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# Corporate Governance and the Changing Dynamics of Shareholder Primacy: A Comparative Study of the UK and Bangladesh

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**Abstract:** This article re-examines the doctrinal status of shareholder primacy within the architecture of UK company law, with particular focus on the role of "enlightened shareholder value" (ESV) under the Companies Act 2006. While section 172 is frequently presented as a normative shift towards stakeholder-inclusive governance, this study challenges that narrative by arguing that ESV does not displace shareholder primacy but rather reconstitutes it in a moderated and strategically legitimizing form. Adopting a doctrinal and analytical methodology, the article traces the historical evolution of corporate purpose, analyses the theoretical foundations of shareholder value, and interrogates judicial interpretations of directors' duties. It demonstrates that stakeholder considerations under section 172 are structurally subordinated, largely non-enforceable, and dependent on managerial discretion. A comparative examination of Bangladeshi company law reinforces this argument by illustrating how shareholder primacy persists in a more explicit and structurally direct form within a developing corporate governance framework. Ultimately, the article contends that contemporary governance reforms in both jurisdictions reflect the adaptive resilience of shareholder primacy rather than its displacement, thereby raising broader questions concerning accountability, stakeholder participation, and the future trajectory of corporate governance reform.

**Keywords:** shareholder primacy; enlightened shareholder value; corporate governance; Bangladesh; UK

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## 1. Introduction

"*The shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests.*"- Chancellor Allen.[1]

This oft-cited observation encapsulates the enduring centrality of shareholders within corporate governance discourse. In contemporary corporate governance discourse, primacy is traditionally accorded to shareholders (Jensen and Meckling 1976). Within the UK company law framework, shareholder interests have historically occupied a dominant position, often taking precedence over the interests of other corporate constituencies (Marc 2018). It is often treated as trite law by the directors that about their operations, first and foremost they are accountable to the general body of shareholders (Marc 2018). However, the directors are free within certain boundaries to take a different course of action from that desired by the shareholders (Dignam and Lowry 2012). However, in the UK the Companies Act, 2006[2] is silent regarding the distribution of power between shareholders and directors (Dignam and Lowry 2012). Comprehensively, the interests of the shareholders weighed the interests of the directors and other corporate constituencies. On top of that, maximization of the shareholder's wealth has been considered as the assessing criteria of managerial success. This paper, thus, aims to demonstrate the basic features of UK Company law through the lens of the "Shareholder Primacy' principle with the aid of selected commentaries to illustrate the doctrinal or legal argument.

The modern concept of incorporation by registration can be traced to the Joint Stock Companies Act 1844, which introduced a formal legal mechanism allowing businesses to acquire corporate personality. The Act of 1844 was the first pillar of the UK company law architecture, though it made incorporation easy but conferred the residual liability on the shareholders on the occasion of business

1 *Blasius Indus., Inc. v. Atlas Corp*. [1988] 564 A.2d 651, 659 (Del. Ch.).

2 The Company Act 2006 (c 46) [hereinafter CA 2006]

loss (Charkham 2006). However, the concept of limited liability remained unknown in the UK company law framework till the enactment of the Limited Liability Act 1855– enacted to lessen the risk of the shareholders and left an investor-oriented framework of the UK Company law. Few other statutes have been tailoring the UK company law framework in that regard- though was of major consolidating legislation at regular intervals (Hannigan, 2012), with the dynamic need of the society to introduce the business-friendly legal context. For instance, the Companies Act 1908, the Companies Act 1929, the Companies Act 1948, the Companies Act 1985 (amended, in particular, by the Companies Act 1989 and by the Companies (Audit, Investigations, and Community Enterprise) Act 2004); and the most recent one is CA 2006 –which provides a more flexible statutory requirement to form a registered company. It only requires one person and a lawful purpose.[3] Comprehensively, the UK company law framework adhered to the 'think small first' approach (Hannigan 2012), hence, smaller family businesses also find the UK framework more convenient for managing their affairs (Charkham, 2006).

However, the CA 2006 shaped the UK Company law structure in such a pragmatic form that there is no appetite for further significant change (Hannign 2012). Within the UK, this influence has historically been both doctrinally entrenched and institutionally reinforced. The traditional model of corporate governance—characterized by dispersed share ownership, strong investor protection, and capital market orientation—has consistently privileged shareholder interests as the central organizing principle of corporate activity. However, the enactment of the Companies Act 2006, particularly section 172, appears to signal a shift in this paradigm. By requiring directors to "have regard" to a range of stakeholder interests while promoting the success of the company, the statute introduces the concept of "enlightened shareholder value" (ESV), widely interpreted as a move towards a more inclusive and pluralistic model of corporate governance.

This article challenges that interpretation. It argues that ESV does not represent a substantive transformation of corporate purpose, but rather a rearticulating of shareholder primacy in a more socially responsive form. Specifically, the article advances the claim that ESV operates as a mechanism of doctrinal legitimation—a form of normative accommodation that preserves the structural dominance of shareholders while enhancing the perceived legitimacy of corporate governance in the face of increasing societal expectations.

To develop this argument, the article adopts a doctrinal and analytical methodology, combining statutory interpretation, case law analysis, and comparative evaluation. It proceeds in four parts. First, it situates shareholder primacy within the historical and institutional development of UK company law. Secondly, it examines the theoretical foundations of shareholder value and its competing alternatives. Thirdly, it offers a detailed doctrinal analysis of section 172, focusing on its structural hierarchy, subjective standard, and enforcement limitations. Finally, it undertakes a comparative analysis with Bangladesh to demonstrate how shareholder primacy persists across different legal contexts in both explicit and rhetorically moderated forms.

