

HISBAH AS A DRIVING FORCE OF AL-MAQASID SHARI'AH IN AN ISLAMIC STATE

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ABSTRACT

This paper examined the relationship between the institution of *Hisbah* and the objectives of Islamic law. The impact of *Hisbah* in the realization of the *Maqasid* of Shari'ah in an Islamic state cannot be overemphasized, hence making it a driving force of the *Maqasid* Shari'ah. It was observed that the implementation of Islamic principles, values and injunctions in relation to social, economic, political, moral and religious in private and public, mundane and spiritual affairs are not unconnected with the function of *Hisbah* institution. This paper is analytical and is based on the survey of relevant available literatures. This paper thus asserts that the institution of *Hisbah* is a driving force for the realization of *Maqasid* Shariah. It was confirmed that the objectives of the institution are tailored towards the attainment of the primary goal of the Shari'ah.

Key words: *Maqasid Shari'ah, Hisbah, Islamic law, driving force, virtues, vices etc.*

1.0 INTRODUCTION

Islamic state is unique in all essence and distinguishable from all other systems of governance due to its underlining characteristics, philosophy and objectives. Shari'ah itself is described as a code or a path which guides mankind to prosperity and success in life and hereafter. Therefore, the glorious Qur'an remains the fundamental and most essential source of Shari'ah as it contains the express injunctions of Allah. Allah described the Qur'an thus; "O mankind! There has come to you an instruction from your lord and a healing to the (spiritual) ailments of the hearts and a Guidance and Mercy for the believers."¹ The Sunnah of the Prophet is another source of Islamic law as it corroborates complements, elaborates and expatiates the decree of Allah to facilitate ease and benefit for the generality of mankind.

¹ Qur'an 10 verse 57

Al Maqasid Shari'ah simple means the objectives of Islamic law. *Maqasid* include the wisdoms behind rulings, such as 'enhancing social welfare,' which is one of the wisdoms behind charity, and 'developing consciousness of God,' which is one of the wisdoms behind fasting. *Maqasid* are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the *Maqasid* of 'preserving people's minds and souls' explain the total and strict Islamic ban on alcohol and intoxicants. *Maqasid* are also the group of divine intents and moral concepts upon which the Islamic law is based, such as, justice, human dignity, free will, magnanimity, facilitation, and social cooperation.²

Meanwhile, *Hisbah* is a concept which connotes the act of promoting virtues and preventing vices through vocal persuasion and physical restraining mechanism. The duty of enforcing good and prohibiting wrongs takes priority in the affairs of every Islamic state or community. Hence, effort is made by the constituted authority to establish a standing agency which is bestowed with the responsibility of discharging this duty (*amr bil ma'ruf wa nahyu an il munkar*). Interestingly, the duty of commanding good and prohibiting evil encapsulates the essence of Shari'ah and epitomizes the objectives of Islamic law.

In the light of the above, the relationship between the principle of *Hisbah* and the objectives of the Shari'ah will be examined elaborately in this paper. There is no gain saying in the fact that the objectives of Islamic law is a dream which an Islamic state or community seek to attain through its policies and programmes. One of the most effective establishments prominent in Islamic community is the institution of *Hisbah*. Hence, it is important to explore the impacts of *Hisbah* on the promotion, realization and sustainability of the objectives of Islamic law.

2.0 MEANING AND CLASSIFICATION OF MAQASID SHARI'AH

The term '*Maqasid*' (plural: of *Maqsad*) refers to a purpose, objective, principle, intent, goal, end,³ *telos* (Greek), *finalite* (French), or *Zweck* (German).⁴ *Maqasid* of the Islamic law are the objectives, purposes, intents, ends, principles behind the Islamic rulings.⁵ For a number of Islamic legal theorists, it is an alternative expression to people's 'interests' (*Masalih*).⁶

²Jasser A., *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach*, (The International Institute of Islamic Thought, London, Washington, 142AH/2007CE), p.1

³ Mohammad al-Tahir Ibn Ashur, *Ibn Ashur-Treatise on Maqasid Al-Shariah*, trans. Mohamed El- Tahir El-Mesawi, vol. 1st(London-Washington: International Institute of Islamic Thought (IIT), 2006), p. ii. See also: JasserAuda, *Maqasid Al-Shariah*An Introductory Guide, (Herndon, VA: IIIT, 2008).

