

A Legal Standpoint of Enforcing Corporate Governance as an Unfinished Agenda in Shari'ah Perspective

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Abstract

The accelerator for a country's economy is investors and foreign investors are even more important for the business market of a country as they bring foreign direct investment (FDI). However, attracting investment requires strong protection for investors. The feeble laws and weak enforcement of laws is a major hurdle in attracting investment in the markets of developing countries including Pakistan. Therefore, this paper intends to investigate both corporate laws and their enforcement in the parameters of both tradition and non-traditional modes of enforcement with special reference to Pakistan along with the principles of Islamic Corporate Governance. The idea is moving from minimalism towards beyond minimalism, i.e., to examine whether the non-traditional ways of enforcement can be proven to be more effective and efficient in contrast to the more traditional methods of enforcement. The method used to conduct this research is qualitative however the methodology employed is doctrinal along with interpretative research philosophy using exploratory strategy. The results are derived by using inductive approach. The results of this study validate the authenticity of non-traditional modes of enforcement however; even the effective enforcement via non-traditional modes is also dependent upon the traditional modes of enforcement as the judiciary is the ultimate and highest forum to redress the grievance and deals with the matters of law. This research corroborate and certify this stance that without an independent and effective judicial system, effective enforcement in anyway remains an unfinished agenda. The authors believe that this paper would be a meaningful contribution in the existing literature and on-going debate on the enforcement of corporate governance around the globe.

Keywords: corporate governance, Shari'ah compliance, enforcement, capital market, judiciary, traditional modes of enforcement, non-traditional modes of enforcement.

Introduction:

Enforcement means to fix the violation of an investor's right which has occurred or might occur whether explicitly or impliedly and a mechanism to convert those violations into regulatory sanctions in order to redress the harm which has occurred to the investor in consequence of the feeble enforcement apparatus. Thus effective enforcement requires not only addressing the violations of law instead to fill in and overcome the lacunas left in those laws. The quickest way to overcome these gaps is through court judgments deciding the matter on basis of relevant fact and law of each case.¹ This is being done in all developing, developed, civil law and common law countries.

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¹ Berglof, E. & Claessens, S., (2004). Enforcement and Corporate Governance, *World Bank Policy Research Working Paper 3409*, 41

The academicians LLSV² and others have found that jurisdictions having strong enforcement apparatus tend to have more developed financial markets. They further found that investors will not be inclined to invest in a market where neither the rights of investors exist nor the protection of those investors' rights is effectively managed. Unfortunately, these two problems do exist in the financial market in Pakistan. Overlapping and ambiguous laws and their feeble enforcement mechanisms result in an unprotected environment for the investor as a consequence of which investors, particularly foreign investors, are hesitant to invest in this market.³ This paper examines further enforcement mechanisms, both public and private in order to investigate which one of them might be the most effective tool for the corporate market of Pakistan.

Major Factors behind the Ineffective Enforcement of Corporate Governance:

A number of factors can be identified as directly impacting on the ineffective enforcement of corporate governance principles particularly in Pakistan. These include: Firstly, the barmy role of government towards legislation and its implementation is a major hurdle in the proper enforcement of laws. It is the responsibility of the government to introduce reforms for creating a healthy environment for investors – and particularly institutional investors. Unfortunately, it has not been the priority of the government of Pakistan. Rather, government representatives break laws and set examples of neglecting corporate governance rules and regulations. Moreover, as a consequence of political instability governments prefer to implement short-term decisions and complete those short-term projects instead of focusing on reforming laws and their modes of enforcement.

Secondly, the concentrated type of shareholding is also a contributing factor resulting in poor enforcement procedures. Companies having concentrated type of shareholding as opposed to diversified shareholding are run by family members via cross shareholdings and pyramid structures.⁴ They consider control relinquishing in board of directors as unfavourable for their interests. Further education should be provided to the business community regarding the advantages of corporate governance principles such as diverse corporate boards in order to remove this misconception.

