

## ***An Analysis of Muttahida Majlis-e-Amal's government in Khyber Pakhtunkhwa (2002-2007) in the light of its Election Manifesto: A case study of Hisbah Institution***

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### **Abstract**

*This research article aimed to investigate the impact of the MMA (Muttahida Majlis-e-Amal) on the Islamization of laws and institutions based on its 2002 election manifesto. Muslims' personal and social lives are centered around Quranic principles such as Dawah Ila al-Khayr (calling towards goodness) and Amar Bil Maroof Wa Nahi Anil Munkar (enjoining what is right and forbidding what is wrong). The MMA expressed concerns about the erosion of Islamic social norms and the influence of liberal values. It advocated for enabling Muslim residents to live in accordance with Shariah as outlined in the 1973 Constitution. As part of its Shariah implementation objectives, the MMA proposed the establishment of a modern Hisbah institution inspired by historical precedents. After assuming power in the province of KP (Khyber Pakhtunkhwa), the coalition government of religious political parties prioritized the Islamization of institutions. The "North West Frontier Province Shariah Act, 2003" was enacted, followed by the introduction of the Hisbah Bill, which aimed to create the Hisbah Institution led by a Mohtasib. However, the bill became controversial, and both the "Council of Islamic Ideology" and the Supreme Court of Pakistan deemed it ultra vires and ineligible to be enacted into the legal code.*

**Key Words:** MMA, Islamization, Hisbah Bill, Hisbah Institution, Mohtasib

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### **Introduction**

Three judicial and quasi-judicial institutions, known as the Qaz, Mazlim, and Hisbah, were developed by the mediaeval Islamic state. The Quranic injunctions of *Da'wah Ila al-khayr* (call to good) and *Amar Bil Maroof Wa Nahi Anil Munkar* (enjoining the doing of everything that is Maruf and forbidding all that is Munkar) were largely expressed in *Hisbah*.

Allah (SW) says in *Surrah Al-Imran* 3: 104.

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

“And from among you, there must arise a gathering that will exhort people to do good, encourage them to act well, and discourage them from acting wrongly”<sup>2</sup>.

Allah (SW) says in *Surrah Al-Imrān* 3: 110.

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ وَلَوْ ءَامَنَ أَهْلُ الْكِتَابِ لَكَانَ خَيْرًا لَهُمْ مِّنْهُمْ الْمُؤْمِنُونَ وَأَكْثَرُهُمُ الْفَاسِقُونَ

"You are the most humanely raised community ever; you promote virtue, discourage evil, and follow Allah. It would have been better for the People of the Book if they had believed. While some of them are faithful, the majority are disobedient"<sup>3</sup>.

Allah (SW) says in *Al-Tawbah* 9:71.

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ  
وَرَسُولَهُ أُولَٰئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ ٤١

"The believing women and men are each other's allies. They institute prayer, pay zakah, obey Allah and His Messenger, and encourage what is lawful and ban what is bad. Allah will show mercy to such people. Allah is indeed supreme in power and wisdom"<sup>4</sup>.

Allah Al-Mighty says in Surah Hajj Ayah 41 (22:41)

الَّذِينَ إِن مَّكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَءَاتُوا الزَّكَاةَ وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ وَاللَّهُ عَقِيبُ الْأُمُورِ

***“They are those who establish prayer, offer zakah, encourage correct behavior, and discourage evil behavior if We grant them power over the land. And the conclusion of (all) issues belongs to Allah”<sup>5</sup>.***

