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Comparative Study of Corporate Governance Guidelines in SAARC Countries

Sumon Kumar Das[1*] Shampa Das[2] Mampi Das[3]
1.Department of Business Administration, Noakhali Science and Technology University, PO Box No-3814, Sonapur, Noakhali, Bangladesh
2.Department of Accounting & Information Systems, Begum Rokeya University, Rangpur-5405, Bangladesh
3.Department of Finance & Banking, National University, Bangladesh

Abstract
To control the opportunistic behavior of a human being is a very difficult task. In agency theory, the principal delegates decision making to the agent. Delegating decision-making authority can lead to loss of efficiency and, consequently, increased costs. These costs are called agency costs. Sound corporate governance is essential to coordinate interests among all parties' relationship for sustainable development and growth of a company. The study is aimed at comparing corporate governance scenario in Bangladesh and three other countries and to identify the areas that need further improvement in order to ensure better governance, reliability, transparency, and accountability. This study is basically exploratory in nature. Strength areas of our corporate governance code are the specification of board size, restriction of no. of independent directorship, the shareholding of independent directors, and the quorum of the audit committee. But the major weakness areas are the non-specification of no. of committee act as member and Chairman by one person; lack of training of BOD; lack of evaluation of BOD, CEO and Independent directors; non-inclusion of employee participation, whistleblower policy, voting right, remuneration and Nomination Committee. These findings will help regulators in taking corrective actions for better performance and favorable treatment of all stakeholders.
Keywords: Corporate Governance, Board of Directors, SAARC, Agency Theory

1. Introduction:

In agency theory, one party (the principal) delegates the decision making to another party (the agent) – this is referred to as an agency relationship. Delegating decision-making authority can lead to loss of efficiency and, consequently, increased costs. These costs are called agency costs. Under Positive Accounting Theory (PAT) is developed on the assumption that all individual action is driven by self-interest and that individuals will act as an opportunistic manner to increase their wealth. Organizations are considered as collections of self-interested individuals who have agreed to cooperate. Such cooperation does not mean that they have abandoned self-interest as an objective; rather it means only that they have entered into contracts that entail sufficient incentives to secure their cooperation (Deegan, 2009).To control the opportunistic behavior of a human being is a very difficult task. The self-love or personal self-interest, however, is not a bad thing so long as this does not hamper others' legitimate interests. The problem is that in trying to maximize one's own utility and satisfying own needs there are chances of frustrating others' interests and needs. Therefore, there arises the need to identify potential areas where an individual or group tries to work for its self-interest at the cost of others. There also arises the need to devise control mechanisms in order to check or mitigate this opportunistic behavior (Chowdhury, 2004). Corporate Governance (CG) is mostly the most important control mechanism for the effective and efficient utilization of corporate resources. Keasey and Wright (1993)'s definition of CG appears to be similar to be the above, where it is concerned with structures and processes associated with production, decision making and control within an organization. The purpose of CG is to coordinate a conflict of interests among all parties' relationship within the company and to develop a system that can reduce or eliminate the agency problems (OECD, 1997). It argues that the agency problems become more critical with weak governance and limited protection of minority shareholders in a company (Dharwadkar, George, & Brandes, 2000). It is the system used to govern a corporation so that the interest of corporate owners is protected. Better governance standard tend to have higher value (La Porta et al.1999) through monitoring management effectiveness and preventing improper irregular behavior (Turrent & Ariza, 2016), ensuring protection of shareholders' right and investors' confidence (La Porta et al. 2000), improving quality of board governance, increasing the accountability to minority shareholder, reducing monitoring cost by general investors (Biswas, 2012) and lowering cost of capital which are prerequisites for sustainable development and growth of our country to be middle income county in 2021 and developed country in 2041. CG covers the concepts, theories, and practices of boards and their directors and the relationship between boards and shareholders, top management, regulators and auditors and other stakeholders (Huq & Bhuiyan, 2012). The purpose of this study is to compare the CG component factors in Bangladesh, India, Pakistan, and Srilanka. The purpose of choosing SAARC counties as it comprises 21% of the world population (Wikipedia). The study is aimed at comparing corporate governance scenario in Bangladesh and three other countries and to identify the areas that need further improvement in order to ensure better governance, reliability, transparency, and accountability. These

findings will help regulators in taking corrective actions for better performance and favorable treatment of all stakeholders.

