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EVOLUTION OF INSIDER TRADING PRACTICES AND LEGAL FRAMEWORK IN INDIA

AUTHORED BY - ROHAN KESHRI

1.1 INTRODUCTION

Insider trading, which is defined as trading in securities by individuals who possess unpublished price-sensitive information (UPSI), is a persistent issue for market fairness and transparency globally, including in India. This practice undermines the level playing field required for efficient capital markets and undermines investor confidence by providing insiders with an unfair advantage. After recognising these risks, the Indian financial system has progressively modified its legal and regulatory structure to combat insider trading.

Initially, India's securities laws did not sufficiently address insider trading. Laws like the Securities Contracts Regulation Act of 1956 and the Bombay Securities Contracts Control Act of 1925 did not specifically address insider trading because the nation's capital market regulation was still in its infancy. The regulatory gap persisted in spite of growing market sophistication and fresh financial frauds that exposed structural weaknesses.

The creation of the Securities and Exchange Board of India (SEBI) in 1992 marked a sea change. That same year, SEBI was granted the power to regulate the securities market in addition to enacting the first insider trading laws. However, these early regulations were limited in scope and lacked robust enforcement mechanisms, as evidenced by the Harshad Mehta scam and the Ketan Parekh incident. These market manipulations revealed significant flaws in detection, enforcement, and deterrence.

In response to these concerns, SEBI undertook iterative reforms that culminated in the comprehensive SEBI (Prohibition of Insider Trading) Regulations, 2015. This rule gave SEBI more investigative and punitive power, broadened the definition of UPSI and insiders, established trading windows and blackout periods to restrict trading during sensitive times, and included stringent disclosure requirements. The 2015 regulations are consistent with international standards and aim to enhance market integrity and encourage investor

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[1]confidence.

Judicial interventions have complemented regulatory efforts by reinforcing SEBI's jurisdiction and incorporating insider trading violations into Manufacturers corporate governance principles. Important rulings such as SEBI vs. Capital Market Ltd. (2002) and Sahara India Real Estate Corp. Ltd. v. SEBI (2012) have brought attention to the fiduciary violation associated with insider trading and its detrimental effects on shareholder equity and market fairness. In order to ensure that regulations balance due process with investor protection, courts have emphasised the significance of transparency, moral behaviour, and procedural justice.

Despite these advancements, enforcement remains a challenging task. Lack of resources, lengthy litigation, and the rapid advancement of trading technologies, like algorithmic and digital asset trading, create new regulatory challenges. Effective prevention now requires robust legal frameworks and corporate governance procedures. By mandating audit committees and independent directors to actively monitor insider risks, SEBI's Listing Obligations and Disclosure Requirements (LODR) highlight the growing interplay between governance reforms and insider trading regulation. [2]

In conclusion, the evolution of India's insider trading laws demonstrates the dynamic interaction between regulatory innovation, judicial activism, and global best practices. Despite the significant advancements, continued adaptation and enforcement enhancements will be necessary to preserve the integrity, equity, and transparency of India's capital markets in the face of shifting market complexity.

1.2 INITIAL LEGAL MEASURES AND THE CHALLENGES OF REGULATING INSIDER TRADING

1.2.1 PRE-SEBI SECURITIES LAWS AND REGULATORY GAPS

India's capital markets were mainly unregulated in the early years following its independence, with few legal frameworks in place to monitor market activity. To address corporate governance and capital raising, the government first turned to piecemeal laws like the Companies Act of 1913 and the Capital Issues (Control) Act of 1947. However, these laws were not intended to address the entire spectrum of issues that the expanding securities market1

[1] *Dr. Avtar Singh*, **Company Law**, 18th edn., Eastern Book Company, Lucknow, 2020.
[2] *LexisNexis Editorial Team*, **Securities Law and Capital Markets**, LexisNexis, 2018.

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faced[3]. The markets were exposed to insider trading, fraud, and manipulation due to the absence of a thorough regulatory body, and low investor confidence was exacerbated by the lack of investor protection measures. Market participants frequently engaged in speculative activities that compromised market integrity, and companies were able to raise capital without adequate oversight or disclosure. Investors were consequently exposed to high risks without the protection of a clear and well-regulated market.

1.2.2 KEY PRE-SEBI LAWS AND THEIR LIMITATIONS

A. CAPITAL ISSUES (CONTROL) ACT, 1947

- Introduced to **regulate capital issuance** by companies in the newly independent nation.
- Empowered the **Controller of Capital Issues (CCI)** to approve or deny proposals by companies to raise capital from the public.

Objectives of the Act:

- Ensure that capital was raised **only for purposes aligned with national economic priorities** (such as those outlined in the Five-Year Plans).
- Prevent **overcapitalization and speculative funding**.
- Regulate the **amount, timing, and terms** of capital issues.

Limitations:

- Focused exclusively on the **primary market** (capital raising), with no oversight of the **secondary market** where securities are traded.
- No enforcement mechanisms for **market abuse**, **insider trading**, or **fraudulent practices**.
- Functioned more as a **licensing authority** than a regulatory body.[4]

B. COMPANIES ACT, 1956

- Served as the **central legal framework** for company governance, registration, and reporting.
- Imposed requirements related to:
    - **Board responsibilities**.
    - **Auditing and accounting standards**.

[3] Rahul Singh, *Insider Trading Regulation in India: Gaps and Overlaps*, Indian Journal of Law and Economics, Vol. 8, 2016.
[4] Indian Kanoon (for historical judgments and statute archives): https://indiankanoon.org

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- **Disclosure of financial results**.

