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A COMPARATIVE AND CRITICAL ANALYSIS OF INSIDER TRADING REGULATION AND CORPORATE GOVERNANCE IN INDIA AND THE UNITED STATES¹

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ABSTRACT

Insider trading regulation in India has attained formal sophistication but not enforcement credibility. This paper compares the insider trading regimes of India and the United States, with particular attention to the corporate governance standards embedded in the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. Using a doctrinal and comparative method, it traces the evolution and theoretical foundations of both regimes and compares four points: the definition of an insider, the role of knowledge and motive, the use-versus-possession standard, and investigative powers. It argues that India's substantive law is comparable in coverage, and in places broader, than American law, and that weak enforcement is better explained by institutional and procedural limits on the Securities and Exchange Board of India's investigative architecture. The paper proposes reforms directed at investigative capacity, whistleblower incentives, trading plan oversight, criminal enforcement, and governance accountability.

Keywords: *insider trading; SEBI; SEC; corporate governance; unpublished price sensitive information; comparative securities regulation.*

I. INTRODUCTION

Securities markets function on the premise that price-sensitive information reaches investors on broadly equal terms. Insider trading, trading securities on material, non-public information by persons holding an informational advantage, undermines that premise and, with it, investor confidence.² India and the United States both prohibit it, but by different routes. The United States built its regime over nearly a century by judicially elaborating a general anti-fraud provision, section 10(b) of the Securities Exchange Act of 1934, and the Securities and

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²See Zohar Goshen & Gideon Parchomovsky, *On Insider Trading, Markets, and "Negative" Property Rights in Information*, 87 VA. L. REV. 1229 (2001).

Exchange Commission's (SEC) Rule 10b-5.³ India moved instead through committee reports to explicit regulatory codification, culminating in the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations).⁴

The PIT Regulations are comprehensive, yet enforcement in India is widely perceived as weak. Investigations are slow, evidence is hard to assemble, and the Securities Appellate Tribunal (SAT) demands an evidentiary rigour that the regulator struggles to supply.⁵ This paper asks whether that weakness lies in the substantive law or in the institutions that apply it. It tests two hypotheses: first, that despite its structure, the framework of the Securities and Exchange Board of India (SEBI) lacks clarity in regulating sophisticated misconduct; and second, that India's low conviction rate is attributable more to SEBI's investigative and enforcement limitations than to deficiencies in substantive law.

The study is doctrinal and comparative. It relies on statutes, regulations, decisions, committee reports and scholarship, compares only the United States, and addresses developments largely through 2024.

II. EVOLUTION AND THEORETICAL FOUNDATIONS

A. Divergent Historical Paths

American law grew from a narrow statutory base. Congress addressed insider trading expressly only in section 16(b) of the Exchange Act, which lets an issuer recover short-swing profits made by officers, directors and ten-percent shareholders.⁶ The broad anti-fraud provision in section 10(b), and Rule 10b-5, supplied the rest. From the 1960s, the Commission and the courts read them to require insiders to "disclose or abstain," a principle articulated in *In re Cady, Roberts & Co.* and extended to a wider class of persons in *SEC v. Texas Gulf Sulphur Co.*⁷ The Supreme Court then narrowed that expansion. *Chiarella v. United States* rejected a general duty of equal information and required a relationship of trust and confidence, and *Dirks v. SEC* conditioned tippee liability on a tipper's breach of duty for personal benefit.⁸ *United States v. O'Hagan* later endorsed the misappropriation theory, and the SEC's Rules 10b5-1 and

³Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2018); 17 C.F.R. § 240.10b-5 (2025).

⁴Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, No. LAD-NRO/GN/2014-15/21/85 (India) [hereinafter PIT Regulations].

⁵See Chandrakala v. SEBI, (2012) 109 SCL 26 (SAT) (India); see also Kanika Sharma, Insider Trading Law: A Comparative and Critical Examination Concerning Corporate Governance Standards in India & US ch. 5 (Apr. 2026) (unpublished B.Com. LL.B. dissertation, UPES School of Law) (on file with author) [hereinafter Sharma].

⁶Securities Exchange Act of 1934 § 16(b), 15 U.S.C. § 78p(b) (2018).

