

Writ Petition

Challenging

The Unlawful and Unjust Ban

On

Hizb ut Tahrir

In Pakistan

Submitted in

The Lahore High Court Rawalpindi Bench Rawalpindi

By

The Official Spokesman of Hizb ut Tahrir
In Pakistan

IN THE LAHORE HIGH COURT RAWALPINDI BENCH RAWALPINDI

Naveed Butt, (Spokesman of Hizb ut Tahrir in Pakistan),
Suite # 11, Moeen Centre,
20 Abbot Rd., Lahore. Pakistan

PETITIONER

Versus

1. Federation of Pakistan through Secretary Ministry of Interior, Government of Pakistan, Federal Secretariat, Islamabad
2. Ministry of Law, Human Rights and Parliamentary Affairs, Government of Pakistan, Islamabad
3. The Inspector General of Police, Punjab, Lahore

RESPONDENTS

**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 AGAINST THE ILLEGAL AND UNLAWFUL
BANNING OF HIZB UT TAHRIR THROUGH NOTIFICATION DATED 20/11/03**

The addresses of the parties have been given for notices.

Respectfully Sheweth,

1. The brief facts forming the background of this writ petition are that the Muslims of the sub-continent, after a long struggle motivated by their desire

for Islam, established a homeland for Muslims, 'Pakistan' on 14th August 1947. In acknowledgement of the ardent desire for Islam present within the Muslims of Pakistan, which has only grown over the years, the First Constituent Assembly of Pakistan passed an objective resolution whose stated purpose was to ensure the enforcement of the Quran and Sunnah in Pakistan,

2. That the petitioner is a citizen of Pakistan and is a member of Hizb ut Tahrir for the past 8 years, The petitioner has been associated with Hizb ut Tahrir as a Muslim and to work for the establishment of Khilafah Rashida and ensure a society based upon pristine principles of Qur'an and the Sunnah, The petitioner and other members of Hizb ut Tahrir and their families are under constant threat, illegal surveillance and are being harassed through illegal raids , humiliated, coerced and victims of malafide as well illegal detentions by the respondent authorities,
3. That Hizb ut Tahrir is a world-wide political entity based on Islam which was established in 1953 by Sheikh Taqiuddin al-Nabhani who was a Judge of the Shariah court in Al-Quds Sharif, its aim is to resume the Islamic way of life through the establishment of the Khilafah Rashida,
4. That Hizb ut Tahrir was established in response to the ayah in the Noble Quran in Surah Aali Imran ordering the establishment of a group to call people to the good and forbid the evil, Allah (subhanahu wa ta'ala) ordered in the Noble Quran,

ولتكن منكم أمة يدعون إلى الخير ويأمرون بالمعروف وينهون
عن المنكر وأولئك هم المفلحون

“Let there be among you a group that invites to the good, orders what is right and forbids what is evil, and they are those who are successful” [Surah Aali

Imran 3:104]

(see Annexure A1),

5. That Hizb ut Tahrir works to intellectually elevate the Muslims and re-establish the Khilafah which is an Islamic obligation, any neglect in this duty is a sin, punishable by Allah (subhanahu wa ta'ala) in the hereafter for RasulAllah (sallAllaho alayhi wa sallam) ordered,

« ومن مات وليس في عنقه بيعة مات ميتة جاهلية »

“Whosoever dies without having a pledge of allegiance (to the Khaleefah) on his neck, dies a death as those in the days of Jahiliyyah.” (Sahih Muslim) (see Annexure A2),

That the Khilafah is the Shariah method to comprehensively implement Islam (see Annexure A3), Islam has determined that the structure of the Islamic government to be the system of Khilafah and it is the system of ruling of the Islamic State, for Muslim narrated on the authority of Abu Hurayrah (radiAllaho an) that the Messenger of Allah (sallAllaho alayhi wa sallam) said in a hadith ,

« كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، وأنه لا نبي بعدي، وستكون خلفاء فتكثر »