⁴ Rudolf von Jhering, *Law as a Means to an End (Der ZweckimRecht)* trans. Isaac Husik, 2nd reprint ed. (New Jersey: The Lawbook Exchange (Originally published 1913 by Boston Book Co.), 2001) p.xxxv. See also: JasserAuda, *Maqasid Al-Shariah*

An Introductory Guide, (Herndon, VA: IIIT, 2008).

⁵Ibn Ashur, *Maqasid Al-Shariah Al-Islamiyah* p 183. See also: JasserAuda, *Maqasid Al-Shariah* An Introductory Guide, (Herndon, VA: IIIT, 2008).

⁶ Muhammad Adil Khan Afridi, 'Maqasid Al-Shari'ah and Preservation of Basic Rights' under the Theme "Islam and Its Perspectives on Global & Local Contemporary Challenges", *Journal of Education and Social Sciences*, Vol. 4, June, 2016, p. 274

Maqasid al Shari'ah, or the objectives of Shari'ah are designed to “promote benefits and repel harms.”⁷Nyazee mentions Imam Shatibi's view on the objectives as “... to free man from the grip of his own whims and fancy, so that he may be the servant of Allah by choice, as he is one without it.”⁸These objectives, though not expressed clearly, but are indicated in every law in the Shari'ah, as it can be deduced from the benefits of fasting, *Solat*, Jihad, *qisas* and others.⁹

The field of the Islamic law, more often denoted as the higher objectives of Islamic law was developed to elucidate the deeper meanings, intentions and wisdom that underlines individual and social practices that are commanded and prohibited by Allah. Allah revealed the Scripture to guide people toward their well-being and righteousness which are the objective of Shari'ah.¹⁰Thus, the Qur'an provides;

It is he who sent down upon His servant (Muhammad) verses of clear evidence that He may bring you out from darkneses into the light. And indeed Allah is to you Kind and Merciful.¹¹

The basis of the *Shari'ah* is wisdom and welfare of the people in this world as well as the Hereafter. This welfare lies in complete justice, mercy, well-being and wisdom. Anything devoid of justice, mercy, well-being and wisdom depict oppression, harshness, misery and corruption which have nothing to do with the *Shari'ah*.¹²The very objective of the *Shari'ah* is to promote the welfare of the people which lies in safeguarding their faith, their life, their intellect, their posterity and their wealth. Whatever ensures the safeguarding of these five serves public interest and is desirable.¹³

Traditional classifications of *maqasid* divide them into three ‘levels of necessity,’ which are necessities (*daruriyat*), needs (*hajjiyat*), and luxuries (*tahsiniyyat*). Necessities are further classified into what ‘preserves one's faith, soul, wealth, mind, and offspring.’ Some *usulist* added ‘the preservation of honour’ to the above five widely popular necessities. These necessities were considered essential matters for human life itself. There is also a general agreement that the preservation of these necessities is the ‘objective behind any revealed law.’ Purposes at the level of needs are less essential for human life, and purposes at the level of luxuries are ‘beautifying purposes’ (*tahsiniyyat*), in the traditional expression.¹⁴

Meanwhile, al-Ghazali wisely puts faith at the head of the list of *maqasid* because, within the Islamic perspective, faith is the most important ingredient for human well-being. It puts human

⁷Wahbah Zuhayli, *Al-Wajeez fi Usul al-Fiqh*(Beirut: Dar al-Fikr al-Mu'asir), 92

⁸Imran Ahsan Khan Nyazee, *Theories of Islamic law* (Islamabad: IIIT and Islamic Research Institute, 2005), 235

⁹Tawfique Al-Mubarak and Noor M. O., ‘Applications of *Maqasid al-Shari'ah* and *Maslahah* in Islamic Banking Practices: An Analysis’

¹⁰Ahmad al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (Kuala Lumpur: Islamic Book Trust, 2006), xxiii.