Every Muslim has a responsibility to spread the word as part of their particular responsibilities as *Amar Bil Maroof Wa Nahi Anil Munkar*<sup>6</sup>. Within the bounds of societal norms<sup>6</sup>, da'wah (the call or invitation to the good) may be extended to anybody, regardless of one's standing<sup>6</sup>. Although it doesn't require any authoritative force for implementation, *Amar Bil Maroof Wa Nahi Anil Munkar* does require some type of cohesive or enforcing power. To influence their children to engage in certain behaviors and refrain from others, the parents use moral, social, and, to a certain extent, even economic restraints. In order to keep their employees in line, executives have administrative authority<sup>7</sup>. When it comes to the general population, where there are no such official or social ties, the injunctions of *Amar Bil Maroof Wa Nahi Anil Munkar* fail to take effect. However, the social relationships between teachers and pupils or elders and younger people may be effective for ensuring compliance with particular instructions. When the second rightly led caliph Hazrat Umar (RA) the Great was in power, the Islamic state of the Middle Ages created the institution of *Hisbah* in recognition of this circumstance<sup>8</sup>.

The institution of *Hisbah*, which was developed over the centuries in medieval Islamic states, played a crucial role in ensuring the proper functioning of society and the enforcement of moral and legal standards. The chief of this institution, known as the Muhtasib, had various responsibilities that evolved over time. As the Islamic states and their administrative systems developed, some of the duties performed

by the functionaries of Hisbah were gradually transferred to other branches of government. The transfer of responsibilities occurred in two main ways: to the judiciary and to the police<sup>9</sup>. The province governors, working through the police force, carried out the duties of Muhtasib under the Umayyad caliphate. Numerous administrative improvements were implemented under the Abbasids<sup>10</sup>. During the reign of Mahdi, the duties of Hisbah were transferred to a separate agency; this system held until the Baghdad disaster. Hisbah was a member of the judicial system in Andalusia (Muslim Spain). In the past, the city's Muhtasib, who served as the judge's choice, nominated municipal judges<sup>11</sup>. During the Mughal dynasty and British colonial control, the institution of Hisbah in the subcontinent lost its vitality due to political incompetence and moral decay. The Muslim institutions nearly vanished during colonial administration (1757–1947)<sup>12</sup>.

With the establishment of India and Pakistan as two sovereign states, colonial rule came to an end in 1947. With a pure commitment to the Muslims of the subcontinent to mould their both individual and collective lives in the light of Islam<sup>13</sup>, Pakistan, a separate homeland for Muslims, was created. The passage of the Objectives Resolution, which was the first significant step towards the Islamization of the constitution, marked the beginning of the path towards Pakistan's achievement of its objectives. It was a directive provided by the Pakistani Constituent Assembly for the state's upcoming constitution. The process advanced gradually but frequently ran aground<sup>14</sup>.

The first constitution of the Islamic Republic of Pakistan was drafted on March 23, 1956, after a gap of almost nine years, with the Objectives Resolution serving as its preamble<sup>15</sup>. However, the forces, not wanting to respect the will of the people, planned plots to thwart the democratic process. The Constitution was suspended on October 8, 1958, and martial law was declared. On March 1, 1962, a new constitution was drafted by the General Muhammad Ayub Khan-led Martial Law dictatorship, replacing the previous document's emphasis on Islam with all the authority of a president who was not directly elected. Instead of the "Islamic Republic of Pakistan", Pakistan is now referred to as the Republic of Pakistan<sup>16</sup>. The terms of the Qur'an and Sunnah were not used by the constitution's writers to define Islam. In other words, the momentum behind the Islamic cause was diminished. The duty of creating a constitution fell to Z. A. Bhutto. Despite all of his liberalism and dedication to socialism, the constitution that he oversaw not only kept all of the Islamic provisions from the prior constitutions of 1956 and 1962, but even went so far as to designate Islam as the official religion<sup>17</sup>.

