

# An Analysis of Corporate Governance in Islamic and Western Perspectives

## Part-1: Evolution of Companies

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### 1. Introduction:

A firm might be an association of persons, group of people, a limited or unlimited partnership, a company or corporation and several variants attached to each. However, the corporation is renowned by virtue of its distinct legal personality that is assigned by law, whereas partnership and unincorporated corporations have not. Company's shareholders own the company as a legal entity and the company as a legal person in turn owns the corporate assets. Every corporation as a separate legal entity from its shareholders has the same legal rights like an individual to enter into contractual arrangements, own property, sue and be sued in its own name rather than in the name of its shareholders. The rights and obligations of a person either legal person or natural person work side by side but some limited liabilities companies *shirkat al-'Inan* have different liabilities from unlimited companies *shirkat al-mufawadah* or partnerships. However, the historical development of corporate entity in British and Islamic systems can draw a clear picture for the analysis of prevailed concept around the world.

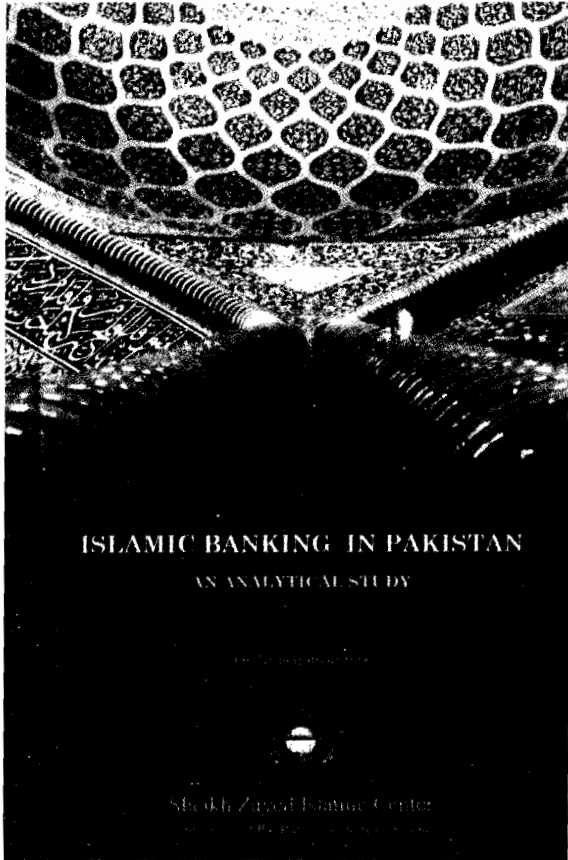
### 2. Historical Development of Company Law in British and Islamic Systems:

#### 2.1. Companies in Islam:

In Islamic system of state (Khilafah), companies operate in pre-determined spheres of the economy because any utility designated by Islam regarded as indispensable for the community.(1) The utilities are regarded as public goods and therefore the revenue generated from utilities should be administered for the benefit of all citizens. The hadith of the Prophet (SAWS)"Muslims are partners in three things: in water, pastures and fire"(2) is regarded as a foundation-principle of utilities and public goods, where as the ownership of key utilities always remain with the state.(3) The prophet (SAWS) accorded his ascent to the practice of Shirkah as He said "I am the third with the two partners as long as they do not cheat one another but when one of the cheats, I leave them".(4) He also said that "Allah is with the two partners unless they defraud each other."(5) However, the extraction, development, refining or constructions are undertaken by companies who will be paid for such a contract.(6)

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**ISLAMIC BANKING IN PAKISTAN**

