.2 Zakat Commissions

Economic benefits that naturally accrue from a Sharia compliant system include a vibrant Zakat and other social security amenities. To this end, the Sharia implementing states, right from conception of the Sharia projects included these social security programs in the blueprints.[129]

4.3.3 Hisba Commissions/Boards

Conducive atmosphere in which rights and duties are enforced is a necessary requirement for the implementation of Shariah. Thus, the body responsible for the commanding of good and prohibiting what is evil is best done by the Hisba, which must be a government institution with powers to arrest, seize, regulate, control, supervise and sometimes prosecute offenders in every Islamic environment that enjoys leverage to apply the Sharia.

[128] Created by virtue of Law No. 3 of 2000
[129] See the Proposed Blueprint on the Implementation of Sharia Programmes in Kano State: May 2003-May 2007 (unpublished)

The Blueprints/whitepapers and other government policies that brought in the Sharia incorporates the provision for the establishment of Islamic based regulatory agency, be it by the name of Hisba[130], market judge or Islamic market regulations[131].

Secondly, the police at the beginning of the Sharia processes were not ready to enforce Sharia rules and laws.[132] The Attorney General of the Federation also sent a memorandum to the Governors of the states that apply the Sharia telling them that Sharia is illegal[133] which means that the apparatus of the Federal Government is not expected to 'lend its hands' towards Shariah implementation.

Different approaches were employed by the various states in enforcing the Sharia laws; in some states, individuals established **voluntary Hisba groups**, which later conflict with the government policies and the police and of course, caused sectarian misunderstandings. Some states set up **quasi committees on Hisba** and later replaced them with full fledged bodies.

4.4 The Constitutional Position of Hisba in Nigeria

There is no judicial authority on the constitutionality or otherwise of the Hisba and all what will be said is academic exercise. The writer is however of the opinion that Hisba is

[130] ibid
[131] See S.8 (f) of the Katsina State Sharia Commission Law 2000
[132] Liman, A.A. *The Roles of Ministries of Justice and the Nigeria Police Force regarding the Implementation of Sharia*. Unpublished paper presented at the 10th Annual Judges' Conference, organized by the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, held at the Kongo Conference Hotel, Zaria (30th-31st Oct. 2008) p.10.
[133] Memorandum dated March 18, 2002 with reference No. HAGF/SHARIA/2002/Vol. 1, available at http://www.dawodu.com/agabi.htm last visited 20th March, 2011. See also http://allafrica.com/stories/200203210758.html last visited 20th March, 2011.

constitutional because the Constitution of the federal Republic of Nigeria, 1999 does not prohibit State Governments from establishing law enforcement outfits that are not "forces". The "Police and other government security services established by law" is an item in the Exclusive Legislative List in Nigeria[134] and the Police is established in section 214 of the Constitution as a Police Force and the section says that "no other police force shall be established for the federation or any part thereof'. It is clear that Hisba is not a force, if not; there is a proliferation of law enforcement agencies in the country restricting the general powers of the police and yet not declared unconstitutional like the Immigration, Customs and the National Drug Law Enforcement Agency. Hisba is not a police or a security agency but an agency that assists the police and other security agencies.

The former Inspector General of Police, Chief Michael Ehindero on 8th February 2006 declared that Hisba is an illegal organization[135] and the next day he ordered the arrest of two top most Hisba officials. Kano State government on the other hand in **Attorney-General of Kano State v. Attorney-General of the Federation**[136] challenged this move at the Supreme Court by instituting a case against the Federal government and invoking the original jurisdiction of the Supreme Court under section 232 of the Constitution of the Federal Republic of Nigeria 1999. The Supreme Court held that it lacked jurisdiction to hear the case because there is no dispute involving the federal Government and Kano State government, however, the court did not venture into the legal position of the Hisba

[134] Item 45 of the Exclusive Legislative List, Part 1, Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999.
[135] http://allafrica.com/stories/200602100613.html last visited 12th April, 2011
[136] (2007) 6 NWLR (PT1029) 164 S.C

which was part of the questions raised by the State. By the Statement of Claim of Kano State (the Plaintiff), six declaratory reliefs were sought and are reproduced below:

1- Declaration that the Kano State Hisbah Board Law No. 4 of 2003 (hereinafter referred to as Law No. 4) and the Kano State Hisbah Board (Amendment) Law No. 6 of 2005 (hereinafter referred to as Law No. 6) were regularly made by the Kano State House of Assembly, duly assented to by the Governor of Kano State, they are legal, lawful and constitutional.
2- Declaration that Law No.4 and Law No.6 were made by the Kano State House of Assembly for peace. order and good government of Kano State, the laws are therefore valid, lawful, legal and constitutional.
3- Declaration that Law No. 4 and Law No. 6 aforesaid were made in accordance with the powers vested in the Kano State House of Assembly by the provisions of section 4(6) and (7) of the Constitution of the Federal Republic of Nigeria, 1999.
4- Declaration that Law No.4 and Law No.6 were made by the Kano State House of Assembly and assented to by the Governor of Kano State in accordance with the provisions of section 100 of the Constitution of the Federal Republic of Nigeria, 1999 and all other powers in that behalf.
5- Declaration that the defendant, his agents or privies have no power nor authority to declare as unconstitutional any of the provisions of Law No. 4 and Law No. 6 without a court order or pronouncement to that effect.
6- Declaration that all the provisions of Law No. 4 and Law No. 6 are valid, extant and operate until otherwise declared.

There were also two injunctive reliefs sought and an order "directing the defendant by himself, his agents or privies to stop forthwith any interference with the lawful implementation of the provisions of Law No. 4 and Law No. 6 and in particular to stop the arrest and or prosecution of any official of Kano State Government in the lawful execution and implementation of the provisions of the said Laws".

The court however observed that the responsibilities of the Hisba Corps under the Hisba Board law are identical to the responsibilities of the police under the Police Act. Despite

these, the position of the law is that the constitutional position remains not decided by the Supreme Court and the Inspector General of Police is not the interpreter of the law, talk-less the constitution. We await the interpretation of either the Court of Appeal or the Supreme Court on the constitutional status of the Hisba and before then, the status quo ante remains which is that the Hisba is a creature of a statute in Nigeria and the presumption of regularity applies. It is important to note that when the Supreme Court is hearing an appeal where interpretation of the constitution is in issue, the court will be composed as full court (seven justices); so also when the Supreme Court is exercising its original jurisdiction as in the preceding case. It will then be foolish to see the Inspector General of Police as an authority in interpreting the constitution. The best thing would have been for the Police to institute a case before a court of competent jurisdiction challenging the legality or constitutionality of the Hisba.

In another case, **Chedi v. Attorney-General of the Federation**[137] the Court of Appeal granted bail to the Appellants, Yahaya Faruk Chedi and Abubakar Rabo Abdulkareem after they were denied same by the Federal High Court where they were charged with the offence of **being members of an unlawful society called Hisba board Organization**, and by managing and assisting in managing the unlawful society. Justice Ibrahim Tanko Muhammad who read the leading judgment of the court observed on the duty of the court to take judicial notice of laws and legislations as follows:

> By virtue of section 74 of the Evidence Act, once a law is cited by a party in a dispute (without the necessity of pleading the law itself or tendering it in evidence), a court of law is bound to take judicial notice of that law as forming part of laws, enactments or subsidiary legislations having the force of law in Nigeria. In the instant case, the

[137] (2006)13NWLR(PT997)308 CA

> fact that there was a law in existence under pretext of which the appellants were operating should alone have worked on the mind of the trial court, to consider it as exceptional circumstance which warrants the grant of hail to the appellants. [138]

To the mind of the writer, the constitutionality of the Hisba in Nigeria is a matter of legal realism and that the proscription or ban and subsequent arraignment of members of the Hisba is no more than a political battle. If not, what would prevent the Federal Government from going to court over the issue?

The concluding remark is that the Hisba is involved in activities that transcend policing or security matters, it is involved in encouraging whatever is good and propagating it and also in discouraging and eradicating whatever is evil. The Hisba works on the hearts and minds of people and are involved in preaching, counseling, encouragement, assistance, cooperation, etc. these issues are outside the purview of the Nigeria Police or any other government agency. Therefore it will be wrong to say that the Hisba duplicates the police or encroach upon the jurisdiction of the police. The Hisba operates within constitutional limits and is lawful.

4.5 Policies of Sharia States regarding the Hisba

All the states that restored the Shariah made policies and plans regarding the process of the restoration of Shariah and the proper implementation of the Shariah. All of the states incorporated the establishment of Hisba into their plans and programmes. While some

[138] Ibid p. 327, paras. C-F

states implemented recommendations regarding setting up of the Hisba, others did not. Some of the policies are examined below:

4.5.1 Kebbi:[139]

The State government was advised to legalize the function of **Aid Groups** by enacting a law to be passed by the State House of Assembly recognizing their operation and its limit. It has been provided that all **Aid Groups** should come together to set up a management team to be recognized by Government through which all contacts with the various Aid Groups would be made and that some selected members of these groups should be given appropriate training.

4.5.2 Borno:

The proposed time-table for the implementation of Sharia Law in Borno state provided that Hisbah would be established at stage 3; June-August, 2001: "Formation of *hisbah*s to assist in monitoring the violation of the Sharia and reporting to the concerned government agencies" with the deadline as 30th June, 2001. It set the body responsible for it as the Sharia Implementation Committee. This, among other proposed activities, were planned to take effect before the taking off of the full implementation of Sharia Penal Code on 1st Ramadan of 2001.[140]

[139] P.212 of the Report of the Committee for the Implementation of Sharia In Kebbi State 2001, in Ostien supra, Vol.2, Chapter 2, part 4, Recommendation No. 7.0 (a) of the Report at p. 219, Recommendations 2.3.8 and 2.3.9 on p.185 of the White paper on the Report of the Committee on the Implementation of Sharia in Kebbi State June, 2000, Recommendation 23.37 at p.187 and Recommendation 23.66 at p.190

[140] Ostien, supra. Interim Report of the Sharia Implementation Committee (Borno State), March 2001. In Vol. 2 chapter 2, p. 11

4.5.3 Bauchi:

The Bauchi State Sharia Implementation Committee in its Recommendations to the State Government on the enforcement of Sharia noted the constitutional duty of the Commissioner of police to enforce laws by virtue of S.215 (4) of the Constitution means that he will enforce the provisions of the Sharia Penal Code. It said that adequate use should be made of the *hisbah* organization to facilitate flow of information so as to enable effective enforcement.[141]

4.5.4 Katsina:

Among the functions of the Katsina State Sharia Commission is that it shall be responsible for advising the government on the implementation of certain Islamic injunctions such as (as per the wordings of the law) the Zakat, Islamic markets, measures and sighting of moon for purposes of Fasting.[142]

4.5.5 Kano:

Prior to the launching of the Sharia, a sub-committee of the Sharia Implementation Advisory Committee reported that it considered a 10 page blueprint of the Hisba approved by the Kano State Government which was to take effect from 28th November, 2003.[143]

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[141] Report of the Task Force on Sharia Implementation: Bauchi State of Nigeria.14th August, 2001. Vol.1 Main Report. Recommendation 11.0 at p.21 (available in Ostien supra vol.2 chapter 2)
[142] S. 8 (f) of the Katsina State Sharia Commission Law, 2000
[143] Sharia Implementation Advisory Committee, Kano State. Summary Report of the Sub-Committee for the review of past activities. No date. p.2

4.6 Voluntary Hisba Organizations

Voluntary Hisba organization means any group of Muslims in Sharia state that does the work of the Hisba without being a government agency. Below are some of the characteristics of a voluntary Hisba organization:

i. Group of individual Muslims particularly scholars or belonging to a particular sect (*tariqa* or *izala*);
ii. These groups usually include notable members;
iii. Does not include children or people below the age of puberty. Hence the reports in some dailies[144] including the *almajirai* in the Hisba or saying that the *almajirai* are the Hisba are wrong;
iv. Usually engage in preaching, public lectures and controlling crowds in social gatherings;
v. No government support or patronage;
vi. May or may not augur well with the police.[145]

The fact that the government recognizes and/or works with a voluntary Hisba does not make it official. Government acts that will convert a voluntary Hisba into a government apparatus include:

i- Enactment of a law to establish and regulate the affairs of the Hisba;
ii- Creation of a board or commission or even a sub-committee for the Hisba by virtue of a law;

[144] www.thisdayonline.com last visited 23/05/2005 time 06:48.32
[145] These are observed by the writer from his knowledge and experience of the Hisba. A separate research has to be undergone to characterize and evaluate voluntary Hisba in Nigeria as this write-up will dwell more on Hisba Boards/Commissions.

iii- The personnel of such bodies must be government staff. Either seconded from other ministries or appointed directly into the bodies.

iv- Government direct funding of the bodies: staff salaries, allowances and other benefits; activities of the bodies; facilities of the bodies.

v- Government control and oversight of the bodies.

vi- Usually maintains a Para-military outfit for enforcement, trained by the police and other security agencies and work side by side with them.

Voluntary Hisba exist in Katsina, Kaduna and Sokoto States and it also once existed in Kano State. An overview of the voluntary Hisba in these states will be made below:

4.6.1 Katsina:

A Hisba organization was established by *Sheikh Yakubu Musa*, their activities were not approved by the government and the government later proscribed them. Katsina State decided not to establish any Hisba institution[146]. The reasons for this decision may not be unconnected with sectarian differences among Muslims in the State. However, the Hisba outfit still exists in the state.

