



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

A COMPARATIVE STUDY OF INSIDER TRADING LAWS: INDIA VS. USA – ANALYZING SEBI’S REGULATORY FRAMEWORK VERSUS THE SEC’S APPROACH

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Abstract:

Insider trading is a significant concern in global financial markets, as it undermines investor confidence and market integrity. Different jurisdictions have developed legal frameworks to regulate insider trading, with India’s Securities and Exchange Board of India (SEBI) and the United States’ Securities and Exchange Commission (SEC) being two of the most prominent regulatory bodies. This study provides a comparative analysis of the insider trading laws in India and the USA, focusing on the differences in regulatory frameworks, enforcement mechanisms, and judicial interpretations. In India, insider trading is governed by the SEBI (Prohibition of Insider Trading) Regulations, 2015, which define key terms such as “unpublished price-sensitive information” (UPSI) and “connected persons.” SEBI has been actively refining its approach to insider trading through amendments and enforcement actions. In contrast, the USA follows the Securities Exchange Act, 1934, with the SEC enforcing insider trading laws through Rule 10b-5 and judicially developed doctrines such as the classical and misappropriation theories. This paper compares the two regulatory frameworks, highlighting differences in legal definitions, penalties, and enforcement strategies. While both countries impose strict liability on offenders, the USA has a more robust enforcement mechanism, including criminal penalties and greater reliance on private litigation. The study also examines key case laws from both jurisdictions, demonstrating how courts have shaped the evolution of insider trading laws. The findings suggest that while India’s framework has improved, it still faces challenges in enforcement and market surveillance. This paper concludes with recommendations for enhancing India’s regulatory approach by incorporating elements of the SEC’s enforcement model.

Introduction

Insider trading is a critical issue in financial markets, as it involves the misuse of material non-public information (MNPI) by individuals who have privileged access. This practice distorts market fairness, gives an undue advantage to insiders, and erodes investor confidence. Countries worldwide have developed regulatory frameworks to curb insider trading, with India and the United States being two jurisdictions that have taken significant steps in this direction.

India regulates insider trading through the Securities and Exchange Board of India (SEBI) (Prohibition of Insider Trading) Regulations, 2015, which have undergone multiple amendments to strengthen enforcement. The USA, on the other hand, enforces insider trading laws primarily under the Securities Exchange Act, 1934, with the Securities and Exchange Commission (SEC) acting as the primary enforcement authority. Unlike India, where insider trading regulations are codified, the USA's insider trading laws have been largely shaped by judicial precedents.

Understanding the differences between these two regulatory frameworks is essential for assessing their effectiveness in preventing market abuse. While both India and the USA penalize insider trading, their legal definitions, enforcement strategies, and judicial interpretations vary significantly. This comparative study aims to highlight these differences and suggest ways to enhance insider trading regulations in India by learning from the USA's approach.

Objectives of the Study

The primary objectives of this research are:

- To examine the legal frameworks governing insider trading in India and the USA.
- To compare enforcement mechanisms and penalties under SEBI and SEC regulations.
- To analyze landmark case laws that have shaped insider trading jurisprudence in both jurisdictions.
- To assess the effectiveness of insider trading laws in preventing market manipulation.
- To recommend policy measures for improving India's enforcement strategies.

Research Questions

This study seeks to answer the following key questions:

1. How do the SEBI and SEC define and regulate insider trading?
2. What are the major similarities and differences between SEBI's and SEC's enforcement mechanisms?
3. How have courts in India and the USA interpreted insider trading laws in landmark cases?
4. How effective are the current regulatory frameworks in preventing insider trading?
5. What lessons can India learn from the USA's approach to insider trading regulation?

Literature Review

A robust body of literature exists on insider trading regulations, focusing on legal frameworks, enforcement mechanisms, and economic implications. This section reviews key theoretical perspectives, previous comparative studies, and gaps in the existing research to contextualize this study's objectives.