Among other things, Islamization included the establishment of the Hisbah institution and the operation of that institution. In August 1983<sup>18</sup>, the ombudsman's office was founded by General Zia-ul-Haq's military government. It succeeded to a certain extent, but the political upheaval of 1988, which had a different objective, halted the process of Islamization. On the other hand, media, particularly television, sports, and other forms of entertainment promoted liberal and secular ideas, pushing the position of the

Hisbah institution or Ombudsman to the background<sup>19</sup>. However, the country's media revolution in the 1990s properly filled the additional gap. Dish antenna culture and unrestricted internet connections encouraged liberal and occasionally rather immoral Islamic ideas, which began to manifest in society through various channels, including national media and billboards on the side of the road. Above it, General Pervez Musharraf's dictatorial rule (1999–2008) was devoted to destroying Pakistan's ideological reputation through his Enlightened Moderation Theory<sup>20</sup>.

### **Hisbah Bill 2002**

After assuming power in the Khyber Pakhtunkhwa (KP) province following the 2002 general elections, the Muttahida Majlis-e-Amal (MMA) began implementing its 15-point election manifesto, with the Islamization of institutions being a top priority<sup>21</sup>. The MMA was deeply concerned about the decline of Islamic social norms and the growing influence of liberal values within society. It aimed to allow Muslim citizens to live in accordance with Shariah, as outlined in the Constitution of 1973. To achieve its goal of implementing Shariah, the MMA sought to revive the institution of Hisbah, drawing inspiration from medieval times. The "North West Frontier Province Shariah Act, 2003" was enacted, followed by the introduction of the *Hisbah* Bill in July 2003<sup>22</sup>. The intention behind the Hisbah Bill was to address societal issues and moral decline. It suggested creating the position of the Mohtasib (ombudsman) at various administrative levels within provinces<sup>23</sup>. As a result, this legislation was termed the "North-West Frontier Province Hisbah Act, 2005," and it was enforced throughout the KP province, previously referred to as NWFP. The *Hisbah* Bill comprised a preamble and 28 articles, addressing various aspects of the proposed legislation<sup>24</sup>.

The preamble of the *Hisbah* Bill highlights the central concept of implementing Islam, as understood through the Quranic principle of "*Amer Bil Maroof*" Wa "*Nahi-Anil-Munkir*" (Enjoining Good and Forbidding Evil). This concept emphasizes the promotion of virtuous deeds and the prevention of sinful or harmful actions within a society. The preamble further states that in order to achieve the goal of implementing this principle, it is necessary to establish an institution. This institution, known as Hisbah, aims to uphold the teachings of Islam. The preamble states that only Allah Almighty has sovereignty over the entire universe, and that the power to be exercised by Pakistan's citizens through their chosen representatives is a sacred trust given upon them by Allah. Furthermore, the preamble suggests that extending the authority of the Mohtasib (Ombudsman) to the government's administration and offices is essential for the purpose of accountability. The Mohtasib is a position responsible for addressing complaints against government officials and ensuring justice. By extending the Mohtasib's authority, the

intention is to prevent injustices, abuse of authority, and other similar excesses within the government's administration. This emphasizes the need for accountability and fair governance in accordance with Islamic principles<sup>25</sup>. While in Article 2(b) of the Hisbah Bill, the concept of *Amar Bil Maroof* as prescribed by the Holy Quran and *Sunnah* and the Mohtasib, in consultation with the Council of Advisors, determines the matters fall in the category of Maroof<sup>26</sup>.

### **Structure of Hisbah Institution:**

Article-3 of the Hisbah Bill, which outlines the proposed appointment and responsibilities of a Provincial Mohtasib (Ombudsman) in the Khyber Pakhtunkhwa (KP) province. The Governor of KP, in consultation with the Chief Minister of the province, is responsible for appointing the Provincial Mohtasib. The Mohtasib's term is initially set for four years but can be extended by the competent authority if deemed necessary. The Mohtasib must be a recognized religious scholar (Alim-e-Din) and meet the qualifications required to become a judge of the Federal Shariah Court. This requirement ensures that the appointed individual has the necessary religious knowledge and legal expertise to fulfill the role. The Provincial Mohtasib, as the chairman, will establish a Provincial Advisory Council. This council is comprised of various individuals who are considered experts in their respective fields and will provide guidance and support to the Mohtasib<sup>27</sup>. The composition of the council is as follows:

- (a) Two ulema of repute: Ulema refers to religious scholars, and in this case, two respected and knowledgeable ulema will be part of the council. Their role is to offer their religious expertise and perspectives.
- (b) Two senior advocates from the Bar: The term "Bar" typically refers to the legal profession, so two experienced and senior lawyers will be included in the council. They will provide legal insights and advice.
- (c) Two representatives of the Government in PBS-20: PBS-20 likely refers to a specific pay scale or grade within the government hierarchy. Two government representatives, likely holding positions at that level, will be part of the council. They will provide the government's perspective and expertise.
- (d) One journalist of repute: A reputable journalist will also be included in the council. Their role is to contribute a media perspective and insights to the council's discussions and decisions<sup>28</sup>.

Comprising five members, the District Advisory Council includes a religious scholar, a law graduate, a journalist, a highly regarded resident of the district, and a district officer from the provincial government.<sup>29</sup>. It is the responsibility of the Provincial Mohtasib to appoint the District Mohtasib, who will be accorded the same privileges, benefits, and compensation as admissible to a session judge. Tehsil Mohtasibs are the members of the third tier; they are chosen by the District Mohtasib with the approval of the Provincial Mohtasib. This system seeks to advance justice, accountability, and openness at the local level<sup>30</sup>.

### **Powers and Functions of Provincial Mohtasib:**

Under Article-10 of the proposed *Hisbah* Bill, the Provincial Mohtasib is granted specific powers and duties to address complaints and ensure effective governance. The Provincial Mohtasib is authorized to receive complaints from individuals in both written and oral forms. Any person who wishes to raise a concern can approach the Provincial Mohtasib with their complaint. In addition to individual complaints, the Provincial Mohtasib can also take up cases referred to them by the High Court of Peshawar, the Supreme Court of Pakistan, the Provincial Assembly of KP, or any other relevant authority. This provision allows the Provincial Mohtasib to address broader issues that require their attention. The Provincial Mohtasib possesses the power of *suo moto*, which means they can initiate investigations and take action without relying solely on complaints or references. This authority enables the Provincial Mohtasib to proactively identify and address matters of public interest or concern.

- a. The Mohtasib has the authority to receive and investigate complaints related to misconduct, mismanagement, or any other administrative issues within an organization. The focus is on addressing grievances arising from poor governance or improper conduct.
- b. The Mohtasib is to ensure the preservation and promotion of Islamic principles and manners within society. It involves monitoring and taking appropriate measures to uphold Islamic values and standards in various aspects of public and social life.
- c. The Mohtasib is tasked with overseeing media outlets established or controlled by the government. The aim is to ensure that their publications, including news, articles, broadcasts, etc., align with the objective of promoting Islamic principles. This implies a form of media monitoring to uphold Islamic values and prevent content that contradicts them.
- d. The Mohtasib is to discourage any individuals, organizations, or authorities who, despite practicing good governance in general, act in a manner that goes against Islamic law (*Shariah*).
- e. The Mohtasib is to develop guidelines or guiding principles to facilitate efficient and effective operations for the authorities working within the scope of the *Hisbah* Bill. The intent is to provide a framework that enables these authorities to carry out their duties in a manner that upholds Islamic principles and promotes good governance.
- f. The Mohtasib is restricted from interfering in matters that are being addressed by the appropriate court, issues related to Pakistan's external affairs, foreign relations, defense matters, or those governed by specific laws concerning the military, naval, and air forces. These areas fall under the jurisdiction of specialized entities or legal frameworks<sup>31</sup>.

