

## The Exceptional Judiciary In Islam (The Mandate Of The Grievances, The Mandate Of The Hisbah) "As A Model"

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### Abstract

*The judiciary and its positive role in resolving disputes among people and achieving justice have been among the key components of the Islamic State. Alongside the regular judiciary, exceptional judicial systems were represented by the mandate of grievances (Mazalim) and the mandate of Hisbah. This is the focal point of the present research, aiming to introduce these two systems and highlight their roles in supporting the oppressed, restoring rights to their rightful owners, regulating societal behavior in religious, ethical, and behavioral aspects, as well as in commercial transactions, in accordance with the grand Islamic principle of (enjoining the good and forbidding the evil) that has fostered a state of tranquillity within the Islamic community.*

**Keywords:** *The mandate of the grievances, the mandate of the Hisbah, The Rights, Judicial Decrees, The rulers of the market.*

### 1- INTRODUCTION

The subject of judiciary and settlement in disputes that occur among members of society is a crucial aspect of communal life. It represents one of the most significant methods for safeguarding rights. The Holy Prophet Muhammad (PBUH), followed by the Rightly Guided Caliphs and Islamic Sharia jurists, have bestowed particular attention to this matter. In the Islamic state, both regular judiciary and exceptional judiciary appeared. The Holy Prophet, and the caliphs, paid particular attention to this exceptional judiciary represented by the system of grievances and the system of Hisbah (a position held in Islamic countries by a principal who supervises public affairs, such as controlling prices and looking after morals). These systems will be the focus of this research owing to the reduction of time and procedures in restoring the rights of the oppressed, ensuring justice for them, and countering the abuse of power by authorities. They also extended their control over the work of the state, monitored societal activities in trade, buying, and selling, and achieved the lofty principles of Islamic Sharia. This led to the establishment of a sense of security and tranquillity within the Islamic community, fostering upright behavior among its members. Furthermore, these systems facilitated the exchange of common benefits among its members based on justice, , securing public and private rights, combat fraud and corruption in commercial endeavors, buying and selling activities, preventing deception in production and manufacturing, and providing advice and guidance to sellers, merchants, craftsmen, and production factories, and Striking with an iron fist at the hands of those with leverage and power who use their influence and authority to infringe on public and private rights.

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## 2- STATEMENT OF THE PROBLEM

The research problem lies in the reality of daily life, manifested through the infringement of public and private rights by those in power and authority. Today, we are in dire need of a mandate of grievances to return public and private rights to their owners, and to provide justice for the thousands of oppressed individuals who have had their rights seized by those in power and authority. Our markets also urgently require the oversight of Muhtasib (a person who was in charge of the Hisbah position, a figure familiar with the professions of the city and controlling balances, who monitored the progress of transactions of merchants) who is not afraid to hold accountable anyone engaging in deceit, corruption, and fraud in our markets and daily lives. Regarding this, the state must put in place legislation to ensure justice for the oppressed and to achieve effective supervision over the movement of commercial transactions in buying and selling in our markets and daily lives. May our ancestors set an excellent example for us in all aspects of our lives.

## 3- METHODOLOGY

The nature of research in historical and human subjects relies on the descriptive-analytical method, which is based on describing the texts as they are and then analyzing them on logical bases to derive conclusions from them for the purpose of benefiting from them in the current reality.

## 4- RESEARCH STRUCTURE

In order to understand the fundamental ideas of the research topic and highlight its general framework, the research was structured with an introduction, two main sections, and a conclusion summarising the most significant findings and recommendations.

## 5- THE MANDATE OF THE GRIEVANCES

The first part of this section sheds light on the concept of the Grievance Authority and its origins, while the second part explores the Board of Grievance and the issues it addresses.