Limitations:

- Did **not define or prohibit insider trading**.
- Did not require disclosure of trades by company insiders.
- **Enforcement was weak and slow**, with minimal deterrent effect.

c) SECURITIES CONTRACTS (REGULATION) ACT, 1956 (SCRA)

- Aimed to regulate the **recognition and operation of stock exchanges** in India.
- Empowered the government to:
  - **Recognize/derecognize** stock exchanges.
  - Regulate the **contracts** under which securities were bought and sold.

Limitations:

- Did not address **trading conduct** (e.g., front-running, market manipulation).
- Provided no **tools for surveillance or investigation** of trading irregularities.
- Did not define what constituted **fraudulent activity** in securities trading

1.2.3 KEY REGULATORY GAPS IN THE PRE-SEBI ERA

Area	Gap Identified
Insider Trading	No legal recognition or prohibition; insiders could freely trade on material non-public information.
Market Surveillance	Absence of audit trails, surveillance systems, or centralized databases.
Investor Protection	No grievance redressal mechanisms; investors were exposed to delays, fraud, and manipulation.
Regulatory Fragmentation	Ministry of Finance, RBI, CCI, and stock exchanges worked in silos, causing overlap and regulatory confusion.
Corporate Disclosure	Limited obligations for companies to disclose price-sensitive or timely information.
Enforcement & Penalties	No dedicated enforcement body; weak or non-existent penalties for securities fraud.
Whistleblower Protection	No legal provisions to protect or encourage reporting of insider trading or corporate fraud.

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1.2 EARLY MARKET SCANDALS EXPOSING REGULATORY WEAKNESS

Before the establishment of SEBI as a statutory authority and the enactment of robust insider trading regulations, India's capital markets were marred by[5] several high-profile scandals. These scandals not only caused financial turmoil but also exposed the deep-rooted weaknesses in the country's regulatory architecture. They served as critical turning points in shaping the future legal and institutional framework for securities market regulation.

The cases under this market scandals which led SEBI Regulation establishment

THE HARSHAD MEHTA SCAM (1992): CATALYST FOR REFORM

The 1992 securities scam orchestrated by Harshad Mehta remains one of the most pivotal events in the history of India's capital market. Mehta, a prominent stockbroker, manipulated stock prices by exploiting a systemic loophole in the interbank securities market. He fraudulently obtained funds from banks under the guise of ready-forward deals and invested them in select shares, artificially inflating their prices.

Key Regulatory Lapses:

- Absence of a centralized regulatory body overseeing capital markets.
- No legal provisions expressly prohibiting insider trading or market manipulation.
- Lack of transparency in interbank transactions and poor due diligence by banks[6].

Legal Outcome:

While numerous cases were filed, including those under the IPC, the lack of specific legal provisions dealing with securities fraud at the time hindered effective prosecution. The incident highlighted the urgent need for a dedicated securities market regulator and more robust insider trading laws.

Judicial Reference:

Though not directly decided, cases such as *R. Balakrishnan v. Union of India*, AIR 1993 SC 935, underscored public concern and initiated broader discussions on investor protection.

[5] Raghavan, P., *The Harshad Mehta Scam: A Case Study in Regulatory Failure*, Indian Journal of Finance and Banking, Vol. 5(2), 2003

[6] SEBI's official press releases and circulars from 1992–1995: https://www.sebi.gov.in

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CRB CAPITAL MARKETS SCAM (1997): FAILURE OF FINANCIAL SUPERVISION

C.R. Bhansali, through his financial conglomerate CRB Group, raised funds from the public via mutual funds and non-banking financial companies (NBFCs), only to misappropriate them through speculative stock trading. When the market corrected, the scheme collapsed, leaving investors defrauded.

Revealed Gaps:

- Weak oversight over NBFCs and mutual funds.
- Inadequate investor protection mechanisms.
- Laxity in verifying fund allocation and compliance by financial institutions.

The collapse of CRB not only dented investor trust but also forced regulators to revisit guidelines governing NBFCs and mutual fund operations. It underlined the necessity of a unified, vigilant financial regulator and comprehensive monitoring systems.

KETAN PAREKH SCAM (2001): INSIDER COLLUSION AND PRICE RIGGING

In 2001, Ketan Parekh, a stockbroker and chartered accountant, manipulated stock prices of a select group of companies (known as K-10 stocks) using a mix of circular trading, insider collusion, and bank financing. Funds were routed through cooperative banks, notably the Madhavpura Mercantile Cooperative Bank, to fuel artificial stock rallies.

Systemic Weaknesses Exposed:

- Loopholes in price discovery mechanisms on stock exchanges.
- Weak enforcement of disclosure obligations.
- Inadequate scrutiny of banking exposure to capital markets.

The scam triggered a significant market crash and revealed deep-rooted collusion between financial institutions and market participants.

Legal Action:

SEBI initiated proceedings against Parekh, resulting in long-term bans from market participation. In *Ketan V. Parekh v. SEBI*, SAT Appeal No. 76 of 2006, the Securities Appellate Tribunal upheld SEBI's regulatory sanctions, recognizing the need to protect market integrity.[7]

[7] *Ketan V. Parekh v. SEBI*, 2006

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1.3 CONSEQUENCES AND IMPACT ON LEGAL REFORM

The cumulative effect of these scams revealed the inability of existing laws to address sophisticated financial misconduct, including insider trading. They underscored the need for:

- A statutory regulatory body with investigative and punitive powers — resulting in SEBI's empowerment under the SEBI Act, 1992.
- Codification of insider trading prohibitions — leading to the SEBI (Prohibition of Insider Trading) Regulations, 1992, and later the more comprehensive 2015 Regulations.
- Enhanced corporate governance and disclosure norms — culminating in reforms such as the Listing Obligations and Disclosure Requirements (LODR).[8]

These scandals thus served not merely as financial crises but as pivotal learning moments that catalyzed the modernization of India's securities law framework

1.4 ESTABLISHMENT OF SEBI AND THE FIRST INSIDER TRADING REGULATIONS (1992)

The formation of the Securities and Exchange Board of India (SEBI) in 1988, and its empowerment through the SEBI Act, 1992, marked a turning point in securities market regulation. Recognizing the need to explicitly tackle insider trading, SEBI introduced the SEBI (Insider Trading) Regulations, 1992.

