

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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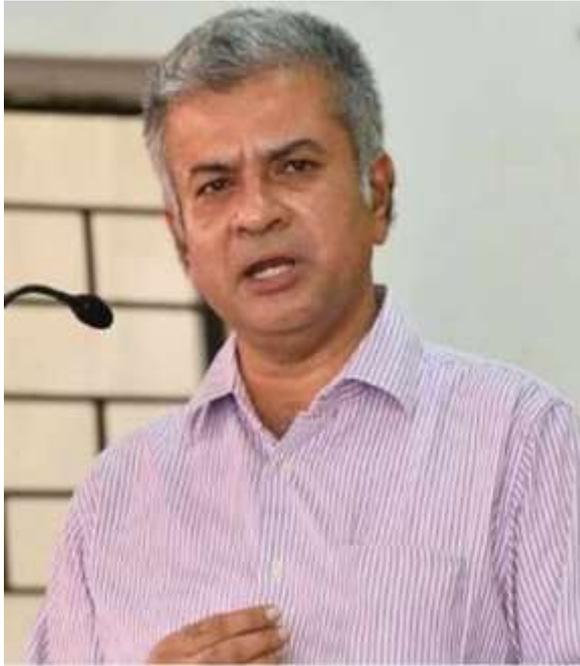
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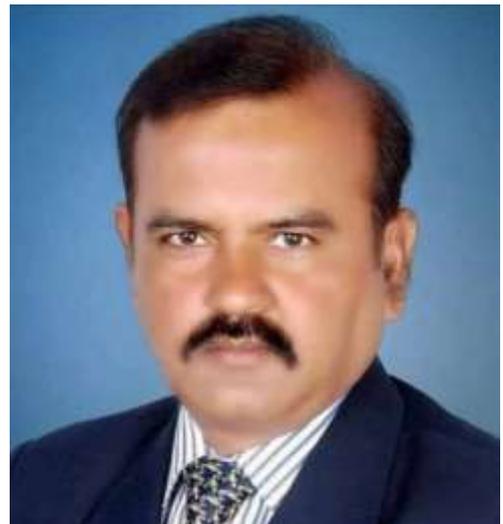


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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

UNDERSTANDING THE CONCEPT OF INSIDER TRADING

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Introduction

Article 19 (1) (g) of the Constitution of India 1949 guarantees the right to practice any trade profession or to carry on any occupation, trade or business to all citizens.¹ Trade refers to buying and selling of goods or services, or exchanging them between people and nations.² In the contemporary world however, trade does not restrict to only tangible goods but includes a variety of intangible goods such as trademarks, patents, copyright, shares etc. Article 19 (1) (g) is not an unrestricted right without any limitation. The limitation of Article 19 (1) (g) is inscribed in Article 19 (6). Article 19 (6) permits the state to make laws in the general public's interest.³

Similarly, trading of the securities is allowed but subject to certain conditions and requirements. Securities are fungible and negotiable financial instruments that have legal standing.⁴ Insider trading is generally considered malpractice and is allowed in certain situations only with extreme restrictions. Various laws and regulations are legislated for defining the boundaries of insider trading. Over the decades, various committee recommendations have helped formulate the framework of insider trading.

Currently, SEBI is the regulatory body that deals with cases of insider trading in the Indian securities market. Although various steps have been taken against insider trading, it seems that legal restrictions on securities trading by insiders could not achieve the desired outcome.

¹ Article 19 (1) (g), Constitution of India Act 1949

² Cambridge Dictionary "Meaning of Trade", Visited on June 5, 2023
<https://dictionary.cambridge.org/dictionary/english/trade>

³ Article 19 (6), Constitution of India Act 1949

⁴ National Institute of Securities Market, "Understand the basics of Securities Market" Visited on June 05, 2023
https://www.nism.ac.in/knowledge_base/understand-the-basics-of-securitiesmarkets/#:~:text=Securities%20are%20financial%20instruments%20issued,a%20productive%20need%20for%20them.