"The political affairs of Bani Israel (People of Israel) were conducted by Prophets. Whenever a Prophet died, another Prophet succeeded. And there will be no Prophet after me. But, there will be Khalifahs. And there will be many of them" (Sahih Muslim),

This hadith is one of many divine evidences that the Islamic Structure of government after RasulAllah (sallAllaho alayhi wa sallam) is the Khilafah,

6. That the methodology adopted by Hizb ut Tahrir for the establishment of the Khilafah is based on the peaceful methodology that RasulAllah (sallAllaho alayhi wa sallam) adopted in establishing the Islamic State in Madinah, the methodology adopted by Hizb ut Tahrir to convey the da'wah is Shari'ah Law derived from the Seerah of the Messenger of Allah (sallAllaho alayhi wa sallam) in his conveying of the da'wah, because it is obligatory to follow him (sallAllaho alayhi wa sallam), as Allah (subhanahu wa ta'ala) says,

لقد كان لكم في رسول الله أسوة حسنة لمن كان يرجو الله
واليوم الآخر وذكر الله كثيراً

“Surely, in the Messenger of Allah, is the best example for those who believe in Allah and the Last Day and remember Allah often” [Surah al-Ahzab 33:21],

There are many other such verses which denote that following the Messenger of Allah (sallAllaho alayhi wa sallam), taking him as an example and taking all aspects of the deen from him is obligatory,

By studying the life of the Messenger of Allah (sallAllaho alayhi wa sallam) from the time he (sallAllaho alayhi wa sallam) first called the people in Makkah to Islam until he (sallAllaho alayhi wa sallam) brought about an Islamic State in Madinah, through peaceful political and intellectual change, it is evident that he (sallAllaho alayhi wa sallam) had a clearly defined approach guided by Allah through revelation, as Allah (subhanahu wa ta'ala) says,

وما ينطق عن الهوى إن هو إلا وحيٌ يوحى

“Nor does he speak of his own desire. It is only an Inspiration (Wahi) that is revealed” [An-Najm:3]

(see Annexure A4),

7. That Hizb ut Tahrir rejects material struggle, violence or militancy to re-establish the Khilafah on the basis that this is forbidden in Islam, Hizb ut Tahrir strictly follows the example of the Messenger of Allah (sallAllaho alayhi wa sallam) who restricted himself in Makkah solely to the intellectual and political domain and he (sallAllaho alayhi wa sallam) did not carry out any violent or material actions to establish the Islamic State, Hizb ut Tahrir has clearly published the Islamic evidences that prohibit the material struggle in establishing the Khilafah, In the book, entitled “Hizb ut Tahrir” the Hizb states on page 26 that, “*And when the people of the Second pledge of ‘Aqabah proposed that he (sallAllaho alayhi wa sallam) give them permission to fight the people of Mina with the sword, he answered them saying:*

«لم نؤمر بذلك بعد»

‘We have not been ordered to do that yet’

And Allah (subhanahu wa ta'ala) asked him (sallAllaho alayhi wasallam) to be patient about the persecution as the Messengers of Allah before him had been, when Allah (subhanahu wa ta'ala) said to them,

ولقد كذبت رسل من قبلك فصبروا على ما كذبوا وأؤذوا حتى أتاهم نصرنا

'Messengers indeed have been denied before you, and yet they remained patient after the rejection (of their message) and they were patient against the persecution till our victory reached them' [Surah An'Aam :34]

