

THE ROLE OF PURPOSES OF SHARIAH AND PUBLIC INTEREST IN CONVERGENCE IN CORPORATE GOVERNANCE IN PAKISTAN

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Abstract:

The objective of this article is to examine the applicability of purposes of Shariah and Public Interest and their role in convergence in corporate governance. In present global world scenario, the convergence of corporate governance features has become norm. The developing countries are in the process of being converged to developed countries to improve their corporate governance mechanism. It is widely considered that the western model of corporate governance and Shariah are two rival systems. The article analyses the possibility and applicability of purposes of Shariah in corporate governance and further analyses the extent to which the purposes of Shariah and public interest help in convergence in corporate governance so that it can improve governance mechanism. The doctrinal, qualitative and comparative research methodology has been widely used in this research. It concludes that the purposes of Shariah and public interest are conducive for convergence rather than divergence in corporate governance.

Key Words: Purposes of Shariah; Public Interest; Corporate Governance; Pakistan.

I. Introduction

Previous century witnessed a competition between capitalism and communism which ended with triumph of capitalism over its rival system. In this scenario, the underdeveloped jurisdictions inclined towards improving their corporate governance system in the light of new world order based on capitalist financial system. Therefore, underdeveloped jurisdictions started converging towards developed jurisdictions. As Pakistan is also less developed jurisdiction, therefore, it is also in the process of convergence to western form of

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corporate governance. *Prima facie* the western legal system and Islamic legal system are two rival systems. However, there is a doubt whether Pakistan being an Islamic State whose constitution prescribes the Islamic injunctions as its 'Grundnorm'¹ for its legal system can converge to west corporate governance norms. An attempt has been made in this paper to highlight the extent to which the purpose of Islamic Law and Public interest can help to improve corporate governance in Pakistan without violating the Injunctions of Islamic Law.

II. The concept of convergence in Corporate Governance

The phenomenon of convergence in corporate governance started in history long ago;² however, it accelerated after success of capitalism over communism. The globalization also stimulated the process. Different other factors also stimulated convergence which include but not limited to efficiency, competition, cross-country investment, interdependent economies, inter-related economic interests, the enhanced role of international financial institutions and foreign investors. This process pushed least developed jurisdictions to converge to the most developed jurisdictions. So the process of convergence in corporate governance was started. On the other hand, despite the fact that convergence in corporate governance was taking place towards the most efficient system, at the same time there was divergence process which restricted convergence in corporate governance. The reason was the presence of certain barriers such as differences in ideology, values, culture, politics, religion, and vested interests such as business groups and families which are beneficiaries of *status quo*.³ However, in recent times, convergence in corporate governance is taking place around the globe rapidly irrespective the fact that there are some barriers in the system.

Corporate governance is compared with product in the market where only efficient product succeeds and less efficient removed.⁴ In the same way, the more efficient feature of corporate governance may replace less efficient feature through convergence. This results in efficient and improved system of corporate governance. This process remains incomplete and transitory in nature unless optimum result is achieved.⁵ The success of the process of convergence

depends on the quantum of resistance from the barriers present in a given system. In order to avoid resistance from the barrier it is necessary to adapt foreign corporate governance feature according to local conditions.

Mostly the religion has no role with issues of corporate governance especially in the western world and other secular countries. The case will be different if a country such as Pakistan is ideological. In this case the religion may have direct effect on its system including the corporate governance. Roe confirms this theory and stated that the ideology and politics affects the system of corporate governance in its development of a particular country.⁶ Therefore, the ideology and culture of a country may determine the choices of corporate governance features and its mechanism.⁷ The religion Islam is a complete and a practical religion. It is not restricted to a few rituals. It guides the whole life of Muslims. It determines and guides its subjects in each and every field of life including the business and the system of corporate governance such as its features and mechanism. For this purpose, it established broad principles for carrying on business, its business ethics and system of corporate governance.