In doing so, the article contributes to the existing literature by moving beyond the binary debate between shareholder and stakeholder models. Instead, it conceptualizes ESV as a structurally necessary doctrine that stabilizes shareholder primacy under conditions of normative pressure. This reconceptualization not only clarifies the doctrinal function of section 172 but also raises broader questions regarding accountability, enforceability, and the future direction of corporate law reform.

## 2. Literature Review

The question of corporate purpose has generated one of the most enduring debates in corporate governance scholarship, structured around the tension between shareholder primacy and stakeholder-oriented models. At the heart of this debate lies a fundamental disagreement regarding the nature of the corporation and the allocation of decision-making authority within it.

The intellectual foundations of shareholder primacy are rooted in classical economic and legal theory. Early contributions, most notably Berle (1931), conceptualized corporate powers as being held in trust for shareholders, thereby establishing a normative link between ownership and control. This position was later reinforced by the agency-theoretic framework developed by Jensen and Meckling (1976), which characterized the firm as a nexus of contracts and identified shareholders as residual claimants. Within this framework, the maximization of shareholder wealth emerges as both an efficiency imperative and a governance benchmark. Contemporary proponents, including Bainbridge (2008), have further refined this position by advancing director primacy as a mechanism for achieving shareholder value maximization through centralized managerial authority.

In contrast, stakeholder theorists challenge the exclusivity of shareholder-oriented governance by emphasizing the broader social and economic functions of the corporation. Freeman (2010) reconceptualizes the firm as a network of relationships encompassing employees, creditors, consumers, and the wider community, all of whom possess legitimate claims. Similarly, Blair and Stout (1999) advance the team production theory, arguing that corporate governance should mediate among competing stakeholder interests rather than privileging shareholders alone. These critiques expose the normative and practical limitations of a purely shareholder-centric model, particularly in addressing issues of sustainability, corporate responsibility, and long-term value creation.

The emergence of "enlightened shareholder value" (ESV) represents an attempt to reconcile these competing perspectives. Developed in the context of the UK company law reforms leading to the CA 2006, ESV seeks to integrate stakeholder considerations within a fundamentally shareholder-oriented framework. Keay (2007) defends ESV as a pragmatic compromise that aligns long-term shareholder interests with broader societal concerns, thereby enhancing both efficiency and legitimacy. However, a significant body of scholarship adopts a more critical stance. Moore (2018) argues that ESV preserves the structural dominance of shareholder interests while offering only symbolic recognition of stakeholders. Nyombi (2015) highlights the absence of enforceable rights for stakeholders, rendering their inclusion largely illusory. Siems and Cabrelli (2013) further contend that the indeterminacy of section 172 undermines its capacity to produce meaningful doctrinal change.

Despite this extensive debate, a critical gap persists in the literature. While scholars have examined the normative desirability of ESV, comparatively less attention has been devoted to its doctrinal operability—specifically, whether it substantively alters the

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3 The Company Act, 2006, Section 7.

legal obligations of directors or merely reframes existing principles in more inclusive language. This article addresses that gap by offering a detailed doctrinal analysis of section 172 and its interaction with the broader UK corporate governance framework. In doing so, it aligns with the critical strand of scholarship but advances the argument by conceptualizing ESV as a legitimizing doctrinal device that sustains, rather than transforms, shareholder primacy.

## 3. Corporate Governance Framework

Although the specific focus of this paper is illustrating the shareholder primacy principle in the UK company law framework, that focus fits within the broader context of corporate governance and its' different regimes. Thus, this part shall demonstrate the concept of corporate governance and its different models.

### 3.1 Corporate Governance

Corporate governance may be understood as corporate governance is 'the system by which companies are directed and controlled' (Jones & Pollitt, 2001). It denotes 'the system by which companies are directed and controlled' (Cadbury et al. 1992). According to Hannigan the expression 'Corporate governance' means different things depending on the context but essentially focuses on the cardinal issues, inter alia, the operation of the board and the relationship between the directors and the shareholders (Hannigan 2012). Comprehensively, corporate governance regulates the functioning of the board of directors and its organization (Jones and Pollitt, 2001) and the relationships between the parties involved (Stafford 2015) including the company's management, its board, its shareholders, and other stakeholders (European Commission Green paper 2011). It embodied the legal principles corresponding to the domain of the distinctive features of each nation's legal and financial tradition (Clarke 2007).

### 3.2 Different Models of the Corporate Governance

The corporate governance system can be demonstrated through two models. The scholars like Franks and Mayer (1995) lay out two models of the corporate governance regime (Aguilera & Jackson, 2003) *i.e.,* the 'outsider' (Anglo-American) and the 'insider' (continental European) models (Mallin 2013). There are 4 core features of the "outsider" corporate governance models (Nestor and Thompson 2001): [i] widely dispersed shareholders hold the shares of large companies; [ii] it recognizes the shareholder primacy principle, hence, the cardinal objective of this regime is to maximize the shareholders' benefit; [iii] a strong emphasis on the protection of minority investors in securities law and regulation; and [iv] relatively strong requirements for disclosure (Nestor and Thompson 2001).