What is Insider Trading

Black's Law Dictionary defines insider trading as “the use of material non-public information in trading the shares of the company by a corporate insider or any other person who owes a fiduciary duty to the company”.⁵

In the year 1986, the definition of Insider Trading was laid down by the Patel Committee, as “Trading in the shares of a company by the person who is in the management of the company or is close to them based on undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others.”⁶

Insider Trading in layman’s terms can be understood as trading by a person in the stocks or securities of the listed companies in which such a person holds a key position and utilise information not available to the general public for trading in the securities and stocks of that listed company. Any person who is in a relationship with the company in contractual, fiduciary, or employment and being in that relationship has access to such information which is price sensitive and not available to the general public, and if such a person applies that information in trading the securities of that company, then he is guilty of insider trading. A hypothetical example of Insider Trading can be a director who is aware of his company's launch of a new product that is unknown to the general public. Based on this information, for his benefit, he trades in the shares and securities of his company. It is not necessary for insider trading that the insider should be benefitted from such trading.⁷

The SEBI (Prohibition of Insider Trading) Regulation, of 1992 & 2015 does not define exactly the meaning of Insider Trading rather they define the terms ‘Insider’, ‘Connected Person’, ‘Price Sensitive Information’ and other key terms.

Who is Insider

Regulation 2(g) of the SEBI (Prohibition of Insider Trading) Regulation, of 1992 defines the term ‘Insider’. Insider is categorized into two types: (a) Connected Persons; or (b) any person in

⁵ Garner, B. A., & Black, H. C. (2009), Black’s law dictionary, 9th ed. St. Paul, MN: West.

⁶ G.S. Patel, *Report of the High-Powered Committee on Stock Exchange Reforms*, Indian Culture, Retrieved on June 6, 2023 <https://indianculture.gov.in/reports-proceedings/report-high-powered-committee-stock-exchange-reforms>

⁷ Securities and Exchange Board of India v. Abhijit Rajan [Civil Appeal No. 563 of 2020]

possession of or having access to unpublished price-sensitive information (UPSI).⁸ Thus, Insider is a wider term and includes a Connected Person.

The term 'Connected Person' is defined in Regulation 2(d) of the (PIT) regulation. Insider term is interpreted widely and it does not concern itself with the procedure by which anyone acquires the possession of or has access to unpublished price-sensitive information. Even if the person has reasonably expected to have information, then also, he will be labelled as an insider. If anyone has access to UPSI, he shall be Insider under the regulation. The onus of proof that the person has UPSI is on the person who alleged such charges.⁹

There are 3 ingredients in the definition of Insider.

There should be a person who can be an individual or other legal entity.

- The person should be related or assumed to be related to the individual.
- The connection should be used to acquire UPSI

There can be two alternate situations to acquire UPSI by the insider by virtue of the connection:

- Where the person is expected to acquire or access UPSI due to his relation
- The insider has actually received or had access to such UPSI.¹⁰

Before the current definition, the SAT tried to include any person who has UPSI as an 'insider' even though he is not connected.¹¹ When two people who are Facebook friends have traded in the company's shares using unpublished price-sensitive knowledge, they will also be classified as insiders.¹²

What is Trading

Trading is defined in Regulation 2 (l) of the SEBI (PIT) Regulation. It is a broad term and is more than just buying and selling. It means and includes:

⁸ Regulation 2(g), SEBI (Prohibition of Insider Trading) Regulation 2015

⁹ Id

¹⁰ Hindustan Lever Limited v. SEBI (1998) 18 SCL 311 MOF

¹¹ Rajiv B. Gandhi v. SEBI, 2008 SCC OnLine SAT 78 ¹²

Palghar Technologies Case, available at:

https://www.sebi.gov.in/sebi_data/attachdocs/1454682584239.pdf

Regulation 2(l), SEBI (Prohibition of Insider Trading) Regulation 2015

1. Subscribing
2. Redeeming
3. Switching
4. Buying
5. Selling
6. Dealing
7. Agree to do anything that is mentioned in 1 to 6.13

Who is a Connected Person

Regulation 2(d) of the SEBI (Prohibition of Insider Trading) Regulation 1992 defines this term in two parts. This section provides a theoretical definition and also provides a list of persons that are deemed to be connected person unless the contrary is established.

