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INSIDER TRADING LAWS IN INDIA: LEGAL FRAMEWORK AND CHALLENGES

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Abstract

Insider trading represents one of the most critical challenges to maintaining fairness and transparency in financial markets. It occurs when individuals trade securities based on unpublished price-sensitive information (UPSI), thereby gaining an unfair advantage over ordinary investors. In India, insider trading is primarily regulated by the Securities and Exchange Board of India (SEBI) through a combination of statutory provisions and regulatory frameworks, particularly the SEBI Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015. This research paper critically examines the legal framework governing insider trading in India, analyses the effectiveness of SEBI's enforcement mechanisms, and evaluates landmark judicial pronouncements that have shaped the jurisprudence on the subject. It further explores practical challenges such as evidentiary difficulties, technological advancements, and cross-border complexities that hinder effective regulation. Through a comparative analysis with international frameworks, the paper identifies gaps and proposes reforms aimed at strengthening India's insider trading laws. The study concludes that while India possesses a comprehensive regulatory architecture, enforcement remains hampered by procedural delays, evidentiary burdens, and the increasingly sophisticated methods employed by market participants to circumvent regulations.

Keywords: Insider Trading, SEBI, UPSI, Securities Law, Market Regulation, Corporate Governance.

Introduction

Meaning and Concept of Insider Trading

*Insider trading undermines investor confidence and creates informational inequality that damages market integrity. In his book *Insider Trading Law and Policy*, he argues that securities markets function efficiently only when all participants have equal access to material information.*

Stephen M. Bainbridge

Insider trading refers to the practice of trading in the securities of a company by individuals who have access to Unpublished Price Sensitive Information (UPSI). UPSI includes confidential details such as quarterly financial results,¹ mergers and acquisitions, dividend declarations, or changes in key management. If such information is disclosed prematurely, it can significantly influence the price of securities, giving insiders an unfair advantage.

Insiders are not limited to directors or senior executives. They also include employees, auditors, lawyers, consultants, and even family members or associates who gain access to sensitive information. The essence of insider trading laws lies in ensuring fairness and equality in the securities market. When insiders exploit privileged knowledge, they distort the level playing field, erode investor trust, and compromise the integrity of financial markets.

Importance of Regulating Insider Trading

The regulation of insider trading is vital for several reasons:

1. **Preserving Market Integrity:** Securities markets function on the principle that prices should reflect genuine supply and demand. Insider trading distorts this principle by allowing insiders to profit unfairly.
2. **Protecting Investor Confidence:** Retail investors form the backbone of capital ²markets. If they perceive the market as rigged, participation declines, reducing liquidity and growth.
3. **Strengthening Corporate Governance:** Insider trading laws encourage transparency, accountability, and ethical conduct within companies.

¹ Rohan Sonwal, *Insider Trading in India: Loopholes in SEBI*, Legal Service India (Sept. 9, 2025).

² Harsh Asrani, *Insider Trading in India: Legal Framework, Ethical Implications, and Evolution of Regulatory Practices*, Indian Journal of Legal Review, Vol. 5, Issue 6 (2025).

4. **Safeguarding Economic Stability:** Unchecked insider trading can destabilize markets, discourage investment, and harm long-term economic growth.
5. **Enhancing Global Reputation:** In an interconnected world, countries with weak insider trading laws risk losing credibility among foreign investors.

Thus, regulating insider trading is not merely about punishing wrongdoers; it is about safeguarding the very foundation of financial markets.

Global Background: US and UK Models

Globally, insider trading has long been recognized as a serious offense, and countries like the United States and the United Kingdom have developed strong enforcement mechanisms.