Theoretical Framework of Insider Trading Laws: The regulation of insider trading is primarily justified on three theoretical grounds:

- a) **Market Fairness Theory:** This theory argues that insider trading creates an uneven playing field where insiders profit at the expense of general investors. Regulatory intervention is necessary to uphold market integrity and investor confidence.
- b) **Property Rights Theory:** Some scholars argue that corporate information is the property of a company and should not be misused by insiders for personal gain. This perspective justifies insider trading laws as a means of protecting corporate ownership rights.
- c) **Market Efficiency Perspective:** Contrary to the fairness theory, proponents of this view argue that insider trading can make markets more efficient by allowing stock prices to reflect all available information. However, regulatory frameworks globally reject this argument in favor of stricter controls.

Overview of Existing Studies: Comparative Studies on SEBI and SEC Regulations

Several studies have analyzed the differences between India's SEBI (Prohibition of Insider Trading) Regulations, 2015, and the USA's Securities Exchange Act, 1934. These studies highlight that while SEBI's framework is codified and regulatory-driven, the SEC's approach is more judicially developed, relying on precedents such as SEC v. Texas Gulf Sulphur Co. (1969) and Dirks v. SEC (1983).

Empirical Research on Enforcement Effectiveness

- Studies on SEC enforcement reveal a high conviction rate in insider trading cases due to strong surveillance mechanisms and cooperation with law enforcement agencies.
- Research on SEBI's enforcement indicates challenges in detecting insider trading due to the lack of real-time surveillance and difficulties in proving wrongful intent.

Judicial Interpretations and Case Law Development

- In the USA, courts have developed key doctrines such as the classical theory (where insiders breach their fiduciary duty) and the misappropriation theory (where outsiders misuse confidential information).
- Indian courts, on the other hand, have primarily relied on SEBI's statutory framework, with limited jurisprudential evolution.

Gaps in Existing Literature: Despite the extensive research on insider trading laws, the following gaps remain:

- Limited analysis of enforcement challenges in India: Most studies focus on statutory provisions rather than actual enforcement outcomes.
- Comparative studies lack case-specific insights: While general comparisons exist, a detailed analysis of landmark case laws from both jurisdictions is lacking.
- Technological advancements and insider trading: The impact of artificial intelligence and blockchain technology on detecting insider trading remains underexplored.

Methodology

This study employs a doctrinal legal research approach, focusing on statutory provisions, case laws, and regulatory frameworks governing insider trading in India and the USA. The methodology is structured to facilitate a comparative analysis of SEBI's and SEC's approaches, emphasizing enforcement effectiveness, judicial interpretations, and policy implications.

Research Design: This research adopts a comparative legal analysis methodology, which involves:

- **Statutory and regulatory analysis:** Examining the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the Securities Exchange Act, 1934 (USA) to understand the core legal frameworks.
- **Judicial analysis:** Studying landmark insider trading cases from Indian and US courts to identify key interpretative trends.
- **Doctrinal research:** Assessing legal literature, academic commentary, and regulatory reports.

Data Sources: This study relies on primary and secondary sources:

(a) Primary Sources

- SEBI (Prohibition of Insider Trading) Regulations, 2015.
- Securities Exchange Act, 1934 (USA), specifically Rule 10b-5 on insider trading.
- Landmark case laws from India and the USA.

(b) Secondary Sources

- Books, journal articles, and research papers on insider trading laws.
- Reports from SEBI, SEC, and international regulatory bodies (e.g., IOSCO).
- Commentaries and law review articles analyzing enforcement trends.

Scope

- The study focuses on legal frameworks and enforcement mechanisms in India and the USA.
- It includes a comparative analysis of judicial interpretations in both jurisdictions.
- The research highlights policy recommendations based on global best practices.

Limitations

- The study does not include primary empirical data such as interviews or statistical analysis of insider trading cases.
- The focus is limited to India and the USA, excluding other jurisdictions.
- The analysis is based on publicly available enforcement data, which may not fully capture regulatory challenges.