2. Literature Review:

Owners are separated from management (agency theory); this agency relationship resulted in the asymmetry of information between owners and managers, this asymmetry, in turn, created the avenue for managers to shirk. CG can be seen as monitoring of management by shareholders, creditors, bankers, auditors and government (Chowdhury, 2004). Good corporate governance principles can make stronger intra-company control and reduce opportunistic behaviors and lower the asymmetry of information, so it will be a positive impact on an organization (Rouf et al. 2010). Much literature emerged in the 1990s focusing on the two most dominant corporate governance models, the Anglo-American model, and the German-Japanese model. The Anglo-American model is recognized as a "market based" system of corporate governance, and is distinguished both by the attributes of the prevailing legal and regulatory environment (Prowse, 1996), and is most common in the Anglo-American countries. The German-Japanese model or "bank-centered relationship-based model" of corporate governance is distinguished as "control-oriented" financing (Prowse 1996). This model is common in Europe and East Asia, and uniquely emphasizes the long-term relationship between firms and investors. Bangladeshi context align with the German-Japanese model, such as a concentration of shareholdings by the banks and financial institutions or dominant shareholders leading to a high degree of ownership control, a less liquid capital market, weak shareholders' rights, a dominant agency conflict between controlling and minority shareholders, and a limited capacity for boards of directors (Rashid et al., 2015). The Cadbury Report (Cadbury, 1992), titled *Financial Aspects of Corporate Governance*, defines corporate governance as "the system by which companies are directed and controlled". As per the Cadbury report, corporate governance should encompass (but not limited) to the following aspects:

Firstly, every public company should be headed by an effective board comprising of both executive directors and non-executive directors which can both lead and control the business.

Secondly, Chairmen are primarily responsible for the working of the board, for its balance of membership subject to board and shareholders' approval, for ensuring that all relevant issues are on the agenda, and for ensuring that all directors, executive, and non-executive alike, are enabled and encouraged to play their full part in its activities.

Thirdly, the audit provides an external and objective check on the way in which the financial statements have been prepared and presented, and it is an essential part of the checks and balances required and

Finally, the formal relationship between the shareholders and the board of directors is that the shareholders elect the directors, the directors' report on their stewardship to the shareholders and the shareholders appoint the auditors to provide an external check on the directors' financial statements.

Another set of five good corporate governance principles is offered by the Organization for Economic Co-operation and Development (OECD, 1999). The five principles are:

Rights of shareholders	1. Recognition of basic shareholder rights 2. Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate changes 3. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings 4. Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights 5. Markets for corporate control should be allowed to function in an efficient and transparent manner 6. Shareholders should consider the costs and benefits of exercising their voting rights
Equitable treatment of shareholders	1. All shareholders of the same series of a class should be treated equally 2. Insider trading and abusive self-dealing should be prohibited 3. Board members and managers should disclose material interests
Role of stakeholders	1. The rights of stakeholders that are established by law or through mutual agreements are to be respected. 2. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights. 3. Permit performance-enhancing mechanisms for stakeholder participation 4. Stakeholders should have access to relevant information in the corporate governance process

Disclosure and transparency	1. The scope of material information to be disclosed 2. Information should be prepared and disclosed in accordance with high-quality standards of accounting and financial and non-financial reporting 3. Annual audit be conducted by an independent auditor 4. Fair, timely and cost-effective means of disseminating information
Responsibilities of the board	1. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. 2. The board should treat all shareholders fairly 3. The board should ensure compliance with the law and take account the interest of stakeholders 4. Definition of key functions of the board 5. The board should exercise objective judgment independent from management 6. Board members should have access to accurate, relevant and timely information

Source: OECD Principles of Corporate Governance (1999).

After falling of Enron, the U.S. Congress passed the most important reform of corporate governance in many decades— The Sarbanes-Oxley Act of 2002.

A summary of the Sarbanes-Oxley Act of 2002 was obtained from the American Institute of Certified Public Accountants (AICPA)

Firstly, the Act requires that both the CEO and CFO certify in writing that their company's financial statements and accompanying disclosures fairly represent the results of operations with possible jail time if a CEO or CFO certify results that they know are false.

