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A CRITIQUE OF SEBI'S 2024 AMENDMENTS THROUGH A COMPARATIVE ANALYSIS OF INDIA, THE UNITED KINGDOM, AND THE UNITED STATES

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Introduction

This paper offers a comparative analysis of insider trading laws in India, the United States, and the United Kingdom, focusing on the legal treatment of “connected persons.” It critiques the SEBI (Prohibition of Insider Trading) Amendment Regulations, 2024, which broaden the definition of connected persons and shift the burden of proof onto the accused without reasonable safeguards. Through an examination of international standards, the paper argues that these changes may undermine due process and create a chilling effect on legitimate market participation.

Connected persons definition in India

The definition of “connected person” under the SEBI (PIT) Regulations, 2015, included those with direct or indirect relationships granting access to unpublished price-sensitive information (UPSI), such as financially dependent immediate relatives.¹ Hence there were 2 important conditions which is to be financially dependent on the person with access to UPSI or having taken consultation from the person with UPSI before conducted trading. Hence the presumption was only to a reasonable number of people and there were criteria set out to defend innocents. However, the 2024 amendment significantly broadened this scope by including individuals residing in the same household as connected persons (Reg. 2(1)(d)(ii)(1))², and expanding “immediate relative” to “relative” to include parents, siblings, spouses and many other relatives under deemed to be connected persons regardless of financial dependence or consultation (Reg. 2(1)(hc)).³ Additionally, it shifted the burden of proof under Reg. 4(2), requiring presumed connected persons to prove they lacked UPSI during trades, raising concerns about overreach

¹ Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019), reg. 2(1)(f).

² Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024 (w.e.f. December 06, 2024) reg. 2(1)(d)(ii)(1).

³ Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024 (w.e.f. December 06, 2024) reg. 2(1)(hc).

and fairness for those with minimal actual connection to insider trading.⁴

Comparative analysis with jurisdictions of UK and USA

UK

In the United Kingdom, insider trading is governed by both civil and criminal regimes under the Financial Services and Markets Act 2000 (FSMA), the UK Market Abuse Regulation (UK MAR), and the Criminal Justice Act 1993 (CJA). UK MAR defines a "person closely associated" (PCA) with a person discharging managerial responsibilities (PDMR) broadly to include spouses, civil partners, dependent children, cohabiting relatives, and legal entities under their control⁵. As seen in the Ian Hannam case, civil penalties like fines or bans can be imposed even without proof of profit motive or completed transactions.⁶

Criminal liability, outlined under the CJA, requires knowledge and intent. Section 52 criminalizes dealing, encouraging others to deal, or disclosing inside information when the person knows it is non-public and price-sensitive.⁷ Section 57 classifies insiders as those who access such information via their professional roles.⁸ Defenses include believing the information was public or denying intent to profit.⁹ As shown in *R v. McQuoid*, the UK prioritizes misuse and possession of inside information over demonstrable fraudulent intent.¹⁰

USA

In the U.S., insider trading is governed by the Securities Exchange Act of 1934 and SEC Rule 10b-5, which prohibit trading on material non-public information (MNPI) through fraud or deception.¹¹ The classical theory (*Chiarella v. United States*) bars corporate insiders from misusing MNPI.¹² The misappropriation theory (*United States v. O'Hagan*) extends liability to outsiders who breach duties of trust to the source of the information.¹³ In *Dirks v. SEC*, tippees

⁴ Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024 (w.e.f. December 06, 2024) reg. 4(2).

⁵ UK Market Abuse Regulation, art. 3(1)(26), as retained EU law under the European Union (Withdrawal) Act 2018.

⁶ *FSA v. Hannam*, Decision Notice, FSA (2012), available at <https://www.fca.org.uk/publication/decision-notices/ian-hannam.pdf>. (accessed on 12/04/2025)

⁷ Criminal Justice Act 1993, c. 36, § 52 (U.K.).

⁸ Criminal Justice Act 1993, c. 36, § 57 (U.K.).

⁹ Criminal Justice Act 1993, c. 36, § 53 (U.K.).

¹⁰ *Regina v. McQuoid*, [2009] EWCA Crim 1301

¹¹ Securities Exchange Act of 1934 § 10(b), (2018).

¹² *Chiarella v. United States*, 445 U.S. 222 (1980).