Comprehensively, the separation of ownership and control is at its best in 'outsider' models (Cheffins 2002). Both the US and the UK belong to the classic outsider model (Nestor and Thompson, 2001), this proposition receives near-unanimous support in the existing literature (Black and Coffee 1994; La Porta et al. 1999; Gilson2006). The UK is typically classified as an archetypal outsider system, characterized by dispersed share ownership, strong investor protection, and an emphasis on capital market efficiency. In such systems, the separation of ownership and control is pronounced, necessitating legal mechanisms that align managerial decision-making with shareholder interests. Whereas, in both countries, an increasing share of national income is managed by institutional investors including mutual funds, pension funds, and insurance companies. In the UK institutional investors are already the dominant owners of the industry (Nestor and Thompson 2001), with a core objective *i.e.,* to maximize the return to their investors. Thus, in the countries – that follow the outsider systems, the legal framework embraces the shareholder's right to control the company and makes the board and the management explicitly accountable to the shareholders (La Porta et al. 1997). This essentially follows the pattern of the Berle and Means corporation which is represented by the dispersion of ownership (Berle and Means 1932). Such a regime strongly tends to focus on the capital markets and imposes high disclosure requirements on the directors to disclose information (Varottil 2010). Whereas, in the "insider" model [i] large companies tend to have a controlling shareholder (Aguilera et al. 2007; Williamson and Conley 2005), and [ii] it values the interests of not only the shareholder but also other stakeholders including employees, creditors, and suppliers (Aguilera et al. 2007; Keay 2007).

## 4. Shareholder Value and the Normative Structure of UK Corporate Law

### 4.1 The Ideology of "Shareholder Value" in the "Outsider" Model

The ideology of the "shareholder value" or "shareholder primacy" is also called the 'nexus of contracts' theory (Dine & Koutsias, 2014). It is a combination of two distinguished principles and objectives- firstly, it embraces the objective to maximize the shareholder's wealth and, as such requires the directors to base their decision considering the long-run benefit of the shareholder; and secondly, it establishes the shareholder control theory (Smith 1776). Thus, it urges the directors of the corporation to manage the company giving the ultimate value to the interest of the shareholders (Smith 1998; Deakin 2012). Primarily, the core objective of the company was maximizing profits (Berle 2004). Thus, it is the shareholders (Blair, 2004; Bainbridge, 2008), whose interest companies must be run (Keay 2007). This proposition traced back to the Dodge v Ford Motor,[4] - a US case that hocked the commentator's appraisal for a long period (Rothman 2012).[5] As per Greenfield, this ideology believes the shareholders to be the owners of the company (Greenfield 2006); and investors of the capital (Deakin 2012), that enables the company to run, i.e., primary stakeholders (Du Plessis, Hargovan and Harris 2018).

### 4.2 Tracing the Shareholder Primacy theory in the UK Company law

The idea of 'shareholder primacy' is the cornerstone of the new corporate law regime in the UK (Du, Hargovan and Harris 2018). Comprehensively, in the UK, most of the large corporations are public and not family-controlled (Black and Coffee, 1994; La porta et al. 1999; Gilson 2006), the shareholder plays a prominent role (Black 1998; Roe 2001; Gordon 2007); which invokes

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[4] *Dodge v Ford Motor Company,* [1919] *170* N.W. 668 (Mich.) at 684.

[5] *Katz v Oak Industries Inc.,* [1986] 508 A 2d 873, 879 (Del. Ch.).

the UK Company law regime to embrace this theory. In comparison to the US, the UK corporate governance is well exemplified by the notion of shareholder primacy (Bruner 2013; Armour and McCahery 2006; Stout 2012). However, it has not been uniformly followed by the UK courts (Moore 2018). About this doctrinal supremacy, the most referred case by the commentators is Greenhalgh v Ardennes Cinema Ltd,[6] where Evershed MR observed that the "[b]enefit of the company as a whole should be understood as the interest of the shareholders as a general body and not the company as an entity." Thus, the Court of Appeal interpreted the phrase "the company as a whole" as referring to the interests of shareholders collectively rather than the interests of the corporate entity in an abstract sense. This judicial interpretation has frequently been cited as reinforcing the doctrinal foundations of shareholder primacy within English company law. However, the expression 'company as a whole' meant that directors and managers must weigh the interests of shareholders above all (Attenborough 2006). Whereas, in Hutton[7] and Re Smith,[8] the court adhered to the interests of the company (Robert 2003).[9] Furthermore, the scholars also challenged this proposition because this theory failed to consider the allocation of powers between shareholders and directors (Bainbridge, 2008).

### 4.3 Lacuna of the Shareholder Value Approach in the UK Corporate Governance: A Critical Appraisal

This theory faces some criticisms along with appreciation (Keasey, Thompson and Wright 1997; Siems and Cabrelli 2013) Visibly, the limitation of the director's powers as it has been implicated by the board neutrality rule there is an apparent conflict between the interest of the shareholders and the interest of the stakeholders (Nyombi 2015). Corporate law attempts to "control conflicts of interest among corporate constituencies (Kraakman et al. 2004)." On top of that, the directors have to play a dual role, when the interest of the company may, sometimes, be incompatible with that of the shareholders, which makes visible that there is a statutory deadlock in the UK Company law regime (McCalman and Young 2018). However, the retention of Shareholders Primacy as the cornerstone of English company law embarks some criticisms along with appreciation (Siems and Cabrelli 2013), because this theory failed to rightly allocate the powers between the shareholders and the directors (Bainbridge 2003).

However, it was contended that society may suffer at large if the sole objective of a business was "the maximization of profits for the shareholders." As such, stakeholder theorists like Argandoña argue that the company is greater than the sum of its contractual responsibilities because corporate responsibility for ensuring the public interest triumphs over the proprietary rights of the company belongs to the shareholders (Argandona 1998), in opposition to Friedman's argument that the corporation's purpose is to generate profit for its owners (Friedman 1970). Thus, Farrar concluded that "[t]he limited Liability Company does not simply represent one interest. It represents an arena in which there is a potential clash of many interests. We may identify the interests underlying it as (1) investors – share capital/loan capital; (2) outside creditors – commercial finance/trade creditors; (3) employees; (4) consumers; (5) the public (Farrar et al. 1991).

