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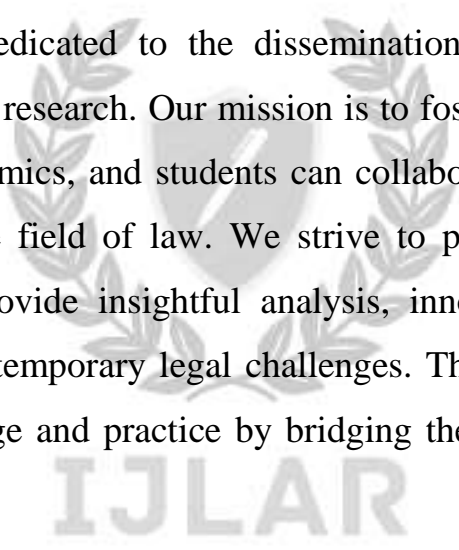
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Introduction

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.

A large, faint watermark of the IJAR logo is centered on the page. It features a circular emblem with a shield in the center, flanked by laurel branches. Below the emblem, the letters 'IJLAR' are printed in a large, bold, sans-serif font.

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.

EXAMINING INSIDER TRADING IN INDIA AND ITS LEGISLATIVE MECHANISMS UNDER SEBI

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ABSTRACT:

Insider trading defined as the clandestine dealing in a company's securities based on unpublished price-sensitive information (UPSI) or confidential data that could materially impact market prices if disclosed and poses a pernicious threat to market integrity, investor confidence and corporate governance. This unethical practice, prevalent since the inception of securities trading, erodes and affects market equilibrium, breaches fiduciary duties and enables misappropriation of gains at the expense of uninformed investors. In India, insider trading has evolved from a peripheral concern under the Companies Act to a focal point of regulatory scrutiny following the enactment of the Securities and Exchange Board of India (SEBI) Act, 1992. SEBI, under section 11(1), 11(2) and 30 is empowered and wields broad authority to investigate, impose disgorgement, restrain orders, and freeze accounts to curb such illicit activities. The regulatory landscape shifted remarkably with the, SEBI (Prohibition of Insider Trading) Regulations, 1992, which were refined amended as the new 2015 regulations. This paper further delves into the primary SEBI- SAT mechanism of regulating insider trading and unethical practices in the securities market.

Keywords: Insider Trading, UPSI, SEBI regulations, profit motive, misappropriation, fiduciary breach.

INTRODUCTION

Insider trading, defined as the acquisition or disposition of shares by insiders or affiliated individuals utilizing unpublished price-sensitive information (UPSI), which is material non-public data that can affect market prices, compromises the fairness, efficiency, and integrity of global capital markets. As markets expand into desirable domains for entrepreneurs and investors, the

allure of quick profits fuels manipulations, with insider trading deemed the most heinous due to its exploitation of informational asymmetries. This activity, of utilizing confidential information unavailable to the public, causes detriment to ignorant shareholders, undermines investor confidence, violates fiduciary responsibilities, and contravenes the principles of free market access to information a fundamental flaw within securities trading frameworks. The expert group appointed by the Indian government and led by P.J. Thomas, who served as the economic advisor for the Ministry of Finance led to the initial foundation of the initial centralised legislation and led to the birth of regulatory statutes like Securities and Exchange Board of India (SEBI) Act, 1992. SEBI framed a new set of regulations in 2015. The new regulations are based on the report of a committee chaired by NK Sodhi. This paper made an effort to investigate the origins of insider trading laws in India under different committees and to comprehend how the judiciary's position on insider trading cases has evolved.

VICTIMS OF INSIDER TRADING

A study through the theory of Allen Strudler and Eric Orts contend that responsibility requires actual harm to others, the argument over victims of insider trading canters on whether this conduct causes identifiable harm that justifies punishment. In few capitalist nations individuals are recognised as the victims of insider trading and are granted the ability to take legal action. Stephen M. Bainbridge, on the other hand, argues that there cannot be any identifiable victims of insider trading. While admitting that insider trading may have detrimental effects on investors, such as persuading them to trade at unfavourable sale or buy prices, the individual maintains the view that this result is only coincidental because of the anonymous matching of trades on exchange trading platforms. Additionally, in situations where a person with privileged access to confidential information purchases shares, it could be argued that any modern trader would unintentionally make comparable profits at the expense of the selling investor in situations where a person with privileged access to confidential information purchases shares.