Comparative Analysis of Insider Trading Laws: India vs. USA Part 1: The Evolution of Insider Trading Laws

The Historical Development of Insider Trading Laws in India

India's approach to insider trading regulation has evolved significantly over the past few decades, shaped by corporate scandals, global regulatory trends, and the increasing sophistication of securities markets. Unlike jurisdictions such as the United States, where insider trading laws developed through a mix of legislation and judicial precedents, India's regulatory framework was primarily statutory in nature and strengthened over time by SEBI's proactive role.

(a) The Pre-SEBI Era (Before 1992): A Lack of Regulatory Clarity

Before the establishment of the Securities and Exchange Board of India (SEBI) in 1992, insider trading was not explicitly prohibited under Indian law. The key legislations governing the securities market during this period were:

- The Companies Act, 1956: This act included provisions against fraudulent and unfair trade practices but did not directly address the misuse of unpublished price-sensitive information (UPSI).
- The Securities Contracts (Regulation) Act, 1956 (SCRA): Focused on regulating stock exchanges but did not have explicit provisions dealing with insider trading.

During this period, insider trading cases were rarely investigated or prosecuted, primarily due to the absence of a specialized regulatory body to monitor stock market activities. This led to unethical trading practices, where corporate insiders leveraged confidential information for personal gains without facing legal repercussions.

(b) The SEBI Act, 1992: Establishing a Regulatory Framework

The liberalization of the Indian economy in 1991 led to a rapid expansion of the stock market, increasing the risk of insider trading. Recognizing the need for stronger investor protection mechanisms, the government enacted the Securities and Exchange Board of India Act, 1992, which:

- Established SEBI as the primary securities market regulator.
- Granted SEBI powers to investigate, regulate, and penalize insider trading.
- Laid the foundation for the first formal insider trading regulations in India.

Following the enactment of the SEBI Act, the SEBI (Prohibition of Insider Trading) Regulations, 1992 were introduced, marking India's first comprehensive attempt to regulate insider trading.

These regulations:

1. Defined "insider trading" and introduced legal obligations for corporate insiders.
2. Required disclosures of shareholding patterns and transactions by directors and key management personnel.
3. Imposed penalties for trading on non-public information.

However, the 1992 regulations had several limitations, such as:

- Ambiguous definitions of key terms like "insider" and "unpublished price-sensitive information (UPSI)".
- Weak enforcement mechanisms, making it difficult to successfully prosecute insider trading cases.
- Limited penalties, which failed to deter corporate misconduct effectively.

Due to these shortcomings, SEBI introduced a revised framework in 2002, followed by a more comprehensive regulatory overhaul in 2015.

(c) The SEBI (Prohibition of Insider Trading) Regulations, 2015: A Globalized Approach

The SEBI (Prohibition of Insider Trading) Regulations, 2015, which replaced the older frameworks, aligned India's insider trading laws with global best practices, particularly those followed by the U.S. Securities and Exchange Commission (SEC). These regulations:

1. Expanded the definition of “insider” to include employees, directors, auditors, investment bankers, and any other person with access to UPSI.
2. Clarified the scope of UPSI, including price-sensitive corporate developments such as:
 - Mergers and acquisitions
 - Financial results
 - Regulatory approvals
 - Changes in capital structure
3. Introduced the concept of a trading plan, allowing insiders to trade securities in a pre-scheduled manner to avoid allegations of impropriety.
4. Strengthened disclosure obligations, requiring insiders to report transactions in securities beyond prescribed thresholds.
5. Enhanced surveillance and enforcement, empowering SEBI to conduct forensic audits and collaborate with stock exchanges for monitoring suspicious transactions.

Despite these improvements, challenges remain, particularly in proving intent, detecting indirect communication of UPSI, and ensuring timely prosecution.

The Historical Development of Insider Trading Laws in the USA

The United States has one of the most robust and well-defined insider trading regulatory frameworks globally. Unlike India, where regulations were primarily statutory, the U.S. insider trading framework developed through a mix of legislation, judicial precedents, and regulatory enforcement actions.