**Special Powers of Mohtasib:** The Mohtasib under paragraph 22 shall have the following powers in addition to those granted by section 10;

1. *Monitoring the observance of Islamic moral principles in public areas;*
2. *Discouraging extravagant behavior, especially during weddings and other family celebrations;*
3. *Giving dowry in accordance with Islamic law;*
4. *To prevent beggary*
5. *To oversee the observance of Islamic principles and its respect and esteem at iftar and traveh;*
6. *To eliminate factors that contribute to improper execution and planning of Eid and Friday prayers;*
7. *To prevent entertainment performances and business transactions during Eids and Friday prayers in the vicinity of mosques.*
8. *To discourage child labor*
9. *To avoid needless delays in the release of civil responsibility that the parties do not dispute;*
10. *To stop animal abuse;*
11. *To fix mosque maintenance issues;*
12. *To observe Islamic decorum during the Azan and Fardh prayers;*
13. *To stop sectarian speeches and the improper use of loudspeakers;*
14. *To oppose inhumane and un-Islamic traditions;*
15. *To reverse the prevalence of lewd behavior in public areas, especially harassment of women;*
16. *To uphold the rights of minorities, particularly in light of their veneration for the sites where they practice their religion;*
17. *To make Taweez, palmistry, magic, etc. illegal to practice as a profession;*
18. *To put an end to non-Islamic traditions that have an adverse effect on women's rights, especially by taking action to stop women being killed in the name of honor; to stop the practice of denying women their inheritance rights; to put an end to the Karo Kari tradition; and to defend the rights of women that are protected by Sharia and the law;*
19. *To monitor weights and measurements and prevent adulteration;*
20. *To prevent inflated price hikes;*
21. *To safeguard public property;*
22. *To eradicate bribery in government institutions;*
23. *To encourage government employees to feel a sense of duty to the public;*
24. *To provide guidance to kids who are found to be disobedient to their parents;*

25. *To perform any other responsibilities that may be determined from time to time by the Provincial Mohtasib in collaboration with the Advisory Council.;*
26. *To serve as a mediator between parties and tribes in disputes involving murders, attempted murders, and other crimes that pose a threat to law and order*<sup>32</sup>.

### **Governor's Reservations on Hisbah Bill:**

According to the 1985 N.W.F.P. Rules of Business, a draft bill named "*Hisbah Bill*" was forwarded to the Governor of KP on June 19, 2003, for his permission before being presented in the N.W.F.P. Assembly<sup>33</sup>. The Governor returned the draft bill with the following observations;

- i. It is a well-established concept that laws must be specific, transparent, and free from ambiguity to safeguard the rights of individuals against possible improper use of authority. The lack of clarity and precision in the draft bill is seen as problematic because it could lead to unnecessary and unlawful infringement of citizens' rights. The text also suggests that the draft bill may encroach upon private matters of morality that may not be desirable or fair. Additionally, it underscores the significance of precisely outlining the terms employed in the proposed legislation, like "social etiquettes contrary to Islamic norms," "values based on Islamic teachings," and "conduct and manners during prayers"<sup>34</sup>.
- ii. As Islam constitutes a comprehensive behavioral guide, any laws established under its authority should be approached with great caution, as any misuse could inevitably damage the image of this dynamic faith. In section 23 of the draught law, in particular, the prospective Mohtasib is intended to be given broad discretionary powers; however, the language of the powers is ambiguous. Such broad, ambiguous, and carelessly worded or designed laws will unavoidably result in significant challenges for the populace, as well as put their civil liberties, privacy, and constitutional rights in danger<sup>35</sup>.
- iii. There are already valid and enforced laws in place for most of these powers mentioned in section-23 of the Hisbah Bill. These existing laws cover a wide range of areas, including child labor, respecting Ramadan, preventing hoarding and black marketing, regulating expenses in weddings, maintaining accurate weights and measures, preventing animal cruelty, regulating gambling, controlling loudspeakers, addressing vagrancy, implementing price controls, and preventing profiteering. These laws are not only in existence but also enforced by various institutions and authorities. Additionally, provisions are made under these laws for administering and regulating them, and the associated expenses are covered by the government's funds (exchequer). Instead of creating new parallel institutions and authorities, it would be more

beneficial to examine the effectiveness and accountability of the existing executing authorities and agencies responsible for enforcing these laws<sup>36</sup>