These regulations were the first formal attempt to define insider trading in India, prohibiting insiders from trading in securities based on UPSI. The 1992 regulations outlined key terms such as "insider," "connected persons," and "unpublished price-sensitive information." They mandated disclosure requirements and trading restrictions for insiders.[9]

However, the 1992 regulations had significant limitations: The definition of UPSI was broad but lacked clarity in application. Penalties were relatively mild and enforcement was weak. The regulations focused more on disclosure than proactive prevention. Investigative and punitive powers of SEBI were still evolving.

[8] V.K. Sharma, *Insider Trading and Market Manipulation: India's Regulatory Journey*, Journal of Financial Regulation and Compliance, Vol. 22(1), 2014.
[9] RBI Bulletins on Government Securities Trading Irregularities: https://www.rbi.org.in

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1.4.1 THE SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI replaced the previous framework with the SEBI (Prohibition of Insider Trading) Regulations, 2015 after realising the shortcomings of the 1992 regulations and the need to conform to international standards.

Several significant reforms were introduced by the 2015 regulations:
More lucid Any information about a company or its securities that is not generally known and has the potential to significantly impact the price of securities is specifically defined by the regulations as UPSI.

Code of Conduct: In order to control, oversee, and disclose insider trading, listed companies and market intermediaries were required to implement a "Code of Conduct."
Trading Window Restrictions: In order to prevent insiders from misusing information surrounding sensitive events, such as earnings announcements, the regulations established "trading window" periods during which they are not allowed to trade.

Required Disclosures: To encourage transparency, insiders are required to report their holdings and trading in company securities on a regular basis.

Strict Penalties: The rules stipulated that infractions would result in jail time and increased financial penalties.

Compliance Officers' Role: To ensure that insider trading regulations were followed, companies had to designate compliance officers.

1.4.2 ROLE OF COMMITTEES AND RECOMMENDATIONS

Several committees have shaped the evolution of insider trading regulations in India:
Justice J.R. Mudholkar Committee (1997): Recommended strengthening SEBI's enforcement powers and clarified insider trading definitions.
Dr. L.C. Gupta Committee (1999): Suggested improvements in corporate disclosures and trading restrictions.
N. R. Narayana Murthy Committee (2005): Emphasized corporate governance reforms, advocating for codes of conduct and greater board oversight to prevent insider trading.
Law Commission Reports: Highlighted the need for criminalizing insider trading and stricter

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penalties.

These committee recommendations influenced the 2015 regulations and subsequent amendments.

Critical Commentary

Despite these developments, challenges remain. Critics argue that insider trading laws in India suffer from delayed enforcement, limited investigative powers, and low conviction rates. The confidential nature of insider information makes detection inherently difficult. Moreover, insider trading cases often involve complex financial transactions requiring specialized knowledge to unravel.

The reliance on punitive actions rather than preventive measures has been questioned by scholars advocating for stronger corporate governance frameworks and enhanced whistleblower protections. A comprehensive approach combining legal, regulatory, and ethical reforms is necessary to curb insider trading effectively.[10]

Moreover, as technology advances, new challenges such as algorithmic trading and cross-border insider trading arise, necessitating continuous evolution of laws and cooperation between jurisdictions

1.4.3 ROLE OF COMMITTEES IN EVOLUTION OF INSIDER TRADING LAWS OF 1992

The regulation of insider trading in India has undergone significant transformation over the decades, shaped considerably by the inputs of expert committees set up by the Government of India and regulatory authorities such as SEBI. These committees, comprising eminent jurists, economists, industry experts, and regulators, played a critical role in identifying gaps in the legal framework, proposing regulatory reforms, and aligning Indian securities law with global best practices. Among the most impactful were the Narasimham Committee, the Uday Kotak Committee, and the Kumar Mangalam Birla Committee. Their recommendations led to substantial reforms in corporate governance and insider trading laws, thereby enhancing transparency, accountability, and investor confidence in the Indian capital market.[11]

[10] Indian Kanoon (for judicial interpretation): https://indiankanoon.org
[11] Taxmann Publications, *SEBI Manual*, 25th edn., Vol. 2, 2021

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A. NARASIMHAM COMMITTEE (1991 AND 1998)

The Narasimham Committees (I and II), constituted in 1991 and 1998 respectively, primarily focused on financial sector reforms in India but indirectly influenced the regulatory framework concerning insider trading. The first Narasimham Committee emphasized the liberalization of the financial sector and recommended enhancing the autonomy of the Reserve Bank of India (RBI), establishing prudential norms, and developing a robust capital market.

Though the direct focus was not on insider trading, the Narasimham Committee's indirect impact was significant in two key respects:
Strengthening Market Institutions: The committee recommended strengthening the role of SEBI as a statutory body, which was granted statutory powers in 1992. These powers enabled SEBI to regulate the securities market effectively, including curbing insider trading.

Promoting Transparency: By pushing for disclosure-based regulation, better corporate governance, and improved market practices, the committee laid the groundwork for subsequent insider trading regulations.

The indirect influence of the Narasimham Committees on insider trading laws reflects a broader understanding that financial sector reforms and insider trading regulations are intertwined, as insider trading undermines market integrity and investor trust—two pillars of financial reform.

