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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INSIDER TRADING—A WHISPERER GOING UNNOTICED

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INTRODUCTION

It is a fact that some secret information is always hidden from the public eye, and here comes our insider trading. In a basic sense, insider trading involves the buying or selling of a company's stock using secret information that is ahead of its time and is hidden from the public eye. By utilizing this information, one can generate substantial profits. The sharing of this information is called a tip. People typically involved in this are prominent politicians, CEOs, friends or family of an insider, company employees, and hackers.

Insider Trading is illegal because it gives a party an unfair advantage over others. It is like a maze where all the people are at a starting point, but the catch is that one knows the map already and the others are still clueless. and they just wander in the big market of stocks and prices, waiting to make it out¹. Securities and Exchange Board of India was set up in 1988 to look after this issue². Under the SEBI Act, soon after its implementation, they announced punishment for insider trading up to 2 years of imprisonment and a fine up to 5 lakhs, or both³.

HOW IS INSIDER TRADING RELEVANT GLOBALLY IN CURRENT TIMES

Recently on Truth Social, a social media platform, Donald Trump posted two tweets saying- **BE COOL! Everything is going to work out well, and another one is saying THIS IS A GREAT TIME TO BUY!!** DJT. DJT is a media company run by Trump. Later, after these two posts, he announced a pause on tariffs. Tariffs are taxes paid on goods being introduced into the economy. When tariffs are cut, stock prices go up, and companies do not need to

¹ U.S. Sec. & Exch. Comm'n, *Insider Trading*, Investor.gov, <https://www.investor.gov/introduction-investing/investing-basics/glossary/insider-trading> (last visited Apr. 10, 2025).

² Sec. & Exch. Bd. of India, *About SEBI*, SEBI, <https://www.sebi.gov.in/about-sebi.html>

³ Jairaj Kapadia, *Insider Trading: SEBI on Test*, 27 Econ. & Pol. Wkly. 2571, 2571–72 (1992).

compromise on lowering profits. After Donald Trump's big step, the stock prices rose sky high, and everyone started buying stocks. People feared this step as he commented and influenced people to buy stocks, one of the stocks being of his own company. It's quite evident he might have used some insider information to regulate the market in this way⁴. This is an example of a politician using his position to gain profit. To battle these situations, we have the Securities Exchange Commission 1934. Previously in history, the case of **Martha Stewart** gained international attention in 2004. She sold off her shares using a piece of insider information, tarnishing a massive reputation. Her case highlighted loopholes in the current law⁵. The US is the biggest hub of stock market with a market cap of 52 trillion dollars⁶. As the economy progressed, the Securities Exchange Commission also became alert and stringent with its punishment. The case of **Raj Rajaratnam**, founder of Galleon Group, a hedge fund company. He got arrested in 2009 for 14 insider trading events. He was found guilty, despite defending himself, that all the information received was based on public research, and he was imprisoned for 11 years and received an additional fine of \$ 92.8 million⁷. There are tons of cases directing us to a problem much bigger than it seems. It's not a fair competition, and it is becoming toxic and fearful for the upcoming traders, especially the young generation. There is an ongoing debate of Ethics vs. law. Does insider Trading really harm anyone individually? People act for their benefit, and it's their right to make profits. Though Insider Trading is illegal but it might not really be unethical⁸.

IMPACT IN INDIA

The craze of stock market is booming in India, considering the number of Demat accounts opened in the past few years. The larger population means it becomes more difficult to keep an eye on the loopholes existing in the market, so to battle this, we have **the Securities Exchange Board of India Regulations, 2015 (Prohibition on Insider Trading)**. It gives a definition of an Insider, which means somebody who is connected to the company and holds a **USPI (Unpublished Price Sensitive Information)**. Communication of USPI is illegal. Let us get a

⁴ India Today Web Desk, Donald Trump's 'Buy Stocks' Tip Before Tariffs Pause Raises Calls for Insider Trading Probe, India Today (Apr. 10, 2025), <https://www.indiatoday.in/world/us-news/story/donald-trumps-buy-stocks-tip-before-tariffs-pause-raises-calls-for-insider-trading-probe-2706713-2025-04-10>.

⁵ James H. Thompson, A Global Comparison of Insider Trading Regulations, 3 Int'l J. Acct. & Fin. Reporting 1 (2013).

⁶ Sibilis Research, Total Market Value of the U.S. Stock Market, <https://sibilisresearch.com/data/us-stock-market-value/> (last visited Apr. 10, 2025).

⁷ Ethics Unwrapped, Raj Rajaratnam: Insider Trader, <https://ethicsunwrapped.utexas.edu/video/raj-rajaratnam-insider-trader> (last visited Apr. 10, 2025).

⁸ Robert W McGee, *Applying Ethics to Insider Trading*, 77 Journal of Business Ethics 206 -207 (2008).

grip of what constitutes a UPSI. A newspaper publishing information with all backed up facts, details, outcomes then it does not constitute UPSI, but a vague rumour about market trend published in a blog will constitute a UPSI. A UPSI influences the investor to change their decision after getting in contact with the news. In the case of *SEBI Vs. Udayant Malhoutra*, the court held that Insider Trading shakes public confidence and loses investors' trust, and one should ensure fairness and integrity in the securities market⁹. In previous cases, we have seen there is a lack of circumstantial evidence found, in the case of *SEBI Vs. Kishore R. Ajmera*, the court asked for a reasonable man test to be conducted to identify insider trading. There should be some reasonable evidence to establish that a sane man believes it is insider work. Courts accept circumstantial shreds of evidence¹⁰. They often look at relationships and the timing of the purchase and selling of stocks. In the case of *CSRIL*, Mr. Pathak was working on a stock deal, and his sister and relatives bought shares. The court ruled that a family relationship was established and that it constituted insider trading¹¹. The problem arises when we look at SEBI having unchecked power because now it does not need solid proof to establish insider trading. By only stating a relation between the information provider, SEBI can punish the person. This can be easily manipulated and gives utmost authority to SEBI, and could be misused. The US Court in the *Raj Rajaratnam* case, as previously mentioned, gave insightful measures to use circumstantial evidence. There should be access to information, some form of relationship, timing of contact and timing of trades that took place, trade patterns and manipulations, and there was an attempt to hide the information. All these can give a strong backing against the wrongdoers. It is fair and justified.

