

APPLYING AL-GHAZALI'S EIGHT DEGREES OF HISBAH TO IHTISAB ON INTOXICANTS IN KANO STATE OF NIGERIA¹

By

Ibrahim Barkindo*

Abstract:

This article considered the ways and methodologies used by the Hisbah regarding intoxication in Kano State, whether forming part of the liquor law of the state or the Sharia Penal Code. The methods are then compared with Al-Ghazali's Degrees of Hisbah to see whether they match and if not why and which can be reviewed, the Kano Hisbah methods or Al-Ghazali's degrees; The paper also considered whether Al-Ghazali's Degrees of Hisbah or Maratibul-Ihtisab augur well with Official Hisbah as opposed to Voluntary Hisbah, it analyzed the steps taken by Kano Hisbah and found that although all the eight steps can be found or used at one point or the other, the steps are not followed serially or chronologically as al-Ghazali posited. The methodology of the article is both doctrinal and empirical and the empirical aspects are the application of the principles on the procedure of the Hisbah in Kano. Recommendations were made at the end of the paper which include a call to the Hisbah to plan carefully on each step and to be scientific in eradicating evil and increasing motivators of good and reducing motivators of evil and for the Hisbah to pay attention on fight against consumption of Indian Hemp.

1. Introduction

This article is concerned with the question of how Kano Hisba enforces the Sharia as part of its activities particularly regarding intoxicants and whether it abides by Al-Ghazali's Eight Degrees of Hisba. The objective of the research is therefore to analyze and explain Al-Ghazali's Eight Degree of Hisba theoretically and match them with Hisba activities in Kano regarding intoxicants. The methodology used in the research is both doctrinal and empirical. The doctrinal aspects explains the degrees of changing

¹ This article was originally presented as an LL.M Seminar paper at the Department of Islamic Law, Ahmadu Bello University, Zaria in 2011. The article was later reviewed and presented for publication.

* LL.B (BUK-1999), BL (Abuja- 2000), LL.M (ABU- 2011), Ph.D candidate in Islamic Law at Ahmadu Bello University, Zaria and a lecturer at the Centre for Islamic Legal Studies, Institute of Administration, Ahmadu Bello University, Zaria.

wrongs while the empirical aspect provides facts, figures and the legal environment regarding Hisba enforcement on intoxicants in Kano.

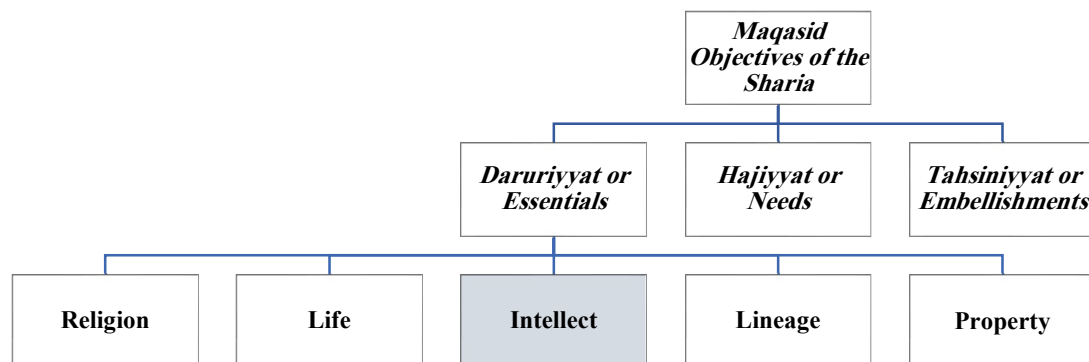
1.1 Sharia and Intoxicants:

Control of intoxicants is one of the main features of the Islamic Penal system, as it seeks to protect the human mind or intellect from corruption because whatever intoxicates befogs the mind and may have temporary or permanent impairment on the intellectual capacity of an individual. Islam expects every individual to be of sound mind at all times. This sober period will enable him to discharge his responsibilities both legal and social alike to his society.

For the purposes of a the Ummah, Sharia holds the following objectives (*Maqasid*) with high esteem:²

1. *Daruriyyat*: Essentials or Necessities;
2. *Hajiyyat*: Complementary or Needs, and
3. *Tahsiniyyat*: Embellishments or Commendable.

Daruriyyat consists of five essential elements which include the essential of intellect. The following chart explains the Essential elements in light of the *Maqasid*:



(Source: chart created by the author)

² Mas'ud, M. K. *Shatibi's Philosophy of Islamic Law*. Islamic Book trust. Kuala Lumpur, Malaysia(2005) PP. 151-162. See also Kamali, M. H. "Maqasid al-Shari'ah Made Simple" *Islamic Studies* 38 (1999), 193-209

In order to protect the intellect as an essential of Islamic objectives, Sharia therefore prohibits consumption of any liquor³ and by analogy⁴, whatever that will intoxicate human intellect is prohibited, be it a drink, pills, smoking substance, powder or any other substance like the solution used in patching tubes of vehicles which if sniffed will intoxicate.⁵

The position of Sharia is that intoxicants are prohibited, and an individual shall not intoxicate himself and he should not relent in stopping others from getting intoxicated. He may even arrest any person who engages in or supports the act of intoxication in any way. By so doing, he is therefore eradicating evil act from the Ummah.

Additionally, Sharia prohibits brewing, manufacturing or producing intoxicants, buying and selling it, trafficking in it, transporting it and any other means of assistance in its production. The following Hadith illustrates it better:

«لُعِنَتِ الْخَمْرُ عَلَى عَشْرَةِ أَوْجُهٍ: لُعِنَتِ الْخَمْرُ بِعَيْنِهَا، وَشَارِبُهَا، وَسَاقِيهَا، وَبَائِعُهَا، وَمُبْتَاعُهَا، وَغَاصِرُهَا، وَمُعْتَصِرُهَا، وَحَامِلُهَا، وَالْمَحْمُولَةُ إِلَيْهِ، وَآكِلُ ثَمَنِهَا»⁶

(Ten matters related to *Khamr*⁷ were cursed. *Khamr* itself was cursed, whoever drinks it, its server, seller, buyer, brewer, who asks for it to be brewed, whoever carries it, whomever it is carried to and whoever consumes its price.)⁸

By the above Hadith, it is not only consuming the intoxicant that is prohibited, the intoxicant itself is an invaluable property and classified as filthy hence not subject to ownership or value of being lawfully exchanged. The Hadith also prohibits producing it in any form, trading in it, transporting it, storing it, ordering its production or supply and even allowing a place to be turned into a beer parlour or a place where the intoxicants are consumed.

³ See Quran in 5:90; 4:43; 2:219. The translation used in this paper is Mubarakpuri, see note 5 below

⁴ Khudari Bek supra p.289 see also Hadith No. 2003 in Sahih Muslim below

⁵ Generally on intoxicants, see Mubarakpuri, S. (ed) *Tafsir Ibn Kathir (Abridgment and Translation)*. Al-Haramain Islamic Foundation, Riyadh. (2000) vol.3 pp. 253-263

⁶ ibid

⁷ *Khamr* means intoxicant

⁸ By a Hadith reported in *Musnad Ahmad b. Hambal*, 2:25 and 2:71, see Mubarakpuri, loc.cit p. 260; *Sunan Ibnu Majah*- Hadith No. 3397. The translation is by Al-Haramain Foundation.

The Hisbah activity (*Ihtisab*) on intoxicants therefore covers prohibiting, discouraging and eradicating all intoxicating substances from the society and all things that motivate⁹ people to drinking, selling, allowing, transporting, brewing or producing, etc.¹⁰

Therefore it is an obligation on any Sharia compliant system to work towards adherence to the above ten issues prohibited and implement the prohibition through laws and their enforcement.