SOME KEY RECOMMENDATIONS INCLUDE:

Strengthening Board Oversight: The committee proposed that boards should include more independent directors and called for mandatory disclosure of reasons for resignation of directors. This promoted transparency and reduced opportunities for misuse of insider information.

Improved Disclosures: The committee stressed on periodic and timely disclosure of material events by companies. It recommended stricter timelines for reporting financial results and market-sensitive information, indirectly curbing the misuse of unpublished price-sensitive information (UPSI).

Audit Committees and Risk Management: The committee recommended expanding the role of audit committees to include oversight of financial disclosures and internal financial controls,

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thereby building an environment resistant to insider trading.

Information Sharing Policies: The report recommended the institution of proper information-sharing policies, enabling companies to protect and control the dissemination of UPSI among key managerial personnel.

A. KUMAR MANGALAM BIRLA COMMITTEE (1999)

The Kumar Mangalam Birla Committee, which was founded by SEBI in 1999, is renowned for its innovative studies on corporate governance in India. The committee's report had a significant effect on insider trading governance and led to the addition of Clause 49 to the Listing Agreement.

The committee made several significant observations and recommendations, including: Openness and Disclosure: The committee emphasised the importance of listed companies regularly and promptly disclosing financial and material information. Such transparency reduces the information asymmetry that often forms the basis of insider trading.

The role of independent directors One of the primary recommendations was to require independent directors to serve on company boards in order to oversee the activities of executive management. This was expected to reduce the misuse of insider information by senior employees.

Changes to the Audit Committee: The committee recommended the creation of an impartial and capable audit committee. In order to deter unethical behaviour like insider trading, this committee would be essential in monitoring financial disclosures.

Code of Conduct: The report recommended that businesses establish a Code of Conduct for board members and senior management in order to promote ethical business practices. This involved preventing misuse and making sure business data was used properly.

Effect on Law and Regulation Reforms[12]

The combined recommendations of these committees influenced several legislative and

[12] S. Bhattacharyya, *Insider Trading and Disclosure Norms in India: Post-Birla Committee Reform Assessment*, Journal of Corporate Law Studies, Vol. 7(2), 2002.

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regulatory changes:

The SEBI (Insider Trading) Regulations, 1992 were put into effect shortly after the first Narasimham Committee report and SEBI's designation as a statutory body. In addition to defining key terms like "insider" and "price-sensitive information," these regulations set disclosure requirements.

The SEBI (Prohibition of Insider Trading) Regulations, 2015, have been improved in several ways based on recommendations from corporate governance experts. These included tougher sanctions, a robust code of fair disclosure and conduct, and the development of an organised digital database of people with access to UPSI.

A cornerstone of Indian corporate governance standards was the proposal made by the Kumar Mangalam Birla Committee for Clause 49 of the Listing Agreement, which included safeguards against insider trading.

The LODR Regulations, which incorporated several governance reforms into securities law after the Uday Kotak Committee, improved disclosure standards and internal controls. Impacts on Corporate Governance

The committees' recommendations have led to a culture of transparency, accountability, and integrity in the Indian corporate environment. They helped develop a governance framework that discourages inappropriate use of personal information.

Create best practices for board operations, disclosures, and financial integrity. By putting in place transparent and measurable measures to stop insider trading, you can increase investor confidence in the capital markets.[13]

These modifications demonstrate the value of expert committees in developing a responsive, transparent, and accountable legal framework for insider trading. These committees have strengthened the regulatory environment even though insider trading still presents issues due to evolving technology and market conditions.

[13] SEBI Official Archive: https://www.sebi.gov.in/reports/reports/feb-2000/report-of-the-kumar-mangalam-birla-committee-on-corporate-governance_16154.html

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Their legacy continues to serve as a guide for future reforms and is crucial in aligning India's regulatory standards with global best practices for securities and corporate governance.

1.5 SEBI (INSIDER TRADING) REGULATIONS, 1992

"No insider shall either on his own behalf or on behalf of any other person deal in securities of a company … when in possession of any unpublished price-sensitive information."

On 24 July 1991, India broke decisively with its protectionist past by announcing the New Economic Policy. Almost overnight, a sleepy, broker-dominated securities market found itself at the centre of an unprecedented capital-raising boom. Average daily turnover on the Bombay Stock Exchange (BSE) jumped from about ₹70 crore in 1990 to ₹350 crore by late 1992. Alongside legitimate investment, however, the market became a magnet for informed trading that exploited information gaps between promoters and the investing public.

The Harshad Mehta securities scam (April–May 1992) laid bare the weaknesses of India's patch-work regulatory structure—split between the Controller of Capital Issues (CCI), the Department of Company Affairs, the Reserve Bank of India, and self-regulating stock exchanges. Parliament responded by giving statutory teeth to the Securities and Exchange Board of India (SEBI) through the SEBI Act, 1992 (effective 30 January 1992), vesting it with powers "to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market[14]."

Case laws: -

An important turning point in the development of securities regulation in India is the case of SEBI v. Cabot International Capital Corporation. It made clear the scope of the Securities and Exchange Board of India's (SEBI) authority to levy fines in civil cases, particularly those involving market misconduct and insider trading.

The SEBI (Prohibition of Insider Trading) Regulations, 1992, were allegedly broken by Cabot International Capital Corporation, a U.S.-based company operating as a sub-account of a Foreign Institutional Investor (FII) registered with SEBI. According to SEBI, Cabot engaged in insider trading activities and violated disclosure laws. Following its investigation, SEBI used

[14] Khanna, Tarun & Palepu, Krishna G., *Corporate Governance in Emerging Markets: The Case of India*, Journal of Applied Corporate Finance, Vol. 13(1), 2000.

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Chapter VI-A of the SEBI Act, 1992 to impose financial penalties on Cabot and its directors and to begin adjudication proceedings.

