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+91 70421 48991
editor@ijlar.com
www.ijlar.com

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# Introduction

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# 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.

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## Description

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# THE SCOPE AND INTERPRETATION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI) UNDER THE SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015: A CRITICAL LEGAL ANALYSIS

AUTHORED BY - UJJAYANI DEBNATH
Institution: Amity University Kolkata
Course: BA LLB
Supervisor: Shruti Poddar

## Abstract

Unpublished Price Sensitive Information (UPSI) is the central concept on which India's insider trading regime rests. The SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) prohibit trading, communication and procurement of UPSI, yet the definition of UPSI in Regulation 2(1)(n) combines an open-ended, materiality-based test with an illustrative list of events. This paper examines the scope and the judicial and regulatory interpretation of UPSI. It traces the evolution of the concept from the 1992 Regulations to the 2015 framework, analyses each limb of the definition (information relating to a company or its securities; not generally available; likely to materially affect price), evaluates the 2025 amendment that expanded the illustrative list from five to sixteen categories, and reviews leading decisions of the Securities Appellate Tribunal (SAT) and the Supreme Court. The paper then compares the Indian approach with the United States and the European Union and argues that, while the amendment improves alignment with the Listing Regulations, it risks over-inclusiveness, uncertainty about the point at which information becomes UPSI, and heavier compliance burdens. The paper concludes with reform suggestions, including a clearer test for crystallisation of information, a reasonable-investor materiality standard, and structured guidance on externally sourced information.

**Keywords:** Unpublished Price Sensitive Information; insider trading; SEBI; PIT Regulations 2015; materiality; generally available information; Regulation 2(1)(n); market integrity.

# 1. Introduction

Securities markets depend on the belief that all participants trade on broadly equal informational footing. Insider trading undermines that belief: a person with privileged access to price-moving information can profit, or avoid loss, at the expense of those who lack it. The harm is not only to individual counterparties but to market integrity and investor confidence.

In India, insider trading is regulated through the Securities and Exchange Board of India Act, 1992 (SEBI Act) and the SEBI (Prohibition of Insider Trading) Regulations, 2015. Section 12A of the SEBI Act and Regulation 3 of the PIT Regulations prohibit insiders from dealing in securities while in possession of UPSI, and from communicating or procuring UPSI except for legitimate purposes. Every one of these prohibitions turns on a single threshold question: *is the information in question UPSI?*

That question is harder than it looks. Regulation 2(1)(n) defines UPSI as information relating to a company or its securities, directly or indirectly, that is not generally available and which, upon becoming generally available, is likely to materially affect the price of the securities. The definition then lists categories of information that are "ordinarily" UPSI, "including but not restricted to" those categories. The words "ordinarily" and "not restricted to" mean that the list guides but does not decide. A market participant, a compliance officer and an adjudicating officer may reach different conclusions on the same facts.

This paper analyses how the definition is structured, how it has been read by SEBI, the SAT and the Supreme Court, and whether the 2025 amendment resolves or deepens its difficulties.

# 2. Research Design

**2.1 Statement of the problem.** The definition of UPSI is simultaneously broad (a residual materiality test) and illustrative (a list of events). Its application depends on three uncertain judgments: whether information is generally available, whether it is likely to materially affect price, and at what stage in a developing transaction information becomes UPSI. Uncertainty at this threshold creates risk of both under-enforcement and over-compliance.

**2.2 Objectives.**

- To examine the statutory meaning and scope of UPSI under Regulation 2(1)(n).
- To trace the evolution of the definition since 1992.
- To analyse the interpretation of UPSI by SEBI, the SAT and the Supreme Court.
- To evaluate the 2025 amendment to the definition.

- To compare the Indian position with the US and EU regimes and suggest reforms.

**2.3 Research questions.**

1. What are the constituent elements of UPSI, and how have they been interpreted?
2. Does the expanded illustrative list in Regulation 2(1)(n) improve certainty, or does it widen the net excessively?
3. How does the Indian materiality standard compare with foreign standards?