(a) The Securities Exchange Act of 1934: The Birth of Insider Trading Regulations

Following the Wall Street Crash of 1929 and the Great Depression, the U.S. Congress enacted the Securities Act of 1933 and the Securities Exchange Act of 1934 to restore public confidence in financial markets. The 1934 Act established the Securities and Exchange Commission (SEC), which was tasked with:

- Regulating securities markets.
- Preventing fraudulent activities, including insider trading.
- Investigating and prosecuting market misconduct.

Under Section 10(b) of the 1934 Act, the SEC introduced Rule 10b-5, which became the foundation of modern insider trading laws. This rule prohibits:

- The use of deceptive and manipulative practices in securities trading.
- The purchase or sale of securities based on material non-public information (MNPI).
- The misrepresentation of key financial information by companies and insiders.

(b) Landmark U.S. Cases Shaping Insider Trading Laws

Unlike India, where SEBI regulations primarily dictate insider trading rules, the U.S. framework has evolved significantly through judicial interpretations. Several landmark cases have played a pivotal role in shaping insider trading jurisprudence:

1. *SEC v. Texas Gulf Sulphur Co.* (1969): The “Disclose or Abstain” Rule: Employees of Texas Gulf Sulphur Co. bought company shares after discovering a major mineral discovery before the public announcement. The court established the “disclose or abstain” rule, requiring insiders to either publicly disclose material information or refrain from trading.
2. *Dirks v. SEC* (1983): Defining Tippee Liability: An insider (whistleblower) revealed fraudulent practices at a company to an outsider (Dirks), who passed the information to investors. The Supreme Court held that tippees (outsiders receiving insider information) can be held liable only if the insider (tipper) received a personal benefit in leaking the information.
3. *United States v. O’Hagan* (1997): The Misappropriation Theory: James O’Hagan, a lawyer, misused confidential information about a pending acquisition to trade stocks. The Supreme Court expanded insider trading liability beyond traditional insiders, holding that outsiders who misappropriate confidential information for personal gain are guilty of insider trading.

These cases demonstrate how the U.S. insider trading framework has developed through judicial rulings, making it more flexible and adaptive than India’s statutory-centric approach.

Part 2: Regulatory Framework and Enforcement Mechanisms Regulatory Framework of Insider Trading in India

India's insider trading regulations are primarily governed by the SEBI (Prohibition of Insider Trading) Regulations, 2015 (SEBI PIT Regulations, 2015), which set forth rules for defining, preventing, and penalizing insider trading. The enforcement of these laws is carried out by the Securities and Exchange Board of India (SEBI), which possesses investigatory, surveillance, and penalizing powers to ensure compliance.

(a) Defining “Insider” and “Unpublished Price-Sensitive Information (UPSI)” under SEBI’s Regulations

To regulate insider trading effectively, SEBI’s framework provides clear definitions of key terms, making it possible to determine liability and enforce penalties.

Key Term	Definition under SEBI (PIT) Regulations, 2015
Insider	Any person who (i) is connected with the company or (ii) possesses unpublished price-sensitive information (UPSI). This includes directors, employees, auditors, consultants, bankers, and their immediate relatives.
Unpublished Price-Sensitive Information (UPSI)	Any non-public and material information that, if disclosed, would affect a company’s stock price. Examples include mergers, acquisitions, financial results, dividends, regulatory approvals, and business expansions.
Connected Person	Individuals or entities that have a direct or indirect relationship with the company and access to UPSI, including investment analysts, legal advisors, consultants, and even journalists.
Trading Plan	A mechanism allowing insiders to pre-schedule their trades to ensure they are not acting on UPSI, thereby reducing liability.

This broad definition of an “insider” ensures that even third parties (such as lawyers, consultants, and analysts) who acquire UPSI through their professional duties can be held liable under SEBI’s

laws.