Pakistan is an Islamic state under the constitution.⁸ Islam dominated in the cultural, social, business and politics affairs of the state. Furthermore, the constitution provides two protections to safeguards the Islamic nature of the country. Firstly, it provides that all existing laws shall be changed to bring them in conformity with the injunctions of Islam as laid down in the *Quran* and *Sunnah*. Secondly, it further provides that in future no law shall be made that is repugnant to injunctions of *Quran* and *Sunnah*.⁹ For this purpose, it established different institutions to bring laws in conformity with the injunctions of Islam. The objective of these institutions is to guide the parliament and the state to take the necessary actions to bring the law into conformity with the injunctions of *Quran* and *Sunnah*.

Pakistan being an Islamic state, it may drive its corporate governance mechanism from injunctions of *Quran* and *Sunnah*. Unfortunately, until now this has remained only a weak force. The main reason behind this fact is that Pakistan had inherited its corporate laws from then British rule. The colonial influence affected Pakistan in every field including corporate governance

norms. However, later on some development was made which saw some deviation from Britain type of corporate governance. Nevertheless, the recent developments around the globe in general and Pakistan in particular Islamic norms may still play a significant role in the corporate governance of Pakistan. Islamic norms may also derive its validity from different purposes of Islamic Law (*Maqasid al-Shariah*) which are highlighted by the Islamic scholars getting guidance from the injunctions of Islam as enunciated in *Quran* and *Sunnah*.

III. The purposes of Islamic law (*Maqasid al-Shariah*)

Al-Ghazali, a well-known Muslim jurist, has defined five basic purposes of Islamic law. These purposes have been accepted by the majority of Muslim jurists. These basic purposes are also called primary purposes of Islamic law. These are as follows¹⁰:

1. *Preservation of religion*
2. *Preservation of life*
3. *Preservation of progeny*
4. *Preservation of intellect*
5. *Preservation of wealth.*

These primary purposes have aggressive or positive as well as defensive or negative aspects. An aggressive / positive aspect of the 'preservation of religion' here means to create such conditions for its subjects that facilitate worship for them, and a defensive / negative purpose means that it is the duty of every one to defend his or her religion. Similarly, the aggressive / positive aspect of the 'preservation of life' here means to create such facilities for the Muslims that ease their life, and at the same time defensive / negative aspect means to provide such facilities that no one can take their life without legal justification and provide penalty for wrong doing with their right of life. Further, the aggressive / positive aspect of 'preservation of progeny' means to facilitate family life for the subjects and the defensive / negative aspect is to prevent illegal sexual intercourse and to provide punishment for such illegal acts. The aggressive / positive aspect of 'preservation of intellect' means to provide education and facilitate its growth, whereas the defensive / negative aspect means the prohibition on the consumption of liquor and other related substances that destroy intellect, and to

impose penalty for its violation. The aggressive / positive aspect of 'preservation of wealth' is to provide such conditions that facilitate growth of wealth and the aggressive / negative aspect means to provide such circumstances that provide penalty for taking away others' property illegally. Therefore, punishment is provided for theft and robbery.¹¹

The priority of these purposes is according to the order in which they are stated above. The Muslim scholars have identified some rules regarding their applicability under Islamic law. The first rule is 'the stronger interest will prevail'. According to this rule, for instance, consumption of liquor is prohibited under 'preservation of intellect' but, at the same time, since the life has priority over 'preservation of intellect' (consumption of liquor), therefore, if a person's life is under threat, he may take some liquor to save his life. Similarly, the second rule is 'public interest will prevail over private interest'. For instance, tax is levied under this rule. The reason is that the public welfare has priority under this rule.¹² Another example is that according to above priority rule the 'preservation of life' has priority over 'preservation of progeny'. However, the death sentence is awarded, under certain circumstances, on culprits, which means 'preservation of progeny' is given priority over preservation of life. Again, the reason is that the public interest will prevail over private interest. In this case, taking the life of a culprit is a private interest; on the other hand saving the society from the evil effects of sex is a public interest. In the same way the purposes of Islamic Law can impact the corporate governance.