1.2 Sharia Implementation in Kano State:

Kano State is one of states that implement Sharia legal system in Nigeria¹¹ and has enacted various laws¹² in order to enhance Sharia Implementation in the State through the establishment of Sharia Commission¹³, Zakkah and Hubusi Commission¹⁴, Shura Council, Hisbah Board, Directorate for Societal Re-Orientation (A Daidaita Sahu)¹⁵ and Public Complaints and Anti-Corruption Commission. It also created various agencies primarily aimed at enhancing the Sharia Implementation.

Among the agencies established is the Hisbah Board. The functions of the Board are the general coordination of the zonal, Local Government and Village Hisbah Committees as well as policy making and disciplinary matters for the Hisbah.

The Hisbah corps is established by the Hisba Board Law 2003¹⁶ and it is made up of men and women who are responsible for the activities that the Hisbah does regarding Sharia implementation, hence it is important to have an historical overview of the

⁹ Ibnu Taimiyyah, A.A. *Al-Amru bil-Ma'ruf wan-Nahyi Anil-Munkar*, Maktabatus Sunnah, Cairo, (1997) Pp. 63-64

¹⁰ Mawardi, *Ar-Rutbah* loc.cit pp. 101-107

¹¹ There are 12 Sharia States in Nigeria and they are Zamfara, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto and Yobe.

¹² The Laws include The Sharia Penal Code Law, The Criminal Procedure Code (Amendment) Law, The Penal Code (Amendment) Law (which amended the provision on intoxication in the 1960 Penal Code), the Sharia Commission Law, Prostitution Prohibition Law and the Transport Law

¹³ Established by virtue of the Kano State Shari'ah Commission Law 2003

¹⁴ Established by virtue of Kano State Zakkah and Hubusi Commission Law 2003

¹⁵ It's a Directorate established by Kano State, see <http://www.adaidaitasahu.org/plan.html> last visited 20th March, (2011)

¹⁶ Section 7

definition, legal position and components of the Hisbah before analyzing the Kano position.

2. Definition and Nature of *Hisbah* and *Ihtisab*:

Hisbah refers to the activity of commanding what is good and prohibiting what is evil and also reconciling disputing people.¹⁷ By the classical definition, Hisbah has two meanings; an activity of commanding good and prohibiting evil as well as an institution that commands good and prohibits evil; the above definition relates to the activity. It is called Hisbah because of its nature in promoting good through commanding people to do, encouraging them to do good thus enjoining and promoting the doing of good deeds because of Allah; he thus anticipates his reward from Allah. Likewise, if he prohibits, discourages and eradicates evil, he anticipates the reward of Allah; the anticipation of the reward is *Ihtisabul Ajr*.¹⁸

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

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

(Let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful)¹⁹

The Institution of Hisbah is the government agency (*wilayah*) saddled with the responsibility of commanding good and forbidding evil or supporting virtue and eradicating vices.

The Sharia supports good deeds by commanding Muslims to adhere to it and see that others also do it and do whatever is necessary for it to be observed and practiced. On

¹⁷ For the definition of Hisbah, see the following: Mawardi, AM.H. *Ar-Rutbah fi Talabil-Hisbah*. Darur-Risalah, Cairo, (2002). P. 63; Mawardi, AM.H. *Al-Ahkamus Sultaniyyah wal Wilayatid-Diniyyah*. Tawfiqiyyah Press, Cairo, (no date). Pp.406-433, Al-Farra', M.H. *Al-Ahkamus-Sultaniyyah*. Darul Kutubil Ilmiyyah, Beirut, (2000). PP.284-308

¹⁸ Hudairi, infra, p.138

¹⁹ Qur'an 4:104. Translation taken *The Qur'an (Arabic Text with Corresponding English meanings)*, Revised and Edited by Saheeh International, Riyadh (1997). This translation is a step ahead of The Noble Qur'an by Dr. Muhsin Khan and Hilali.

the same vein, Sharia discourages evil by prohibiting an individual from engaging into it and asking him to persuade, stop, hinder, discourage and even fight others to stop.

By the doctrine of enjoining/promoting virtues and eradicating vices, Islam makes a nation of good people who make others also to be good; a perfect nation perfecting others. Whereas *Ihtisab* is the activity of Hisbah (verb form), *Hisbah* is used to denote both the activity and the institution. The words are sometimes used interchangeably by many writers.

2.1 legal Position of Ihtisab:

The legal position of commanding good and forbidding evil is mandatory²⁰ and three stages are provided within which each and every person must find himself, at least in one. The Prophet (SAW) said in Hadith that

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ»²¹

(Whoever among you witnesses an evil, let him change it with his hand. If he is unable, then let him change it with his tongue. If he is unable, then let him change it with his heart, and this is the weakest faith.)²² Later in this article, this Hadith will be referred to as the Hadith of changing wrongs.

The operation of this Hadith transcends evil or wrongs; it means also whoever sees good being neglected should make people to do it if he has the authority; preach to people (to) do it if he has no authority but has the ability to inform or remind people and lastly should do it himself and like it if he cannot reach out to people.

²⁰ Al-Umari infra, pp.31-53, see also Ibnu Taimiyyah, A.A. *Al-Amru bil-Ma'ruf wan-Nahyi anil-Munkar*. Maktabatus Sunnah, Cairo, (1997). Pp.9-19 see also Morgan, S. *Enjoining Right and Forbidding Wrong*. (Translation of Ibnu Taimiyyah's AlAmr...), available at https://d1.islamhouse.com/data/en/ih_books/single/en_Enjoining_Right_and_forbidding_wrong.pdf accessed 18/0/11. See also Ibnu Taimiyyah, A. A. *Al-Hisba fil Islam*. Darul Kutubil Ilmiyyah, Beirut, (n.d). pp.23-29 and its translation: Holland, M. *Public Duties in Islam: The Institution of Hisba*. The Islamic Foundation, Leicester, (1992), PP.19-24

²¹ Muslim b. Hajjaj. *Al-Jami'us Sahih*, (Sahih Muslim). 1:69; *Sunan Abi Dawud* 1:406; *Sunanut Tirmizi* 3:318-319; *Sunan ibn Majah* 1:406

²² Hajjaj, M. *Sahih Muslim*. Darul Fikr, Beirut. (2000), P. 52, Hadith No.82. the translation is from Mubarakpuri.

2.2 Components of *Hisbah*:²³

Hisbah has four components²⁴, namely:

2.2.1 *Muhtasib* (the actor of *Ihtisab*):

The one engaged in *Hisbah* or *Ihtisab* is called *Muhtasib* and he may either be a voluntary *Muhtasib* (*Muhtasib Mutadawwi'*) if he is not appointed by the government to do the work of *Hisbah* or a government appointed person (*Muhtasib Muwazzaf* or *Muhtasib Muwalla*). There are ethics and qualifications required of each which are outside the purview of this paper.

2.2.2 *Muhtasab alaihi*: (the subject of *Ihtisab*): the person who is commanded to do good or to refrain from evil.

2.2.3 *Muhtasab fihi* (the object of *Ihtisab*):

What is good or evil is as prescribed by the Sharia, whatever the Sharia requires an individual to do is good, be it mandatory (*Wajib*) or recommendatory (*Mandub*) and whatever the Sharia requires a person not to do, abstain from or prohibits him is evil or bad, be it prohibited (*Haram*) or disliked (*Makruh*). The permitted (*Mubah*) is also required to be done as it forms part of good.²⁵

2.2.4 *Ihtisab* (the activity):

This means the act of enjoining or supporting good or the act of prohibiting or opposing evil. Activity has two limbs which are ethics and stages or degrees. The Hadith on changing wrongs requires an individual to change wrong committed or to enjoin right to be observed in three stages. These three stages are tabulated below in order of importance as per the Hadith of changing wrongs.