⁷*In re Cady, Roberts & Co.*, 40 S.E.C. 907 (1961); *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968) (en banc).

⁸*Chiarella v. United States*, 445 U.S. 222, 235 (1980); *Dirks v. SEC*, 463 U.S. 646, 662–64 (1983).

10b5-2 (2000) clarified the awareness standard and duties of confidence.⁹

India's path was committee-driven. The Thomas Committee (1948) first identified misuse of non-public information as a regulatory problem, and later committees (Bhaba, Sachar, Patel and Abid Hussain) moved gradually toward a definition of insider trading and a dedicated regulator.¹⁰ The Companies Act, 1956 added only disclosure duties for directors' shareholdings.¹¹ The SEBI (Insider Trading) Regulations, 1992 finally provided a standalone instrument, but early prosecutions exposed definitional and evidentiary weaknesses, and a 2002 amendment added model codes of conduct, shifting emphasis from punishment to prevention.¹² On the recommendation of the Sodhi Committee, the 2015 Regulations recast "insider" around possession of or access to unpublished price sensitive information (UPSI), widened the class of connected persons, and introduced the compliance officer and trading plans.¹³

B. Theoretical Foundations

Three bodies of theory underpin prohibition. The first is economic. Insider trading imposes adverse selection costs: market makers who cannot distinguish informed from uninformed order flow widen bid-ask spreads, raising transaction costs for every participant.¹⁴ It also rewards access rather than research. If informed trading earned no return, no one would gather information, yet insiders earn returns by privilege rather than by productive analysis, which is the intuition behind the Grossman–Stiglitz paradox.¹⁵ Henry Manne's contrary case, that insider trading accelerates price discovery and compensates entrepreneurs, has been answered persuasively.¹⁶ The price-discovery gains are marginal, the confidence costs are structural, and mandatory disclosure can deliver the informational benefit without the distributional inequity.¹⁷

The second body of theory is doctrinal. The classical theory grounds liability in the fiduciary relationship between insider and shareholders, whereas the misappropriation theory reaches

⁹United States v. O'Hagan, 521 U.S. 642, 652 (1997); 17 C.F.R. §§ 240.10b5-1, 240.10b5-2 (2025).

¹⁰See Sharma, *supra* note 4, ch. 2.1 (surveying the Thomas (1948), Bhaba (1952), Sachar (1977), Patel (1986) and Abid Hussain (1989) Committees).

¹¹Companies Act, 1956, No. 1 of 1956, §§ 307–308 (India) (repealed).

¹²Securities and Exchange Board of India (Insider Trading) Regulations, 1992 (India) (repealed).

¹³High Level Comm. to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992, Report (2013) (Justice N.K. Sodhi, Chairman); PIT Regulations, *supra* note 3, regs. 2(1)(d), 2(1)(g), 5.

¹⁴Albert S. Kyle, *Continuous Auctions and Insider Trading*, 53 *ECONOMETRICA* 1315 (1985); Lawrence R. Glosten & Paul R. Milgrom, *Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders*, 14 *J. FIN. ECON.* 71 (1985).

¹⁵Sanford J. Grossman & Joseph E. Stiglitz, *On the Impossibility of Informationally Efficient Markets*, 70 *AM. ECON. REV.* 393 (1980).

¹⁶Henry G. Manne, *Insider Trading And The Stock Market* (1966).

¹⁷Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure Of Corporate Law* 253–76 (1991).

outsiders who breach a duty of trust owed to the source of the information.¹⁸ Critics observe that the fiduciary foundation is less coherent than its canonical status suggests, and that misappropriation strains the statutory phrase “in connection with.”¹⁹ India’s Regulations adopt neither label, but by defining insiders as connected persons or as persons with access to UPSI, they synthesise both.