Part 01: Any person who is or has been connected to a company, directly or indirectly, in any capacity during the six months before the concerned act, including through frequent contact with its officers or by being in a fiduciary or contractual relationship or by being a director, officer, or employee of the company, or who holds any position involving a professional or business connection with the company due to which, have access or expected to have access to the UPSI.

Part 02 contains a list of people that are considered to be connected persons until disproved.

1. Immediate relative of connected person
2. A holding company, associate company or subsidiary company of the company in question
3. Persons mentioned in Section 12 of the SEBI Act 1992 an employee or director thereof
4. Investment company, trustee company, asset management company or an employee or director thereof
5. Officials of Stock Exchange, clearing house, or corporation
6. Members of the board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof
7. Member of the board of directors or an employee, of a public financial institution
8. Official or an employee of a self-regulatory organization
9. A banker of the company

10. A concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company has more than 10% of the holding or interest.¹²

Unpublished Price Sensitive Information

As the name suggests, this is the information of a listed public company that can manipulate the price of the securities of that company and such information is not within access of the general people. Regulation 2(n) of the PIT Regulation 2015 defines UPSI as “any information of the company or its securities that is directly or indirectly, generally not available and which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- i. Financial results;
- ii. Dividends;
- iii. Change in capital structure;
- iv. Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- v. Changes in key managerial personnel¹³

Whether information is price sensitive or not is determined by the likeness of manipulation on the price of such security. It is not necessary that such information must impact the price and mere likeness is enough to construe it as Price Sensitive information.¹⁴

Evolution of Insider Trading Laws

The United States was the first country that legislated on curbing the issue of Insider Trading. The Great Depression of 1929 fueled the low confidence of investors in the share market resulting in the enactment of the Securities Act of 1933. The Securities Act deals with the practice of fraud in the sale of securities. In 1934, the Security Exchange Act was enacted which set up an administrative authority to regulate the stock market and related activities.¹⁵

¹² Regulation 2(d), SEBI (Prohibition of Insider Trading) Regulation 2015

¹³ Regulation, 2(n), SEBI (Prohibition of Insider Trading) Regulation 2015

¹⁴ B. Renganathan vs SEBI

¹⁵ History and evolution of Insider Trading, Visited on June 06, 2023
http://www.riskpro.in/download/insider_wp.pdf

India was not distant behind the US and acknowledged the harm of Insider Trading. Soon after Independence, in 1948, a committee was set up under the chairmanship of PJ Thomas because during that time directors, agents, auditors, and other key personnel are utilizing their intimate information to make gains. Thomas Committee suggested that stock market traders should disclose the information to restrict them from making short-term profits.¹⁶

In 1952, the Bhabha committee also recommended putting an obligation on the directors to disclose their sale/purchase of shares in a separate register to be maintained by the company.¹⁷

Sections 307 and 308 were added to the Companies Act of 1956 after taking into consideration the committee's suggestions. Where Section 307 required companies to maintain a register to track the shares that directors owned in the company¹⁸ and Section 308 mandated that directors and those presumed to be directors disclose their ownership interests in the company,¹⁹ the Manager of the Company was later added to such section and required to make the required disclosure by the Companies Amendment Act, 1960.²⁰

The Sachar Committee²³ stated in its report from 1979 that individuals like directors, auditors, corporate secretaries, etc. may have access to price-sensitive information that might be used to manipulate stock prices, thereby putting the investing public in financial jeopardy. To limit or forbid employee dealings, the firms suggested amending the Companies Act of 1956. This Committee believed that the Companies Act's Sections 307 and 308 were insufficient to prevent insider trading.²⁴

In 1984, Patel Committee²¹ was constituted to curb the menace of Insider Trading. For the first time, the meaning of Insider trading was defined by this committee. It recommends that a separate statute should be drafted concerning provisions of Insider Trading. The committee also submitted a draft framework of laws prohibiting insider trading. This committee was formed due to the inadequacy of the actions of the recognized stock exchange to suppress insider trading.