### 5.1. The Mandate of the Grievances and Its Origins

Since the early days of Islam, the Islamic state implemented a form of oversight similar to that exercised by the French Council of State over the actions of rulers, governors, and even caliphs. This oversight has been known as the "grievance authority". It is a comprehensive and effective judicial authority that often exceeds in its scope and impact many judicial systems. It was established as an institutional system during the Umayyad period, and the authority of grievances emerged when their officials acted in the provinces, confiscating people's wealth and obstructing the enforcement of judicial rulings. At that time, the judges found themselves unable to implement their rulings when the opponents were individuals with power and authority (Al-Mawardi, 1966) because the provincial officials and governors had stronger influence and authority than the judges owing to their strength and power in that era. The grievance authority is similar to the judiciary as it aims to do justice to the oppressed and return their rights to them. Its exemption distinguishes it from any restrictive regulations, as it is sufficient for any person to appeal to the ruler, the caliph, or the governor. The intervention of the ruler alone can shed light on the situation and work towards rectification, leveraging the authority of governance and the power of reprimand. In fact, it is sufficient for the ruler to realize the injustice or the crime to address or prevent it (Al-Aboudi, 2007).

The Persian kings perceived this as a principle of sovereignty and laws of justice, whereby goodness does not prevail except by observing it, and justice is not complete

except by directing it. In the same vein, in the pre-Islamic era of the Quraysh, when their leaders multiplied and their leadership roles expanded, they witnessed conflicts and struggles that any dominant authority could not quell, they formed an alliance to combat injustice and redress the oppressed from these injustices (Al-Mawardi, 1966). Rectifying the injustice suffered by the oppressed is the cornerstone of social justice in a healthy society. It contributes to achieving social and economic stability and moving away from primitive systems such as individual revenge. The historical stimulus for the emergence of the mandate of the grievances was to establish the authority of law over powerful governors and state officials, whom regular judges could not subject to legal judgments or compel to follow court rulings (Al-Nadawi, 2015). The purpose of the mandate of the grievances is to drive the oppressed to justice and to deter disputants from confrontation through authority.

Therefore, the prerequisite for the oversight of the mandate of the grievances was the possession of respectable stature, influential leadership, formidable presence, conspicuous integrity, modest ambition, and strong moral character, for he required the authority of the governor and the firmness of judges. This role involves a high level of responsibility and risk. Criticism would not affect him when pursuing justice, and temptation would not sway him towards bribery (Al-Mawardi, 1966). This is intended to enable him to enforce judgments against governors and influential figures, returning rights to their rightful owners, asserting state authority over rulers and the ruled, and eventually achieving social stability and confidence in the state's governance and political system.

## 5.2. The Board of Grievances and the Cases It Considers

### 5.2. 1. The Board of Grievances

The Board of Grievances is composed of representatives of the public authority, including the caliph, ministers, and princes. Its sessions are held on a specified day of the week to consider the disputes and transgressions that have arisen from the governors and those in power against the subjects who are powerless in the face of the governor's or Sultan's authority. Abd al-Malik ibn Marwan, the Umayyad caliph, was first person to sit and review the injustices faced by people and allocate a day for. He was followed by Umar ibn Abd al-Aziz (Ibn Taymiyyah, 2009), who redressed the Umayyad clan's grievances against their people and restored rights and property that had been unjustly taken from them. The authority of the board of Grievances continued during the reign of the Abbasids and the Andalusian caliphs, and it had a role in deterring the oppressors and acquitting the oppressed (Al-Termanini, 1982). It aimed to restore rights to their rightful owners, and to achieve a degree of relative justice among subjects. Therefore, when grievances are considered, whoever is appointed for the purpose fixes a known day for the proceedings. On this day, the affected people come to present their cases, and the disputants return to review them. Five indispensable categories complete the quorum for the Board of Grievances, and procedures cannot be organized without them. These categories are:

**Protectors and Assistants:** Their role is to raise the prestige of the Board of Grievances, attract influencers and ensure the seriousness of the process.

**Judges and Rulers:** They are responsible for clarifying established rights, understanding the procedures in their courts between disputing parties, and making appropriate rulings for disputes presented.

