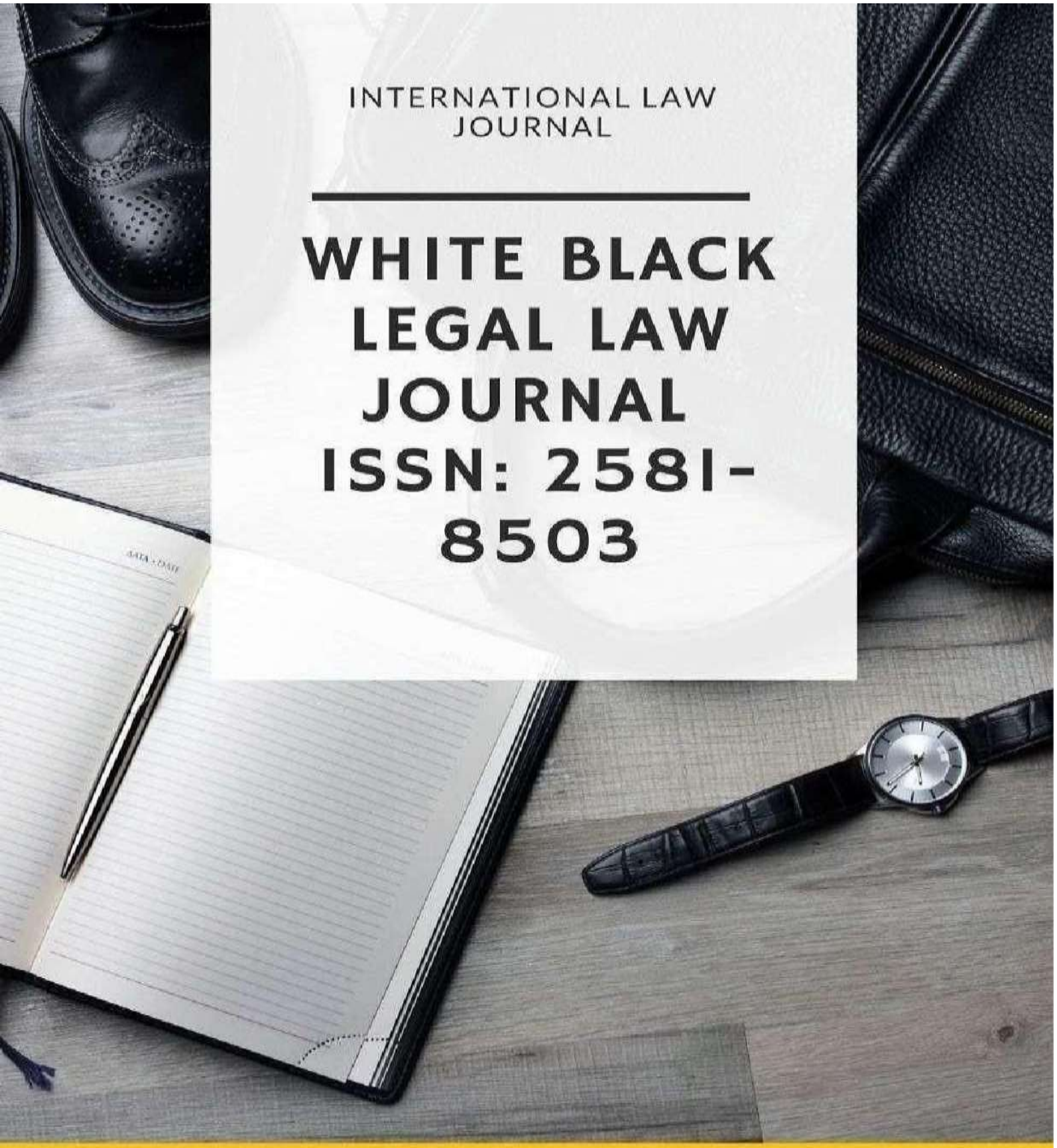

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COMPARATIVE PERSPECTIVES ON INSIDER TRADING AND MARKET MANIPULATION: LEGAL SAFEGUARDS FOR INVESTORS IN INDIA AND THE U.S.

AUTHORED BY - PRITHISH DEKAVADIA

CHAPTER III
NATIONAL LEGAL FRAMEWORK OF INSIDER TRADING REGULATIONS IN INDIA

The Indian securities market, a cornerstone of the nation's economic development, thrives on transparency, investor confidence, and the equal availability of information. Insider trading poses a direct threat to these foundational principles by enabling select individuals to capitalize on privileged, non-public information. This unfair practice not only distorts market fairness but also undermines investor trust and market efficiency. In India, the gravity of insider trading has been increasingly recognized, prompting significant regulatory and legislative attention over the years.

The Securities and Exchange Board of India (SEBI), established through the SEBI Act of 1992, stands as the principal regulatory authority responsible for monitoring and regulating securities transactions. Through its wide-ranging powers under Sections 11 and 11B, SEBI has sought to construct a legal and institutional framework that can effectively address insider trading and promote equitable market conduct. A landmark initiative in this regard has been the introduction and continual refinement of the SEBI (Prohibition of Insider Trading) Regulations, 2015. These regulations aim to prevent misuse of unpublished price sensitive information (UPSI) by mandating disclosure norms, internal compliance mechanisms, and strict prohibitions on trading while in possession of UPSI.

The 2015 Regulations define key concepts essential to enforcement. The term "insider" is broadly categorized to include connected persons such as directors, employees, and professional advisors as well as individuals who possess or have access to UPSI. UPSI itself encompasses information that is likely to have a material impact on stock prices once made public, including financial results, dividend announcements, changes in key personnel, mergers, and acquisitions. The regulations explicitly prohibit both the

communication of UPSI and trading on the basis of such information. Further, SEBI mandates listed entities to establish codes of conduct and maintain digital databases to monitor access and disclosures, thereby enhancing corporate accountability.

Insider trading is not merely a legal infraction but also an ethical breach, as it exploits information asymmetry for personal benefit at the expense of uninformed investors. The economic implications are equally severe, as such conduct disrupts market equilibrium and may deter participation from retail and institutional investors alike. India's evolving legal landscape has tried to address these concerns through not just statutory measures but also through case law and enforcement precedents. Despite the progress, challenges persist in terms of evidentiary thresholds, the clandestine nature of such activities, and technological advancements that complicate detection.

111.1 Introduction to Insider Trading in India

Insider trading represents a significant challenge to the integrity and transparency of financial markets. In essence, it involves the buying or selling of securities by individuals who possess access to confidential, non-public information that could materially affect the price of those securities. Such activities confer an unfair advantage to insiders at the expense of the broader market, undermining the principles of equity and fairness that underpin investor confidence.

In the Indian context, the regulation of insider trading has evolved significantly in response to the country's expanding and increasingly sophisticated securities market. The primary regulatory authority tasked with overseeing securities transactions is the Securities and Exchange Board of India (SEBI). Established under the SEBI Act, 1992, the Board is empowered under Sections 11 and l lB to issue directives in the interest of investor protection and to ensure the orderly functioning of capital markets. Recognizing the gravity of insider trading, SEBI introduced the SEBI (Prohibition of Insider Trading) Regulations, 2015, which have since been periodically amended to address emerging risks and to align with international standards.