**2.4 Hypothesis.** The open-textured definition of UPSI, even as expanded in 2025, leaves significant interpretive uncertainty, particularly on materiality and the stage at which information crystallises into UPSI, and this uncertainty is only partly cured by alignment with the Listing Regulations.

**2.5 Methodology.** The study is doctrinal and analytical. Primary sources include the SEBI Act, the PIT Regulations and their amendments, the Listing Regulations, SEBI circulars and consultation papers, committee reports and decided cases. Secondary sources include books, articles and practitioner commentary. The comparative part relies on US statutes and case law and on the EU Market Abuse Regulation.

**2.6 Scope and limitations.** The paper concentrates on the definition and interpretation of UPSI, not the whole insider trading regime. It does not examine penalties, settlement or criminal procedure in detail. Case citations and the current text of the Regulations should be verified against official sources before submission.

## 3. Review of Literature

Scholarship on insider trading broadly divides into three strands.

The first strand is *economic*. Henry Manne argued that insider trading accelerates the incorporation of information into prices and may be an efficient compensation mechanism for entrepreneurs. The dominant counter-view holds that insider trading harms liquidity, raises the cost of capital and erodes trust, justifying prohibition. Indian regulatory policy has consistently adopted the second view.

The second strand is *doctrinal and comparative*. US scholarship distinguishes the "classical" theory (breach of duty by a corporate insider), the "misappropriation" theory and the "equal

access" theory. Indian regulation, which attaches liability to possession of UPSI by insiders and connected persons, is closer to a possession-based, parity-of-information model than to the duty-based US model.

The third strand consists of *Indian regulatory and committee literature*. The 1992 Regulations were comprehensively revised after the Justice N.K. Sodhi Committee (2013), whose recommendations led to the 2015 Regulations. The T.K. Viswanathan Committee (2018) reviewed the 2015 framework and recommended amendments that were notified in 2019. SEBI consultation papers of 2023 and 2024 prepared the ground for the 2025 amendment to the UPSI definition.

The gap in the literature is a sustained critical analysis of *how* the open-ended definition is applied and whether the 2025 list resolves the interpretive uncertainty. This paper addresses that gap.

## 4. Theoretical Framework

Three theoretical positions inform the discussion.

**Market egalitarianism.** Markets should be fair; no participant should profit from information unavailable to others through no superior skill or effort. This justifies a possession-based prohibition and a broad definition of UPSI.

**Fiduciary and misappropriation theories.** Liability arises from breach of a duty of trust to the source of the information. These theories favour narrower definitions focused on the relationship rather than the information.

**Regulatory design and certainty.** A good definition should give fair notice, support compliance and enable enforcement. The tension between a flexible standard (which adapts to new facts) and a bright-line rule (which gives certainty) runs through the UPSI debate.

## 5. Statutory Framework

The regime comprises the following instruments.

- **SEBI Act, 1992:** Section 12A prohibits insider dealing in connection with listed securities; sections 15G and 24 provide for penalties and prosecution.
- **PIT Regulations, 2015:** Regulation 2(1)(n) defines UPSI; Regulation 2(1)(g) defines "generally available information"; Regulation 2(1)(d) defines "connected person"; Regulation 2(1)(i) defines "insider"; Regulation 3 prohibits communication and

procurement; Regulation 4 prohibits trading and states the defences; Regulation 5 governs trading plans; Regulation 3(5) and (6) require structured digital databases.

- **Schedules:** Schedule A requires a code of fair disclosure; Schedule B requires a code of conduct for listed companies; Schedule C governs intermediaries and fiduciaries.
- **LODR Regulations, 2015:** Regulation 30 and Schedule III require disclosure of material events, and Regulation 30(11) deals with verification of market rumours. This is the disclosure counterpart of the UPSI regime.