(b) SEBI's Enforcement Mechanisms and Investigative Powers

SEBI enforces insider trading laws through multiple surveillance and enforcement tools, including data analytics, forensic audits, and legal actions. The key mechanisms include:

1. **Stock Market Surveillance Systems (SMSS):** SEBI employs Artificial Intelligence (AI)-driven surveillance mechanisms that detect unusual trading patterns, sudden spikes in stock prices, and suspicious transactions before major corporate announcements. The Stock Exchange Mechanism collaborates with SEBI to flag suspected insider trading activities.
2. **Insider Trading Investigations:** SEBI has the power to summon individuals, conduct forensic audits, and demand trading records from brokers and companies. The regulator can examine phone records, emails, and internal communications to track potential breaches.
3. **Regulatory Actions and Penalties:** SEBI imposes monetary penalties, trading bans, and market prohibitions on individuals found guilty of insider trading. SEBI can also refer cases for criminal prosecution, leading to imprisonment in severe cases.
4. **Whistleblower Mechanisms:** While India's whistleblower laws are still relatively weak compared to the USA, SEBI encourages anonymous reporting of insider trading violations. However, there are no financial incentives for whistleblowers, unlike in the U.S.

(c) Penalties under SEBI's Insider Trading Regulations

Offense	Penalty
Insider trading	Up to ₹25 crore (~\$3 million) or three times the profit made from the trade (whichever is higher).
Failure to comply with disclosure obligations	₹1 crore (~\$120,000) per violation.
Providing misleading UPSI	Fines up to ₹10 crore (~\$1.2 million).

While SEBI has strengthened its enforcement, insider trading cases still face significant challenges, particularly in proving intent and ensuring timely prosecution.

Regulatory Framework of Insider Trading in the USA

The United States has one of the most advanced insider trading enforcement systems, led by the Securities and Exchange Commission (SEC). The primary laws governing insider trading include:

1. Securities Exchange Act of 1934 (Rule 10b-5): Prohibits trading on Material Non-Public Information (MNPI). Requires corporate insiders and tippees to abstain from trading unless information is publicly disclosed.
2. Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010: Established the Whistleblower Program, offering monetary rewards (10-30% of penalties collected) to individuals who report insider trading violations.

(a) SEC’s Insider Trading Enforcement Strategies

Enforcement Mechanism	How it Works
AI-Driven Market Surveillance	The SEC uses sophisticated data analytics and AI to track unusual trading activity before major corporate events.
Whistleblower Program	Encourages individuals to report insider trading in exchange for financial rewards.
Coordination with the DOJ and FBI	The SEC collaborates with law enforcement agencies for criminal prosecutions, ensuring stricter penalties.
Civil and Criminal Penalties	Violators face fines up to \$5 million and up to 20 years in prison.

The SEC is significantly more aggressive than SEBI in pursuing insider trading violations, with a higher conviction rate due to its advanced surveillance techniques, stronger whistleblower incentives, and faster legal proceedings.

Case Studies: High-Profile Insider Trading Cases

A comparative analysis of insider trading cases in India and the USA highlights key differences in enforcement and judicial outcomes.

(a) Case Study: India – The Reliance Industries Case (2021)

- Facts: SEBI fined Reliance Industries ₹25 crore (~\$3 million) and its chairman Mukesh Ambani for violating insider trading regulations. The company manipulated stock prices by selling shares in an off-market deal before a major announcement.
- Outcome: SEBI imposed monetary penalties, but no criminal prosecution or imprisonment was pursued.

Key Takeaway: SEBI’s enforcement was limited to financial penalties, whereas criminal action would have been possible under SEC’s jurisdiction.

(b) Case Study: USA – The Raj Rajaratnam Case (2011)

- Facts: Hedge fund billionaire Raj Rajaratnam was found guilty of running the largest insider trading ring in U.S. history. He used confidential corporate information to make millions in illicit profits.
- Outcome: The SEC worked with the FBI to arrest Rajaratnam, leading to an 11-year prison sentence and \$156 million in fines.

Key Takeaway: The SEC’s use of wiretaps, forensic financial analysis, and whistleblower evidence ensured a swift conviction, demonstrating the aggressive enforcement approach of U.S. regulators.

