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The Shareholders' Role to Foster Corporate Governance in Bangladesh: A Suggestive Review

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Abstract

This paper unveils the issues on shareholders’ activism to secure the desirable corporate governance in Bangladesh. The focal point is the motive and the nature of shareholders in company dealings. Factually, the prime agenda as observed of the shareholders to get profit affects the activities of a company and in Bangladesh, corruption has a curious link with shareholders some of whom thinks of dividend only irrespective of transparency and accountability. The dominating and controlling thought obsesses some shareholders who fear the disclosure and the losing of control over company they have set up. This creates rational apathy into the other shareholders to play a role. The poor percentage of presence of shareholders in meeting explores the indifference of them. All these have been factually and argumentatively presented soberly to find how corporate governance may run forward with the balancing effect.

1.1 Introduction

Corporate governance, a running issue, is the reflection of governing a company to a certain reasonable extent. The manner of directing a company and its relevant laws and practices affecting the directors and the officers fall in the field of corporate governance. Admittedly, it typifies the delicate issues to deal with company management as a whole. The best definition of corporate governance is given by the Cadbury Committee and it defines corporate governance as the system by which companies are directed and controlled.1 In a business enterprise like company or

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corporation the objective of it is set forth generally to achieve business prosperity. When this business prosperity is uttered, it entails the standard and requisite business dispensation. Corporate governance answers the query of those standards with some do’s and don’ts. The inter-relationship between the board of director, management and shareholders is one of those views and it stands accepted when the accountability and transparency is properly ensured. Indeed, the balancing environment is the vital issue in the relationship. In corporate activity, the shareholders, the organ of company, even from the birth of the company need to partake in the strategic and existential factors to sustain it. Their part with the other strategic partners e.g. directors is required to conform with entrepreneurial and legal demand.

But the demand may not be fulfilled if they are lax in their steps, participation, feelings and ethics towards the welfare of the company as a whole. Admittedly, a slightly less careful participation and the unfair conduct of any organ of the company may render a big loss for the company which is compensated by every part of the company- may be less or larger. This is quite indiscreet and unjust.

Obviously the shareholders own the definite portion of share in a company. The profit and the liability are borne by them in eventualities- it is true. But their rapt attention to increase their wealth on share merely being passive investors arises as the issue to be looked into. In Bangladesh in contrast to the other perspectives, the scenario of shareholders seems not to be so good at all. Their ethical standard comes

2 See n 1 ,Birds Company Law, 380-381.
in view to evaluate their role, and their activities in dealing with their investment into company need to be met with the analytical crucification.

1.2 Methodology:

The paper is a descriptive analytical work. It is based on content analysis method. Here the books, reports, laws and websites have been used to build the conceptual framework.

1.3 Objectives:

This work runs taking the following objectives:

(i) To examine the theme of corporate governance.

(ii) To find out the inadequacies of the shareholder role in corporate governance in Bangladesh.

(iii) To provide the possible suggestion to minimize the unveiled inadequacies.

1.4 Pinpointed Issues on Shareholder’s Role in Bangladesh:

Generally but actually shareholders invest money into company with some objectives. To get return seems to be the ulterior purpose. Indeed, in conformity with their investment they are entitled to enjoy rights such as right to dividend, right to vote, right to have the answer of their question of company affairs. More importantly, the shareholders holds the right to look after the existence of company if necessary by changing the constitution of the company and the right attached to their shares, though on the backing of the law, the members own less extent of power than directors as a
phenomenon of the constitution of the company.\textsuperscript{4} Yet, the role of shareholders needs to be brought forward so that the investors’ concern for the company is recapitulated to infuse the proper administration into the company. However, as noted above, rights with shareholders are found out and these should be emphatically given the scope to be exercised. But rights alone cannot go with them; as per jurisprudential parlance, rights and duties are interlinked and every right reminds some duties and responsibilities to be discharged completely.\textsuperscript{5} Taking this view into account, shareholders are to be amenable to the role and responsibilities arising out of corporate objectives and eventualities. These responsibilities actually appear the culminating factors to invigorate corporate governance in a company.