Thirdly, a less active stock market and less focus on an equity culture are significant causes of bad enforcement of corporate governance principles. The growth of stock market and equity culture in Pakistan was strongly discouraged by the extraordinary performance of government bonds in the early 1980s and by the more moderate admission of bank loans in the 1990s.⁵ This exercise of debt financing still prevails. This is a huge obstacle to the growth of a culture of equity. As a result, the stock market has to rely on large companies and large family businesses are generally satisfied

² La Porta, Lopez-ed-Silanes, Shleifer and Vishny

³ LLSV, (1997). Legal Determinants of External Finance, *The Journal of Finance*, 52(3), 1131; LLSV, (1998)., Law and Finance, *Journal of Political Economy*, 106(6),1113; LLSV, (2000)., Investor Protection and Corporate Governance, *The Journal of Finance*, 28, 24.

⁴ Ashraf, J., and W. I. Ghani, 'Accounting in a Country: A Case of Pakistan'. CMER Working Paper No. 05-40, 2005.

⁵ Ali, Z. & Butt, S., "The Impact of Corporate Governance on the Cost of Equity: Empirical Evidence from Pakistan Listed Companies", *The Lahore Journal of Economics* 139, 2009 <<http://www.ssrn.com/abstract=1732509>> (accessed on 10 May 2019).

and want to maintain their position in the corporate sector without letting their control fall behind which could be weakened by offering shares to the general public.⁶

Fourthly, inactive financial press is additionally responsible for the fragmentary enforcement of corporate laws. The financial press does not give importance and point out the non-compliance of corporate governance principles by companies. This is significant as the financial press is generally regarded as having a significant contribution towards the development of corporate governance principles, principally where conventional enforcement instruments are absent and inadequate.⁷

Finally, Pakistan's Code of Corporate Governance is inhibited with several ambiguous and intersecting provisions with that of other corporate laws, particularly with company law. This makes their implementation difficult. Moreover, only two provisions of the Code are binding while the rest is voluntary in nature, however; the regulator (SECP) requires mandatory acquiescence of the complete Code of Corporate Governance as the compliance has been made a listing requirement for the listed companies.⁸

As there is no concept of partial compliance as in the UK and some other countries based on 'comply or explain' principle, it makes the adoption of the Code even more difficult. For instance, it seems that if a listed company complies with the majority of the provisions of the Code and leaves the rest, it has to face delisting. This penalty for non-compliance is very harsh. It is submitted by the authors that this should be amended with delisting only being appropriate in cases of complete non-compliance. In cases of partial compliance, the penalty should be in terms of a fine only.

Non-Traditional Methods of Enforcement (Beyond Minimalism):

Private capital is necessary for economic growth of a country. However, the capital and equity do not flow in jurisdictions where there is no protection for investment. In order to provide protection to such investments, the reformation of enforcement methods is highly necessary. In contrast to traditional mods of enforcement, such as through the courts, stock exchanges, arbitration panels, and lending institutions; there can be softer ways of enforcement as well which may be called non-traditional modes of enforcement, including: institutional investors, rating agencies and media.⁹

It is obvious that the governmental bodies are primary enforcers of laws and regulations for the protection of shareholders' rights. But no regulatory body can possibly reach to every director and manager who encroaches the shareholders' rights due to the lack of resources. In such situations the soft ways of enforcement can help to achieve the desired standards of enforcement.

⁶ Zulfiqar Ali Shah, Safdar A. Butt and Arshad Hassan, "Corporate Governance and Earnings Management an Empirical Evidence from Pakistani Listed Companies", *European Journal of Scientific Research*, Vol. 26, No. 4, 624-638, 2009.

⁷ Valeria Kozhich and Haroon Hamid, "Corporate Governance in an Emerging Market: A Perspective on Pakistan", *Journal of Legal Technology Risk Management*, Vol. 1, No. 1, 2006

⁸ Salman, F. & Siddiqui, K., "Corporate Governance in Pakistan: From the Perspective of Securities and Exchange Commission of Pakistan", *The IUP Journal of Corporate Governance*, 12(4), 13, 14, 2013.

⁹ Millstein, M. I., *at al.*, "Enforcement and Corporate Governance: Three Views", *Global Corporate Governance Forum Focus* 3, (2005).