¹⁶ P.J. Thomas, *Report on the Regulation of The Stock Market In India*, Security and Exchange Board of India, Retrieved on June 6, 2023

¹⁷ Bhabha C.H., *Report of the Company Law Committee 1952*, Indian Culture, Retrieved on June 6, 2023 <https://indianculture.gov.in/reports-proceedings/report-company-law-committee-1952>

¹⁸ Sec. 307, Companies Act 1956

¹⁹ Sec. 308, Companies Act 1956

²⁰ Companies Amendment Act 1960, Visited on June 7, 2023, available at <https://www.lawyerservices.in/Companies-Amendment-Act-1960> ²³ Sachar Committee Report, Visited on June 7, 2023, available at: https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf

²¹ Supra Note 06 at pg.

The Abid Hussain Committee²² was set up in 1989 to assess the effectiveness of the current institutions, mechanisms, and structures in the Indian capital market as well as the regulations controlling its operation. One of the committee's initial and most significant issues was the lack of sufficient capital market rules. Due to the rapidly changing demands of the capital market, particularly in the area of investor protection and counselling, the fundamental regulations were deemed to be insufficient. The committee also stated that several parts of trading practices still needed to be improved, despite ongoing efforts on the side of various agencies. The rules and norms that emphasize fairness in securities transactions are realized as weak and vulnerable to abuse. Genuine investors are discouraged by such conditions in the stock market. It https://www.sebi.gov.in/sebi_data/commondocs/may-2019/HistoryReport1948_p.pdf recommends that the person guilty of insider trading should be penalized both in civil and criminal proceedings.

A government administrative resolution established the Securities and Exchange Board of India on April 12, 1988, as a non-statutory agency to handle all issues connected to growth, regulate and advise the government on topics pertaining to investor protection, and securities market regulation. SEBI was given statutory status and authority through an Ordinance published on January 30, 1992. The SEBI was created as a statutory entity on February 21, 1992. On April 4, 1992, an Act of Parliament superseded the Ordinance. The SEBI Act, 1992's preamble lays forth the organization's goals, which include promoting the growth and regulation of the securities market as well as safeguarding investors' interests in the securities market.²³²⁴

The inefficiency of sections 307 and 308 and the recommendation of previous committees, the Central government under section 30 of the SEBI Act promulgated a regulation on insider trading, known as 'SEBI (Insider Trading) Regulations, 1992'. It was the first law exclusive to Insider Trading. SEBI (Insider Trading) Act 1992 involves 4 Chapters and 3 Schedules including the 15 Regulations.

However, the regulation of 1992 could not curtail all the problems explicitly highlighted in various cases. In *Hindustan Lever Ltd v. SEBI*²⁸ it was held by SAT that, since the information is reported

²² Reema Bali, "Insider trading in India rules till now", *International Journal of Research – GRANTHAALAYAH* (2020), 8(9), 49-53. <https://doi.org/10.29121/granthaalayah.v8.i9.2020.1072>

²³ Glossary of Capital Market, Visited on June 08, 2023

https://www.sebi.gov.in/sebi_data/attachdocs/1292926861775.pdf

²⁴ COMP LJ 473 (SAT)

by the media house, it is available to the public and is no more disclosed.

To cover the lacunas, the regulation was amended in 2002. It changes the name to SEBI (Prohibition of Insider Trading) Regulations, 1992. The main objective behind this amendment was to specifically exclude speculative reports in media outside the definition of ‘publishing information’. Chapter 5A, which deals with insider trading and prohibits it, was inserted in the SEBI Act. Also, a provision for a penalty of up to 5 lakhs was provided for committing insider trading.