**Jurists:** Judges and rulers refer them to complex matters, seeking for their advice on matters that are not clear or obscure. Jurists provide these consultations to judges and rulers.

**Clerks:** their duty is to document what happened between litigants and to record the rights claimed or waived to them. They are responsible for recording actions.

Witnesses: They are present to testify before the head of the grievances council regarding established rights and judgments, especially in cases where something is contested.

Once the Board of Grievances is completed with the presence of the five aforementioned categories, it then proceeds to consider the matters (Al-Mawardi, 1966).

### 5.3. Cases under Consideration by the Board of Grievances

When the Board of Grievances has completed its quorum, it begins to review the cases presented it on the specified day. These cases are classified into ten sections, as specified by Al-Mawardi. The first section: examining the transgressions of governors against their subjects and their unfair treatment, which is a necessary aspect of the investigation of grievances. The oppressed individual should not be ignored or marginalised. In addition, the Board explores the states and details of the oppressed individuals to explore whether the oppressed have been justly acted (Al-Mawardi, 1966). The Prophet said: “All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is a guardian of his family” (Muslim, 1829).

Section Two: injustice against workers in their right to wages. Just laws are referred to in the offices of the leaders, urging people to abide by them, and workers to claim their rights through them, and to review any additional sums they have taken. If it is raised to the treasury, order it to be returned; If it is used for personal use, it must be returned to its rightful owners (Al-Mawardi, 1966). Imam Ali said: “To me, the humble is noble until I return his right and the noble is humble until I take the right from him” (Jardaq, 1323).

Section Three: office Clerks, as they are entrusted with the assets of Muslims, while ensuring the accuracy of what they receive and deliver. The condition of everything that is entrusted to them must be checked. If they act justly, those who enter or depart with an increase or decrease shall be subject to their regulations. If there is any deviation, it is met with correction (Al-Mawardi, 1966).

Section Four: The grievances of those who earn their livelihood from the decrease or delay of their provisions, and the injustice done to them in their consideration, is referred to the department they appoint. There, a fair distribution of aid is enforced, and they are given what they deserve. The department then reviews what has been deducted or withheld from them. If their leaders took it, it must be taken back from them. If it is not taken, the judges will retrieve it from the treasury (Al-Mawardi, 1966).

Section Five: The restitution of usurped property. It has two forms: one is the usurpation by a ruling authority, which the oppressors' governors have dominated, as in the case of properties seized from their owners. The other form is usurpation seized by those with strong hands who have wielded it as if they were kings, exercising dominion and control through force and conquest.

Section Five: The restitution of usurped property. It has two forms: the usurpation of the ruling power controlled by the rulers of the oppressors, as in the case of property seized from its owners. The other form is usurpation, seized by those with strong hands who have wielded it as if they were kings, exercising dominion and control through force and conquest.

Section Six: the waqf, which is public and private. Regarding the public waqf, the examination begins, and if no aggrieved party is involved, the process proceeds. As for the private waqf, the examination is halted until the aggrieved parties are in dispute because it depends on identified parties

Section Seven: Enforcement of Judgments. This pertains to executing the verdicts issued by judges due to their inability to enforce them, and control the convict due to his power or authority, thus enabling the overseer of grievances to wield a stronger hand and execute decisions (Al-Mawardi, 1966).

Section Eight: Reviewing matters that the overseers of Hisbah were unable to address in public interests, such as publicly forbidding what is wrong but lacking the ability to prevent it (Al-Mawardi, 1966). It is known that the hisbah is an Islamic system that calls for enjoining good and forbidding evil. It involves a proactive and reactive supervision of the actions of persons. This system flourished during the Abbasid era (Hammoudi, 2013).

Section Nine: Observance of outward religious practices such as Fridays and Eid's prayers, pilgrimage, and jihad, addressing any shortcomings or violations of their conditions. Allah's rights are more important to be fulfilled, and His obligations are paramount to be fulfilled. True worship bestows upon the servant a spiritual energy that watches over the worker in their workshop, the farmer in their field, and the responsible individual while fulfilling their duties.