(see Annexure A5),

8. That Hizb ut Tahrir rejects sectarianism as this is also forbidden in Islam, in the book , entitled "Hizb ut Tahrir", it is stated on page 13 that, "*The Hizb accepts Muslim men and women as its members regardless of whether they are Arab or non-Arab, white or coloured, since it is a party for all Muslims. It invites all Muslims to carry Islam and adopt its systems regardless of their nationalities, colours and madhahib (Schools of Thought), as it looks to all of them according to the viewpoint of Islam*", It recognises Hanbali, Hanifi, Jafari, Maliki and Shafii amongst others as Islamic schools of jurisprudence and has distributed many leaflets calling for the unification of all Muslims (See Annexure A6), moreover Hizb ut Tahrir has issued a leaflet calling for unity between Sunnis and Shias entitled 'O Muslims, beware of the sectarian fighting', The leaflet was widely distributed in Pakistan and Iraq among other Muslim countries, The leaflet states, "*The Hizb calls you O Muslims, especially in Iraq, to deal with the terrible incident with awareness and wisdom, and to turn the plotting of your enemies against them, **so do not fight each other** ... They want to divide you and cause you to fight each other so that you lose courage and lose your strength*", In another leaflet entitled 'Allah has named you Muslim', Hizb says, "**No matter if your school of thought or source is Sunni or Shia, you are first a Muslim**"... "*Hizb ut Tahrir is an example for other Muslim parties, hence they should not close membership for any school of thought neither for a Sunni nor for a Shia rather they should open their membership for all Muslims*" (see Annexure D5.1 and D5.2),

9. That Hizb ut Tahrir propagates its ideas through peaceful styles such as leaflet distribution, mass contacting, talks, seminars, conferences and rallies, in over 50 years of worldwide activity there is **not a single evidence** showing that Hizb ut Tahrir has used terrorism/militancy or sectarianism to propagate its cause, in fact to the contrary, America, the leading country in the 'War on Terror,' despite considering Hizb ut Tahrir a major threat to its interests has confirmed the fact that Hizb ut Tahrir is not a militant or terrorist group and that its anti-terrorism legislation does not apply to it,

The US State Department in its Report of 20th November 2002 stated that, *"The United States is also closely monitoring the Hizb ut Tahrir al Islami (HT) movement, which has called for the overthrow of the governments of Central Asia. Despite its inflammatory, anti-Semitic, and intolerant rhetoric, it professes non-violence. Because there is little if any evidence that HT has committed acts of violence to achieve its political goals, the United States has not designated it a Foreign Terrorist Organization"* (Annexure B1.1),

Dr. Fiona Hill, a well known expert on Central Asia and a Senior Fellow of The Brookings Institution in her testimony before the House Committee on International Relations on July 23, 2003 testified that *"unlike the IMU, HT seeks to secure its goal through grassroots activism and purportedly peaceful means"* (see Annexure B1.2),

Also the Turkish court as well as Danish government have also confirmed that the Hizb is not a terrorist organisation (see Annexure B1.3 and B1.4),

10. That Human Rights Groups including Amnesty International and Human Rights Watch have also confirmed the fact that Hizb ut Tahrir is non-violent,

"Hizb ut Tahrir renounces violence as a means to achieve reestablishment of the Caliphate." [Human Rights Watch, Mar 2004, 'Creating Enemies of the State: Religious Persecution in Uzbekistan'] (See Annexure B 2.1),

“Prisoners of conscience who remained in prison during the year included 'Ata' Abu'l-Rushta, spokesperson for the Hizb al-Tahrir fi'l-'Urdun (Iqj), Liberation Party in Jordan, a party seeking to re-establish the Islamic Caliphate, was sentenced to three years' imprisonment in February by the State Security Court for lese-majesty under Article 195(1) of the Penal Code in connection with an interview he had given to the newspaper al-Hiwar. The statements on which the charges were based did not advocate violence.”
[Amnesty International Report, 1997] (see Annexure B2.2)