One option for investors to enforce their rights could be through contractual obligations. But in case of non-fulfilment of contracts by the directors or management of a company the investor will have to resort towards judiciary for enforcing his contract and, as discussed above, in the case of an ineffective judiciary the appropriate remedy might not be available to the aggrieved party. However, the local stock exchanges may be the most effective tools for enforcing the corporate laws, even if the other legal institutions and the judiciary are less efficient because it is easier to reform listing rules of stock exchanges than other statutes and company law.¹⁰

Moreover, lending institutions such as banks may also enforce corporate governance standards effectively like stock exchanges; as after families and state, local banks are the major financiers in the business in developing countries and have the self-enforcing capabilities much like the local stock exchanges. Furthermore, non-profit shareholder organisations (NPOs) which may include institutional investors can be the effective stewards for enforcing corporate governance standards.¹¹ Institutional investors are private, independent, and professional organizations, having experience of investment and holding large shareholdings can protect the rights of investors in a better way. They supervise the process of decision making of the board of directors and therefore, can influence the company management for the better enforcement of corporate governance principles being larger in their size.¹²

Furthermore, rating agencies and media can also play a very effective role in the enforcement of corporate governance standards. Rating agencies should rate highly those companies following international best standards of corporate governance and observing full compliance with the Code. It will increase the share value and enhance the reputation of such companies. Thus, a competitive environment will be created which will attract the less performing companies who are not complying with the corporate governance standards. Such strategies of rating agencies may also be an alternative to the division of the stock market for phased implementation as the aim of dividing a stock market was also to create a competitive environment for the better implementation of corporate governance standards. In addition to this, media can also play an important role in the enforcement of corporate governance standards by creating awareness about the potential advantages attached to the adoption of the Code and highlighting the good and bad performing companies.

Traditional/Minimalist Methods of Enforcement:

Traditionally, a) the judiciary and b) the capital market are the major players responsible for enforcing corporate laws both in their letter and their spirit.

The legal structure of Pakistan is a combination of foreign jurisdictions and of native standards. The current structure of judiciary is according to the lines of the Constitution of Pakistan of 1973 (Part VII, Articles 175-212). The corporate judicature is established in addition to the constitution in accordance with the Companies Ordinance of

¹⁰ Ibid

¹¹ Klapper, L. & Love, I., "Corporate Governance, Investor Protection, and Firm Performance in Emerging Markets", *Journal of Corporate Finance*, 10, 723, 2004.

¹² Khawaja, A., & Mian, A., "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market", *Journal of Financial Economics*, 78, 203, 205, 2005.

1984 and the SECP Act of 1997. SECP and the general court both deals with the corporate complaints.

SECP is the appropriate forum to file a complaint in two circumstances:

When SECP is stated as the appropriate forum for filing a complaint and; while the violation of the provisions of the Companies Ordinance is occurring and no forum is declared to initiate a complaint and the punishment for the infringement is only fine.

According to sec. 476 of the Companies Ordinance 1984, the second forum is the general courts. This can be used in two circumstances:

when the court is declared an appropriate forum and; when the violation is punishable by imprisonment with or without a fine.

The Ordinance provides that:

in situations where the punishment is just fine, the officials of the SECP retain the authority to entertain these cases relying on the amount of fine (Part II of the Ordinance). A revision application against the decisions of assistant registrar, deputy registrar, joint registrar and additional registrar can be filed with the Registrar of Companies (S. 477 (1) (a) of the Ordinance).

The objective of the Company Law is to decide cases relating to companies promptly, but; in reality the courts do not follow this practice which shows the non-serious and negligent behaviour of the courts in order to deal with corporate cases rapidly. Moreover, the courts are overburdened which is a key hurdle in enabling them to handle cases within time. Moreover, another major concern regarding the non-efficacy of judiciary relating to corporate cases is political influence. This results in the judiciary failing to be stable, strong and independent. Preamble and the Article 2A of the Constitution stresses upon the independence of judiciary by separating it entirely from the executive, but it could not have been done so far in its letter and spirit. The Constitution contains clear provisions regarding the structure, jurisdiction, roles and responsibilities of the courts (Articles 177, 193 and 205 along with Schedule 5), and declares the Supreme Court as guardian of the constitution (Articles 178 and 194 along with 3rd Schedule).