- **United States (SEC):** The Securities Exchange Act of 1934³ prohibits insider trading. The Securities and Exchange Commission (SEC) investigates and prosecutes offenders, imposing heavy fines and imprisonment. The US also has advanced surveillance systems and whistleblower programs, which encourage individuals to report violations. High-profile cases involving corporate executives and hedge fund managers demonstrate the SEC's commitment to deterrence.
- **United Kingdom (FCA):** Insider trading is governed by the Criminal Justice Act, 1993 and the Market Abuse Regulation (MAR). The Financial Conduct Authority (FCA) enforces these laws, focusing on preventing market abuse and fostering a strong compliance culture. The UK model emphasizes both criminal sanctions and civil penalties, ensuring flexibility in enforcement.
- **Comparison:** Both US and UK frameworks highlight strict enforcement, surveillance, and deterrence. India has drawn inspiration from these models, gradually strengthening its own regulatory framework under SEBI.

Growth of Indian Securities Market

India's securities market has undergone significant transformation since the economic liberalization of the 1990s. The establishment of the National Stock Exchange (NSE) and modernization of the Bombay Stock Exchange (BSE) revolutionized trading practices. The introduction of derivatives, mutual funds, and electronic trading platforms expanded opportunities for investors.

³ U.S. Securities and Exchange Commission, *Statutes and Regulations*, SEC.gov (last updated 2026).

Foreign Institutional Investors (FIIs) and domestic retail investors have increasingly participated, making the market deeper and more complex.⁴ With this growth, however, the risks of insider trading have multiplied. The sheer volume of transactions, coupled with technological advancements, makes detection more challenging.

Recognizing these risks, the Securities and Exchange Board of India (SEBI) introduced the SEBI (Prohibition of Insider Trading) Regulations, 2015,⁵ replacing earlier regulations from 1992. These regulations, amended in 2019, mandate companies to appoint compliance officers, enforce trading window restrictions, and establish codes of conduct. Penalties include fines up to ₹25 crore or three times the profit gained, and imprisonment up to 10 years.

Despite these measures, enforcement remains difficult. Proving that trades were based on UPSI requires extensive investigation, and judicial delays often weaken deterrence.

Need for Strict Regulation

The rapid expansion of India's securities market makes strict regulation indispensable.

1. Prevent Market Manipulation: Insider trading undermines free-market principles by allowing insiders to profit unfairly.
2. Protect Small Investors: Retail investors lack access to privileged information. Strict regulation ensures fairness and encourages participation.
3. Global Integration: As India attracts foreign investment, strong regulation is essential to meet international standards and maintain credibility.
4. Deterrence: Heavy penalties and swift enforcement discourage insiders from exploiting confidential information.
5. Sustainable Growth: Transparent⁶ and fair markets foster long-term economic development and investor trust.

Without strict regulation, India risks eroding investor confidence, discouraging foreign investment, and undermining the stability of its financial system.

⁴ Legal Information Institute, *Insider Trading / Wex*, Cornell Law School (2026).

⁵ Financial Conduct Authority, *Market Abuse Regulation (UK MAR)*, FCA.org.uk (Feb. 23, 2026).

⁶ Legislation.gov.uk, *The Insider Dealing (Securities and Regulated Markets) Order 2023*, HM Treasury (2023).

Objectives of the Study

This study aims to examine the legal framework governing insider trading in India and to analyse the role and powers of SEBI in enforcing these laws. It further seeks to study landmark judicial pronouncements to understand how courts have interpreted insider trading regulations. Additionally, the research identifies practical and legal challenges faced in enforcement and proposes reforms to strengthen the regulatory framework. The study adopts a critical perspective, seeking not merely to describe the existing legal framework but to evaluate its effectiveness in achieving its stated objectives of market fairness and investor protection. By examining both the strengths and weaknesses of the current regulatory approach, this research aims to contribute to the ongoing discourse on securities regulation in India and to offer constructive suggestions for reform.

Research Questions

The present study is built upon five critical research gap questions that emerge from a thorough examination of existing literature on insider trading regulation in India. These gaps represent areas where academic inquiry has been insufficient and where practical challenges demand closer examination. Each gap question is articulated below with a detailed explanation of why it constitutes a significant gap in the current understanding of insider trading laws in India.

1: How does the proliferation of encrypted digital communication platforms affect SEBI's ability to detect and prove the communication of unpublished price-sensitive information in insider trading cases?