The interplay is important. Once information is disclosed to the stock exchanges and made accessible, it ceases to be UPSI. The Listing Regulations govern *when* the market must be told; the PIT Regulations govern *what may not be done while the market has not been told*.

## 6. Anatomy of the Definition of UPSI

Regulation 2(1)(n) defines UPSI as any information relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available is likely to materially affect the price of the securities. Three cumulative elements emerge.

### 6.1 Information relating to a company or its securities, directly or indirectly

The words "directly or indirectly" extend UPSI beyond company-internal facts. Information about a major customer, a supplier, a regulator's intended action or a counterparty may relate *indirectly* to the company's securities. The 2025 amendment's references to regulatory orders and other external events reinforce this breadth. The consequence is that UPSI is defined by its *effect on the price of the securities*, not by its origin.

### 6.2 Not generally available

Regulation 2(1)(g) defines "generally available information" as information that is accessible to the public on a non-discriminatory basis. Three issues arise.

- *Accessibility versus dissemination.* Information in a regulatory filing, a court record or a trade publication may be technically accessible but not meaningfully known to investors. Indian authorities have generally looked for dissemination to the market on a non-discriminatory basis, not mere theoretical availability.
- *Rumours.* Market rumour or speculation is not generally available information. Unverified chatter does not cleanse UPSI; Regulation 30(11) of LODR requires listed entities to confirm, deny or clarify material price-moving rumours.

- *Selective disclosure.* Disclosure to analysts, investors or lenders is not general availability; Regulation 3 and Schedule A of the PIT Regulations restrict such disclosures to legitimate purposes.
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**6.3 Likely to materially affect the price**

The materiality limb is the most contested. The test is *prospective and probabilistic*: the information must be "likely" to have a "material" price effect once public. Several points follow.

- *No actual price movement is required.* The test looks at likely effect, not observed market reaction. A price move after disclosure is evidence of materiality but is not essential, and an absence of reaction does not prove immateriality.
- *No numerical threshold.* Unlike Regulation 30 of LODR (which uses quantitative thresholds for certain events), the PIT definition has no numerical criterion for price effect.
- *No stated reference person.* The Regulations do not specify whether materiality is judged from the perspective of a reasonable investor, an informed trader or the market as a whole. Adjudicating authorities have tended to rely on inferences from the nature of the information and surrounding trading behaviour.
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**6.4 The illustrative list**

The words "ordinarily including but not restricted to" make the list illustrative. Listed events are treated as ordinarily UPSI, but the presumption is not conclusive; and information outside the list can still be UPSI if it satisfies the general test. This structure combines a standard with indicators.

## 7. Evolution of the Definition

**1992 Regulations.** The SEBI (Insider Trading) Regulations, 1992 defined "price sensitive information" as information that relates directly or indirectly to a company and which, if published, is likely to materially affect the price of its securities. The definition gave examples such as periodical financial results, intended declaration of dividends, issue of securities, major expansion plans, amalgamations, mergers or takeovers, and disposal of the whole or a substantial part of the undertaking.

**Sodhi Committee (2013) and the 2015 Regulations.** The Sodhi Committee recommended a

new framework, shifting the focus to UPSI and to the concept of *connected persons*. The 2015 Regulations introduced the term UPSI, the five-item illustrative list (financial results; dividends; change in capital structure; mergers, de-mergers, acquisitions, delistings, disposals and expansion of business, and award or termination of orders or contracts not in the normal course; and changes in key managerial personnel), and a formal notion of generally available information.

**Viswanathan Committee (2018) and the 2019 amendment.** The committee examined practical difficulties, including legitimate-purpose sharing, and the 2019 amendments added the structured digital database requirement and other compliance mechanisms. The UPSI definition itself remained broadly stable.

**2024-2025 reforms.** Following earlier proposals in 2023, SEBI issued a consultation paper on 9 November 2024 proposing to add specified events to the UPSI definition in line with material events disclosed under Regulation 30 of the Listing Regulations. The SEBI Board approved the proposals on 18 December 2024. The amendment was notified on 11 March 2025 and came into force on 10 June 2025.