Moreover, a strong set-up of check and balance and accountability is also required for judicial autonomy. The Constitution confers this responsibility on the Supreme Judicial Council (SJC). The procedure is as follows:

The SJC comprises on the Chief Justice of Pakistan as Chairman, two most senior Judges of the Supreme Court and two most senior Chief Justices of High Courts. The Registrar of the Supreme Court acts as the Secretary of the SJC. On the reference from the President or via suo-moto action, the SJC investigates the matter and forwards its judgement to the President. If the SJC decides that the concerned Judge cannot fulfil his duties or is guilty of misconduct. That judge can therefore be fired. The President may order the removal of that judge (Article 209 of the Constitution).

In addition, disorganization of the judiciary is also a major obstacle. The judicial process is complex, resulting in delays in the resolution of cases. In addition, the inability of judges to deal with technical issues, their insufficient number, dearth of facilities and support staff additionally causes excessive and unreasonable delays.

Steps have been taken to reform the justice system with the help of the Asian Development Fund (ADB) and the United States Agency for International Development (USAID), but because of the *mala fide* of leaders, these measures were not successful.¹³ The intention behind these steps was to enhance judicial capability, transparency, independence, responsibility and efficiency. This could not be achieved due to the nonexistence of unanimity between the government and USAID on the terms and conditions of the loan and its practical applicability.

However, reforming the judiciary is a long and difficult process that entails the backing of politicians and other stakeholders.¹⁴ Political and financial limitations can be major obstacles to such endeavours.¹⁵ Another obstacle for this stage could be the families that own and control a series of businesses, and these families are also politically powerful. They seize the rights of minority and individual investors. Thus, they do not appreciate or support reforms intended to strengthen shareholders security via improving enforcement frameworks.

In such a situation, the academicians recommend an alternative to the judicial enforcement mechanism;¹⁶ through which the firm-level administration can be improved by the acceptance of contracts with increased disclosure, protecting the right of shareholder, and executing the code of corporate governance. The authors argue that companies having a strong corporate governance do not necessarily need a judicial enforcement. However, the argument against it holds that this alternative to the compliance mechanism may not be a good option, since disasters cannot be reduced to the existence of shareholder rights, disclosure and the acceptance of code of corporate governance.

The cause may be the procedure adopted while making corporate decisions and the working environment of companies in which the probability of disagreement among the parties always exists. The firm governance mechanisms also confront corporate conflicts for which a rigorous judicial execution mechanism is required for the proper enforcement of laws. Non-traditional modes of enforcement may be a useful option, but they also depend on traditional modes of enforcement mechanisms in order to achieve the required outcome as judiciary is the highest and ultimate forum to resolve disputes. Hence, the authors argue that both traditional and non-traditional modes of enforcement are required simultaneously for the better implementation and execution of corporate governance principles; as private methods work effectively only in the presence of strong institutional mechanism.

¹³ ADB Completion Report, (2009)., Pakistan Access to Justice Programme, 1
<<http://www.adb.org/sites/default/files/projdocs/2009/32023-01-pak-pcr-pdf>> (accessed 10 June 2019).

¹⁴ Leora Klapper & Inessa Love,, “Corporate Governance, Investor Protection, and Firm Performance in Emerging Markets”, *Journal of Corporate Finance*, 10, 723, 2004.

¹⁵ Erik Berglof & Claessens Stijn, “Enforcement and Corporate Governance”, *World Bank Policy Research Working Paper 3409*, 41, 2004.
<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=625286&download=yes> (accessed 10 May 2019).

¹⁶ Leora Klapper & Inessa Love,, “Corporate Governance, Investor Protection, and Firm Performance in Emerging Markets”, *Journal of Corporate Finance*, 10, 723, 2004.

Furthermore, the lack of expertise regarding corporate and other technical matters among the judiciary is another cause for the inefficiency and ineffectiveness of the judiciary. However, the training of newly appointed judges in the field in question may be a solution to this problem. This process would be time consuming and costly, while comparing the potential benefits of this procedure, as the required judges for a specialized corporate matter would be few. In that case, there is no need to provide irrelevant training to all judges.