It is a perceived phenomenon that globally in corporate governance maximization of shareholders’ wealth into company is the real purpose and in order to secure the purpose the directors are consigned to carry out the activities with accountability at large. And shareholders are held to be the supervisory mechanics to ferret out the genesis of accountability to give effect to the company’s interests simultaneously.\textsuperscript{6} The emphasis on shareholder’s active role and responsibility is affirmed by the Hampel Committee report in 1998.\textsuperscript{7}

But the practical view of shareholders’ role seems to be indifferent and self-aggrandizing. They don’t want to go into the risk and procedural barriers conflict with directors. Rather than confronting with them, shareholders take a compromising

\textsuperscript{5} P.J. Fitzgerald, \textit{Salmond on Jurisprudence} (London: Sweet & Maxwell, 1979) 216-217
\textsuperscript{6} See n 2 above, 384.
\textsuperscript{7} Ibid.
course to keep them in their favour to cream out their part of profit from the company.\(^8\)

It is observed that shareholders are not constructively organized to put their powers to make directors and managers accountable and sad though true, they are disperse to behave in company. This renders the truth that the main and substantial decisions are taken by directors who, in likewise situation, pursue their interests so far as they find the opportunity. This factual scenario comes from the fact that the role of shareholders is still hazy and parochial.\(^9\)

In Bangladesh, shareholders invest their money into company as a common phenomenon for getting outcome. They are seen to put more emphasis on their profit than ensuring the properly exercising of their rights to secure the standard corporate governance. The following discussion can make it obvious.

Indeed, shareholders in Bangladesh are not aware of corporate governance and their role seems to be indifferent to partake in taking challenges for the better corporate governance.\(^10\) From the above, it is assimilated that the scope and the performance of shareholders is not so active to nourish the standard corporate governance in Bangladesh.

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\(^8\) See n 2 above 384-385; see n 3 above.


\(^10\) http://www.ifc.org/ifext/cgf.nsf/content/Bangladesh_ROSC (last visited 17\(^{th}\) May, 2011).
Interestingly, in Bangladesh, a matter of concern signals that corruption has impact on investment and since 1990 at least 25 percent to 40 percent of Bangladesh economy has grown basing on black money and big business groups control may commercial establishment. However issue may arise that when a big business man lays out money collected by corruption into company, his strategy may be not to see the overall transparent management success into that concerned company. His prime concern may be to find his investment benefit instead of securing the transparency and accountability, which is contrary to the spirit of corporate governance. It may be because the corrupt businessmen (shareholders) may lose ethics of transparency and corruption may shut their attitude of accountability for fear that profit is hampered somehow and come in the collusive plan with directors to maximize their profit on the investment. On the penetrative view over the fact, it may be asserted that the other shareholders may feel reluctant to extend their efforts to enhance and ensure the standard corporate governance into company. Then they may take the compromising course to stay into the company.

On the other hand, as noted above, the shareholders have rights to vote and right to have a say on the corporate affairs. But their stance on rights to vote is not kept up strongly. In the face of the fierce pressure and dissatisfaction they concede their voting power and other rights and find the exit way. Instead of using their voice over the issue they show their rational apathy.  

12 see n 2 above 384-385.
More noticeably, experience and study suggest that the shareholders are not quite equipped to maintain their role either of ethics or of knowledge and understanding. Lack of shareholder’s conscious activities is the most-often-discussed issue and the real problem in Bangladesh.

In “Study Report on Corporate Governance in Bangladesh: How Best to Institionalize it, Critical Practices and Procedures”\(^ {13} \) it is explored that the condition of shareholder having knowledge and skills to understand company operations is very poor and as such their ability to cope with the experienced directors is below the average. And even if some of the shareholders may have the knowledge and understanding they pay very little attention and time to evaluate the issue of performance business strategy, future business plans and disclosures and process. Actually, if they would take up those facts actively and wholeheartedly, the accountability in a company would be secured in the accepted degree and their performance would touch most of the corners in a company. But the awareness of the shareholders seems to be like not touching any sensitive issue but going along with the directors to maximize their benefit.

Curious though practical, shareholder’s role and activities are still an illusion in Bangladesh and the awareness is at the neglected scale.\(^ {14} \)

\(^ {13} \) at www.dhakachamber.com/cipe/Epps & studies/study CG How best to inst..pdf (last visited 13\(^ {th} \) May, 2011).
More emphatically, shareholders in Bangladesh are disorganized and their self-interest draws them into the respective role and the best interest of the company is still less emphasized.\textsuperscript{15}

One important fact is that the fraud practice among shareholders is one of the obstacles in shareholders’ role in Bangladesh. Some shareholders in collusion with directors realize their profit secretly and lead their lives comfortably whereas in the same situation the other shareholders are shown the fact that the company is a losing concern and so dividend is so near yet so far and deprivation runs pitiably affecting the rights of the other shareholders. These types of complaints come to lawyers as often as not.\textsuperscript{16}

On the other hand, many companies and firm are controlled by concentrated founder-family and it draws the adverse effect on the other shareholders.\textsuperscript{17} In this practice of founder-family companies, the other shareholders are hamstrung from exercising their rights because the big e.g. sponsor shareholders try best to keep their control over company.