- iv. The creation of the Hisbah force is in contradiction with the Police Ordinance of 2002. The Police Ordinance is a legislation that outlines the organization, powers, and functions of the police force in Pakistan. If any change or amendment is proposed to this ordinance, it would require permission from the President of Pakistan. The basis for this requirement is mentioned in Schedule VI of the 1973 Constitution of the Islamic Republic of Pakistan. Schedule VI of the Constitution of Pakistan typically lists subjects that fall within the jurisdiction of the federal government. It provides a framework for the division of powers between the federal government and provincial governments. It is stated that before the extension of the Hisbah Bill to Provincially Administered Tribal Areas (PATA) the prior approval of the president of Pakistan is necessary<sup>37</sup>.

Due to the sensitive and important nature of the matter at hand, the Treasury benches (referring to the ruling party or government) should not rush into legislating. Instead, as a first step, they should consider seeking the opinion of the Council of Islamic Ideology (CII) in accordance with Article 230 of the Constitution of Pakistan<sup>38</sup>.

**Opinion of Council of Islamic Ideology:** In line with the Governor of KP's suggestion, the Provincial Government concurred on submitting the case to the Council of Islamic Ideology. In its assessment, the CII highlighted inherent deficiencies in the suggested legislation and explicitly indicated that incorporating matters of morality, especially those lacking consensus (*Maruf*) and inviting differing opinions, would divert the Hisbah institution from its core objective of promoting fair governance<sup>39</sup>. Among the 27 duties outlined in Article 23 of the proposed Hisbah Bill, a significant portion lacks clarity and specificity, failing to meet the standards of recognized and unacceptable conduct (*Maruf* and *Munkar*). According to the Council, the definitions of *Maroof* and *Munkar* should be presented in a way that is well known and regarded as valid by many sects in the context of the Quran and *Sunnah*. The Council's judgement was conveyed to the Provincial Government on September 18, 2004, however the MMA government still introduced the Hisbah Bill on July 11, 2005, and it was passed<sup>40</sup>.

#### **Decision of the Supreme Court about *Hisbah* Bill:**

On July 11, 2005, the Hisbah Bill was dispatched to the Governor of NWFP for approval. However, due to concerns about its alignment with the constitution, the Governor initiated steps to obtain a legal

perspective on the issue. Syed Iftikhar Hussain Shah, the Governor of NWFP, appealed to the Prime Minister to advise the President to direct the Hisbah Bill to the Supreme Court. The primary aim of this referral was to seek the Court's viewpoint on whether the bill adhered to the provisions of the 1973 Constitution. Upon receiving the Governor's request, the Prime Minister of Pakistan was content to guide the President to consult the Supreme Court to assess the legitimacy of the Hisbah Bill<sup>41</sup>. The Prime Minister concurred that seeking the Court's input was the appropriate way forward. Acting upon the Prime Minister's counsel, the President of Pakistan forwarded specific inquiries concerning the legality of the Hisbah Bill to the Supreme Court. This action was carried out in accordance with Article 186 of the Constitution of the Islamic Republic of Pakistan<sup>42</sup>.

1. Whether the proposed law or its provisions comply with the constitution.
2. Whether the provisions of the Hisbah Bill infringe upon or violate the fundamental rights guaranteed by the constitution.
3. To determine whether the Hisbah Bill or its provisions would violate specific articles 2A, 4, 203G, 212 and 230 of the constitution.
4. Whether the enforcement of the Hisbah bill establishes a parallel judicial system that undermines the existing system of Judiciary, compromises judicial impartiality, or denies citizens access to their fundamental right.
5. Whether the enactment of the Hisbah Bill would violate the principle of separation of powers in the constitution of 1973.
6. Whether the Hisbah Bill, in particular Sections 10 and 23, violates the Constitution by being too broad, too ambiguous, or by delegating too many powers.
7. Whether the Governor to assent this bill in the presence of above mentioned objections raised on the constitutionality of the bill<sup>43</sup>.