The third is market-efficiency theory. Strong-form efficiency, under which even non-public information is already reflected in prices, has been rejected empirically because insiders demonstrably earn abnormal returns.²⁰ The semi-strong form, by contrast, supports disclosure-based regulation: if public information is quickly priced, the only remaining edge is non-public information, and the law’s task is to move information into public view on non-discriminatory terms. India’s definition of “generally available information” reflects that logic.²²

III. INDIA’S GOVERNANCE-BASED COMPLIANCE ARCHITECTURE

The distinctive feature of the PIT Regulations is that they treat control of insider trading as a matter of corporate governance rather than of prohibition alone. Three instruments carry that design. Schedule A, read with Regulation 8, requires every listed company to publish a code of practices for fair disclosure of UPSI, providing for prompt and uniform public disclosure, a designated chief investor relations officer, careful responses to rumours and analyst queries, and need-to-know handling of unpublished information.²³ Schedule B, read with Regulation 9(1), requires a minimum code of conduct for designated persons, and Schedule C extends comparable duties to intermediaries and fiduciaries.²⁴ That code requires a compliance officer, a structured digital database of every person with whom UPSI is shared, information barriers (“Chinese walls”), trading window closures around price-sensitive events, pre-clearance of larger trades, a six-month contra-trade restriction, and periodic disclosures.²⁵ Regulation 5 permits persons who are continuously in possession of UPSI to trade under pre-disclosed trading plans, a device modelled in spirit on Rule 10b5-1.²⁶

¹⁸*Chiarella*, 445 U.S. at 235; *O’Hagan*, 521 U.S. at 652.

¹⁹*See* Donald C. Langevoort, *Rereading Cady, Roberts: The Ideology and Practice of Insider Trading Regulation*, 99 COLUM. L. REV. 1319 (1999).

²⁰Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 J. FIN. 383 (1970).

²¹H. Nejat Seyhun, *Insiders’ Profits, Costs of Trading, and Market Efficiency*, 16 J. FIN. ECON. 189 (1986).

²²PIT Regulations, *supra* note 3, reg. 2(1)(e).

²³*Id.* reg. 8 & sch. A.

²⁴*Id.* reg. 9(1) & sch. B; *id.* reg. 9(2) & sch. C.

²⁵*Id.* reg. 9 & sch. B.

²⁶*Id.* reg. 5.

Section 15G of the SEBI Act authorises a penalty of up to twenty-five crore rupees or three times the profit made, whichever is higher, and section 24 provides for prosecution.²⁷

On paper this is a coherent preventive system. Its weakness lies in implementation. Compliance officers are typically employees, often company secretaries, of the very company whose insiders they monitor, and in promoter-led and family-controlled companies concentrated ownership compromises their independence. Chinese walls prevent inadvertent leaks better than deliberate tipping, and codes of conduct risk becoming box-ticking exercises.²⁸ The design is sound; the difficulty is substantive accountability.

IV. COMPARATIVE ANALYSIS

A. *Who Is an Insider?*

Indian law defines an insider in two limbs: a connected person, or any person in possession of or with access to UPSI.²⁹ Connected persons include those associated with the company in the preceding six months in any capacity, such as director, employee, banker or adviser, and immediate relatives are presumed connected, subject to rebuttal.³⁰ The Regulations thus capture people by relationship and by informational position, blending classical and misappropriation logic. The United States has no statutory definition. Liability rests on the classical theory for corporate insiders and on the misappropriation theory, now supplemented by Rule 10b5-2's examples of relationships of trust, for outsiders.³¹

Both systems have moved from status-based to access-based conceptions of the insider, India through text and the United States through litigation. The American approach adapts to novel facts but leaves boundaries uncertain. The Indian approach is more predictable, but its breadth presupposes an ability to prove access across diffuse networks of relatives and intermediaries, and the relative presumption raises due-process concerns because it shifts the burden without proof of any link to UPSI.

B. *Knowledge and Motive*

Indian law does not require the regulator to prove that UPSI motivated a trade. Once SEBI establishes possession, the trade is presumed to have been motivated by that knowledge, and

²⁷Securities and Exchange Board of India Act, 1992, No. 15 of 1992, §§ 15G, 24 (India).

²⁸See Sharma, *supra* note 4, chs. 4, 6.

²⁹PIT Regulations, *supra* note 3, regs. 2(1)(d), 2(1)(g).

³⁰*Id.* regs. 2(1)(d), 2(1)(f).