Section ten: The judgment between the disputants. The judgment between them does not deviate from the necessities and requirements of the right, and it is not permissible to judge between them except as per the rules of judges and rulers (Al-Mawardi, 1966).

We have witnessed how there is a strong connection between the righteousness of governance and the well-being of the people. Many aspects of public life, both material and spiritual, are closely tied to the justice of the ruler. Likewise, many aspects of private life are contingent upon the ruler's fairness. The rules that guide this ruler are permitted by the principle that "a ruler's justice is better than a prosperous time." The judgments of the judiciary hold no meaning unless they are executed justly and faithfully (Jarda, 1323).

## **6. THE MANDATE OF THE HISBAH**

In order to understand the subject of 'Hisbah,' we have divided this part of the research article into two sections. In the first section, we explored the mandate of the Hisbah and its historical roots. In the second section, we delved into The Legitimacy of Hisbah and the Responsibilities the Muhtasib:

### **6.1. The Mandate of the Hisbah and its Historical Roots**

Hisbah linguistically: Derived from 'ihtisab,' it means to distance oneself from reprehensible acts or to denounce vile actions. For instance, when someone practices Hisbah against someone' implies they criticized the person's wrongful action (Ibn Duraid, 1970). In essence, it involves enjoining good and forbidding evil when an act of abstinence becomes evident, and forbidding evil when a reprehensible act is observed. It also involves reconciliation between people (Al-Farra, 1983). Hisbah terminologically: It is an administrative term that has evolved over time, and has turned into a religious and worldly function that aims to attain the satisfaction of Allah Almighty, implement His orders, and safeguard societal norms. Its scope includes the maintenance, preservation and promotion of public morality. In this regard, Almighty Allah says: "Be a community that calls for what is good, urges what is right, and forbids what is wrong: those who do this are the successful ones" (Quran 4:104, Oxford World's Classics edition).

Then this concept expanded further after the civilization progress witnessed by the Islamic state, particularly during the Abbasid era. It began to encompass various aspects of life, such as focusing on social, economic, educational, health, industrial, and commercial services. This includes supervising and regulating markets, ensuring cleanliness, monitoring trade, overseeing merchants, and regulating commercial transactions (Al-Sarhan, 1970). Almighty Allah has enjoined upon Muslims to enjoin good and forbid evil in various verses of the Holy Qur'an to reform society, maintain order, and preserve public morals in Islamic society. Stability and tranquillity are essential requirements of basic life. In this regard, the hisbah is an administrative organization in the Islamic state that holds religious legitimacy because it embodies an important

principle in Islam: enjoining what is right and forbidding what is wrong. This principle is part of Islamic Sharia and emphasizing its application. Hence, Muslims are obligated to adhere to the principles of hisbah because they serve the common good. Therefore, the hisbah system functions as a religious and worldly structure with broad responsibilities in the field of social organization. It extends to observing the behaviour of individuals in the Islamic community in their speech and actions, preserving the unity of society, and protecting it from any harm. This is achieved by preventing encroachments upon public and private rights (Hammoudi, 2013). When tracing the historical roots of the hisbah system, we find its presence in the ancient Roman state, particularly during the era of the Republican Consul, which began in 509 BC and ended in 130 BC. During this time, the role of market rulers was established in 367 BC. Their duties included supervising markets and public stores, monitoring the sale of goods and livestock, resolving disputes arising from them, ensuring the availability of food supplies for the city, and taking measures to prevent inflation of prices, especially the price of wheat. For these purposes, they were granted powers, imposed fines for violations within their jurisdiction. They were also vested with judicial authority to address matters related to the sale of slaves and animals, among others (Mustafa, 1959). In addition, they were charged with organizing and supervising public games and arenas. It is clear that the ancient civilizations recognized the hisbah system, albeit with varying differences, as a system that contributes to societal reform, establishing order, and preserving morals. And it is not surprising that this system influenced later civilizations.