Sections 10, 12(1), 23(1), (3), (5), (6), (12), (14), and (27) along with Section 25(1) and Section 28 of the Hisbah Bill were found to be in contravention of multiple provisions within the Constitution of the Islamic Republic of Pakistan, 1973. These identified sections were characterized by their lack of clarity, excessive breadth, unreasonableness, and an excessive transfer of authority. The sections outlined in the Hisbah Bill were found to run afoul of the subsequent constitutional articles: 2A (Principles of Pakistan's Ideology), 4 (Rights of Individuals to Due Process of Law), 9 (Personal Security), 14 (Respect for Human Dignity), 16 (Right to Assemble Peaceably), 17 (Freedom of Association), 18 (Freedom to Undertake Trade, Business, or Profession), 19 (Freedom of Expression), 20 (Freedom of Religion and Management of Religious Institutions), 25 (Equality of Citizens), and Article 175 (Appointment of Supreme Court Judges). This judgment was rendered due to the identified sections' incompatibility with the aforementioned constitutional provisions, as they exhibited ambiguity and an excessive transfer of

authority. The sections of the Hisbah Bill that were deemed unconstitutional were criticized for their ambiguity and over breadth<sup>44</sup>. This means that the language used in these sections was unclear, leading to interpretation difficulties, and their scope was considered excessively broad, potentially infringing on individual rights and freedom. The Supreme Court's ruling highlighted that the *Hisbah* Bill's contested sections exhibited an excessive delegation of jurisdiction. This means that the bill granted powers and authority to the Hisbah institution that were beyond what was reasonably necessary, potentially encroaching on the domain of the judiciary. The sections found to be unconstitutional were criticized for denying citizens access to justice and attempting to establish a parallel judicial system. This suggests that the provisions undermined the established legal framework and potentially compromised the rights of individuals to seek justice through recognized channels. As a result of the Supreme Court's ruling, the Governor of the Khyber Pakhtunkhwa was unable to sign the Hisbah Bill in its current form. Consequently, the bill could not become law since its provisions were declared unconstitutional<sup>45</sup>.

## Conclusion

Muslims' social and personal lives revolve around the Quranic principles of “*Amar Bil Maroof Wa Nahi Anil Munkar*” (enjoining good and forbidding evil) and “*Da'wah Ila al-Khayr*” (calling to goodness). It is the individual responsibility of every Muslim to fulfill these duties and spread the message of good within the boundaries of societal norms. This call to goodness can be extended to anyone, regardless of their social standing, as long as it is done in a respectful manner. Historically, Islamic societies recognized the need for authoritative power to enforce “*Amar Bil Maroof Wa Nahi Anil Munkar*”, but it does not necessarily require the use of force. The institution of Hisbah was developed in medieval times, starting with the second rightly guided caliph, Hazrat Umar the Great, to address the need for promoting and upholding Islamic social norms. However, in modern times, the deterioration of Islamic social norms and the influence of liberal principles in society became a major concern for the government of MMA (Muttahida Majlis-e-Amal). The MMA advocated for allowing Muslim citizens to live according to Shariah as envisioned by the Constitution of 1973. As part of their efforts to apply Shariah, they sought to revive the institution of Hisbah, drawing inspiration from medieval times. After assuming power in the province of Khyber Pakhtunkhwa, the MMA began implementing their election manifesto of 2002. The *Hisbah* Bill, which aimed to establish the Hisbah Institution alongside the Mohtasib (ombudsman), was passed following the North West Frontier Province Shariah Act of 2003. However, both the Council of Islamic Ideology and the Supreme Court of Pakistan raised concerns about the *Hisbah* Bill, considering it to be ultra vires. Due to the controversy surrounding the proposed legislation, it was ruled that the Bill could not be enacted into law.



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