



The manipulation and disclosing of information and secretes crime in the stock exchange

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ABSTRACT

One of the newest issues of the economical crimes in the Iranian legislation policy is subjected to the manipulation of the stock exchange. According to the Legislation Article 46 of the stock exchange issued in 2005, the following people would be punished from three months to one year discretionary prison or cash punishment equal to two and five times the obtained profit or both of them. Every person whose actions or approaches going towards misleading or cheating apparently or making fake prices regarding to the pricing issue and cheating others I achieving the transaction process in the stock exchange would have to tolerate the punishment of the judicial affairs. In general, this crime can be achieved by two ways; the first one is subjected to the manipulation of information; in this way, the manipulator give some tricking or misleading information based on some gossips changing the price of the shareholder. The second way is related to the manipulation of the prices based on the related transaction. People using well-known and famous creditors or dealers try to purchase vastly increasing the prices. Before issuing the above-mentioned legislation, the manipulation of the stock exchange is considered as the awful crimes of stock agents having the highest and intensified punishment according to the Legislation Article 2, this will be included the intensified reprimand for making any misleading actions in the stock exchange. Also another important crime is subjected to the disclosure of the information in the stock exchange. Income: in terms of the economics, the stock exchange is a kind of thermometer of every country; in other words, the quality and quantity of every country's investment is subjected to the volume of the cash and investments affairs in every country in the world. The process of purchasing and selling is affected by many various factors and other variables are really effective in this regard; for instance, the fundamental indices such as the increase of global prices about the oil and metals increase of exports, foreign exchanges or currency fluctuations and other side effects such as political circumstances. But any abrupt changes can be governed directly from the manipulation of the stock exchange regarding to the related transactions. Due to the catastrophic consequences of the crimes in relation to the stock exchange, many countries have been amended their legislative issues in the field of stock exchange because these committed crimes not only destruct the stock exchange but also it destroys the commercial relations drastically. It also is considered as the criminals of the free competence regulation because any unreal changes in the stock exchange can influence on the degree of transactions of the vendors or purchasers in this regard.

The related criminals aim at tricking the investors achieving fake or counterfeit transactions changing the price of the stock exchange destructing the queue of the dealers in this pavement. According to the issue of the stock exchange market legislation in 2005 and the entrepreneurship of the stock exchange as well as marketplace supervision, the related issued legislation is aimed at investigating these some criminals and their crimes regarding to the stock exchange.

CONCEPT OF STOCK EXCHANGE

The term stock exchange is a French word meaning the Market that the whole transaction issues will be achieved in this place potentially. The factories, banks and chain supermarket participate in this case. The stock exchange is subjected to the construction of a cohesive and formal market and its investment that the entire purchasing and selling affairs will be achieved there potentially and the related banks or private

sections also participate in this case. The line 3 of the Article 1 regarding to the stock exchange legislation issued in 2005, the stock exchange has been defined as following:

It is a cohesive and self-regulated market where the whole stock exchanges are being transacted by the related agents and dealers according to the dealership and transaction legislation. The stock exchange is conducted only by a stockholder framework. The main feature of the stock exchange is subjected to the legislative support of the investors and owners of the credits being necessary for the legislative affairs. In one hand, the stock exchange is the center of collecting or gathering the savings and cashes of the private section to provide the financial issues of the long term investment projects; in the other hand, it is a safe and secure place where the stagnant savings of owners can be applied into the whole companies or enterprises making benefits for the private or governmental sections and other surplus cashes for the same sections. The share means a part of property of a company or a factory; the owner of the same property has its own share according to the same property as he or she belongs it as well; the most essential factors influencing on purchasing the stock exchange is subjected to the efficacy and its risk in compare to other investing opportunities in this field. For the reason, the efficacy and risk of every stock sheet is comparable with other stock sheets; in other words, the logical investment is subjected to the selection of the stock sheet in one hand; in the other hand, having equal risk should bring the same equal efficacy of the stock sheet; in the other hand, having the equal efficacy should be comparable than other stocks efficiently. According to the mentioned issue, there have been some points regarding to the effectiveness of the stock sheets; of course, these points have their own generality issues; hence, the degree of the importance among investors may differ together due to their policies and decisions in this regard.