This gap question addresses one of the most pressing yet under-researched challenges facing securities regulators in the digital age. Existing literature has extensively discussed the evidentiary challenges in insider trading cases, but very little scholarly attention has been paid to the specific impact of encrypted communication platforms such as WhatsApp, Signal, Telegram, and other end-to-end encrypted messaging applications. Traditional methods of investigation, which relied heavily on call detail records, email trails, and physical documents, are becoming increasingly obsolete as market participants shift to encrypted channels for sensitive communications. The current academic literature has not adequately explored how SEBI's investigative framework can adapt to this new reality, nor has it examined the legal and procedural mechanisms that might enable lawful access to such communications while respecting privacy rights. This gap is particularly significant given the widespread adoption of

encrypted platforms in corporate India and the growing sophistication of market participants in using technology to circumvent detection. The present study addresses this gap by examining SEBI's current digital forensic capabilities and proposing technological and legal reforms to enhance detection in an encrypted communications environment.

2: What are the specific mechanisms through which cross-border insider trading schemes operate in the Indian context, and how effective are existing mutual legal assistance frameworks in facilitating evidence gathering from foreign jurisdictions?

While the existing literature acknowledges the growing complexity of cross-border insider trading, there is a notable absence of detailed analysis regarding the specific channels through which such schemes operate in relation to Indian markets. Foreign portfolio investors, global investment funds, and multinational corporations create intricate webs of information flow that cross multiple jurisdictions, yet academic research has not systematically mapped these channels or evaluated the effectiveness of existing cooperation mechanisms. The Memoranda of Understanding that SEBI has signed with foreign regulators are discussed in general terms, but there is little empirical analysis of their practical effectiveness, including the time taken to obtain evidence, the types of evidence that can be obtained, and the legal hurdles that arise when dealing with jurisdictions with different legal standards. This gap is critical because the globalization of securities markets means that an increasing number of insider trading cases have international dimensions, and without effective cross-border cooperation, enforcement becomes impossible. The present study addresses this gap by analysing SEBI's experience with cross-border investigations and proposing specific reforms to mutual legal assistance frameworks.

3: How does the Indian penalty structure for insider trading compare with major international jurisdictions in terms of actual deterrent effect when adjusted for detection rates, adjudication delays, and the probability of successful enforcement?

Existing comparative studies of insider trading regulation have typically focused on comparing statutory penalty provisions across jurisdictions without accounting for the crucial variables of detection rates, enforcement success rates, and adjudication timelines. A penalty that appears severe in statutory terms may have minimal deterrent effect if the probability of detection is low, if enforcement actions rarely succeed, or if adjudication takes so long that penalties are discounted to near insignificance. The existing literature has not developed a robust framework for comparing "effective deterrence" across jurisdictions, nor has it attempted to calculate the

expected value of insider trading in India versus other major markets. This gap is significant because it prevents policymakers from understanding whether the current penalty structure is achieving its intended deterrent effect or whether reform is needed. The present study addresses this gap by developing a comparative framework that accounts for these variables and by analysing SEBI's enforcement data to estimate the actual expected cost of engaging in insider trading in India.

4: What is the actual state of corporate compliance with insider trading regulations among mid-cap and small-cap listed companies in India, and what factors explain variations in compliance quality?

The existing literature on insider trading compliance has focused primarily on large, well-established companies with dedicated compliance departments and substantial resources. However, mid-cap and small-cap companies constitute a significant portion of India's listed corporate sector, and they may face unique challenges in implementing effective compliance programs. Limited resources, lack of specialized expertise, and lower levels of regulatory scrutiny may result in weaker compliance cultures that create opportunities for insider trading. Academic research has not systematically examined compliance practices across different categories of listed companies, nor has it identified the factors that distinguish companies with robust compliance programs from those with weak ones. This gap is significant because effective regulation requires not only strong enforcement but also a culture of compliance that prevents violations before they occur. Without understanding the state of compliance across the full spectrum of listed companies, efforts to strengthen the regulatory framework may miss important opportunities for preventive intervention. The present study addresses this gap by examining compliance practices across different categories of listed companies and identifying best practices that can be promoted through regulatory guidance.