Edward Freeman, on the other hand, introduced the stakeholder theories (Blair and Stout 1999). He said that the economic justification for this was that the existing structure is not assisting directors in adapting to changes in the corporate environment (Freeman, 2010). Comprehensively, Scholars correctly grasped the conundrum of how to safeguard the interests of the stakeholders when they considered the board neutrality rule's implications, which limit the director's authority (Nyombi 2015). Furthermore, there are situations where the company's interests' conflict with those of its members. How to do this dual job. As a result, the UK Company law system appears to be at a statutory standstill (McCalman and Young 2018). Section 172 of the CA 2006 also protects the interests of shareholders, although other stakeholders' standing is still precarious (Davies, 2003).

In addition, the CA of 2006 mandates that a director must be operating for the right purpose[10] when performing the general obligations of the director to the firm. Under such conditions, it would be impossible because it casts doubt on the agency-principal connection (Argandona 1998).

### 4.4 Section 172 of the CA and the Overview of the Enlightened Shareholder Value in the UK Company Law Regime: the Structure, Inclusive Language and the Hierarchical Reality

Section 172(1) of the CA 2006 constitutes the central statutory articulation of enlightened shareholder value (ESV) within UK company law. The provision requires directors to act "in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole," while having regard to various stakeholder-related considerations, including employees, suppliers, creditors, communities, and environmental impacts.

At first glance, the provision appears to signal a significant departure from traditional shareholder primacy. The incorporation of stakeholder-oriented language seemingly reflects a broader conception of corporate purpose capable of reconciling shareholder interests with social responsibility and long-term sustainability. Indeed, legislative reform discussions surrounding the CA 2006 frequently presented ESV as a middle path between strict shareholder primacy and pluralist stakeholder governance. However, closer doctrinal analysis reveals that section 172 preserves a fundamentally hierarchical structure. The ultimate objective remains the promotion of corporate success "for the benefit of members as a whole." Stakeholder considerations are not recognized as independent ends but rather as factors directors must merely "have regard" to when pursuing shareholder benefit. Consequently, stakeholder interests remain instrumentally rather than intrinsically protected.

The structure of section 172 therefore reflects continuity rather than transformation. While the provision expands the language of corporate governance to include broader societal concerns, it does not alter the underlying distribution of corporate power. Shareholders remain the ultimate beneficiaries of corporate activity, while stakeholder considerations operate largely within the boundaries of managerial discretion. The continued centrality of shareholders is evident not only in the statutory language but also in the

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6 *Greenhalgh v Ardennes Cinema Ltd* [1951] Ch 286, CA.

7 *Hutton v West Cork Railway Co* [1883] 23 Ch D 654.

8 *Re Smith and Fawcett Ltd* [1942] Ch 304, CA.

9 *Walker v Wimborne* [1976] CLR 1, 137.

10 Companies Act 2006, S. 171(1).

broader governance framework, including mechanisms of accountability such as voting rights and control over directors' remuneration (Adenwala 1991). Directors are required to act in the way they "consider, in good faith" most likely to promote corporate success. The emphasis upon subjective good faith substantially limits the intensity of judicial scrutiny. Courts traditionally refrain from second-guessing commercial decisions unless bad faith, fraud, or improper purpose can be demonstrated.

The decision in *Re Smith & Fawcett Ltd*[11] established the foundational principle that directors may exercise their powers in the manner they honestly believe to be in the company's interests. Subsequent judicial reasoning has consistently maintained this deferential approach. As a result, section 172 operates less as a substantive constraint upon managerial power and more as a procedural framework legitimizing managerial discretion.

Recent judicial developments reinforce this interpretation. In *BTI 2014 LLC v Sequana SA*[12], the UK Supreme Court recognized that directors may owe obligations to creditors in circumstances approaching insolvency. However, the Court simultaneously reaffirmed the centrality of shareholder interests within ordinary corporate governance. The decision illustrates the judiciary's continuing reluctance to dilute shareholder-oriented governance except in exceptional circumstances.

Similarly, the litigation initiated by ClientEarth against Shell plc[13] concerning directors' climate obligations under section 172 exposed the practical limitations of stakeholder-oriented enforcement. The claim was dismissed, with the court emphasizing judicial reluctance to interfere in complex managerial decision-making. Although framed in terms of sustainability and long-term corporate interests, the litigation ultimately demonstrated the considerable insulation enjoyed by directors under the subjective "good faith" standard.

Perhaps the most significant limitation of ESV lies in the absence of enforceable stakeholder rights. Although section 172 refers extensively to stakeholder interests, those stakeholders possess no independent standing to enforce the duty. Enforcement remains vested primarily in shareholders through derivative actions and corporate governance mechanisms. Stakeholder protection therefore depends largely upon managerial willingness to accommodate non-shareholder interests rather than upon legally enforceable entitlements. This enforcement deficit reveals the structural logic of ESV. The provision incorporates stakeholder language sufficient to enhance the legitimacy of corporate governance while withholding the institutional mechanisms necessary to redistribute corporate power meaningfully. In this sense, ESV functions as a form of doctrinal accommodation rather than substantive pluralism.

The significance of this interpretation extends beyond technical statutory analysis. The interpretation aligns with the skeptical strand of academic commentary, which views ESV as a form of "qualified" or "enlightened" primacy rather than a genuine pluralist model (Siems and Cabrelli 2013; Moore 2018). The persistence of shareholder-oriented governance under rhetorically inclusive language reflects a broader transformation within modern corporate law. Rather than rejecting shareholder primacy outright, contemporary reforms increasingly seek to preserve it through moderation, flexibility, and normative adaptation. ESV therefore represents not the abandonment of shareholder primacy, but its strategic evolution under conditions of increasing social and political scrutiny.

