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**ANALYSIS OF CIRCULAR TRADING IN FRAUDULENT
AND UNFAIR TRADE PRACTICES RELATED TO
SECURITIES MARKETS IN INDIA
AND A COMPARATIVE STUDY WITH UNITED STATES**

AUTHORED BY - NALINI R¹

ABSTRACT

This article aims to study and analyse in detail about the circular trading practice in the Indian Securities Market and to do a comparative study of fraudulent and unfair trade practices in the United States. To discuss various kinds of Unfair Trade Practices happening in India and the measures taken by the regulator (SEBI) to prevent such “Fraudulent and Unfair Trade Practices” happening in the Securities Market. Participants of Circular Trading and the measures taken by SEBI to control it. Unfair Trade Practices in the United States and the related regulations to control it. The Doctrinal Research Method is used in this project to study about the circular trading practice in Securities Markets in India and Unfair Trade Practices in the United States.

Keywords: *Circular Trading, Unfair Trade Practices, Securities Markets, SEBI, Federal Trade Commission Act*

I. INTRODUCTION

The Securities Market in India is subject to various fraudulent activities. It is the duty of the securities market regulator SEBI to regulate such activities and to save the interests of investors. SEBI has introduced a regulation which is “Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003” to prohibit such manipulative, fraudulent and unfair trade practices happening in the securities market. Regulation 4(n) of the “Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003” gives definition for a circular transaction which states “circular transactions in respect of a security

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entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security²”; Circular trading is one of fraudulent trade practices happening widely in India, whereas it is banned in all the other countries. Circular Trading is a type of price manipulation fraud in the securities market in which the sell orders are placed along with buy orders simultaneously for the same price and the same quantity to show a huge volume in that particular company to cheat the investors and make to think that there are changes happening in the company and prices are expected to move high. Circular trading is done by two or more persons trading simultaneously in a company between them. Irrespective of the number of traders and trades, shares go back to the real owners at the end of the day. “Section 5 of the Federal Trade Commission Act, 1914 of the United States of America prohibits “unfair and deceptive acts or practices” in or affecting commerce”. Such practices broadly include:

- “an act or practice that causes or is likely to cause substantial injury to consumers, that cannot be reasonably avoided by consumers and is not outweighed by countervailing benefits to consumers or to competition³”; and
- “an act or practice where a material representation, omission or practice misleads or is likely to mislead the consumer, who has reasonably interpreted such representation, omission or practice⁴”.

II. LITERATURE REVIEW

1. A Study on Unfair Trade Practices in India – Sandra N S
2. Unfair Trade Practices – A Lost Imperative of the Indian Economy – Akshra Mehla

III. SECURITIES AND SECURITIES MARKETS

Financial products used to raise capital are known as securities. The basic purpose of the securities markets is to allow capital to move from those who have it to those who require it. The securities market facilitates the transfer of resources from people who have them idle to those who require them for productive purposes. Securities markets serve as conduits for allocating

² Regulation 4(n) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

³ Section 5, Federal Trade Commission Act, 1914 of the United States of America

⁴ ibid

savings to investments, separating the two activities. As a result, savers and investors are bound not by their own talents, but by the economy's ability to invest and save, resulting in an increase in saves and investment in the economy.

STRUCTURE OF INDIAN SECURITIES MARKETS

The securities market is the market in which securities are issued, purchased by investors, and then transferred among investors. The primary market and secondary market are two interrelated and inseparable parts of the securities market. Issuers raise capital by selling securities to investors in the primary market, also known as the new issue market. The secondary market, often known as the stock exchange, permits the trade of previously issued securities, allowing investors to exit a position. In the secondary markets, the risk of a security investment is shifted from one investor (seller) to another (buyer). The primary market is where financial assets are created, while the secondary market is where they are sold.

KEY CHARACTERISTICS OF SECURITIES

A security can be a stock, a bond, or any other financial instrument with value or that is tied to a valuable underlying instrument. A security is one that can be traded on an exchange, according to the Securities Contracts Regulation Act (SCRA). As it relates to financial markets, below are some key characteristics of securities.

- Securities are the terms of a money exchange between two parties, in this case a buyer and a seller.
- Borrowers and equity funders can issue securities to raise money at a low cost, and investors can own the securities.
- Businesses use a regulated contract and a controlled and monitored process to raise money from investors with surplus capital.
- While the rules for raising cash are set by the security's issuer, investors have a claim to the rights represented by the securities.
- Securities are divided into two categories: equity (risk participation) and debt (claim on cash flows).
- Unlike debt securities, which are issued for a set period of time, equity securities are issued indefinitely. Debt securities pay interest, and equity securities provide dividends, but neither is guaranteed.