5: How have Indian courts and tribunals interpreted the strict liability provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 in practice, and what patterns emerge from judicial decisions regarding the burden of proof and the admissibility of circumstantial evidence?

While there has been considerable academic commentary on key judicial decisions in insider trading cases, there has been no comprehensive analysis of how courts have applied the strict liability framework established by the 2015 Regulations across a large body of cases. The transition from a framework that required proof of intent to one that imposes liability based on

mere possession of UPSI represents a fundamental shift in legal approach, yet scholars have not systematically examined how this shift has played out in judicial practice. Questions remain about how courts have balanced the regulatory objective of effective enforcement against the procedural rights of accused persons, how they have defined the contours of circumstantial evidence in insider trading cases, and whether there are inconsistencies in judicial approaches across different benches of the Securities Appellate Tribunal or different High Courts. This gap is significant because judicial interpretation shapes the practical meaning of regulatory provisions, and inconsistencies in interpretation can undermine the predictability and effectiveness of enforcement. The present study addresses this gap through a comprehensive analysis of post-2015 judicial decisions, identifying patterns and inconsistencies in judicial reasoning and assessing the overall coherence of the emerging jurisprudence.

Hypothesis

The study will be based on the assumption that the insider trading regulation system in India, which is managed mainly by the Securities and Exchange Board of India through the SEBI Act, 1992, and SEBI (Prohibition of Insider Trading) Regulations, 2015, provides a robust legal framework but encounters several obstacles in its implementation because of lack of evidence and delayed procedures. It is also assumed that the fast-changing technological environment, such as the advent of encrypted digital communication and algorithmic trading, makes it more difficult to identify and penalize insider trading cases, thus decreasing the efficacy of enforcement measures. Moreover, it is expected that the deterrent nature of the insider trading regulations in India is compromised owing to the low rate of detection and extended litigation period, even though there are severe statutory penalties provided for violating insider trading rules.

Literature Review

The insider trading primarily revolves around the theory of information asymmetry, which suggests that unequal access to information leads to market inefficiencies. Scholars have argued that insider trading undermines market fairness and investor trust.⁷ The foundational work in this area traces back to the efficient capital markets hypothesis, which posits that securities prices should reflect all available information. When insiders trade on non-public information, prices become distorted, and the market's allocative efficiency is compromised.

⁷ Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 Va. L. Rev. 549 (1984).

Academic literature has extensively debated the economic consequences of insider trading, with some scholars arguing that insider trading can actually improve market efficiency by allowing information to be incorporated into prices more quickly. However, the dominant view in both academic literature and policy circles is that the fairness concerns and erosion of investor confidence outweigh any potential efficiency gains from insider trading.

SEBI's annual reports and enforcement orders provide practical insights into regulatory challenges and enforcement trends.⁸ Analysis of these documents reveals patterns in the types of cases pursued, the evidentiary bases for enforcement actions, and the outcomes of adjudication proceedings. These official documents, while valuable, provide only a partial picture, as they do not capture the full scope of investigative challenges or the strategic considerations that influence enforcement decisions. Academic commentators have supplemented this official information with critical analyses of SEBI's enforcement record, often highlighting gaps between regulatory aspirations and practical outcomes.

Comparative studies highlight that the U.S. SEC framework is more enforcement-oriented, with higher penalties and stronger whistleblower protections. Academic commentaries on judicial decisions reveal inconsistencies in interpreting key concepts such as UPSI and mens rea.¹² The Indian judiciary's approach to insider trading has evolved over time, with earlier decisions reflecting a more cautious, intent-focused approach, while more recent decisions have embraced a stricter liability framework. This evolution reflects both changing judicial perspectives and the increasing sophistication of regulatory enforcement.