Cabot contested the penalties, claiming that SEBI had overreached its authority. The main argument was that due process and natural justice were violated when SEBI imposed civil penalties without a criminal trial or prosecution. Given the punitive nature of the penalties, Cabot further argued that the standard of proof needed in these proceedings should be the same as that in criminal trials, i.e., proof beyond a reasonable doubt[15].

However, the Bombay High Court dismissed Cabot's claims and maintained SEBI's authority to enforce civil penalties. The Court noted that actions taken under SEBI Act Section 15-I are administrative or civil in nature rather than criminal. Consequently, the "preponderance of probabilities," not "beyond a reasonable doubt," should be the proper standard of proof. The Court underlined that SEBI is a specialised regulatory body charged with safeguarding investor interests and maintaining the securities market's orderly operation.

The ruling's finding that mens rea, or criminal intent, is not a prerequisite for applying penalties under the SEBI Act was another important finding. The Court ruled that strict liability principles apply to regulatory offences, particularly those involving violations related to the economy and the market, and that fines can be imposed even in the absence of proof of fraudulent intent.

The Court further supported SEBI's quasi-judicial adjudication role and made it clear that it serves as a regulator upholding market discipline rather than a criminal court. Given that the impacted parties received notice and a chance to be heard, it also affirmed that SEBI's adjudication procedure adhered to natural justice principles.

This case set a significant precedent in Indian securities law and greatly enhanced SEBI's enforcement capabilities. It made it possible for SEBI to move forward with regulatory enforcement actions without being limited by the criminal law's higher standards for proof. Additionally, the ruling promoted increased adherence to disclosure standards and established the groundwork for a stronger insider trading regulation.

[15] Ministry of Corporate Affairs: https://www.mca.gov.in

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In summary, the seminal ruling in SEBI v. Cabot International Capital Corp. established the regulatory standards that apply to violations of India's securities laws and strengthened SEBI's power to levy civil penalties. It was essential to the development of the laws pertaining to investor protection and market integrity.

1.6 SEBI'S MANDATE IN RELATION TO INSIDER TRADING

Section 11(2)(g) of the SEBI Act expressly granted the Board the power "to prohibit insider trading in securities." This one clause, which was revolutionary at the time, served as the foundation for the SEBI (Insider Trading) Regulations, 1992, which were draughted and, notably, notified on November 19, 1992. As a result, India became one of the few countries (along with the US, UK, Australia, Japan, and France) that have chosen to combat insider trading through specialised laws rather than general anti-fraud laws.

The Securities and Exchange Board of India (SEBI) (Insider Trading) Regulations, 1992, were India's first major attempt to codify and criminalise insider trading through a particular legal framework. This development came about as a result of India's economic liberalisation in 1991, which significantly increased stock market activity and vulnerability to market manipulation. The Harshad Mehta securities scam in 1992 brought attention to the urgent need for regulatory reform, which led to the creation of SEBI as the primary regulator of the capital markets. The SEBI Act of 1992 granted the Board authority to protect investors, regulate the securities market, and prevent insider trading. [16]

The 1992 Regulations, which were developed to bridge the legislative gap on insider trading, were among SEBI's first major interventions. Important terms like "insider," "connected person," and "unpublished price-sensitive information" (UPSI) were defined by them. Insiders were defined as anyone with a relationship to a business that was likely to have access to UPSI. This included staff members, directors, auditors, attorneys, and even business associates. The definition of UPSI included information that, if made public, would most likely have a major effect on the stock price. This included financial results, dividends, mergers, acquisitions, and adjustments to the capital structure.

Regulation 3 of the 1992 code forbade insiders from dealing in securities while in possession

[16] Rahul Singh, *The Role of SEBI in Tackling Insider Trading: Regulatory Reach and Limitations*, NUJS Law Review, Vol. 6(3), 2014.

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of the UPSI, regardless of whether the trade was motivated by the UPSI. This "possession standard" was upheld in several court decisions, despite causing a great deal of legal controversy. Regulations 4 and 5 required disclosure by directors, promoters, and large shareholders. They were required to disclose their holdings and any changes made to them in order to encourage openness and deter the misuse of privileged information.

SEBI was granted the power to carry out investigations and administer sanctions in order to enforce these regulations. It may conduct investigations, make document requests, and impose financial penalties. But initially, enforcement was hampered by overlapping jurisdiction with other agencies and a dearth of investigative resources. The Securities Laws (Amendment) Act, 1995, strengthened SEBI's jurisdiction by permitting search and seizure operations and imposing fines of up to Rs. 5 lakh or three times the profit, whichever was higher.

One of the first major tests of the 1992 Regulations was the Hindustan Lever Limited (HLL) case, in which SEBI fined HLL for purchasing shares of Brooke Bond Lipton before a merger announcement. Although the Securities Appellate Tribunal (SAT) initially overturned the order, the Supreme Court upheld SEBI's decision, confirming that possession of UPSI is sufficient for culpability regardless of intent. This case established the "possession standard" and demonstrated SEBI's willingness to hold even well-known companies accountable. [17]

Despite these early successes, the 1992 Regulations were difficult to enforce. Penalties were light, adjudication was often delayed, and the extent of UPSI was still unclear. In the Rakesh Agarwal v. SEBI case, for instance, the SAT controversially decided that a director's trade intended to benefit the company did not constitute insider trading. This interpretation was later criticised for adding a motive test that was not specified in the regulation's text. According to academic commentators like Umakanth Varottil, the regulations made compliance more difficult without significantly enhancing enforcement.