These regulations clearly define critical terms and responsibilities. For instance, Regulation 2(l)(g) elaborates on what constitutes Unpublished Price Sensitive Information (UPSI), while Regulation 2(l)(h) defines an "insider" within the legal framework. Regulation 3 restricts the communication and procurement of UPSI, whereas Regulation 4 strictly prohibits trading while in possession of such information. Additional provisions, such as Regulations 7 and 9, mandate

disclosures and necessitate the formulation of internal codes of conduct by listed companies to enhance compliance.

From an ethical and economic standpoint, insider trading disrupts the fairness of financial markets. It allows a privileged group to exploit informational asymmetries, thereby compromising market efficiency and deterring wider investor participation. The ethical ramifications are also significant, as insider trading often entails a breach of fiduciary duty, weakening corporate accountability and governance.

The study of insider trading laws m India is of pressing relevance, especially in light of high- profile cases that have exposed systemic vulnerabilities in enforcement. Despite a comprehensive regulatory framework, challenges such as evidentiary constraints, rapid technological evolution, and the covert nature of such transactions have limited regulatory success. This research aims to explore the efficacy of the existing legal framework, analyze enforcement trends, and evaluate the potential for reform. It also draws comparisons with international practices, particularly those in jurisdictions such as the United States and the United Kingdom, to extract actionable insights for policy and regulatory enhancement.

In doing so, this thesis seeks to address several core questions: What constitutes insider trading under Indian law? How effective are the current mechanisms for detection and punishment? What improvements can be made by borrowing from global models? And finally, how can technology aid in bolstering enforcement? The scope of this research remains confined to the civil and regulatory dimensions of insider trading in India, while referencing international norms to provide a comparative perspective.

III 1.1 Prohibition of Insider Trading in India

Insider trading in India is governed by the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, which provide a statutory mechanism to curb unfair access to and misuse of unpublished price sensitive information (UPSI). Insider trading typically involves buying, selling, or dealing in securities of a listed company by individuals who are in possession of UPSI that, upon becoming public, is likely to materially affect

the market pnce of the securities.

Under Regulation 2(1)(g) of the 2015 Regulations, UPSI includes information relating to financial results, dividends, change in capital structure, mergers or acquisitions, delisting, expansion of business, or changes in key managerial personnel. The definition of an "insider" under Regulation 2(1)(b) extends to connected persons and those in possession of UPSI, including directors, officers, employees, auditors, legal advisers, and consultants who, by virtue of their position or relationship with the company, have access to sensitive information.

Under Regulation 3 of the 2015 Regulations prohibits the communication or procurement of UPSI, and Regulation 4 specifically prohibits trading when in possession of such information. These prohibitions are reinforced by Section 15G of the SEBI Act, 1992, which prescribes penalties for insider trading, including fines of up to twenty-five crore rupees or three times the number of profits made, whichever is higher.

Judicial pronouncements have further clarified the contours of insider trading law in India. In Rakesh Agrawal v. Securities and Exchange Board of India[25], SAT held that trading based on UPSI, even in the absence of mala fide intent, could amount to insider trading if it violates the fiduciary duty of the insider. In SEBI v. Cabot International Capital Corporation[26] The Bombay High Court emphasized that SEBI, under Sections 11 and l lB of the SEBI Act, has wide-ranging powers to issue preventive and corrective directions to preserve market integrity. Furthermore, Regulation 9 mandates listed entities to establish internal codes of conduct and policies for handling UPSI, while Regulation 3(5) requires companies to maintain structured digital databases to ensure accountability and track information access. These internal compliance mechanisms play a vital role in identifying and controlling insider trading risks. Overall, the Indian regulatory framework combines substantive prohibitions with institutional duties and enforcement powers. While proving possession and use of UPSI remains a challenge, the jurisprudence and

[25] *Rakesh Agrawal v. Securities and Exchange Board of India,* (1994) l SAT 160.

[26] *SEBJ v. Cabot international Capital Corporation,* 2004 SCC OnLine Born 220: (2005)

57 SCL 267 (Born)

regulatory intent signal a strict approach aimed at preservmg transparency and investor confidence in the securities market.

III 1.2 Analysis of Landmark Judgements based on historical development of Insider Trading Laws in India

111.1.2.1 Insider Trading Law in India prior to 1992

Insider Trading Laws came to India on 1948, after a Committee Report was submitted regarding the "Regulation of the Stock Market in India" under Title ("P.J Thomas Report")[27].Committee Report suggestions were regarding to "disclosure obligations and restrictions" imposed by the then stock market for "short swing profits". The provisions were later incorporated into the Companies Act ,1956 Sec 307 & 308.

The provision includes certain mandatory disclosure norms given by the Directors and Managers (within the company) termed as Insiders. It was due to lack of formal rules and effective regulations separately under the head of Insider Trading applicable in the Republic India for many years. Later the P. J Thomas report was more deliberated, defined and revised by the upcoming committee reports and panels. P. J. Thomas Report defines the investments in a Country of great Importance and without proper supervision and regulations would result in "serious dereliction of public duty" and "creation of inequalities in the societies as rich getting richer". The report referred corporate insiders as inspired operators (Directors and Managers) and their connected person's friends, family as "inspired operators named no better than the common thief- who must be caught in interest of public."[28] Human being has nature of being "speculative and gamble" so there was a need of speculative dealing in stock exchange.

The concept of "insider trading" in India got evolved during 80's and 90's.The rapid development of the complex and advancing securities market in India required more comprehensive legislation to regulate the Insider trading practices. The Prohibition of Insider Trading regulation was introduced in the

[27] P.J. Thomas, *Report on the Regulation of the Stock Market in India* (Department of Finance, Government of India, 1948).

[28] The Companies Act, 1956 under Section 307 and Section 308.

year 1992 by the SEBI.SEBI PIT Regulations got amended in 2002 after the discrepancies got amended in the 1992 regulations in Hindustan Levers Ltd v. SEBI, Rakesh Agarwal v. SEBI to bring a more transparent, effective and remove the lacunae in the 1992 regulations. The amendment is known as Prohibition of Insider Trading Regulation 2015. In July 1988 SEBI prepared an approach paper on the comprehensive legislation for the securities market with the basic objective of healthy and orderly development of the securities market and adequate investors protection. The approach paper suggested that the proposed legislation would seek to curb fraudulent and unfair trade practices in the securities market.[29]

In the publication released in 1991 titled as "Securities and Exchange Board of India-Objectives, Functions and Activities" the SEBI stated that, "Insider Trading is one of the ills which plague our system today, and there is no legal provisions to curb it. In the absence of the regulatory framework, insider trading fuels illegitimate speculation in the stock exchanges and places the average investor at a great disadvantage. SEBI is working towards a separate legislation for dealing with insider trading. "SEBI issued a consultative paper containing Draft Insider Trading Regulations in which it suggested stringent measures to curb the insider trading practices and deterrent punishment to those who would indulge in it.

The Cohen committee on the Company law reforms in England observed that "Even if legislation is not entirely successful in suppressing improper transactions, a high standard of conduct should be maintained, and it should be generally realized that a speculative profit made as a result of special knowledge not available to the general body in a company is improperly made". At par with the Cohen Committee emphasis on "High Standard of conduct" in regard with the insider dealing, the SEBI by its Press release issued on 19th August 1992 insisted on framing 'Internal Code of Conduct" to check the practice of insider trading.

111.1.3.2 The Introduction to Insider Trading Regulation in India

[29] The P.J. Thomas, "Report on the Regulation of the Stock Market in India" (Government of India, Department of Finance, 1948).