11. That American and European Think-tanks such as Janes Intelligence, the International Crisis Group and The Brookings Institution amongst others have confirmed the fact that Hizb ut Tahrir is a non-violent group (see Annexure B3),
12. That Newspapers, magazines and books of repute such as America's 'TIME magazine', 'The Times Online and Ealing TIMES of London', and Ahmed Rashid's book 'Jihad: the Rise of Militant Islam in Central Asia' have confirmed Hizb ut Tahrir as being non-violent, Mr. Rashid writes, ***“Hizb ut Tahrir does not advocate a violent overthrow of Muslim regimes... Instead HT believes in winning over mass support”*** (see Annexure B4),
13. That Hizb ut Tahrir has criticised the policies of the present Government and its collaboration with America in the 'War on Islam and Muslims', the Government permitted American forces to use Pakistani soil to wage a brutal crusade against the Muslims of Afghanistan (see Annexure C1), Pakistan's air space, air bases and waterways were handed over to the Americans (see Annexure C2), the Government compromised Pakistan's internal security by permitting the stationing of FBI officers in Pakistan (see Annexure C3), the Government withdrew its support to the Kashmiri resistance (see Annexure C4), the Government used the Pakistani army to kill its own citizens in the tribal belt. (see Annexure C5), the Government through its Privatisation plan has strengthened the control of foreigners over Pakistan's economy (see Annexure C6), the Government through its education reforms is polluting the Islamic character of our children (see Annexure C7), these and other policies

of the Government have been harshly criticised and exposed by Hizb ut Tahrir, indeed accounting the ruler is an Islamic obligation (see Annexure C8), moreover Article 19 of the constitution of Pakistan also allows criticism of government policies and voicing political opinions for the welfare of the people and the State,

14. That America wants to suppress any organisation which is working for the establishment of the Khilafah as the implementation of Islam would lead to the unification of Muslim lands, the Ummah's control of its material and strategic assets and its political destiny leading to the re-emergence of the Islamic superpower, this would clearly be against America's interests (see Annexure C9),

15. That on 20.11.03 the respondents without giving any justification issued a notification SRO No. 1061(1)2003 order declaring the activities of Hizb ut Tahrir illegal, it was alleged that Hizb ut Tahrir is involved in sectarian, militant and terrorist activities, invoking Section 11-B and Section 11-E of the Anti-terrorist act, 1997, a photocopy of the notification order is attached (see Annexure D1),

16. That the act of the respondents of imposing a ban on the activities of Hizb ut Tahrir is illegal, unlawful, void, ab-initio, malafide and without lawful authority on the following amongst other:

GROUND

A. That the Respondents by banning Hizb ut Tahrir have acted against Islam as Hizb ut Tahrir was founded on Islam, works for the re-establishment of the Khilafah and works according to a methodology based on Islam (see Annexure A1, A2 and A4),

B. That The Respondents by banning Hizb ut Tahrir have acted against Islam by placing illegal obstacles in the way of Hizb ut Tahrir pursuing the Islamic duty to account the rulers for their neglect of Islam and Muslims,

- C.** That as all of Hizb ut Tahrir's activities have Islamic evidences derived from the Quran and Sunnah, the Respondents banning of Hizb ut Tahrir violates Article 2-A of the Constitution of 1973 which states that no law can be passed which is repugnant to Islam,
- D.** That the Respondents banning of Hizb ut Tahrir violates Article 19 of the Constitution of 1973 which states that every citizen shall have the right to freedom of speech and expression, Hizb ut Tahrir propagates its ideas through peaceful styles such as leaflet distribution, mass contacting, talks, seminars, conferences and rallies.
- E.** That the Respondents banning of Hizb ut Tahrir violates Article 20 (a) of the Constitution of 1973 which states that every citizen shall have the right to profess, practise and propagate his religion, as it denies the peaceful propagation of Islam,
- F.** That Hizb ut Tahrir is a political entity based on Islam and works for resuming the Islamic way of life by establishing the Khilafah and the Respondents banning of Hizb ut Tahrir violates Article 17 of the Constitution of 1973 which states that every citizen has the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality, The issue raised also falls within the ambit of public importance,
- G.** That Hizb ut Tahrir was banned through a notification without giving any show cause notice to the petitioner which is therefore illegal, unlawful and without any justification and no opportunity for a hearing was given to the petitioner and it is clear cut law that 'no-one can be condemned unheard',
- H.** That it was alleged in the notification dated 20th November, 2003 that Hizb ut Tahrir is concerned in terrorism which is totally false and baseless, Neither any reason given nor any evidence was collected by the respondent to justify their allegation, We have to see what is terrorism