The other approach to deal with this issue could be to institute the separate specialist corporate courts. The establishment of these courts will improve the enforcement in corporate matters. These courts will work more efficiently and effectively while operating separately from the general courts due to the high volume of workload on them. The training to deal with corporate matters should be provided to these judges of corporate courts. The practice of establishing special courts to strengthen law enforcement capacity is already practiced in several jurisdictions.¹⁷

The creation of special courts could solve compliance problems or possibly increase the capacity to comply with corporate laws. The authors argue that the establishment of separate corporate courts can greatly assist in improving the application of corporate laws. This initiative cannot make a considerable transformation because of several other problems (aforementioned) that must be resolved at the same time as the creation of special courts. Moreover, there should be a code of conduct for the retired senior judges which prohibit them from participating in political activities during or after retirement. The argument is based on the responsibility of a judge which is very prestigious, i.e., to prevail justice in the society. Therefore, he should remain undisputed. Lastly, to increase the number of judges and making their appointment procedure fair and transparent would also help to resolve the issue in hand.

The securities market is the second significant body after judiciary responsible for the enforcement of corporate laws and regulating the corporate governance standards. However, the capital market of Pakistan is not as efficient as it should be and does not punish companies with bad performance or directors responsible for poor corporate performance. A corporate market with a weak mechanism of enforcement is the major cause of misappropriation of the rights of minority shareholders by the large groups.¹⁸ Therefore, it goes without saying that the market reforms are highly necessary for the better implementation of corporate governance and to meet the global standards. The establishment of Securities and Exchange Commission of Pakistan (SECP) was a major step in this process. However, the frustration of the securities market to ensure shareholders' security and penalize the wrong doers or who are the major players of non-compliance with corporate governance standards remained unfinished.

¹⁷ OECD, (2011). Corporate Governance in Asia 2011: Progress and Challenges, Corporate Governance, (OECD Publishing)

<<http://browse.oecdbookshop.org/oecd/pdfs/product/2611011e.pdf>> (accessed 10 May 2019).

¹⁸ Ather, J, Ensuring Capacity, Integrity and Accountability of Regulators and Supervision, (6th Asian Roundtable on Corporate Governance, Organized by OECD, Seoul), 2004.

<http://www.oecd.org/document/34/0,3746,en_2649_37439_33962850_1_1_1_37439.00.html> (accessed 10 May 2019).

Moreover, the securities market was corporatized for a purpose of attracting general public to be shareholders in the corporations in order to weaken the hold of few groups on the companies. However, this process of Corporatisation of securities market has not yet been implemented completely because of the slow legislative process. In addition to this, the rules of insider trading were changed in order to shift criminal liability to the civil liability, so that the process of resolving corporate disputes could be quicker as the form of proof required in criminal matters are hard to find and establish which takes a lot of time, since it requires convincing evidence to prove a crime, which may not be possible in most corporate cases and white collar crimes.¹⁹

Furthermore, the code of corporate governance was also introduced in order to be at par with the international standards of corporate governance. In fact, moving a step forward, the code of corporate governance was made part of the listing requirement for its better compliance and implementation theoretically. However, in practice, this target of fully compliance with the code of corporate governance is an unfinished agenda so far.

The authors succumb that the above steps to reform the securities market are significant and inspirational; however there is much yet to be done in order to achieve the optimal results. The authors argue that gradual implementation of code of corporate governance could produce better results instead of compliance at once and the securities market can be divided into different segments for this purpose. Each segment can have separate requirements (strict or lenient) depending upon the nature of listing.

This model is already being followed in the United Kingdom and several other jurisdictions. The London Stock Exchange has a premium listing and a standard listing along with an international market called the Alternative Investment Market for smaller emerging companies. Several companies, comprising venture capital join this market looking for entrance to raise their capital. The beauty and incentive of this model is that it generates a competitive environment, which results in the better compliance with and implementation of corporate governance standards.

This paper recommends that the division of Pakistan's securities market in three divisions with primary, secondary and third listing. The primary listing may entail the adoption of international standards of governance including; stricter disclosure requirements and compulsory compliance with the Code of Corporate Governance. The secondary listing may only require compliance with local corporate governance standards and voluntary compliance with the Code. The third listing can be for smaller and emerging companies who are looking for entrance in the market to raise capital along the lines of Alternative Investment Market of the United Kingdom.