Companies Act 1956, section 307 and 308 provided a legal framework for Insider Trading Regulations. Later the Sachar Committee and Patel Committee reviewed the Insider Trading regulation in 1978. Section 307 provided for maintenance of a register by the companies to record the directors' shareholdings in the company. Section 308 prescribed the duty of the directors and people deemed to be the directors to make disclosure of their shareholdings in the company. The aim of creating the Committee was to provide suggestions and measures to put effective control over the Insider Trading in India and created a defined statute differentiated from others as Insider Trading Regulations.

111.1.3.2.1 Bhabha Committee (1952)

The Bhabha committee in 1952 suggested that directors be required to report information about share sales and purchase in a separate register maintained by the firm. Under Section 307 requires corporations to keep a register of their directors' shareholdings in the company and under Section 308, which means that directors and people deemed to be directors disclose their shareholdings in the company were later added to the Companies Act 1956. Managers of the company were brought to the scope of Section 308 by the Companies Act of 1960. The Sachar Committee suggested that in 1978 strict legislation be enacted to acknowledge traders' transaction facts so that it could be determined that no undue benefit had been made by using price sensitive information.

111.1.3.2.2 Sachar Committee (1979)

In 1979 the Sachar Committee said in its report that Directors, auditors, company secretaries etc. may have some price sensitive information that could be used to manipulate stock prices which may cause financial misfortunes to the public investing. The companies recommended amendments to the Companies Act 1956 to restrict or prohibit the dealings of the employees. This Committee opined that Section 307 and 308 of the Companies Act were insufficient to curb Insider Trading.[30]

The committee recommended that:

[30] *Hindustan Lever Ltd. V SEE!* (2004) 1 Comp LJ 193 SAT, (2004) SCL 351 SAT.

a. Intentions to trade had to be notified by the Insiders.

b. Securities before or after two months after the end of the accounting year must not be traded by Insiders.

c. Insider share dealing must be recorded in a company register.

d. Compensation and civil remedies must be provided.

111.1.3.3.3 Patel Committee (1986)

In 1986 the Patel committee defined Insider Trading as Trading in the shares of a company by the person who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others. The Committee was established in May 1984 to conduct a thorough investigation of stock exchange dealing and give suggestions. The Patel Committee recommended that the Securities Contract Regulation Act SCRA 1956 be amended to make exchanges curb insider trading and unfair insider trading and unfair stock deals. Section 21 of the SCRA mandated compliance with the conditions prescribed under the listing agreement between the company and the stock exchange. Each stock exchange can formulate its own terms and conditions of the listing agreement.[31]

111.1.3.3.4 Abid Hussain Committee (1989)

In 1989 Abid Hussain headed the committee stressed to put civil and criminal penalties under Insider Trading. After the reviews done by the committee and collective recommendations, Central Government under the Securities appellate authority SEBI in 1992 brought SEBI Insider Trading Regulations of 1992 for providing comprehensive legislation on Insider Trading. Also, amendments were included for loopholes in the regulations and were mentioned by litigants in the time before the SEBI and SAT Securities Appellate Authority.

The recommendations of the various committees and the needs of rapidly advancing securities market gave way to the formulation of a comprehensive legislation known as the SEBI (Insider Trading) Regulations, 1992 which after subsequent amendment in 2002 to plug certain loopholes revealed in the cases

[31] *Rakesh Aganval v. SEBI* (2004) 1 Comp LJ 193 SAT, (2003) 49 SCL 351 SAT.

of Hindustan Lever Ltd. v. SEBI[126] and Rakesh Agarwal v. SEBI came to known as SEBI Prohibition of Insider Trading Regulations 1992 and which prohibited fraudulent practice and a person involved in insider trading to be held guilty for such malpractice. The debate of Insider trading legislations revolves around a comment by a former president of The Bombay Stock Exchange in 1992 "There is no other kind of trading in India, but Insider variety". Also, the statement of Mr. Arthur Levitt, the then Securities Exchange Commission (SEC) Chairman in 1998, "Insider Trading has Utterly no place in any fair-minded law-abiding economy".[32]

111.1.3.3.5 N. K Sodhi Committee (2013)

A panel headed by former Chief Justice of India N.K Sodhi by SEBI in 2013 suggested that trades by promoters, employees, directors and their immediate relatives would need to be disclosed internally to the company. The Justice Sodhi Committee on Insider Trading Regulations made a range of recommendations to the legal framework for prohibition of Insider Trading in India and focused on making this area of regulation more predictable, precise and clear by suggesting a combination of principles-based regulations and rules that are backed by principles. The Committee suggested that each regulatory provision may be backed by a note on legislative intent.[33] All the flaws were included in the 2002 Amendment. Thereafter it was named as "Prohibition of Insider Trading Regulation 2015.Recently on 15[1] April 2019 amendments were brought. The N.K. Sodhi Committee emphasized that if any insider's trades were in fact contrary to the nature of UPSI such trading ought not be treated as a wrongful act. Further this issue was also deliberated by the Securities Appellate Tribunal (SAT) in the matter of Chandrakala v. SEBI where on SAT observed that "An entity privy to positive UPSI is likely to purchase, and not sell shares, prior to the publication of UPSI. SEBI finds that a trade is wrong under the PIT Regulations merely because it was executed during the UPSI period and not considering the direction of trade, reduces a serious wrong such as insider trading to a mere technical violation. This order goes against the very edifice on which insider trading laws are

[32] "Insider Trading," *Legal India*, available at https://www.legalindia.com (last visited on March 2026).

[33] Nishith Desai Associates, *"Insider Trading Regulation A Primer"* (2016).

promulgated and unjustly penalize perfectly legal and ethical behaviour of insiders of listed companies. SEBI needs to realign its findings with the regulatory objectives of the Insider Trading laws via outline the 'abuse of UPSI' and not bar all trades while a person is in possession of UPSI.

111.1.3.3 Prohibition of Insider Trading Regulation (1992)

The TISCO[34] case served the wake-up call and highlighted the vulnerabilities in the securities market in India. It prompted the authorities to act and introduce insider trading regulations to prevent such unfair practices and ensure market transparency and integrity. During the first half of the fiscal year 1992-93, TISCO's profits dropped to Rs. 50.22 crore in contrast to the previous fiscal year's profit of approximately Rs. 278.16 crore. Prior to the announcement of the half yearly results there was a notable surge in share trading activities between 22nd October 1992 and 29th October 1992. During this time the Sensex dropped by 8.3%. It became evident that insiders who possessed knowledge of the upcoming poor financial results, maintained the market to make short sales.Due to absence of trading regulations in India during that period it was difficult to investigate the case thoroughly. It proved that there is an urgent requirement for legal regulations and legal framework to address insider trading effectively and protect the interests of investors.[35]

The first significant regulation addressing insider trading in India was introduced through the SEBI prohibition of Insider Trading Regulation 1992.These regulations were enacted with the objective curbing the negative impact of such kind of illegal market practices. The regulations did not provide an explicit definition of the term "insider trading" but they stipulated that any individual who is an insider engages in trading activities that contravene the provisions outlined under Section 3 of the SEBI Insider Trading Regulations 1992 would be held accountable for insider trading and the Regulation 4 mentioned such breach as

[34] *Tata Iron & Steel Co. Ltd. v. Union of India & Others*, 1988 AIR 1269, 1988 SCR (3) 1023, 1988 sec (3)

403, 1988 (2) JT 581, 1988 (35) ELT 605, 1988 PAT LJR 85 (Supreme Court of India, 6 May
1988).