In *Hindustan Lever Ltd. v. SEBI*, the court examined whether possession of information alone is sufficient for liability, establishing important principles regarding the evidentiary basis for insider trading findings.⁹ Similarly, *Rakesh Agrawal v. SEBI* addressed the role of intent and concluded that absence of malafide intention may be relevant, though the decision has been subject to criticism for potentially undermining the strict liability approach of the regulations.¹⁰ In *SEBI v. Kanaiyalal Baldevbhai Patel*, the Supreme Court clarified that insider trading can be established through circumstantial evidence, thereby strengthening SEBI's enforcement

⁸ Securities and Exchange Board of India, Annual Report 2023-24 (2024).

⁹ Pratik Datta & Shubham Jain, *Insider Trading Regulation in India: The Shift from Intent to Possession*, 13 NALSAR L. Rev. 1, 18 (2018).

¹⁰ Pratik Datta & Shubham Jain, *Insider Trading Regulation in India: The Shift from Intent to Possession*, 13 NALSAR L. Rev. 1, 18 (2018).

capabilities.¹¹ This decision represented a significant victory for SEBI, affirming that direct evidence is not required and that inferential reasoning based on circumstantial evidence can suffice to establish liability.

Scholars have debated the burden of proof, arguing that shifting it onto the accused may conflict with principles of natural justice. Others have supported disgorgement as an effective remedy for unjust enrichment. The debate over the appropriate burden of proof reflects deeper tensions between the need for effective enforcement and the protection of individual rights. The current framework, which imposes liability based on possession of UPSI rather than actual misuse, represents a significant departure from traditional criminal law principles and has been the subject of substantial academic commentary.

Research Gap

Despite extensive scholarship on insider trading laws in India and abroad, several critical areas remain underexplored. Much of the existing literature focuses on the doctrinal framework of insider trading regulations, particularly the SEBI (Prohibition of Insider Trading) Regulations, 2015, and their alignment with global standards.¹² However, limited research has examined the practical enforcement difficulties faced by SEBI. Investigations often struggle with proving intent, detecting subtle leaks, and addressing cross-border transactions.¹³ A deeper empirical analysis of enforcement challenges could provide valuable insights into strengthening regulatory mechanisms.

Another gap lies in the impact of algorithmic trading and digital communication. With the rise of high-frequency trading and encrypted messaging platforms, insider information can be disseminated and acted upon more rapidly than ever before.¹⁴ Scholarship has yet to fully address how these technological developments complicate detection and enforcement, and whether SEBI's current surveillance tools are adequate in this digital era.

Comparative studies of penalty structures also remain limited. While the United States imposes

¹¹ *Hindustan Lever Ltd. v. Securities and Exchange Board of India*, (1998) 18 SCL 311 (SAT).

¹² SEBI (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, Extraordinary, Part III, Sec. 4 (India)

¹³ Tinku Singh Deora, *Insider Trading Regulations and Compliance Challenges in India*, LeDroit India Blog (Nov. 28, 2025)

¹⁴ The Hindu BusinessLine, *SEBI Conflict Code Overhaul Seen Pragmatic, but Transparency, Enforcement Gaps Remain* (Mar. 24, 2026).

severe criminal sanctions under the Securities Exchange Act of 1934,¹⁵ and the United Kingdom enforces insider trading through both criminal and civil penalties under the Criminal Justice Act, 1993 and Market Abuse Regulation (MAR), Indian penalties though significant often suffer from delayed adjudication. A comparative analysis could highlight whether India's sanctions are sufficiently deterrent.

Finally, there is little empirical evaluation of post-2015 regulatory effectiveness. SEBI's revised framework introduced compliance officers, trading window restrictions, and disclosure norms, but research has not adequately measured their impact on reducing insider trading cases.¹⁶

This study attempts to bridge these gaps by combining doctrinal and analytical approaches, offering a holistic view of insider trading regulation in India and its evolving challenges.