Such division of securities market will not effect and frustrate those business tycoons who do not welcome any advancement in the corporate governance as they have a misapprehension that by adopting corporate governance principles their control on the business market will loosen. They may opt to have listing on secondary market which requires voluntary compliance with the code of corporate governance.

¹⁹ Haroon Hamid, & Kozhich Valeria, "Corporate Governance in an Emerging Market: A Perspective on Pakistan", *Journal of Legal Technology Risk Management*, 1(1), 1, 2006. <<http://www.ssrn.com/abstract=976499>> (accessed 10 May 2019).

The primary market could be a better option for multinationals and other companies owned by educated and well-off people who welcome market reforms and willing to follow international standards of governance in order to contribute in the advancement of their securities market will ultimately boost the economy of a country. It goes without saying that these companies will win the trust of shareholders and large local and foreign investors by following the stricter disclosure requirements and adopting the rules of transparency and accountability. This practice will have an important role to play in encouraging companies to move from the secondary to primary listing; meaning thereby, to follow the highest standards of corporate governance.

Small businesses and emerging companies may choose to remain on the third listing that will entail voluntary compliance with the Code, the only requirement being to guarantee protection of potential shareholders and other interested parties. Thereafter, as the business of these companies begins to develop and realize the potential benefits of strict adherence to the Code, they may switch to a secondary or primary listing. This fragmentation of securities market will inform companies of the benefits of adopting the Code and will create a competitive environment. The fulfillment of less strict obligations can lead to the administration of family and state companies to consider the change towards a more strict compliance.

The reputation and greater confidence of shareholders can provide incentives for the inclusion in primary listing. Moreover, institutional investors can also play an important role being experts of investment, in creating the awareness regarding the optimal benefits of corporate governance principles to their investee companies. Similarly, the independent non-executive directors can also be a significant source to ensure the adopting of rules of transparency, accountability and fairness among the companies where they are part of corporate boards.

Rating agencies and the press stand out by admiring and enhancing the ratings of companies having listing on primary market for absolute implementation of the Code as well as to meet international standards. This change will improve the confidence of the shareholders and guarantee the corporate commitment with higher governance standards. In consequence, this phased implementation of code of corporate governance or the division of securities market by creating an environment of healthy competition will improve the equity value. Moreover, it will remove a fear and misconception about the weakening control of companies resulting the adoption of corporate governance standards. The security of the shareholders will be strengthened and stricter corporate governance standards will be guaranteed. Minority shareholders may find it advantageous to invest in the primary market while guaranteeing the protection of their funds, while institutional investors may invest in both markets due to their knowledge and experience in this area. In the same way, they can also influence the investee companies towards stricter compliance.

Shari'ah Perspective of Enforcing Corporate Governance:

Islamic principles of corporate governance contain in-rooted the notions of behaviour and faith for the governance of a business. It is because of the faith of Muslim on *Allāh*; which advocates that the significance of *Tauhid* (monotheism) is the foundation of all beliefs, thought as well as behaviour of a Muslim, comprising the consideration regarding corporate governance. Accountability is one of the principles of *Tauhid* which is the basic pillar of corporate governance. The spirit and teachings of Islam always

emboldens its people to be fair in their dealings, both in the matters of faith, Ahari'ah, or moral as the magnitude of faith and to attain the notch of faithfulness.²⁰

Surah-Al-Maidah verse eight says:

*"O you who have believed, be persistently standing firm for Allāh, witnesses in justice, and do not let the hatred of people pervert you from being just. Be just; that is near to righteousness. And fear Allāh; indeed, Allāh acquainted what you do".*²¹

The teachings of Islam show that the principles of accountability and fairness are envisioned to instigate the management of the company to be fair to all its stakeholders. For example, in Shari'ah, justice should address and include both spiritual and material aspects. Having said that; only in that case the meaning of fair can be stretched at any principles contained in the corporate governance and other values that can be raised over the implementation of justice. It has been argued that the legitimacy theory might be utilised to elucidate the association of corporate governance best principles with that of disclosure of Islamic financial institutions, the board of directors, audit committee, the animation of Shari'ah Supervisory Board along with its composition and expertise of its directors.²² Corporate governance best principles can inspire management to reveal their strategies of implementation of corporate governance principles in order to bring transparency and fairness in the decision-making process and other affairs of a corporation.²³