4.6.2 Kano:

During the time of Governor *Kwankwaso* (1999-2003), after the declaration of sharia, a voluntary Hisba outfit was established by *Sheikh Aminuddeen Abubakar*, which was later informally approved by the government and the Deputy Governor particularly

[146] Interview with a parliamentary staff at the Katsina State House of Assembly, on 16 July 2006

participated actively in the activities of this Hisba organization. Some reports have it that he participated in joint patrols with the Hisba and the Deputy Commissioner of police.[147]

This organization succeeded in chasing out prostitutes from the State which later brought about a positive impact on the HIV/AIDS indices in the state which drastically declined and also affected the other Sharia states in the sense that the prostitutes from these states anticipated what happened in Kano and they went into an exodus to non-sharia states and to Niger Republic,[148]

4.6.3 Sokoto:

The Sokoto State independent Hisbah Committee (***Rundunar Adalci***) which is situated at No.16 Tafarki Road, Mabera, Sokoto, started as a committee of six people on 25/03/2003 voluntarily on public awareness. It has no government patronage. It has good relationship with the police and the other Islamic organizations. It is structured well and it has current membership of 400 persons.[149]

4.6.4 Kaduna:

A voluntary Hisba organization exists in Kaduna state under the chairmanship of *Ishaq Yunus*. This organization is not supported by the Government. The organization works

[147] www.thisdayonline.com last visited 23/05/2005 time 06:48.32
[148] Daily Independent News of 5th May, 2001 "Niger's Border Prostitutes and the Profits of Islam" http://www.independent.co.uk/news/world/africa/nigers-border-prostitutes-and-the-profits-of-islam-683723.html last visited 20th March, 2011
[149] Information provided by the Sokoto State Independent Hisba Committee in January, 2009. The following materials were also provided by them: Sokoto State Independent Hisba Constitution 2003 (in Hausa), Application Form for joining the Hisba (Hausa), Untitled document that talks of Offices and their functions within the Sokoto Hisba, and Rules and Regulations of the Sokoto Hisba (Hausa). I am grateful to Mal. Sa'd Abubakar for taking the pains to obtain the information for me from Sokoto.

under the Supreme Council for Sharia in Nigeria, Kaduna State chapter, which itself is a Non Governmental Organization.[150] The Hisba organization was established in 2001, when Sharia was launched in the state.

The activities of this organization include preaching, public enlightenment regarding good and evil in Islam (*al-Amr bil ma'ruf wan-Nahy anil munkar*), safeguarding people's property and crowd control during Islamic events.

The organization has presence in Kaduna North, Kaduna South, Igabi and Soba Local Governments of the state. Kachia branch is being set-up. The present membership to the organization is around 1, 000 members. Attempts were made by the organization to have it established as a Commission by virtue of a Law of the state but failed. The administration under Architect Namadi Sambo established a new committee on *Zakkah* and *Waqafi*. The committee involves the Hisba and Islamic schools. The Hisba organization however rejected this set-up as it wants an independent commission on Hisba.[151]

4.7 Agencies and Laws on the Hisba

The states that took steps to regularize the activities of the Hisba employed different modes in the processes of regularization. Below are the various ways employed:

4.7.1 Independent Board or Commission established by law

[150] Information by Ishaq Yunus via phone call on 28th February, 2009
[151] ibid

Zamfara, Kano and Jigawa States established independent Hisba bodies by laws of the houses of Assembly of the states.

Zamfara Hisba Commission: this commission is established by virtue of the Zamfara State Hisba Commission (Establishment) Law No.17 of 2003 which came into force on 20th July 2003.

Kano Hisba Board: established by virtue of Kano State Hisba Board Law No.4 of 2003 which came into force on 7th November, 2003. (During the Shekarau administration). This law had been amended three times; the amendments are mainly merging offices, resizing the composition of the Hisba Board as well as adding or abolishing offices. The amendments do not touch the functions of the Board or the responsibilities of the Hisba Corps.

Jigawa Hisba Coordination Committee: established by virtue of the Jigawa State Hisba Advisory Committee (Establishment) Law No.2 of 2004 which came into operation on the 20th of April, 2004.

4.7.2 Sub-Committees under the Sharia Commission

In the following states, the Hisba operates as a committee or sub-committee under the respective Sharia Commissions, i.e. they are not independent:

Bauchi: Hisba exists as an enforcement department under the Bauchi State Sharia Commission. The Sharia Commission Law provides that "the function of the commission shall include recruitment and control of members of Hisbah"[152] as a result, the Hisba was established and Rules and Regulations on it were made.

Yobe: Hisba and Aid Group exist under the Sharia Implementation, Monitoring and Coordinating Committee alongside six other sub-committees.[153]

It is important to note that Fika Local Government of Yobe state made a bye-law affecting the Hisba. The bye-law defined the Hisba and gave it powers to arrest, accorded its staff/members protection in the course of duty and the staff or members can act upon an authorization by an Alkali of Area Court. The law specifically defined Hisba as "a highly responsible Muslim who is registered, recognized for good character and appointed by the Committee on Sharia Implementation in Fika Local Government Area for the purpose of monitoring Sharia implementation"[154]

Niger: the Hisba outfit in Niger State operates under the Niger State Sharia Commission as a sub-committee. To the knowledge of the writer, it is still under the Sharia Commission and has no independence.[155]

[152] S. 8 (g) of the Bauchi State Sharia Commission Law 2001. See the Place of Community Policing under the Sharia and the advent of Hisba, by Ahmed S. Garba. Available at http://www.gamji.com/article6000/NEWS6178.htm last visited 3rd April, 2011
[153] Bello, K. *The Economic Dimensions of Sharia in the North-East Geo-Political Zone*. (unpublished) paper presented at the (paper presentation No.3)Fifth in-house forum on the Economic Dimensions of Sharia in Northern Nigeria, at Nassarawa Guest Palace Hotel, Kano, 29th May, 2004. P.30
[154] S.2 of Fika Local Prohibition of certain un-Islamic Practices Bye-Law 2002
[155] The writer visited the Hisba office at the Sharia Commission headquarters in Minna, September, 2006

Jigawa: at one time, the Jigawa Hisba operated under the Sharia Commission. Currently however, it has independence by virtue of a law enacted to establish it.

4.8 Administrative arrangements of the Hisba Bodies:

This section will be limited to Zamfara, Kano and Jigawa States, because these states have legislations on the Hisba. The purpose of this section is to consider the corporate nature of these agencies as well as government control and supervision of the agencies.

4.8.1 Definition and status of the agencies:

Zamfara: Hisba has been defined by the Zamfara law as "an Islamic volunteer group whose routine duties includes **implementation of sharia**, the eradication of social vices, crimes and anti-religious vices"[156].

Definition and status of the commission: the commission has been defined by the law as "Hisbah Commission, or where the context so admits means coordinators and monitors of the commission branches offices in the local government areas and ward areas"[157]

Section 4(2) says that the commission shall be a body corporate with perpetual succession and a common seal with right to sue and be sued in its name.

[156] S.3 (Interpretation section)
[157] ibid

Kano: the interpretation section defines Hisbah to mean "the Board and Hisbah Corps established by section 3 and 7 of this law respectively". Therefore, the board together with the corps makes the Hisbah.

Status of the Board: section 3 which establishes the Board made it a body corporate with perpetual succession and a common seal, with power to sue and be sued in its corporate name; and also hold, acquire and dispose of property, movable and immovable.

Jigawa: the Hisba Advisory Committee is established for the state while for each Local Government is established a Hisba Committee and Hisba Guards. There is no section in the Law that defines the Committee or the Guards or state that they are corporate bodies with perpetual succession and common seal. There is however a section which state that in any suit by or against the committee, the committee shall be represented by the Attorney General or his representative in court.[158]

Observations and Analysis:

i. It will be observed that proper definition of Hisbah has not been made by all the laws of the three states. The Zamfara Law attempted a definition but instead of making a positive definition, ended in sympathetically describing "volunteer Hisbah".
ii. The enforcement apparatus of the three Hisba outfits were not adequately defined. The Kano Law establishes the Hisbah Corps without defining them, but it did provide for an elaborate function to be discharged by them. The Jigawa law

[158] S. 15 of the Jigawa Law

calls them Hisbah Guards. The word "Guards" signify informal structures in Nigeria that evolved as a result of the failure or inefficiency of the formal Police. The Vigilante and other self-help groups are called Guards; for a government agency to be called "Guards" is actually ill-conceived, apologetic and an abuse of lexicon. The Zamfara Law on the other hand did not specifically mention or even allude to a semi-regimented outfit of the Hisbah for the purposes of enforcement; it mentions "Coordinators" and "Monitors" who shall be under the Local Government and Ward Hisbah Committees. They shall have powers of arrest under sections 27-30 of the State Sharia Criminal Procedure Code.[159]

iii. The corporate nature of the Hisbah outfits: all the three outfits are corporate entities as they are creatures of legislations. Among the consequences of this fact is that vicarious liability exist regarding these corporations in cases involving its staff where acts are done or purportedly done in the performance of official duties. The Zamfara law specifically absolves staff of the Hisbah from personal liability.[160] The Jigawa law on the other hand absolves its staff from both civil and criminal liability.[161]

iv. The current dispensation in Nigeria differ from the Institution of the Hisba in the classical times as the Institution then was not a regimented one and is represented by one person, the "Muhtasib" who has various assistants in all sectors of life. The Zamfara position was close to it, only that the "Monitors" and "Coordinators" are not defined and their powers not stated.

[159] S. 9 of the Zamfara State Hisba Commission Law
[160] Ibid, S. 18
[161] S. 16 of the Jigawa Law

v. The legislations realize that actions of staff of the outfits may call for judicial review; hence no rubber stamp of the activities of the staff is contemplated. Being a government agency, liability of its staff is borne by the state.

vi. Only the Zamfara law connects the definition to Hisba to Sharia implementation.

4.8.2 Government oversight:

Zamfara: in Zamfara, the chairman, six permanent commissioners, 10 part-time members of the commission as well as the secretary are all appointed by the Governor of the State.[162] The Local Government and Ward Hisba Committees are under the oversight of the Commission.

Kano: the chairman of the Board together with the 17[163] other members of the Board are appointed by the Governor of the state,[164] so also the secretary to the Board[165]. The Hisba Corps Commander (Commander General) is also appointed by the Governor.[166]

The Governor of the state approves the following:

i. Departments that the Board shall establish,[167]

ii. The investment of monies accruing to the Board[168],

iii. The Standing Orders to be made by the Board on the procedures for carrying out its activities under the law,[169]

[162] SS.5(1) and 10 of the Zamfara State Hisba Commission Law.
[163] With the maximum of 27 members: section 2 of the Kano State Hisba Board (Amendment) (no.3) Law 2007
[164] S. 4 of the Kano Law
[165] Ibid S. 11 (1)
[166] Ibid S. 7 (2)
[167] Ibid S. 6
[168] Ibid S. 12 (2)

iv. Rules for the operation of the Hisba Corps to be made by the Board in consultation with other security agencies[170]

The Governor may also make regulations for better carrying out of the provisions of the law. [171] The Board shall also submit to the Governor an annual report of its activities which shall include a report on its audited account of the preceding year.[172] The Board shall be audited annually by an auditor appointed by the **Auditor General** from a list of three auditors recommended by the Board.[173]

Jigawa: Section 3 which establishes the Committee and provided for its composition is silent on who appoints the members of the Committee. A paragraph in the section however provides that there are such other members that the Governor may from time to time appoint. It also states that the governor shall appoint the Secretary.

The other areas of government interface with the Hisba include:

i. The law also provides that no person shall be appointed as a member of the State Committee or the Local Government unless who, *inter-alia*, in the opinion of the Governor, will make meaningful contribution to the development and proper implementation of the Sharia legal system in the state.
ii. The Governor in his discretion may determine the terms and conditions upon which members of the committee shall be paid monthly allowances.

[169] Ibid S. 13 (1)
[170] Ibid S. 13 (2)
[171] Ibid S. 14
[172] S. 15
[173] S. 16

iii. Among the functions of the State committee is that it shall perform such other functions as the Commissioner[174] may from time to time assign to them.

iv. The Attorney General of the State approves the number of Hisba Guards to be determined by the State Committee or the Local Government Hisba Committee.[175]

v. A member of the Committee may resign by writing addressed to the Attorney General or absents from three meetings of the committee without the leave of the Attorney General.

vi. The Attorney-General and the Solicitor-General shall be the Chief Coordinator and the Deputy Chief Coordinator respectively of the Committee. A careful reading of the Law however does not reveal any definition or function of "coordinator" and no mention of it was made elsewhere. Perhaps the draftsmen intended "chairman" of the committee and not the "coordinator"

Observations and Analysis:

i. The Hisbah agencies are all created by the government and there is a government involvement throughout. This is easier for the smooth running of the Hisba programs as well as coordination of the entire Sharia implementation programs in the states.

ii. Enforcement of rights and duties requires government ownership, support and coordination. The three Hisbah outfits are all government Hisbah agencies and not voluntary organizations, the definition of the Zamfara law of "Hisbah"

[174] No definition given for that in the law, it however seems that he is the commissioner in charge of religious affairs as can be inferred from section 9 of the Law
[175] S. 6 (2) of the Jigawa Law

notwithstanding. It should however be noted that the agencies cannot be called "***Muhtasib Muwazzaf***" as defined in the previous chapter; its staff however (Hisbah corps, Monitors, Coordinators and Guards) qualify each to be "***Muhtasib Muwazzaf***".

4.8.3 Funding:

There is no provision in the Zamfara law on funding of the Commission.

Kano: The Kano Law provides that source of funds for the Hisba shall be grants from the State and local Governments, donations from individuals and organizations as well as subscription fees and sale of publications and other activities of the Board.

The law also provides that the Board shall with the consent of the governor invest any money that accrues to it in any manner acceptable to Islamic injunctions. The Board shall be audited annually and the report on audit shall form part the Board's Annual Report.

Jigawa: At the state (Commission) level, the members of the Committee shall be paid monthly allowances on such terms and conditions as the Governor may, in his discretion, determine. The committee shall be paid such allowances as are reasonably necessary for the up-keep of its secretariat and for the meeting of its incidental expenses as the Governor may in his discretion determine.

It seems that each Local Government Council pays personal allowances of Hisba Guards and secretariat set-up allowance of its Hisba Committee. The State Committee recommends to Local Government Councils what is needed for these.

Observations and Analysis:

i. This is part of government ownership and control of the agencies. It is only important in the sense that funds accruing to the agencies will be a benchmark by which the agencies' performance will be gauged. It also increases government control of the institution, as the adage goes, "he who pays the piper dictates the tune"; if individuals will be allowed to finance the institution or contribute financially towards it, its objectives, activities and priorities will be controlled by such individuals.

ii. The 2007 Appropriation Law of Kano State made the allocation of the sum of N290, 393, 054.00 as total expenditure for the Hisba Board.[176] One wonders how the state and local governments pay the allowances of the Hisba corps who are up to 9, 000, as will be seen below. Supposing each corp is paid the allowance in the sum of N5, 000.00, it will make N45, 000, 000.00 (forty five million Naira) monthly. The total sum for the whole year will be N540, 000, 000.00 which almost doubles the annual allocation to the Board.