ROLE OF M&A

During a Merger where two companies come together into one, and in acquisitions, one company takes control over the other and, in a literal sense, acquires the smaller company. These are big deals and the information is confidential. These events can influence the market by raising or a drop in stock prices, affecting employment opportunities, customer service, and leadership roles in the company. M&A are done to sustain in the economy and make big profits. This news is a game changer and if somebody holds this UPSI and leaks it, it accounts to insider trading. It can be done through external links of the company before the big announcement or

⁹ Securities and Exchange Board of India v. Udayant Malhoutra, (2021) 1 SCC 219.

¹⁰ Securities and Exchange Board of India v. Kishore R. Ajmera, MANU/SC/0212/2016.

¹¹ Rajat Sethi, Misha Chandna & Aditi Agarwal, Insider Trading: Circumstantial Evidence Is Evidence Enough?, 32 NAT'L L. SCH. INDIA REV. 205 (2020)

CEO, employers etc. Use of UPSI is illegal in M&A's except in cases of transactions where the company employee needs to know the big step for the benefit of their company, it becomes necessary to share this info. As long as the sharing of sensitive information is done for legitimate business purposes while maintaining transparency it is valid. In the case of Emami, a major FMCG company announced in 2015 that they were going to acquire Kesh King for Rs 1651 crore. The trend on stock prices was noticed as it jumped from Rs.935 before announcement to Rs. 1053.50 after announcement. This major fluctuation in the prices was the role of a UPSI. But the catch is that all the trades happened between the promoters, and no outside party was involved. Here comes the SEBI Regulations Act, 2015, clause 4(1)¹². It states that no insider must not trade while in possession of a UPSI until they prove their innocence. But as no unfair advantage was proven by an outsider, it did not amount to UPSI misuse¹³. There comes off-market Vs. on-market deals. Under off-market trade, private deals between promoters who both hold the same UPSE are exempted under 4(1). On-market deals are not done privately. If people hold the same UPSI as in the case of Emami, the trade was fully public and disclosed, and no one was cheated. Even though the deal was on the market, it did not amount to unfairness.

HOW TUNNELING PRACTICE FUELS INSIDER TRADING

Tunneling is the movement of assets and income out of companies for the advantage of those who control them, usually promoters, insiders, or controlling shareholders, at the detriment of minority shareholders¹⁴. One can sell shares through the info before the market hits rock bottom. Tunneling creates UPSI. Due to weak internal protocol, tunneling and insider trading co-exist in nature.

Satyam Scandal throws perfect light on the practice of tunneling and insider trading grave consequences. Satyam Computer Service Ltd. Was founded by B.Ramalinga Raju. The investigation had revealed that there was a falsification in the company's account to gain profit including inflated profits amounting to Rs. 5000-7800 crore¹⁵. The promoters (Raju and family) sold/pledged Satyam shares despite knowing that the financials were fake. There was

¹² SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015, Section 4(1), 2015, (India)

¹³ In Re: Emami Limited and Ors., MANU/SB/0219/2018 (SEBI/SAT).

¹⁴ Investopedia, Tunneling, INVESTOPEDIA (Apr. 10, 2025, 9:00 PM), <https://www.investopedia.com/terms/t/tunneling.asp>.

¹⁵ S. Harish, *Insider Trading with Special Reference to the Satyam Saga*, 2 NLIU L. REV. 52, 52–66 (2011).

clear evidence of insider trading by the board of directors and the company's management¹⁶. In the big world of money flows, everyone is trying to have a one step advantage over other? It poses a psychological question forward will you ever got your hands on info that can make you rich, would you still use it? But there is always a thin line between doing well and doing it illegally, and one should always bow down to the supreme law for equity.

SOLUTIONS AND STRINGENT ACTIONS

Firstly, the definition of UPSI and who can be considered an insider should be more clear and broad in the SEBI Regulations Act, 2015. The regulations should be up-to-date with the current market trends and practices. Moreover, with the advancement of technologies, the use of AI surveillance tools to keep a check on market and trade patterns becomes easier. One can easily be traced globally. There should also be protection for the whistleblowers, as we have seen one who disclosed information get scrutinized, and fear for their own life contributes to low reporting of insider trading. There should be corporate governance regulations, compliance with the industry standards, and following moral conduct and ethics. Power of the position should not be misused when your purpose is not to gain profits but to make society a better place. As this is a grave issue that our government encounters, one should not just rely on vague shreds of evidence but should adopt a robust mechanism to collect proper evidence against the wrongdoer and then jump to a fair conclusion.

¹⁶ Indiaforensic Media, Satyam Investigation Report by SEBI, INDIAFORENSIC (July 22, 2014), <https://indiaforensic.com/satyam-investigation-report-by-sebi/>.​;contentReference[oaicite:2]{index=2}