Secondly, the Act established the Public Company Accounting Oversight Board to provide additional oversight over the audit profession.

Thirdly, the Act places the power to hire, compensate, and terminate the public accounting firm that audits a company's financial reports in the hands of the audit committee of the board of directors.

Fifth, the Act requires that a company's annual report contain an internal control report and

Finally, the Act establishes severe penalties of as many as 20 years in prison for altering or destroying any documents that may eventually be used in an official proceeding and as many as 10 years in prison for managers who retaliate against a so-called whistleblower who goes outside the chain of command to report misconduct.

There is a dearth of comparative studies of corporate governance guidelines with developing countries like Bangladesh. Most studies are focused on developed countries. Mintz (2006) found that the U.S. and UK represent shareholder models of ownership and control whereas in Germany a stakeholder approach to corporate governance provides greater input for creditors, employees and other groups affected by corporate decision making. Qurashai (2017) found that Bahrain and Qatar maximum convergence with the CG good practices as recommended by the UN, Oman, and UAE the least convergence. Although some of the studies were trying to understand the extent of the relationship between corporate governance and firm performance (Rashid et al., 2009; Nath, Islam & Saha, 2015; Haque & Arun, 2016; Rouf, 2011 and Das, 2017). Momtaz and Yusuf (2005) identified that poor bankruptcy laws, no push from the international investor community, limited or no disclosure regarding related party transactions, weak regulatory system, general meeting scenario, lack of shareholder active participation were major shortcomings of our code. Bhowmik and Islam (2013) found that the strengths of our code were specific condition to be appointed as independent director, specific time period to fill the vacancy of the member both Board of Director (BOD) and audit committee, specific qualifications to be independent director, the requirement of the compliance certificate and rules related with subsidiary company but weaknesses were lack specific instructions regarding number of board meeting, audit committee meeting, time gap between two meeting, shareholders' voting right, proxy right etc. considering different Asian countries namely Bangladesh, India, Pakistan, China, and Malaysia . Biswas (2012) found that CG code could be further improved by including provisions to ensure the true independence of the board and its committees, minimum educational and professional service requirements for non-independent directors, and annual assessments of the board members. Rahman & Khatun (2017) found that corporate governance guideline 2012 include some new issues such as criteria and qualification of independent director; some additional statements in the directors' report; mandatory requirement of separation of chairman and CEO; constitution of audit committee; chairman of audit committee; role of audit committee, duties of CEO and CFO on financial statements; and collection of compliance certificate from professional accountant or secretary in compare to corporate governance guidelines 2016 also recommended for inclusion of more issues such as tax management and reporting, risk management and reporting; individual and overall performance analysis of the board and independent directors; separate nomination and compensation committee; assessment of true independence of the board and its supporting committees to ensure higher quality of corporate governance and

transparency. The objective of our study is to compare the corporate governance guidelines in SAARC and to identify potential areas for improvement.

3. Methodology of the Study

This study is basically exploratory in nature. The study is aimed at comparing corporate governance scenario in Bangladesh and three other countries and to identify the areas that need further improvement and develop best practices of the corporate governance in Bangladesh. We select India, Srilanka and Pakistan for comparison with our code as those countries are similar cultural, legal, social and economic environments. The data has been collected from secondary sources. The major source of secondary data include SEC guidelines of different countries including Bangladesh, India, Pakistan and Srilanka, relevant books, publications, journals, periodicals, research paper, newspaper clippings, articles, and internet.

4. Corporate Governance Guidelines in SAARC Region:

South Asian Association for Regional Cooperation (SAARC) is the regional intergovernmental organization and geopolitical union of nations in South Asia. Its member states include Afghanistan, Bangladesh, Bhutan, India, Nepal, Maldives, Pakistan and Srilanka. It was founded in Dhaka on 8th December 1985. In our study, we consider four countries including Bangladesh, India, Pakistan, and Srilanka. The reason for choosing these corporate governance guidelines is that the countries are regionally closer.

As corporate governance is a multifaceted set of cultural, economic, and social issues and that the corporate governance guidelines of corporations differ from country to country, it is appropriate that corporate governance guidelines and practice codes be planned and adopted by each constituent country.