The term "hisbah" has historical connotations that suggest that it originated during the time of the Prophet in relation to the Islamic state. He personally practiced it and occasionally delegated it to others. The rightly guided Caliphs continued this practice. Subsequently, it became a function within the religious authorities (Al-Yuzbek, 1977). After that, the muhtasib (the person in charge of the hisba) and the hisbah continued to be used in the Umayyad era. The term continued to be employed in the East of the Muslim world, while the term 'Hukam al-Suq' (Market Governors) remained in use in North Africa and the Maghreb. This use indicates their influence from Roman civilization. The term "hisbah" indicates the governance of the market and the one in charge of it is called the owner of the market (Wakee, 1950). The Abbasid era (132 - 656 AH / 750 - 1258 AD) witnessed the expansion and prosperity of the Islamic state in its economic, social and cultural aspects. The state showed concern in the markets in terms of location, organization and infrastructure, especially in Baghdad, the capital of the Islamic Caliphate. Public markets were established, divided according to trades and crafts. Specialized markets emerged for various industries, professions, or trades, named after the goods they sold such as the date market, the basket market, the paper market, the spice market, the copper market, and the slave market, among others (Al-Fassi, 1984). Al-Mawardi mentioned that Abu Sa'id al-Istakhri, one of the companions of Imam al-Shafi'i, assumed the position of Hisbah in Baghdad at the time of Al-Muqtadir. He ordered the removal of the wine market (Al-Dadi market,) as it was being used for the sale of prohibited items. The presence of this role appeared in the life of the Abbasid state, which flourished and expanded in various fields of social, economic and cultural life. This position was of great importance because of his adherence to the principle of enjoining good and forbidding evil. Almighty Allah says: "The believers, both men and women, support each other; they order what is right and forbid what is wrong; they keep up the prayer and pay the prescribed alms; they obey God and His Messenger. God will give His mercy to such people: God is almighty and wise" (Quran 10:71, Oxford World's Classics edition). Some jurists have defined Hisbah as enjoining good when its abandonment appears, and forbidding evil when its commission becomes evident. This is because Islam establishes society on the principles of righteousness, and individuals are obliged to cooperate to observe it to ensure common welfare (Al-Yuzbek, 1977). This great principle introduced by the honorable Islamic Sharia plays an important role in building a just society. Almighty Allah says: "Be a community that calls for what is good, urges what is

right, and forbids what is wrong: those who do this are the successful ones” (Quran 4:104, Oxford World's Classics edition). The concept of “good” in this context refers to Islam, “enjoining good” means obedience to Allah, and forbidding evil means abstaining from disobedience. Thus, there is a need for a group that calls Muslims to what pleases Allah and discourages what angers Him. This function is an obligation incumbent upon those in authority over the affairs of the Muslims. They are responsible for appointing those suitable for this role, obligating them to fulfil their duties, assisting them, and addressing wrongdoings within their capacity. This role extends to upholding public interests in the city, such as preventing congestion on the roads, curbing excessive loads for porters and shipmen, ruling to demolish structurally unsound buildings, and removing potential threats to pedestrians. It also includes administering punishment for teachers' physical abuse of students in schools and other similar cases “Ibn Khaldun, 1978). This justifies for us the importance of the Hisbah system in the various economic, social, educational and service fields in society, as well as combating any deviant behavior that leads to disturbances in community and the life of the city.

## 6.2. The Forcibility of Hisbah and the Responsibilities the Muhtasib

### 6.2.1. The Forcibility of Hisbah

The legitimacy of hisbah lies in enjoining good and forbidding evil, as stated in the Qur'an and the authentic Sunnah of the Prophet. Muslims have been concerned with applying the teachings of Islamic Sharia that are obligatory for them, implementing all the commands and prohibitions contained in the Qur'an and the honorable Sunnah of the Prophet, and considering them religious duties. Among these principles is enjoining good and forbidding evil, which is the basis of the hisbah system in Islam. The Qur'anic verses and hadiths dealing with this principle are numerous. It suffices to mention some of them (Hammoudi, 2013).