¹¹Qur'an 57 verse 9

¹²Ibn Qayyim al-Jawziyyah, (*I'lam al-Muwaqqi'in*, 1955), Vol. 3, p.14

¹³Al-Ghazali, *al-Mustafa* (1937), Vol. I, p. 139-40

¹⁴Jasser A., *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach*, p. 3-4

relations on a proper foundation, enabling human beings to interact with each other in a balanced and mutually caring manner to help ensure the well-being of all.¹⁵ The three goals in the middle (life, intellect and posterity) relate to the human being himself, whose well-being is the primary objective of the *Shari'ah*. The firm direction that amoral commitment to the enrichment of these three can provide to the allocation and distribution of resources, cannot come from prices and markets alone in a secularist environment. It is the life, intellect and posterity of all human beings that are to be preserved and enriched and not just of the rich and the highly placed. Everything that is necessary for enriching these three for all must be considered a 'need' and everything possible done to ensure its fulfilment - adequate nutrition, clothing, proper upbringing and education for spiritual and intellectual development, housing, a healthy spiritual and physical environment (with reduced tensions, crime and pollution), medical facilities, comfortable transport, enough leisure to meet all essential family and social obligations, and an opportunity to earn an honest living.

Ghazali places wealth at the end of the list because it is not amend in itself. It is only a means, though an important and indispensable one, for realizing human well-being. Wealth cannot help realise this objective unless it is allocated efficiently and distributed equitably. This requires, as indicated above, the satisfaction of certain moral criteria in the pursuit of wealth and the operation of markets or the politburo. If wealth becomes amend in itself, it leads to inequities, imbalances and environmental excesses, which ultimately reduce the well-being of most members of the present and the future generations.¹⁶

Similarly, in the classical Islamic discourse on objectives (*maqasid*) and public benefit (*maslaha*), there has been a discussion on how to strike a balance between spiritual good that lead to eternal bliss in the Hereafter and earthly or material good. Al-Zarkashī prioritizes spiritual or religious interests since “its fruit is the eternal happiness to which nothing else can compare, pointing out that al-Rāzī and al-Amidi both affirm the same thing unequivocally”. Because many material interests conflict with disciplining of the soul, which appears to be the highest aim of the Sharia, interests that conflict with this purpose acquire a secondary status. Al-Amidi thinks that all other objectives, like preservation of human life, faculty of reason and material wealth, are meant to further the highest aim of the attainment of eternal happiness. He writes,

Whatever is intended to preserve the root of religion should be given priority over all else...All other objectives, including the preservation of human life, the faculty of reason, material wealth and anything else, are in the service of this overriding interest.¹⁷

The foregoing analysis summarised *Maqasid* Shari'ah to include protection of faith, life, intellect, progeny and wealth. It is important to note that, protection of faith takes precedence

¹⁵Chapra M. U., *Islam and the Economic Challenge*, (International Islamic Publishing House, Kano, Nigeria), p. 24

¹⁶*Ibid.*

¹⁷Amana Raquib, 'Maqasid al-Sharia and Technological Policy-Making', p.5

over others considering its influence on others. The importance of the *maqasid* Shari'ah is predicated on the essence of Shari'ah and stands as a compass of direction to all individual and corporate activities in a bid to attaining felicitation in this world and in the hereafter.

Meanwhile, *Maqasid* Shari'ah in relation to state administration exists as a philosophy which needs to be exhibited in the social, economic, political, religious and moral interactions amongst the people. In other words, the objectives of Shari'ah which underline the essence of Islamic law need an impetus for compliance in every individual's and collectives' affairs. Hence, the establishment of the *Hisbah* institution with the sacred mandate of protecting the *Maqasid* through the act of commanding virtues and preventing vices in the Muslim Community remains imperative.

