

FINANCIAL MARKET Regulation

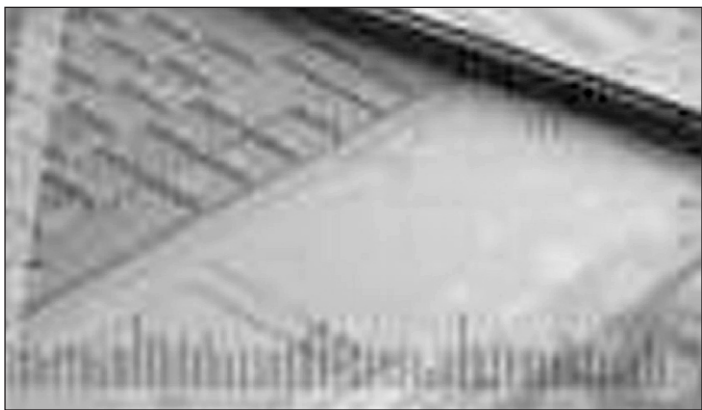
Bubbles and manias in securities markets: Is regulation an answer?

BARRISTER TUREEN AFROZ

SPECULATION is a common phenomenon in securities market. Speculation refers to buying or selling of a 'financial asset' with the aim of making a 'quick profit'. Speculation should be contrasted with long-term investment, 'in which a financial asset is retained despite short-term fluctuations in its value.' In securities markets, the speculators play an important role. It is believed that frequent buying and selling of financial assets by the speculators provides liquidity to the securities markets. This benefits longer-term investors, too, as it enables them to get a good price when they do eventually decide to sell their financial assets.

However, the history of popular thought concerning securities markets in Anglo-American culture reflects that the common people were 'suspicious of (securities) trading' and 'hostile to (securities market) speculations'. This is due to the fact that too much speculation is at times not good for securities market. Intense and excessive speculation may result in 'bubble' or 'share mania'. In securities market, a bubble or share mania occurs when speculation in a financial asset causes its price to increase, thus producing more speculation. The price of the said asset then reaches absurd levels. A sudden drop in prices usually follows the bubble. This situation is commonly referred to as a 'crash' or a 'bubble burst'.

Such incidents of 'bubble and burst' are not new in markets. It dates back to the Tulipomania of 1636-37 when in Netherlands demand for tulip bulbs reached such a peak that enormous prices were charged for a single bulb. In this bubble, speculators from all walks of life bought and sold tulip bulbs and



even futures contract on them. Allegedly, some tulip bulb varieties briefly became the most expensive objects in the world, until the bubble burst in 1637.

Similarly the South Sea Bubble refers to an unhappy experiment in the 18th century English public finance. The South Sea Company was set up in 1711 with the hope that it would one day challenge the financial strength of the Bank of England and the (British) East India Company when it came to providing loans for the government to support the national debt. The company had a monopoly on trade with all Spanish territories, South America and the west coast of North America. In 1713, the Company received the right to supply slaves to the Spanish colonies. In 1720, the government encouraged investors to trade governments stocks for South Sea Company shares and as these boomed, more and more people speculated in them (forcing the share price higher). In July 1720, with company shares at a vastly inflated, unrealistic and unsustainable level, confidence collapsed (as did the share price). Investors lost considerable amounts and some even committed suicide.

In the Indian sub-continent, there was a steady growth of stock exchanges from the late 19th century through the mid-20th century. By 1830, business on corporate securities in bank, cotton textile, jute, tea and coal industries took place in many of the major cities of Indian sub-continent. It may be mentioned that Mumbai, Ahmedabad and Kolkata became the major centres for such securities trading. In 1830, 6 persons in Mumbai, involved exclusively in securities trading, called themselves as 'share brokers'. The 1850s witnesses a rapid development of commercial enterprise and brokerage business attracted many men into the field. As a result, by 1860, the number of brokers increased to 60.