²³ Al-Ghazali, loc. Cit, pp. 440-442

²⁴ For the components of *Hisbah*, see Al-Ghazali, *infra* at p. 436; see also Zaidan, A. *Usulud-Da'wah*. Mu'assatur-Risalah, Beirut, (2001), pp.173-202 and Hudairi *infra* at pp.81-152

²⁵ Kamali, loc. cit, pp. 280-289

Table 1: The Three stages of changing wrongs

S/N	STAGE	ACTION REQUIRED	REMARKS
1.	FIRST	Practical change of wrong in all its ramifications	<ul style="list-style-type: none"> - Change wrong practically or facilitate its change through execution, enforcement of means of eradicating the wrong. - Giving instructions/arrest/ prosecution/execution of punishments/surveillance/ - Applicable to both good and evil - Whoever has authority to execute, enforce, act or physically prevent any action within the ambit of Ihtisab
2.	SECOND	Campaign against wrong/evil and for right/good by words of mouth	<ul style="list-style-type: none"> - Legal information/Preaching/Enlightenments/ Campaigns/Propaganda - This stage does not involve physical intervention - Whoever has the capacity to call for the observance of the law has a responsibility to support it by words of mouth or any form of campaign. This may involve rallies and protests.
3.	THIRD	Emotional likeness of good and disliking of evil	<ul style="list-style-type: none"> - If neither of the above stages is practicable, a person must like the good and wish it to be observed and dislike the evil and wish it to abate and be eradicated. - This stage is inherent in every Muslim including those capable of achieving the above two stages.¹

Source: Author's design

¹ Ibnu Taimiyyah, *Al-Amru bil-Ma'ruf* infra, p. 21 where it has been said that a Muslim who disregards this grade is not a believer.

It is important to appreciate the fact that the order of changing by hand, then by tongue and then by heart is of importance regarding the reward as well as regarding law enforcement and not regarding priority, because going by priority, the heart comes first.¹ However, where circumstances allow and prerequisites met, it is better to abide literally by this Hadith. A person having authority must remove an evil through physical means and not through preaching, but instructions and orders. A person who lacks powers to effect change can preach, recommend, submit a memorandum, campaign and even protest to see that an evil is removed or it is abated. The person lacking both powers to effect change and is incapable of calling for change or is afraid must hate the evil perpetrated; this requirement is strict and nobody is exempted from it². The word hand (*yad*) in the Hadith denotes authority or physically; the word mouth (*lisan*) denotes the ability to speak which includes preaching, campaign, propaganda, etc. Pen is part of mouth and not hand because allegorically, pen is for writing to change people's behaviour or perception despite the fact that the "pen" will be used to sign executive Orders, etc. Heart (*qalb*) includes all emotional feelings because in the Sharia, there is a duty of the heart.³ The heart has a duty to believe, like or dislike certain things as right or wrong, the heart is equally prohibited from pride and enjoined to be humble.⁴

The three levels interact and complement each other. Executive authorities need to be guided, constantly reminded and even challenged towards removing evil from the society; the intellectual community needs an emotionally like society so that the message of the intellectuals constitute a bridge between the execution and the emotional feelings of the society. If any of these levels is neglected, there will be an imbalance in supporting what is good and right in the *Ummah*, likewise in preventing, discouraging and fighting to eradicate evil or wrong from the *Ummah*. The figure below shows that evil is fought from outer-inner approach in terms of importance but inner-outer approach in terms of the structure of the society.

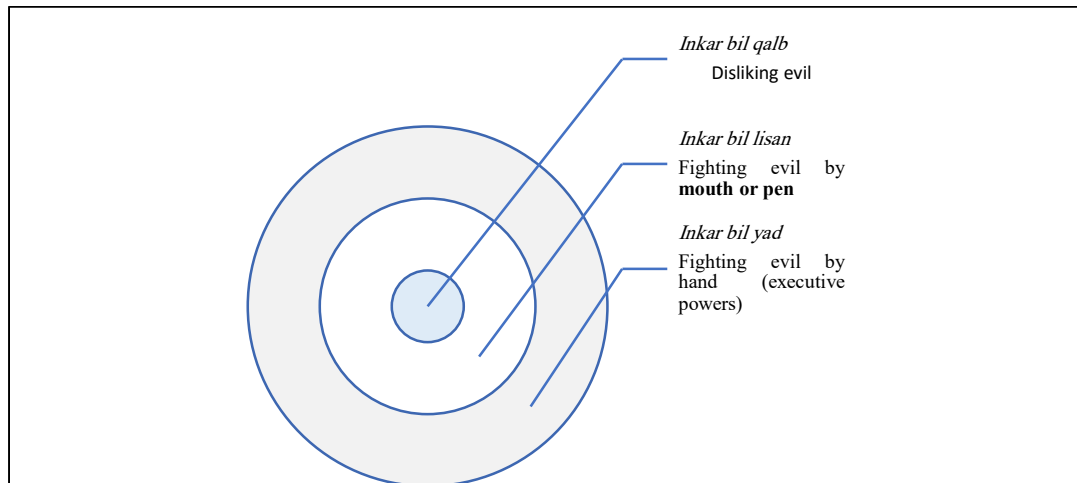
Figure 2: Levels of *Inkar* (prohibition/discouragement of evil/wrong/vice)

¹ *Akhbaru- Hisbah*, Vol. 1 No. 6, Dhul-Qa'dah-Dhul-Hijjah 1415, p.4

² *Akhbarul-Hisbah*, Vol. 5 No. 23, Muharram-Safar 1419, p. 4

³ *Amalul qalb*

⁴ Ibnu Taimiyyah, *al-Amru bil Ma'ruf wan Nahyi anil Munkar*, pp.29-31



Source: Author's design

The above figure depicts the layers of working with good and evil, the heart must like good and dislike evil, when there are like minds, scholars will have the courage to preach for good and against evil because effective preaching or campaign only comes from a believing hear. The government can only uphold what the community believes in and preaches and people can physically intervene to support good and oppose evil. The three layers are complimentary.

3. Degrees of Hisbah

The Hadith on changing wrongs section gave three stages of *Ihtisab*. This section will analyze its applicability and whether the three stages can be further broken into more stages.

3.1 Al-Ghazali's *Maratibul-Ihtisab* or the Eight Degrees of Hisbah⁵:

Abu Hamid Al-Ghazali (450-505 Hijrah calendar, equivalent to 1058-1111 AH)⁶ is one of the foremost Shafi'i Jurists as well as among the leading Islamic jurists that ever

⁵ Al-Ghazali, M.M. *Ihya' Ulumiddin*. Darul Afaqil Arabiyyah, Cairo (2004) vol.2 pp. 440-464; see also Hudairi, N. *Al-Hisbatun-Nazariyyah wal Amaliyyah indal-Imam Ibnu Taimiyyah*. Darul Fadilah, Riyadh. (2005) pp.142-146 and Al-Amri, J. *al-Amru bil Ma'ruf wan Nahyu anil Munkar*. IIFSO, Beirut, (1984) pp. 290-313. The translation is taken from *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. See note 27 below

⁶ See the biography of Al-Ghazali on p.4 of the Introduction to *Ihya'Ulumiddin* edited by Tamir M. Tamir above.

lived.⁷ In his *Ihya' Ulumiddeen*⁸ (Revival of Religious Sciences) he explains the Hadith of changing wrongs in relation to the stages of Hisbah. He categorizes the stages into eight degrees as follows:⁹

First Degree: Knowledge correctly obtained on the evil perpetrated or good neglected. The source of knowledge should not be eavesdrop or uncover what is covered in order to know the misdeeds of another. Manifest actions are the target of correction.¹⁰ The stage requires understanding of the problem by the one seeking to correct others. The stage is called "*Ta'arruf*" meaning knowing (the law or the act).