Cashing ability

This is a sheet of the stock meaning the possibility of the rapid selling of a production. When a stockholder is sold rapidly along with low expenditure, its cashing process will be achieved increasingly. Stock exchange sheets being sold daily and for different times have higher cashing process along with the lowest risk issues in compare to stock sheets with little or limited transacted times. The list of fifty active companies working in the stock exchange is a suitable guideline for taking up the related share having its own cashing process.

Number of shares at public hand

The cashing ability of a share depends on the number of the shares at public hand; when the number of share is getting high at public hand, the volume and speed of the transaction will be increased, too. For the reason, the marketplace will also have a balanced and fair pricing index in this case. In contrast, when the number of the shares is getting little at public hand, the higher rate will be overcome on the transactions reducing the prices in this regard. The related point is subjected to companies experiencing the same strategy dramatically.

Combination of stockholders

One of the most essential and suitable criteria of a share sheet is subjected to the combination of stockholders or the issuing company; the combination of the stockholders being determined by the managers can be useful for the retail stockholders potentially. This can be also beneficent for wholesale stockholders in this pavement. There may be issued some decisions about the efficient markets showing its suitable effect in this path. And of course, it does not influence on the share price but in inefficient markets it can be to some extent influence on the marketplace setting potentially. It can also change the price changes in one side terribly. In the stock of rapid-destructing objects, it cannot be transacted and these kinds of transactions are called stock-based regulations. Type of commodity and its delivery deadline of the transacted case and its payment conditions and the whole dealing affairs should be followed by a legislation case that has been mentioned in the commercial regulations and domestic marketplace. The process of investment is required in the activation of the commercial and service-based affairs or productive issues. This investment can be provided by the managers potentially. Sometimes the degree of the investment is high and this makes the managers to get beyond the investment affairs. Thus, an investor gives some parts of his own property efficiently in this regard. It should be mentioned that the legislation case and regulation of the guild or trading union, the price of a commodity is clear; in this case a vendor can be implied for selling his own productions potentially and the price of the same commodity is ranging between 10 to 15 % of the marketplace and it merely is required the purchaser's acceptance for purchasing case; thus, the same purchaser may not agree with purchasing an unknown price of a commodity according to the written and verbal auction in despite of the imply of some other parties.

Manipulation and disclosure in the stock exchange

Manipulation in the stock exchange

In the legislation of the stock exchange market issued in 2005, there is no given a clarified definition from the criminal of the stock exchange; but, due to the definition of the Line 3 of the Article 46 of the

legislation, it is represented in the Iranian stock exchange that every person making any kind of misleading action in the stream of the stock exchange will be considered as criminal one; it can be stated that the mentioned line is subjected to the apparent feature of committing a crime in the stock exchange marketplace. This has been also considered and specified as the Manipulation Process in other countries as well. There have been included many various definitions regarding to this crime so far; one of these definitions is subjected to the Black jurisprudence dictionary semantically. This dictionary has defined the related crime as following:

An illegal action to increase or decrease the price of a share appearing as misleading case in the whole transactions (2); other definitions have been also mentioned in different viewpoints; for instance, intentionally intervention in the free function of the demand and ask process of the stock exchange or any intervening action in the mechanism of the stock exchange making or destructing the prices (7). However it should be paid attention that there is no accepted definition of the related crime yet. In despite of the recent problems in defining the accurate meaning of this crime, there have been carried out some potential issues regarding to the manipulation crime. This has been also making some challenges and unfortunately no any approach is given in this way. Of course the elements of misleading, counterfeiting have been mentioned for the benefit of stakeholders in this case. If there is no given a comprehensive definition regarding to the stock exchange crime, there may be appeared some people to let the related crime as a legal case for their transacting affairs; for the reason, the Iranian legislator should achieve its own legislative policy according to the criminology issue potentially to prevent any illegal issues happening in the stock exchange. If the stated representations have vast involvement by the legislator, this approach should be regarded to the related crime trying to clarify its definition and conceptual meaning semantically in this case. Historically, the manipulation crime of the stock exchange has been appeared in the stock exchange firstly in the stock exchange of the Netherland in early 17th century but it has been roughly paid attention by researchers in 1920s efficiently and other experts and economists were also considered in this case. Allen, Gill and Javier were the first researchers that investigated the different aspects of this crime and categorize it into several groups. According to their viewpoints, the manipulation crime is subjected to the practical-based manipulation and manipulation of the related information based on the related transactions (10). In spite of the regular base of regulations regarding to the sharing companies, this is rejected theory; type two and third category requires the more detailed investigation potentially. First, the manipulation is based on the related information; this kind of manipulation in the marketplace is based on the publication of the information and incorrect gossips or rumors happening in order to mislead the participants of the market. For instance, the violator or infringer publishes the related gossips to prevent the process of purchasing in this regard. Then, the same infringer tries to increase the prices raising the shares in the marketplace getting illegal benefits through this way. Of course in general categorization, there is another kind of manipulation based on the power of the market regarding to the mental element of this crime applying very misleading case in this regard. Since the manipulation is an expertise type of crime in the marketplace, there will be many various maneuvers regarding to the conditions of defining this crime having differences with the infringing issues potentially. Second, the manipulation is based on transaction; this makes a vast and comprehensive domain in the marketplace; in this method, a big or a group of dealer increases the prices unreal regarding to making a big transaction with others by purchasing the share of the related company and when these prices get increased, they will try to sell their own shares to get higher profits in this case. Indeed, in this kind of manipulation in the marketplace, the criminals raise their own benefits by achieving transactions and their shares in the market while this increase has been come from dissimulating behavior of these individuals in the market; these people used to hide their own properties making their own transaction secretly in a cohesive mood. In another sample, these cheaters make coalition institutions manipulating the whole process of the transaction in this pavement. These institutions are very similar to the real investors such as Joint and Wincher; in relation to the activity of these coalitions in the stock exchange marketplace carrying out by hyper investing issues, there have been many various studies carried out by the same organizations and officials regulating the legislative issues in the country. But in one hand, some of the stock exchange researchers such as Barman and Benson believe that the criminal of the manipulation regarding to these coalitions have their own suspicious and in the other hand, some researchers reject the fact that the economical factors have been made these harmful issues towards the stock exchange coming from the manipulation affairs because they believe that the behavior and reaction of the prices in the marketplace is unpredictable even for people requiring the time and it may obtain another type of consequence in despite of what they expect in their issue (3). However it should be stated that this kind of manipulation is completely active being established based on the market interactions and it can be stated that it is considered as the clear manipulation based on the marketplace power including the line 3 of the Article 46 of the stock exchange legislation issued in 2005.

Disclosure of the secret information:

The transformation and disclosure of any information is another type of crime happening based on the information affairs. This kind of crime had not been estimated in the former legislation of the stock exchange (1966). In the Bill of market legislation being mentioned in the Chapter 6, it is pointed to the "forbidden issues, crimes and punishments". In fact, the second chapter of this section titling "the crimes and punishments" is consisted of several Articles that have been pointed in the Article 58 and in the end of line 1 regarding this Article. By issuing the stock exchange legislation in 2005, some part of this has been amended and the related crime has been pointed in the end of line 1 of the Article 46 of the related legislation. What the legislator has made the criminology titling the transformation and disclosure of the final information can cause to the disclosure and publishing of the related information. Also the Article 18 of the above mentioned legislation has given some tasks to the responsibility of the officials and administrators of the council members and the entire managers and accounting institution partners. This Article can be considered as part of the legislative element of the related crime (5). The line 1 of the Article 46 of the legislation of the stock exchange is regarded about someone making the disclosure and transformation of the hidden information; hence, it is not necessary for a person to disclose the hidden information directly but the practical achievement is enough for achieving the same action in this case. Second, he may have the related permission to fulfill the related task destructing the related information. In this case, he is not considered as a criminal according to the legislation being stopped for the legal prosecution in this pavement. It seems that the material-physical behavior could be appeared in two forms: in one hand he directly achieves the information disclosure as hidden (Article 1) and in the other hand he commits an action leading to disclosure the hidden information (Article 2). Article 18 of the Iranian stock exchange market states that: the members' council and partners of the accounting institution have to prevent making disclosure of the hidden or secret information directly or indirectly. As we see this Article has prevented of disclosure of two form hidden information. The aim of disclosure the direct information is to destruct the hidden information of a company. In fact, this action is subjected to the disclosure of the hidden information. The Article 18 has paid attention to the legislation of two forms information disclosure being achieved by stock exchange agents. The indirect disclosure of information in Line 1 of the Article 46 of the above mentioned legislation should be paid attention in this regard because the related Line talks about people making the disclosure and publish of the hidden information. In despite of the disclosure of direct information, people committing this crime should be responsible for the legislative issues; these are those people who have been paid attention in the legislation issues potentially. Due to the related discussion, it seems that there are two points should be paid attention: first what is the main purpose of providing to publish the secret information? Secondly, what is the aim of "in non-regulated case" in the Line of 1? In response to the first question, it is better to refer to the legislation cases of the stock exchange market. As we stated, the indirect disclosure of the information can be provided by someone acting the causes of this process for making the disclosure of the information. Now it should be looked at what these cases can achieve? In other words, what actions can make the disclosure of the hidden information in the stock exchange marketplace? These cases according to the legal legislation issues are subjected to those cases that have been accepted in the Regulation Letter of the accepted companies in the stock exchange market. Due to the case titling "the prevention of important information", we will stop naming and explaining the same topic here. The main subject was to mention about the criminal action of the internal information disclosure. In the end of the material element discussion, it is necessary to explain the obtained result of the physical behavior in this regard. As we stated before, this result should have a direct causative relationship with the related physical behavior; in other words, what stated about the physical behavior of the material element should be subjected to the following case.

Disclosure secretes of people

It is one of the crimes happening against the spiritual generality of people that has been considered in the punishment regulations of various countries prosecuting by legislators legally. In our country the same legislator issued the Article 648 of the legislation regarding to the same crime in 1996; it states that the physicians, surgeons, nurses and drug-stores and the whole persons being as secretes of their own professions, if they are cheated to disclosure their secretes the criminals will be punished from one year and or have to pay 15.000.000 to 6.000.000 RLS cash punishment. Here we are not in the establishment of a legislator issuing any punish against these criminals but we only want to mention about the cases of the issued Article that the Article 48 of the legislation is our main purpose in this pavement. It also is subjected to the determination of guaranteeing the execution of crimes such as the commitment of agents and dealers regarding to the Article 648 of the legislation. The Article 48 states that the agent, dealers and marketers and or investment consultants if make disclosure of information without the permission of their owners, they would be punished according to Article 648 of the Islamic Punishment Legislation

issued in 1996. In despite of the topical issue of the Article regarding to the crimes against the people' spirituality issues, these two are different together: first, the Article 648 of the general legislation have been involved many various cases about the disclosure of the related information because the legislator has considered the whole physicians, surgeons, nurses and drug-stores as secrete people bringing the statements "and the whole people having secrete occupation" issued the same legislation in this regard. The domain of involvement of this Article has been developed and it also is devoted to the Article 48 of the legislation. Second, the Article 648 of the legislation mentioning "the whole people being secrete for their own occupation" points to the fact that the disclosure of one of crimes is implemented when a person having a special occupational position makes the disclosure of the information. For example Mr. A is working in consultation profession. A person is referred to him stating his own mental problems and asking some remedial consultations for his relaxation while Mr. A retells his secretes to others committing a crime according to the Article 648 legislation issue. The main aim of the mentioned example is subjected to the position of the same consultant that he is not a real consultant in this case because of retelling secretes of others in his occupation. Hence it is necessary to know that committing a crime is coincident with having an occupational position; for the reason, the legislator of Article 48 has used the term "disclosure of secretes" in the investment market for representing the crime commitment issue: "people give some secretes of others without having any permissions". Here, the legislator applies the word "task" instead of the "occupation" giving the term "or making someone's options"; in other words, it is getting away of the Article 648. Here both of these changes should be evaluated. Firstly it seems that the term "task" is nothing than the term "occupation". It is deducted that the person is going to disclosure others' secretes actively following their information in this path. For example, someone as a manager of the Board Member in a commercial company; this implies the same person to be aware of the essential information of a company following better decision-making process and if the same person makes the disclosure of information, he will certainly make the top-crime commitment case; in other words an occupational case can be followed by people's secretes; and he would not be able to disclosure others' problems. It should be stated that the investment market is appeared in the framework of the "task" in compare to the "occupation"; for the reason, the legislator has used the term "task" in the Article 48 of the legislation. Secondly, the term "it should be given to him", is one of the most fundamental subjects in the Article 648 of the legislation and Article 48 of the same legislation. In the Article 648 the legislator has paid attention to the point that everyone is personally referred to a doctor or nurse, they should not be able to disclosure these people's secretes and they have to keep their secretes potentially in their own way occupationally. The same legislator's purpose is to ask these occupational situations to preserve people secretes in their job affairs according to the consideration of the legal issue.