Comparative Analysis: SEBI vs. SEC

Aspect	India (SEBI)	USA (SEC)
Legal Framework	SEBI (PIT) Regulations, 2015	Securities Exchange Act, 1934
Definition of Insider	Broad, includes employees, relatives, and consultants	Based on fiduciary duty and MNPI access

Enforcement Approach	Mostly administrative penalties	Both civil and criminal prosecutions
Whistleblower Protection	Weak, no financial incentives	Strong, monetary rewards up to 30% of penalties
Surveillance Techniques	Limited AI-driven monitoring	Advanced AI-based trading surveillance
Maximum Criminal Penalty	₹25 crore fine (~\$3 million)	\$5 million fine + up to 20 years in prison

Part 3: Challenges, Effectiveness, and Policy Recommendations Challenges in Enforcing Insider Trading Laws

Despite having well-defined legal frameworks, both India and the USA face challenges in detecting, investigating, and prosecuting insider trading cases. While the SEC has been relatively more effective in enforcement, SEBI continues to struggle with proving intent, weak whistleblower protections, and slow legal proceedings.

Challenges in India’s Enforcement of Insider Trading Laws: India’s enforcement of insider trading laws, despite substantial improvements post-2015, faces several systemic and procedural hurdles:

(a) Difficulty in Proving Intent and Establishing Insider Trading

- Insider trading cases require proof that the accused traded based on Unpublished Price-Sensitive Information (UPS) rather than independent analysis.
- Insiders often use complex networks of family members or shell entities to conduct trades, making it difficult to establish a direct link.
- Unlike the USA, where the SEC relies on wiretaps and whistleblower testimonies, SEBI primarily depends on circumstantial evidence, which can be challenged in court.

(b) Weak Whistleblower Protection Framework

- India lacks a strong whistleblower reward system, making it less likely that insiders

will report violations.

- In contrast, the USA's Dodd-Frank Whistleblower Program has led to multiple high-profile convictions and millions in fines, encouraging individuals to report wrongdoing.

(c) Limited Criminal Prosecution of Insider Trading Cases

- SEBI has rarely pursued criminal charges, relying mostly on monetary penalties.
- Even in high-profile cases like Reliance Industries' insider trading violation (2021), the penalties were limited to fines, whereas in the USA, jail time would have been a likely consequence.

(d) Delays in Legal Proceedings

- Insider trading cases in India often take years to resolve, as seen in the PNB Housing Finance case (2019), where regulatory action took more than two years.
- The Indian judicial system is overburdened, causing delays in hearings and final orders.

Challenges in the USA's Enforcement of Insider Trading Laws: Despite being one of the most aggressive regulators, the SEC also faces challenges in tackling insider trading. Some key issues include:

(a) The Grey Area in Defining Insider Trading

- The USA does not have a statutory definition of insider trading, unlike India, where the SEBI PIT Regulations, 2015, explicitly define "insider" and "UPII."
- Courts often interpret insider trading laws on a case-by-case basis, leading to inconsistent judicial rulings.

(b) Use of Advanced Technology for Insider Trading

- Insiders in the USA are increasingly using encrypted messaging apps, blockchain-based transactions, and offshore accounts to avoid detection.
- While the SEC has AI-driven surveillance tools, new-age trading strategies make it harder to detect wrongdoing in real-time.

(c) Ethical Concerns with Whistleblower Rewards

- The SEC’s whistleblower program has been highly successful, but it has also raised concerns that employees may report minor infractions to receive monetary rewards.

Effectiveness of Insider Trading Laws: SEBI vs. SEC

Criteria	India (SEBI)	USA (SEC)
Detection Mechanism	Stock exchange alerts, forensic audits	AI-based market surveillance, whistleblower tips, FBI wiretaps
Speed of Investigation	Slow, often takes years	Faster, SEC resolves cases within months
Legal Consequences	Monetary fines, market bans	Fines + criminal prosecution (jail terms)
Whistleblower Effectiveness	Weak (no financial incentives)	Strong (10-30% rewards on fines)
Conviction Rate	Low, cases often dismissed due to lack of evidence	High, backed by FBI & DOJ

Key Takeaways from SEBI vs. SEC’s Enforcement Approaches

1. SEC’s aggressive strategy (criminal penalties + wiretaps + whistleblower incentives) leads to a higher conviction rate.
2. SEBI’s enforcement remains largely administrative, focusing on fines rather than imprisonment.
3. India’s legal system is slower in handling insider trading cases, affecting deterrence.
4. Whistleblower protection is a game-changer in the USA, encouraging self-reporting and cooperation with regulators.