In 2011, amendments were made in Regulation 13, Form B & Form D of the PIT Regulation 1992. Inter alia, the regulation mandates a Promoter or member of a Promoter Group of a listed company to disclose the number of shares or voting rights held by him to the company under Form B. Also, location and any changes in such holdings are to be disclosed to both the stock exchange and the company, under Form D.²⁵

India's market capitalisation reached USD 1.6 trillion in November 2014, ranking it as the ninth-largest economy in the world by advertising capitalization. The need to update the law on insider trading can be attributed to the fact that more than 23 years had passed since SEBI issued the Regulation, which was becoming obsolete because, since 1992, the economy, recorded organisations, and the share trading system as a whole had changed. These developments highlighted the gaps in the 1992 Regulation that adversely affected investor rights, corporate governance norms, and consequently damaged public confidence in Indian financial markets.²⁶

Justice Sodhi Committee²⁷ was set up to evaluate the (PIT)Regulation 1992. This committee made numerous important recommendations that later shaped the Insider Trading Regulation 2015. The objective of the committee was to make the rules more predictable, unambiguous, and accurate. The key highlights of this committee were: clear and certain definitions of key terms such as an internal person, UPSI, connected person, and an immediate relative. Other recommendations

²⁵ SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011, Visited on June 08, 2023 <https://taxguru.in/sebi/sebi-prohibition-insider-trading-amendment-regulations-2011.html>

²⁶ Abhirami B & Arya Kuttan, “*Insider Trading Laws in India – Pertinence and Problems*”, International Journal of Legal Developments and Allied Issues (2018) Visited on June 10, 2023 <https://thelawbrigade.com/wp-content/uploads/2019/05/Abhirami-Arya.pdf>

²⁷ N.K. Sodhi, *Report on the Regulation of The Stock Market In India*, Security and Exchange Board of India, Retrieved on June 6, 2023 https://www.sebi.gov.in/sebi_data/attachdocs/1386758945803.pdf

include disclosure to the stock exchange if more than 10 lakh value of securities are traded within a quarter. Every entity that has issued securities listed on a stock exchange or is being considered for listing would be required to write and publish a Code of Fair Disclosure outlining the events and circumstances that might affect how its shares' value is revealed.

The legal foundation for the prohibition of insider trading is strengthened by the new Regulations. On January 15th 2015, by new regulation, significant changes have been made to the definitions of phrases like "insider," "connected persons," and "unpublished pricesensitive information." The revised Regulations include legislative notes that are fundamental and functional components of each provision. They aid in understanding and interpreting the new laws and lay out the regulator's legislative intent. Securities that are listed or that are being considered for listing on a stock exchange will be subject to the Regulations. Numerous defences and innovative ideas, such as the creation of trade plans, have been introduced. Additionally, SEBI now has the authority to give guidance on how to interpret or apply these Regulations.²⁸

In 2018, the Regulation was amended. It provided much-needed reforms in the arena of Insider Trading Regulation Law. Some of the reforms were: providing definitions for 3 significant terms, clarifying the provisions regarding sharing information for due diligence, maintenance of digital database, providing additional defences, separation of code of conduct for companies and fiduciaries, and addressing the concerns of leakage of UPSI and fixed institutional responsibility.²⁹

On September 17, 2019, the SEBI through its 3rd amendment amended SEBI (Prohibition of Insider Trading) 2015. The amendment defines two terms: informant & original information.

The amendment provides that the informant is not under any obligation to disclose his identity while submitting original information. He is outside the purview of the Right to Information Act 2005. Such an Informant may be punished by SEBI by the imposition of a fine, sanction, directive, or settlement. Organisations with a code of conduct must now make sure that the policy adequately protects employees who offer information to SEBI from being fired, demoted, suspended, harassed, threatened, or discriminated against, either directly or indirectly. Also, the provision for

²⁸ Vinita Solanki and Shruti Nandwana, "Analysis of The Securities and Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — An Overview" SCC Online