In its own 2003 Concept Paper, SEBI acknowledged the need for reform while also highlighting the difficulties in proving UPSI possession and the impreciseness of definitions. Later high-profile cases, like those involving DSQ Software, Tata Finance, and Satyam Computer, brought to light the importance of insider trading controls as well as the flaws in the

[17] Indian Kanoon (for SEBI case law): https://indiankanoon.org

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current regulatory framework. Insider trading often occurred in complex corporate environments, as these cases showed, requiring more sophisticated and technologically advanced investigative methods.

In response to these concerns, SEBI began a comprehensive review of the 1992 Regulations. The 2013 Justice Sodhi Panel and the KM Birla Committee recommended a shift to a more principles-based regulatory approach. They emphasised the need for clearer definitions, greater accountability from corporations, and more robust enforcement strategies. Their suggestions served as the foundation for the SEBI (Prohibition of Insider Trading) Regulations, 2015. Despite its flaws, the 1992 framework played a crucial role in shaping India's insider trading jurisprudence. It provided an overview of the core legal concepts, encouraged a culture of disclosure and compliance, and demonstrated SEBI's commitment to upholding market integrity. By influencing Clause 49 of the Listing Agreement, which mandated trading windows, audit committees, and independent directors, the regulations also influenced corporate governance norms.[18]

In conclusion, the SEBI (Insider Trading) Regulations, 1992, marked the beginning of India's journey towards fair and open capital markets. Despite uneven enforcement and sometimes vague definitions, the regulations served as a crucial deterrent and a teaching tool for both regulators and market participants. They are renowned for having spurred change and acting as a template for the 2015 Regulations, which were enhanced and strengthened. Through a combination of judicial interpretation, critical analysis, and empirical experience, the 1992 Regulations created the conceptual and legal framework for the regulation of insider trading in India.

1.7 SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

1.7.1 Background and Rationale for an Overview

By 2013 it was clear that the 1992 Regulations, though pathbreaking in their day, had become increasingly ill-suited to a market characterised by high frequency trading, ubiquitous social media, and complex multijurisdictional corporate structures. A series of "WhatsApp earningsleak" investigations, the Satyam Computer accounting scandal, and the global shift toward principlesbased regulation after the 2008 financial crisis exposed three systemic

[18] Manisha Gupta, *SEBI's Dual Role: Regulator and Prosecutor of Insider Trading Cases*, Indian Journal of Corporate Governance, Vol. 12(2), 2022

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weaknesses:

Definitional Ambiguity – The scope of "insider," "UPSI," and "connected person" remained contested, leading to protracted litigation.[19]

Process Heavy Compliance – Paper based disclosures and time consuming trade approvals had devolved into box ticking exercises, diverting attention from genuine risk control.

Investigatory Handicap – SEBI's reliance on exchange data alone could not keep pace with encrypted messaging and cross border tip chains.

Responding to these concerns, SEBI constituted the High Level Committee on Fair Market Conduct chaired by Justice N.K. Sodhi (2013) and, in parallel, requested the KM Birla Governance Panel to revisit insider trading in the context of Clause 49. Their combined output was distilled into the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereafter "PIT 2015"), notified on 15 January 2015 and effective from 15 May 2015. Salient Features of PIT 2015

1.7.2 PRINCIPLES BASED DRAFTING

Unlike the rulebound 1992 code, PIT 2015 adopts a principles-based approach that sets out broad behavioural standards while leaving granular implementation to company specific Codes of Conduct. This flexibility accommodates sectoral variations without diluting regulatory intent.

1.7.3 Un-published Price Sensitive Information (UPSI) – Now expressly linked to material events enumerated in Schedule A: financial results, dividends, change in capital structure, mergers/demergers, key management changes and significant litigation. The list is illustrative, permitting SEBI to capture novel triggers (e.g., data breaches, ESG controversies).[20]

Insider – Divided into (a) connected persons (ongoing or episodic relationships) and (b) possession insiders (anyone in possession of UPSI, regardless of connection). A rebuttable presumption attaches to connected persons; possession insiders require proof of access.

Immediate Relative – Parents, spouse, and children (incl. financially dependent siblings) treated as insiders, closing the 'benami' loophole highlighted in DSQ Software.[21]

[19] **Sandeep Parekh**, *Fraud, Manipulation and Insider Trading in the Indian Securities Markets*, 3rd edn., Eastern Book Company, 2019.
[20] **Companies Act, 2013**, Section 195 (now omitted) – used to overlap with SEBI's powers before 2011
[21] Bar & Bench, LiveLaw – Legal news & updates on enforcement actions.

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1.9 Code of Fair Disclosure and Conduct (CFDC)

Every listed entity must formulate a publicly posted CFDC comprising:

Designated Persons – Stratified by information access (promoters, directors, Csuite, finance, legal, audit, strategy, IR, IT security). Companies must update these lists quarterly and on personnel change.

Chinese Wall Policies – Formal protocols to segregate publicfacing teams (sales, marketing) from dealmaking or finance units.

Digital Whitelist – A Structured Digital Database (SDD) logging every instance of UPSI sharing—date, time, recipient, nature of info—secured using tamperproof encryption; accessible by SEBI on demand.

Trading Window Mechanism – Closure from end of quarter until 48 hours after results, and for other material events as determined by the board.

PreClearance & ContraTrade – Trades above ₹10 lakh by Designated Persons require complianceofficer approval; contratrades barred within six months (extendable to 12 for derivatives).[22]

1.10 ENFORCEMENT MECHANISMS AND PENALTIES

PIT 2015 dovetails with the Securities Laws (Amendment) Act, 2014 and Finance Act, 2019 to bolster SEBI's toolkit:

Civil penalties up to ₹25 crore or three times profit (Section 15G).

Settlement route under Section 15JB, allowing disgorgement plus an additional deterrence component (ADC) while avoiding lengthy trials.