### 6.2.2. The Forcibility of the Hisbah in the Qur'an

Almighty Allah says: “Be a community that calls for what is good, urges what is right, and forbids what is wrong” (Quran 4:104, Oxford World's Classics edition). In Surah Al Imran, Almighty Allah says: “[Believers], you are the best community singled out for people: you order what is right, forbid what is wrong” (Quran 4:110, Oxford World's Classics edition). In Surah Al-Hajj, Almighty Allah says: “those who, when We establish them in the land, keep up the prayer, pay the prescribed alms, command what is right, and forbid what is wrong: God controls the outcome of all events” (Quran 17:41, Oxford World's Classics edition). In Surah Al-Mutaffifin, Almighty Allah says: “Woe to those who give short measure, who demand of other people full measure for themselves, but give less than they should when it is they who weigh or measure for others” (Quran 30:1-2-3, Oxford World's Classics edition). The Holy Qur'an is the primary source of Islamic rulings and it prevails over all other sources. It is inconceivable for another source to provide a judgment that contradicts what is stated in the Holy Qur'an. The establishment of such contradiction serves as definitive evidence of the invalidity of what is presented in that alternative (Hosni, 2007).

The Holy Qur'an is the constitution of the nation, it includes the fundamental principles, lays down the general foundations, and restricts the overarching rules. It provides a broad framework within which the legislator and the responsible individual operate, ensuring that no legislation that contradicts one of its principles is enacted. It establishes an ethical framework and directs the human intellect to move in accordance with the necessities of life, charting a clear path and distinct milestones (Al-Zalmi, 1900).

### 6.2.3. The Forcibility of the Hisbah in the Noble Prophet's Sunnah

The Sunnah is one of the fundamental sources of Islamic legislation, ranking second after the Qur'an. It is obligatory to follow the Sunnah unless its authenticity is proven invalid based on the Qur'an, Hadith, consensus or sound reasoning. There are many noble



hadiths of the Prophet that emphasize adherence to the hisbah system because of its importance in the life of the nation and society. we will mention some hadiths related to this topic.

The Prophet (ﷺ) said: “By Him in Whose Hand my life is, you either enjoin good and forbid evil, or Allah will certainly soon send His punishment to you. Then you will make supplication and it will not be accepted” (Al-Ghazali, 2001). The Prophet (ﷺ) said: “I was sent to uphold and complement ethical values” (Al-Nawawi, 2002). The Prophet (ﷺ) said: “Avoid sitting on roadsides.” His Companions said: “O Messenger of Allah (ﷺ), there is no other alternative but to sit there to talk.” Thereupon the Messenger of Allah (ﷺ) said, “If you have to sit at all, then fulfill the rights of the road.” They asked: “What are their rights?” Thereupon he said, “Lowering the gaze (so that you may not stare at unlawful things); refraining from doing some harm to others, responding to greeting (i.e., saying 'Wa'alaikumus- salam' to one another) and commanding the good and forbidding the evil” (Al-Ghazali, 2001). Messenger of Allah (ﷺ) said: “Both parties in a business transaction have a right to annul it so long as they have not separated; and if they tell the truth and make everything clear to each other (i.e., the seller and the buyer speak the truth, the seller with regard to what is purchased, and the buyer with regard to the money) they will be blessed in their transaction, but if they conceal anything and lie, the blessing on their transaction will be eliminated” (Al-Ghazali, 2001).