In India, after establishing Securities and Exchange Board of India (SEBI) on April, 1992, the Confederation of Indian Industry (CII) was prepared voluntary corporate governance code titled 'Desirable Corporate Governance - A Code'. Consequently, in early 1999 SEBI had set up a committee under Kumar Mangalam Birla and it was the first formal and comprehensive attempt to evolve a code of corporate governance. In early 2000, the SEBI board accepted and rectified key recommendations of the Birla Committee. Naresh Chandra Committee appointed in August 2002 by the Department of Company Affairs (DCA) under the Ministry of Finance and Company Affairs to examine various corporate governance issues. The fourth initiative is in form the recommendations of the Narayana Murthy Committee. The 'Corporate Governance -Voluntary Guidelines 2009', being proposed for voluntary adoption by the Corporate Sector has taken into account the recommendations of the Task Force set up by Confederation of Indian Industry (CII) under the chairmanship of Shri Naresh Chandra in February 2009. Then 'Corporate Governance -Voluntary Guidelines 2009' was promulgated by the Ministry of Corporate Affairs, Government of India.

In Pakistan, The Securities and Exchange Commission of Pakistan (SECP) was issued the Code of Corporate Governance in March 2002 which was later amended in 2012 and became applicable to all public listed companies.

In Srilanka, The Institute of Chartered Accountants of Srilanka was the pioneer in initiating good corporate governance principles titled '*Code of Best Practice on matters related to financial aspects of Corporate Governance*' in 1997, which was subsequently updated in 2003 and 2008.

After taking into account the changes taking place all over the world a committee was appointed in 2011 to review and revise the Code of Best Practice on Corporate Governance, issued in 2008.

Finally the updated publication of the Code of Best Practice on Corporate Governance 2013, which was promulgated through the joint initiatives of the Institute of Chartered Accountants of Sri Lanka and the Securities and Exchange Commission of Sri Lanka.

In Bangladesh, Corporate Governance guidelines emerged in 2006 based on suggested by the Taskforce on Corporate Governance (2004) convened and supported by Bangladesh Enterprise Institute (BEI) and amended in 2012. SEC issued a notification on Corporate Governance Guidelines (CG Guidelines) for the publicly listed companies of Bangladesh under the power vested on the Commission by Section 2CC of the Securities and Exchange Ordinance, 1969. The regulatory authority further revised the corporate governance guidelines of 2016 which were issued on a 'comply or explain' basis, providing some 'breathing space' for the companies to implement on the basis of their capabilities.

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5. Comparison of Corporate Governance Guidelines of different Countries

5.1 Board of Directors

Subject	BANGLADESH	INDIA	SRI LANKA	PAKISTAN
The Composition of Board	Representing various categories of shareholders and independent directors.	Optimum combination of executive and non-executive directors at least one woman director	Balance of executive and non- executive directors (including independent non-executives)	Effective representation of independent non-executive directors, including those representing minority interests.
Board size	5 to 20	Not specifically covered	Not specifically covered	Not specifically covered
Maximum no of committee act as member	Not specifically covered	Not more than 10 committees across all companies in which he is a director	Not specifically covered	Not specifically covered
Role of Board	Covered	Covered	Covered	Covered
Maximum no of committee act as Chairman	Not specifically covered	Not more than 5 committees across all companies in which he is a director	Not specifically covered	Not specifically covered
No. of meeting in a year and the time interval between two meeting	Not specifically covered	At least 4 times a year, with a maximum time gap of 120 days between any two meetings.	At least once in every quarter of a financial year	At least once in every quarter of a financial year
Evaluation of BOD as a whole	Not specifically covered	Covered	Covered	Covered
Evaluation of CEO	Not specifically covered	Covered	Covered	Covered
Training of BOD	Not specifically covered	Covered	Covered	Covered
Committee of BOD	Audit Committee	Audit, Remuneration, and Nomination Committees	Audit, Remuneration and Nomination Committees	Audit, Human Resource and Remuneration (HR&R) Committee
Code of Conduct	Covered	Covered	Covered	Covered
Disclosure of Remuneration	Covered	Covered	Covered	Covered
The Number of Independent Directors	At least $1/10^{th}$ of the total number of directors or minimum one.	at least $1/3^{th}$ of the board if executive chairman, at least $1/2^{th}$ of the board if executive chairman	At least 02 Non-Executive Directors or $1/3^{th}$ of the total number of Directors, whichever is higher. If Chairman and CEO is the same person, comprise a majority of the Board.	At least 01 and preferably $1/3^{th}$ of the total members