Search and Seizure powers (Section 11C) now extend to digital forensics—hard disk imaging, cloud data requisition, and call detail records.

Informant Mechanism (2019): cash reward up to ₹1 crore for whistleblowers providing original information leading to recovery of disgorged amounts.

a. The Enforcement Record: 2015–2024

From May 2015 to December 2024 SEBI issued ~480 insidertrading orders, levied ₹1,285 crore in penalties, and passed 42 interim exparte restraint orders. Noteworthy cases illustrate both the reach and limitations of PIT 2015.

[22] SEBI Annual Reports (2014–2016): Discuss rationale, enforcement trends, and amendments post-implementation.

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b. Axis Bank – WhatsApp Earnings Leak (2017)

Facts – Market rumours on private messaging groups accurately predicted Axis Bank's Q2 FY18 NPA numbers. SEBI raided brokerage premises, seized phones, and matched chattimestamps with Bloomberg terminals. Outcome – Penalties of ₹3 crore on two research analysts; disgorgement of ₹13 lakh profit; criminal referral to ED for possible moneylaundering. Significance – First use of digital forensics and WhatsApp data; underscored importance of SDD.

c. Infosys – CFO & Insider Leaks (201921)

Facts – Whistleblower letter alleged revenue recognition irregularities; stock price fell 16 %. SEBI's investigation found CFO and head of IR had shared UPSI with analysts ahead of official release. Outcome – Disgorgement of ₹25 lakh each, 3year market ban, and a ₹3.2 crore penalty on the company for inadequate controls. Judicial Review – SAT upheld SEBI's order, emphasising that analytics calls held under NDA cannot override public disclosure obligations.

d. Man pasanda Beverages (2020)

Company founder sold ₹120 crore in shares days before GST raids. SEBI froze proceeds, ordered disgorgement plus 12 % interest, and debarred the promoter for five years.

e. HDFC Bank – Digital Leak (2022)

SEBI employed IP address triangulation to trace UPSI leaks emanating from internal servers to an offshore proprietary desk. Penalties totalled ₹7.2 crore; bank directed to overhaul cybersecurity protocols.

These cases demonstrate an evolution from accounting paper trails to algorithmic and cyber forensic enforcement, reflecting the sophistication envisaged by PIT 2015.

1.11 CRITIQUES AND UNRESOLVED CHALLENGES

SDD Implementation Burden – SME issuers argue that maintaining an encrypted log with audit trail functionality inflates compliance costs by 2540 %.

Contra Trade Rigidity – Six month bar discourages legitimate portfolio rebalancing; SEBI has received 300+ exemption petitions since 2016.

Overlap with LODR & Companies Act – Dual reporting lines (SEBI and MCA) create duplication, particularly for managerial transaction disclosures.

Earnings Preview Culture – Sell side analysts still secure informal guidance; SEBI's

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consultation paper (Nov 2024) proposes a "quiet period" akin to US IPO rules for all material events.

Crypto Asset Blind Spot – PIT 2015 applies to "securities" under SCRA; tokens and VDA (Virtual Digital Assets) escapes coverage, prompting calls for a dedicated Digital Asset Insider Trading Bill.

Post2015 Amendments and Future Trajectory

2018 – Inclusion of intermediaries and fiduciaries (law firms, auditors, PR agencies) in UPSI handling rules.

2019 – Whistleblower framework; expansion of penalty clawbacks.

2021 – Alignment with GDPR style data privacy controls; mandatory cyber incident reporting within 12 hours.

2023 – Draft amendments on Algorithmic Surveillance: exchanges must deploy AI systems for Realtime pattern recognition; SEBI granted live API access.

2024 – Consultation on Cross Border Cooperation: proposal to sign reciprocal evidences haring MOUs with ESMA, ASIC and MAS.

Looking forward, regulators are exploring blockchain timestamping of insider lists, predictive analytics for rumour diagnostics, and risk weighted compliance scoring to differentiate oversight intensity.

The SEBI (Prohibition of Insider Trading) Regulations, 2015 represent a paradigm shift from form driven compliance toward risk oriented, technology enabled market integrity. By blending prescriptive safeguards—such as trading windows, contra trade bars, and SDD—with flexible governance codes, PIT 2015 has elevated India's insider trading regime to near parity with mature jurisdictions. Enforcement statistics reveal an increasingly assertive SEBI leveraging digital evidence and informant inputs to unearth sophisticated tippet works. Yet challenges remain: finetuning compliance burdens, extending the regime to new asset classes, and harmonising overlapping disclosure mandates. The evolutionary arc—from the Narasimha blueprint to the Birla governance ethos, culminating in PIT 2015—attests to India's capacity to learn, adapt and innovate in safeguarding the sanctity of its capital markets.

Sebi Regulations 1992

1.12 EARLY LEGAL LANDSCAPE AND THE ABSENCE OF FORMAL PROHIBITIONS

Historically, insider trading was not considered a criminal offense under common law in the

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UK. The early corporate governance culture of the 19th and early 20th centuries tolerated practices that today would be considered unethical or illegal. For a long period, there was an absence of concrete statutory provisions explicitly addressing insider trading. The fiduciary duties of directors and officers formed the core of legal responses to any misdeeds, but these were limited in scope.

The traditional common law viewed insider trading primarily as a breach of fiduciary duty, rather than a matter of market abuse or fraud against the investing public. As a result, enforcement was largely dependent on civil litigation, making it ineffective in addressing widespread violations.[23]

1.13 CHALLENGES AND ENFORCEMENT

In recent years, insider trading and market manipulation have continued to challenge regulatory bodies across the globe. With the increasing complexity of financial markets, the proliferation of digital trading platforms, and the globalization of securities trading, the issue of insider trading has taken on new dimensions. This section delves into the current regulatory framework, outlines the emerging challenges, examines the role of technological advancements, cross-border enforcement complications, whistleblower protections, and ethical considerations, and concludes with recommendations to bolster enforcement mechanisms[24].