[35] Acuity Law, "SEBI PIT Regulation Amendment: Strengthening Insider Trading Norms" (31 March 2025) https://acuitylaw.co.in/sebi-pit-regulation-amendment-strengthening-insider-trading-norms/

Section 3 of the SEBI Insider Trading Regulations 1992 provides that, when having any unpublished price sensitive information, deal with the securities of the company which are listed on any stock exchange either on his behalf or someone else. Communicate, provide or receive, directly or indirectly any unpublished price sensitive information to any person who during the possession of such unpublished price sensitive information shall not deal in securities. While having any unpublished price sensitive information no company shall deal in the securities of another company or any associate of that other company.

The Securities and Exchange Board of India by the powers vested on it through Section 30 of the SEBI Act 1992 has come up with the Securities and Exchange Board of India Act 1992 has come up with the Securities and Exchange Board of (Prohibition of Insider Trading) Regulation 1992, emphasizing on the prohibition on dealing, communicating, or counselling on matters relating to Insider Trading. The provision clearly states that no insider shall, either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information or communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities. Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law. The provision also states that no company shall deal in the securities of another company or associate it with that other company while in possession of any unpublished price sensitive information. Any insider who deals with securities in contravention of the provisions of regulation 3 or 3A shall be guilty of Insider Trading. The power of investigation vests with the Board which can elect one or several members to investigate the book of accounts and take Suo moto cognizance of any complaint received on behalf of or against an insider.

All listed companies and organizations associated with the securities market, including other intermediaries, are mandated to frame a code of internal

procedures and conduct in correspondence to the Model Code of the 1992 Regulation under Schedule 1.

The burden of proof lies upon the person if he is connected as "connected person" and if that's affirmative then the burden of proof lies upon the SEBI as the securities regulator to prove the persons as Insiders. The case and its establishment based on facts and law depends on "Whether the persons had access to unpublished price sensitive information".[36]

a. As per Regulation 2(c) (1992) of PIT Regulation a "connected person" is "a person holding a position involving a professional or business relationship, including persons who act in such capacity on a temporary basis". Also, there is a provision as "whether there is a reasonable expectation that such person had access to unpublished price sensitive information in relation to that company".

b. Regulation 2(h) as a "connected person" has a wide sphere including "intermediaries. Merchant bankers, brokers, and relatives of such persons".

c. Regulation 2(d) as "dealing in securities to mean subscribing, buying, selling, or agreeing to otherwise deal in securities by persons acting as principal and agent."

d. As per PIT Regulation 2(e) OF 1992 "insider" as

i. An individual who relates to the company.

ii. Have reasonably expected to have access to unpublished price sensitive information in respect to securities of a company.

iii. A person who has received or has access to such price sensitive information.

As per 1992 PIT regulations provmg a person to be an insider held liable under the regulations, the perquisite is access to unpublished price sensitive information.As per PIT Regulation 2(h) (a) "price sensitive information" can be "any information which is directly or indirectly related to the companies which if published is likely to materially affect the company's price of securities. Under Regulation 2(h)(a) with 2(k) defines "Unpublished price sensitive information" as the person can be held liable and caught".

[36] The SEBI (Prohibition of Insider Trading) Regulations, 1992, Gazette of India, reg.

2(c)(ii).

111.1.3.4 The Judicial interpretation of the SEBI Insider Trading Regulation 1992

In Manoj Gaur v. SEBI:[37],the announcement by Jaiprakash Associates Ltd. "JAL" to consider Interim dividend and rights issue for the year 2008-2009 Mrs. Urvashi and Mr. Sameer Gaur wife and the brother of the executive chairman Mr. Manoj Gaur, bought 1000 shares and 7400 shares respectively when the trading window was closed. SEBI adjudicated that Mr. Manoj Gaur dealt in the securities of JAL in the basis of such UPSI.

The question arose such as.

a. The executive chairman was in possession of UPSI leading to purchase of the disputed securities.

b. The Executive chairman indulged in Insider Trading.

c. There was a violation of JAL's code of conduct.

The SAT in this matter held that closure of trading window ipso facto does not mean that there was some UPSI. However, based on the facts of SAT believed the trial balances were available to the chairman and thus he was subjected to financials of JAL and the SAT also decided that there is a lack of concrete or sufficient evidence to establish that Mrs. Gaur and Mr. Sameer Gaur have acquired shares of JAL, on the basis of or motivated by UPSI in the possession of Mr. Manoj.

The Model Code of 1992 PIT Regulation prescribes that the employees/Directors shall not trade in the company's securities when the trading window is closed. Since Mrs. Gaur and Mr. Sameer Gaur are not employees or directors of JAL this restriction does not apply to them. But the code of conduct prescribed by JAL states that the code is applicable to all connected persons and persons deemed to be connected under the Insider Trading Regulations. To the extent Mrs. Urvashi Gaur and Mr. Sameer Gaur were held guilty of breaching the code of conduct of JAL by trading in the securities of JAL when the trading window was closed.

[37] The SEBI, *"Order in the matter of Jaiprakash Associates Ltd.Mano) Gaur, Urvashi Gaur & Sameer Gaur"*
dated March 2026.

In Gujrat NRE Mineral Resources Limited v. SEBI in Securities Appellate Tribunal dated 18th November 2011, FCGL Industries Ltd. ("FCGL") an investment company decided to acquire certain coal mining leases in Australia, in furtherance of which it decided to dispose of part of investment it had in Gujrat NRE Coke Ltd. "Coke Company". FCGL reported its transactions to Bombay Stock Exchange BSE however it failed to disclose the disposal of its investment in the Coke Company. FCGL shares were sold to Matangi Traders and Investors Ltd. ("Matangi") and Marley Foods Pvt Limited ("Marley") where the director and chairman of FCGL were the directors as well. The issue that arose was whether the decision by an investment company and subsequent sale would amount to PSI that needs to be disclosed to the public? Regarding that, the question arose whether trading in securities of FCGL by Matangi and Marley was based on such UPSI. It was held by the SAT that FCGL is an investment company whose business is only to make investments in the securities of other companies. It earns income by buying and selling securities held by it as investments. This being the normal activity of an investment company, every decision made by it to buy or sell its investments would have no effect, much less material, on the price of its own securities. If that were so, then no investment company would be able to function because every time it buys or sells securities held as investments it would have to make disclosures to the stock exchanges where its securities are listed. Therefore, the decision by an investment company to sell its shareholding in another company is only a decision in the ordinary course of its business and not a UPSI.

III 1.3.5 Legislative framework of Insider Trading governance

The governance of insider trading in India is primarily structured around the Securities and Exchange Board of India Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015, along with its subsequent amendments. These legal instruments aim to prevent the abuse of asymmetric access to market-sensitive information and maintain investor trust in the financial system. The SEBI Act, under Section 11, empowers SEBI to protect investor interests and regulate the securities market. Moreover, Section 11B confers upon SEBI the authority to issue necessary directions to any intermediary or

person associated with the securities market in the interest of investors or for orderly market development. For penal action, Section 15G specifically deals with insider trading, prescribing financial penalties and other sanctions against individuals trading based on unpublished price sensitive information (UPSI).