IV. Applicability of the purposes of Islamic law in corporate governance

As the objectives of Islamic law is that the Muslim spent their lives according to injunctions of Islam and no one should do any act whose objective is to defeat the intention of the lawgiver. Implying this objective in corporate governance means the managers have to act in a way that preserves the purposes of Islamic law.¹³ Therefore, a company cannot do any activity that defeats the objectives of Islamic law irrespective the quantum of profit it can earn. Therefore, in this context, a company cannot undertake the activities such as to produce alcohol, as this is against the

‘preservation of intellect’. In the same way, the purpose of ‘preservation of life’ prohibits all such products that harm the human life such as heroine, tobacco and other harmful drugs. Similarly, the purpose of Islamic law, the ‘preservation of progeny’ will prohibit all materials that induce illegal sexual intercourse, such as producing pornographic films and other sexual materials. The objective of ‘preservation of wealth’ is to create conditions that are conducive for the growth of wealth. Therefore, under this objective the formation of a company is justified as it can grow the wealth of Muslim businessmen. This means the interests of the investors have priority under the purposes of Islamic law. However, Islamic law does not focus only on the interests of investors but it focuses on the society in general. Applying the rule ‘public interest will prevail over private interest’ means the interest of investors is subordinate to the interest of society at large. Therefore, this rule demands from the managers that they should make decisions in such a way that are not harmful for the society irrespective of the quantum of benefit to the shareholders and stakeholders. Therefore, some kind of businesses will be prohibited, for instance gambling business. This may be beneficial to investors but as this is harmful to the society, therefore, will be prohibited under Islamic law. In general, the managers of companies are duty-bound to take such decisions that do not in any way defeat the objectives of the *Shariah*. For example, the managers should not take decision to invest the company’s surplus amount in any business which is interest-bearing investment or to involve in a business activity that promotes *Shariah*-prohibited activities. These are *primary purposes* of Islamic law.

After fulfilling the primary purposes, managers may proceed further and can take guidance from the secondary purposes. The secondary purposes have also been developed by the jurists. These secondary purposes are divided into different categories by the jurists. The first category is called ‘needs’. The objective of secondary purposes may be to fulfil the primary purposes.¹⁴ These secondary purposes can also be applied in the corporate governance. The managers, after acting upon the primary purposes (for instance, after providing employees with fair pay and safety at the workplace), may proceed further and provide training to enhance human resource quality. This may enhance human capacity to perform well and to fulfil the

primary purposes more accurately and efficiently.¹⁵ The second category of secondary purposes is called ‘complementary purposes’ by the jurists. The objective of these purposes is meant to create ease and facility for the society at large. After fulfilling the primary purposes and the first category of secondary purpose, the managers may proceed further and discharge their social responsibilities. They can donate to charity and to other social institutions. They can provide scholarships to needy students, accurate and clear information of the products that are offered to the customers.¹⁶ They can also provide correct information and more disclosure to the investors and to the general public for investment in the business. This can help to attain the highest degree of social responsibility of the companies and can develop a better business environment to the investors. In the context of corporate governance, priorities set by Islamic law may help managers to decide what possible course of action they can take in case a conflict of interest arisen between different stakeholders.¹⁷ The purposes of Islamic law can be achieved in corporate governance by the managers through above course of action.

The upshot of the above discussion is that corporate governance is much more important in companies that operate under the injunctions of Islamic law. More responsibilities are levied on the managers under Islamic law system of corporate governance. They are required not only to act for the benefit of shareholders, but also to society at large after preserving the objectives of Islamic law. Therefore, as the companies move towards an Islamic mode of financing and conducting business, more emphasis will be on corporate governance. Therefore, in the context of Pakistan, as the country moves towards Islamizing the economy, the corporate governance will feature more in policy.