3.0 CONCEPTUALIZATION AND FUNCTIONS OF HISBAH

The knowledge on *Hisbah* has received special attention from Islamic scholars by instigating ideas and thoughts about *Hisbah* in the form of academic articles. These academic works have been appreciated and responded to in the form of implementation. Hisbah is a horde of knowledge created from an Islamic perspective and paradigm. Knowledge on Hisbah has been put in book form and has appeared in academic articles. Some of the discussions on this topic are found in literatures such as *al-Hisbah fi al-Islam* by Ibrahim Dasuqi al-Shihawi, *Ahkam al-Sultaniyah* by Imam al-Mawardi, *Nihayah al-Rutba fi Talab al Hisbah* by Ibn Bassam, *Ma'alim fi al-Qurbah fi Ahkam al-Hisbah* by Ibn al-Ukhuwwah and numerous other classic works.¹⁸ Basically, Al-Juwaini opined that the whole parts of the Shari'ah principles are rooted from the duties of enjoining good and forbidding evil.¹⁹

The historical evolution of the institution of *hisbah* unarguably owes its roots in the divine ordinance of the Shar'iah. In other words, the primary sources of Islamic law are the basic foundation and genesis of the institution of *Hisbah*. Generally, it is believed that the principles of *Hisbah* are enshrined in the slogan "*al-Amr bil-Ma'ruf wa al-Nahiy 'an al-Munkar* (enjoining what is good and forbidding what is evil).

The term *hisbah* can also be derived from the root word *hasaba*, *yuhasibu*, *muhasabah*, which in this case means self-evaluation.²⁰ Technically, *Hisbah* has defined by both Che Ya'kob and Khan postulates the creation of an institution which would be responsible for commanding righteousness and restraining wickedness.

It is significant to note that the hallmark of *Hisbah* is basically enshrined as a fundamental duty on every individual and as a collective duty. As part of the religious duty of the Prophet, the

¹⁸ Azrin Ibrahim 'Accountability (Hisbah) in Islamic Management: The Philosophy and Ethics behind Its Implementation, *International Journal of Humanities and Social Science*, Vol.5 No 8, August 2015. p. 184

¹⁹ Mohd Ab Malek bin Md Shah and others, 'The Institution of Hisbah: In the Purview of Its Significances and Development', *Global Journal of Business and Social Science Review journal* homepage: www.gjbssr.org GJBSSR, January-March 2015, Vol. 1 (2), p.387

²⁰ *Ibid.*

duty was religiously carried out during his existence. The companions of the prophet; particularly during the reign of the rightly guided Caliphs, hisbah was institutionalized as a state responsibility. The duty of commanding good and prevention underscores the uniqueness of the Muslim Ummah as enshrined in the Qur'an;

You (true believers in Islamic monotheism, and real followers of Prophet Muhammad (SAW) and his Sunnah) are the best of people ever raised up for mankind; you enjoin *Al ma'ruf* (i.e. Islamic monotheism and all that Islam has ordained); and forbids them from *Almunkar* (i.e. disbelief, polytheism of all kinds and all that Islam has forbidden) and you believe in Allah...²¹

Similarly, the prophet is reported to have enjoined the act of commanding virtues (*al-maruf*) and prevention of evil according with one's capacity. The prophet said;

Whoever among you sees an act of wrong should change it with his hand. If he is unable to do so, then he should change it with his tongue. If he is not able to do so, then with his heart, and this is the weakest of faith.²²

The above authorities pinpoint the exigencies of *Hisbah* institution in any Islamic community and in the quest to realizing the objectives of Islamic law. Hence, the object of the institution is aimed at facilitating benefit and removing injuries in the society. The tentacle of *Hisbah* is so pervasive that it penetrates all aspects of human affairs. The tranquillity and peaceful cordiality that characterized the Islamic state of Madinah was not unconnected with the impacts of *Hisbah* which include market supervision, prevention of social ills and indecency in the society. More lights will be thrown on the nexus between *Hisbah* and the *Maqasid Shari'ah* subsequently.

4.0 A DRIVING FORCE OF THE MAQASID SHARI'AH

Prior to the advent of Islam, human society was characterized with extreme corruption, immorality, violence, rivalry and injustice. These societal ills are consequences of deliberate neglect of the duty of commanding good and prevention of evils. The nonchalant attitude of the society to this duty informed the curse and wrath pronounced on them, thus the reason for their predicaments. The Qur'an while describing the cause of the predicament of the past generation thus;

Cursed were those who disbelieved among the children of Israel by the tongue of David and of Jesus, the Son of Mary. That was because they disobeyed (habitually) transgressed. They used not to prevent one another from wrongdoing that they. How wretched was that which we doing.²³

Similarly, the prophet warned in an authentic hadith against and intercession compounding evil or crimes irrespective of the status of the culprits.