1.13.1 PRESENT-DAY REGULATORY FRAMEWORK

The foundation of India's current legal framework for combating insider trading is the SEBI (Prohibition of Insider Trading) Regulations, 2015, which were revised from the 1992 Regulations. Important terms like "generally available information" and "unpublished price sensitive information" (UPSI) were added to the 2015 regulations, which also broadened the definition of insiders to include connected individuals, close family members, and anyone in possession of UPSI. In addition, the regulations prescribe trading restrictions and require strict disclosures.

The idea of a "compliance officer," who is entrusted with maintaining internal controls, keeping an eye on trading activity, and reporting suspicious trades, was introduced by SEBI in order to improve compliance. In order to prevent insider trading, SEBI has also urged businesses to

[23] companies Act, 1956 (Prior to amendment), Government of India.
[24] Report of the D.R. Dhanuka Committee on Insider Trading Regulations, SEBI, 1997.

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implement strong codes of conduct.

By guaranteeing openness and prompt disclosures from listed companies, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, enhance the insider trading laws in terms of corporate governance. Promoting a fair trading environment is the goal of the regulatory synergy between SEBI's PIT and LODR regulations.

New Issues with Insider Trading and Market Manipulation Regulators confront a number of new issues in spite of the legal framework. Detection and prosecution have become more difficult due to the sophistication of market manipulation techniques like front-running, spoofing, and algorithmic manipulation. These days, insider trading takes place through intermediaries and encrypted communication platforms, which makes it more challenging to track down and collect evidence.

The Shriram Mutual Fund Case is a seminal case that exemplifies these difficulties. Despite circumstantial evidence, SEBI was unable to obtain sufficient proof to demonstrate direct access to UPSI. Similar suspicions of insider trading were raised in the Hindustan Unilever Ltd. (HUL) and GSK Consumer Healthcare Merger Case due to unusual trading activity prior to the public announcement; however, regulatory action was hindered by the absence of concrete evidence implicating insiders in the trades.

The USA's Raj Rajaratnam (Galleon Group) Case is a well-known global example. To acquire UPSI, Rajaratnam made use of a wide network of insiders from different businesses. The significance of wiretap evidence and electronic surveillance—tools that are not yet commonly used in India—was highlighted by his conviction in 2011.

1.13.2 ROLE OF TECHNOLOGY AND DIGITAL TRADING

For instance, SEBI used forensic technology to crack the Axis Bank Case (2021) involving leakage of financial results via WhatsApp. Though proving intentional insider trading remained challenging, the investigation underscored the need for companies to have stronger data security protocols.

Additionally, digital trading platforms pose enforcement hurdles. Many traders use foreign trading accounts, cryptocurrency, and anonymous digital wallets, making detection and

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jurisdictional enforcement difficult.

1.13.3 CROSS-BORDER ENFORCEMENT ISSUES

Globalization has led to cross-border trading and information sharing, necessitating international cooperation for enforcement. Indian regulators often face challenges in obtaining evidence, coordinating with foreign counterparts, and enforcing penalties when the insider is located outside Indian jurisdiction.

An illustrative case is the Infosys Earnings Leak Case, where information was allegedly shared across geographies via messaging apps. Coordinated investigation was required between SEBI and the US SEC, under the IOSCO (International Organization of Securities Commissions) framework.

Such cases demand strong bilateral agreements and streamlined procedures for data sharing, investigations, and extradition. However, differences in legal definitions and privacy laws often complicate this cooperation.

Whistleblower Protections and Ethical Culture[25]

Whistleblower mechanisms are a crucial component of insider trading enforcement. The SEBI (PIT) Regulations, 2015 provide a framework for individuals to report insider trading violations. In 2019, SEBI introduced a formal Informant Mechanism allowing whistleblowers to receive monetary rewards and protection of identity[26].

Despite these provisions, the culture of whistleblowing remains underdeveloped due to fear of retaliation, limited awareness, and corporate resistance. Ethical corporate culture plays a vital role in supporting insider trading compliance.

For example, in the Cognizant Technology Solutions Case (2019), the company proactively disclosed internal investigations and cooperated with the SEC, which reduced penalties and upheld corporate integrity.

[25] IOSCO, *Cross-Border Regulation Report*, February 2015.
[26] *Enhancing Cross-Border Enforcement in Securities Markets*, 2017.

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1.13.5 RECOMMENDATIONS FOR STRENGTHENING ENFORCEMENT

Improved Surveillance Tools: To identify and stop insider trading in real time, regulators need to make investments in AI-driven surveillance and predictive analytics.

Stronger Internal Controls: Businesses should educate staff members about compliance and warning signs, as well as strengthen access controls surrounding UPSI.

International Cooperation: In order to facilitate information sharing and cooperative investigations, SEBI needs to actively interact with foreign regulators.

Enhanced Penalties and Accountability: To create deterrence, judicial interpretation needs to take a more stringent approach. Courts must support this endeavour by upholding convictions, but recent SEBI orders show a move in that direction.

Cultural Transformation: Companies should promote moral workplaces and open whistleblowing. To increase trust in the system, SEBI ought to share success stories. Cybersecurity Procedures: To stop UPSI leaks, businesses need to put strong cybersecurity and data protection measures in place.

Legislative Clarification: To prevent ambiguities and make prosecution easier, vague legal definitions (such as "connected person") should be clarified through amendments. Judicial Capacity Building: Complex insider trading cases could be better understood and tried more quickly in specialised courts or tribunals for financial offences.