An important dimension of purposes of Islamic law is the application of public interest in corporate governance. The extent to which the public interest will act as catalyst in the application and convergence of corporate governance is debatable. The next section will discuss this aspect of purposes of Islamic Law.

V. Public Interest and Convergence in Corporate Governance

The term 'public interest' has wide range of meaning. Feintuck believes that the term public interest often appears to be an empty vessel, to be filled at different times with different contents. It varies from discipline to discipline, society to society, religion to religion and also ideology to ideology. The main reason behind this phenomenon is the priorities set by each discipline, society, religion and ideology. For example, economics may have different meaning than the political science. Socialism may have different meaning than Capitalism due to priorities set by each discipline.¹⁸ Similarly, the capitalism may have different meaning which is understood in Islamic financial system.

The nature of a society shapes the nature of public interest. In new world scenario, this has become more challenging where capitalism has dominated the most part of the world but still some capitalist countries such as Pakistan has its different norms based on Islamic injunctions. The reason is that the constitution prescribes Islamic injunctions as its 'Grundnorm' and therefore, the state must adhere to it. Historically, some Islamic countries including Pakistan remained a colony of the United Kingdom and other western countries where capitalism was dominant. After getting independence from western world; these Islamic countries adopted the legal, regulatory, institutional and financial structures of their colonial masters. Later on, especially after the recent financial crisis, some developments were made which highlighted the importance of alternative financial system that may respond more suitably to which capitalism had failed to respond.¹⁹ There was some other development in the Muslim world to resuscitate its own Islamic identity in financial matters. The thrust was to provide alternative products introduced and developed by capitalism which is not acceptable in Islam. However, this was challenge for modern Muslim scholars. They were required to develop Islamic financial products which are compatible to modern needs and requirements and at the same time are not against the Islamic injunctions. In this scenario, the problem is to determine what is public interest? This is a methodological and an empirical challenge especially when capitalist world and Islamic world have different Grundnorms²⁰. For instance, Islamic injunctions are a Grundnorm in Pakistan whereas

in most of the western world it may be democracy, constitution or other ideology.

There is another difficulty hanging with the term public interest. In some cases, it overlaps with private interest. In this scenario, it becomes difficult to determine the boundaries for both terms. In other words, it is not easy task to determine up to what extent pursuit of private interest will infringe public interest. For instance, a professional while pursuing return on his investment that was made in getting skill development may not emphasis on welfare of the society at large in his professional life.²¹

To draw a distinction between private interest and public interest and the question up to what extent a private interest may be followed without invading public good is difficult to answer. It basically depends upon the ideology of a specific society or country. For instance, the capitalism focuses more on private rights than the society. On the other hand, Islamic finance focuses on the society at large. However, it does not means that the capitalist society does not focus on the welfare of the society but the problem is the quantum of freedom for an individual to pursue private interest irrespective of quantum of negative influence on the society at large. The individuals in capitalist society may pursue private interest unless such acts are not declared unlawful. For instance, the western system of corporate governance allows businesses which have a moral negative effect on the society such as businesses connecting to alcohol, pornography and gambling. On the other hand, Islam has different priorities. Islam is a practical religion which provides complete guideline in every aspect of life including business and commercial dealings. It does not allow businesses which are unethical and immoral. Therefore, it is evident that an Islamic financial system will not allow pursuit of private interest which is immoral and also harmful for the society. The focus of Islam is on moral business practices which does not permit domination of private interest over public interest. It is in this backdrop that Islam does not allow immoral businesses including gambling, pornography, or alcohol manufacturing and other immoral businesses.²²

Islamic financial system has defined and determined the limits of the terms private and public interest better than its counterpart

socialism and capitalism. The term public interest being a modern terminology has not been used much in the early period of Islamic finance but yet classical Muslim jurists have discussed this terminology in interpreting the basic sources of Islamic law. They used this term in defining the nature and philosophy of Islamic society. The Muslim jurists used the term public interest as a yardstick while defining and determining the scope of the Islamic law. For instance, the term was used by the jurists while defining, explaining and determining the scope of the sources of Islamic law such as *Maslahahmursalah*, *Istihsan*, *Istishab* or *ibahah*, *Sadd al-dhar'i* and *Urf*.