²¹ Qur'an 3:110

²² Jamal al- din M. Z, *Commentary on the Forty Hadith of al Nawawi*, Vol. 1 & Vol. 2, hadith 34 (Al Basheer Publications and Translations), p.984

²³ Qur'an 5 verse 78-79

The Quraish people became very worried about the Makhzumiya lady who had committed theft. They said, "Nobody can speak (infavour of the lady) to Allah's Messenger, and nobody dares do that except Usama who is the favourite of Allah's Messenger 1•"When Usāma spoke to Allah's Messenger, about that matter, Allah's Messenger said, "Do you intercede (with me) to violate one of the legal punishment of Allah?" Then he got up and addressed the people, saying, "O people! The nations before you went astray because if a nobleperson committed theft, they used to leave him, but if a weak person among them committed theft, they used to inflict the legal punishment on him. By 'Allah, if Fatima, the daughter of Muhammad committed theft, Muhammad will cut off her hand!"²⁴

The above hadith further buttressed the risk attached to condoling evils and refraining from virtues. Hence, the social, economic and political status of the culprit should not blindfold the authority from establishing the ordinances of Allah. If the hallmark of Allah's ordinance is to establish virtues which has the potential of bringing forth benefit and preventing which on the other hand is capable of inviting agony and harm to the society, it is therefore sacrosanct that an institution like *Hisbah* is established and reinforced to carry out the duty towards realizing the objectives of Islamic law.

A painstaking review of the functions of the *Hisbah* Institution further accentuates its significance in any Islamic community in actualizing the Maqasid of Shari'ah. A cursory look at the role of the commission for the promotion of virtues and prevention of vices in Saudi Arabia which is a similitude of Hisbah police during the pristine Islamic age is imperative to the assertion that *Hisbah* is a driving force of *Maqasid* Shari'ah.

It is fact beyond controversy that Saudi Arabia is one of the most peaceful and fastest developing countries in the world. The security, tranquillity and internal stability in the most Muslims countries are incomparable with any other. This is without prejudice to the fact that there are few reported cases of crimes. Naturally, a community habituated by human being in not immunized from human errors and crime commission. However, the level of crime perpetration and social unrest is minimized and bearable compared to other part of the country. Even during the existence of the prophet in Madinah, there were reported cases of theft and adultery which resulted into the melting out of *Hudud* punishment on the culprits²⁵. This occurrence justify the fact that mankind are fallible and irresistible from errors due to their inherent weaknesses.

²⁴ Muhammad M. K., English Translation of *Sahih Bukhari*, hadith 6788, Vol. 8, (First ed. King Fahd National Library, Riyadh Jeddah Al-Khobar Shar'iah 2007), p. 410

²⁵The story of the Maqsumiyyahlady who committed theft (supra)

Although, there seems to be no nation in the world that can be described as a full-fledged Islamic states due to one or two ingredients which characterized an Islamic state, nevertheless, the kingdom of Saudi Arabia can be described as one similar to an Islamic state because of some certain peculiarities. Saudi society bases its religion, ideology and daily practices on Islam and belief in Allah. Accordingly, all the affairs of its life are interconnected with the rules of Islam. Moreover, Saudi Arabia is the only country in the world that applies the Shariah law of Allah and whose constitution is the Holy Qur'an.²⁶ There can be no doubt, therefore, that the Saudi system of governance derives its authority from Islamic legislation considering its features and form of administration.²⁷

In view of the great importance the state gives to "Hisbah", the Basic System of Government in Saudi Arabia (which was announced by Royal decree No. 90-A dated March 2, 1992 mentions explicitly that the state will take over the duty of propagating virtue and preventing Vice, i.e. "Hisbah". To this effect, article 23 of the System reads:

The state protects the Islamic creed, applies Shari'ah, and enjoins what is right and forbids what is wrong, and undertakes the call to the worship of Allah.²⁸