Second Degree: 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*" meaning informing the subject.

Third Degree: 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 wrong-doing and inspire the fear of Allah's punishment as well as the ways of the *Salaf* (the first three centuries in Islam rated as the best of Islamic nation). That must be done with compassion and kindness and without anger or severity.

Fourth Degree: Rebuke and use of harsh words. This is only resorted to when there is no 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 Degree: Physical intervention: This includes smashing the instruments of disobedience, disposing of intoxicants, etc. The physical intervention is restricted to

⁷ Ibid. see also Isma'il, S.M. *Usulul Fiqh: Tarikhuhu wa Rijaluh*, Darus-Salam, Makka (1982), 2nd ed. Pp.203-206

⁸ In vol. 2 Pp. 440-464. The chapter on Hisba is "Kitabul Amr bil ma'ruf wan nahy anil Munkar", pp.428-496. That chapter has been edited and published as a separate book entitled *Al-Amr bil ma'ruf wan Nahy anil Munkar*, by Sayyid Ibrahim, Darul Hadith. See *Akhbarul Hisbah*, No. 11, Ramadan 1416, p.4

⁹ Actually he broke the three stages twice, one into five stages, see Al-Ghazali supra p.440-441 and the other into eight stages pp.459-464.

¹⁰ Reza, S. "Islam's Fourth Amendment: Search and Seizure in Islamic Doctrine and Muslim Practice", 40, *Georgetown Journal of International Law*, 703 (2009)

only the evil (object) and does not extend to the perpetrator of the evil or the one neglecting the good (subject).

Sixth Degree: Threats of use of force against the person committing the evil or wrong, e.g. he may be told that he may be flogged or he will be reported to the police.

Seventh Degree: Actual use of force, e.g. striking with hand or foot without showing or using weapons. This stage has conditions thus: (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 the evil act ceases and objects like weapons should not be used in this stage

Eighth Degree: If he is unable to accomplish it himself and needs Law enforcement agents to use even weapons if necessary. The Police or the army should be called upon because the sinner will also seek aid from his associates with weapons. Then the only correct course is to do this with the permission of the Imam or ruler, otherwise, offenders may attack the stopper and chaos may ensue which if not controlled may even be bloody.¹¹

3.2 Understanding the Eight Degrees:

Many writers have written on these eight steps, analyzing, summarizing and even expanding them. Some writers are, however, obsessed with these steps, particularly those curtailing the powers of an individual, they include Vogel¹², Kristen Stilt¹³ and Prof. J. Lowry¹⁴ who are Orientalists and try to stress that the steps must be followed serially and deemphasise physical intervention. Their writings criticize the Saudi Arabian Hisba as offending al-Ghazali's levels and failed to recognize that government Hisbah agencies are different from individual persons who al-Ghazali addresses.

¹¹ Al-Ghazali, loc. cit. pp.459-464.

¹² 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" *Social Research*. Fall, 2003.

¹³ Ibid

¹⁴ Diversity in Classical Islamic Civilization: The Case of Al-Ghazali-Mystic, Jurist, and Theologian. Lecture by Prof. J. Lowry at the Middle East Centre, University of Pennsylvania, Middle East Lecture series, Thursday, November 7, 2002 published in <http://www.sas.upenn.edu/mec/resources/freematerials> accessed 18/2/2011 at 9.45 a.m.

The table below helps towards understanding the eight levels and what is required to be done at each level and what it is called in Arabic as well as in English.

Table 2: Tabulation of Al-Ghazali's Eight Degrees

S/N	Degree	Degree (English)	Remarks
1.	التعرف Obtaining knowledge	Obtaining knowledge of the good or bad and its manifestations in his locality	The Muhtasib should acquaint himself with the laws and customs. What is good, what good is neglected, what is evil, what evil is committed
2.	التعريف Informing subject	Informing the individual (subject of Ihtisab) of the good or wrong	If he does not appear to have known; or reminding him constantly
3.	النهي بالوعظ والنصح والتخويف من الله تعالى advise	Prohibiting by use of advise, preaching and soft language	Likewise commanding
4.	الغلظة بالقول Harsh words/rebuke	Rebuke and harsh words	Like: You are disobedient, you fool. The person neglecting to do what is right or good may likewise be rebuked with harsh words
5.	التغيير باليد physical intervention	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.	التهديد والتخويف Threats of use of force	Threats of use of force	e.g. I will report you to the police or I will fight you to prevent the evil you want to do
7.	ايقاع الضرب Actual use of force	Actual use of force to stop the commission of crime.	No weapons will be used in this stage. This action is directed at the subject
8.	الاستعانة بالشرطة و شهر السلاح Seeking assistance of army	Obtaining the help of Law enforcement agents like the police and the army	If stopping the wrong-doers seem troublesome, or fight may ensue

3.3 Applicability of the Degrees:

Jurists are of the opinion that some of these degrees apply totally in respect of some issues while in others, only part of them apply. Some may not necessitate physical intervention and some may not involve the police, arrest or even seizure. Ibnu Taimiyyah's theories on Ihtisab require that the Muhtasib uses wisdom in changing

wrongs and should use the appropriate level according to the severity of the wrong, the culpability of the doer (first timer, repeater or recurring offender) and that offender who disobeys secretly or openly are treated differently.¹⁵ The Prophet SAW treated wrongdoers differently according to the severity of their deeds and he did not follow the steps and the Muhtasib must make sure that the wrong deed requires a higher degree of correction.¹⁶ Al-Ghazali himself admits that level five is only conceivable in some wrongs and not all, including intoxication.¹⁷

Al-Mawardi¹⁸ reveals that these degrees as arranged or prioritized were not contemplated by the practicing *Muhtasibs*, as the manual provide detailed action points at their various intervals according to profession or item. It is important to bear in mind the fact that al-Ghazali was never a Muhtasib or even a judge, the only official appointment he held was a Professor at the *Nazzamiyyah* Academy in Baghdad and this might have influenced his theses on the powers of the Hisbah because Al-Mawardi who was a Muhtasib did not see what al-Ghazali sees.

Other writers on Hisbah were also at some points appointed as *Muhtasibs* and they include ibnul-Ukhuwwah and Shaizari and their manuals on Hisbah are all styled on Mawardi's manual which silent on these degrees but talked of the ethics of a *Muhtasib* to use the appropriate method and commensurate to the evil perpetrated. A person seen consuming alcohol need not be informed that he is committing wrong or reminded or even rebuked not to talk of being advised, the intoxicant should be instantly snatched from him and destroyed and he may be subjected to use of force to be taken to court for trial. Therefore al-Ghazali's degrees are more theoretical than practical.

It is important to note that these degrees have a bias towards the prevention and eradication of wrong instead of being applicable to both *Ma'ruf* and *Munkar*. The third to the eighth degrees only serve as eradication of vices and hardly promotion of virtues. Even the Hadith that is the basis of these degrees talks of evil only.

¹⁵ Hudairi, pp.138-147

¹⁶ Ibid

¹⁷ *Ihya' Ulumiddin*, vol. 2, p.461

¹⁸ Mawardi, AM.H. *Ar-Rutbah fi Talabil-Hisba*, Darur-Risalah, Cairo, (2002). Pp. 101-111 (*fil Hisbati alal khamr wal aalaatil muharrah*)

From the negative point of view however, abandoning what is good is by itself evil.
Below is an attempt by the writer to make *Ma'ruf* amenable to the eight degrees.