The 2015 Regulations are the cornerstone of contemporary insider trading governance. They offer detailed definitions and compliance obligations. According to Regulation 2(l)(g), UPSI includes confidential information about financial results, dividends, mergers, acquisitions, changes in capital structure, and key managerial appointments. Regulation 2(1)(h) defines an "insider" as someone who is either a connected person or one in possession of UPSI. Regulation 3 prohibits the communication or procurement of UPSI, while Regulation 4 strictly bars any trading while in possession of such infonnation. The scope of governance extends to all listed companies and market intermediaries, including employees, directors, auditors, consultants, and even outsiders who may be temporarily associated with the company and have access to UPSI. Further, Regulation 9 requires listed entities to implement internal codes of conduct and fair disclosure policies, while Regulation 3(5) mandates the maintenance of structured digital databases to monitor access to UPSI.

Judicial interpretations have played a critical role in shaping the enforcement landscape. In Rakesh Agrawal v. SEBI, the Securities Appellate Tribunal clarified that trading based on UPSI, even if done in the interest of the company, violates insider trading norms if carried out without proper disclosure or safeguards.[1] The Bombay High Court in SEBI v. Cabot International Capital Corporation reinforced the wide-ranging powers of SEBI under the SEBI Act, recognizing its preventive mandate to preserve market integrity. These rulings underscore the evolving jurisprudence and the emphasis on a strict liability framework where intent is secondary to access and use of non-public information.

The current scope of insider trading governance m India is comprehensive and preventive in nature, addressing both structural and behavioural risks. It combines statutory prohibitions, regulatory compliance frameworks, and judicial interpretations to build a robust mechanism for market integrity. Despite this,

challenges persist m terms of surveillance, burden of proof, and the complexity of proving intent or misuse in digital environments. Nonetheless, SEBI's increasing reliance on data analytics and cross-border cooperation is a sign of the strengthening institutional capacity to deal with insider trading violations in an era of rapid technological advancement.

III 1.3.6 SEBI (Prohibition of Insider Trading) Regulations ,2015 Amendment

11.1.3.6.1 Prohibition of Insider Trading Regulations 2015 amended from PIT Regulation 1992

As per 2(c) regulation of the SEBI Prohibition of Insider Trading Regulations, 2015, Compliance officer can be defined as a senior officer designated so and reporting to the board of directors or head of the organization in case board is not there, person who is financially literate[134] and is capable of appreciating requirements for legal and regulatory compliance and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring trades and he implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization as the case may be. Compared to 2 (c) of the PIT Regulation 1992, amended 2015 PIT Regulation 2(d) has wider ambit with enhanced sphere.[38]

As per Regulation 2(e) of 2015 "generally available information" meant to be accessible to the public on a non-discriminatory basis" which includes "information published on the website of the stock exchange". The legislative intent for the insertion of the provisions was "so that it is easier to crystalize and appreciate what unpublished price sensitive information is". "Information accessible on a discriminatory basis" won't be acceptable and falls under the ambit of UPSI.

As per Regulation 2(n) of 1992 PIT Regulation "unpublished pnce sensitive information can "likely to materially affect the price upon coming into the

[38] A financially literate person has the capability to understand and interpret fundamental financial documents, including the balance sheet, income statement, and

cash flow statement. This literacy provides individuals with critical skills necessary to evaluate an entity's financial condition and to make sound financial and economic choices.

public domain".

As per Regulation 2(g) the term "Insider" is defined as "anyone who is either connected person or is in possession of UPSI or have access to UPSI". Insider means any person who is a connected person or in possession of UPSI. Legislatures intent to link between "connected person" and "insider" can be defined as a person "who is in possession or receipt of having access to UPSI is considered to be an insider, without thinking if the person came into possession or have of such information". The burden of proof lies before the person as insider to prove before the SEBI that the person is not involved or indulged in access to UPSI information at the time of trading".

As per Regulation 2(1) "Prohibition of communication of UPSI and trading based on UPSI" provides exception to "legitimate purposes" and "performance of duties" or "discharge of legal obligation" and their satisfaction as per section 3 and 4.

As per Regulation 4 of the SEBI Prohibition of Insider Trading Regulation 2015 the insider shall not trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information. When a person who trades in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information m his possession. The Insider may prove his innocence by demonstrating that trades were pursuant to a trading plan set up in accordance with Regulation 5.

As per Regulation 5, a trading plan formulated by an insider is subject to the following conditions: Trading as per trading plan can commence after 6 months from the date of public disclosure of such trading plan. Trading as per trading plan cannot be executed on the 20th trading day prior to the last day of the financial period and the 2nd trading day after the disclosure of such financial results. (Logic is that 20th day earlier to close of financial period the company has to announce financial results. The trading plan should not be less than 12 months. Two trading plans should not overlap with each other. (Second trading plans cannot be started unless the first trading plan ends). Such trading plans should set out either the value of trades to be

affected or dates on which such trades shall be affected. The trading plan shall not be used trading in securities for market abuse.

As per regulation 7 which defines the disclosure requirements by certain people as per the SEBI Prohibition of Insider Trading Regulations, 2015.No concept of the trading plan was provided. An Insider may carry out trades pursuant to a trading plan which is approved and disclosed to the public. The regulation of 2015 allows people to engage in regular divestments in relation to the company without attracting sanctions in relation to insider trading. The trading plan would be disclosed to the public in advance; therefore, it would be easy for the investors to front run the insider and artificially increase and decrease the price of the scripts before the expected date of trading. The concept of the trading plan would be applicable if the script of the company is highly liquid and where the trading plan is not for the large quantities of the shares.

Under the Initial Disclosure every person on an appointment as KMP or director of the company or upon becoming a promoter or member of promoter group shall disclose his holding of securities of the company within 7days of his appointment as KMP, director or becoming a promoter.

Under the Continual Disclosure every promoter, member of promoter group, designated person and director of every company shall disclose to the company the number of securities acquired or disposed of within 2 trading days if the value of the securities traded over any calendar quarter exceeds

10 lakhs or such other value as may be specified. On receipt of the above information, the company shall notify the same to the stock exchange within

2 trading days of receipt information or from becoming aware of such information. The above disclosures shall be made in such form and such manner as may be specified by the SEBI from time to time.

Under Disclosures by connected people listed company may at its discretion require any other connected person to make disclosures of holdings and trading m securities in such form and at such frequency as may be determined by the company to monitor compliance.

In India the SEBI prohibition of Insider Trading was introduced with the SEBI

Prohibition of Insider Trading Regulation 1992.This regulation didn't provide for Chinese walls policy or any defence to Insider Trading to manage UPSI. Regulation 3B was introduced by an amendment in 2002, which introduced the Chinese wall defence into the 1992 Regulations.

a. That the decision to enter into a transaction or agreement was taken on its behalf by person or persons other than the officer or employee of the organization that possesses UPSI.

b. That the company has put in place such systems and procedures which demarcate the activities of the company in such a way that the person who enters into transactions in securities on behalf of the company cannot have access to information including UPSI which is in possession of other officer or employee of the company

c. It had arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision that no advice with respect to the transactions or agreement was given to that person or any other persons by that officer or employee and

d. Factually the information was not so communicated, and no such advice was given.