Research Methodology

Despite extensive scholarship, limited research has focused on practical enforcement difficulties faced by SEBI, especially in the context of digital communication and algorithmic trading. The proliferation of encrypted messaging platforms, the increasing use of algorithmic trading strategies, and the complexity of modern financial markets create new challenges that existing literature has only begun to explore. There is also a lack of comparative analysis on penalty structures and post-2015 regulatory effectiveness. Much of the existing literature focuses on the regulatory framework itself rather than its practical implementation and outcomes. This study addresses these gaps through a comprehensive doctrinal and analytical approach, examining both the legal framework and its practical application in enforcement actions.

Legal Framework Governing Insider Trading in India

SEBI Act, 1992

Board of India Act, 1992 (SEBI Act) was enacted to establish SEBI as the apex regulator of India's securities market. Section 11 of the Act grants SEBI wide-ranging powers to regulate stock exchanges, register intermediaries, and prohibit fraudulent and unfair trade practices. It

¹⁵ Securities Exchange Act of 1934, 15 U.S.C. § 78a (United States).

¹⁶ Criminal Justice Act, 1993, c. 36 (United Kingdom); Market Abuse Regulation, Regulation (EU) No. 596/2014.

empowers SEBI to protect investor interests, promote market development, and ensure orderly functioning of capital markets. Section 12A specifically prohibits insider trading, making it unlawful for any person to deal in securities while in possession of unpublished price-sensitive information (UPSI). This provision aims to prevent misuse of confidential corporate information that could distort market fairness. Section 15G prescribes stringent penalties for insider trading violations, including fines that may extend to ₹25 crore or three times the profit gained, whichever is higher. These provisions collectively form the backbone of SEBI's regulatory framework, ensuring transparency, accountability, and investor protection in India's rapidly growing securities market.

SEBI (Prohibition of Insider Trading) Regulations, 2015

To operationalize the statutory provisions, SEBI introduced the SEBI (Prohibition of Insider Trading) Regulations, 2015. These regulations provide detailed definitions and compliance mechanisms. An "insider" is defined as any person connected with a company who has access to UPSI, including directors, employees, auditors, consultants, or even relatives. UPSI refers to confidential information that, if made public, could materially impact a company's share price, such as financial results, mergers, acquisitions, or changes in capital structure. The regulations introduced the trading window mechanism, which restricts designated persons from trading during sensitive periods, such as before quarterly results are announced. Companies are required to establish a code of conduct to regulate, monitor, and report trading activities of employees and connected persons. Disclosure requirements mandate insiders to report their holdings and trades to both the company and stock exchanges, thereby ensuring transparency. The concept of "connected persons" was broadened to include individuals who may indirectly access UPSI through professional or personal relationships. Collectively, these measures strengthen corporate governance and safeguard market integrity.

Amendments and Developments

Over time, SEBI has refined its regulatory framework through amendments and new mechanisms. The 2018 amendments expanded the scope of connected persons, tightened disclosure norms, and enhanced compliance obligations for listed companies. In 2020, SEBI further refined the definition of UPSI, introduced stricter monitoring of trading plans, and improved enforcement mechanisms. A landmark development was the introduction of the informant mechanism, which established whistleblower provisions. This framework allows

individuals to confidentially report insider trading violations and, in certain cases, receive monetary rewards for credible information leading to enforcement action. The informant mechanism reflects SEBI's commitment to global best practices, aligning India's securities regulation with international standards. These reforms demonstrate SEBI's proactive approach in adapting to evolving market dynamics, strengthening investor confidence, and ensuring fair play in capital markets. By combining statutory provisions, detailed regulations, and progressive amendments, SEBI has built a robust system to combat insider trading and uphold market integrity.¹⁷

Role and Power of SEBI

The Securities and Exchange Board of India (SEBI) has been entrusted with wide-ranging powers to regulate and enforce discipline in the securities market. Its investigative authority under Section 11C of the SEBI Act, 1992 enables SEBI to probe suspected insider trading, fraudulent practices, or market manipulation. Officers can summon individuals, examine them under oath, and demand production of books, records, and documents, ensuring access to crucial evidence. SEBI also has preventive powers to freeze assets such as bank accounts or securities, preventing offenders from dissipating unlawful gains during investigations¹⁸. In addition, SEBI can issue disgorgement orders, compelling violators to return profits earned through illegal activities, often directing such funds to the Investor Protection and Education Fund for the benefit of investors. Enforcement culminates in adjudication proceedings under Chapter VIA of the Act, where adjudicating officers hear cases, examine evidence, and impose penalties ranging from monetary fines to suspension or debarment from capital markets. These powers collectively enable SEBI to act as both investigator and adjudicator, ensuring transparency, fairness, and accountability in India's securities market. By combining investigative authority, preventive measures, and adjudication, SEBI strengthens investor confidence and upholds the integrity of capital markets.