³¹*O'Hagan*, 521 U.S. at 652; 17 C.F.R. § 240.10b5-2 (2025).

the accused must offer an innocent explanation.³² In *SEBI v. Kishore Ajmera*, the Supreme Court confirmed that SEBI proceedings turn on a preponderance of probabilities and may rest on circumstantial evidence.³³ Regulation 3 prohibits communication of UPSI except for legitimate purposes or legal obligations, which imports a purpose element, but what is “legitimate” is left largely to adjudicatory discretion.³⁴

The American position is more demanding. Section 10(b) requires scienter, so negligence does not suffice.³⁵ Tipping liability requires proof that the tipper acted for a personal benefit.³⁶ The Second Circuit in *United States v. Newman* demanded a “meaningfully close personal relationship” yielding a benefit of a pecuniary or similarly valuable nature, sharply reducing the government’s success in tipping cases, until *Salman v. United States* held that a gift of confidential information to a trading relative or friend suffices.³⁷

The United States thus protects defendants through precise mental-state elements at some cost to enforceability, whereas India adopts an enforcement-oriented presumption. But burden-shifting works only if SEBI can first prove access, possession and suspicious trading. In sophisticated cases with concealed communications, that predicate is what is missing, so the mechanism functions in straightforward cases and falters in complex ones.

C. Use Versus Possession

American law resolved the ambiguity in 2000 through Rule 10b5-1, which treats a person as trading “on the basis of” material non-public information if aware of it when trading. Awareness is broader than proof of use but narrower than bare possession.³⁸ The rule also affords a defence for trades under a written plan adopted before awareness of the information. Empirical work suggested insiders exploited the defence by timing plans around news.³⁹ The SEC accordingly amended the rule in 2022 to require cooling-off periods (at least ninety days for officers and directors, and thirty days for others), to restrict overlapping and single-trade plans, and to require good faith.⁴⁰

³²PIT Regulations, *supra* note 3, reg. 4(1).

³³*SEBI v. Kishore Ajmera*, (2016) 6 SCC 368 (India).

³⁴PIT Regulations, *supra* note 3, reg. 3.

³⁵*Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

³⁶*Dirks*, 463 U.S. at 662–64.

³⁷*United States v. Newman*, 773 F.3d 438, 452 (2d Cir. 2014); *Salman v. United States*, 580 U.S. 39 (2016).

³⁸17 C.F.R. § 240.10b5-1(b) (2025).

³⁹Alan D. Jagolinzer, *SEC Rule 10b5-1 and Insiders’ Strategic Trade*, 55 MGMT. SCI. 224 (2009).

⁴⁰Insider Trading Arrangements and Related Disclosures, Exchange Act Release No. 96492, 87 Fed. Reg. 80,362 (Dec. 29, 2022); 17 C.F.R. § 240.10b5-1(c) (2025).

India's Regulation 4 prohibits trading while in possession of UPSI and presumes that the trade was motivated by it, subject to rebuttal, including by reliance on a pre-existing trading plan.⁴¹ The result is a possession standard operating as a modified awareness rule. Regulation 5 plans resemble Rule 10b5-1 plans but have a structural weakness: they are approved by the compliance officer of the very company whose executives seek to trade, which raises questions of independence. A possession standard may also over-include persons who traded for unrelated reasons, so meaningful appellate review is essential. Yet the standard is not the source of India's enforcement problem: it is easier for the regulator to satisfy than the American test. The difficulty lies in proving the predicate facts in the first place.

D. Investigative Powers

The starkest difference is institutional. The SEC may issue subpoenas in formal investigations, enforceable in federal court, to compel documents and testimony from regulated entities and third parties.⁴² It draws on the Consolidated Audit Trail, which records every order across United States equity and options markets and identifies the customer behind it.⁴³ It administers a whistleblower programme under which persons who provide original information leading to sanctions above one million dollars may receive between ten and thirty percent of the amount collected, backed by anti-retaliation protection.⁴⁴ It also works alongside the Department of Justice, which can prosecute criminally and use tools, including court-authorised wiretaps, that a civil regulator lacks, as the Rajaratnam prosecution illustrated.⁴⁵

SEBI's formal powers are substantial. It may call for information, inspect records, and appoint an investigating authority empowered to examine persons on oath and compel documents.⁴⁶ In practice, however, its reach is narrower. Access to communications and financial records depends on third parties and on slow additional process, and SEBI has no interception power comparable to that used against American defendants. Offshore trading depends on foreign regulators' responsiveness. The informant mechanism introduced in 2019 originally capped rewards at one crore rupees, far below the American percentage formula, and offers weaker protection against retaliation.⁴⁷ Enforcement is also largely administrative: criminal

⁴¹PIT Regulations, *supra* note 3, regs. 4(1), 5.