4.8.4 Staff:

Zamfara: the commission has a chairman, six permanent commissioners, 10 part-term members and a secretary who is not a member of the commission but its staff. There are

[176]Schedule to the Kano State Appropriation Law, 2007

also coordinators and monitors of the branch offices. The composition of members of the commission, Local government and ward committees shall reflect the Islamic groups in the state, local governments and wards (all sects must be represented).

Remuneration of members: the chairman and members of the commission shall be paid such remuneration, whether by way of salary or allowance as the governor may determine; so also the Local Government committee and the ward committee.

Kano: apart from the members of the Board, the Board has a Director General.[177] The Commander General has two deputies, one in charge of special duties and the other in charge of operations.[178] There is also another Deputy Commander who shall be a female for the women corps. At the Zonal, Local Government and Village Hisbah Committees, members from diverse disciplines make the committees.

Jigawa: the state committee comprises a chairman and more than 18 members of the Committee. The law in section 6 establishes Guards for each Local Government Hisba Committee. The State Committee may determine the number of the guards to be appointed into the local government Hisba Committees on the approval of the Attorney General of the State.

Observations and Analysis:

i. The organization of the Kano Hisba is better regarding staff of the agencies, despite the fact that it has the worst industrial relations, as no issue of

[177] S. 4(2) of the Kano State Hisba Board (Amendment) (No. 2) Law 2007 (Law No. 6 of 2007)
[178] Ibid, S. 4(3)

remuneration was mentioned in the law and no section protects its members from liability while performing their duties.

ii. There are also the Hisba corps in Kano whose number exceed 9, 000 in the state.[179] Rough distribution across the Local Governments of the state will make 150 corps per local government plus the headquarters. The 9, 000 Hisba Corps were inaugurated on 03/07/2005

4.9 Organizational Structures of the Hisba bodies:

This section explains the way the Hisba outfits in the three states are organized. The objective is to understand the hierarchical structure of the outfits as well as highlighting government presence or involvement throughout the hierarchy of the outfits. The section will also include the compositions of the outfits in the three states. This section will also enquire into the entry points for the Hisba regarding Shariah implementation.

4.9.1 Zamfara:

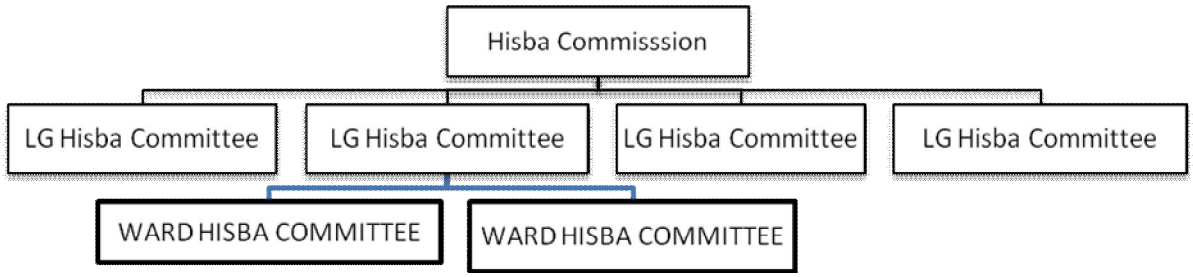
At the state level there is the commission established by the law[180], below it are the various Local Government committees established by the Governor on the advice of the

[179] Kano State Hisba Board: Activities of the Board from 7th November 2003-30th April 2007 (Report submitted to the Kano State Government) (unpublished) pp.2-3; see also *Muryar-Hisba*(The Hisba News Bulletin) Vol. 1 No.1, July, 2005

[180] S. 4 of the Zamfara Law

Commission[181] and below them, are the various ward committees to be established by the Commission on the advice of the various local government Committees[182]. The chart below explains so:

Figure 1: Organization of Zamfara Hisba



Composition of the Hisba Commission:

The Commission comprises the following persons[183]:

i. A Chairman;

ii. Six (6) Permanent Commissioners, including a legal practitioner;

iii. 10 part-time members

All those appointed as members to the commission shall be persons of proven integrity.

The law does not specify any quality that may be required for the members of the Local Government Hisba Committees. The Commission shall nominate the persons to be appointed into the Local Government Committees. The only important feature is that the composition of the State Commission, the Local Government Committees and the Ward

[181] Ibid, S. 12
[182] Ibid, S. 13
[183] S. 5 of the Zamfara Law

Committees shall reflect the various Islamic sects identified in the state, Local Governments as well as the various wards involved.

4.9.2 Kano:

The Hisba includes the Board and the Corps. The Board shall be responsible for general policy making as well as coordination of activities between state, zone and Local Government Hisba Committees, as well as responsible for disciplinary matters.[184]

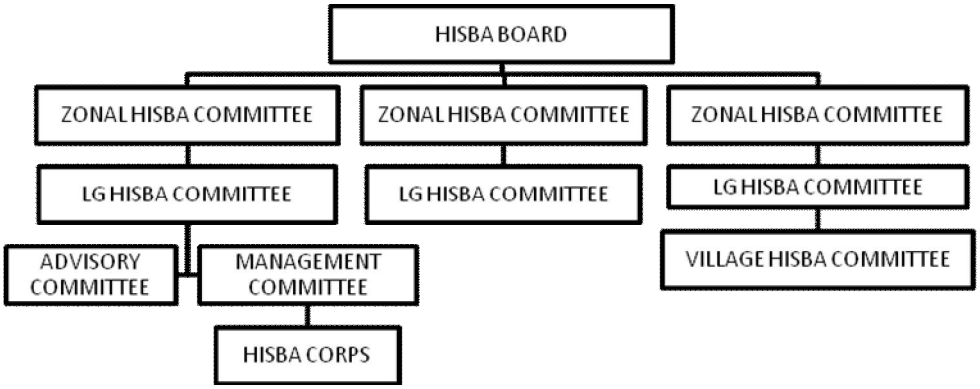
The law established four levels of the Hisba coordinating body, namely:

i. Hisbah Board, at the state level,[185]
ii. Hisbah Committee in each Senatorial zone,[186]
iii. Hisbah Committee in each Local Government Council,[187] which has two organs:
    i. Advisory Committee, and
    ii. Management Committee
iv. Hisbah Committee in each village.[188]

The chart below describes the structure of the Kano Hisba:

[184] S. 6 of the Kano Law
[185] Ibid S. 3
[186] Ibid S.8
[187] Ibid S.9
[188] Ibid S.10

Figure 2: Organization of Kano Hisba



Composition of the Hisbah Board: the composition to the Board was provided in the 2003 and amended twice. Therefore, at different times, three orders existed. All the three will be provided below:

a) The Board under the 2003 Law[189]:

   i. A full – time Chairman who shall be a devout Muslim of unquestionable moral character, versed in Islamic Jurisprudence who shall also be a qualified administrator;

   ii. A representative of the Emirate Council;

   iii. A representative of the Zakkah and Hubusi Commission.

   iv. A representative of the Shari'ah Commission

   v. A representative of the State Vigilante Group and Civil Defence Corps;

   vi. A representative of Ministry of Justice;

   vii. The State Hisba Commander;

   viii. Representative of Nigeria Police Force;

[189] S. 4

ix. Representative of the State Security Service;

x. Representative of Immigration Services;

xi. A representative of the Office of the secretary to the State Government;

xii. Four other persons of proven integrity who in the opinion of the Governor are capable of making useful contributions to the functions of the Board as part-time members.

b) The composition of the Board under the Law No. 6 of 2007 (Amendment) (No. 2) made only few changes to the composition as follows[190]:

i. The Full time chairman shall be the Commander General of the Hisbah Corps;

ii. Four other persons of proven integrity who in the opinion of the Governor are capable of making useful contributions to the functions of the Board.

This makes the four permanent members of the Board, as the proviso in paragraph (xii) of section 4 of the 2003 law was dropped.

iii. A Director General shall be appointed by the Governor to the Board.

c) The composition under the Kano State Hisbah board (Amendment) (No. 3) Law2007, Law No. 10 of 2007: this law drastically changed the composition of the Board. The new composition is as follows:

i. Part time Chairman

ii. Commander General who shall be the Chief Executive;

iii. Representative of the Emirate Council:

[190] S. 4 of Law No.6 of 2007

iv. A representative of the State Vigilante Group and Civil Defence Corps;

xiii. A representative of Ministry of Justice;

xiv. Representative of the State Security Service;

xv. Representative of Immigration Services;

xvi. Representative of Nigeria Police Force, and

xvii. Not less than ten (10) but not exceeding twenty (20) persons of unquestionable moral character.

As can be seen, the representatives of both the Sharia Commission and that of Zakkah and Hubusi Commission are removed from the Board as well as the representative of the Secretary to the State government. The office of the Chairman of the Board has now been made part-time and the Commander General of the Hisbah Corps is removed as the Chairman of the Board, but made the Chief Executive. The number of persons to be appointed by the Governor in his discretion is now increased from four to ten at least and twenty at most and, it seems they are permanent members. No quality is now attached to those appointed at the governor's discretion as the condition that they, in the opinion of the governor are capable of making useful contributions to the Board is dropped from the principal law.

Composition of the Zonal Hisbah Committee:

For the purposes of coordinating the respective Local Government Hisbah Committees in each Senatorial District, a Zonal Hisbah Committee is established with the following composition:

i. Two District Heads from the Zone, each alternating after two years;

ii. Representative of the Nigeria Police in the zone;

iii. Representative of the State Security Service in the zone;

iv. Two representatives of the local Government Councils in the zone;

v. The Zonal Hisbah Corps Commander;

vi. Three persons of unquestionable integrity;

vii. Two most senior Imams in the Zone;

viii. Representative of the Vigilante Group and or Civil Defence in the Zone;

ix. Representative of Zakkah and Hubusi Commission in the Zone;

x. Representative of Sharia Commission, and

xi. Representative of Immigration Service in the Area.

Composition of the Local Government Hisbah Committee:

The Local Government Hisbah Committee has two organs, the Advisory Committee and the Management Committee.

a) The Advisory Committee comprises 15 members including the following:
    i. The District head who shall be the Chairman;
    ii. The Chief Imam;
    iii. Representative of the Local Government Council;
    iv. At least two Islamic Scholars from the Local Government;
    v. Representative of the State Security Service in the Local Government;
    vi. Representative of the Nigeria Police in the Local Government;

vii. Representative of Immigration Service in the Local Government;

viii. Four other persons of proven integrity, and

ix. Head of members of the Management Committee.

b) The Management Committee have the following members:

i. Local Government Hisbah Commander;

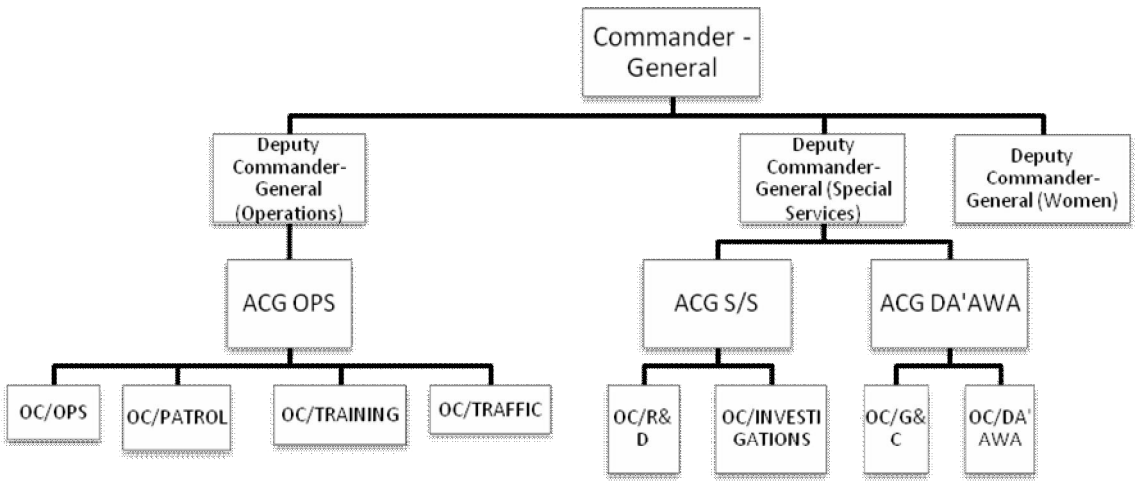
ii. Head of Security of Hisbah;

iii. Head of Da'awa of the Local Government Hisbah Committee, and

iv. Head of Administration and Finance.

Composition of the Village Hisbah Committee: the Board shall determine the persons eligible for appointment into the Village Committees.

Figure 3: The structure of the Hisba Corps:[191]



[191] This command structure is provided in *Muryar Hisbah* (Hisbah News Bulletin), vol.1 No.10, Jumadal Awwal, 1429-May, 2008, p.20 with slight modification that removed the Administrative structure of the Board. See also vol.1 No. 10 of the Hisbah News Bulletin (*Muryar Hisbah*).

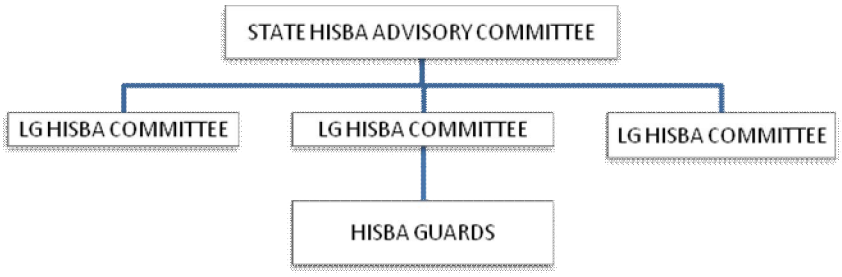
(The key to the abbreviations are provided in the preliminary pages)

As can be seen from the above chart, there are officers in charge of operations which is relevant to arrests, special services is relevant to intelligence gathering; Da'awa is relevant to enlightenment; patrol, investigations, research and documentation as well as guidance and counseling are all relevant to the activities.