which has been elaborated in Section 6 of Anti Terrorism Act 1997 as under,

- a. Causes death or is likely to endanger a person's life;
- b. Involves grievous violence against or harm to a person;
- c. grievously damages to property;
- d. Incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
- e. Involves any form of mischief to spread panic;
- f. Involves firing on religious congregations, mosques, churches, temples and all other places of worship;
- g. Creates a serious risk to safety of the public or is designed to frighten the general public and disrupts civic life;
- h. Involves burning of vehicles or any other serious form of arson;
- i. Involves extortion of money or property;
- j. Seriously interferes with communication systems;
- k. Involves coercion or intimidation of a public servant in order to force him to discharge or to refrain from his lawful duties;
- l. Involves serious violence against a member of the public force, armed forces, civil armed forces or a public servant;

Hence the allegation levelled by the respondent does not apply at all to the petitioner for Hizb ut Tahrir is a peaceful organization as clearly explained in paragraph 6-12 and works to revive the Islamic System i.e. Khilafah which is the duty of every Muslim and cannot be associated with terrorism as defined above,

- l. That the ban on the activities of Hizb ut Tahrir is against the law and constitutional guarantees and militates against the preservation of fundamental rights enshrined in the constitution, The respondents have issued a notification order imposing ban without showing any evidence of sectarian, terrorist or militant activities, in fact the respondents have no evidence for imposing a ban on Hizb ut Tahrir and have condemned the petitioner unheard,

- J. That it is for the above reason that the Honourable Judge of the Anti Terrorism Court III at Karachi Mr. Arshad Noor Khan declared the notification dated 20.11.03 banning Hizb ut Tahrir 'defective', He observed, *"In the present case the notification Ex. 17 is completely silent regarding any reason basing on which Hizb ut Tahrir organization has been declared as proscribed organization. The first line of the notification Ex. 17 is the reproduction of the wording of Section 11-B(1)(a) ibid. and thereafter it is silent with regard to any reason as such notification Ex. 17 in my humble opinion is defective for want of reasons in writing"*, a copy of the order is attached (see Annexure D2),
- K. That as a result of this ban the members of Hizb ut Tahrir were arrested and kept in illegal detention for several months after passing an illegal order under 3 M.P.O and thereafter 11 EEE of the anti-terrorism act by the Home Secretary Punjab, although the same was quashed by the Honourable Judge Mr. Justice Ijaz Ahmed Chaudhry, Lahore High Court Multan bench, declaring that the order under 11EEE of ATA is illegal, and unlawful, The Honourable Judge stated that the respondent has failed to justify that the petitioner was acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or maintenance of supplies or services, so the same was set aside and quashed, The Honourable Judge declared that distribution of pamphlets cannot be termed terrorism, He observed, *"The perusal of those pamphlets shows that defunct Hizb-ut-Tahrir has shown dissatisfaction on the policies of the government which is the right of each and every citizens... I am unable to understand as to how distribution of these pamphlets in the general public was termed as terrorism or sectarianism"*, a copy of the order is attached (Annexure D3),
- L. That it is also pertinent to mention that the Honourable court of Mr. Justice Karamat Nazir Bhandari, Judge Lahore High Court Lahore, stated in a writ petition No. 524/2002 that peacefully working for the prorogation of Khilafah is not contrary to the law, so the Honourable court directed the respondents not to harass the petitioner (present petitioner was also the

petitioner in that case), He observed, "...in so far as the other activities of the petitioner are concerned like speech and propagating system of Khilafat, it is laid down in the Constitution that no citizen shall be prohibited from doing that which the law does not prohibit him" a copy of the order is attached (Annexure D4),