Moreover, the Islamic Social Reporting is required by the Muslims as a result of their duty towards *Allāh* and society, followed by improving the transparency of corporations by providing the significant relevant information in detail regarding the appropriateness for the requirements of Muslim Stakeholders.²⁴ Islamic Social Reporting index comprehends corporate social responsibility criterions established by Accounting and Auditing Organization for Islamic Financial Institutions. The Islamic Social Reporting index is like a primary step in terms of Corporate Social Responsibility disclosure criterions according to the lines of Islamic corporate governance.²⁵

The intention behind this reporting is:

*"Demonstrating accountability to Allāh and community. Improving the transparency of business activities by providing relevant information watching the spiritual needs of Muslim investors in decision-making."*²⁶

²⁰ Indrawaty, Siti Maria Wardayati, "Implementing Islamic Corporate Governance (ICG) and Islamic Social Reporting (ISR) in Islamic Financial Institution (IFI)", *Procedia-Social and Behavioral Sciences*, 219, 338-343, 2016.

²¹ *Al-Qur'ān: Al-Maidah*: 8

²² Samsudin S. B. & Islam M. S., "Value of al-amanah in Human Life", *International Journal of Scientific and Research Publications*, Vol. 5, No. 4, 1-3, 2015.

²³ Mohammad Ayaz, Mohammad Tahir Mansoori, "Strengthening Corporate Governance Regime for Islamic Banks in Pakistan: Focusing on the Principles of *Amana* and *Mas'uliyah*", *Journal of Islamic Business and Management*, Vol. 7, No. 2, 178-196, 2017.

²⁴ Hafeez D., "An Analysis of Corporate Governance in Islamic and Western Perspective", *International Journal of Business, Economics and Law*, Vol. 2, No. 3, 98-103, 2013.

²⁵ Ibid 23.

²⁶ Ibn Kathir, I. A. F., "*Tafsir Ibne Kathir* (M. M. J. Ghari, Trans.) (Vol. 4) Lahore, Pakistan: Maktabah Quddoosiyah, 2016.

Now-a-days, corporate governance is not only rising in the conventional economy, but also in the Islamic economics including Islamic banks and other Islamic Financial Institutions IFIs. The business market must enforce the principles of corporate governance according to the principles of Islamic Corporate Governance. The efficiency and usefulness of the enforcement of Islamic Corporate Governance is replicated in the Islamic Social Reporting. Determinants of Islamic Corporate Governance include composition of the Shari'ah Supervisory Board, the size of the Board of Directors, frequency of Board meetings, size and composition of the audit committee and the frequency of their meetings.

Conclusion:

This paper examined the legal perspective of execution and enforcement of corporate governance and declared it an unfinished agenda. The enforcement of corporate governance standards in letter and spirit is an uphill task and continuing phenomenon, it cannot be achieved at once; neither a unified model can be implemented all over the world due to the diverse markets and their diverse demographics. This paper highlighted that investors provide capital however; the directors control the enterprise. Therefore, each activity of the director and manager affect the equity of enterprise. If they follow good governance benchmarks the value of shares would go up and if they ignore and compromise on the principles of good governance, the value will go down. However, the recent disasters have stated so rudely that if the directors and managers lie, misrepresent, steal or cheat, the value of the enterprise may fall to zero.

The issue becomes additionally serious when the minimalist/traditional methods of enforcement, such as judiciary and stock market itself, fail to enforce corporate governance standards. Ineffectiveness, corruption, nepotism, feudalism, judicial spending and excessive delays are the basic problems facing Pakistan's legal system. Although the SECP is an independent body, many representatives of the SECP are not competent and need to develop their knowledge and skills in corporate law, particularly due to their appointments on political basis.

This paper recommends the adoption of non-traditional methods of enforcements of corporate governance standards such as institutional investors, independent non-executive directors, rating agencies and media. Moreover, the Islamic Principles of Corporate Governance comprising of shari'ah supervisor board, principle of

amanah and accountability could help in making the enforcement mechanisms better. The authors reiterate that the inclination towards these methods will improve the enforcement of corporate governance standards in the country and will uplift the corporate governance of Pakistan beyond a minimalist approach which is inevitable in order to meet the international standards of corporate governance.