⁴²Securities Exchange Act of 1934 § 21(a)–(b), 15 U.S.C. § 78u(a)–(b) (2018).

⁴³17 C.F.R. § 242.613 (2025).

⁴⁴Securities Exchange Act of 1934 § 21F, 15 U.S.C. § 78u-6 (2018); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841 (2010).

⁴⁵*See United States v. Rajaratnam*, 719 F.3d 139 (2d Cir. 2013) (affirming conviction in prosecution relying on court-authorised wiretaps).

⁴⁶Securities and Exchange Board of India Act, 1992, No. 15 of 1992, §§ 11(2)(i), 11C (India).

⁴⁷PIT Regulations, *supra* note 3, ch. IIIA (inserted 2019); *see* Sharma, *supra* note 4, ch. 5(D).

prosecution under section 24 has historically run for a decade or more, leaving penalties and disgorgement, which wealthy defendants may treat as a cost of doing business, as the dominant sanctions.⁴⁸

This asymmetry supports the second hypothesis: the United States convicts because it can detect, reconstruct and prove trading networks, while India's thinner record reflects investigative capacity rather than the reach of its law.

V. TOWARD REFORM

The comparison points to institutional rather than definitional reform.

First, SEBI should receive limited, court-supervised power to obtain electronic communications and financial records in insider trading investigations, subject to prior judicial authorisation and proportionality review consistent with the constitutional right to privacy.⁴⁹

Second, the informant mechanism should move from a fixed cap toward a reward linked to the sanctions imposed, coupled with statutory remedies against retaliation for good-faith reporting.⁵⁰ Third, trading plans above a prescribed size should be reviewed independently by the stock exchange or another external reviewer rather than resting on a company officer's approval alone.⁵¹

Fourth, criminal enforcement should be revitalised through fast-track special courts, standing for SEBI to appear in prosecutions, and a joint task force of SEBI, the Enforcement Directorate, the Financial Intelligence Unit and the Central Bureau of Investigation, modelled on SEC–Department of Justice cooperation. Fifth, governance should be strengthened by making the compliance officers of larger listed companies accountable to the audit committee, and by requiring the committee to certify annually that it has independently reviewed insider trading compliance.⁵² Sixth, SEBI should build an integrated beneficial-ownership database with depositories, brokers and the Financial Intelligence Unit, identifying the ultimate person behind trading accounts, and upgrade surveillance to detect trading coordinated through encrypted messaging.

⁴⁸Securities and Exchange Board of India Act, 1992, No. 15 of 1992, § 24 (India).

⁴⁹See Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

⁵⁰Cf. 15 U.S.C. § 78u-6(b), (h) (2018).

⁵¹Cf. PIT Regulations, *supra* note 3, reg. 5; 17 C.F.R. § 240.10b5-1(c) (2025).

⁵²See Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17–27 (India).

VI. CONCLUSION

This paper examined insider trading regulation in India and the United States through the lens of corporate governance. India's evolution, from the unheeded Thomas Committee recommendations to the 2015 Regulations, has produced a mature instrument: its definitions are broad, its governance architecture embeds prevention within listed companies, and its burden-shifting presumption suits the realities of proof.

But formal sophistication is not operational effectiveness. The first hypothesis is therefore only partially confirmed. Ambiguity persists around "legitimate purpose," compliance officer independence, and trading plan adequacy, but these defects are secondary. The second hypothesis is confirmed more decisively. The contrast between the SEC's subpoena power, surveillance, incentivised whistleblowers and parallel criminal track, and SEBI's more constrained tools explains the divergence in enforcement outcomes better than any difference in substantive law.

Further elaboration of definitions or higher penalty maxima will therefore yield diminishing returns unless accompanied by investment in investigative capacity, informant incentives, surveillance and inter-agency coordination. Insider trading law must be enforced, not merely enacted, if India's markets are to deliver the fairness on which investor confidence depends.

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