Similar to the South Sea Bubble and the Tulipomania in Europe, the Indian sub-continent experienced a Share Mania during 1861-65. The 'Share mania' in India begun when the American Civil War broke out in 1860-61 and the cotton supply from United States was stopped. The number of brokers increased to about 200 to 250. However, at the end of the American Civil War, in 1865, a disastrous slump began. The Share Mania of 1861-65 resulted in tremendous losses in India. Most brokers actually went bankrupt.

In the post-independence era, the 1996 Share Market Crash in Bangladesh can also be attributed to the excessive speculation in the securities market. It tremendously eroded investors' confidence in securities market. It has almost been 10 years and the market is still struggling to restore such confidence.

Now, what can regulation do to control speculation in the securities market? Or more specifically, can regulation at all do something to control securities market speculation?

History accords that the initial securities market regulation in England was inspired by a regulatory objective of suppressing securities trading activities in the society. The aim of such regulatory measures was essentially to avoid any kind of speculation in the financial markets. For example, the first statute to regulate the securities market in England was named: Act to Restrain the Number and Ill Practice of Brokers and Stock-Jobbers 1697. Another example could be the promulgation of Bubble Act 1720, which was tended towards prohibiting the creation of the companies and prohibiting the issuance of securities. Also during the early years of American securities markets (which began to operate in 1790s) suppression of securities trading remained a strong regulatory objective is the US securities regulation.

Similarly after the Share Mania of 1861-65, the Government of India enacted special legislation to deal speculation problem in securities market. The Act XXVIII of 1865 was accordingly passed by the Government of Mumbai to control speculative activities in the securities market. This Act is claimed to be the first and the earliest legislation relating to the Stock Markets in India.

It is argued that in the securities market, regulation should be introduced to control speculation only up to a certain extent. Speculation brings in liquidity to the market and is helpful for market growth. Therefore, even though over-speculation should be avoided, a moderate level of speculation is always desired in any securities market. Regulation, having the purpose of driving speculation out of the market altogether and thereby, suppressing the securities trading activities, will not benefit the economy in the long run.

The author is an Assistant Professor of Law at BRAC University School of Law.

Correction

In our story headlined "Water water everywhere..." published July 15, 2006, it was mentioned that "the first part of a two-part story..." It was actually the concluding part of the story.

We regret the inadvertent error.

Visit-www.thedailystar.net/law/2006/07/03/waterright.htm for full story.

CRIME punishment

Police remand: Concept and procedure

BARRISTER MD. ABDUL HALIM

Duration of remands
At the stage of investigation: Provisions are laid down in section 167 of the CrPC which are as follow:

PUT in very simple terms, a remand is another name for an adjournment of a case. However, in criminal justice system remand is known as having a particular meaning. When a case is adjourned, the court may have the power or duty to remand the accused in police custody or in jail, rather than simply adjourn the case for another day. It would be accurate to say that while all remands are adjournment, not all adjournments are remands. The difference between 'remanding' a defendant and simply 'adjourning' the case is that when the court remands a defendant, it is under a duty to decide whether the defendant should be released on bail or kept in police custody or in jail custody. Thus remanding the defendant may be of three types: remand on bail, remand in police custody, and remand in prison custody or jail.

In England there is a system of disposing of a criminal case within 24 hours where there is straight forward guilty plea by the accused. However, in Bangladesh even the simplest criminal case would not be completed in a year let alone a day. And this is mostly because of corruption by the police in investigation and lack of knowledge and training for magistrates in dispensation of criminal cases.

As mentioned above, remanding means committing the defendant into the custody or placing him in bail. The most objectionable remand in Bangladesh is remanding on police custody since police uses unlawful torture on the defendant on the pretext of extracting information from the accused.

(i) Not more than 15 days in a whole in police custody or jail custody.

(ii) When the investigation cannot be completed within 120 days from the date of receipt of information relating to the commission of the offence or the order of the Magistrate for such investigation, the Magistrate empowered to take cognisance of such offence or making the order for investigation may, if the offence is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail.

(iii) When the investigation cannot be completed within 120 days from the date of receipt of information relating to the commission of the offence or the order of the Magistrate for such investigation, the Court of Session may, if the offence is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail.

(iv) If the accused is not released on bail under this section, the Magistrate or the Court of Session shall record the reason for it.