Maslahahmursalah (extended analogy or public interest) is considered as a source of Islamic law which means the preservation of the purpose of Islamic law in the settlement of legal issues. For instance, the rule of Islamic law 'life for life' means for deliberate murder, the life of one person will be taken for one murder. However, scholars have ruled that if more than one person is involved in the killing of one person, then life of all involved in the murder may be taken. The purpose is to preserve the purposes of Islamic law, that is, the preservation of individual life.²³ As the objective is to follow a particular course of action in the public interest; therefore it is called public interest.²⁴

The *istihsan* (Juristic preference) is also considered as a source of Islamic law. Its literal meaning is 'something that is preferred or inclined by someone'. Its technical meaning is 'an exception to a general principle established through analogy, subject to condition that stronger evidence is available'. The purpose is to provide relief to the people. For instance, the rule of Islamic law is that 'do not sell that does not exist at the time of agreement'. But an exception to the general rule, *Ijarah* (the contract of hire) is allowed. In *Ijarah*, the benefits or services do not exist at the time of the contract but this is allowed on the basis of need as an exception to the general rule. The evidence for this contract is found in the *Qur'an* where Prophet Jacob entered into a similar contract.²⁵ This concept is similar to western concept of equity. Both are based on fairness and good conscience.²⁶

Istishab or *ibahah* is also considered as source of Islamic law. It means the presumption of continuity of the *status quo*. Therefore,

according to this concept an existing rule will continue unless overruled through evidence from the sources of Islamic law.²⁷ In other words, it can be derived that ‘everything is allowed unless prohibited by Islamic law’. So, any act will be considered permissible in the absence of a prohibition by the Islamic law. This is similar to common law. Both focuses on the continuity of a rule first established unless overruled.²⁸

The source of Islamic law ‘*Sadd al-dhar’i*’ (Blocking the legal means to an illegal end) means if an act which is otherwise legal but outcome of such act is illegal and harmful to society, then such act will be prohibited. This can be explained by the following example, the cultivation of poppy like other crops is not illegal in itself but if the objective of such cultivation is to make heroin, which is harmful to society, then such cultivation is prohibited.²⁹

Urf (Custom) is also considered as a source of law under Islamic law. This is similar to a custom that is also considered a source of law in the Western world. Classical Muslim jurists did use custom as a source of law but they did not focus much on it. However, modern Muslim jurists have given it importance as source of Islamic law. The reason may be the influence of West.³⁰ The major difference between *urf* as a source of Islamic law and custom in the Western world is that there are some conditions for *urf* to be considered as a source of Islamic law, for instance, the *urf* should not be contrary to the *Shariah*.³¹

Purposes of Islamic law have been developed and defined by the Muslim jurists in order to interpret the primary sources of Islamic law. This helped the modern Muslim jurists in order to find a solution to a problem in modern times while interpreting the primary sources of Islamic Law. The developed purposes of Islamic law are preservation of religion, life, progeny, intellect and wealth. The priority of these purposes is the same in which these are written. Hence, a high ranked purpose will have priority over the below ranked purpose. Similarly, as discussed before, the objective of these purposes is also to pursue public interest. For instance, life has given priority over progeny but on the other hand the death sentence is prescribed by Islamic Law under certain circumstances to a person who is involved in unlawful sexual intercourse. This shows progeny has been given priority over life. This ruling is due to

prevalence of public interest over private interest. In this case, preservation of society in general from evil effect of illicit sexual intercourse is a public interest whereas preservation of life of offender is a private interest. Therefore, the nature of public interest and its priority over private interest is determined by Islamic Law.