Policy Recommendations for Strengthening Insider Trading Laws in India

To enhance the effectiveness of India’s insider trading enforcement, the following reforms are

recommended:

(a) Strengthening SEBI's Investigation and Prosecution Powers

- SEBI should be granted criminal prosecution powers, allowing it to initiate insider trading cases directly in criminal courts, similar to the SEC's collaboration with the FBI and DOJ.

(b) Introducing a Robust Whistleblower Reward Program

- India should adopt a whistleblower system modeled on the USA's Dodd-Frank Act, offering financial incentives to individuals who expose insider trading violations. This can lead to better self-reporting, reducing reliance on circumstantial evidence.

(c) Expediting Legal Proceedings for Insider Trading Cases

- Establishing fast-track courts for securities fraud cases to ensure insider trading cases are resolved within 12-18 months. Encouraging the use of plea bargains to secure faster convictions.

(d) Strengthening Surveillance through AI and Data Analytics

- SEBI should collaborate with fintech firms and AI specialists to develop real-time trading pattern detection tools. Leveraging blockchain-based audit trails to prevent the use of offshore accounts for insider trading.

(e) Aligning India's Laws with Global Best Practices

- Adopting a hybrid model of judicial precedents and statutory definitions, similar to the USA, to make India's insider trading laws more flexible. Implementing cross-border cooperation agreements with regulators like the SEC, FCA (UK), and ESMA (EU) for tracking international insider trading activities.

Conclusion: The Future of Insider Trading Regulation

The comparative analysis of India and the USA's insider trading laws reveals that while India has made significant progress in strengthening regulations, enforcement gaps remain a major

challenge. The USA's proactive use of technology, whistleblower programs, and criminal prosecution mechanisms have made its regulatory framework more effective.

Key Takeaways from the Comparative Study:

1. SEBI's 2015 regulations brought India closer to international standards, but proving intent remains difficult.
2. The SEC's use of wiretaps, whistleblower rewards, and AI-driven surveillance gives it a strong edge over SEBI.
3. Insider trading cases in India take longer to prosecute, weakening deterrence.
4. Criminal penalties in the USA (up to 20 years in prison) make insider trading riskier than in India.

Conclusion and Recommendations

Summary of Findings: This study has examined the insider trading laws in India and the USA through a comparative analysis of SEBI's and SEC's regulatory frameworks. It highlights the differences in legal definitions, enforcement mechanisms, judicial interpretations, and challenges faced by regulators in both jurisdictions.

Key Findings:

1. Regulatory Framework: India's SEBI (Prohibition of Insider Trading) Regulations, 2015, and the USA's Securities Exchange Act, 1934 (Rule 10b-5) serve as the primary legislations governing insider trading. While both frameworks emphasize prohibiting the misuse of non-public price-sensitive information, the USA employs a broader and more dynamic legal approach through judicial precedents.
2. Definition of Insider Trading:
 - SEBI explicitly defines "insider," "connected persons," and "unpublished price-sensitive information (UPSI)," whereas the USA lacks a statutory definition and relies on judicial interpretations (e.g., SEC v. Dirks).
 - The USA recognizes two theories: classical theory (fiduciary duty-based) and misappropriation theory (unauthorized use of information), while India follows a

stricter connected-person model.

3. Enforcement and Penalties:

- The SEC has more extensive enforcement powers, including criminal prosecution, while SEBI primarily imposes civil penalties.
- The USA has a higher conviction rate due to FBI involvement, whistleblower programs, and the ability to use wiretaps in investigations.
- India's enforcement is mostly administrative, relying on monetary fines and market bans rather than criminal charges.