Thus there is no maximum period fixed by law for order of detention in police custody by the Magistrate. For how many terms not exceeding 15 days can the Magistrate authorise detention? This is not mentioned. In Indian CrPC provisions have been made that the total period of detention in custody must not exceed 60 days and such detention must not be in police custody. It is to be noted that in England there is provision of remand in police custody for not more than three days in total. If the



defendant is on bail, there is no statutory time limit for remand.

Police remand, use of force and extorting information from the accused

Section 167 of the CrPC implies two situations: (1) when an investigation can be completed within 24 hours; and (2) when investigation cannot be completed within 24 hours. The provision of section 167 also implies that while producing a person arrested without warrant before the Magistrate, the police officer must state the reasons as to why the investigation could not be completed within 24 hours and what are the grounds for believing that the accusation or information received against the person is well-founded. Second, the police officer also shall transmit to the Magistrate the copy of the entries in the case diary (B. P. Form No. 38) (B. P. Police Regulation No. 236). After examining information in the case diary and the reasons shown by the police officer, the Magistrate will decide whether the person shall be released at once or detained further. This is the mandatory law

which the Magistrates have to follow.

However, in absence of any proper guideline unfortunately the Magistrates have been accustomed to follow a 'parrot like' order on the forwarding letter of the police officer authorising detention either in the police custody or in jail. And this non-application of proper judicial mind in view of sub-sections (1), (2) and (3) of section 167 of the Code by the Magistrates has ultimately resulted in so many custodial deaths and incidents of torture in police custody.

Application for remand and abuse of power

A police officer makes a prayer for 'remand' stating that the accused is involved in a cognisable offence and for the purpose of interrogation 'remand' is necessary. In sub-section (2) of section 167 though it is not mentioned that 'remand' can be allowed for the purpose of interrogation, at present, the practice is that an accused is taken on 'remand' only for the purpose of interrogation or for extorting information from the accused through interrogation. There is no proper



guideline as to when such prayer should be accepted and when rejected by the Magistrate and this legal lacuna gives both the police officer and Magistrates power to abuse the same. Police officers being motivated or dictated by the executive organ or out of their personal conflict or aggrandisement seek unreasonable remand under section 167 of the Code. And the Magistrates in absence of any proper guideline, either being dictated by the executive organ or otherwise have been accustomed to follow a 'parrot like' order on the forwarding letter of the police officer authorising detention either in the police custody or in jail.

The views expressed in favour of police remand is that it is a civil necessity that if some force is not used, no clue can be found out from hard-nut criminals. On the other side of the spectra there is a widely held view that to send the arrested person to police remand prima facie upholds the idea that the accused person did not give the confession voluntarily. When the entire state machinery acts against him, he cannot confess voluntarily and as such the provision for grant-

ing police remand several times (although not exceeding 15 days in the whole) totally destroys the purpose behind it. This is because a person coming before the Magistrate has no guarantee that he will not be sent again to police remand unless he has already completed 15 days. It is therefore imperative on the Magistrate to give reasons for granting a remand.