REGULATORS OF THE INDIAN SECURITIES MARKETS

Securities and Exchange Board of India (SEBI)

The Securities and Exchange Board of India (SEBI), a statutory agency established by Parliament (SEBI Act, 1992), is India's primary securities market regulator. SEBI is a government agency that reports to the Ministry of Finance. SEBI's major goal is to help the capital markets expand and develop while also protecting investors' interests⁴. SEBI is in charge of enforcing the Securities Contracts Regulation Act of 1956.

SEBI has codified and publicised regulations that apply to all securities market activities and intermediaries.

The Reserve Bank of India (RBI)

The money market section of the securities market is regulated by the Reserve Bank of India. RBI is the government's issue manager because it manages the government's borrowing programme. It is in charge of overseeing and regulating the government securities market. The Reserve Bank of India (RBI) is also the Indian banking system's regulator, ensuring that banks adhere to prudential standards in their operations. RBI is also in charge of monetary, FX, and credit policies, and its activities in these markets have an impact on the availability of money and credit in the system, which affects interest rates and borrowing costs for banks, governments, and other debt issuers.

SECURITIES FRAUD

“Section 17 of The Indian Contract Act, 1872 defined Fraud, "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract⁵:-

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;

⁵ The Indian Contract Act, 1872

4. any other act fitted to deceive;
5. any such act or omission as the law specially declares to be fraudulent”.

Securities fraud, also known as stock fraud or investment fraud, is a misleading technique in the stock or commodities markets that leads to investors making purchase or sale decisions based on incorrect information, often resulting in losses and in violation of securities regulations.

Outright theft from investors (stockbroker embezzlement), stock manipulation, misstatements on a public company's financial reports, and lying to corporate auditors are all examples of securities fraud. Insider trading, front running, and other unlawful behaviours on the trading floor of a stock or commodity exchange are all covered under this umbrella phrase.

Securities fraud, often known as stock or investment fraud, is a sort of serious white-collar crime that involves misrepresenting facts to investors in order to influence their decisions.

An individual, such as a stockbroker, could be the perpetrator of the fraud. It could also be a corporation, brokerage firm, or investment bank. Individuals can commit this form of fraud on their own by using insider trading strategies.

There are various securities fraud happening in Securities Markets including Insider Trading, Front-running, Self-Trading and Circular Trading. We will discuss about Circular Trading in detail in this project.

CIRCULAR TRADING

Circular trading is a deceptive practise in which a broker enters sell orders knowing that offsetting buy orders for the exact same amount of shares at the exact same time and at the exact same price have been or will be entered.

The beneficial ownership of the security does not change as a result of such a trading arrangement. Circular trading artificially inflates volumes to demonstrate that a security has liquidity, maintain a targeted share price, and act as proof that the stock has market interest. In a few of countries, the practise is outlawed.

What is circular trading, and how does it work?

The Securities Appellate Tribunal (SAT) states:

- When two or more people join hands and begin trading in a scrip among themselves, this is known as a circular transaction.
- Despite various participants and exchanges, at the end of the trading session, the shares are returned to their original owners, completing the circle.

For example, A sells to B, who then sells to C, who then sells it back to A. When the shares return to A, the circle is complete. Multiple players may be involved in the process.

As a result, trading volume has increased without a change in ownership.

In circular trading, sell orders are countered with buy orders for the same number of shares and at the same price.

MANIPULATION OF THE SECURITIES MARKETS THROUGH CIRCULAR TRADING

Circular trades can create a false sense of activity around a stock, which can influence its price if they continue. For example, if a security's trading price was on the verge of falling below levels desired by some shareholders, a circular trade could help to prop up the price by giving the impression that new owners are buying the shares at the desired level. This activity may persuade people who aren't aware of the strategy to invest in the stock, assuming that the trades reflect a rising interest in the stock. There may even be a suspicion that the company is about to divulge information that, if made public, will cause the stock to rise in value.

There is no basis for that assumption because the circular trade plan does not introduce any real change in ownership or represent any actual action about to be announced. If the stock price rises as a result, the value has been artificially inflated. When the plan is exposed, the artificially inflated stock price will fall in on itself, destroying the monies invested by others.