4. Judicial Interpretation and Case Law:

- In India, judicial interpretation is still evolving, with courts largely relying on SEBI's findings (Rakesh Agarwal Case, Hindustan Lever Ltd. Case).
- In the USA, landmark cases such as SEC v. Texas Gulf Sulphur Co. and United States v. O'Hagan have shaped insider trading jurisprudence.

5. Challenges in Enforcement:

- SEBI struggles with proving intent, tracking indirect trades, and legal delays.
- The SEC faces challenges due to the absence of a statutory definition, high burden of proof, and technological advancements in evading detection.

Addressing Research Questions

1. How do SEBI's insider trading regulations compare with those of the SEC?

- SEBI's regulations are more structured and codified, while the USA relies heavily on judicial precedents to define insider trading.
- The USA applies both the classical and misappropriation theories, while India focuses on the connection-based approach.
- The SEC has broader investigative powers, including criminal prosecution, whereas SEBI primarily imposes civil penalties.

2. What are the similarities and differences in enforcement and penalties?

- Both regulators impose fines and market bans, but the USA has a more aggressive approach, including criminal penalties (jail time).
- SEBI lacks the ability to conduct criminal prosecutions, whereas the SEC works with the

Department of Justice (DOJ) and the FBI to secure convictions.

- The SEC has a strong whistleblower reward system, encouraging insiders to report violations, while India's whistleblower protections are weak.

3. How effective are these regulations in preventing market manipulation?

- The USA's framework is more effective due to rapid enforcement, strong surveillance mechanisms, and severe criminal consequences.
- India's legal delays and the lack of criminal prosecution reduce deterrence against insider trading.
- AI-based surveillance and whistleblower mechanisms in the USA have led to higher conviction rates compared to India.

Policy Recommendations

To enhance the effectiveness of SEBI's insider trading regulations, the following reforms are suggested:

1. Strengthening SEBI's Investigative and Enforcement Powers
 - SEBI should be granted criminal prosecution powers similar to the SEC's collaboration with the DOJ.
 - Faster resolution of cases through specialized fast-track courts for securities fraud.
2. Introducing a Robust Whistleblower Reward Program
 - India should adopt a Dodd-Frank-style whistleblower program, offering financial incentives for reporting insider trading violations.
 - Strengthening whistleblower anonymity protections to encourage disclosures.
3. Enhancing Surveillance and Technological Capabilities
 - Implement AI-driven trade surveillance systems for real-time tracking of suspicious transactions.
 - Leverage big data analytics and blockchain tracking to identify indirect trading patterns.
4. Expanding Cross-Border Regulatory Cooperation
 - Strengthen cooperation between SEBI and global regulators (SEC, FCA, ESMA) for tracking cross-border insider trading activities.

- Align SEBI's regulations more closely with international best practices.
5. Strengthening Penalties and Investor Awareness
 - Introduce mandatory imprisonment provisions for serious insider trading offenses.
 - Increase public awareness campaigns on the risks and consequences of insider trading.

Future Scope of Research

Given the rapid evolution of financial markets, further research can be conducted in the following areas:

1. Empirical studies on insider trading enforcement effectiveness in India and the USA.
2. Comparative analysis of insider trading laws in other emerging markets (e.g., China, Brazil, South Africa).
3. The role of AI and machine learning in insider trading detection.
4. Impact of whistleblower programs on insider trading prosecutions globally.

Conclusion

The comparative study of SEBI and SEC regulations on insider trading demonstrates that while both jurisdictions aim to ensure market integrity, their enforcement approaches differ significantly. The USA's aggressive stance, technological integration, and strong whistleblower mechanisms have made its regulations more effective. For India to enhance its enforcement, SEBI must be empowered with criminal prosecution powers, AI-based surveillance, and stronger whistleblower protections. By implementing global best practices, India can significantly improve deterrence against insider trading and enhance investor confidence in its capital markets. By bridging the enforcement gap between SEBI and the SEC, India can move closer to a regulatory framework that effectively curbs insider trading, ensuring fair and transparent markets for all investors.

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