Lamentably enough, it is found that many shareholders making some investment into the company resort to violence in the annual general meeting for higher rate of dividend and they are seen to put pressure on the directors to recommend dividend even without the adherence to the legal provision and the

\textsuperscript{15} see n 13 above.  
\textsuperscript{17} see n 11 above.
possible range of the overall company’s condition.\textsuperscript{18} This puts the role of shareholders at stake. And ultimately, perhaps the disorder and the mismanagement may also start from this irrational behaviour.

Interestingly, in Bangladesh, some shareholders have a tendency that they have established the company and they should have control over the company so that their power over that does not decrease.\textsuperscript{19} This type of condition hinders the spontaneous role of the other shareholders to come forward to find fault if any fault creeps up in company decisions.

Also an irrational aversion is found in shareholders to accountability and transparency through disclosure. Some of the shareholders think that accountability will weaken their control over the company and that disclosure may make the company vulnerable to the competitioners.\textsuperscript{20} At this attitude of the shareholders being the organ of company, the venture of the other shareholders is frustrated. Thus the role of shareholders seems to be deactivated in providing a fair environment in company.

Factually, it is counted that in Bangladesh, 37.5 percent shareholders become present in meetings, 37.5 percent by proxy, 12.5 percent by phone and 12.5 percent by mail.\textsuperscript{21} But as of the counting of proxy, mail or phone the Companies Act 1994 in

\textsuperscript{18} M. Ismail, Hand Book on Company Meetings & Resolutions for Directors and Secretaries (Dhaka, ABC Consulting Corporation Ltd, 1998) 79.
\textsuperscript{20} Ibid.
Bangladesh is yet to recognize.\textsuperscript{22} This scenario may give the impression that the percentage of presence in meeting does not show the proper activism of the shareholder to give voice over the issues of company.

1.5 A Host of Suggestions Unveiled:

With the unstructured and indifferent view of the shareholders’ role as above, the picture of corporate governance in Bangladesh arises as bleak and feeble. In order to orient a better view on corporate governance, the following suggestions may be considered:-

(i) The target for shareholders’ maximization of wealth through investment into company needs to be diverted to the concern of the best interests of company. The desperate demand for profit for shareholders should come to a reasonable expectation in view of the collective benefit. As such shareholders may be motivated and framed to infuse this feelings into their mind so that profit through investment by shareholders can not mean totally everything for a company.

(ii) In Bangladesh, the shareholders getting money through corruption can invest money into company to supply capital. But the attitude of corruption cannot affect the environment of a company; their irrational aversion to transparency and accountability should, even by legal hand, be changed to rational application in the management of a company and the proper administration needs to be sustained through the transparent role of the shareholders.

\textsuperscript{22} see n. 16 and 18 above.
(iii) The pattern of family concentrated company by some shareholders in Bangladesh may be reduced and the thought of those shareholders to keep their direct control over company should be changed to the proper control by the participation of all shareholders. The thinking of the shareholders- “I have established the company, so transparency could weaken my control and disclosure will make the company vulnerable to the competitioners”- needs to be kept aside so that this close - fisted view can be given up.

(iv) Voice of the shareholders is a vital concern. As shown above, the presence of the shareholders in meeting 37.5 percent which signifies the lack of the sincere activism of them. So the motivation of the shareholders is necessary and the feeling to attend meeting needs to grow as a responsibility to be taken actively and seriously and legal provisions may run as such.

(vi) On the whole, shareholders in Bangladesh should made conscious of knowledge, ethics and patriotic feelings through the massive training procedure. Not only in Bangladesh but also in every country, shareholders thinks of their own interests which is contrary to the spirit of patriotic feelings. The success of a company through the proper sole influences a countries’ progress if not in the large measure.

1.6 Conclusion:

The shareholders being the part of the company are expected to play a vital role to secure the proper corporate governance. But to this end, their rapt attention to profit should be reflected as the attention to the overall welfare in a company. Actually, in order to bring the organized role the shareholders should have not only
money but also their solemn desire, capability, caliber and honest feeling. For this purpose, the motivation attempts may be adopted to capture the minds of shareholders to face up to deregulation and the maladministration in company.

The efforts of motivation to motivate shareholders and of coercive measure to coerce the shareholders to keep them on right track may be considered to occasion the standard corporate governance in company; only the normative approach like the Code of Corporate Governance seem to be only the palliative measure.