As a responsible investor and trader, it's critical to be informed about any unethical trading practises that may affect you.

It is a method of artificially inflating the stock's volume and price without any real change.

SYNCHRONISED TRADE AND CIRCULAR TRADE

Circular trading is a synchronised trading strategy.

According to SAT, a synchronised trade is a type of transaction in which the seller and buyer execute the trade at nearly the same time for nearly the same quantity and price.

Circular trades, on the other hand, occur when numerous parties conspire to buy and sell shares repeatedly in order to manipulate the stock price.

HOW DO CIRCULAR TRADES MANIPULATE THE MARKET?

Due to inflated volume impacting the stock price, circular trading helps generate a misleading sense of active stock.

Consider the following example from the SEBI document (see WTM/GA/55/ISD/3/06):

Global Trust Bank's (GTB) trading volumes increased dramatically in FY 2000-2001, resulting in a price increase. This is what transpired.

Period	Average Daily Volume on BSE	Stock Price
01-Sep to 10-Oct, 2000	Below 38,000	Rs. 57 (On 11-Oct-2000)
25-Oct to 23-Nov, 2000	More than 7,70,000	Rs. 114 (On 20-Nov-2000)

In just 29 trading sessions, the price climbed by 100%. SEBI discovered the following while investigating the case.

- During the specified period, transactions were made by entities linked with a certain entity referred to as 'A.'
- These entities were fictitious, and the beneficial ownership of shares remained unchanged. They were simply trading amongst themselves, using circular trading to artificially raise the volume and price of GTB scrips.

Because of the speculative character of the stock market, increasing trading volume gives the impression of increased demand, prompting retail investors to trade in that stock and jeopardising the market's integrity.

MEASURES TO CURB CIRCULAR TRADING

Circular trading is a fraudulent or unfair trade conduct, according to the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Circular transactions involving securities entered into between intermediaries to increase commissions, provide the appearance of trading in such securities, or inflate, depress, or induce price swings are constituted fraudulent or unfair commercial practises, according to the law.

Under the different sections of the SEBI Acts and Regulations, SEBI investigates any unusual market behaviour in a scrip. It also sanctions fines on a case-by-case basis if any broker or company engages in circular trading. Depending on the size anomaly committed, the penalties range from a term of suspension from trading to a fine.

SEBI has ordered that all exchanges set a daily price band and an overall weekly limit for each stock in order to prevent circular trading and improve market safety and integrity. The securities have a dynamic price band determined by the exchanges.

The exchanges have implemented a surveillance mechanism to track price and volume movements, as well as potential market abuses such as bogus transactions and circular trading.

Circular trading, which deceives investors by generating a misleading sense of stock activity, disrupts market equilibrium. Circular trading jeopardises the stock market's integrity and stability, as well as its credibility among investors. Despite the fact that SEBI and the exchanges have put in place effective mechanisms to minimise circular trading, some cases continue to arise. Let's hope that in the future, with active engagement from all market participants, there are no incidents of circular trade.

PENALTY PROVISION

Penalty provisions for fraudulent and unfair trade practices is provided in Section 15HA of SEBI Act, 1992 which states “If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher⁶”.

COMPLAINTS AGAINST UNFAIR TRADE PRACTICES

Investors can approach SEBI and file a complaint if they come across any frauds or unfair trading practises in the securities industry. For faster handling of complaints, SEBI maintains a separate complaint cell called Sebi COmplaints REDress System (SCORES). Investors can easily make a complaint through SCORES' online platform⁷.

IV. JUDICIAL INTERPRETATION

1. Ketan Parekh vs. SEBI (2006)

It was observed:

“It would, therefore, follow that a synchronised trade or a trade that matches off market is per se not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium.”

2. Subhkam Securities Private Limited vs. SEBI (2012)

The principle was also reiterated in this case in which it has been observed:

“It is an admitted position that synchronized trades per se are not illegal. It is only when synchronized trades are executed with a view to manipulate the price of the scrip that the provisions of the FUTP Regulations will get attracted.”

⁶ Section 15HA of Securities and Exchange Board of India Act, 1992

⁷ <https://scores.gov.in/>

3. SEBI vs. Kishore R. Ajmera (2016)

Dividing Line between PFUTP Regulations and Code of Conduct Violations

“In this case, the Supreme Court recently passed an order on several appeals involving a common question of law i.e., what is the degree of proof required to hold brokers/sub-brokers liable for fraudulent/manipulative practices under SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and/or liable for negligence under the Code of Conduct as specified under SEBI (Stock Broker and Sub-Broker) Regulations, 1992.