²⁹ Sara Jain & Swapnil Singh, "The 2018 Insider Trading Amendment – A Step in Right direction?", Indian Law Journal
<https://www.indialawjournal.org/the-2018-insider-trading-amendment.php>

a reward for providing the information was brought through the amendment.³⁴

At its board meeting on June 25, 2020, SEBI adopted the PIT Amendment, which makes the following significant changes: (1.) Improving the structured digital database to find and save more information about people who share unpublished, price-sensitive information (or UPSI). (2.) Automation of shareholder disclosures and a change in reporting power for listed firms, market intermediaries, and fiduciaries to disclose PIT violations. (3.) Introduction of additional transactional mechanisms that are exempt from the limitations of the trading window.

Recent amendments regarding Insider Trading Laws

A mutual fund is a funding company that collects funds from various investors and then invests in the securities market and short-term debt. Due to its significant advantages like professional management, diversification, affordability and liquidity, a large number of investors are attracted to it. As on March 31, 2022, there were about 1120 open-ended schemes and 354 close-ended schemes.³⁵

The PIT Regulations of 1992 were amended in 2002 to require Asset Management Companies (AMCs) and Trustees of Mutual Funds ('MFs') to establish internal policies and practises for the prevention of insider trading. Under these policies, any security that the organisation purchased, sold, or considered purchasing or selling on behalf of its clients or Mutual Fund scheme was required to be placed on the restricted/grey list. However, MF units were not included in the definition of securities under the PIT Regulations that SEBI passed at its meeting on November 19, 2014. The reasoning behind this was that even if a person had insider information about one company, he couldn't possibly profit from it by investing in a scheme that is a diversified pool of securities from different companies and that there were strict and transparent rules for calculating NAV (net asset value), and that the SEBI (Fraudulent and Unfair Trade Practises) Regulations, 2003 already addressed the offence of front-running.³⁶

In November 2022, SEBI (Prohibition of Insider Trading) Regulation 2015 was amended to include Mutual Funds under the purview of Insider Trading. The reason for the amendment was the Franklin Templeton Case in which the fund house's few executives were accused of

34 [Pallavi Kanakagiri & Nabarun Chandra Ray](#), "India: Changes To Insider Trading Law: New Informant Policy", Mondaq.

<https://www.mondaq.com/india/securities/857340/changes-to-insider-trading-law-new-informant-policy> 35 Mutual Fund Investments, Available at:

<https://www.sebi.gov.in/statistics/mutual-fund/mf-investment-objectives.html> 36 Vinod Kothari Consultants, available at:

<https://vinodkothari.com/2022/11/mutual-fund-units-now-under-the-net-of-insider-trading-regulations/>

redeeming their holdings in the schemes ahead of the six debt schemes shutting for redemption. It was contended that since the PIT Regulations disregarded Mutual Funds units from their applicability, the SEBI may have engaged in regulatory overreach if it attempted to apply in the current instance the criteria employed in prosecuting insider trading cases. Then, on October 28, 2021, SEBI introduced a circular (the "SEBI MF Circular") to update its current framework for regulating investment/trading in securities (including Mutual Fund units) by employees or board members of asset management companies and trustees of Mutual Funds.

Under the amendment, a new chapter, Chapter 2A was inserted in the SEBI (PIT) Regulation 2015. The purpose of the chapter was to restrict the communication relating to mutual funds and to restrict insider trading in mutual funds.

Chapter 2A extends the scope of multiple provisions to include mutual funds. It provides that all provisions of Chapters 2A, 3A and 4 apply to the mutual fund unit. It made regulations for mutual units concerning (i) Trading when in possession of unpublished price-sensitive information, (ii) Disclosures by certain persons, (iii) Disclosures by certain persons, (iv) Designated Persons, and (v) Institutional Mechanism for Prevention of Insider trading.