4.9.3 Jigawa:

The Committee exists at the State level; below it are the various LG Committees and Hisba Guards:

Figure 4: The Structure of the Jigawa Hisba Committee:



Composition of the State Committee:

The committee comprises the following:[192]

i. A chairman;

ii. The Chief Imams of Hadejia, Gumel, Kazaure, Dutse and Ringim Emirates;

iii. One representative each from Hadejia, Gumel, Kazaure, Dutse and Ringim Emirate Councils;

iv. Attorney-general or his representative;

[192] S.3 (2) of the Jigawa Law

v. The Honourable Commissioner Ministry of Religious Affairs or his representative;

vi. Representative of the Ministry for Local Government;

vii. Representative of the Nigeria Police Force;

viii. Representative of the State Security Service;

ix. Representative of the Ministry for Women Affairs;

x. Such other members as the Governor may from time to time appoint, provided that the Attorney-General and the state Solicitor-General shall be the Chief Coordinator and the Deputy Chief Coordinator of the Committee respectively;

xi. Chairman House Committee on Religious Affairs or his representative;

xii. Chairman House Committee on Sharia or his representative;

xiii. All former Grand Khadis in the State, and

xiv. A Secretary shall be appointed by the Governor.

Local Government Hisbah Committee and Guards shall consist of a chairman, secretary, Commandant and such number of guards as the state committee may determine.

4.9.4 Observations and Analysis:

i. In all the three states, there are Hisba outfits at the state and Local Government Level. Kano has a Zonal level which, in the opinion of the writer is superfluous, as the Board can exercise oversight functions over the Local Government Hisbah Committees directly. Practically however, the Management of the Hisbah under the Commander-General meets monthly

where all the Local Government Hisbah Committees present their monthly reports. The Zonal Committee adds up to expenditure and does little.

ii. The Jigawa structure does not maintain a Hisbah outfit at the grass root level, i.e. Ward level, contrary to what is obtained in both Zamfara and Kano States.

iii. The compositions of the respective Boards are large. Zamfara Commission has 17 members; Kano Board has the minimum of 19 and the maximum of 29 while Jigawa Committee has a minimum of 19 members.

iv. The composition of the Zamfara Commission does not require qualities of the permanent commissioners or the 10 part-time members, or even that of the Chairman, it only requires one of the permanent commissioners to be a legal practitioner.

v. The Kano Board and the Jigawa Committee share some features regarding qualities of members as follows:

iii. The Emirate Councils in the States are all involved in the bodies;

iv. Chief Imams of the respective Emirate Councils and Local Governments or districts within Kano Emirate;

v. Sharia implementation outfit and House of Assembly Committee Chairman on Sharia;

vi. The office of the Attorney-General;

vii. The Nigeria Police Force, and

viii. The State Security Service.

vi. The Jigawa Law clearly provides that no person shall be appointed to the Committee unless he is capable of making meaningful contribution to the

development and proper implementation of the Sharia legal system in the state. The law also state that the conduct of the affairs of the committee shall be carried out so as to reflect the teaching of Islam and Principles governing the implementation of the Sharia Legal System.

vii. Kano has an elaborate structure in the Local Government and Village level that involves the already existing government structures and who, along with the other memberships of the Hisbah Committees make up the committees; the police, local government, state security service, the emirate council, the Emirate councils as well as the Chief Imams. This set up makes it easy for the committee to work at the grass-root level. More so, each local government has a Security Meeting monthly involving most of these offices.

viii. It will be clearly observed that members of the commerce are not represented in all the three Hisbah bodies, be it from the markets, traders union or any other as per the laws. In Kano however, at one time, a representative of the trader union was appointed by the governor into the Board around 2005.[193]

ix. No representation is provided for all government regulating agencies, particularly the following:

ix. National Food and Drug Administration and Control (NAFDAC);

x. Standards Organization of Nigeria (SON);

xi. Ministry of Health;

xii. Builders' Union;

xiii. Consumer Protection Agency;

[193] The writer attended a meeting of the Board at the Primary Education Management Board office in March 2005 which included a representative of the **Kantin-Kwari Market Traders' Union**.

xiv. National Drug Law Enforcement Agency (NDLEA);

x. Kano and Jigawa set ups are regimented in the sense that there is a Para-military outfit for enforcement.

xi. The Kano outfit has an intelligence department under the OC/INVESTIGATAIONS, which is ideal for surveillance and investigations into Shariah compliance or violation. The presence of the State Security Service into the Board ensures that the investigations done by the Hisba are within the ambits of the law and government policies.

xii. Apart from the fact that the Sharia Commission is represented at the Kano Hisba Board, **no mention of implementation of Sharia was made in the Kano Law**; it was not even alluded to. The representation of Sharia Commission and Zakkah and Hubusi Commission in the Board may be interpreted to mean that these bodies shall advise the Board on Sharia implementation programs in the state; if not, what is the importance of their presence in the Board.

Unfortunately, representations from the Sharia Commission and the Zakkah and Hubusi Commission was dropped by the Kano State Hisba Board (Amendment) (No.3) Law 2007.

Fortunately however, section 8 of the Principal Law has not been repealed, which provides for the composition of the Zonal Hisbah Committee. This Committee comprises both the Sharia Commission and the Zakkah and Hubusi Commission.

xiii. Of what wisdom is the inclusion of the Immigration service into the Kano Board is not clear to the writer. One cannot think of any possible contribution the Immigration service would render towards Sharia implementation in the state.

4.10 Powers and Functions of the Hisba

This section will be limited to three states that have legislations on the Hisba (Zamfara, Kano and Jigawa); hence the legislations will be consulted. At the end of the section, analysis will be made on whether the powers (Zamfara) and functions (Kano) have roles regarding Shariah implementation.

4.10.1 Powers of the Commission in the Zamfara Law[194]:

The commission shall have the following powers with emphasis:

i. To **monitor** the **proper implementation and application** of laws and bye-laws made by the state or local government councils;
ii. To **ensure proper compliance** with the **teachings of Sharia** throughout the state;
iii. To **monitor** the daily proceedings of Sharia **Courts** in order to ensure **proper compliance** with Sharia Penal and Procedure Codes and **report** on all actions likely to tamper with the **proper** dispensation of justice from any court official or any litigant;
iv. To **keep** a record of and **liaise** with the relevant **agencies** or representatives of all persons in prison with pending Hudud cases;

[194] S. 6 of the law

v. To **take every measure** to ensure **proper conformity** to the teachings of **Sharia** by the general public in matters of worship, dress code and social or business interactions and relationships;

vi. To **ensure conformity with sharia** in all the activities of the **state** and **local governments** in their day to day **governance** of the society;

vii. To **ensure** that all ceremonies, celebrations and anniversaries are carried out in accordance with the **teachings of sharia**;

viii. To **enlighten** the general public on **sharia legal system and its application**;

ix. To **advise** the **state** and **local government councils** as well as **public** and **private institutions** on all issues concerning the **implementation and application of sharia**;

x. To **render** any **help** or **assistance** required by **government agencies** on matters concerning **sharia implementation**, and

xi. To **carry out** any other duty or function that may be assigned to it by the **state** government from time to time;

Section 9 of the law provides that in exercising its powers under S.6 (1) and (2) above, the commission and its staff at local government councils and ward levels shall have the power to make arrests in accordance with sections 27-30 of the Sharia Criminal Procedure Code Law 2000, and thereafter hand over the arrested person(s) to the police in accordance with section 38(1) of the Sharia Criminal Procedure Code Law, 2000. All members and staff of the commission both at local government and ward level shall have the power of justice of the peace in cases of arrest.

4.10.2 Functions of the Hisbah in the Kano Law:

Section 4 of the Kano Law provides that the board shall be responsible for General Policy Making as well as coordination of activities between State, Zone and Local Government Hisbah Committees. No specific operational function has been given for the Board by the Law.

The law provides for the responsibilities of the Hisbah Corps which happen is the other component of the Hisbah. If one combines the functions of the Board with the responsibilities of the Corps, the functions of the Hisba in Kano will be clearly seen. Their responsibilities are as follows, with emphasis added:[195]

i. Rendering necessary assistance to the Police and other security Agencies especially in the areas of prevention detection and reporting of offences:
ii. Encourage Muslims to unite in their quest for justice, equality and enjoin one another to do good and to avoid evil;
iii. **Encourage** kindness to one another:
iv. **Advise** against acquiring of interest, usury, hoarding and speculations:
v. **Encourage** charitable deeds particularly the payment of Zakkah:
vi. **Advise** on moral counseling in the society which is in conformity with Islamic injunctions:
vii. **Encourage** orderliness at religions gathering e.g. in Mosques during Salat, (Prayer *Iftar*, Breaking the Fast) during Ramadan, Pilgrims during Hajj operations and in any public functions:

[195] S. 7 (4) of the Kano Law

viii. **Encourage** general cleanliness and environmental sanitation:

ix. **May handle** non firearms for self defence like batons, and other non lethal civil defence instruments:

x. **Reconciliation** of civil disputes between persons and organizations where parties are willing:

xi. **Assisting** in Traffic control:

xii. **Emergency relief operations**; and

xiii. **Assisting** in any other situation that will require the involvement of Hisbah be it preventive or detective.

4.10.3 Functions of the Hisba in the Jigawa Law:

By section 5 of the law, the following functions shall be performed by the Committee:

i. The **command** of good deeds by **exposing its virtues** to the community and **prohibition** of bad deeds or evil by **exposing its negative consequences** to the community as ordained by Allah (SWT);

ii. The **promotion** of the religion of Islam and the **Islamic Legal System** through **constant reminder** on the obligation of Moslem adult to his family, the immediate society and humanity in general;

iii. The **enlightenment** of the general public on the tenets of the **Sharia legal system** its virtues and **application**, through constant preaching, radio programmes, seminars, conferences and workshops;

iv. **Assisting** the law enforcement agents in the prevention and detection of crimes through locating and exposing criminals and places where criminal activities take place;

v. **Rendering** of **humanitarian services** in areas such as traffic control wherever there is need for it and crowd control at public functions;

vi. **Rendering** of humanitarian **assistance** at the event of disaster strike, such as fire, flood, road traffic accidents and other similar disasters by striving to save lives and properties of the victim;

vii. **Liaising** with the state council of Ulama' on ways and means to **properly implement the sharia system**;

viii. **Performing** such other functions as the Commissioner may from time to time assign to them and such functions shall not be at variance with tenets and teachings of Islam.

4.10.4 Observations and Analysis:

i. The Zamfara and Jigawa Laws made elaborate functions of the Commission and Committee respectively while the Kano Law made the functions of the Board to be general policy making as well as coordination of activities between state, zonal, local government Hisbah Committees. The elaborate functions of the Hisbah Corps were also made which resemble the functions of the Zamfara Commission and the Jigawa Committee.

ii. About 80% of the functions of the Zamfara Hisbah Commission are directly connected to Sharia implementation in the state.

iii. In the Jigawa Law, five out of eight items in the functions of the Committee are directly connected to Sharia implementation.

iv. In the Kano Law, no section directly talks of Shariah implementation. The powers of the Hisbah Corps would survive in situations where Shariah is not implemented.

v. From the respective laws, it makes it clear that Hisbah outfits are neither stand-alone agencies nor a substitute of the law enforcement agencies as well as others. The words "liaise", "render help/assistance", "assisting" denote the existence of certain agencies saddled primarily with some duties and the Hisbah assists, renders help or liaise with them as a result of the former's insufficient manpower or personnel or due to some other reasons.

vi. The functions and powers of the Hisbah are in most cases apologetic, without giving them absolute powers. The words used to describe their functions or powers include: "advise", ensure", "enlighten", "encourage", "assist" which does not carry much gravity in the sense of enforcement of laws.

vii. All the three Laws use vague words which are difficult to quantify or assess which allows for maneuver by those given the duties or powers. Examples of the vague words used include: "monitor **proper**…", "ensure proper compliance", "take every measure".

viii. Under the Zamfara Law, most of the activities of the Hisbah are directed towards the government.

ix. The Kano Law is more temporal in nature than the Zamfara and Jigawa Laws.

Chapter 5 **THE ROLE OF THE HISBAH REGARDING SHARIA IMPLEMENTATION IN KANO STATE**

This chapter gives account of the activities performed by the Hisbah regarding Shariah implementation. The State in focus is Kano State because of the following reasons;

1. It has a Board with an elaborate structure with hierarchy and responsibility;
2. It distinguishes the Board from the Corps which allow for pinpointing who does what;
3. The system is well organized, with subsidiary legislations, monthly and annual reports as well as News Bulletin;
4. Kano State Government accords prominence to the Hisba, therefore adequate funding is enjoyed from the State Government.

The chapter is divided into three main sections i.e.

1. Activities of the Hisbah by subject matter;
2. Activities of the Hisbah between 2003 and 2007 (four year report), and
3. An account of a three month activity of the Hisbah in 2008.

The **first part** identifies the various areas where the Hisbah intervenes. The sources of this information are:

1. Reports of the Hisbah: there are two types of reports; the four year report[196] and monthly reports[197] both of the Board and of the various Local Government Hisbah Committees.
2. Hisbah News Bulletin (*Muryar Hisbah*).

The **second part** gives an account of activities of the Hisbah from inception of the Board to the next four years (the Shekarau first-term). This term is very crucial to the Hisba in the state because it is the formative stage as a government agency. The four year report will be the reference for this part.

The **third part** considers a quarter of a year. This is only done because the monthly reports of the Hisbah are too bulky and in Hausa language only which makes reading and digesting them too difficult, hence reports of three months only were considered, analyzed and presented.

5.1 Activities of the Hisbah by Subject-Matter

The activities of the Hisba are divided into two:

1. The activities of the Hisba Board, and
2. The activities of the Hisbah Corps.

[196] *Activities of the Board from 7th November 2003 to 30th April 2007* (unpublished) Report submitted to the Shekarau 2007 Transition Committee at Africa House, Government House, Kano on Friday 11th May, 2007. This report occurs in eleven pages.
[197] Each of the 44 Local Government Hisbah Committees submit Monthly Reports to the Commander General of the Hisbah. The Board then harnesses the various reports and produce a two page condensed report which has only figures on the respective issues.

The activities of the Board serve as an **input**[198] to the work of the corps which amounts to **output**.[199] The purpose of this section (activities by subject matter) is not to give the frequencies of the occurrences of these activities but to populate the various types of activities undertaken by the Hisbah regarding Sharia implementation, albeit in general themes.

5.1.1 The Activities of the Board:

This section gives account of the activities of the Board in its general policy making and coordination of Hisbah activities through the other three tiers in the state (The tiers of the Hisbah are the State Board, the Zonal Committee, the Local Government Committee and the Village Committee). The Kano State Hisba Board came into being on the 7th of November, 2003 by the coming into effect the Hisba Board Law 2003. The Board took the following steps to support Sharia implementation in the State:

Establishing Departments: pursuant to section 4 of the Law, the Board established various departments which include the Legal Department, Administration and General Services, Personnel, Operations, Special Services and Da'awa[200].