Table 3: Applicability of the Eight Degrees to *Ma'ruf*:

S/N	Degree	Ma'ruf
1.	التعرف Obtaining knowledge	Knowledge of and manifestations of virtues whose neglect is clear
2.	التعريف Informing subject	Informing subjects of the virtues of the good acts they are neglecting and whether it is <i>Wajib</i> or <i>Mandub</i>
3.	النهي بالوعظ والنصح والتخويف من الله تعالى advise	Preaching for the good and reminding of the reward for doing the good
4.	الغلظة بالقول Harsh words/rebuke	Use of harsh words and rebuke to instil fear of Allah so that good will be observed. Use of mild words to instil likeness to paradise.
5.	التغيير باليد physical intervention	Less likely in most cases. It can be conceived in some areas like the commercial sector where craftsmen and traders will be threatened with legal consequences, like seizure, closure of business premises, etc should they fail to abide by standards.
6.	التهديد والتخويف Threats of use of force	Not conceived. The effect of physical removal of evil result into the bettering of the lot of good. In commerce, the seizure and destruction of sub-standard measure instruments necessitates the use of correct ones.
7.	ايقاع الضرب Actual use of force	Craftsmen forced to wash basins and containers in certain professions, animal sellers forced to feed the animals in their possession, administration of oath on craftsmen
8.	الاستعانة بالشرطة وشهر السلاح Seeking assistance of army	Difficult to conceive. Forcing craftsmen to abide by standards and prohibiting the practice by professionals who have no license by using a contingent of the police to seal, impound and confiscate substandard goods. The objective is to force craftsmen and professionals to be good and provide good and quality products and services.

Source: Author's design

3.4 Are these Degrees for *Muhtasib Mutadawwi'* (Voluntary Muhtasib) or *Muhtasib Muwazzaf* (Appointed Muhtasib)?

An official Muhtasib or Muhtasib *Muwazzaf* already has the authorization of the government (*Imam*) and he already has deputies who investigate, inspect and supervise

and others who seize, impound, seal, arrest and enforce the observance of regulations and standards. Therefore, there is no need for resorting to law enforcement agencies as the Muhtasib himself, aided by his deputies constitute a law enforcement agency. This means that al-Ghazali talks about the voluntary Muhtasib and the official one. Hence, it will be out of place to require the official Muhtasib to abide by al—Ghazali's degrees.

The second aspect is that the first degree is that the Muhtasib should acquaint himself with the knowledge of right and wrong as well as their manifestations in his juridical area including local customs and practices which will enable him to know the legal position of right and wrong, to know the good that is neglected so that he support its performance and the evil that is committed so that he prevents and fights it in order to eradicate it. These qualifications are in respect of a voluntary Muhtasib or *Mutadawwi'*, because it will tantamount to a superficial qualification or even tautology in respect of an appointed Muhtasib or *Muwazzaf*, in whose qualification *Ijtihad* is a requirement.¹⁹

Treatises on Islamic Constitutional Law apparently ignore the Police in their writing in the arrangement and functions of constitutional bodies. Ibnu Taimiyyah is more specific in *al-Hisba fil-Islam*²⁰ where he categorically stated that powers, duties and functions of government agencies (*wilayat*) are specified by the instruments²¹ 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.

Although Hudairi²² (a modern Saudi Arabian writer) talks of the appointed Muhtasib being bound by these degrees, including the eighth degree, it should be noted that in Saudi Arabia the jurisdiction of the Hisba is slim as the entire apparatus of the government enforces the Sharia.

4. The Kano Hisbah on Intoxicants:

¹⁹ Al-Mawardi, pp.64-67; Hudairi, p. 95, where he argues that this requirement is of Classical times, today however, the Hisbah is unattainable if the Muhtasib must be a Mujtahid.

²⁰ Ibn Taimiah, *Al-Hisbah fil Islam*, Beirut, Darul Kutubil Ilmiyyah, (n.d.) P. 15

²¹ Like warrants, laws and regulations creating agencies today.

²² Hudairi loc.cit, pp. 141-147

Despite the fact that no mention of Sharia or Sharia Implementation was made in the Hisbah Board Laws,²³ the perceived and natural motive behind the establishment of the Hisbah is that it will assist in the implementation of Sharia in the State.²⁴ Therefore, the Hisbah has roles regarding the Sharia Penal Code as well as the other pro-Sharia legislations in the State.

The main features of Sharia implementation in Nigeria and particularly in Kano State are the criminal aspects, i.e. the inclusion of certain crimes into the penal system. More particularly, the crimes of *Zina* (unlawful sexual intercourse), *Shurbul-khamr* (consuming intoxicating substances), *Sariqah* (theft), *Hirabah* (Highway armed robbery), *Liwat* (sodomy) and *Sihaq* (Lesbianism) and the law of homicide and retaliation (*Qisas*).

4.1 The Responsibilities of the Hisbah Corps:

The responsibilities of the Hisbah Corps are as follows (with emphasis):²⁵

- 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 religious gathering e.g. in Mosques during Salat, (Prayer *Iftar*, Breaking the Fast) during Ramadan, Pilgrims during Hajj operations and in any public functions:
- viii. Encourage general cleanliness and environmental sanitation:

²³ Kano State Hisbah Board Law 2003,

²⁴ Barkindo, I. *The Role of the Institution of Hisba in Sharia Implementation in Northern Nigeria*. (unpublished) LL.M Thesis, Ahmadu Bello University, Zaria (June 2011), pp.87-89; S.8 (f) of the Katsina State Sharia Commission Law 2000, and Ostien, P. *Sharia Implementation in Northern Nigeria 1999-2006: A Source Book*, (Ibadan) Spectrum Books Ltd., 2008, vol.2 Chapter 2, chapter 2

²⁵ S. 7 (4) of the Kano State Hisbah Board Law 2003, published in Kano State of Nigeria Gazette No. 6 Vol. 35, 20th November, 2003 Supplement Part A

- 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.

4.2 The Organizational Structure of the Corps:

The Hisbah institution is also divided into various departments. There is the Board which has the membership of 19 persons at least and 29 at most.²⁶ There is also the Hisbah Corps which are headed by a Commander-General who himself is an *ex-officio* member of the Board.²⁷ The Governor of the State also appoints a Director-General for the Hisbah Board.²⁸

Administrative aspects of the Hisbah are under the Director-General while the operational aspects of the Hisbah, i.e. the Corps are under the Commander-General. The Commander-General has two deputy Commander-Generals and two Assistant Commander-Generals. Below each are the various officers of the Hisbah.²⁹ The chart below explains the organizational structure of the Hisbah Corps:

Figure 2: Organizational Structure³⁰ of the Hisbah Corps³¹:

²⁶ Kano State Hisbah board (Amendment) (No. 3) Law 2007, (Law No. 10) of 2007; see also, Barkindo, p.115

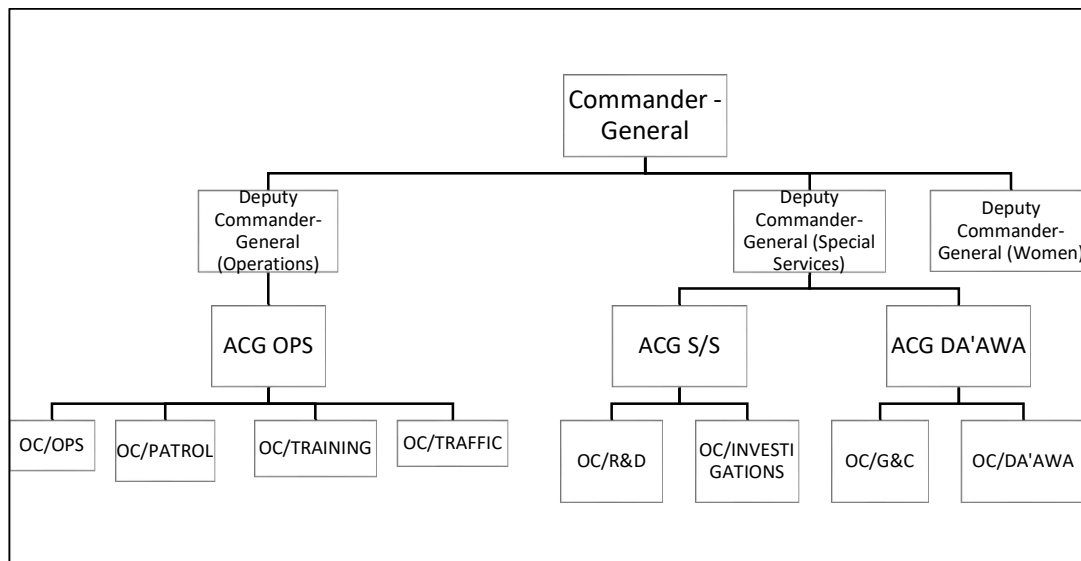
²⁷ Ibid,

²⁸ Ibid

²⁹ Barkindo, p.108

³⁰[KEY: (DCG: Deputy Commander General; ACG: Assistant Commander General; OC: Officer in Charge; OPS: Operations; G&C: Guidance and Counselling; R&D: Research and Documentation; S/S: Special Services

³¹ 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.