SEBI recognized Chinese walls as an internal mechanism to prevent leakage of information within organizations. These regulations required all listed entities in 2002 to place and maintain Chinese walls under a code of conduct known as the "Minimum Standards for the Code of Conduct to Regulate, Monitor and Report Trading by Insiders".[39]

These standards required the adoption of a Chinese Wall policy to separate areas which routinely have access to confidential information ("inside areas") from areas which deal with sale/marketing/investment advice or other departments providing support services ("public areas"). Employees in the inside area shall not communicate any UPSI to any one in public area, and

[39] According to Schedule B, Clause 9 (2.4) of the SEBI (Prohibition of Insider Trading)

Regulations, 1992, and as reinforced by the SEBI Committee on Corporate Governance through Notification DBOD No. BC. 112/08.138.001/2001-0l dated June 4, 2002, financial institutions were instructed to

implement "Chinese walls" within their organizational structure. These directives aimed to establish both structural and procedural safeguards to ensure a clear separation between divisions that access confidential or price-sensitive data and those involved in market trading. The primary purpose of this internal segregation is to prevent the exploitation of insider knowledge, ensure transparency, and reduce potential conflicts of interest within such institutions.

the organization 1s required to physically segregate such employees.

In the exceptional circumstances, employees from the public areas may be brought "over the wall" and given confidential information on a "need to know" basis and under intimation to the compliance officer.

1. Dr. T.K Vishwanathan Committee Report on fair market conduct.

Later the Dr. T.K Vishwanathan Committee was constituted for preparing a report on "fair market conduct"[40] The recommendations were included in the 2019 amendment of "Prohibition of Insider Trading Regulation" as enforced on 15[1] April 2019. T.K Viswanathan Committee foresaw the importance of prohibiting, preventing, detect and punish market abuse and protect the investors' confidence and empowers the economic growth of the country through its stock exchanges. Amendments to the 2019 Prohibition of Insider Trading regulation recognize to be dynamic with more flexibility on corporations requiring the board of directors of market participants to define their own policies and practices to recognize legitimate purposes[41].T.K Vishwanathan committee also recommended two separate code of conduct for listed entities termed as "companies" and other person entities as "market intermediaries". The term "legitimate conduct" would be applicable to "fiduciaries" and the person who would have access to unpublished price sensitive information (UPSI). As the corporate being as "employee within the company" or "in a capacity of a market intermediary.

The Insider Trading amendments were aimed at redressing the issues in identifying and prosecuting individuals related to insider trading practices. The amendments were aimed at addressing the prevention and obtaining of direct evidence related to insider trading violations which have been caused due to delay in resolving insider trading cases. The amendments sought to streamline the process and expediate the insider trading investigation and prosecution. The key objectives of the amendments were to encourage the public to report any violations of insider trading to SEBI and to incentivize whistle blowers

[40] T.K. Vishwanathan, *Report of the Committee on Fair Market Conduct*, Securities and Exchange Board of India (August 8, 2018), available at https://www.sebi.gov.in/ (last

visited on March 2026).

[41] T.K. Vishwanathan, *"Report of the Committee on Fair Market Conduct"* 14, para. 4.1 (SEBI, 2018) ("It would be difficult to unequivocally define such term whether by way of inclusive definition or otherwise.").

with rewards.

The key points of the amendments:

a. The larger ambit of the definition of Insider Trading in related to direct and indirect transactions.

b. Informant reward mechanism and protection of identity of informants. The Amendments introduced a mechanism to reward. Individuals who provide information about the violations of insider trading to SEBI. The whistleblowers can provide information anonymously and the SEBI is required to maintain the confidentiality of their identity.

c. Wider ambit of powers of investigation and enforcement. These include the power to access call data records and conduct search and seizures.

d. Streamlined settlement process: The amendment is aimed to expedite the settlement process for insider trading cases.

The Committee on Fair Market Conduct m 2019 recommended removing the explicit reference to "material events" from the PIT Regulations as any unpublished information with the potential to impact prices would be considered UPSI.SEBI analysis shows that companies now classify unpublished price sensitive information as UPSI based on the enumerated list, resulting in inconsistencies .To address this SEBI proposes amending the PIT Regulations to include "material events accordance with Regulation 30 of SEBI - Listing Obligations and Disclosure Requirements Regulations, 2015", in the UPSI definitions This would shift the focus to materiality but blur the distinction between UPSI and MNPI.Compliance measures like closing the trading window and obtaining pre clearance would be required. SEBI's objective in initiating this review is to establish consistent compliance standards throughout the ecosystem by aligning material events under the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (Listing Regulations) with the definition of UPSI.

2. SEBI Prohibition of Insider Trading Regulation Amendment 2020

As per Regulation 3 "any individual who is handling UPSI should ensure that there is a digital database maintained where the permanent account number (PAN) should be made available and internal control can be trapped so that

it can't be hampered or misused". As per Regulation 5 "The database is meant to be saved and preserved for not less than 8 years after the completion of transaction", prior to that there were confusions with the provision "UPSI handled by intermediaries", now with respect to specific issues SEBI has introduced the maintenance of Digital database by the entities.

The transaction listed under Schedule B states that "While exempting them from Trading window, restrictions were not amendable as "There was absence if strict following of Code of Conduct defined under PIT Regulations. SEBI has mandated ever listed entities, intermediaries, and fiduciaries to maintain a structured digital database with Pan card and Personal details of the individual upon whom UPSI is shared. The restriction upon the trading window would be applicable to OFS or "offer for sale" and "Rights entitlement". Schedule B of PIT Regulations makes it mandatory for making trading window closure upon the designated person and their relatives as they might have reasonable access to UPSI.

In the notification of July 2020 SEBI stated that "Allowing the selling of promoters holding by way of OFS and exercise RE in the period of closure of trading window". It is specified that all listed entities, intermediaries, and fiduciaries must mandatorily prompt and report Code of Conduct for the violation of "Prohibition of Insider Trading Regulation in a format prescribed to the bonuses and the amount recovered in default shall be mandatorily deposited on the IPEF (Investor Protection and Education Fund" as per SEBI. The introduction of Digital database shall remove the asymmetry in information during the period of investigation done by SEBI.

3. Reforms and Amendment of 1992, 2015 and 2020 Prohibition of Insider Trading Regulations in India under the ambit of SEBI Act 1992, The reason and need for the reforms with its implication in the current securities market

SEBI always took an active step in curbing insider trading but there have been difficulties in detecting and prosecuting the perpetrators of the crimes. This is because of the lack of primary evidence upon the person committing Insider Trading and it affects the success rate and investigation of the cases. In order to remove the complexity SEBI tried to seek power for intercepting phone

calls in way to aid its investigation and surveillance mechanism. As per SEBI discussion paper dated 10th June 2019.

4. SEBI Prohibition of Insider Trading Regulation Amendment 2022

On 28th June 2023 SEBI introduced a new framework with an aim to restrict trading by freezing the PAN of the Designated person (DP) at the security level.

The framework will be applicable to all the listed entities from 31st March 2023 ensuring smooth implementation of the restrictions.

The framework will be effective for more transparent and fair market conduct. In the circular dated 5th August 2022 SEBI intended to freeze the designated persons so that their trading can be restricted during the TWC period.

BSE via the circular[42],3l st March 2023 issues a schedule for implementing the process of restricting trading by Designated Persons by freezing their PAN at security level. According to the said circular issued by SEBI it was implemented for listed entities forming part of SE NIFTY 50, for and from the quarter ended September 2022.