AN ANALYTICAL STUDY

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- <sup>33</sup> See, Religion and Civilization, p.66, ibid
- <sup>34</sup> Nadwi, Abul Hassan Ali, Seyyed, Islam Aik Taghuur Pazeer Dunya Mein, Majlis Nashriyat e Islam, karachi, p.18
- <sup>35</sup> See, Speaking Plainly to the West, p.61-62, ibid
- <sup>36</sup> See, Islam and the World, p.139-140, ibid
- <sup>37</sup> See: ibid: p.139-140
- <sup>38</sup> See: ibid: p.141-142
- <sup>39</sup> See: ibid: p.143
- <sup>40</sup> ibid
- <sup>41</sup> See: ibid: p.146-147
- <sup>42</sup> Al-Quran:16:5-8
- <sup>43</sup> Al-Quran:43:13-14
- <sup>44</sup> See: ibid; p.150
- <sup>45</sup> Ibid: p.150-151
- <sup>46</sup> Nai Dunya (America) Mein Saaf Saaf Batein, Seyyed Abul Hassan Ali Nadwi, Majlis Nashriyat e Islam, karachi, p.18-25
- <sup>47</sup> Ibid:p.25-26
- <sup>48</sup> See: ibid: Islam and the World, p.153-155
- <sup>49</sup> Ibid: Speaking Plainly to the West, p.43
- <sup>50</sup> See: ibid: Islam and the World, p.155
- <sup>51</sup> See: ibid: <sup>51</sup> Western Civilization Islam and Muslims, p.157-166
- <sup>52</sup> Nadwi, Abul Hassan Ali, Seyyed, Islamiyat Aur Maghrabi Mustashriqin Aur Musalman Musannafin, Majlis Nashriyat e Islam, karachi, see ,p.11-14
- <sup>53</sup> Ibid: p.175
- <sup>54</sup> See:ibid:p.183-184
- <sup>55</sup> See: ibid: p.200-205
- <sup>56</sup> Charles le GaiEaton, Islam and the Destiny of Man, State university of new york press, the Islamic Text society,1985, p.12-13
- <sup>57</sup> Mahmud Ahmad Ghazi, compiler, Seyyed Aziz Ur Rahman, Musلمانuh ka Dini Aur Asri Nizam-e-Taleem(Khutbat wa Taqarir), December 2009, Ash- Shariah Academy, Gugranawala, see, p.189-190
- <sup>58</sup> See, Nai Dunya (America) Mein Saaf Saaf Batein, p.45-46, ibid

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  - 3 Nadwi, Abul Hassan Ali, Seyyed, Muslim Mumalik Mein Islamiyat Aur Maghribiat Ki Kashmakash, translator, Kidwai, Mohammad Asif, translation, Western Civilization Islam and Muslims, , Haji Arfeen Academy, Karachi,p.5
  - 4 Nadwi, Abul Hassan Ali, Seyyed, Makateeb e Europe, Maktaba Islam, Lacknuw, see, p.43
  - 5 Nadwi, Abul Hassan Ali, Seyyed, Insani Dunya Par Musalmano Kay Arooj Wa Zawal Ka Asar, translator, Kidwai, Mohammad Asif , translation, Islam and the World, Sh.Muhammad Ashraf, Lahore, p.111
  - 6 See: ibid,p.112-114
  - 7 See: ibid,p.115-117
  - 8 Muhammad Asad, Islam at the Crossroads, Dar Al- Andalus,Gibraltar, p.35
  - 9 John William Draper, produced by, Charles Keller and David Widger, History of the Conflict between Religion and Science, www.gutenberg.org,p.26
  - 10 Islam in the World, Ibid, p.129
  - 11 Nadwi, Abul Hassan Ali, Seyyed, Maghrib Say Kuch Saaf saaf Batein, translator,Mohiuddin Ahmad, translation,S Speaking Plainly to the West, , Haji Arfeen Academy, Karachi, See, p.83d
  - 12 Ibid: p.84
  - 13 Nadwi, Abul Hassan Ali, Seyyed, Marka e Emaan Aur Madiyyat, , translator, Mohiuddin Ahmad, translation, Faith Versus Materialism, Haji Arfeen Academy, Karachi, see, p.52-53
  - 14 Al-Quran:18:28
  - 15 See: ibid, p.93-94
  - 16 Ibid: p.94-95
  - 17 See, Islam in the World, p.130131, ibid
  - 18 Islam at the Cross Roads ,p.44, ibid
  - 19 Nadwi, Abul Hassan Ali, Seyyed,Mazhab wa Tamaddun, Translator, Mohiuddin Ahmad, translation, Religion and Civilization, Haji Arfeen Academy, Karachi, See, p.14-17
  - 20 See: ibid: p.45-49
  - 21 Ibid: p.48-49
  - 22 Al-Quran:26:128-130
  - 23 Al-Quran:26:146-149
  - 24 Ibid: p.55
  - 25 See: ibid:p.64-66
  - 26 Islam and the World, p.158-159,ibid
  - 27 Ibid
  - 28 Al-Quran:23:37
  - 29 Al-Quran:11:91
  - 30 See, ibid: p.160
  - 31 Al-Quran:2:7
  - 32 See, ibid
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western Europe". When he presented the view of *دع ما صفا و دكر ما كدر* in front of participants of the conference, they unanimously controverted this notion and made it clear to him that, West will not permit you to derive the benefit from her science, technology and civilization on such conditions, it is a complete package that you have to borrow entirely without any 'pick and choose'.<sup>(57)</sup>

The above mentioned references denote that, the viewpoint of Seyyed Abul Hassan Ali Nadwi does not seem a substantial stance, while interacting with western civilization. However, the burden has shifted to the shoulders of genuine Muslim scholars to chalk out a clear line of action for the *Ummah* to interact with the West.