But the term "it should be given to his responsibility" in the Article 48 of the legislation, it is pointed to the fact that some people may get aware of others secretes due to their occupational situation and they are not allowed to disclosure their issues personally. In other words, the attention to the "task" is burden on people having accessibility to others personal affairs. Anyway, after getting this personal information, they are not allowed to make any disclosure according to the Article 48 of the legislation; because this implies people to preserve others personal and commercial issues and secretes. However, it is stated that some people may get aware of others secretes due to their occupationally situations in this case. To be secrete of others secrets is subjected to some people having a special occupational situation and they have to absorb others trust in this pavement. Another point is subjected to mention the term "without permission" according to the Article 48 of the legislation. In other words according to this condition, people sometimes can disclosure others secrete with their special permission and there is no any legal prosecution in this regard. There is of course a similar case in the Article 648 of the legislation; in the Article the legislator considers the disclosure of others information as a crime giving punishment cases in this regard (5).

CONCLUSION

The crimes of the stock exchange market have been established in the top cases in the field of the economy. These crimes include a vast domain of the economical issues. The disclosure of the customers' secretes are the main crimes of the stock exchange market. The manipulation of the stock exchange sheets is another crime in the stock exchange market according to the Line 3 of the Article 46 of the legislation issued in 2005. Also, the disclosure of secretes and information in the stock exchange is considered as a crime having some legal prosecution and punishments for people committing these crimes.

REFERENCES

1. Akhoundi Dr. Mahmoud: punishment regulation letters, 1st volume; Islamic Guidance Ministry Publication; 4th printing, summer 1991.
2. Compbell Black, Henry, Blacks law dictionary, west publishing co, 2004.

3. EshtiaghVahid: combat against the cheat of stock exchange markets; magazine of right researches, no: 17, 2010.
4. Jaafari Langhroudi Dr. Mohammad Jaffa: terminology of the Rights, Ghanj-e-Danesh Publication, 4th printing, 1989.
5. Jaafari Mojtaba: a contrastive analysis of stock exchange sheet crimes in Iranian and French punishment rights, a thesis for MA in punishment rights and criminology, Imam Sadegh University, 2006-2007.
6. Lazrezh Christian: an introduction on the criminaql politics, translated by Dr. Ali Hussein NajafiAbarandAbadi, Tehran: Mizan Publication, 2004.
7. Mirzaiee MonfaredGholamali: punishment rights of stock exchange market, Tehran, Mizan Publication, 2010.
8. Sadeghi, Mir Mohammad: criminals against the properties, Mizan Publication, 8th printing, 2001.
9. Sadeghi Hussein Mir Mohammad: private punishment rights (3); criminals against the public welfare, Tehran, Mizan Publication, 12th printing, winter 2008
10. Safari Ali and Daryanavard, SeydehVahideh: investigation of the manipulation crime in the stock exchange market, a collection of articles, volume 2, Tehran, Mizan Publication, 2013