The above pronouncement culminated into the establishment of Committee for the Propagation of Virtue and Prevention of Vice, (CPVVCV). The hallmark of this committee is to invite and promote that which is good and to refraining people from indulging in evil of any form. They help preserve the identity of Saudi society and are instrumental in field application of the principles of propagation of virtue and prevention of vice. The functions of the CPVVCV have been clearly defined. They are to guide people and advise them on performing the irreligious duties as prescribed by Islamic law or Sharia and ensure that they are indeed performed; to forbid all that is reprehensible, ensure that no unlawful acts are committed and no deviant habits or traditions are followed.²⁹

Essentially, the role of the committee in the social, economic and political stability in Saudi Arabia is indicative of the fact that the institution of *Hisbah* is instrumental to the actualization of the objectives of Islamic law (maqasid). It is instructive to restate that the *Maqasid* Shari'ah as discussed earlier is to facilitate ease in personal and public affairs. In other words, benefits to the all and sundry irrespective of colour, race, ethnics, religion and gender which is the hall mark of Shari'ah tally with the aspiration of the *Muhtasib*. However, this goal, objective, aspiration and target is not an end in itself but facilitated through the mean of the institution and principles of *Hisbah*. By propagating virtue and preventing vice, the religious police have achieved three objectives which are of paramount importance to Saudi society and which every advanced society would aim at achieving. They are: continuity, stability and cohesiveness.³⁰

²⁶Ibrahim Al-Juwair, 'Religious Police: A social Reform Institution in Saudi Arabia' in *The Religious Police in Saudi Arabia*, (First ed. Ghainaa Publications, 2008), p. 42

²⁷Abdullah Al-Turaiqi, *The Political System of Saudi Arabia*, (First ed. Ghainaa Publications, 2008), p. 41

²⁸Ibrahim Al-Juwair, 'Religious Police: A social Reform Institution in Saudi Arabia', p. 43

²⁹*Ibid.*

³⁰*Ibid.*

A meticulous examination of the objectives of *Hisbah* using the CPVPV in Saudi Arabia as a case study, convincingly revealed the nexus between it and the objectives of Islamic law. Summarily, the objective of *Hisbah* captured in the Saudi constitution includes but not limited to the following;

- a. Article (9) of the CPVPV Law states: “The most important duty of the CPVPV is to guide people and advise them to adhere to the religious duties prescribed by the Islamic *Shari'ah* and to ask people to perform these duties while at the same time preventing vice and standing against committing what is forbidden and unlawful or following bad customs, traditions or reprehensible innovations.”
- b. Article (12) of the same law reads: “The Commission has the right to take part, with the concerned agencies, in monitoring forbidden items that affect beliefs, behaviours or general disciplines.”

An attempt to juxtapose the aforementioned objectives of the CPVPV with the five objectives of Islamic law (protection of faith, life, intellect, progeny and wealth) strengthened the contention of this paper that hisbah is a driving force, fulcrum and pilot of the *Maqasid Shari'ah*. Hence, the duty of a muhtasib is geared towards keeping alive the objective of Islamic law.

5.0 CONCLUSION

The institution of *Hisbah* has remained a veritable tool for the enforcement of Islamic law in an Islamic/Muslim state. However as a principle “*al amur bil ma'ruf wa nahyu wal munkar*” it is the underlining reason for the compliance of Muslims in non-Islamic states to the direct dictates and ordinances of Allah fear of any enforcement agencies. Meanwhile, absolute compliance with the prescriptions of Islamic law and abstinence from its prohibitions fast track the realization of *Maqasid Shari'ah*.

The foregoing analysis revealed the important role of the institution in the facilitation of compliance with Islamic law in all the social, economic, political, and religious activities of every individual and the government. Therefore, the stability and peaceful co-existence which characterized the pristine Islamic state in Madinah and some Muslim countries in the contemporary world; Saudi Arabia as a case study is unconnected with the efforts of *Hisbah* in the establishment of virtues and prohibition of vices.

The *Maqasid Shari'ah* which comprises of protection of religion, life, progeny, intellect and wealth remains a dream and needs a driver for its full implementation. There is no gainsaying in the fact that, the institution of *Hisbah* has proven itself over the years as a veritable fulcrum to the realization of the objectives of Islamic law.