Source: *Muryar Hisbah* (Hisbah News Bulletin), vol.1 No.10

As can be seen from the above chart, there are officers in charge of operations, special services and *Da'awa* which include patrol, investigations, research and documentation as well as guidance and counselling. The offices in the above structure are relevant to the eight degrees of Hisba because both operations and special services are relevant to it. Special services department is relevant to the first stage which is obtaining knowledge because through it the types and prevalence of evil is known and the locations where such evil is perpetrated. Training and *Da'awah*, guidance and counselling units or activities are all relevant to *Ihtisab* by 'mouth' and information 'subjects' of the legal position of what they do. Operations, patrol and traffic on the other hand are relevant to *Ihtisab* by 'hand'.

4.3 The Legal Regime Regarding Intoxicants in Kano:

Kano State has four legal regimes regarding intoxicants and they are below, the first two are however the most important:

- a) The Kano State Sharia Penal Code Law 2000, signed into law on 25th November 2000 and came into operation on 26th November 2000³² The Code provides

³² See sections 148-150as in the CILS Harmonized Sharia Penal Codes

148. Whoever drinks alcohol or any other intoxicant knowingly and voluntarily, shall be punished with caning of eighty lashes.

149. Whoever prepares alcohol by either manufacturing, pressing, extracting or tapping whether for himself or for another; or transports, carries or loads alcohol whether for himself or for another; or trades in alcohol by buying or selling or supplying premises by either leasing or storing or leasing out premises for the storing or preserving or consumption or otherwise dealing or handling in any way alcoholic drinks or any other intoxicant shall be punished with caning which may extend to forty lashes or with imprisonment for a term which may extend to six months or with both.

150. Whoever is found drunk or drinking in a public or private place; and conducts himself in a disorderly manner, to the annoyance of any person or incapable of taking care of himself, shall in addition to the punishment specified in section 148 above, be punished with imprisonment for a term which may extend to six months or with a fine which may extend to two thousand naira or with both

- b) Kano State Penal Code (Amendment) Law 2004³³. This Law amends sections 401, 403 and 404 of the 1960 Penal Code regarding drinking intoxicating substances and also repeals the Liquor Law (CAP 82) Laws of Kano State of Nigeria, 1991.
- c) There are also Acts of the National Assembly dealing with intoxicants, namely (1) the National Drug Law Enforcement Agency Act³⁴ and (2) the Indian Hemp Act³⁵. Similar laws include (3) the Dangerous Drugs Act³⁶.
- d) Local Government Bye-Laws like the Tarauni Local Government (Kano State) Bye-Law on Prohibition of Liquor Sales (1999).³⁷

4.4 The Legal Position of *Hisbah* in Kano

The Nigeria Police since the inception of the Sharia process was not keen in enforcing Sharia laws despite the fact that the constitution of the Federal Republic of Nigeria, 1999 places a duty on the Commissioner of Police in section 215 to comply with the

³³ Published in Kano State of Nigeria Gazette No. 5, Vol.36, 27th May, 2004, Supplement Part A, PP.A13-A14

³⁴ CAP 253, laws of the Federation of Nigeria, 1990 now CAP N 30 LFN 2004

³⁵ CAP 176, Laws of the Federation of Nigeria 1990

³⁶ CAP 91, Laws of the Federation of Nigeria, 1990

³⁷ Ostien, P. *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*. (Ibadan) Spectrum Books, 2007, vol. 3, p.190

Governor's instructions³⁸. It is important to bear in mind that the Attorney-General of the Federation sent a letter³⁹ to the Governors of States that enacted Sharia Penal Codes to warn them that Sharia as illegal. The then President, Olusegun Obasanjo however was not aggressive to Sharia and said (pessimistically) that if it was introduced with good intent it will stay.⁴⁰

Secondly, on 7th February, 2006 the Inspector General of the Federation Chief Mike Ehindero made a Press Release after a Federal Executive Meeting and stated that the Hisba of Kano State is similar to the Nigeria Police and therefore illegal.⁴¹ The two top-most Hisba officials⁴² were arrested, taken to Abuja and charged on terrorism charges. They applied for bail and were granted and were finally discharged and acquitted by the Court of Appeal.

On the constitutionality of Hisba however, Kano State swiftly⁴³ filed a suit at the Supreme Court⁴⁴ invoking the Court's original jurisdiction under section 232 of the Constitution of the Federal Republic of Nigeria. The Supreme Court held that there is no dispute between the Federal Government and Kano State Government in the case hence the court lacked jurisdiction. It however did not consider the constitutionality of the Hisba or otherwise. However, *obiter*, they observed that the Inspector General of Police was concerned that the powers of the Hisba as per the law establishing it are very similar to the powers of the police⁴⁵.

³⁸ 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

³⁹ 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.

⁴⁰ Assist News of Thursday, August 16, 2007, available at <http://www.assistnews.net/Stories/2007/s07080136.htm> last visited, 20th March, 2011. See also http://news.bbc.co.uk/2/hi/talking_point/1800826.stm, last visited 20th March, 2011.

⁴¹ This act has been described by Prof. A.H. Yadudu as unconstitutional because, he argues, if the Police and the Federal Government feels that Hisba is unconstitutional, they should institute a case before a court of law to determine Hisba's constitutionality since it was established by law, see <http://www.independent.co.uk/news/world/africa/nigers-border-prostitutes-and-the-profits-of-islam-683723.html> (13/02/2006) last visited 20th March, 2011.

⁴² Which has been criticized by an outspoken lawyer as hunting of anti third term campaigners, see <http://allafrica.com/stories/200602140362.html> last visited 20th March, 2011.

⁴³ <http://allafrica.com/stories/200602100613.html> last visited 20th March, 2011

⁴⁴ Attorney General of Kano State v. Attorney General of the Federation. SC.26/2006, see <http://www.nigeria-law.org/Attorney-General%20of%20Kano%20State%20v%20Attorney-General%20of%20the%20Federation.htm> last visited 20th March, 2011.

⁴⁵ *ibid*

There is no judicial authority on the constitutionality or otherwise of the *Hisba* and all that will be said is academic exercise. The writer is however of the opinion that *Hisba* is 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 Nigeria⁴⁶ and the Police is established in sections 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 Civil Defence, 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.

Enforcement of Liquor Laws in Kano State by the Hisbah

From the light of the above, the *Hisbah* becomes the main enforcer of the Liquor law in the state. The police also play important indispensable roles regarding the enforcement of liquor laws in the state as will be seen later in this article.