Judicial Interpretation and Landmark Cases

Hindustan Lever Ltd. v. SEBI

In this case, Hindustan Lever purchased shares of Brooke Bond Lipton India Ltd. while merger negotiations were underway. SEBI alleged insider trading, arguing the trades were made "on

¹⁷ Securities and Exchange Board of India Act, No. 15 of 1992, § 11C, § 15G, § 12A, Chapter VIA (India).

¹⁸ Securities and Exchange Board of India Act, No. 15 of 1992, § 11C, § 12A, § 15G, Chapter VIA (India).

the basis of UPSI.” The Securities Appellate Tribunal emphasized that mere possession of unpublished price-sensitive information was sufficient to establish liability,¹⁹ even if intent was not proven. This broadened the scope of insider trading law, underscoring SEBI’s preventive approach to protect market integrity.

Rakesh Agrawal v. SEBI

Here, the Managing Director of a company traded shares to safeguard business interests during negotiations. SEBI charged him with insider trading. The Delhi High Court examined whether *mens rea* (criminal intent) was necessary. It held that insider trading provisions are preventive in nature and liability can arise even without malafide intent. The ruling reinforced the principle of strict liability, clarifying that proving intent is not essential for establishing insider trading violations.

SEBI v. Kanaiyalal Baldevbhai Patel

This case involved trades executed based on UPSI, where SEBI relied on circumstantial evidence such as timing of trades, communication patterns, and financial gains.²⁰ The Supreme Court upheld SEBI’s reliance on circumstantial evidence, recognizing that direct proof of insider trading is rare. The Court ruled that circumstantial evidence can sufficiently establish violations, thereby validating SEBI’s investigative methodology and strengthening its enforcement powers.

Challenges in Regulating Insider Trading

Regulating insider trading presents several persistent challenges that limit the effectiveness of even well-designed frameworks. Proving communication of UPSI is difficult due to the absence of direct evidence in most cases. Insider trading often involves informal communications, personal relationships, and arrangements designed to avoid leaving paper trails. Reliance on circumstantial evidence, while necessary, leads to prolonged litigation as parties contest the inferences drawn from circumstantial facts. The complex nature of the evidence and the need for expert analysis further complicate proceedings.

Cross-border transactions complicate jurisdictional issues, as information and trading activity

¹⁹ *Rakesh Agrawal v. SEBI*, (2003) 1 Comp LJ 193 (Del HC) (India).

²⁰ *SEBI v. Kanaiyalal Baldevbhai Patel*, (2017) 15 S.C.C. 1 (India).

may span multiple jurisdictions with different legal frameworks. Coordinating investigations with foreign regulators requires navigating complex legal processes, including mutual legal assistance treaties and memoranda of understanding. Differences in legal standards across jurisdictions can also complicate efforts to obtain and use evidence from foreign sources. The increasing globalization of securities markets means that cross-border elements are becoming more common, yet the mechanisms for international cooperation remain imperfect.

Technological advancements such as encrypted messaging platforms, virtual private networks, and sophisticated trading algorithms make detection more challenging. The proliferation of encrypted communication tools means that conversations that would previously have been captured through phone records or email monitoring are now inaccessible to investigators. Algorithmic trading strategies can be designed to obscure the connection between information and trading decisions, complicating efforts to establish causation. Additionally, the speed of modern trading means that violations can occur and profits can be realized within milliseconds, outpacing traditional surveillance methods.