EVOLUTION OF THE CONCEPT OF INSIDER TRADING IN INDIA

In the 1948 Thomas Committee Report, examples of directors, agents, officers, and auditors having strategic information about the company's financial situation, the dividends to be declared, the

issuance of bonus shares, or the pending completion of a favourable contract before public disclosure were mentioned. Followed by the Sachar committee in 1979, which stated that directors, auditors, company secretaries, etc. may have some price-sensitive information that could be used to manipulate stock prices and cause financial misfortunes to the investing public. The Committee recommended amendments to the Companies Act 1956 to restrict or prohibit dealings by employees. It suggested changing the Companies Act of 1956 to limit or forbid employee transactions. According to this Committee, sections 307 and 308 of the Companies Act were insufficient to curb insider trading. Followed by the Patel committee in 1986 defined insider trading as *"trading in the shares of a company by the person who is in the management of the company or is close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others."* The committee recommended that the Securities Contract (Regulation) Act (SCRA), 1956 be amended to cover insider trading and unfair stock deals through stock exchange listing agreements. It suggested amending the Securities Contract (Regulation) Act (SCRA), 1956 to include insider trading and unfair stock transactions through stock exchange listing agreements.

Furthermore, in order to stop unfair transactions, the Abid Hussain Committee in 1989 suggested that insider trading be covered by both civil and criminal legislation and that market regulators establish rules and regulations.

INSIDERS VS. CONNECTED INDIVIDUALS

A "Connected Person" The 1992 regulations limited the definition of connected persons to directors or deemed directors of a company, officers and employees of the company, or those with a professional or business relationship with the company. This narrow definition excluded a variety of individuals who could have access to UPSI without being among the aforementioned individuals. The 2015 regulations filled the gap with a much broader and inclusive definition of connected persons.

The 1992 regulation limited the definition of related persons to a firm's officers and employees, directors or considered directors, and those with a business or professional connection to the corporation. A variety of people who could have access to UPSI without being among the individuals listed above were excluded by this restrictive definition of connected persons. With a much broader and more extensive definition of related individuals, the 2015 regulations narrowed

the gap.

Whereas, the Sodhi Committee defined the term insider to mean all connected persons and those in possession of UPSI, thus, leaving it to the definition of 'generally available information' to safeguard against an overreach of the prohibition being read as a ban on 'informed trading' as opposed to 'insider trading'. Thereafter, these recommendations were incorporated in the 2015 regulations. Regulation 2(g) of the 2015 regulations say, an insider means any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to UPSI in respect of securities of a company, or has received or has had access to such UPSI.

ROLE OF SECURITIES EXCHANGE BOARD OF INDIA AND SECURITIES APPELLATE TRIBUNAL IN REGULATING INSIDER TRADING

The two main pillars of India's insider trading regulatory framework are the Securities and Exchange Board of India (SEBI) and the Securities Appellate Tribunal (SAT). SEBI was created as the market watchdog and has broad authority under Sections 11(1), 11(2)(a), and 11(4), 11B, 15G to protect investors, promote market development, and regulate securities through the (Prohibition of Insider Trading) PIT Regulations, 2015 (as amended). Sections 11(1), 11(2)(a), and 11(4) grant SEBI, which acts as the market watchdog, broad jurisdiction to safeguard investors, encourage market growth, and control stocks through the (Prohibition of Insider Trading) PIT Regulations, 2015. SEBI investigates UPSI possession or communication by "insiders" linked individuals or "persons with UPSI," acting as principal investigator and adjudicator and imposing civil penalties up to ₹25 crore and restraints like demat/bank freezes. In 2015 the amendment to the SEBI regulation marked a significant change in India's approach to regulating insider trading. One of the key concepts introduced in the identification of designated persons or individuals who are likely to access Unpublished Price Sensitive Information. These individuals may include senior management, executives, legal advisors, etc. These designated persons are required to adhere to strict trading windows, which are periods during which trading is prohibited. To periodically disclose their holdings and trades to compliance officers, to refrain from communicating or advising others to trade based on UPSI. Furthermore, the Integrated

Market Surveillance System (IMSS) is SEBI's primary surveillance tool, which is designed to monitor market activity in real time. It helps identify unusual trading patterns, such as sudden spikes in price or trading volume, repetitive trading behaviour prior to price-sensitive announcements, and correlations between announcements and trades made by insiders. This system improves SEBI's proactive surveillance capabilities and serves as the first line of defence against market abuse. The IMSS, or Integrated Market Surveillance System stands as the main surveillance tool of SEBI, the IMSS, is made to track market activities in real time. Unusual trading patterns, such as abrupt price or trade volume spikes, might be found using it. Additionally, Securities Market Information System (SMIS) by combining and evaluating vast amounts of market data, aids in the creation of an evidence-based trail of misconduct. It allows SEBI to detect suspicious transactions involving multiple entities; cross-reference trades with access logs to identify Unpublished Price Sensitive Information (UPSI). Data from numerous stock exchanges, depositories, and intermediaries is combined by the SMIS. It allows SEBI to find Unpublished Price Sensitive Information (UPSI) by cross-referencing trades with access records. Identify questionable transactions involving several parties. The SMIS contributes to the creation of an evidence-based trail of wrongdoing by combining and analysing massive amounts of market data. Whereas SAT provides an overlook on the SEBI mechanisms. Section 15 T of the SEBI act provides for a ground of appeal under SAT. Investors, unsatisfied with the decisions of SEBI can make an appeal to Securities Appellate Tribunal (SAT).