¹³ *United States v. O'Hagan*, 521 U.S. 642 (1997)

are liable only if the insider breached a fiduciary duty for personal benefit and the tippee knew it.¹⁴ In *Salman v. United States*, even familial sharing of MNPI triggered liability.¹⁵ Scienter is required in criminal cases (*Ernst & Ernst v. Hochfelder*), while civil cases need only a preponderance of evidence.¹⁶

Now that we have discussed the basic differences between how connected people are treated in these 3 different jurisdictions, it is important to look at 2 main criteria by which we can prove that the new amendment undermines fairness: -

Presumption of Guilt without safeguards simply on the basis of association undermines the principles of natural justice and shakes investor confidence

The 2024 SEBI amendment to the regulations introduced a rebuttable presumption to individuals who have been mentioned as deemed to be connected.¹⁷ This in particular has been criticized as this significantly shifts the burden of proof from the regulator (SEBI) to the accused without reasonable factors, compelling them to prove that they are innocent and did not have access to UPSI and did not use it to trade. The old act prior to the amendment, did not make such an assumption when it comes to as broad of a category that the present act had and even in places where it had to, such as immediate relatives, there were criteria set out which were, the accused had to be financially dependent on the person with access to UPSI or that the trading done was done so on advice of the person with access to UPSI.¹⁸ However, in contrast, the 2024 amendment allows SEBI to presume guilt merely based on association, rather than requiring it to establish a substantive link between the individual and the insider information. Suppose an individual resides with their uncle, who happens to work at a publicly listed company. If this individual trades in the company's shares, even without any communication or knowledge of inside information, they could be presumed to have had access to UPSI solely due to their distant connection under the term relative. This is even true if in all practical sense the 2 individuals might be fighting against each other in multiple court cases.

To add on to this the new framework is excessively broad and practically unworkable. It creates

¹⁴ *Dirks v. SEC*, 463 U.S. 646 (1983).

¹⁵ *Salman v. United States*, 580 U.S. 39 (2016)

¹⁶ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

¹⁷ SEBI (Prohibition of Insider Trading) Regulations, 2015, as amended by SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2025, Noti. No. F. No. SEBI/LAD-NRO/GN/2025/235, Mar. 11, 2025 (India).

¹⁸ Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019)

regulatory confusion and imposes a compliance burden on individuals and corporations that is almost impossible to discharge. For instance, individuals may now be expected to track the financial behavior of distant relatives, tenants and landlords, or relatives with whom there may be no regular contact.

P. Chidambaram v. Directorate of Enforcement, the Supreme Court reiterated that presumption of guilt provisions must be applied cautiously, especially in economic offences, and they must not override the basic rights of the accused.¹⁹

Moreover in Balram Garg v. SEBI, the Securities Appellate Tribunal (SAT) overturned SEBI's order due to lack of cogent evidence, noting that mere association with the company was not sufficient to establish trading based on UPSI.²⁰

The Securities Appellate Tribunal (SAT) in SEBI v. Gaurav Varshney, made it clear that insider trading liability cannot rest solely on association; there must be demonstrable access to UPSI and a breach of fiduciary duty or a relationship of confidence.²¹ Similarly, in SEBI v. Kishore R. Ajmera, the Supreme Court emphasized that while circumstantial evidence can support a case, it must be grounded in strong, clear factual circumstances, mere suspicion is not enough.²² Once again in the case of SEBI v. Balram Garg, the SAT also reaffirmed that holding a corporate position or having a personal relationship does not automatically imply access to UPSI unless supported by tangible evidence of intent or knowledge.²³ But merely looking at Indian cases is not enough as, to truly prove that this amendment truly undermines principles of fairness, we must also look at how other powerful jurisdiction deals with such issues.

Under the Market Abuse Regulation (UK MAR), the definition of “persons closely associated” is clearly circumscribed to include spouses, dependent children, or individuals cohabiting in a close relationship for at least 12 months.²⁴ In FSA v. David Massey, the Tribunal emphasized that liability must be based on proven access to confidential information, not mere proximity

¹⁹ P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 66.

²⁰ Balram Garg v. SEBI, (2022) 9 SCC 425.

²¹ SEBI v. Gaurav Varshney, (2016) 14 SCC 430.

²² SEBI v. Kishore R. Ajmera, (2016) 6 SCC 368.

²³ Balram Garg v. SEBI, (2022) 9 SCC 425.