Subject	BANGLADESH	INDIA	SRI LANKA	PAKISTAN
Limit on the number of independent directorships	Not more than 3 listed companies	Not more than 7 but if whole time director in any listed company as an independent director in not more than three listed companies.	Not specifically covered	Not specifically covered
Shareholding of independent director	Not more than 1%	Not more than 2%	Not more than 5%	Not more than 10%
Maximum tenure of Independent Directors	3 years, extended for 1 term only	As per law	9 years	Three consecutive terms
Appointment to Independent Directors	Board of Directors	As per law	Nomination Committee	Not specifically covered
Performance evaluation of Independent Directors	Not specifically covered	Covered	Covered	Not specifically covered
Separate meetings of the Independent Directors	Not specifically covered	At least one meeting in a year	At least once each year	Not specifically covered
Restriction to be independent director	Sponsor, loan defaulter, stock exchange member	Pecuniary relationship with the company or subsidiary or supplier	Material relationship or close family member or significant shareholdings	Connection or family relationship with the company

5.2 Audit Committee (AC), Remuneration Committee (RC) and Nomination Committee (NC)

Subject	BANGLADESH	INDIA	SRI LANKA	PAKISTAN
Size of AC	Minimum 03	Minimum 03	Minimum 02	Minimum 03
Chairman of AC	An independent director	independent director	Non-Executive Director	Preferably be an independent director,
Non-executive and/or Independent director under AC	At least 1 independent director	Two-thirds of members of independent directors.	Majority	All non-executive directors and at least one independent director.
Reporting framework of the AC	Board of Directors	Board of Directors	Board of Directors	Board of Directors
The frequency of meeting of AC & time gap between two meetings	Not covered	At least 04 times in a year and not more than 04 months gap between two meetings.	Not specifically covered	At least once every quarter of the financial year

Subject	BANGLADESH	INDIA	SRI LANKA	PAKISTAN
Quorum of AC Meeting	At least 01 independent member	Either 02 members or one-third of the members of the audit committee whichever is greater, but the minimum of 02 independent members	Not specifically covered	Not specifically covered
Size of RC	Not covered	At least 03 directors	Minimum 02	Minimum 03
Non-executive and/or Independent director under RC	Not covered	All of whom non-executive directors and at least half independent.	Exclusively of Non-Executive Directors	Majority of non-executive directors and preferably an independent director
Chairman of RC	Not covered	An independent director	An independent Non-Executive Director	Any member of RC except CEO
Size of NC	Not covered	Minimum 03	Minimum 02	Not covered
Chairman of NC	Not covered	An independent director	Non-Executive Director	Not covered
Non-executive and/or Independent director under NC	Not covered	All of whom non-executive directors and at least half independent.	Majority	Not covered

5.3 Right of Shareholders, Disclosure, and others:

Subject	BANGLADESH	INDIA	SRI LANKA	Pakistan
Participation in the decision regarding fundamental corporate change	Not specifically covered	Covered	Covered	Not specifically covered
Voting right	Not specifically covered	Covered	Covered	Covered
Asking the question in AGM	Not specifically covered	Covered	Covered	Covered
Protection regarding whistleblower	Not specifically covered	Covered	Not specifically covered	Covered
Employee Participation	Not specifically covered	Covered	Covered	Covered
Obtaining Certificate of Compliance Status	Yes	Yes	Yes	Yes
Disclosure to significant material change	Covered	Covered	Covered	Covered
Disclosure related to Internal Control	Covered	Covered	Covered	Covered
Disclosure related to Related Party Transaction	Covered	Covered	Covered	Covered

6. Findings:

After comparing the CG code of Bangladesh with other countries in the SAARC region, the major findings of the CG code of our country are the following:

Firstly, our code has specifically mentioned the range of board size, the role of the BOD is mentioned but there is no restriction regarding maximum no. of committee act as Chairman and member of the board of directors.

Secondly, the number of the meeting of BOD is not specially mentioned but disclosure of remuneration of BOD is covered.