Screening staff/officials of the Local Government Hisbah Committees: the staff of the various local government Hisbah Committees were screened by the Board.

[198] An input in any project management is what is provided in terms of personnel, money, facilities or any tangibles to facilitate the implementation of the project or program.
[199] An output is what is done or achieved as a result of the injection of an input. If the Board recruits corps, trains them and provide uniforms and vehicles, it is an input. If the corps go on a patrol, conducts an intelligence gathering or make an arrest, advise or reconcile disputing parties, this is an output.
[200] See Muryar Hisbah (News Bulletin) vol.1 No.10, May, 2008 p.20

Making Rules and Regulations: other Rules and Regulations were made by the Board as follows:

- Rules for the Operation of the Hisbah Corps, which were made in consultation with the other security agencies in the State (pursuant to S.13(2));
- The Board also made the Rules regarding organizational structure of the corps, the use of uniform and conduct of Hisba Corps, and
- Pursuant to section 7 (4) (x) of the Law, the Board made the Reconciliation Committees (*Zauren-Sulhu*) Rules 2004 which occurs in 15 sections and a schedule.

Establishing Reconciliation Committees: the Board established 484 Community Reconciliation Committees (*Zaurukan-Sulhu*) across the state with memberships of 7, 260 members, who were inaugurated the same day with the Hisbah Corps.[201]

Recruitment of Hisba Corps: 9, 000 Hisbah Corps were recruited from the state and the 44 Local Government Areas. The recruitment was done by the Board which involved Local Government Councils and Security agencies in the State. By August 2004, allowances were provided for the corps. The Board also provided kits for the corps as well as necessary facilities including mobility. The number of the State Hisbah Corps is 886 corps. The Ministry of Local Government started giving allowances to the Hisbah Corps from July, 2005.

[201] Only those of 8 Local Governments in Kano Metropolis were inaugurated that day. See Muryar Hisbah (Hisbah News Bulletin) vol.1 No. 1 p.10

As would be recalled, there were two Hisbah settings in the state prior to the establishment of the Board; the **Independent Hisba** as well as the **Kwankwaso Administration Hisbah** setting. The two settings were incorporated into the new order.

Training and Retraining of the Hisbah Corps: The Board in conjunction with other government agencies and security agencies carried out series of trainings prior to and after the inauguration of the 9, 000 Hisba corps. The trainings serve as capacity building to the corps.

Establishing Partnerships for effective Services: the Hisba established partnerships with various institutions and persons who are stakeholders regarding the functions of the Hisba, like the Local Government, other law enforcement agencies particularly the Police, State Security Service, the National Drug Law Enforcement Agency (NDLEA), schools as well as craftsmen and unions, the Emirate System as well as the Vigilante and others.

Regular Meetings: the Hisbah Board meets monthly where policies are made regarding the Hisba. The success of the entire Hisbah activities lies with the regular meetings held by the Board.

5.1.2 The activities of the Corps:

As would be recalled, the definition of Hisbah is the enjoining of good when it is neglected, the forbidding of wrong when it is done and reconciling disputing people.

How the Hisba prioritize its activities: the Hisbah Board Law accorded priority to the items specified in section 7 (4) (i)-(xii) as either good or evil. One paragraph mentioned that commanding good and forbidding evil forms part of the responsibilities of the Hisbah Corps, i.e. "encourage Muslims to unite in their quest for justice, equality and enjoin one another to do good and to avoid evil". Not enough items of *Ma'ruf* or that of *Munkar* has been enumerated or listed in the Law and no omnibus paragraph was provided on *Ma'ruf* and *Munkar*. Secondly, the Hisbah Board published the Rules and Regulations of the Hisbah regarding their activities (*Hisba da ayyukanta a addinin Musulunci)* which covered the various ***Ma'rufat*** and ***Munkarat*** prevalent in the state. Each member of the Hisbah corps was given a copy of these regulations during training and inauguration. It seems the activities of the Hisba are more in line with these regulations, as they reflect time, place and circumstances.

The various types of activities of the Hisbah Corps as per the Law:

a) Assisting the Police and other Law enforcement Agencies:

The Hisba corps are involved in assisting the following law enforcement agencies:

- The Police, through joint patrols, ensuring orderliness and crowd control in some situations, providing security at some places and facilities in some situations as well as arrests. The Hisba arrests and hands over offenders to the police in most cases.
- The National Drug law Enforcement Agency (NDLEA): the Hisba arrests drug offenders and hands them over to the NDLEA.

b) Supporting Quest for Justice, Enjoining Good and Avoiding Evil:

Under this heading, the Hisba is involved in series of campaigns in the forms of preaching, public lectures, seminars, conferences as well as television and radio programs directed at championing the cause of justice. The Hisba preaches and supports the doing of good things and discourages and prevents the doing of evil or bad things. Under this heading however, all the activities of the Hisbah can fit in. The Hisba combats prostitution, theft, intoxicants and other crimes and vices.

c) Instilling Kindness in the Public:

Through words and actions, Hisbah encourages kindness to the weak, poor and vulnerable in the society by constant preaching in its various forms. It is also involved in providing assistance to the needy in the society. The offices of the Hisbah are always full of those in need of assistance, both medical and otherwise.

d) Unlawful Commercial Practices:

The Hisbah discourages unlawful commercial practices like hoarding, speculation and transactions involving usury or interest and arbitrary purchase of landed properties from poor people by the rich and other corporations. The Hisbah Corps also attend markets and ensure compliance with weighs and measures regulations.

e) *Zakkah* and other Charitable acts:

The Hisbah encourages Muslims to kindness, charitable deeds and *Zakat*. It also supports the Zakkah and Hubusi Commission in discharging its duties in the state and the Hisbah was actively involved during Zakat distributions throughout the state as well as in Niger Republic during the famine the country experienced in 2006. The Hisbah Corps

contribute voluntarily from their meager monthly allowance of N6, 000.00 as charity towards assisting those in need of medical and other forms of assistance.

f) Moral Counseling:

The Hisbah is involved in preaching in the mosques and in form of public lectures, seminars, conferences, television and radio programs as well as through the Zauren-Sulhu. The medium of Zauren-Sulhu is the most effective as specific cases are considered and parties in most cases counseled morally.

g) Orderliness and Crowd Control during social, religious and commercial gatherings:

The Hisbah provides assistance in terms of crowd control and ensuring orderliness during religious and public gatherings. It also provides security to some offices and facilities. The most important however is that it facilitates orderliness during weekly markets by regulating vehicle parks, flow of traffic amongst others.

The Hisbah is also involved in helping pilgrims during Hajj both in Nigeria and in Saudi-Arabia.

h) Environmental cleanliness and sanitation:

The Hisbah is involved in environmental sanitation and cleanliness particularly the clearing of graveyards.

i) Reconciliation of Civil Disputes:

The Hisbah maintains the outfit known as *Zauren-Sulhu* where reconciliations of civil disputes are done. The reconciliations cover a wide range of issues; from matrimonial disputes, to disputes involving siblings or parents and children to commercial disputes etc.

j) Transport Sector and Traffic Control:

The Hisbah maintains a department or section on road traffic which is saddled with the responsibility of assisting the government agencies in traffic control. Throughout the state, the Hisbah posts its corps to specific roads, junctions and locations to assist in controlling traffic and assisting the old and weak in crossing the roads.

The Hisbah also enforced the Transport Law by arresting offenders of the Law when the Police decided not to enforce the law.

k) Emergency relief operations:

The Hisbah assists in response to disaster outbreaks and emergency situations like road traffic accidents.

5.2 Activities of the Hisbah between 2003 and 2007[202]

The Hisbah Board presented a four year report to the Shekarau Administration detailing its activities between 7th November, 2003 (the day the Hisbah Board Law came into operation) and 30th April, 2007, a month to the end of the *Shekarau* first term. The activities will be outlined below by subject matter; the objective is to populate the

[202] The reference for this entire section is the 4 year report.

frequencies of the various activities relevant to Sharia implementation for a complete tenure of government so that lessons will be learnt for possible replication.

The Hisbah categorized their activities into two main headings; commanding good (*amr bil-ma'ruf*) and forbidding evil (*nahy anil-munkar*).

1st Category: Commanding Good:

5.2.1 Missing people found and returned Home:

About 1, 951 cases of found persons who were missing were successfully returned by the Hisbah to their respective countries, states and local governments. In such cases, parents usually collect their children after proper identification procedure. By this, the conventional functions of Social welfare services are taken over by the Hisbah de facto. People find it comfortable bringing in missing persons to Hisbah offices rather than police or social welfare offices.

5.2.2 Helping juvenile and delinquent persons:

The Hisbah found 133 children who were ***almajiris*** but turned delinquents, pick-pockets and thieves. These children were **reformed** and returned to their parents throughout the Northern States. 15 mentally deranged persons were also returned to their families while those with severe mental problems were taken to *Dawanau* Psychiatric Hospital.

5.2.3 Medical assistance to the needy:

The Hisba financially assisted 4, 679 parents regarding their children's health during the period under review. About 391 liters of blood was also donated by the Hisbah Corps to various needy persons. All theses donations were sourced from voluntary contributions of the Hisbah corps from their meager N6, 000.00 monthly allowances.

5.2.4 Monetary assistance to the needy:

The Hisbah financially assisted 2, 878 orphans, travelers and needy families from contributions given by the Hisbah Corps.

5.2.5 Preaching and propagation:

The Hisbah conducted preaching in forms of public lectures and conferences 3, 600 times throughout the state.

5.2.6 Settlement of disputes through *Zauren-Sulhu*:

The various Reconciliation Councils (*Zaurukan-Sulhu*) heard and disposed of 23, 167 disputes on matrimonial, land, pastoral, neighborhood, commercial as well as religious matters.

2nd category: Forbidding Evil:

5.2.7 Control of intoxicants:

The Hisbah combated intoxicants in the state as follows:

- 31 trucks loaded with alcohol were arrested. The contents were totaling in thousands of cartons of beer, jeri-cans of palm-wine and *Agogoro* (a locally brewed liquor). They were handed over to the police for appropriate prosecution.
- Identification of 452 beer parlors in the state;
- 8 beer parlor were converted into schools and classrooms at Kumbotso, Makoda, Dala and Dawakin-Kudu Local Governments;
- Permanent closure of 13 beer parlors from the 452 already identified in the state;
- Arrest of 574 offender of the Liquor law (consuming intoxicating liquor) and handing over to the police. They were prosecuted and convicted accordingly.
- The intoxicants were then destroyed by order of court.

5.2.8 Fight against prostitution and other immoral acts:

The Hisbah executed several projects with the aim to eradicate prostitution and other immoral activities from Kano state. The successes are below:

- 1, 324 lectures (enlightenment, reminder, rehabilitation) and psychological counseling targeting prostitutes on the dangers associated with prostitution and the promises and potentials of a morally clean life;
- 236 landlords housing prostitutes were also counseled;
- Closure of 186 brothels across the state from the 405 identified;
- Eradication of prostitution in some Local Governments in the state;
- Eradication of the practice of allowing girls to be hawking in markets to dusk during market days;

- Apprehending and handing over to the police of 26 persons (suspects) of rape for appropriate prosecution.

5.2.9 Enforcing the State Transport Law:

By the inertia of the police or blatant refusal to enforce the Kano State Transport Law, the Hisbah enforced the law as follows:

- The Hisba held 4, 675 Public lectures to stakeholders in the transport business, i.e. commercial motorcyclists (‘*Yan-Achaba*), taxi as well as bus drivers on the purport of the law and the danger of overloading, carrying of female passengers as payees especially in the eight Metropolitan Local Governments;
- Several other discussions held with the stakeholder at motor-parks on the law;
- The Hisbah apprehended 6, 374 commercial motorcyclists for contravening the law. The Ministry of justice, not the police prosecuted these cases.

5.2.10 Combating theft and other crimes and vices:

The various offences in which the Hisbah intervened are as below:

- Arrest of 40 persons who belong to a gang of thieves and handed over to the police for investigation and prosecution;
- The Hisbah closed 122 lottery and raffle houses in the state;
- 1, 908 weapons were confiscated by the Hisbah from youth during *Sallah* celebrations;
- Prevention of 2, 852 incidents of *Bori* and types of gatherings prohibited by Islam, and

- 27 surprise patrols that prevented the commission of offences.

5.2.11 Provision of security at public gatherings and other places:

The Hisbah sends its corps to provide security in the following areas:

- At government offices, schools and other public places;
- Services at traffic joints in order to reduce congestions;
- Assisting old people and children to cross roads;
- Providing security and social welfare services in government hospitals, social welfare homes and rehabilitation centers in the state;
- Providing security and services at markets during weekly market days;
- Providing security at the weekly *Juma'at* prayers throughout the state;
- Providing security during the two *Eids* throughout the state;
- Providing security during Islamic gatherings;

5.3 Activities of the Hisbah for three months in 2008

The **objective** of this section is to see **progress** or otherwise in the activities of the Hisbah. A quarter of a year will be reviewed to see whether the Hisbah is succeeding in its activities or not and whether its establishment can be justified based on the activities they are carrying on. Charts will be used in this section to gauge the activities.

The formats of the monthly reports of the Hisbah Board and the various Local Government Hisbah Committees will be followed as nearly as possible. The formats of the reports are as below:

1. Returning lost but found people and children;
2. Patrols aimed at preventing crimes and where they come across crime being committed, they apprehend the offenders;
3. Medical assistance which comes as financial aid to sick people;
4. Financial assistance to the needy;
5. Preaching, public lectures, seminars and the like aimed at enlightenment or reminder regarding duties and rights, particularly right and wrong;
6. Reconciliation of civil disputes covering matrimonial, domestic (involving parents and children or siblings) and commercial (land, sales, debt);
7. Control of intoxicants;
8. Prevention and control of crimes;
9. Theft and other crimes and vices;
10. Immoral activities including unlawful games;
11. Services at markets (be it provision of security, inspection of commodities), and
12. Provision of Security.

The summary of the reports are provided in a tabular form which gives only numbers of the frequencies of the above issues. This write up will use the tables with slight modifications as some columns will be removed, as some of the photocopies are not clear.