²⁴ UK Market Abuse Regulation, art. 3(1)(26), as retained EU law under the European Union (Withdrawal) Act 2018.

or association.²⁵ Similarly, while civil liability under the Financial Services and Markets Act (FSMA) allows penalties without criminal intent, it still requires evidence of misconduct or access to unpublished confidential information. In *FSA v. Hannam*, civil sanctions were imposed, yet the standard required demonstration of information possession.²⁶ *R v. McQuoid* also illustrated that liability demands intent and misuse, with proof beyond reasonable doubt.²⁷ Thus, the UK regulatory system resists the temptation to presume guilt from mere association, preserving the principles of natural justice and sustaining investor confidence. This is unlike what is currently being followed in India post 2024 amendment. The current amendment will also shake investor confidence, as investors will have to “wear a camera on their head”²⁸ in order to prove innocence, since the amendment makes, practically speaking, proving innocence as an impossible standard to meet.

The United States, under SEC Rule 10b-5 and judicial precedent, mandates that insider trading liability arises only where there is a breach of fiduciary duty and knowing misuse of material non-public information (MNPI).²⁹ In *Dirks v. SEC*, the Supreme Court ruled that tippee liability cannot arise merely from association with an insider, it requires proof that the insider breached their duty for personal benefit, and that the recipient knew or should have known of that breach.³⁰ This was reaffirmed in *United States v. Newman*, where the court held that the government must prove a meaningful personal benefit to the tipper and actual knowledge of the breach by the tippee.³¹ Further cases like *Salman v. United States* reinforced the requirement of scienter³², knowing or reckless misconduct, as did *United States v. O’Hagan*, which penalized misappropriation of confidential information within fiduciary contexts.³³ Importantly, *Ernst & Ernst v. Hochfelder* made clear that mere possession or relationship is insufficient.³⁴ These consistent judicial standards which have already been mentioned earlier once before in this paper prevent arbitrary enforcement and uphold fairness.

²⁵ *David Massey v. Financial Services Authority*, [2011] UKUT 49 (TCC).

²⁶ *FSA v. Hannam*, Decision Notice, FSA (2012), available at <https://www.fca.org.uk/publication/decision-notices/ian-hannam.pdf>. (accessed on 12/04/2025).

²⁷ *Regina v. McQuoid*, [2009] EWCA Crim 1301.

²⁸ CNBCTV18.com, Experts Explain SEBI’s Proposed Changes to Definition of Connected Persons, Relatives in Insider Trading Rules, CNBC TV18 (Jan. 5, 2024, 10:39 AM), <https://www.cnbctv18.com/market/experts-explains-sebi-proposed-changes-to-definition-of-connected-persons-relatives-in-insider-trading-rules-19472130.htm>. (accessed 13/04/2025)

²⁹ Securities Exchange Act of 1934 § 10(b), (2018).

³⁰ *Dirks v. SEC*, 463 U.S. 646 (1983).

³¹ *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014).

³² *Salman v. United States*, 580 U.S. 39 (2016)

³³ *United States v. O’Hagan*, 521 U.S. 642 (1997)

³⁴ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

In contrast to India's presumption-based regime, the U.S. framework embodies legal safeguards, ensuring that liability is grounded in proven wrongdoing, not relationship alone, thus safeguarding constitutional fairness and market trust, while also maintaining investor confidence.

No Requirement To Prove Intent (Mens Rea) Or Benefit Directly Undermines Fairness

The 2024 amendment to SEBI's insider trading regulations introduces a troubling shift, it permits penalties against individuals classified as "connected persons" even in the absence of intent, knowledge, or benefit. This departs from fundamental principles of jurisprudence where the requirement of mens rea (guilty mind) is paramount, especially when the consequences involve severe penalties and reputational damage. In my opinion, apart from penalties and reputation damage it can also cause emotional distress to a person, simply having to prove they haven't done something.

Under this revised regime, a person may be prosecuted for insider trading simply because of their association with someone in the company regardless of whether they had access to UPSI, used such information, or intended to derive any benefit from it. The very act of being related to or sharing a household with an insider is now enough to trigger suspicion and liability, as mentioned in my previous point.

For example, consider a young adult who trades shares of a listed company with the intention of saving for college. If their uncle, unknown to them, who doesn't even reside in the same house, holds a position in the same company, the trader could be investigated or penalized, despite having no knowledge of the uncle's role or access to any UPSI. This places individuals at risk not for any culpable act, but for mere coincidence or association.