- M.** That Hizb ut Tahrir considers the use of militancy/terrorism to establish the Khilafah as a contradiction of Shariah, this is clearly evident from its literature in the form of leaflets/books and press releases which are widely available in the public domain, as mentioned in paragraph No 6-7, That the non-violent activity of Hizb ut Tahrir has been confirmed by Governments, think-tanks, human rights groups, newspapers and magazines, as mentioned in paragraph No 9-12, Notification dated 20.11.03 issued by respondents violates article 4, 5 and 25 of the constitution of the Islamic Republic of Pakistan 1973,
- N.** That Hizb ut Tahrir is non-sectarian in nature, indeed its members are from a wide variety of nationalities and madhahib (schools of thought), in fact to the contrary Hizb ut Tahrir has issued leaflets calling for unity between Sunnis and Shias as mentioned in Paragraph 8 (also see Annexure D5.1 and D5.2),
- O.** That the Hizb ut Tahrir is a non-violent, non-sectarian group and has nothing to do with terrorism, Hence Hizb ut Tahrir does not fall under the ambit of the Section 11-A of the ATA which describes terrorist organization as the one which,
- a.** Commits or participates in acts of terrorism;
 - b.** Prepares for terrorism;
 - c.** Promotes or encourages terrorism;
 - d.** Supports and assists any organization concerned with terrorism;
 - e.** Patronizes and assists in the incitement of hatred and contempt on religious, sectarian or ethnic lines that stir up disorder;
 - f.** Fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or

g. Is otherwise concerned in terrorism.

P. That the ban on the activities of Hizb ut Tahrir is malafide, with ulterior motives, to please America as well as to stop the propagation of Islam, as the American think-tank, Heratage Foundation pointed out in its report '*Hizb ut Tahrir: An Emerging Threat To U.S. Interests In Central Asia*' (see Annexure C9.1), Hence just for the pleasure of the American regime petitioner was banned by the respondents,

Hence ban was against law and constitution,

Q. That the Respondents cannot claim impunity for their policies or laws passed under Article 248 nor under Article 10 of the 17th Amendment, which amends Article 270AA of the 1973 Constitution, as there is no impunity for policies and laws that are against Pakistan, Muslims and Islam, The impugned notification SRO No 1061(1)/2003 dated 20.11.03 is malafide and against law,

17. No other effective, alternate and expeditious judicial remedy is available to the petitioner against the illegal actions of the respondents, hence this petition under the article 199 of the 1973 Constitution.

PRAYER:

In view of the submissions stated above, it is therefore, most respectfully prayed that by accepting the writ petition, the impugned notification **SRO No. 1061(1)/2003 dated 20-11-2003** issued by respondent No. 1 whereby the ban has been imposed on the constructive and Shariah activities of Hizb ut Tahrir, may kindly be declared malafide, illegal, unlawful and without lawful authority being arbitrary, discriminatory and void in violation of the Constitution,

It is further prayed that the respondents may kindly be restrained and a declaration be made prohibiting respondents from interference in the lawful activities of Hizb ut Tahrir, in any manner whatsoever in the interest of justice.

Hizb ut Tahrir should be declared as a peaceful, political and non-sectarian group engaged in lawful, peaceful and non-violent activities,

It is furthered prayed that the petitioner, his family members and others be not harassed by the respondents in any manner,

It is also prayed that the operation of the impugned order/notification dated November 20th 2003 issued by respondent No. 1 be suspended until the final decision of the main petition,

Any other relevant measures that this Honourable Court may deem fit may kindly be granted.

PETITIONER

CERTIFICATE

1. As per instructions, this is the first writ petition on the subject
2. It is further certified that this petition has arisen from violation/ non-fulfilment of obligations under Article 199 of Constitution of 1973 and that no other alternate remedy is available to the petitioner in the matter.