Table 2: Activities of Kano Hisba for May 2008

S/N	LG	Lost/ Found	Patrol	Medical Assistance	Financial Assistance	Public Lectures	Reconciliation	Intoxicants	Crimes	Theft	Mosque Services	Market Service	Traffic	Security
1.	AJINGI	3	-	-	N16,600	-	10	2 bottles	-	-	-	-	-	-
2.	ALBASU	5	-	-	N9,800	6	21	4	-	-	4	-	-	6
3.	BAGWAI	-	3	-	N15,000	-	11	-	12	-	-	-	-	-
4.	BEBEJI	3	5	N500	N4,000	7	12	-	2	-	84	16	-	-
5.	BICHI	4	-	N8,000	N8,000	3	3	-	-	-	-	-	-	-
6.	BUNKURE	8	9	N7,000	N3,500	9	8	-	-	-	88	4	-	-
7.	DALA	9	-	N3,000	N34,000	22	41	-	-	1	64	-	120	-
8.	DAMBATTA	-	-	-	N2,500	-	16	1	2	-	148	4	30	-
9.	D/KUDU	8	16	-	N9,900	1	6	-	5	-	80	12	-	62
10.	D/TOFA	5	-	-	N18,700	5	5	-	1	1	41	6	-	6
11.	DOGUWA	-	-	N12,500	18,700	5	30	-	-	1	132	80	-	-
12.	FAGGE	23	-	-	N5,000	-	23	192 bottles	18	5	-	-	-	29
13.	GABASAWA	-	-	N24,000	N3,000	-	15	-	-	-	16	12	-	2
14.	G/MALLAM	2	2	N3,000	N8,200	-	10	-	1	-	-	-	-	-
15.	GARKO	10	8	-	N45,500	30	19	8	-	-	40	40	-	-
16.	GAYA	10	-	-	N19,850	7	14	24 cartons	6	2	80	8	1	1
17.	GEZAWA	14	12	-	N12,040	16	27	116 bottles	20	-	88	46	-	15
18.	GWALE	8	-	-	-	-	14	-	3	-	32	-	-	9
19.	GWARZO	13	-	-	N10,000	2	6	-	2	-	-	-	-	2
20.	KABO	4	-	N800	N9,290	17	19	-	1	-	60	14	-	-
21.	KMC	8	-	-	-	-	6	-	-	-	-	-	-	150
22.	KARAYE	2	-	N3,000	N6,100	5	15	-	7	2	80	12	-	7
23.	KIBIYA	2	-	N28,000	-	13	19	-	-	-	-	-	-	1
24.	KIRU	7	1	N11,350	N12,300	10	41	-	-	-	-	-	-	6
25.	KUMBOTSO	6	4	N5,340	N5,640	-	18	210 bottles	-	6	60	-	60	5
26.	KUNCHI	-	-	-	N6,500	-	9	-	-	-	24	20	-	31
27.	KURA	4	-	N4,215	N32,300	8	24	-	4	-	-	-	-	1
28.	MADOBI	6	-	N500	N16,600	2	25	-	2	1	-	-	-	-
29.	MAKODA	1	-	N6,086	N12,176	-	4	-	2	-	80	12	-	-

30.	MINJIBIR	8	-	-	-	-	9	-	-	1	104	4	-	1
31.	NASSARAWA	4	-	N1,400	N41,400	34	39	52 cartons/8 bottles/24tins/72sachets-assorted	3	5	-	-	-	-
32.	RANO	3	3	N6,980	N101,730	3	13	-	4	-	56	16	-	33
33.	R/GADO	6	-	N4,000	N6,500	19	15	-	-	-	16	18	-	9
34.	ROGO	1	-	N10,960	N9,000	34	26	-	3	-	8	-	-	-
35.	SHANONO	1	-	-	N22,000	7	10	-	-	-	88	-	-	3
36.	SUMAILA	5	-	-	N69,500	12	15	-	-	-	-	-	-	-
37.	TAKAI	5	-	N10,000	N14,950	1	12	1	4	1	-	-	-	66
38.	TARAUNI	-	-	-	N22,600	-	19	-	2	1	30	-	-	-
39.	TOFA	4	-	N21,530	N17,500	14	29	2	-	-	20	16	-	66
40.	TSANYAWA	4	-	-	N6,200	4	20	-	-	-	-	-	8	2
41.	T/WADA	5	-	-	N15,000	4	22	-	-	-	4	15	30	-
42.	UNGOGO	17	3	-	N8,450	7	18	-	1	-	36	-	60	1
43.	WARAWA	3	6	-	N7,500	8	30	-	-	1	44	4	28	3
44.	WUDIL	9	-	N4,400	N22,575	25	26	-	9	-	28	8	-	30
Total		**227**	**72**	**N176,561**	**N710,111**	**340**	**750**	**716**	**113**	**28**	**1,635**	**367**	**337**	**545**

Table 3: Activities of the Kano Hisba for June 2008

S/N	LG	Lost/ Found	Patrol	Medical Assistance	Financial Assistance	Public Lectures	Reconciliation	Intoxicants	Crimes	Theft	Mosque Services	Market Service	Traffic
1.	AJINGI	-	-	-	N41,350	13	16	Solution-3	4	-	34	-	6
2.	ALBASU	2	-	-	N29,000	18	29	-	4	-	4	-	-
3.	BAGWAI	2	2	N6,200	N11,500	5	20	-	-	-	52	32	-
4.	BEBEJI	2	3	N5,000	N3,000	5	8	12 jeri-cans/2 drums	1	3	81	16	-
5.	BICHI	2	-	-	N19,100	4	2	-	-	-	-	-	-
6.	BUNKURE	1	3	N3,600	N9,100	-	4	-	-	-	88	4	8
7.	DALA	7	2	N3,700	N28,600	27	40	-	-	-	16	-	20
8.	DAMBATTA	7	2	N4,920	N1,800	8	38	-	1	1	148	4	8
9.	D/KUDU	7	17	N2,000	N49,150	4	5	239 wraps of hemp/581 Solution/1 gallon of Sukurdai/45 bottles	10	1	80	12	-
10.	D/TOFA	7	-	N3,200	N4,900	-	6	Solution-1	4	-	24	12	-
11.	DOGUWA	5	-	N5,000	N28,000	15	74		-	-	132	28	-
12.	FAGGE	-	35	N15,000	N16,000	20	25	847 bottles	-	7	32	-	216
13.	GABASAWA	-	10	-	-	16	14	-	-	-	-	12	-
14.	G/MALLAM	1	1	N180	N5,300	4	15	-	2	-	46	6	-
15.	GARKO	2	8	-	N19,850	30	24	-	8	-	40	8	-
16.	GAYA	6	4	N4,200	N17,250	9	17	-	3	-	80	8	-
17.	GEZAWA	11	-	N2,150	N4,490	16	28	1 gallon	16	-	-	-	-
18.	GWALE	13	-	-	N18,500	-	36	-	-	-	5	32	-
19.	GWARZO	-	3	N3,000	N8,500	4	13	-	4	-	60	16	30
20.	KABO	-	-	N22,000	N55,200	13	17	-	1	-	60	12	-
21.	KMC	6	-	N11,500	-	-	8	-	-	-	16	-	150
22.	KARAYE	1	-	N3,500	N2,500	4	15	-	3	-	20	12	-
23.	KIBIYA	3	1	-	-	5	8	-	-	-	64	24	-
24.	KIRU	17	7	N600	N17,000	7	29	-	-	-	-	-	-
25.	KUMBOTSO	7	3	-	-	4	17	-	-	-	60	-	60
26.	KUNCHI	-	-	-	N32,400	3	16	-	-	-	24	14	-
27.	KURA	5	-	-	N25,980	7	32	-	2	-	44	12	120

28.	MADOBI	10	4	-	N8,350	5	16	-	5	-	44	-	120
29.	MAKODA	1	--	N15,900	N14,000	12	5	-	1	-	80	12	-
30.	MINJIBIR	8	-	-	N270	1	9	-	1	-	104	4	20
31.	NASSARAWA	4	4	N1,500	N4,500	6	4	392 cartons/805 bottles	8	12	56	-	30
32.	RANO	5	4	N3,500	N3,500	7	7	-	1	2	56	16	-
33.	R/GADO	1	14	N5,850	N6,000	20	14	-	3	-	16	18	-
34.	ROGO	1	-	N2,800	N13,000	44	42	-	5	-	8	-	-
35.	SHANONO	2	-	-	-	10	20	-	-	-	76	16	-
36.	SUMAILA	2	-	-	-	-	16	-	3	-	-	-	-
37.	TAKAI	9	28	-	N10,500	8	12	590 bottles/1 jeri-can	6	-	4	-	17
38.	TARAUNI	1	28	-	N800	-	13	-	1	-	24	-	-
39.	TOFA	14	-	N2,500	N7220	34	23	-	2	-	24	7	66
40.	TSANYAWA	5	5	N1,200	N500	18	15	-	1	-	96	8	-
41.	T/WADA	2	4	N5,400	-	16	16	-	4	-	-	-	-
42.	UNGOGO	20	-	N6,000	N5,000	18	21	Solution-48	1	-	36	-	60
43.	WARAWA	-	2	-	-	-	9	-	9	-	48	-	25
44.	WUDIL	9	-	N5,000	N10,900	94	29	-	11	-	32	18	34
Total		**211**	**194**			**534**	**708**	**3,567**	**135**	**26**	**1,848**	**363**	**890**

Table 4: Activities of the Kano Hisba for July 2008

S/N	LG	Lost/ Found	Patrol	Public Lectures	Reconciliation	Intoxicants	Crimes	Theft	Market Service	Traffic
1.	AJINGI	-	-	40	13	-	3	-	24	8
2.	ALBASU	3	2	-	14	-	4	-	-	-
3.	BAGWAI	1	3	-	20	-	-	-	20	5
4.	BEBEJI	2	2	9	8	-	-	-	16	-
5.	BICHI	2	-	6	2	-	-	-	20	-
6.	BUNKURE	3	-	-	6	-	-	--	8	8
7.	DALA	-	-	69	52	-	3	-	-	180
8.	DAMBATTA	8	-	3	17	-	2	-	4	8
9.	D/KUDU	3	8	92	26	-	4	-	12	-
10.	D/TOFA	2	-	3	5	-	1	-	12	23
11.	DOGUWA	5	-	27	34	-	-	-	24	-
12.	FAGGE	16	4	16	21	351 bottles	-	6	-	216
13.	GABASAWA	-	-	18	7	-	-	-	16	-
14.	G/MALLAM	3	5	-	25	-	-	-	-	-
15.	GARKO	3	8	8	19	-	4	-	8	-
16.	GAYA	4	9	19	20	-	4	-	8	-
17.	GEZAWA	6	110	18	10	-	25	-	23	-

18.	GWALE	-	-	4	-	-	-	-	-	180
19.	GWARZO	4	12	4	14	-	6	-	16	50
20.	KABO	-	-	3	15	-	-	-	12	-
21.	KMC	6	-	1	8	-	210	-	-	180
22.	KARAYE	4	4	6	16	-	-	-	12	21
23.	KIBIYA	3	-	12	18	--	-	-	24	-
24.	KIRU	24	-	2	49	-	2	1	-	-
25.	KUMBOTSO	3	2	-	23	6 jeri-cans/36 bottles	-	2	-	50
26.	KUNCHI	1	3	5	5	-	8	1	12	10
27.	KURA	17	4	11	28	-	4	1	12	120
28.	MADOBI	6	-	-	12	-	2	-	-	-
29.	MAKODA	1	-	8	2	-	2	-	12	-
30.	MINJIBIR	2	-	46	7	-	1	-	4	12
31.	NASSARAWA	5	3	-	15	166 bottles	4	2	-	30
32.	RANO	1	5	5	7	-	5	-	16	30
33.	R/GADO	1	-	19	3	-	-	-	12	-

34.	ROGO	-	30	18	35	-	-	-	4	-
35.	SHANONO	-	-	-	20	-	-	-	20	30
36.	SUMAILA	4	-	-	10	-	1	-	-	-
37.	TAKAI	5	-	8	8	-	2	1	-	-
38.	TARAUNI	-	-	4	16	-	-	-	-	-
39.	TOFA	6	-	70	56	-	1	4	8	65
40.	TSANYAWA	-	-	74	7	-	2	-	8	8
41.	T/WADA	5	15	-	15	4 jeri-cans	-	3	19	30
42.	UNGOGO	9	7	11	20	-	8	-	-	-
43.	WARAWA	-	5	5	8	-	6	1	-	-
44.	WUDIL	10	30	13	28	-	4	-	8	22
45.	DA'AWA UNIT	13	-	3	54	-	-	-	-	-
	Total	**198**	**271**	**555**	**798**	**553**	**318**	**23**	**394**	**314**

As will be noted here, four columns are removed from the table, i.e. columns on Medical Assistance, Financial Assistance, Mosque Services and Security provision. This is because the photocopy of the report is not clear.

5.3.1 Analysis by Subject Matter[203]

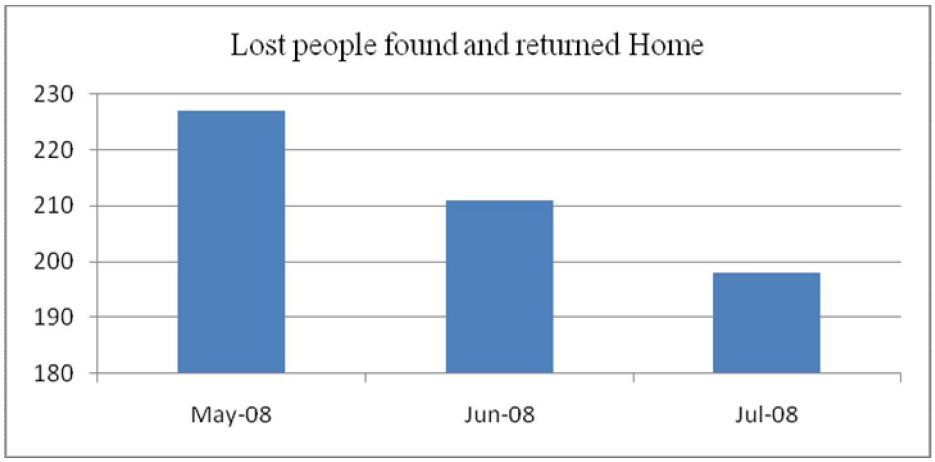
Some observations on some aspects of the three month report. Progress will be analyzed for seven items on the above for the three months and graph will be used for these.