For March 31si, 2024, it appears all listed companies are under compliance unlike the previous quarters where only shortlisted companies were subject. Qualifying companies must include all equity ISIN and ISINs that are convertible into equity. The listed entities are required to designate one of the depositories as designated depository and provide include information of PAN of promoter's group, directors and designated persons in the manner prescribed to the SEBI circular no-SEBI/HO/ISD/ISD/CIR/P/2020/168 of 9th September 2020.The listed entities shall update the designated person list in the manner specified by the depositories on a regular basis. The Circular notification shall come into force with effect from the quarter ending 30th September 2023.

[42] The Securities and Exchange Board of India (SEBI), *Circular No. SEBIIHOIISDIISD-SEC-4/PICIR/2022/107, Trading Window Closure Period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulation, 2015 - Framework*

for Restricting Trading by Designated Persons by Freezing PAN at Security Level ,August 2022, available at https://www.sebi.gov.in/ (last visited on March 2026).

The SEBI Prohibition of Insider Trading Amendment Regulations 2022[43],issued by the SEBI introduced in Chapter IIA to the existing SEBI PIT Regulations, 2015.

The newly introduced chapter imposes restrictions on communication and trading in mutual fund units by insiders, whereby insiders are now prohibited from trading in mutual fund units when they possess unpublished price sensitive information that could significantly impact the net value of a scheme or the interests of unit holders. The amendment establishes the possibility that any dealing in mutual funds units by a person having access to unpublished price sensitive information are motivated by their knowledge of such information. The amended regulation requires asset management companies to disclose quarterly aggregated details of holdings in their mutual fund schemes by designated persons, trustees and their immediate relatives and directs the board of directors of such AMCs to ensure that the CEO or MD formulates an approved code of conduct for dealing in mutual fund units by designated persons and their immediate relatives, ensuring compliance with the regulations.

SEBI has also introduced an Institutional mechanism for prevention of Insider Trading. The Mechanism established effective internal controls for ensuring compliance with the regulations and prevent Insider Trading.

The SEBI recently released a series of consultation papers titled as "Consultation paper on draft SEBI (Prohibition of Unexplained Suspicious Trading Activities in the Securities Market Regulations 2023." Requesting public input in various regulatory matters. The papers discuss the various strategies to combat illicit Insider Trading practices, front running pump and dump schemes. SEBI acknowledges that the market participants are increasingly employing new techniques to engage in fraudulent activities in the securities market, while concealing their identities and relationships. These activities often involve evasive tactics such as mule accounts, creating complex networks of entities to layer funds and communicating through encrypted electronic platforms like Face Time, WhatsApp and BOTIM etc. As

[43] The Securities and Exchange Board of India, Prohibition of Insider Trading Regulations, 2015.

a result, the traditional sources of evidence collection like Call Data Records and Bank records are becoming ineffective in establishing the preponderance of probability. To coup these fraudulent practices SEBI has proposed a new regulatory framework where individuals showing unexplained suspicious trading patterns, involving abnormal gains in securities and material non-public information would be presumed to violate securities laws unless they can effectively counter the presumption.

Another significant point of view from market participants is the intended examination of the definition of 'Unpublished Price Sensitive Information' (UPSI) with the SEBI (Prohibition of Insider Trading) Regulations 2015 (PIT Regulations).

In a Consultation paper dated 24th November 2023[44] SEBI provided a report for comments on the titled providing flexibility in provisions relating to 'Trading Plans' under the SEBI Prohibition of Insider Trading Regulations, 2015 mentioned following suggestions:

The concept of a trading plan was introduced under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) to offer a compliant mechanism for certain categories of insiders such as Key Managerial Personnel (KMP) and senior management who are often in continuous possession of Unpublished Price Sensitive Information (UPSI) and thus face significant restrictions on trading. These individuals typically operate under very narrow windows for legitimate trading activities, often hindered by mandatory trading window closures around financial results. However, they may need to engage in transactions for legitimate purposes such as creeping acquisitions or compliance with minimum public shareholding requirements. In addition, stock options form a significant part of KMP compensation, and disposing of shares acquired through the exercise of these options becomes challenging when UPSI is continuously held. To address these concerns, the trading plan mechanism was intended to enable trading in a structured and

[44] The Securities and Exchange Board of India (SEBI), "Consultation Paper on Providing Flexibility in Provisions Relating to Trading Plans under the SEBI (Prohibition of Insider Trading) Regulations, 2015",24 November 2023 https://www.sebi.gov. in/reports-and-statistics/reports/nov-2023/consultation-paper-on- providing-flexibility-in-provisions-relating-to-trading-plans-under-the-sebi-

prohibition-of-insider-trading- regulations-2015 793 l 7.html (last visited on March 2026).

transparent manner. Despite its utility, the current framework 1s considered overly rigid, which has led to limited adoption. Recognizing this issue, a working group comprising representatives from SEBI, stock exchanges, and market stakeholders was formed to review and propose revisions to the trading plan provisions in the PIT Regulations. The review primarily focuses on introducing greater flexibility to encourage broader use of trading plans by insiders who consistently possess UPSI.

Key recommendations include reducing the "cool-off' period between disclosure and implementation of a trading plan from six months to four months. Additionally, the minimum duration for which a trading plan must remain in effect may be reduced from twelve months to two months. The group also proposed eliminating the blackout period restriction currently imposed during the trading plan's operation. Another important suggestion is allowing insiders to define price limits when formulating their trading plans, such as setting upper limits for purchase transactions and lower limits for sales, within a 20% range (positive or negative) of the security's closing price on the date of plan submission. If market prices fall outside the pre-set range, the trade would not be executed. Where no price limit is specified, the transaction must proceed at prevailing market prices. Furthermore, the working group recommended removing the existing exemption that excludes trades executed under a trading plan from contra trade restrictions. This means that such trades would now be subject to the same contra trading limitations as other insider transactions. It was also proposed that the timeline for disclosing trading plans to stock exchanges be shortened to two days from the date of approval. A standardized reporting format for trading plan disclosures may be developed in consultation with market participants.

Regarding disclosing personal information in trading plans, Regulation 5(5) currently requires compliance officers to notify the trading plan, including details such as the insider's name, designation, and PAN, to the stock exchanges. This level of transparency is designed to assist investors in making informed decisions and to aid stock exchanges in monitoring compliance. However, concerns were raised about privacy and the risk of personal data misuse. The working group considered several alternatives. One option was to

mask the insider's identity entirely in public disclosures. Another was to maintain the current approach, disclosing full personal details. The majority of the group supported the latter, citing the need for transparency and traceability. A third proposal suggested a dual- disclosure system: insiders would submit a complete version of the trading plan with personal details to the stock exchange (for confidential use), while a redacted version excluding personal identifiers would be made public. To prevent misuse and enable reconciliation, a common reference number or timestamp would be assigned to both versions. These recommendations seek to balance regulatory oversight, market transparency, and privacy concerns while encouraging the use of trading plans as a viable compliance tool for insiders operating under frequent UPSI constraints.

III 1.2.1 The Companies Act 2013 and relevant provisions under Insider Trading

The Companies Act, 2013, incorporates a comprehensive framework to combat insider trading, placing primary responsibility for regulation and enforcement on the Securities and Exchange Board of India (SEBI). These statutory provisions aim to uphold market fairness, discourage unethical conduct, and safeguard investor confidence. Several key sections of the Act delineate penalties and liabilities associated with insider trading. Section 195 empowers SEBI to levy monetary penalties on individuals involved in such misconduct, with the fines proportionate to the illicit gains or losses avoided, thereby ensuring fairness in enforcement. Section 195A introduces criminal sanctions, where offenders may be subjected to imprisonment along with financial penalties. The extent of these sanctions depends on the gravity and consequences of the offense, underlining the seriousness of insider trading.