JUDICIAL INTERPRETATIONS ON INSIDER TRADING

India's judiciary has profoundly shaped insider trading jurisprudence through a conservative, evidence-centric lens that often tempers SEBI's regulatory zeal, demanding proof of profit motive and limiting circumstantial evidence's weight under both the 1992 and 2015 PIT Regulations. The Securities Appellate Tribunal (SAT) and Supreme Court have established that mere UPSI possession does not trigger strict liability intent (*mens rea*) remains pivotal, as crystallized in the landmark *SEBI v. Abhijit Rajan* (2024), where the Supreme Court held that an insider's profit motive is essential to establish an insider trading charge. The apex court dismissed the SEBI appeal against the SAT order, which exonerated Abhijit Rajan from the charges of selling shares in Gammon Infrastructure Projects Limited ("GIPL") as an insider. This built on SAT precedents like *Rakesh Agrawal v. SEBI* (2004), acquitting despite suspicious timing (trades pre-merger

announcement) for unproven UPSI communication, emphasizing "preponderance of probability" over criminal standards. Similarly, *Hindustan Lever Ltd. v. SEBI* (2001) absolved brokers for absent trade motive, while *Reliance Industries v. SEBI* (2003) upheld holistic scrutiny where timing corroborated links. Courts distinguish 1992 Regulations classical theory (insider-company nexus) from 2015's broader possession rule, yet *Abhijit Rajan* implies motive's enduring role, complicating SEBI prosecutions amid shadow trading evasion. *Balram Garg v. SEBI* (2022) permitted reverse tracing (post-UPSI trades), but evidentiary hurdles persist direct proof of information flow rare, forcing reliance on patterns SEBI struggles to sustain on appeal. This judicial restraint, while protecting against overreach, dilutes deterrence: low conviction rates, backlogs from criminal appeals post-2018 decriminalization, and fidelity to fiduciary breach over market parity. Reforms urge clarified mens rea thresholds and expansive interpretations to match global standards. The 1998 ruling in *Hindustan Lever Limited v. SEBI* sets a significant precedent. Shortly before announcing its merger with Brooke Bond Lipton Limited, Hindustan Lever Limited ("HLL") purchased 800,000 shares of the company from Unit Trust of India ("UTI"). It was argued that in order to prove insider trading, it was necessary to demonstrate that a fiduciary position was abused and that the transaction was carried out in order to make money or avoid loss. The SAT rejected these arguments shortly before announcing its merger with Brooke Bond Lipton Limited, Hindustan Lever Limited ("HLL") purchased 800,000 shares of the company from Unit Trust of India ("UTI"). There was a claim that in order to prove insider trading, it was necessary to demonstrate that a fiduciary position was violated and that the transaction was made with the intention of making money or avoiding loss.

These arguments were rejected by the SAT, which concluded that insider trading was present even in cases where the motive was not proven.

CONCLUSION

In conclusion, India's insider trading regime from the P.J. Thomas Committee's 1948 disclosure mandates through the Sachar, Patel, and Sodhi reforms to SEBI's strong 2015 PIT Regulations shows admirable progress in preventing UPSI exploitation, but ongoing judicial-regulatory tensions undermine its effectiveness. SEBI's surveillance arsenal (IMSS, SMIS) and powers under Sections 11/15G, while the Supreme Court interpretations in *SEBI v. Abhijit Rajan* reinstated profit motive as an essential element., *Hindustan Lever* (2001) absolving absent mens rea impose

fiduciary breach thresholds that frustrate possession-based liability, resulting in low convictions and backlogs despite post-2018 civil tilt. Bainbridge's anonymity thesis denies identifiable harm, which is consistent with India's market-wide focus over U.S.-style private suits, while Strudler-Orts demands provable injury amid diffuse effects. These gaps evidentiary hurdles, classical vs. shadow trading rigidity erode deterrence, investor trust, and the integrity of the ₹400 lakh crore market. In order to ensure that SEBI-SAT synergy upholds fiduciary duties without unduly penalizing informed trades and establishing India as a global leader in the securities industry.

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