Table 5: Summary of the activities of Kano Hisba for May, June and July 2008

S/N	Theme	No. in May 2008	No. in June 2008	No. In July 2008
1.	Lost People Found and Returned Home	227	211	198
2.	Public Lectures/Preaching	340	534	555
3.	Reconciliation of Civil Disputes	750	708	798
4.	Control of Intoxicants	716	3, 567	553
5.	Theft and other Crimes and Vices	28	26	23
6.	Services at Markets	367	363	394
7.	Traffic Control	337	890	1, 312

The themes are hereunder analyzed one after the other.

Figure 5: Lost People Found and Returned Home



This shows that the number of lost people who are found and returned to their families have declined steadily, in May, there were 227 cases, there was a reduction by 6 in June

[203] The entire information on this section is from the Reports of the Board and of the 44 Local Government Hisbah Committees for the months of May, June and July 2008 (all unpublished).

and further by 13 in July. The successes behind this may be that families become more aware of reasons why people particularly children and women leave home to places unknown. Parents and guardians may have exercised more care on their children and wards; the Hisbah, in cases involving women leaving home as a result of forced marriages always **counsel** parents of the dangers of forced marriages and in almost all the cases, the parents are made to understand the fact that the dangers of a girl leaving home is far graver than allowing her to marry whosoever she wishes.

Some of the cases involve almajiris who cannot locate their schools to go back to, or young children who cannot even speak while others are mentally and physically retarded people.

Public Lectures:

This item is the most important aspect of *Ihtisab*, as people will through it be informed of the legal positions of things and be constantly reminded of it. Through it also they will be warned or threatened of legal consequences in case of violation or non-compliance. It is important to note that in the classical times, the job of the Muhtasib includes legal information on rights and duties and constant reminders regarding rights and duties. This activity is seen by the writer as the pivot of *Ihtisab* in today's world because some aspects of physical *Ihtisab* may amount to violations of the constitution.

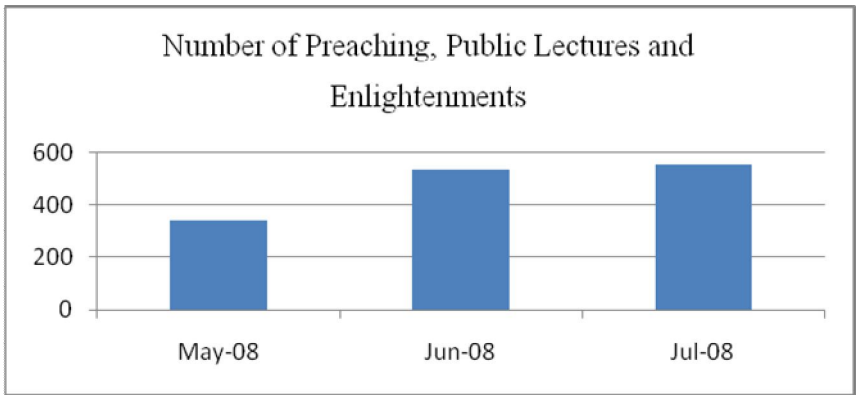
By ***Al-Ghazali*'s Degrees of Hisbah**, it occurs in degree numbers 2, 3, 4 and 6. It will not be out of place to reproduce Al-Ghazali's Degrees of Hisbah here:

Table 6: Al-Ghazali's Eight Degrees of Hisba

S/N	Degree	Explanation	Remarks
1.	First	Obtaining knowledge of the good or bad	The Muhtasib should acquaint himself with the laws and customs.
2.	Second	Informing the individual (subject of Ihtisab) of the good or wrong	If he does not appear to have known; or reminding him constantly
3.	Third	Prohibiting by use of advise, preaching and soft language	Likewise commanding
4.	Fourth	Rebuke and harsh words	Like: You are disobedient, you fool
5.	Fifth	Physical intervention, but restricted to the object and not the subject	Like smashing musical instrument, destroying intoxicants by breaking the container or pouring the contents
6.	Sixth	Threats of use of force	e.g. I will report you to the police or I will fight you to prevent you
7.	Seventh	Actual use of force to stop the commission of crime.	No weapons will be used in this stage
8.	Eighth	Obtaining the help of Law enforcement agents like the police and the army	If stopping the wrong-doers seem troublesome, or fight may ensue

The methodology employed by the Hisbah is pro-active[204] policing by which the public is geared towards obeying laws and ways through which disobedience may be committed blocked.

Figure 6: Number of Public Lectures by the Hisba



As can be seen, the number of preaching increased from 340 in May to 534 in June and further still by 21 in July.

Under this activity, good is commanded, encouraged and supported, therefore by constant reminder and motivation, the society imbibes good culture and abide by it. Also, evil will be persistently discouraged, prevented and eradicated till people gradually abhor, eschew and eradicate it from the society.

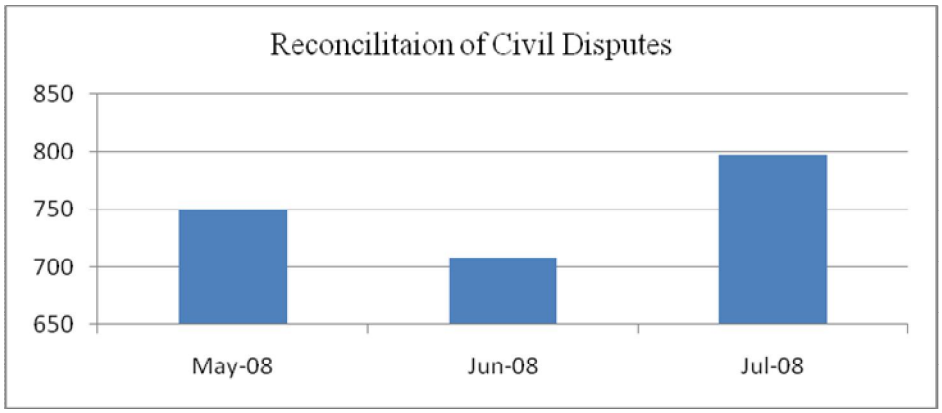
Reconciliation:

The third arm of the classical duty of the Hisbah is the amicable resolution of disputing parties. The Hisbah, through the Zauren-Sulhu and the various Hisbah offices and corps, as a matter of procedure incorporate the system of Sulh in almost every matter they

[204] Means taking the initiative by acting rather than reacting to events. Encarta Encyclopedia 2008.

handle, including serious crimes. Instances abound where women come to the Hisbah with illegitimate children asking the Hisbah to collect and take care of the children or laying complaints against their parents for driving them out because they had illegitimate children. The Hisbah usually invite the parents and **advise** them to take the daughters back and that the children should not suffer because of these circumstances.

Figure 7: Frequency of resolution of civil disputes through Sulh



From the above figure, , 750 reconciliations were facilitated by the Hisbah in May 2008 ranging from matrimonial, domestic (parent-child/sibling), land (farmland or otherwise) to commercial matters. The number decreased by 42 in June but leaped in the next month to 798. This shows the public awareness of the Hisbah activities and increased patronage which is an indicator of public confidence; satisfaction of the services rendered must have increased the public confidence.

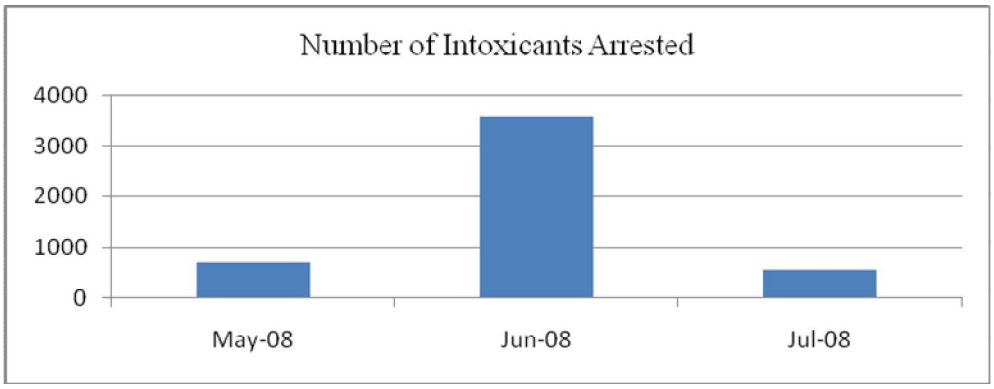
It should be noted that people find it comfortable going to the Hisbah rather than the police as most of these cases are not crimes, yet if they resort to the police they are automatically converted into crimes. The courts are expensive, slow and in some cases

corrupt, there is also another issue that discourages people from the courts, it always end in a win-lose situation whereas a reconciliation always end in a win-win situation.

Intoxicants:

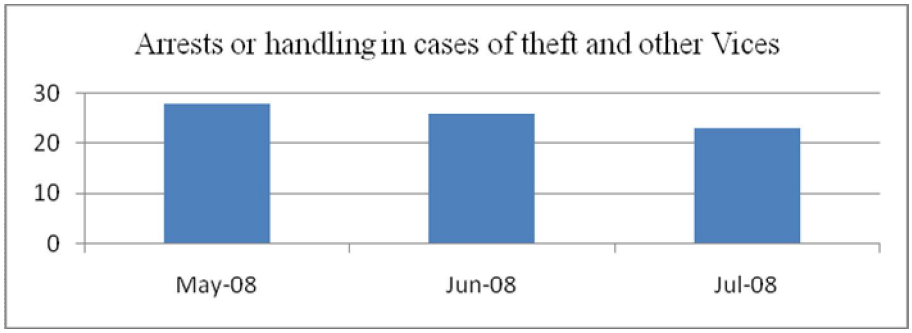
Control of intoxicants is one of the main themes of the criminal aspects of Sharia implementation. Despite the legislations, intoxicants will continue to flow into the state unless prevented; once it is available, those disposed to consuming it are thus encouraged by the environment to consume. The police, being inactive regarding liquor prohibition in the state leave the state's Sharia implementation helpless. The Hisbah then vigorously enforces the law by surveillance, arrest of vehicles carrying liquor into the state and forwarding them to the police for prosecution.

Figure 8: Number of Intoxicants arrested



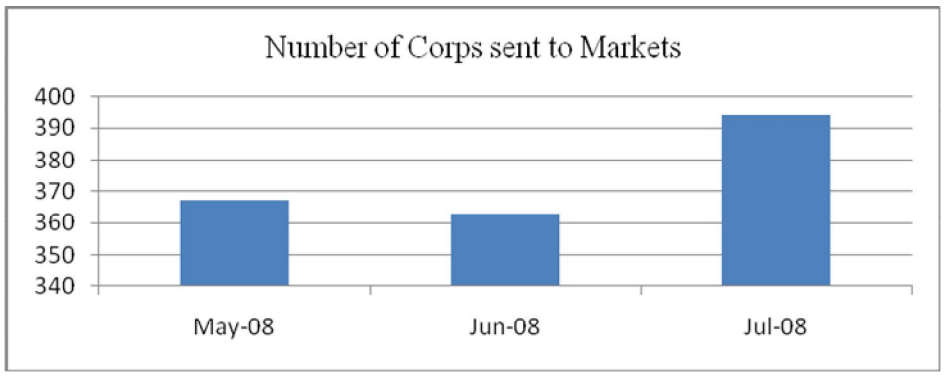
In May, 716 items of intoxicants were arrested, including jericans. The number sky-rocketed to 3, 567 in June and as a result of this "big catch", the beer dealers saw their loss and a drop was recorded in July when only 553 items were arrested. What this shows is that intoxicants continue to flow into Kano State despite arrests monthly.

Figure 9: Number of arrests regarding theft and other vices



May recorded 28 times which dropped to 26 by June and further to 23 by July of arrests involving theft and other vices. This activity is highly connected with crimes and the Hisba tries to abide by the constitution in the sense that it understands that it is neither an investigative nor prosecutorial agency but may assist the police in arrests and the offenders so arrested be handed over to the police or NDLEA as the case may be with immediate effect. In these cases, the police carries out the prosecutions of those handed over to them by the Hisba.

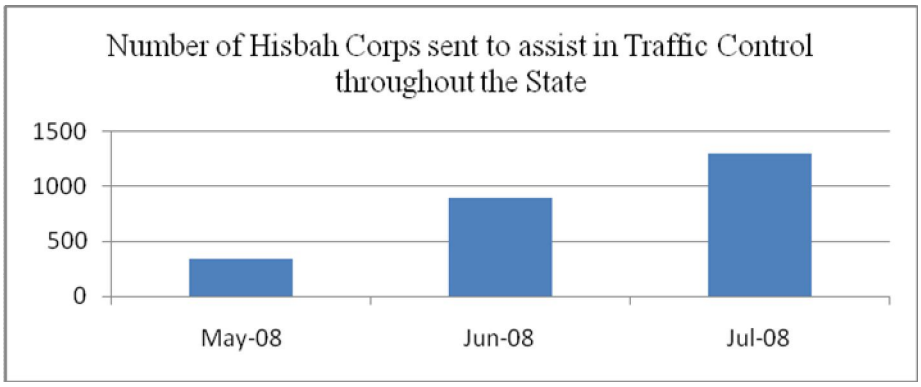
Figure 10: Number of corps sent for market service



The number of Hisbah corps sent to the respective markets in the state was 367 for the month of May, 363 for June and 394 for July.

The types of services rendered at the markets vary; sometimes the Hisbah supervises weights and measures in the markets while sometimes they advise market people on various Ma'rufat and Munkarat. In the classical times, the Muhtasib was more prominent in the markets because there are more violations in the markets and in commerce than in other sectors of the society. however, what the Hisba does in 'market service' is not identical to what the Muhtasib did in the market during the classical times in the sense that in most cases, the Kano Hisba is concerned with crowd control, traffic control and general vigilance of the markets rather than supervision and regulation of products and services and consumer protection. While the efforts of the Hisba are commended, it is recommended that they venture into supervision of crafts and professions, enforcing standards and protecting both the consumers and the marketers just like the case in the classical times.

Figure 11: Number of corps sent for Traffic Control



May recorded 337, June 890 while July 1, 312. This shows that the regular traffic warders sent by the police are not enough to control the traffic in the major cities and since traffic control is good, the Hisba is engaged in it.