### **Conclusion:**

The approach of Seyyed Abul Hassan Ali Nadwi towards the western civilization is based upon his acute observation of the centers of the western culture. He studied the west through the literature of western authors. He made several trips to the Europe and America to build up a concrete view about the western civilization. He has maintained his viewpoint that, the western civilization is an amalgamation of different ideologies, theories, speculations, political and economic systems. The western civilization traces its origin or lineage back to the ancient Greek and Roman civilization. The materialism and dialectical materialism is the dominant feature of the western civilization. The exaggerated indulgence in the materialism has shaped the western civilization as a sensualist civilization, and it has deprived the West of the religious sense. Modern science and technology has taken the position of a deity in the West, instead of proving the 'means' to facilitate the mankind for the greater objectives of life, these 'means' has become the 'ends' in the West. This mistake is not only proving fatal for the West but also for the whole world. He holds the opinion that the western civilization has reached at its climax and the maximum fruits or results which it could have borne to the mankind, it has furnished. The misery of the West manifested by the fact that the rein of life is not in the hand of man rather life has held the reins of man.<sup>58</sup> The family system of the West has collapsed; it has lost social and moral values, and this civilization is heading towards the decline and fall. He concludes that it will be the greatest achievement and service of mankind to guide the western civilization in the light of Islamic faith and canons. This is the need of hour that Muslims should cope with the challenges of the modern age rendered by the West, and set up their line of action in the light of Seyyed Abul Hassan Ali Nadwi's approach to the western civilization.

show them to the public at large with the help of a telescope.(53) Two fold responsibility lies on the shoulder of Muslim researchers and scholars, on the one hand they have to present a classical Islamic literature that should be superior to the work of orientalists, on the other hand a strict scrutiny and refutation of misconception created by the orientalists is the need of the hour.(54)

#### The Extent to Learn From the West:

Seyyed Abul Hassan Ali Nadwi is of the view that Muslims can't and should not reject the modern western techniques and means of life. He had the strong belief in the idea that it is possible for the Muslims to use the modern means of comfort, modern inventions and instruments without impersonation of Islamic culture.(55)

#### Critical Analysis:

Seyyed Abul Hassan Ali Nadwi demonstrates his viewpoint regarding the real field of acquisition from the West is to adopt the fine things of Europe that are not contrary to the spirit of Islam. However, this standpoint can be scrutinized in the views of some eminent scholars. Gai Eaton (Hassan Abdul Hakim) examines this view in such words:

“Those who have close contact with Muslims will be accustomed to hearing, with monotonous regularity, the parrot-cry: ‘We will take the good things from western civilization. We will reject the bad things’. It is strange that any Muslim should imagine this to be possible. Islam itself is an organic whole a gestalt, in which everything is interconnected and in which no single part can be considered in isolation from the rest. The Muslim above all others should understand that every culture has something of this unity and should realize that the modern civilization created in the West, even if it seems constantly to change shape as in a kaleidoscope, forms a coherent pattern in terms of cause and effect. To draw one fibre from it is to find that this is attached, by countless unseen filaments, to all the rest. The small fragment of 'good', lifted from the pattern, brings with it piece after piece of the whole structure. With the light come the shadows; and with everything positive come all the negative elements which are related to it either as cause or as effect.” (56)

He deems this viewpoint fatal for the Muslims and ushers them that the ideologies and forces of the western civilization have destroyed the Christianity and, it may prove catastrophic for Islam. Here, an interesting question comes up, whether the westerners would allow the Muslims to derive benefit from their science and technology without their consent. Mahmud Ahmad Ghazi participated as an only Muslim delegate in a conference held in Germany in 1994-1995 on the topic, “Is Islam a threat to

and they have been using modern scientific means as a tool to achieve this 'objective'. What's wrong has happened in the Europe now, its not difficult to understand, the 'means' to secure the 'objective' have transformed into the ends.(48) Abul Hassan Ali Nadwi describes the difference between the 'mean' and 'end' in the following words:

"... there is a vast difference between the means and the end. I have this walking stick in my hand. It gives me support when I walk; it can even be helpful in defending myself. But it can never take the place of any objective I aspire to achieve. If I can get a better stick or if I am enabled to give it up, I shall at once throw it away. There was a time when it was the only weapon possessed by man but as he learnt to manufacture better weapons he abandoned it." (49)

The western nations have been employing the modern scientific means irrespective of any spiritual or moral code, that's why the modern science and technology has converted into a curse for Europeans and generally for the whole world.(50)

### **Remedy For the Westernization Of Muslims:**

The western civilization has dominated all the civilizations of the modern world, and there is no exception to the Islamic States and societies in this matter. The leaders and the learned men in the Muslim world are under the awe of the western civilization. Abul Hassan Ali Nadwi suggests the following steps to save the Muslims from the hazardous effects of the western civilization.

#### **Purification of Western Educational System:**

The western educational system is the gist of thousand years experience of western scholars and philosophers. This educational system carries a particular spirit in it, especially the western thought and ethics are the part and parcel of this system. Wherever it would be implemented, it would impart its indispensable effects, particularly in an Islamic State or a society, it would produce mental and religious apostasy. There is no other remedy of the current state of affairs except the reorientation of the educational system in the Muslim world with the aim to mould it according to the needs and aspirations of Muslims.(51)

#### **Scrutiny Of the Orientalists Work:**

The western scholars who have studied the Islamic history, culture and civilization devoted themselves to the research of Islamic studies, they have brought forth many distinctive manuscripts in the world of Islamic studies. In spite of all their untiring in the field of research, the job done by them is similar to the job of a drain inspector who takes note of heaps of filth in a beautiful municipality.( 52 ) The orientalists look into the 'weaknesses' of Islamic history and Islamic studies with a microscope but

heavy loads to lands that ye could not (otherwise) reach except with souls distressed: for your Lord is indeed Most Kind, Most Merciful; and (He has created) horses, mules, and donkeys, for you to ride and use for show; and He has created (other) things of which ye have no knowledge.” (42)

To acknowledge the bounties of Allah about the transportation following prayer is taught to the believers:

﴿لِيَسْتَوُوا عَلَىٰ ظُهُورِهِ ثُمَّ تَذْكُرُوا نِعْمَةَ رَبِّكُمْ إِذَا اسْتَوَيْتُمْ عَلَيْهِ وَتَقُولُوا سُبْحَانَ الَّذِي سَخَّرَ لَنَا هَذَا وَمَا كُنَّا لَهُ مُقْرِنِينَ وَإِنَّا إِلَىٰ رَبِّنَا لَمُنْقَلِبُونَ﴾

“In order that ye may sit firm and square on their backs, and when so seated, ye may celebrate the (kind) favour of your Lord, and say, "Glory to Him who has subjected these to Our (use), for we could never have accomplished This (by ourselves), "And to Our Lord, surely, must we turn back!" (43 )

The balance of power and morality has been disturbed in Europe since the Renaissance. The material progress has made notable advancement, while on the other hand spiritual values have gone down to a large extent.(44)Abul Hassan Ali Nadwi explains this situation as such:

“This has given rise to a generation that looks almost superhuman in so far as its power over matter is concerned, but is not very much superior to the beasts when judged with reference to its own inner state. With all the means of good life at its command, it does not know how to live.”(45)

The industrial progress in the West has abundantly elevated the quantity of machines in every walk of life. Machines have replaced the manpower in all the dimensions of life. Man is inventing new machines every day and the efficiency of the machine is improving day by day. Therefore, the rule of the machine is evident on the society.(46) Seyyed Abu Hassan Ali describes this position in these words:

“The authority of America is acknowledged all over the world, its say is recognized in the politics of the whole world and no one including Islamic States have any exception in this regard. The plans designed over here, implemented in our countries and our leaders make these plans successful. Today America has enslaved the whole world but it has become slave of machines, slave of its lifestyle and slave of its living standard. The most peculiar thing in America is a man with a live and bumping heart in his chest.” (47)

The science and technology are subservient to human will, they are neither good or bad, it depends on their use. Therefore, in the case of evil produced by the modern scientific means, the user must be blamed. The western nations have a strong belief in the material well-being, power and prestige, therefore they have set them as their sole ‘objective’ in the life,