The question up to what extent the public interest under Islamic law may act as a barrier to convergence in corporate governance to western form is important. But, before that it is important to look at the core issues of corporate governance. Minority Shareholder Rights and Enforcement Mechanism are core issues of corporate governance. All these issues have common objective that is protection of investor; especially the minority shareholders. As argued before, 'preservation of wealth' is one of purposes of Islamic law. This purpose of preservation of wealth has two aspects. One is positive and other is negative. In its positive aspect, preservation of wealth puts duty on the state to provide such facilities to its citizens which are favourable for the growth of their wealth. Similarly, in its negative aspect it is duty of state to provide protection to the wealth of the citizens. Therefore, Islam prescribes punishment for stealing the wealth of others.³²Therefore, it means the investor protection is one of the main objectives of the Islamic law.

Many instances can be quoted from the primary sources of Islam which clearly provides protection to the investors in particular for the minority stakeholders.³³ However, only few examples, regarding investor protection, are described to elucidate the objective of the *Shariah*. The Holy *Qur'ān* says:

*'And do not swallow up your property among yourselves by false means, neither seek to gain access thereby to the judges, so that you may swallow up a part of the property of men wrongfully while you know'*³⁴

The objective of this verse is protection to the property rights of the others. In other words, the objective of the *Shariah* is to provide protection to investors.

In the same way, the protection of property rights of the others is evident from the *Sunnah* of Prophet Muhammad (peace be upon him).

'...A Muslim ...does not oppress his brother nor abandon or humiliate...every Muslim is protected, his blood, his wealth, and honour'.³⁵

There is another quotation from Holy Prophet (peace be upon him). The Prophet (PBUH) has been quoted as saying that God says:

'I am a third partner of those who form partnership; unless one of them betrays the other, I leave them alone'³⁶

The *Sunnah* specifies that who betrays the other partner, will lose blessings of Allah. To remain faithful to other business partner is also part of religious duty under the guidance of Islam. These references clearly indicate the importance of protection to the property of others in the religion of Islam. In business, the weaker party is considered at risk of being dealt unfairly, expropriated and exploited by the stronger party. It is because of this reason that the emphasis of the *Shariah* is to provide protection to the weaker party in business and commercial transactions.³⁷

Recent research on corporate governance has focused on Investor protection. The main objective of the research is to provide environment that is conducive for business. This will encourages healthy business activities. The whole society gets benefits from such healthy business activities that in return may provide better quality products. This also provides opportunities to the members of society to invest and to increase their wealth through legal business. In the context of corporate governance, the protection of the investors can be quoted as public interest. This is so because such protection provides a sense of protection of their wealth and they can invest without any fear of expropriation by the management and other dominant party. As Islamic Law provides high priority to public interest, hence, an individual is forbidden to pursue private interest which is harmful to the society at large. Islamic law also provide protection to the minority shareholders in business. These principles of Islamic law can be quoted as to the good corporate governance practices which are understood in the Western world. Therefore, it can be concluded that as to the form of protection to the investors, the public interest does not create a barrier to convergence to western model of corporate governance. The only problem is the

mechanism in order to achieve this objective. There are certain restrictions imposed by Islamic law on the way in which businesses are to be run by the managers. Therefore, certain kinds of business activities are not allowed under Islamic *Shariah*. The main difference between the Islamic finance and capitalism is the way in which business is to be run by the managers. As to investor protection achieved through minority shareholders' protections and enforcement mechanism is concerned both Islamic finance and capitalism have same objectives. Therefore, convergence in corporate governance to western model is possible but subject to the condition that this should not be against the fundamental principles of Islamic Law.