Thirdly, our code does not cover evaluation criteria and the matrix of BOD, CEO and Independent director & not mention how they are trained up.

Fourthly, the specification of the minimum number of independent directors, restriction of the number of companies acting as independent director & shareholding are comparatively better in our code.

Fifthly, maximum tenure of Independent Directors & restriction to be the independent director are well

defined but the separate meeting of the Independent Directors is not covered.

Sixthly, Size, Chairman, the inclusion of Independent director, reporting framework of the Audit Committee are specially identified but there is no existence of Nomination Committee and Remuneration Committee.

Seventhly, Not only participation in the decision regarding the fundamental corporate change, voting right and asking the question in AGM by Shareholders but also protections regarding whistleblower are not specially covered.

Eighthly, Employee participation is not mentioned in our code but there is the existence of disclosure regarding the significant material change, internal control, and related party transaction and

Finally, our code specifies that the listed company must obtain a certificate of compliance certificate from a practicing Professional Accountant/Secretary (Chartered Accountant/Cost and Management Accountant/Chartered Secretary) and must disclose the same in the annual report but it shows only tick box format compliance or noncompliance.

7. Recommendations:

CG is the system by which companies are directed, managed and encouraged to maximize the value of the company and provide accountability, responsibility, fairness, and transparency. We recommend necessary modifications and/or inclusion in the guidelines taking into account the global best practices and the practices of the neighboring country. Among others, we highlight the following:

Firstly, There should be imposed a restriction regarding maximum no of committee act as Chairman and Member of the board of directors.

Secondly, BOD should meet regularly i.e at least once in every quarter of the financial year, with mentioning a maximum time gap of between any two meetings.

Thirdly, the board is accountable to the shareholders and/or stakeholders of the Company. To meet this objective, The Board should be required, at least annually, to assess the performance of itself, the CEO and independent directors.

Fourthly, the code should include the training program to its BOD on their induction as well as on a continuous basis. The program should include nature of its business, including its overall objectives, critical success factors, risk profile, internal controls system and governance structures, the responsibilities of the board, board committees and management and their relationship with each other, ethics and compliance framework of the company and about laws & regulations affecting the company & its environment.

Fifthly, Majority member of BOD should be independent instead of t least 1/5th of the total number of directors.

Sixthly, There should be included the scope of independent directors separate meetings without the presence of non- independent directors and members of management.

Seventhly, Independent Directors should be provided with adequate resources and support by the companies to enable them to study and analyze various information and data provided by the company management.

Eighthly, the code should be included nomination committee and remuneration committee specifying composition, powers, functions, and responsibilities.

Ninthly, the member of the audit committee should meet regularly i.e at least once in every quarter of the financial year, by mentioning a maximum time gap between any two meetings.

Tenth, the effective participation of shareholder regarding the decision of fundamental corporate change should be included.

Eleventh, the code should encourage the shareholders to participate in annual general meetings of companies and exercise their voting rights and

Finally, the code should be emphasized on the opportunity of shareholders to ask questions to the board, to place items on the agenda of general meetings, and to propose resolutions

8. Conclusion:

Forty-six years after independence, Bangladesh is lagging behind in establishing a sound corporate governance code. The inclusion of obtaining a compliance certificate from Chartered Accountant or Cost & Management Accountant or Chartered Secretary by Bangladesh Securities and Exchange Commission (BSEC) was a good initiative for better practice of corporate governance in listed companies. But it is just a template of tick box based on the review of compliance rather than an accountability and responsibility. The objective of our paper is to compare corporate governance guidelines in the SAARC region and identify the area of improvement for ensuring good governance. In the stages of development of a country, establishing a sound governance system is one of the most challenging areas. Strength areas of our CG code are the specification of board size, restriction of no of independent directorship, the shareholding of independent directors, and the quorum of the audit committee. But the major weakness areas are the non-specification of no of committee act as member and Chairman by one person; lack of training of BOD; lack of evaluation of BOD, CEO and Independent directors; non-inclusion of employee

participation, whistleblower policy, voting right, Remuneration and Nomination Committee. The limitation of our study is comparison limited to SAARC only. Further research could include a comparative study of corporate governance code between developed countries and developing countries.

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