Chapter 6 **CONCLUSION**

This chapter concludes the research by making a brief summary of the past chapters, answering the questions asked in Chapter One and making recommendations.

6.1 Brief Summary

Hisba is well entrenched in Islamic law and its application and had always been utilized throughout the history of Islamic law starting from the time of the Prophet SAW to date and that an *Ijma'* is constituted on the fact that Hisba is imperative for the enforcement and observance of Islamic injunctions[205].

Time, place and political variations in Islamic history and civilization molded the Hisba into various names[206] and with increasing and decreasing portfolio or jurisdiction[207]. However, there was no disagreement among jurists that Hisba activities cover all aspects of human life. Whatever qualifies as *ma'ruf* or *Munkar* is within the scope of Hisba[208].

The imperative for the Hisba led the governments in 10 of the 12 Sharia implementing states of Nigeria to establish Hisba at varying degrees and saddled it with responsibilities. Sokoto, Katsina and Kaduna States have voluntary Hisba while Yobe, Bauchi, Kebbi and Niger have Hisba sub-committees operating under the various Sharia Commissions of the States. Zamfara, Kano and Jigawa on the other hand have independents Hisba bodies as commissions and boards backed with legislations.

[205] Ibn Taimiah, *Al-Amr bil Ma'ruf wan Nahyu anil Munkar*, pp. 9-30
[206] Muhtasib, Hisbah, Walil Hisbah, Sahibus Suq, Aamil alas Suq.
[207] Ibn Taimiah, *Al-Hisbah fil Islam*, pp. 10-13
[208] Ibn Taimiah, *Al-Amr bil Ma'ruf wan Nahyu anil Munkar*, pp.98-110

Kano excelled its equals regarding Hisba in various ways including planning, financial support, government commitments, administrative and operational capabilities, public patronage, confidence and satisfaction with the services rendered by the Hisba.

6.2 Main Findings of the Research:

The main findings of the research tried to answer the research questions raised at the beginning of this research and as much as possible, it is arranged in the order in which they were raised:

6.2.1 Hisba is mandatory in every Islamic environment both as an activity and as a government agency. The Hisba as an agency must however fit into the constitutional arrangement of the locality it finds itself in and jurisdiction must be respected. In today's Nigeria particularly, the Hisba cannot be the Police and can only assist the Police in limited ways and its powers and activities must be within constitutional limits;

6.2.2 Islamic law has an inbuilt mechanism of enforcement of right and wrong and the Prophet SAW in a famous Hadith requires each individual to correct any wrong he sees whether by his hand, mouth or heart. By this, whatever is right is liked by the heart, encouraged by words and physically implemented; likewise evil. Physical enforcement relies on what is 'campaigned' and what is in the hearts of men and women. This is the Islamic method of enforcement of right and wrong;

6.2.3 The Sharia states were careful in the establishment of the Hisba in trying not to violate the constitution, they therefore established the Hisba which is neither a rival nor an alternative of the police but an agency that would operate to complement the police and other agencies and most of its works are outside the purview of law enforcement or security issues.

6.2.4 The Hisba is established in 10 Nigerian States; they are Zamfara, Kano, Jigawa, Bauchi, Niger, Yobe, Kebbi, Sokoto and Katsina. in Zamfara, Kano and Jigawa, the Hisba is established by virtue of a Law of the House of Assembly in each of the states and Boards and Commissions were established to manage the Hisba amongst other things. In Bauchi, Niger, Yobe and Kebbi States, the Hisba operates under the Sharia Commission and they are not independent. In Sokoto and Katsina however, the Hisba are voluntary organizations and not under the government.

6.2.5 The Hisba in these states were established after the 'restoration' of Sharia in the states with the main objective that the Hisba will support Sharia implementation, sanitization of the Muslim Ummah and facilitating orderliness, standards and fair play in all dealings;

6.2.6 By comparison of the Hisba in Zamfara, Kano and Jigawa (that have laws and Commission/Board), Zamfara law was better drafted with entry points for Sharia, Kano law was more of regimental setting. The organizational set up of Kano Hisba is the best because the corps are established with clear responsibilities; Kano state government spends more on Hisba and the government is more concerned with the Hisba than any other state.

6.2.7 Narrowly, Kano Hisba identified manifest evil in the society and the good that is neglected and focused on them towards change for good. They then intensified public lectures, guidance and counseling including television and radio programmes; those who are not changed by these are then arrested and handed over to the police or NDLEA for prosecution. In some cases the Hisba reconcile disputing parties either by the corps acting alone or through the Zauren-Sulhu; the Hisba uses pro-active methods for *amr bil ma'ruf wan nahy anil Munkar* like market services where corps are sent to manage crowd, control traffic and assist people on market days. The Hisba also assist the police in traffic control and helping the young and elderly to pass through on roads.

An Evaluation of Kano Hisba

How far did Kano Hisba discharge the role or duty?

The Kano Hisba was able to discharge their duties to a large extent effectively and efficiently. The achievements include but are not limited to the following:

a) Reduction in the number of brothels and prostitutes in the State during the peak time of Sharia implementation which was 2000-2002;
b) Increased awareness by the public on their responsibilities towards the law regarding Sharia. This was successful due to the fact that public lectures, campaigns and preachings were intensified by the Hisba
c) An effective control of inflow of intoxicants in the state and a successful reduction of the incidents of drinking alcohol in the state;

d) An effective implementation of a transformation of public policy regarding transportation in the state that reflects Sharia tenets which though short-lived due to the arrest of the two heads of the Hisba, was able to Islamize the transport sector in conjunction with a Daidaita Sahu.
e) Effective and efficient traffic control through which the Hisba augmented the police by sending wardens daily to places where traffic are high and on a weekly market days in some local governments and villages;
f) *Zauren-Sulhu* established by the Hisba and includes members of the Kano Emirate structure. Through the Zauren Sulhu, hundreds of thousands of disputes were resolved amicably where both parties in each case were willing.
g) Crowd control during gatherings and Islamic events where the Hisba usually assist the police, the Civil Defence Corps and other agencies in controlling crowds which are normally rowdy and provide conducive environments for thugs and other criminals to misbehave.
h) Services during market days where Hisba corps are sent to weekly markets to assist in orderliness, control, traffic, parking and inspection.

The Hisba in Kano have permeated the lives of Muslims and had transformed the culture of the citizens of the state towards Islamic injunctions.

Is Sharia implementation contingent upon the Hisba?

Empirically, this research has proven that Sharia implementation at least in Nigeria is contingent upon the Hisba. Although the Nigeria Police arrests, investigates and

prosecutes Sharia cases, the Hisba is a catalyst in the identification, arrest and in some cases trial in Sharia courts (though not in all types of cases or states).

The Hisba mechanism borders more on encouragement and discouragement regarding Sharia. The Sharia mechanism for normative control transcends what the police and prosecutorial agencies are doing; appeal to the heart, changing environments to make them conducive to the Sharia and continuous preaching, public lectures and awareness of Sharia regulations are discharged by the Hisba and no other agency does it or is under a duty to do it.

Commanding good and forbidding evil is purely Islamic and only Islamic environments will satisfy it. Theoretically, even Q 4:104 talks about a part of Muslims that encourage each other in the commanding of good and forbidding of evil and that a non-Muslim does not believe of the injunctions in his heart, its being good or evil does not resonate from his mouth, hence he cannot be expected to enforce what he does not believe or say.

Every Muslim must exercise *Ihtisab* and if the entire Muslim *Ummah* is pro-Sharia at heart, the scholars will support the state of their hearts by preaching, reminding and explaining which are all in agreement with the hearts. Then enforcement will tally with the hearts and mouths of Muslims; **there is symmetry in what is right and what is wrong in a Sharia compliant setting.**

What is necessary for a productive Hisba?

A productive Hisba should have an impact towards the Sharia regime where it operates and should work towards **reducing or eliminating the motivators of evil and increasing the motivators of good in the society**. This it does, not only in criminal law matters but in all spheres of life as Sharia is not restricted to the public sphere or criminal law.

A productive Hisba should be able to work in harmony with both the (other agencies of) government and the society, must be effective and efficient in making the society compliant to Sharia and must be loved and respected by the community.

The Hisba must prove to be a catalyst for change towards the Sharia and not just a government agency or a regimented agency where the "mentality of uniforms" preoccupy its members instead of the code of ethics of a Muhtasib under the Sharia.

Chapters four and five proves that effective funding for the Hisba by the government will certainly contribute towards positive success of the agency. The men that will field the jobs for this onerous duty must be protected and not only empowered but given hope or an assurance that they serve Allah and that their world is also not forgotten.

From the reports available to the writer, the Hisba is less active in commercial aspects as required by the classical manuals and they fall short even of the laws, particularly Kano

laws where they have a duty to support Islamic-type economy, discourage usury and also the supervision, control and regulation of markets.

Was the Hisba effective?

The Hisba was successful in achieving most of its goals. There is an increased and continuous awareness of Sharia injunctions, un-Islamic practices discouraged to the level that the society, particularly in Kano is moving towards a more Islamic oriented society, which is visible in social interactions and gatherings, in the public transport system, in the confidence reposed in the Sharia system which receives increasing matters for solution instead of the formal courts and the police and even in the health sector where the North-Eastern states of Nigeria have the lowest incidents of HIV/AIDS in the country which is a direct outcome of Hisba activities in the areas[209].

Problems and Challenges facing the Hisba

As noted earlier in chapter four of this research (in Observations and Analysis), the Hisba suffers from some problems and challenges that may be summarized as follows:

1- Poorly drafted laws in which the definition of the Hisba is sometimes hilarious like the Kano definition which at the end failed to define what the Hisba is. The use of apologetic words to describe the powers and functions of the Hisba, like 'to assist' 'render necessary help or assistance' etc which shows that the Hisba is

[209] Daily Independent News of 5th May, 2001 "Niger's Border Prostitutes and the Profits of Islam" http://www.independent.co.uk/news/world/africa/nigers-border-prostitutes-and-the-profits-of-islam-683723.html last visited 20th March, 2011

neither stand-alone nor strong to carry out anything other than in a complimentary capacity

2- The regimentalization of the Hisba takes it far from Islam in the sense that the 'mentality of uniformed men' creeps into the minds of the Hisba corps and they abide by paramilitary procedure rather than the ethics of the Muhtasib provided in classical manuals and in the current Hisba Rules. Some members of the Hisba tend to arrest and hand over to the police more than they preach and counsel wrongdoers

3- Over-zealousness on the part of some Hisba officials in the course of work which in some cases tantamount to intimidation, encroachment upon privacy and a misplacement of priority

4- Prioritization of work by the Hisba sometimes need to be revisited because some sectors need more attention than is accorded by the Hisba. The service that Kano Hisba renders in markets should be more of supervision and inspection rather than crowd and traffic control

5- The writer observes that there is superficial hierarchical order in the Hisba agencies that may gulp up resources but yield less

6.3 Observations

It is a glaring fact that Borno and Gombe States are not serious regarding Sharia implementation and this is so regarding the Hisba which is also non-existent in the states.

6.3.1 Sharia implementation hinges squarely on the Hisba and if they are removed, nothing will remain in Sharia implementation;

6.3.2 Lack of uniformity in the policies, approaches, legislations and structures of the respective Hisba outfits of the states which makes it difficult to generalize their powers and responsibilities and no general assumptions may be made on all of them;

6.3.3 There is low level of animosity or aggression between the Hisba and the police and other law enforcement agencies; this provides an opportunity for cooperation and good working relationships;

6.3.4 Although an Islamic environment is required for Hisba to operate, government regulatory agencies may utilize the Hisba for purely temporal matters; NAFDAC, NDLEA, Standard Organization of Nigeria and the rest may make use of the Hisba or any of its techniques even in states that have low Muslim population;

6.3.5 An effective and productive Hisba is one that is well supported by the government in terms of ownership, funding, proper material and moral support with supervision and oversight.

6.4 Recommendations

6.4.1 The governments in Sharia states should continue to support the Hisba outfits in their states and those that do not enjoy patronage, support and ownership of the government should be converted into Boards and Commissions so that the governments assume ownership and control over them. Those two states that do not maintain Hisba should establish Hisba Commission or Board just like Zamfara and Kano;

6.4.2 Conference of Sharia Implementing States (COSIS) should hold workshops and support projects to unify and harmonize the policies, approaches, structures and activities of the respective Hisba outfits in the states and develop a draft law for the harmonization of the Hisba laws in the federation;

6.4.3 Hisba should design methods to nurture the good relations with the other security agencies and law enforcement agencies especially the police and devise means of strengthening good ties and harmonious working conditions;

6.4.4 Hisba should develop plans for an intensive work on regulatory and supervisory aspects of commerce that is an integral part of Hisba and involve closely government agencies like the NAFDAC, Standard organization of Nigeria, public health sector, environmental sector actors, regulation of guild and professions, etc

6.4.5 The Hisba should build its capacity to secure enough funding and material support from the governments of the states and any other government agency, if possible through partnership and joint services; the governments on the other hand should answer the needs of the Hisba and spend adequately on it.

To achieve the above, the following should be employed to actualize the recommendations and the writer hopes to prepare them and dispatch them accordingly.

A policy memo: submitted to both the Hisba authorities as well as government Ministries, departments and agencies (MDAs) on the action points stated above, especially on building the capacity of the Hisba and ways to boost the image of the Hisba in the society.

An action plan for a comprehensive and an intensive media campaign for the Hisba. This is imperative because the public need to be updated periodically on Hisba activities and those who are not aware of its activities or are apprehensive of it will be assured and reassured.

An action plan: for the COSIS and the Hisba authorities for ways to better the institution, to organize workshops to harmonize the laws of Hisba, to unify policies, approaches and activities, etc

Bill for a Law to harmonize the Hisba laws in the country: to be submitted to COSIS, Sharia States, and Houses of Assembly of the affected states as well as the Hisba agencies. The writer will develop a draft that will be deliberated upon by a workshop to be organized by COSIS.

These steps, when taken will, in the opinion of the writer will bring about far reaching impact on the Hisba and consequently on the Sharia generally.

Unless these are done, the Hisba in the respective states will continue to operate in isolation of each other instead of in harmony and integration; the Hisba will be unable to plan and execute projects effectively and will be unable to tap into opportunities of partnership and good working relations with the other government agencies and the Hisba may not be disposed to tap from the abundant resources of the government for its use.

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