Section 172(1) of the CA 2006 requires a director to act "in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole," while having regard to a list of stakeholder-related factors. At first glance, this formulation appears to signal a shift away from strict shareholder primacy towards a more pluralistic conception of corporate purpose.

However, a closer doctrinal analysis reveals that the provision preserves a clear hierarchical structure. The duty is owed to the company, and the ultimate objective remains the promotion of success "for the benefit of its members as a whole." Stakeholder interests are not ends in themselves but factors to which directors must merely "have regard." This linguistic construction positions stakeholder considerations as instrumental rather than intrinsic, subordinating them to the overarching goal of shareholder benefit (Keay 2007; Moore 2018).

A more persuasive interpretation, therefore, is that section 172 functions as a legitimizing doctrinal device rather than a transformative legal innovation. By incorporating stakeholder language without conferring corresponding rights or enforcement mechanisms, the provision enhances the normative appeal of corporate governance while leaving its structural foundations largely intact. In this sense, ESV operates as a form of "rhetorical accommodation," enabling the law to respond to evolving societal expectations without fundamentally redistributing power within the corporate framework.

### 4.5 Agency-Principal Relationship Between the Shareholder and the Directors: Agency Problem Paradigm

As per Romer J, there remains an agent-principal relationship between the shareholder and the director of the company,[14] which invokes a fiduciary duty as well.[15] Putterman and Kroszner claimed that a business firm is mainly an economic entity and, hence is executed to produce certain returns to the owners (Putterman and Kroszner 1996). However, in *Gramophone,*[16] Buckley LJ observed that the directors of a company are not agents of and bound to serve the shareholders of the company as their principals.

The UK shareholders benefit from fiduciary duties and a conception of corporate purpose (Bruner 2008). Putterman and Kroszner's claimed that a business firm is mainly an economic entity and, hence is executed to produce certain returns to the owners (Putterman and Kroszner 1996). Therefore, the requirement imposed upon the directors to make profits for the shareholder and maximization of benefits enshrines the main essence of agency- principal relationship, as Berle explained that having become the agents of the shareholders -managers and directors, who are in charge of the company are duty-bound to work in the best interest of

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11 *Re Smith and Fawcett Ltd.* [1942] Ch 304.

12 *BTI 2014 LLC v Sequana SA* [2022] UKSC 25.

13 *ClientEarth v Shell PLC* [2023] EWHC 1897 (Ch).

14 *Re City Equitable Fire Insurance Co* [1925] 1 Ch 407.

15 *Ranson v Customer Systems plc* [2012] EWCA Civ 841, ¶ 22.

16 *Gramophone &Typewriter Co. Ltd. v. Stanley* [1908] 2 KB 856.

the shareholders (Berle 1931). However, in *Gramophone,*[17] Buckley LJ observed that the directors of a company are not agents of and bound to serve the shareholders of the company as their principals.

### 4.6 Directors' Duties and Enlightened Shareholder Value

Drawing on the above discussions, it is worth mention here that the shareholder value is the ideological underpinning upon which the legitimacy and extent of the directorial power lie- as Allen claimed in *Blasius Indus*.[18] The most important common law duties of the directors are the 'fiduciary duties [duties of faith] (Singla 2007), including the duty to 'act in good faith' in the best interests of the company as a whole (Griffin 2000). Comprehensively, it includes not only the interests of shareholders but also those of other stakeholders (French, Mayson, and Ryan 2011-2012; Davies and Rickford 2008). Accordingly, the court under the common law system in *Percival;*[19] and the modern company law paradigm in *Multinational Gas*[20] held that the directors owe no fiduciary duties to the individual shareholders, rather it's the company, to whom they are owed (Keay 2008). Notably, the decision in *Percival v Wright* clarified that directors owe fiduciary duties to the company rather than to individual shareholders. This principle reinforces the corporate entity doctrine while simultaneously preserving the structural primacy of shareholders within corporate governance.

However, based on common law rules and equitable principles, the CA 2006 incorporates a wide range of general duties of the directors. Visibly, this common law duty has been enshrined in section 170 of the CA 2006 and accordingly gets the statutory force (Lowry and Reisberg 2012). As Lowry analyzed section 170 of the CA 2006 embeds the director's fiduciary duties to the company that employed them as the directors (Lowry, 2012). Comprehensively, section 170 embodied the general duties of the directors, and the following sections elaborate on other anticipatory duties (Sealy and Worthington 2013).

Where section 171 requires the director to act within the powers conferred upon him through the company constitution. Moreover, section 172 requires the directors to promote the success of the company and act for the benefit of the company as a whole. The directors are also bound to exercise all of their powers with reasonable care and skill.[21] Comprehensively, sec. 175 requires the director to avoid all conflicts of interest.[22] While Section 176 prevents the directors from accepting any benefits from any outsiders. On top of that, Section 177 requires him to disclose any information that is necessary to prevent the loss of the company,[23] and interest in the coming transaction, to the General Meeting or Board.[24]

### 4.7 Directors' Remuneration and Shareholder Control: A Critical Appraisal

The regulation of directors' remuneration in UK company law further illustrates the structural centrality of shareholders within corporate governance. Traditionally, the law governing remuneration is rooted in the relationship between directors and the company's shareholders (Adenwala 1991), reflecting the broader principle that directors exercise managerial authority on behalf of the company while remaining accountable to its members (Hutton, n.d.).[25] Under the traditional common law position, directors were not prima facie entitled to remuneration for their services, unless such payment was authorized by the company's constitution or approved by shareholders in a properly convened,[26] or ratified[27] by the general meeting.[28] This position was emphasized in early doctrinal commentary, which recognized that directors could claim remuneration neither upon a *quantum meruit*;[29] nor any equitable allowance (Cowen 1967); nor otherwise (Sealy).