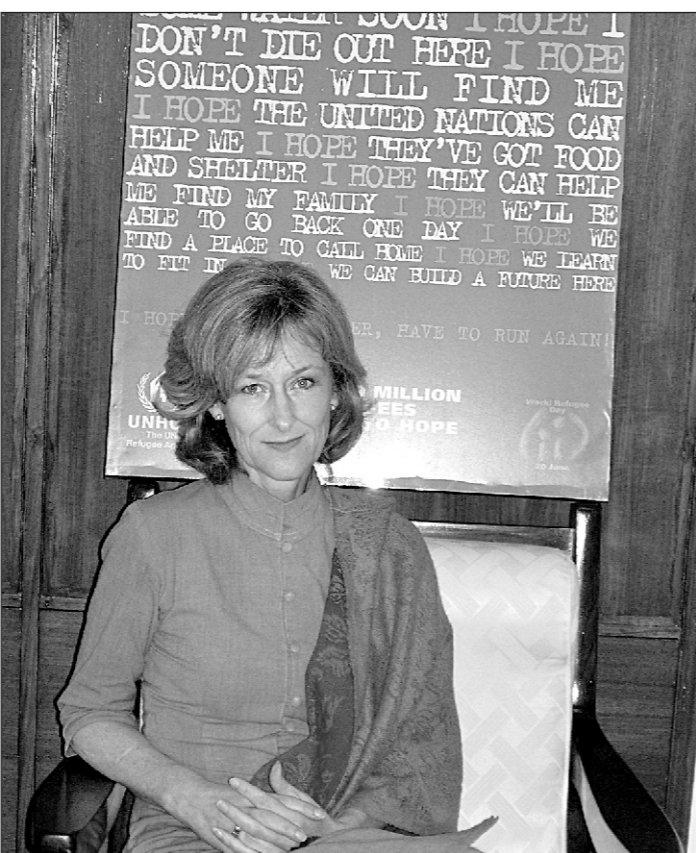
Again, article 35(4) of the Constitution states that no person shall be compelled to be a witness against himself. So the provisions of the CrPC under section 167 are in direct contrast with the provisions of the Constitution. This CrPC was passed by the British government back in 1898 when there was no fundamental rights as we have now in our Constitution. In view of the present provision in article 26 this provision of police remand seems to be void and this is largely the decision of the High Court Division in the BLAST V State.

The author is an advocate of the Supreme Court of Bangladesh.

LAW interview

Interview with Ms. Pia Prytz Phiri, UNHCR Representative in Bangladesh

"History of the liberation war will help the Bangladeshi people to realise the plight of the refugees"



Ms. Pia Prytz Phiri, Representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh

SULTANA RAZIA

JUNE 20 was observed as the World Refugee Day. On that occasion Ms. Pia Prytz Phiri, Representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh spoke to Sultana Razia of The Daily Star. Ms. Phiri who has a 22-year career with UNHCR joined as the Representative in Bangladesh in February 2006. The excerpts of the discussion are produced below:

Sultana Razia (SR): What do you think about the possibility of acceding to the 1951 Convention on the

Status of Refugees by our government and what role can UNHCR play in this regard?

Pia Prytz Phiri (PPP): During the liberation war of Bangladesh in 1971, about 10 million Bangladeshis took refuge in neighbouring India. They returned after the independence struggle which took nine months. At the end of 2005, there were a total of 8.4 million refugees worldwide which is less than the number of Bangladeshi refugees who fled in 1971. So, the people of Bangladesh have first hand experience of being refugees themselves and hopefully the history of the Liberation War will help the Bangladeshi people to

realise the plight of the refugees many of whom have been living in limbo for more than 10 years. These personal experiences will be invaluable in advocating for refugee rights in Bangladesh and promoting accession to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and adoption of national legislation on refugees. Of course, it is within UNHCR's mandate to lobby with the Government and we have been working on that and I am hopeful that Bangladesh will accede to the Convention and its Protocol.

Further, Bangladesh is a member of the UNHCR's Executive Committee which provides guidance to UNHCR on how to engage in refugee issues worldwide. Thus one hopes that this imposes some accountability and respect towards implementation of at least the spirit of the 1951 Convention domestically. In Bangladesh, UNHCR works and engages with the Government. We also advocate refugee issues with academics, the Bar Council and civil society organisations. I have much hope that efforts from civil society and the Bangladeshi people will persuade the Government to accede to the 1951 Convention which will provide minimum standards for the treatment and protection of refugees and become part of the family of some 146 States who have done so. Of course, UNHCR stands ready to provide all the necessary technical assistance and training required for the drafting of national legislation and implementation of the Convention.

SR: What is your opinion about UNHCR's involvement regarding Internally Displaced Persons (IDP) and how does UNHCR deal with them, as there is a big controversy about their existence in Bangladesh?

PPP: Many IDPs flee their homes for the same reasons as refugees but remain within their own country as oppose to refugees who flee to another country. Though UNHCR does not have a specific mandate for IDPs, we are

assisting several millions among the estimated 25 million IDPs worldwide. These UNHCR operations on IDPs are initiated at the request of the UN Secretary-General or the General Assembly, with the consent of the country involved and have included recent crises in Colombia, the Middle East, the Balkans, Africa, Afghanistan, East Timor and Sri Lanka.