It inserted Schedule B1 in Regulation 2015 to provide minimum standards of code of conduct to regulate, monitor and report the trading done by Designated Persons in mutual funds under its scheme.³⁰

Provisions for Eliminating Insider Trading

Insider Trading is an unfair practice that not only affects the investors and the company but the whole capital market. Trading through the aid of exclusive information is like a fraudulent act

³⁰ Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2022, available at: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-amendment-regulations-2022_65437.html

with the investor. It harms the reputation of the company if insider trading is revealed. If the frequency of insider trading cases increases then this will shake the confidence of the public and investors in the capital market leading to a crash.

There are various provisions under the regulation for eliminating the menace of Insider Trading.

1. Disclosures Obligations: Certain kinds of individuals in a firm whose stocks are listed on a stock market, along with the public disclosure requirements for the company, must make the initial and ongoing disclosures. Within seven days after the appointment, the Key Management Person (KMP) must make the initial disclosure. The need to disclose does not end at the initial stage; promoters, directors, and officials must continue to disclose. Additionally, connected parties are accountable for disclosures.
2. Code of Conduct: Every market intermediary and listed company's board of directors is required to create a code of conduct to control, monitor, and report trading by its associates in line with Schedule B to the Regulations. The Regulations also state that anybody else who must deal with UPSI over the course of their business operations, including auditors, accountancy companies, legal firms, analysts, consultants, and other participants in the capital markets, must create a code of conduct in this manner. The Code of Conduct is the catalyst for curbing the menace of Insider Trading.³¹
3. Penalty: Under the Regulations, no distinctive penalties have been established. However, it refers to the penalties outlined in the SEBI Act of 1992, which will be followed. A fine of INR 250,000,000 or three times the profit made from insider trading, whichever is bigger, is imposed for insider trading, according to the Act. Additionally, SEBI has the authority to annul illegal transactions, force the return of securities that have been bought or sold, and forbid insiders from trading or investing in stocks. Any person who violates, attempts to violate, or aids in the violation of the Act may also be subject to imprisonment for a term that may not exceed 10 years, a fine that may not exceed INR 250,000,000, or both.³²
4. Whistleblower policy: The listed firm must have one and inform all its workers. An

³¹ Saurabh Chakraborty, "Insider Trading in India", International Journal of Law Management & Humanities, Vol. 05 Issue 03 (2022)

³² Section 15 G & Section 24, SEBI Act 1992

individual who alerts authorities to the company's dishonest trading practices is known as a whistleblower. Such people will be protected by a policy, and they will also get compensation for their bravery and honesty.³³

Challenges & Limitations in Elimination

It was observed that though insider trading frequently happens in India, there are few cases where the offender has been prosecuted successfully. Despite various efforts of the government, the menace of Insider Trading is still not diminishing. There are various reasons for it.

1. Inadequate Staff with Required Skills: As of March 31, 2022, there was 980 total personnel in various grades (including deputation and contract employees), of whom 905 were officers and 75 were secretaries and other support staff.³⁴ In its comparison, the US Security and Exchange Commission (SEC) comprises 4200 employees.³⁵ The difference is clear and broad. In SEC, there is approximately one employee for each listed company. However, there seems to be one SEBI employee for every six listed companies. The SEC employs more than 15 times as many people as SEBI does in critical divisions like Corporate Finance, which is in charge of, among other things, evaluating the accuracy of the financial statements of listed businesses. As a result of this, it is challenging to identify insider trading practices.
2. No phone tapping power: The most challenging stage after suspecting someone of insider trading or at least having doubts about them is "proving the offence," and typically telephone records and transcripts are the only items that prove the relationship between the persons who are capable of committing this crime. Although SEBI requested the government provide it with the authority to record phone calls in response to the Raj Rajaratnam-Rajat Gupta case, the government declined this request because it would be vulnerable to abuse. SEBI Chairman, UK Sinha said "The SEBI does not have the power to tap phones. It can only request call data records in suspicious cases."
3. Lack of Extra-Territorial Application: The globalisation of the world has also led to a

³³ Supra at 38

³⁴ Employee Profile at Sebi, Visited on June 13, 2023 <https://www.sebi.gov.in/department/human-resources-department-37/employee-profile-in-sebi.html>