The rationale underlying this restrictive approach lies in the fiduciary character of directors' duties (Feuer, 1974). Automatic or self-determined remuneration could potentially undermine the strict duty of loyalty owed by directors to the company and create conflicts between managerial interests and those of shareholders (Drake 1989). Consequently, the law traditionally required shareholder approval as a safeguard against managerial opportunism. This mechanism ensures that remuneration decisions remain subject to shareholder oversight and prevents directors from extracting private benefits at the expense of shareholders or, in situations of financial distress, creditors.

However, notwithstanding it cannot be claimed as of right, the shareholder may offer a sum of remuneration (Adenwala 1991), even when the company has made no profits, or the company is not solvent (Sealy). Moreover, there is no requirement that the remuneration should come only out of profits[30] either divisible or indivisible. However, there may be contractual remuneration.[31] In such a case the director has to maintain the account for profits made under such a contract.[32] However, a resolution duly passed

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17 *Gramophone &Typewriter Co. Ltd. v. Stanley* [1908] 2 KB 856.

18 *Blasius Indus. Inc. v. Atlas Corp*. [1988] 564 A.2d 651, 659 (Del. Ch.).

19 *Percival* v *Wright* [1902] 2 Ch 421.

20 *Multinational Gas and Petrochemical Co Ltd* v *Multinational Gas and Petrochemical Services Ltd* [1983] Ch 258, ¶288.

21 The CA 2006, sec, 174.

22 *Re, Allied Business & Financial Consultants* [2009] EWCA Civ 751.

23 *Movitex v Bulfield* [1988] BCLC 104.

24 *Guinness plc v Saunders* [1990] 2 AC 663; *Lee Panavision v Lee Lighting* [1992].

25 *Dunstan v lmperial Gas Light and Coke Co* (1832) llO ER 47; *Re Waipuna lnvestments Pty Ltd* [1956] ALR 460*; Guinness plc v Saunders* [1990] 2 AC 663.

26 *Re George Newman & Co* [1895] 1Ch 674 at 686.

27 *Re Duomatic Ltd* [1969] 1 All ER 161.

28 *Society Management Pty Ltd v Pickering* [1986] SR(NSW) 106 at 109; *Furs Ltd v Tomkies*[1936] 54 CLR 583 at 592.

29 *Guinness plc v Saunders* [1990] 2 AC 663 (House of Lords).

30 *Lundy Granite & Co Ltd Lewis's Case* [1872[] 26 LT 673.

31 *Young v Naval & Military Cooperative Society* [1905] 1 KB 687.

32 *Industrial Development Consultants Ltd v Cooley* [1972] 1 WLR 443.

in the general meeting remunerating the directors in itself does not constitute a contract.[33] Rather the amount of remuneration is to be fixed by its members and the market value of those services might be ignored.[34] Once the transaction tends to be ultra vires, the benefit of the company would become irrelevant.[35]

In the absence of an objective means, it is difficult to measure the director's worth to the company (Adenwala 1991), because of variance in their merit and dedication towards the company (Farrar et al., 1988). Therefore, in most of the cases, the level of remuneration remained unveiled.[36] However, in *Re Lee Behrens*[37] the court set out the three-fold test to value a director's transaction -(i) its reasonableness to the conduct of the company's business; (ii) whether the transaction is bona fide; and (iii) its importance to integrate the benefit and prosperity of the company. In *Halt Garage*[38] Oliver J rejected this threefold test and held that a director's remuneration cannot sufficiently be based on his activeness and performance in the company's business, rather it is on the management of the company to determine. However, in *Barclays Bank,*[39] Harman J dissented with Oliver J. Thus, like the US approach,[40] in the UK, the court such remuneration must be based on the standard of reasonableness (Garage), considering the value of the services.[41] In doing so, the director's ability, services, and time devoted to the company, difficulties involved, success achieved, corporation earnings, profits and prosperity, and all other relevant factors must be taken together in mind (Adenwala 1991). Accordingly, the law governing directors' remuneration reinforces the broader governance structure in which shareholders occupy a position of ultimate control, thereby reflecting the enduring influence of the shareholder primacy principle within UK company law.

## 5. Comparative Perspective: Corporate Governance and Shareholder Primacy in Bangladesh

While the UK presents a sophisticated and evolving articulation of shareholder primacy through the doctrine of enlightened shareholder value (ESV), the position in Bangladesh reflects a more traditional and structurally embedded approach to corporate governance. Corporate governance practices in Bangladesh remain comparatively underdeveloped and, relative to regional and global standards, the country has progressed more slowly in institutionalizing modern governance reforms (Grant 2003).

The Bangladeshi framework, principally governed by the Companies Act 1994, substantially retains the classical features of UK-derived company law but lacks the modern doctrinal developments introduced by the CA 2006 (Chowdhury 2018). The Bangladeshi framework therefore exposes, with greater doctrinal clarity, the continuing structural logic of shareholder primacy that remains partially obscured within the rhetorically moderated language of enlightened shareholder value in the United Kingdom. (Keay 2007; Moore 2018). The following discussion therefore examines, first, how shareholder primacy operates within the broader Bangladeshi corporate governance framework and, secondly, how sections 106 and 108 of the Companies Act 1994 provide concrete statutory expressions of that shareholder-oriented model.

### 5.1 Tracing Shareholder Primacy and Enlightened Shareholder Value within the Bangladeshi Corporate Governance Framework

The principle of shareholder primacy remains deeply embedded within the corporate governance structure of Bangladesh, notwithstanding the absence of any express statutory equivalent to section 172 of the CA 2006. Directors' duties remain grounded primarily in traditional fiduciary principles inherited from common law, whereby directors are expected to act in the interests of the company and, by implication, its shareholders collectively (Islam and Rahman 2022). Unlike the UK's ESV framework, however, Bangladeshi law does not expressly require directors to "have regard" to employees, suppliers, environmental sustainability, community welfare, or long-term corporate consequences.