The honorable Sunnah of the Prophet is a source from which we derive the provisions of Islamic sharia. The Qur'an has indicated that what the Messenger says is a form of legislation, because it is based on divine revelation from Allah. Almighty Allah says: “he does not speak from his own desire. 4The Quran is nothing less than a revelation that is sent to him” (Quran 27:3-4, Oxford World's Classics edition). Therefore, his sayings carry the obligation of adherence. Moreover, It is known that the Prophet Muhammad is the most knowledgeable in understanding the noble meanings of the Qur'an. He acted upon these meanings both in word and deed, implementing their comprehensive and specific objectives in life. He commanded noble morals, spread virtue among individuals in society, and made the primary goal of religion to preserve individuals from their inherent evil tendencies and rectification of human souls. He established piety as the cornerstone for distinguishing between individuals. He instructed to avoid injustice, prohibitions, and vices that lead to disputes, enmity, and animosity among members of the human society. In this way, the Holy Prophet laid the foundations for the establishment of the new Islamic state in Al-Madinah Al-Munawwarah and the principles on which it is based of equality, justice, brotherhood, and mercy among the members of human society, regardless of all the differences between members of society (Ibn Khaldun, 1978). However, the Hisbah in Islam serves a fundamental purpose of maintaining what is known today in Man-made law as legal supremacy, positively through enjoining what is right and negatively through forbidding what is wrong. Thus, it can be said that the hisbah has been a means of upholding justice and righteousness. There is a fundamental distinction between the roles of the enforcer of Hisbah and a judge. The judge only deals with matters presented to them, while the executor of the hisbah plays their part proactively by enjoining what is right and forbidding what is wrong (Al-Nahi, 1971). This means that the enforcer of Hisbah performs his duty whether he is expressly requested or not. They take responsibility and fulfill their duty once they notice a violation of religious principles or social norms.

Therefore, Islamic jurisprudence has set certain conditions for those who are qualified to engage in the hisbah and assume the responsibility of enjoining good and forbidding evil, taking into account the personal characteristics of the individual who assumes this solemn position and the heavy responsibility associated with it (Al-Nadawi, 2015). Regarding this, Al-Mawardi explains that among the conditions for those overseeing Hisbah is that they should be highly esteemed, influential in their actions, command great respect, demonstrate evident integrity, possess minimal greed, and maintain a high level of piety



(1966). This is because their role requires them to exercise power over the powerful and maintain the trust of judges. Thus, they need to embody the qualities of both parties to effectively establish the rule of law over high-ranking officials and state figures who may be outside the jurisdiction of ordinary judges due to their influence and power.

### 6.3. The Responsibilities of the Muhtasib

Sometimes the role of the hisbah overlapped with that of the judge, albeit with some differences between the two functions. The work of a judge is based on investigation and careful deliberation in making judgments. At the same time, the role of a hisbah official involves ensuring compliance with Sharia rules, and looking into and investigating matters thoroughly before making judgments. The work of the Hisbah official is characterized by accuracy and speed in issuing decisions (Al-Aboudi, 2007), and avoiding violating the provisions of Sharia and prevailing customs while ensuring that people's interests are achieved and harm is prevented. As previously explained, the hisbah is enjoining what is good when it appears that it has been neglected and forbidding what is wrong if it appears that it has occurred. Hisbah can be categorized into three main aspects: The first aspect concerns matters related to the rights of Allah, enjoining what is good and forbidding what is evil in the realm of worship. The second aspect concerns matters related to human rights, both public and private rights. The third aspect involves matters that are shared between both rights. Such divisions also extend to addressing evil, encompassing all aspects of the Islamic society's public order, economic, social, religious, and behavioural as its scope.

Some historical sources indicate the important duties of enjoining good and forbidding evil. Among the matters they deal with are adherence to Sharia law and observance of public morals. It also focuses on monitoring markets and subjecting transactions, industries, professions and trades to continuous control (Al-Tabari, 1966). Furthermore, they constantly scan the markets to prevent fraud, deception, manipulation of weights and measures, and price gouging (Al-Khatib Al-Baghdadi, 1996). Their duties extend to supervising the minting of coins and hunting down counterfeit coins (Al-Samarrai, 1987). In addition, they price the basic foodstuffs that constitute the source of people's livelihood and prevent these commodities from being monopolized by traders and speculators (Wakee, 1950). Moreover, they monitor the activities of judges, teachers, doctors and artisans. It also addresses issues related to adultery and holds practitioners of witchcraft and sorcery accountable. Finally, they supervise state employees who neglect their duties.