The *Hisbah*, since inception in early 2003 has been involved in series of anti-intoxicants campaigns, arrests, seizures as well as destructions of hundreds of thousands of intoxicants whether acting alone or in partnerships with other agencies like the National Drug Law Enforcement Agency⁴⁷ or the Police.

The activities of the *Hisbah* regarding intoxicants in Kano are outlined below:

Activities between 2003 and 2007⁴⁸

⁴⁶ Item 45 of the Exclusive Legislative List, Part 1, Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended.

⁴⁷ Established by the national Drug Law Enforcement Agency Act, CAP N30 Laws of the Federation of Nigeria 2004

⁴⁸ Activities of the Kano State Hisba 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

- a) Thirty one trucks loaded with alcohol were arrested. The contents were totalling in thousands of cartons of beer, jeri-cans of palm-wine and *Agogoro* (a locally made wine). They were handed over to the police for appropriate prosecution.
- b) Identification of 452 beer parlours in the state;
- c) Eight beer parlours were converted into schools and classrooms at Kumbotso, Makoda, Dala and Dawakin-Kudu Local Governments;
- d) Permanent closure of thirteen beer parlours from the 452 already identified in the state;
- e) Arrest of 574 offenders of the Liquor law (consuming intoxicating liquor) and handing over to the police. They were prosecuted and convicted accordingly.
- f) The intoxicants were then destroyed by order of court. This includes the case of ***C.O.P vs. Akuku Ibrahim & 10 Others***⁴⁹

It should be noted that Classical principles on enforcement mechanisms regarding *Khamr* (intoxicants)⁵⁰ include breaking the jars containing *Khamr*⁵¹ or piercing the containers.⁵² Some scholars opined that instead of breaking the containers, the intoxicant should be spilled⁵³ and the containers can be used for lawful purposes.⁵⁴ Al-Ghazali himself holds that view and stated it while discussing level five⁵⁵ where he stated that the Muhtasib should take caution while spilling away the intoxicant so as not to break the jar as much as possible, this is regarding jar, but where containers have small necks (like bottles) and spilling them will waste the time of the Muhtasib, then he can break them. There is a Hadith in which the Prophet SAW ordered the spilling of intoxicant and breaking the jars.⁵⁶

Still, another opinion suggests that *Khamr* can be converted into vinegar (*takhli*).⁵⁷

Contextually, in modern day Nigeria, bottles of intoxicants may be used for other lawful purposes as commonly seen, women selling cooking oil in beer bottles, etc. Despite these principles, the writer agrees with the Hisbah method of destroying everything of the *khamr*, including the bottles because it is more deterrent and the Hisbah will not be

⁴⁹ (Unreported) case of Magistrates Court Kano. KA/139/CT14/08

⁵⁰ Ibnu Taimiyyah, *Al-Hisbah fil Islam*, p.49; in p. 51, he stated that the beer parlor should also be burnt (I think because in those times the parlors- *hawani*- are usually made of thatch

⁵¹ *kasru dinanil Khamr*

⁵² *Shaqqu zurufil khamr*

⁵³ *iraaqatul khamr*

⁵⁴ Al-Mawardi, (Ar-Rutbah), pp.81-84; 101-107

⁵⁵ Al-Ghazali, vol. 2, p.462

⁵⁶ Reported by Tirmizi- NO. 1293, Sahih. See Al-Ghazali, loc cit.

⁵⁷ Al-Mawardi, loc cit

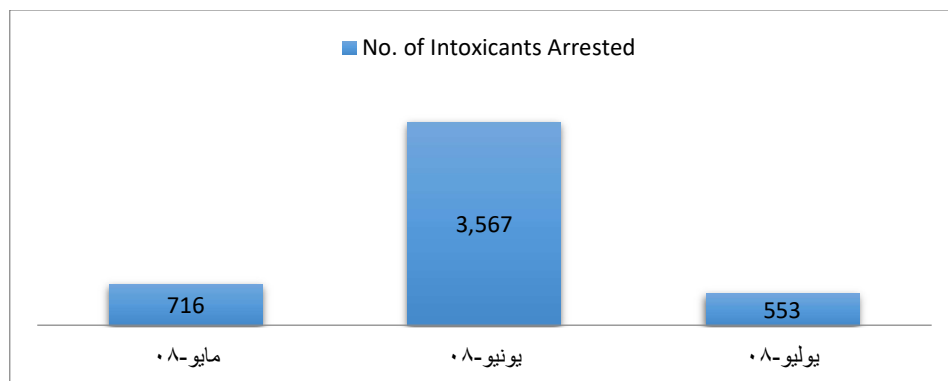
seen as having seized intoxicants from mostly non-Muslims just to spill the contents and give Muslims the containers to use for their businesses.

Activities in three months in 2008⁵⁸:

The months of May, June and July of 2008 will be analyzed as an example of how *Hisba* activities on intoxicants. The reports are of three types; Monthly Consolidated Reports of the Hisbah Board, which consolidates statistics of the reports of the 44 Local Government Hisbah Committees in the State and the respective monthly reports of the 44 Local Government Hisbah Committees for the three months. Reliance is be placed on the Hisbah News Bulletin (*Muryar Hisbah*)⁵⁹

Statistics: in May 2008,⁶⁰ 716 items of intoxicants were seized. The number increased to 3,567 in June⁶¹ but dropped to 553 items in July.⁶² The reason for the increment in arrests of the intoxicants in June may be that due to increased public awareness of the activities of the *Hisba*, people volunteered to inform the *Hisba* of intoxicants being trafficked into the state or their whereabouts. The chart below shows graphically the trend of the arrests in the three months:

Figure 3: Increase or decrease in the number of intoxicants arrested (May-June, 2008)



Source: Chart plotted by the author

⁵⁸ References for this entire section are: Kano State Hisba Board

⁵⁹ Muryar Hisbah (Hisbah News Bulletin) vol.1 No. 1, Muryar Hisbah (News Bulletin) vol.1 No.10, May, 2008,

⁶⁰ Report of the Activities of the Board and Local Government Hisba Committees for the Month of May, 2008. (unpublished).

⁶¹ Kano State Hisba Board, Report of the Activities of the Board and Local Government Hisba Committees for the Month of June, 2008. (unpublished)

⁶² Kano State Hisba Board, Report of the Activities of the Board and Local Government Hisba Committees for the Month of July, 2008. (unpublished).

g) Guiding Philosophy:

There is an important legal principle on the *Hisbah* expounded/enunciated by Ibnu Taimiyyah that “the Muhtasib must ensure that motivators of good (*Ma'ruf*) outnumber/outweigh the motivators of evil (*Munkar*)”.⁶³ *Ma'ruf* is promoted better by the eradication of vices. Regarding intoxicants, the motivators to intoxication include the availability of the intoxicants, presence of beer parlours, lack of arrests and prosecution, allowing people to drink and lack of condemnation. Removing these will not motivate people to drink and will motivate them to stay away from the drinks. There will therefore be more motivators of good and less motivators of evil.

5. Applying Al-Ghazali's Degrees of *Hisbah* unto the Kano *Ihtisab* on Intoxicants:

Whether the steps and methods followed by the *Hisbah* are in congruence with modern-day policing or not or whether the steps and methods are as spelt out in Islamic books on practice and procedure strictly followed. The most important question however is, are the methodologies of the *Hisbah* classical or Modern or a blend of the two, or as what *Ali A. Mazrui* says, “an ancient modernity or a modernized age”⁶⁴.

This section considered entry points of Al-Ghazali's Eight Degrees of *Hisbah* in the Kano *Ihtisab* on intoxicants and in particular, highlight where the applicability is restricted, made conditional or where a degree may not be applicable. Most importantly, the section mapped out a table of degrees of *Hisbah* as applies in Kano.

⁶³ Ibnu Taimiah, *Al-Amr bil-Ma'ruf* supra Pp. 46-72

⁶⁴ Mazrui, A. A. *The Trial of Christopher Okigbo*, African Writers Series.