In Bangladesh, corporate ownership structures significantly shape the operation of shareholder-oriented governance (Sarker 2024). Unlike the dispersed ownership model characteristic of the UK, most Bangladeshi corporations are closely held, family-controlled, or dominated by concentrated ownership groups (Uddin and Choudhury 2008). As a result, shareholders—particularly controlling shareholders—exercise substantial influence over managerial decision-making and board composition. Unlike the dispersed ownership model characteristic of the United Kingdom, most Bangladeshi companies are closely held or family-controlled, enabling dominant shareholders to exercise substantial influence over board composition and managerial decision-making (Uddin and Choudhury 2008). As a result, the classical separation between ownership and control — central to agency-based theories of shareholder primacy — is comparatively weak. Nevertheless, shareholder interests remain the principal reference point of corporate governance regulation.

At the same time, stakeholder concerns arise only indirectly through sector-specific regulatory regimes, including labour, banking, environmental, and securities laws, rather than through the core architecture of company law itself (Biswas 2012; Chowdhury 2018). This omission leaves directors' duties primarily focused upon fiduciary accountability, managerial discipline, and protection of shareholder investments (Hossain 2018). Thus, while the UK's ESV model rhetorically broadens the scope of directors' responsibilities, the Bangladeshi framework continues to operate within a more conventional shareholder-oriented paradigm (Zahir 2007).

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33 *Putaruru Pine & Pulp Co (NZ) Ltd v MacCulloch* [1934] NZLR 639, 647.

34 *Re Halt Garage* (1964) Ltd [1982] 3 All ER 1016 (Chancery Division).

35 *Charterbridge Corp Lid v Lloyds Bank Ltd* [1969] 2 All ER 1185 at 1193-94.

36 *Burland v Earle* [1902] AC 83.

37 *Re Lee Behrens* & Co [1932] 2 Ch 46.

38 *Re Halt Garage* (1964) Ltd [1982] 3 All ER 1016 (Chancery Division).

39 *Barclays Bank plc v British & Commonwealth Holdings plc* [1996] 1 BCLC at 9.

40 *Blish v Thompson Automatic Arms Corp* [1948] 64 A 2d 581; *Miller v Magline* [1977] 256 NW 2d 761.

41 *Wyles v Cambel* [1948] 177 F Supp 343 at 346-47.

### 5.2 Sections 106 and 108 of the Companies Act 1994: Statutory Expressions of Shareholder Primacy

The shareholder-centric nature of Bangladeshi company law becomes particularly visible in sections 106 and 108 of the Companies Act 1994, which regulate directors' removal, disqualification, and vacation of office. These provisions reinforce the principle that directors remain accountable primarily to the company and its shareholders rather than to a wider body of stakeholders.

Comprehensively, Section 106 of the Companies Act, 1994 strengthens shareholder supremacy by permitting shareholders to remove directors before the expiry of office through extraordinary resolution. The provision reflects the classical company law principle that ultimate corporate authority remains vested in shareholders, notwithstanding managerial delegation to directors. In contrast to section 172 of the CA 2006, the Bangladeshi provision imposes no corresponding obligation upon directors to balance shareholder interests against stakeholder concerns.

Similarly, Section 108 focuses upon managerial discipline, fiduciary integrity, and protection of corporate assets through grounds such as insolvency, prolonged absence from board meetings, conflicts of interest, and statutory non-compliance. The related restrictions under Sections 103 and 105 concerning loans, guarantees, offices of profit, and self-interested transactions further demonstrate a regulatory emphasis upon preventing misuse of corporate property and safeguarding shareholder investments.

The judicial interpretation of these provisions likewise reflects a shareholder-oriented conception of governance. Decisions in *Social Islami Bank Limited*[42] and *Abdur Rashid Chowdhury*[43] illustrate that courts primarily assess directors' conduct through procedural legality, fiduciary compliance, and protection of the company's financial interests. Even where directors were accused of prejudicial conduct or misappropriation of corporate funds, judicial concern centered principally upon harm to the company and its shareholders rather than broader stakeholder consequences.

Accordingly, sections 106 and 108 collectively reinforce the broader structure of Bangladeshi corporate governance, where shareholder control, fiduciary accountability, and capital protection remain the dominant objectives of company law. Unlike the UK's ESV framework, stakeholder interests remain external to the central doctrinal framework governing corporate purpose and directors' duties.

### 5.3 The Corporate Governance Code 2018: Significance and Loopholes

While sections 106 and 108 of the Companies Act 1994 reflect the shareholder-oriented foundations of Bangladeshi company law at the statutory level, subsequent regulatory reforms sought to modernize governance standards through disclosure-based oversight and institutional accountability mechanisms. Among these reforms, the Corporate Governance Code 2018 constitutes the most significant regulatory intervention within Bangladesh's contemporary corporate governance framework.

The evolution of corporate governance regulation in Bangladesh reflects a gradual transition from a predominantly formalistic compliance framework towards a more structured regime of managerial accountability, disclosure, and investor protection. As observed by Uddin and Choudhury, the development of Bangladesh's corporate governance architecture has been significantly shaped by the regulatory interventions of the Bangladesh Securities and Exchange Commission (BSEC), the Registrar of Joint Stock Companies and Firms (RJSC), the country's stock exchanges, and professional accounting bodies. Within this evolving landscape, the Corporate Governance Code 2018 represents one of the most comprehensive regulatory attempts to modernize governance standards in Bangladesh's listed corporate sector.