³⁵ US Securities & Exchange Commission, Visited on June 13, 2023 <https://www.sec.gov/spotlight/sec-employees.shtml>

globalisation of crime, but the Indian legal system has not been created or modified to reflect this globalization-level prominence accorded to crime. The law is applicable across international borders so that resident and domestic investors' interests can be safeguarded. In cases where an investigation is ongoing in India but the evidence necessary to prove guilt is located in other nations, India lacks the legal framework necessary to request assistance from other nations. India does not have bilateral agreements with the majority of countries, while having some bilateral agreements, such as the Mutual Legal Assistance Treaty and Memorandum of Understanding.³⁶

4. Lack of Reasonable Time Period: The Regulation does not specify a reasonable period of time for wrapping up the investigation of insider trading instances. Any unusual delay in the examination's completion could lead to the destruction of important documentary evidence and offer the examination's critics an opportunity to influence it. Additionally, they lack a suitable plan for conducting the assessment process. The case of Dilip Pense v. SEBI (2001) is a prime example that highlights this lacuna. This case demonstrates how SEBI's lack of a cautious investigation component and a diligent approach allows wrongdoing groups to evade the reach of the law.³⁷
5. Lack of Anticipatory Actions: Nothing can be done when steps need to be taken to prevent insider trading because there is no law addressing this. SEBI can only launch an investigation when there is a violation of any regulation described in the insider trading regulation, and another scenario can only be when the information came from an informant.
6. Lack of specific provisions for Merger & Acquisition: The main time when the offence of insider trading increases is when a merger, acquisition, or takeover is imminent. In this situation, India lacks adequate regulations to stop this type of practice.³⁸

³⁶ List of MOUs at SEBI, Visited on July 14, 2023

http://www.sebi.gov.in/cms/sebi_data/internationalAffr/IA_BilMoU.htm

³⁷ Priyanka Patil & Sparsha Pavan, "Need for a Stringent Legislation on Insider Trading and its Relation to Mismanagement", International Journal of Law Management and Humanities, Volume 04 Issue 03

³⁸ Pranav Saraswat, "Elements of Effective Insider Trading Regulations: A Comparative Analysis of India and U.S.A." [2020] 10.1 NULJ 81

Conclusion

In conclusion, the subject of insider trading in India has received a lot of attention from regulators, decision-makers, and market participants. Insider trading is the act of someone trading security based on important information that is generally not available to the public, giving them an unfair edge over other market participants.

India has seen the development of insider trading laws over time, as well as a greater understanding of the negative consequences it has on market integrity and investor confidence. As the main regulatory body, the Securities and Exchange Board of India (SEBI) has put in place several measures to prevent insider trading. Among these steps are the ban on trading on unreleased price-sensitive information, the implementation of stringent disclosure rules, and the imposition of fines and legal repercussions for violators.

Although the regulatory system for preventing insider trading has improved, obstacles still stand in the way of its complete eradication. Since insider trading frequently involves intricate networks of information flow and covert transactions, one of the main problems is the difficulty in identifying and demonstrating instances of it. Further, conducting exhaustive investigations and consistently enforcing the laws are made difficult by the regulatory authorities lack of resources and experience.

A strong whistleblower protection mechanism is also required because people with knowledge of insider trading may be reluctant to come forward for fear of retaliation or because they lack faith in the effectiveness of the current reporting channels. Enhancing whistleblower protection and rewards can promote the revelation of crucial information and improve the enforcement of insider trading laws.

Effective insider trading regulation is further complicated by cross-border transactions and the global structure of financial markets. To overcome this issue and provide an even playing field for all market participants, regulatory agencies across jurisdictions must coordinate their activities and share information.

In conclusion, even though insider trading has been significantly reduced in India because of the introduction of tighter laws and penalties, the fight against this immoral practice is still ongoing.

A fair and transparent market environment that protects the interests of investors and supports the integrity of India's financial system requires ongoing efforts to improve monitoring tools, advance whistleblower protection, and promote international cooperation.