Under Section 195B, SEBI is authorized to order the disgorgement of unlawful profits, requiring wrongdoers to return the illicit earnings to affected investors or the regulatory authority. Section 195C enables SEBI to restrict individuals from participating in securities markets for a specific duration, serving as a preventive tool to curb repeated violations.

Civil remedies are available under Section 213, allowing victims of insider trading to pursue compensation through legal proceedings, thereby

complementing regulatory enforcement with avenues for restitution. Section 216 holds directors and key managerial personnel liable for insider trading conducted by the company, thereby reinforcing accountability and corporate governance standards.

Section 219 attributes liability to companies for insider trading breaches, mandating corrective actions by the Board against defaulting personnel. Additionally, Section 28A grants SEBI the authority to confiscate electronic devices and records pertinent to insider trading investigations, enhancing its capacity to gather critical evidence. Together, these provisions form a strong legal infrastructure aimed at curbing insider trading under the Companies Act, 2013. The framework stresses deterrence, responsibility, and market transparency while ensuring investor protection and fostering trust in the financial system.

III 1.3 Securities Exchange Board of India (SEBI) as the Regulatory Authority

The Securities and Exchange Board of India (SEBI) serves as the principal regulatory authority overseeing the securities markets in India. Comparable to the Securities and Exchange Commission (SEC) in the United States, SEBI plays a pivotal role in maintaining the integrity and efficiency of the financial markets.[45]

The primary mandate of SEBI is to safeguard the interests of investors, ensure the orderly growth of the securities market, and regulate its operations. Its stated purpose is to protect investors, foster market development, and oversee all activities related to securities trading, including matters directly or indirectly associated with it. By providing a regulatory framework and addressing market challenges, SEBI aims to create a fair, transparent, and robust securities market ecosystem in India. Securities and Exchange Board of India (SEBI) was initially formed as a non-statutory organization on April 12, 1988, through a resolution passed by the Government of India. Later, it gained statutory recognition with the enactment of the Securities and Exchange Board of India Act, 1992. The Act officially came into effect on January 30,

[45] The Securities and Exchange Board of India, *"Index,"* available at https://www.sebi.gov.in (last visited on March 2026).

1992, solidifying SEBI's role as a regulator of the securities market in India. The Securities and Exchange Board of India (SEBI) operates its headquarters from the Bandra-Kurla Complex, a prominent business hub in Mumbai. To ensure widespread accessibility and efficient functioning, SEBI has established regional offices in key metropolitan cities such as New Delhi, Kolkata, Chennai, and Ahmedabad, along with numerous local offices in cities like Bangalore, Jaipur, Guwahati, Patna, Kochi, and Chandigarh. SEBI's responsibilities focus on three primary stakeholders in the securities market:

- Securities Issuers: Companies seeking to raise capital through public or private offerings.
- Investors: Individuals and institutions investing in securities markets.
- Market Intermediaries: Entities like brokers, underwriters, and other participants facilitating market operations.

As a regulatory authority, SEBI drafts policies, enforces compliance through statutes, conducts judicial reviews by issuing rulings and orders, and undertakes investigative and punitive actions when necessary. For instance, SEBI enforced a ban on short selling in the Indian market from 2001 to 2008 to ensure stability during turbulent periods.

The governance of SEBI is vested in a board of directors comprising:

- A Chairperson, appointed by the Government of India.
- Two representatives from the Ministry of Finance.
- One member nominated by the Reserve Bank of India (RBI).
- Five additional members, also appointed by the Government of India.

This multi-representative structure ensures diverse expertise, enabling SEBI to address the dynamic needs of India's financial markets effectively. SEBI's primary objective is to ensure the protection of investors, foster the growth of the securities market, and regulate its functioning. The Board's preamble highlights its mission as safeguarding investor interests, promoting market development, and overseeing all activities related to the

securities market, along with addressing any ancillary issues. This transformation from a non-

statutory body to a statutory authority marked a significant step in enhancing the transparency, accountability, and overall integrity of the Indian securities market.

111.1.4 Insider Trading Provisions under the Companies Act, 2013 (Omitted)

Under the Companies Act, 2013, insider trading was addressed in Section 195, which prohibited any person, including directors and key managerial personnel (KMP), from engaging in insider trading activities. This provision aimed to prevent individuals with access to unpublished price-sensitive infonnation (UPSI) from misusing such information for personal gain. Violations of this section could result in imprisonment for up to five years, fines ranging from

₹5 lakh to ₹25 crore, or three times the number of profits made, whichever was higher, or both.

However, Section 195 was omitted by the Companies (Amendment) Act, 2017, effective from February 9, 2018. The rationale behind this omission was to eliminate redundancy and align the Companies Act with the Securities and Exchange Board of India (SEBI) regulations, which comprehensively govern insider trading. SEBI's framework, particularly the SEBI (Prohibition of Insider Trading) Regulations, 2015, provides detailed guidelines and enforcement mechanisms for insider trading offenses.[46]

Post-omission, the regulation of insider trading falls exclusively under SEBI's jurisdiction. The SEBI Act, 1992, along with the 2015 Regulations, defines insider trading, outlines the responsibilities of insiders, and prescribes penalties for violations. These regulations apply to securities that are listed or proposed to be listed, thereby excluding private companies and unlisted public companies from their ambit.[47]

In summary, while the Companies Act, 2013, initially contained provisions to curb insider trading, these were later deemed redundant and were omitted to streamline the legal framework. Currently, SEBI's regulations serve as the

[46] Effective from 12.09.2013 available at Section l of Companies Act, 2013 :- Short title, extent, commencement and application= IBC Laws (last visited on March 2026).

[47] The Securities and Exchange Board of India Act, 1992 (Act 15 of 1992), s. llC.

pnmary legal mechanism to prevent and penalize insider trading m India.

111.2 Penalties and Enforcement Mechanisms

111.2.1 Role of SEBI in Investigating and Penalizing Insider Trading

The Securities and Exchange Board of India (SEBI) conducts investigations under its quasi- judicial mandate, which requires adherence to procedural fairness and compliance with due process. These processes ensure a fair hearing for affected parties and mandate that SEBI issue well-reasoned orders. Under the SEBI Act, the regulatory authority can initiate investigations if it suspects individuals or entities involved in the securities market of breaching laws or regulations. Investigations may also be triggered if SEBI believes certain securities transactions are detrimental to investors or market stability. This authority extends to both legal and equitable considerations.[48]

SEBI's investigative powers include:

- Requesting information or documentation from any individual or organization linked to the Indian securities market.
- Summoning individuals for testimony and enforcing their attendance.
- Examining financial records, registers, and other corporate documents.

As part of its quasi-judicial role, SEBI operates with powers comparable to those of a civil court under Indian law, as outlined in the Code of Civil Procedure, 1908.[49] It must adhere to the procedural standards established for civil cases while executing its functions. These powers and processes form the foundation for SEBI's regulatory oversight, but they also raise critical legal questions about the scope and application of its investigative authority.

[48] *National Securities Depositories Limited v. Securities and Exchange Board of India,* (2017) 5 SCC 517.

[49] Umakanth Varottil, "Overhauling the Insider Trading Regulations: Part l" *JndiaC01pLmv* 21st December 2013, available at Overhauling the Insider Trading Regulations: Part l= IndiaCorpLaw (last visited on March 2026).