Now the question is how this convergence is possible then? For this purpose, there principles of Islamic law can be used which can facilitate convergence rather than divergence in corporate governance to western model. Firstly, 'presumption of continuity' can be used. Therefore, those features of western corporate governance can be adopted that are not against the *Shariah* under the principle of 'presumption of continuity'. According to this principle, all those features of western corporate governance which are not against the *Shariah*, can be adopted under Islamic law. This principle allows adopting any feature of western corporate governance for Islamic financial system even if it is taken from the western model provided it is not prohibited under the *Shariah*. Secondly, those features of western corporate governance that have some defect may be restructured in a way that they are made compatible with Islamic financial system. This defect can be removed by Islamic method of 'ruses' (*hila*). According to this principle, if any defect is found in any feature which makes it against the *Shariah*, then this can be restructured to make it compatible with *Shariah* by removing defect. For instance, conventional Bonds and Insurance have been reconstructed in a way to made compatible with Islamic finance. *Sukum* (Islamic bonds) and *Takaful* (Islamic Insurance) have been restructured by the Muslim scholars to provide alternatives to conventional Bonds and Insurance.³⁸ Thirdly, those features of western corporate governance that have minor defects may be adopted under the principle of 'necessity' (*darurah*). Muslim scholars used to apply these three

principles for providing relief to the people when there was no evidence in the primary sources of Islamic law. They also used public interest as a main feature in these principles for providing relief to masses for the welfare of society at large. Therefore, it can be concluded safely that public interest is not in any way a barrier to convergence to western model of corporate governance. It can be further concluded that it will rather facilitate convergence which might otherwise be considered as causing divergence in some cases.

VI. Conclusion

The capitalism has dominated the world during last part of previous century. This domination has attracted less developed jurisdictions to adopt the financial system of developed jurisdictions in order to improve their system in the light of capitalist financial system. As Pakistan is also less developed jurisdiction; therefore, this phenomenon was also evident in Pakistan.

In this scenario, the convergence in corporate governance was no exception. However, as Pakistan is an Islamic state with Islamic norms as its basic norm under the constitution of Pakistan; therefore, there is a doubt whether Pakistan can converge to western form of financial system in particular in corporate governance. *Prima facie* the both Islamic and western legal and financial systems are rival systems. However, as far as system of corporate governance is concerned, it can be concluded that the Islamic legal and financial system driven through purposes of Islamic Law and Public Interest may facilitate rather than frustrate the convergence in corporate governance.

This convergence can take place under the Islamic principles of 'presumption of continuity', 'ruses' and 'necessity'. These three principles of Islamic law can facilitate convergence to western model of corporate governance. Firstly, under the principle of 'presumption of continuity', the western corporate governance features can be adopted that are not against the Islamic *Shariah*. This will allow adopting any feature even if it is taken from the western system provided it is not against the basic principles of *Shariah*. Secondly, the features of west corporate governance that have some kind of defect may be restructured in a way that they are made compatible with Islamic financial system. The defect may be

removed using the Islamic method of ‘ruses’ (*hila*). According to this principle, if there is any defect in any feature of corporate governance which makes it against the *Shariah*, then this defect can be restructured by removing that defect and may be made compatible with *Shariah*. Thirdly, the features of corporate governance that have minor defects may be adopted under the principle of ‘necessity’ (*darurah*). Muslim jurists have been applying these three principles for providing relief to the people when there was no evidence in the primary sources of Islamic law. While providing relief to the people, they did use public interest as a basic feature in these principles for the welfare of society at large. Therefore, it can also be concluded that the public interest and purposes of Islamic law are not barriers to convergence to western model of corporate governance. Rather it will facilitate convergence which might otherwise be considered as causing divergence in some cases.

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- ³⁴ Al-Baqarah 2:188 (a verse from the Holy *Qur'ān*).
- ³⁵ Narrated by Imam Muslim (May Allah be pleased with him) (A well-known Muslim scholar and collector of *Sunnahs*).
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