The court stated that it is a cardinal rule of law that proof of an allegation levelled against a person may be in the form of direct evidence or circumstantial evidence. In relation to the violations committed by the brokers/sub-brokers, the court stated that the evidence has to be gathered from various circumstances such as the volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders; the proximity of time between the two etc.

The court held that there is a dividing line between negligence and deliberate intention. The difference between Code of Conduct violations and PFUTP Regulations violations depends on the extent of the persistence on the part of the broker/sub-broker. Upto an extent, where the brokers/sub-brokers failed to alert themselves, violations can be attributed to negligence and lack of due care and caution. However, persistent trading either over a long period of time or in respect of huge volumes would show deliberate intention to play the market. The court further added that the said dividing line has to be drawn on the basis of the volume of the transactions and the period of time that the broker/sub-broker indulged in the conduct.

This is a landmark decision by the Supreme Court which has shed some clarity on the determination of liability either for violations of the provisions under PFUTP Regulations or for the violation of the provisions under the Code of Conduct, though the question of broker/sub-broker complicity will always be a fact centric issue”.

4. SEBI vs. Shri Kanaiyalal Baldevbhai Patel (2017)

“The Supreme Court observed for the first time in SEBI v. Shri Kanaiyalal Baldevbhai Patel that terms ‘fraud’ and ‘unfair trade practice’ as provided under the PFUTP regulations are different. The Court observed that the concept of unfairness has a broader meaning than fraud,

and that trade practice is broadly unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It has to be considered comprehensively to include any act beyond a fair conduct of business, including the business in sale and purchase of securities. However, the Court also observed that a generalised or single definition of 'unfair trade practice' cannot exist, and it requires adjudication on case-by-case basis and in accordance with the facts and circumstances surrounding the transaction".

5. SEBI vs. Rakhi Trading Pvt. Ltd. (2018)

"The Supreme Court of India in its recent landmark judgement of SEBI v. Rakhi Trading Pvt. Ltd., delivered by Justice Kurian and Justice Banumathi, has overruled several orders of the Securities Appellate Tribunal which had held that synchronised trades are illegal only when they are committed with the intention to impact the market. The Court has also shed further light on the concept of 'unfair trade practice' as provided under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003".

V. UNFAIR TRADE PRACTICES IN UNITED STATES

Unfair commercial practises are prohibited in the United States under Section 5(a) of the Federal Trade Commission Act, which states that "unfair or deceptive acts or practises in or affecting commerce" are prohibited. It extends to all individuals involved in commerce, including banks, and establishes a legal norm for unfair trade activities, which can be either unfair or deceptive⁸.

Below are lists of unfair and deceptive practices as per the rule:

Unfair Practices

An act is unfair when it meets the following criteria:

- It injures consumers significantly or is likely to do so.
- Consumers will not be able to avoid it.
- It is not outweighed by countervailing consumer or competitive gains.

⁸ Section 5(a) of the Federal Trade Commission Act (FTC Act)

Deceptive Practices

When an act or behaviour fits the following conditions, it is considered deceptive:

- A consumer is misled or is likely to be misled by a representation, omission, or practise.
- Under the circumstances, a consumer's understanding of the representation, omission, or conduct is considered fair.
- Material is a deceptive representation, omission, or practise.

VI. CONCLUSION

It is vital to keep any market free of frauds, illicit activities, unjust and manipulative behaviours in order for it to thrive and grow consistently throughout time. This is also true in the securities market. The Securities and Exchange Board of India (SEBI) has taken every step feasible to ensure long-term growth and protect the people who invest in the securities market. Due to India's population and the vast number of investors entering the market, there is a higher chance of frauds taking advantage of a big number of investors, and India also lags behind other industrialised countries in terms of cybersecurity. Because most securities are now handled through online platforms, applications, and other means, SEBI should establish cybersecurity guidelines and a cyber security wing to protect the securities market from any potential cyber hacking, thereby safeguarding and guiding the securities market in India toward development.

VII. REFERENCES

1. The Indian Contract Act, 1872
2. Federal Trade Commission Act, 1914
3. The Monopolies and Restrictive Trade Practices Act, 1969
4. Securities and Exchange Board of India Act, 1992
5. SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995
6. The Competition Act, 2002
7. SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003
8. The Consumer Protection Act, 2019
9. SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022