These are some of the duties and responsibilities that the Muhtasib undertakes when we understand the principle of enjoining good and forbidding evil, which is a broad principle applied to all aspects of religious, social, economic, moral, and behavioral life in the community. It is not possible to confine the tasks and duties of the Hisbah to a specific aspect of life. The state has granted the Hisbah executive power to impose minor penalties for the purpose of deterrence and admonition, including verbal reprimands, flogging, public humiliation, exile, and the expulsion of offenders from the country.

## 7. CONCLUSION

In conclusion, this research highlights an aspect of the great Islamic heritage that has greatly contributed to achieving justice and equality among members of community. This heritage undoubtedly provides valuable material for historians and researchers as it contains various social and economic issues related to daily life. This heritage reveals the legal thought in its administrative, penal and civil dimensions in which scholars and judges in Muslim countries have engaged through different ages. Muslim jurists have indeed excelled at deducing flexible legal rulings to address the evolving dynamics of social, economic and moral life. They aimed to find practical solutions in aligned with the objectives and principles of Islamic Sharia, and to avoid deviation or contradiction.

Among these solutions, the The mandate of the grievances, the mandate of the Hisbah stand out. These were the means by which jurists faced situations in which the offender possessed power, prestige, and wealth, while the victim was weaker and the judge was often unable to deliver justice. This evolution paralleled the growth of the Islamic state and the gradual emergence of administrative structures and systems, tailored to the society's needs and the changing Islamic state. This expansion necessitated the existence of effective administrative and judicial systems in addition to the role of the caliph, and the appointment of experienced and qualified people to manage these important institutions: The mandate of the grievances, the mandate of the Hisbah. These roles have become distinctive features of Islamic civilization throughout various eras, representing both religious and worldly functions grounded in the core Islamic principle of “Enjoining Good and Forbidding Evil”. These institutions have morphed into government bodies led by individuals who have been selected based on specific criteria, including knowledge of Sharia, piety, competence, sincerity, integrity, and pursuit of justice. They have been crucial functions within the state.

## 8. FINDINGS:

- The system of the mandate of the grievances had a pre-Islamic precedent among the Quraysh during the era of ignorance (Jahiliyyah), where they formed alliances to address injustice and defend the oppressed against the oppressors. After the advent of Islam, this system evolved and became institutionalized. Among the conditions for the supervisors of the mandate of the grievances is knowledge of jurisprudence and piety.
- The system of grievances continued to develop in the Abbasid era, and it had a major role in deterring oppressors, rectifying injustices, and restoring rights to their rightful owners.
- There is a close connection between the uprightness of governance, the well-being of the people, and the general and private aspects of life. This connection depends on the justice of the ruler, his integrity in ruling, and the avoidance of injustice to the subjects.
- The research confirms that the system of Hisbah (Market Inspection) is a well-known system in the Islamic state, and has historical roots dating back to the ancient Roman state. This system was established around 367 BC and was known for rulers of markets.
- The development of the system of the mandate of Hisbah in the Islamic state is due to its root in the Qur'an and the noble Sunnah of the Prophet.
- The duties of the Muhtasib are wide-ranging, as they are rooted in the great principle (Enjoining Good and Forbidding Evil). This principle guides the duties of the muhtasib in ensuring ethical behaviour, fairness, and justice in the various aspects of society.

## 9. RECOMMENDATIONS

The study urges the legislative authorities to implement the "mandate of grievances" system and develop appropriate legislation. This aims to monitor the operations of state institutions and the private sector, safeguarding public and private funds from those with influence and power, correct grievances, and return illegally confiscated rights to their rightful owners. The actions of our ancestors inspire this initiative.

-We call on the legislative authorities to enact and enforce strict legislation to maintain public order, uphold ethical standards, and protect Iraqi society's authentic social customs and traditions. This is especially important given the rapid transformation brought about by various forms of social media, which expose society to the diverse customs and traditions of different countries and civilizations in the current era.

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