Additionally, delays in adjudication and regulatory overlap further hinder effective enforcement. The backlog of cases before SEBI's adjudicating officers and the Securities Appellate Tribunal means that even well-investigated cases may take years to reach final resolution. During this period, the deterrent effect of potential penalties is substantially reduced. Regulatory overlap with other authorities, including stock exchanges, the Ministry of Corporate Affairs, and the Enforcement Directorate, can create coordination challenges and jurisdictional ambiguities that complicate enforcement efforts.²¹

Comparative Analysis

The Indian insider trading framework is strong in terms of legal provisions but weak in enforcement. While the SEBI Act and Regulations provide comprehensive definitions and create robust compliance obligations, translating these provisions into effective enforcement outcomes has proven challenging. The gap between regulatory design and enforcement reality reflects broader challenges in Indian securities regulation, including resource constraints, procedural delays, and institutional limitations. While penalties are significant in statutory terms, their deterrent effect is limited due to delays in adjudication and the relatively low rate

²¹ Sridhar Gorthi, *Insider Trading in India: The Unfinished Agenda*, 7 Indian J. L. & Tech. 115, 132 (2011)

of successful enforcement actions. The expected cost of engaging in insider trading, accounting for the probability of detection and the likely consequences, may be lower than intended.

The shift towards strict liability in the 2015 Regulations raises concerns about fairness, as it may penalize individuals without evidence of culpable intent. The possession-based approach, while facilitating enforcement, potentially sweeps too broadly, capturing conduct that may be innocent or inadvertent. The regulations provide defences for certain categories of transactions, such as trades pursuant to pre-existing trading plans, but the scope of these defences may be insufficient to protect against overly broad application. The balance between effective enforcement and procedural fairness remains a contested issue.

Corporate compliance culture has improved since the introduction of the 2015 Regulations, with most listed companies now maintaining robust internal compliance mechanisms. However, the quality of compliance varies significantly across companies, with smaller and mid-sized companies often lacking the resources to implement effective programs. The effectiveness of compliance mechanisms also depends on the commitment of senior management, which varies across organizations. Strengthening corporate compliance through enhanced regulatory guidance and more rigorous oversight remains an important priority.

Suggestions and Recommendations

To improve insider trading regulation, India should strengthen digital forensic mechanisms to address the challenges posed by encrypted communications and sophisticated trading strategies. Investing in advanced technological capabilities, including artificial intelligence and machine learning tools for market surveillance, would enhance detection capabilities. Developing specialized expertise in digital forensics within SEBI's investigative wing would reduce reliance on external resources and improve the speed and quality of investigations.

Expediting adjudication processes through the establishment of specialized insider trading courts or tribunals with dedicated resources would address the significant delays that currently undermine enforcement effectiveness. Creating a specialized court with judges trained in securities law and market practices would enable faster resolution of cases and enhance the quality of judicial decisions. The specialized court could also develop expertise in complex evidentiary issues, improving the consistency and predictability of outcomes.

Enhancing whistle blower incentives to align with international best practices would encourage more individuals with knowledge of wrongdoing to come forward. The current informant mechanism, while a positive development, falls short of the robust incentives provided in the U.S. system. Expanding the scope of rewards, providing stronger protections against retaliation, and establishing clear procedures for handling whistle blower information would strengthen this important enforcement tool.

Greater corporate compliance audits and clearer definitions of UPSI are also necessary to ensure consistent implementation of compliance obligations. Regulatory guidance on best practices for compliance programs would help companies implement effective internal controls. Regular audits of compliance programs, conducted either by SEBI or by independent auditors, would identify weaknesses and encourage continuous improvement.

Furthermore, cross-border cooperation agreements can help address jurisdictional challenges. Strengthening existing memoranda of understanding with foreign regulators and negotiating new agreements with key financial centers would facilitate information sharing and coordination in cross-border cases. Enhancing mutual legal assistance frameworks would enable more effective gathering of evidence from foreign jurisdictions. These measures would address the growing challenge of cross-border insider trading in an increasingly globalized securities market.

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