The Corporate Governance Code 2018 was issued by the BSEC through Notification No. BSEC/CMRRCD/2006–158/207/Admin/80 dated 3 June 2018. The Code replaced the earlier Corporate Governance Guidelines 2012 and substantially expanded the governance obligations applicable to listed companies. As Bala notes, the 2018 Code introduced 166 conditions under nine broad heads, significantly increasing the scope of governance regulation compared to the previous framework (Bala 2018).

Substantively, the Code introduced reforms designed to strengthen board accountability, disclosure obligations, and internal oversight mechanisms. These included mandatory requirements relating to board composition, independent directorships, audit committees, separation of the offices of Chairperson and Chief Executive Officer, qualifications of independent directors, risk management procedures, and enhanced financial reporting obligations. The framework also institutionalized greater transparency through mandatory governance compliance reporting by listed companies.

From a comparative corporate governance perspective, the Code reflects a significant transplantation of Anglo-American governance principles into the Bangladeshi regulatory framework. The emphasis on board independence, disclosure-based accountability, audit oversight, and investor confidence closely mirrors governance models associated with outsider systems in the UK and USA. In particular, the requirement that at least one-fifth of the board comprise independent directors demonstrates an increasing regulatory emphasis on managerial monitoring and shareholder protection.

However, notwithstanding these reforms, the Corporate Governance Code 2018 remains subject to significant structural and doctrinal limitations. Most fundamentally, the Code operates primarily as a mechanism of regulatory compliance rather than as a transformative reconfiguration of corporate purpose. Its underlying orientation remains overwhelmingly shareholder-centric, focusing principally upon investor confidence, market stability, financial transparency, and the protection of shareholder interests. Although the language of governance reform suggests broader accountability, the framework does not meaningfully integrate stakeholder interests into the foundational structure of corporate decision-making.

This limitation becomes particularly apparent when contrasted with the enlightened shareholder value (ESV) model under section 172 of the Companies Act 2006. Unlike the UK framework, the Bangladeshi regime imposes no explicit obligation upon directors to consider employees, environmental sustainability, creditors, or broader societal interests when exercising managerial authority. Stakeholder concerns therefore remain largely external to the doctrinal architecture of company law and are instead addressed indirectly through sector-specific regulation.

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42 *Social Islamic Bank Limited and Ors. vs. Md. Rezaul Haque* [2011] LEX/BDHC/0625/2011.

43 *Abdur Rashid Chowdhury vs. C.A. Hamid and Co. Ltd. and ors.* [2005] LEX/BDHC/0133/2005.

Moreover, the practical effectiveness of the Code is constrained by the structural realities of Bangladesh's corporate landscape. The dominance of closely held and family-controlled corporations frequently weakens the substantive operation of formal governance safeguards. In many listed companies, controlling shareholders continue to exercise decisive influence over board appointments, management structures, and strategic decision-making. Consequently, mechanisms such as independent directorships and audit committees often risk becoming formally compliant yet institutionally ineffective.

The enforcement dimension of the Code further exposes these structural weaknesses. Although the BSEC possesses supervisory authority over listed entities, concerns persist regarding limited institutional capacity, inconsistent enforcement practices, and the procedural nature of compliance monitoring (Haque et al. 2011; Ahmed and Uddin 2018). In practice, many corporations approach governance obligations as disclosure-oriented regulatory formalities rather than as substantive mechanisms of accountability or ethical governance. Formal compliance may therefore coexist alongside continuing concentrations of managerial and shareholder power.

Critically, the Code also reflects the broader limitations of disclosure-based governance models. Contemporary corporate governance increasingly assumes that transparency and disclosure can discipline managerial conduct and improve market accountability. Yet disclosure alone cannot adequately address deeper structural concerns such as minority shareholder oppression, concentrated ownership, regulatory capture, or weak institutional enforcement. Without stronger mechanisms of substantive accountability and broader stakeholder participation, governance reform risks producing procedural legitimacy rather than meaningful institutional transformation.

## 6. Conclusions

The emergence of enlightened shareholder value under section 172 of the Companies Act 2006 was widely framed as a normative shift in UK company law aimed at reconciling shareholder interests with broader stakeholder concerns and long-term corporate sustainability. However, this article argues that it does not displace shareholder primacy. Rather, it recalibrates shareholder-oriented governance to accommodate social, economic, and regulatory pressures while preserving the underlying hierarchy of corporate power. Doctrinal analysis shows that section 172 continues to prioritise shareholder benefit as the ultimate objective of corporate decision-making, with stakeholder interests remaining subject to managerial discretion and a subjective good-faith standard. The absence of enforceable stakeholder rights, alongside judicial reluctance to intervene in commercial decisions, limits any transformative potential. Stakeholder inclusion therefore functions primarily as a legitimising device rather than a redistribution of governance authority. The comparative analysis of Bangladesh reinforces this position. Despite reforms such as the Corporate Governance Code 2018, Bangladeshi company law maintains a more explicit shareholder-centred structure. Governance reforms have strengthened disclosure and accountability, yet the doctrinal core remains focused on shareholder protection, investor confidence, and capital preservation, with stakeholder interests occupying a peripheral role. Comprehensively, both the jurisdictions demonstrate the resilience of shareholder primacy within contemporary corporate governance. Rather than signalling a shift towards stakeholder pluralism, reforms in both contexts largely refine and legitimise shareholder-centred governance through the language of sustainability, accountability, and responsibility. This has important implications for future reform. Meaningful movement beyond symbolic stakeholder recognition would require structural change, including enforceable stakeholder participation, a reconfiguration of corporate power, and a departure from investor-centric regulatory logic. Absent such transformation, enlightened shareholder value is likely to remain a legitimising framework for the continued dominance of shareholder primacy under conditions of heightened societal expectation.

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