Such a presumption violates natural justice and contradicts key SAT rulings like *SEBI v. Gaurav Varshney*³⁵, which held that mere association or familial ties do not suffice for insider trading liability clear evidence of communication and misuse is essential. The case of *Balram Garg v. SEBI*³⁶ also stated that mere connection like trading patterns and social media likes

³⁵ *SEBI v. Gaurav Varshney*, (2016) 14 SCC 430.

³⁶ *Balram Garg v. SEBI*, (2022) 9 SCC 425.

cannot be the basis of forming a case against an individual. The proof should be clear between the alleged insider trading and an action done by the individual.

Further, in *SEBI v. Cabot International Capital Corporation*, the Bombay High Court noted that even in civil penalty cases under SEBI laws, there must be a degree of culpability, an element of guilt or knowledge, when interpreting penal statutes.³⁷ The absence of mens rea or any element of knowledge here is both unprecedented and dangerous.

In the seminal case *Dirks v. SEC*, the U.S. Supreme Court held that insider trading liability under SEC Rule 10b-5 requires two key elements: (1) the insider must have breached a fiduciary duty by disclosing UPSI in exchange for a personal benefit, and (2) the tippee (i.e., the recipient) must have known or should have known about the improper disclosure. Mere receipt of information or association is not enough.³⁸

Under the Financial Services and Markets Act (FSMA) 2000, even civil liability for insider dealing considers whether the accused “knew or ought reasonably to have known” that the information was inside information. Not only this but the FSMA also points out specific defenses that a person may take as safeguards under Section 53 of the act.³⁹ The *FSA v. David Massey* (2008) case illustrates this where the UK court emphasized that intent and awareness of wrongdoing are critical even in civil enforcement actions.⁴⁰

By removing the intent filter, SEBI's current model effectively criminalizes ignorance or coincidence, disproportionately affecting retail investors and individuals. Moreover under the new amendment as mentioned before even access to UPSI does not need to be proven by SEBI.

Potential Solutions

It is abundantly clear not just from cases like *Balram Garg v SEBI*, but also from the regulations, act and cases from UK and USA, that this new amendment made under the SEBI prevention of insider trading rules, directly undermines fairness. No other country presumes without any concrete evidence that such a distant person which you may have no relation with

³⁷ *SEBI v. Cabot International Capital Corp.*, 2004 SCC OnLine Bom 180.

³⁸ *Dirks v. SEC*, 463 U.S. 646 (1983).

³⁹ Criminal Justice Act 1993, c. 36, § 53 (U.K.).

⁴⁰ *David Massey v. Financial Services Authority*, [2011] UKUT 49 (TCC).

in all practical terms, is going to be the reason you have done insider trading. This is increasingly baffling when you consider that SEBI does not have to prove intent, mens rea or even that you had access to UPSI while trading. As seen from arguments above no other country has followed such a principle, including India in cases that have arisen in court. However, since this amendment is new, no major case has come out of it and as a result, this is the law to this day, even though SAT and Supreme court have gone against such principles in the past. In my opinion, in an attempt to “cast a wider net”⁴¹ SEBI has accidentally made an amendment which will do more harm than good, not just to the individuals but also to the market as more and more people will be afraid to take part in trading securities. This amendment, removes safeguards, doesn’t check the financial connection and set an impossible standard to be defended by innocent people.

To ensure fairness and align with natural justice, the definition of “connected person” should be narrowed to potentially only include immediate family, fiduciary relationships, or those with demonstrable access to UPSI. The amendment should also put a requirement of proving intent, knowledge, or at the bare minimum actual access to UPSI before imposing liability. Lastly, automatic assumptions of guilt based on familial ties or cohabitation must be eliminated, and safeguards must ensure liability is based on concrete evidence not on mere proximity. These reforms would not just align us with global standards but also restore fairness, uphold investor confidence, and improve regulatory accuracy.

⁴¹ CNBCTV18.com, Experts Explain SEBI’s Proposed Changes to Definition of Connected Persons, Relatives in Insider Trading Rules, CNBC TV18 (Jan. 5, 2024, 10:39 AM), <https://www.cnbctv18.com/market/experts-explains-sebi-proposed-changes-to-definition-of-connected-persons-relatives-in-insider-trading-rules-19472130.htm>. (accessed 13/04/2025)