Table 4: Kano Hisbah's Methodologies cross-matched with Al-Ghazali's

S/N	DEGREE	AL-GHAZALI'S	KANO HISBAH	REMARKS
1.	FIRST	<i>Ta'arruf</i> knowledge obtained of wrong	General knowledge/induction training/manual/specific instructions/o-c Da'awa/	Elementary Islamic knowledge (<i>ma ulima minaddini bid-darurah</i>); may be dispensed with
2.	SECOND	<i>Ta'rif</i> informing the subject that he is doing an evil act	General knowledge of Islam/public lectures/radio & TV programs/targeted reminders/gazetting of laws/	In some cases it may be dispensed with
3.	THIRD	Prohibiting by use of advise, preaching and soft language	Preaching,	Public lectures and enlightenment
4.	FOURTH	Rebuke and harsh words	Also used in preaching	Public lectures, warnings, notices
5.	FIFTH	Physical intervention, but restricted to the object and not the subject	Not allowed. No destruction of unlawful objects allowed without leave of court.	Until after judgment is delivered and time of appeal elapses
6.	SIXTH	Threats of use of force	Not allowed. In practice, those smoking Indian hemp are told that they will be arrested and handed over to the NDLEA should they be caught smoking it again	Patrols are a form of caution
7.	SEVENTH	Actual use of force to stop the commission of crime.	Seizure of intoxicating materials, may extend to stopping the consumption physically	Depends on the nature of the subjects of the wrong, if they are armed the Hisbah must seek the assistance of the Police or NDLEA
8.	EIGHTH	<i>Al-isti'anatu bish-Shurtah</i>	Reporting to the Police/effecting arrests/patrol/effecting seizure/reporting to NDLEA/reporting to NAFDAC/	May be dispensed with, as the Hisbah Corps are themselves enforcement agents/justices of the peace/they however are not empowered to carry weapons/

Table 5: Re-arrangement of the Eight Degrees to fit the Kano Hisbah:

S/N	KANO HISBAH	AL-GHAZALI'S	REMARKS
1.	Induction or orientation course; general knowledge on Islamic injunctions	<i>Ta'arruf</i> 1 st degree	In reality however, the Hisba corps are mostly trained on drill, investigations and regimental arrangements rather than intensive study of tights and duties or ma'ruf and Munkar; though they are taught, it is not much. Are they taught the Sharia penal Codes from beginning to end, if at all?
2.	Preaching, propaganda, mass campaigns, TV and radio programs	<i>Ta'rif</i> 2 nd degree	Sometimes the <i>Ta'rif</i> is not carried out by the Hisba, and when they are acting, they presume that subjects have sufficient knowledge of right and wrong.
3.	Arrests and patrols. Raids are not normally resorted to. Some of the arrest are jointly made by the Hisba and the police or the NDLEA. Some raids are not intended for arrests but to create an environment where committing the offence or sin will be difficult, e.g. prostitution	Partially eighth degree	This is not the province of a private individual in normal circumstances. It is not part of Al-Ghazali's picture.
4.	Hand-over of certain cases to the police, NDLEA or courts	Partially eighth degree	Seeking the help of law enforcement agencies as per Al-Ghazali's degree contemplate seeking the assistance of the agencies in effecting compliance with the law; it may involve seizure, destruction, and stopping people from offending.
5.	Investigations at Hisba offices. Only serious matters are taken to the office; most matters are resolved by Hisba corps	Not available.	<i>Ta'arruf</i> may not be investigations after the fact, but intelligence before the fact.

6.	Reconciling parties, caution to offenders and sinners, parties who are wrong are asked to restore rights if the rights belong to individuals	Not available.	Al-Ghazali's degrees does not contemplate reconciliation or <i>Sulh</i>
7.	Prosecution of certain cases; the Hisba does not have a prosecutorial department, hence the police and ministry of justice prosecutes the cases. The Hisbah's role during prosecution is limited to rendering evidence.	Not available	<i>C.O.P vs. Akuku Ibrahim & 10 Others</i> ¹
8.	After sentence, if it is a term, convict serves it in a prison, if it is a fine, convict pays at the judiciary, if there are objects which should be destroyed, the Hisba will be ordered by the court to destroy the items after time of appeal must have elapsed.	Not available	Al-Ghazali's degrees contemplate the instant destruction of illegal items (removal of evil or <i>izalatul Munkar</i>) by the volunteer. In today's world, such destruction can only be carried out after a conviction so as to avoid the possibility of the government or its agency planting exhibits or any extra-judicial deprivation of property. Any deprivation shall be after a judicial consideration. The destruction shall also be public so as to serve as a discouragement and deterrence to others.

¹ (Unreported) case of Magistrates Court Kano. KA/139/CT14/08

6. Conclusion and Recommendations:

6.1 Brief Summary:

Kano State *Hisba* excels its equals in the attempts to implement Sharia and it does things the right way. The methodologies used by the *Hisba* are in most cases campaigns and guidance, sometimes cases involving Indian hemp are treated by the *Hisba* as simple civil cases where, instead of arrest, prosecution and punishment, the offenders are counselled and re-oriented which plays a vital role in social engineering in the society.

The reports have it that most of the beer parlours identified in the state have not been compulsorily acquired by the state government, none have been demolished and very few had been converted into schools.

6.2 Observations:

This article analyzed the forth component of *Ihtisab* which is the activity of the *Hisba*. The *Hadith* on changing or removing evil provided three stages for removing harm or changing wrongs and jurists further broke these stages into five and then into eight. While some of the stages apply to the actor, others are directed to the object while others are directed to the subject.

By the *Hadith*, the third or lowest stage should be imbibed by all Muslims, whether they are *Muhtasibs* or not. The second stage involves campaigns, enlightenments, preaching and sensitizations while the first stage aims at removing the evil (directed at object), changing the subject physically by preventing him or enforcing standards and ensuring that the subject changes physically.

It is observed that the eight stages in their order of priority is the direct opposite of the *Hadith*, because the *Hadith* arranged them in order of importance while the stages are arranged in order of priority. It is more important to change evil by hand through execution and physical intervention that to preach against it or to hate it; this is the desired scenario. However, it is logical that the heart must hate the evil, that evil is fought through preaching and then lastly that evil is physically eradicated.

It is also not necessary that all cases must undergo the stages serially or at all because certain cases may require starting the intervention at the eighth stage. These stages augur more with private *Ihtisab* rather than public *Ihtisab*.

The writer feels that the Kano *Hisba* employs the appropriate methods in preventing intoxication, alcoholism and eradicating it or its manifestations in the state or most of it although the methods need improvement. The *Hisba* also succeeded in eliminating or reducing the motivators of evil regarding intoxication in the state which plays vital roles in changing the 'drinking' trends in the state.

6.3 Recommendations:

The author recommends the following:

- 6.3.1 More detailed plans should be developed by the *Hisba* to evaluate how each of the methods employed by them works so that they use efficient methods and abandon non-efficient ones.
- 6.3.2 The **motivators** of evil regarding intoxication should be studied in an intensive manner so that the problems should be solved from the roots.
- 6.3.3 More activities need to be done regarding the consumption of Indian hemp in Kano state which is on the high side; it seems people view consumption of Indian hemp as less illegal than beer. A community will not allow a beer parlour within it but will reluctantly allow an Indian hemp joint which is another motivator of evil. The community also needs *Ihtisab* over this.
- 6.3.4 Rules of Procedure detailing the degrees should be drawn by the *Hisba* and each corps member should be trained on the procedure so that correct measures are always taken, and
- 6.3.5 Activities should be reported to *Hisba* offices so that statistics and facts are recorded for measurement and monitoring purposes by the State headquarters.