Discussions are on going within the UN on how deal with IDP issues as they are related to forced displacement. UNHCR has many years of experience in handling emergency situations and providing protection, shelter and camp management and care. With the IDP numbers increasing while refugee numbers are decreasing, UNHCR is best placed to help these people who are often living in close proximity with the refugees. As of the end of 2005, UNHCR has cared for 6.6 million IDPs globally. In Bangladesh, we are not involved with forced internal displacement. UNHCR would need a request from the Government to the UN Secretary General to be engaged in IDP issues here.

SR: There is an allegation that the Rohingya refugees are involved with most of the smugglings and other disturbances in greater Cox's Bazaar area and it has a negative impact on the role of UNHCR as it provides shelter to them. Do you want to comment on that?

PPP: The host Government is responsible for camp management and law and order. If a refugee commits any crime in the host country, the individual would not be immune from the law of the land and the individual should be prosecuted just as any other perpetrator. However, our responsibility is to ensure proper legal representation for the accused in the court of law, if needed.

SR: What are the challenges you face so far working in Bangladesh as you have taken up the Representative post recently?

PPP: UNHCR started its operation in Bangladesh in the early 1990s and I think we should con-

sider it as a success as so far, more than 236,700 refugees have voluntarily repatriated, and now there are only about 21,000 refugees in two camps. The refugees have been here for the last 15 years and many were born here. Nearly 50 percent of the total population is below 17-years-old. UNHCR provides them with care and maintenance assistance, protection and facilitates their voluntary repatriation. We believe that once it is possible to go home, all the refugees would take the opportunity to do so because it is really difficult to lead a life in the refugee camps.

Working for refugees is always a challenge for us as the environment is not always conducive while we have international standards to maintain a minimum standard of treatment for shelter, food, health care, reproductive health, education for children and other minimum necessities for the care and maintenance of the refugees. We are currently lobbying with the Government to introduce bilingual medium of instruction for refugee children's schooling in their own mother tongue and in English. For now, they have access to informal education in Burmese while their mother tongue is Rohingya. It is challenging work to empower them as over the years, many of them have been deskillled or incapacitated by the many years of living in the camps.

SR: After 9/11, many anti-terrorist legislations are being enacted which have a very negative impact on the rights of the asylum seekers. What is your observation on that?

PPP: Yes, it is true that the aftermath of September 11 has changed many things. The refugees' right to seek asylum and freedom of movement are very much more restricted as security concerns in many States are heightened. It is very important to underscore that refugees are victims of serious human rights abuses or are fleeing from wars similar to the situation of Bangladeshis who fled during the Liberation War. The act of granting asylum to fleeing refugees is a

humanitarian act and should not be forgotten. Perpetrators of human rights abuses or war criminals are excluded from our mandate. It is true that genuine asylum seekers often arrive in mixed group of people to a receiving State some are refugees, some are economic migrants and it can be difficult to differentiate. This is also why it is important to accede to the 1951 Convention and to set up institutionalised structures and procedures.

SR: The role of media and the civil society are also important for changing any policy or situation. How do you see that?

PPP: As you know, the media can play an immensely important role in forming public opinion. Sometimes, I get extremely concerned with some press reporting as they tend to generalise and stereotype that refugees are terrorists or are involved in criminal activities. It is important to use words carefully so as not to demonise all the refugees just because there are some allegations that some of them or 'foreigners' are involved in criminal activities.

Sometimes reporting from a global viewpoint can also bring different perspectives. In Bangladesh, the refugee issue is not serious if viewed in a global context. It is in fact a small humanitarian issue which can be resolved if all were to work together. The media when reporting on the plight of refugees should avoid stereotyping and instead concentrate on the very human stories that all refugees have. We need politicians to lend their voices to bring this issue to the Bangladeshi people and to Parliament. UNHCR cannot tackle this issue alone. We need all the help we can get including the support of human rights organisations.

The author is working with Law Desk, The Daily Star.