## 8. The 2025 Amendment: Widening the Illustrative List

### 8.1 What changed

The amendment expanded the illustrative list in Regulation 2(1)(n) from five categories to sixteen by adding sub-clauses (vi) to (xvi). In summary, the new categories cover:

- change in credit rating (other than ESG ratings);
- fund-raising proposed to be undertaken;
- agreements which may impact the management or control of the company;
- fraud or defaults by the company, its promoters, directors, key managerial personnel or subsidiaries, and arrests of such persons;
- resolution plans, restructuring or one-time settlement in relation to loans or borrowings from banks or financial institutions;
- admission of winding-up petitions and of applications for corporate insolvency resolution against the company or a material subsidiary;
- initiation of forensic audit in specified circumstances;
- actions initiated or orders passed by regulatory, statutory, enforcement or judicial authorities against the company or its directors, key managerial personnel, promoters or subsidiaries;

- outcome of litigation or disputes that may have an impact on the company;
- giving of guarantees or indemnity, or becoming a surety, for third parties not in the normal course of business; and
- granting, withdrawal, surrender, cancellation or suspension of key licences or regulatory approvals.

The amendment was accompanied by a flexibility for *externally sourced* UPSI: a proviso to Regulation 3(5) allows companies to record such information in the structured digital database within two calendar days of receipt, and related relaxations apply to trading-window closure for certain events.

### 8.2 Rationale

SEBI's stated reasoning was that the original five categories no longer captured many price-sensitive events and that market participants were not treating many Regulation 30 disclosures as UPSI, leading to inconsistent practice and information asymmetry. Aligning the UPSI list with material events under Regulation 30 was intended to improve uniformity and certainty.

### 8.3 Evaluation

*Strengths.* The amendment narrows the gap between disclosure obligations and insider trading prohibitions, reduces the risk that an event is disclosed under LODR but was not treated as UPSI beforehand, and gives compliance officers a concrete checklist.

*Concerns.*

- **Over-inclusiveness.** Not every listed event is price sensitive in every company. A modest litigation, a routine licence renewal or a small guarantee may have no real price effect, yet falls into a listed category. Because the list is "ordinary" UPSI and not conclusive, companies may still argue immateriality, but the compliance cost of treating all such events as UPSI is real.
- **Crystallisation.** The amendment does not clearly answer *when* a developing matter such as proposed fund-raising, a potential default or a pending order becomes UPSI: at internal discussion, board proposal, or final decision. Uncertainty at this stage is the main source of litigation risk.
- **Externally sourced information.** The two-day database window helps, but companies still face difficulty identifying when they have received UPSI from third parties and what it means for the trading window.

- **Compliance burden.** Larger databases, wider insider lists and more trading-window closures increase cost, especially for mid-size companies.

## 9. Judicial Interpretation

The cases below illustrate the principal themes. Citations and holdings should be verified against official reports before formal submission.

**Hindustan Lever Ltd v SEBI (1998, SAT).** One of the earliest important insider trading decisions, concerning HLL's purchase of Brooke Bond Lipton India Ltd shares ahead of the merger of the two companies. The outcome is often cited as showing the consequence of a gap in the then-applicable regulations, which prompted subsequent amendment.

**Rakesh Agrawal v SEBI (2004, SAT).** The case concerned information about the prospective acquisition of ABS Industries by Bayer AG. The SAT emphasised the purpose of the regulation and the need to consider the person's role and whether the information was actually misused. It illustrates that identification of UPSI is closely tied to the person's role and the purpose of the dealing.

**Samir C Arora v SEBI (2004, SAT).** The decision concerned the standard of proof for establishing the use of price-sensitive information and the need to connect the information to the trading with evidence rather than rely solely on coincidence of dates.

**Dilip S Pendse v SEBI (SAT, 2011).** The case concerned trades by a company's managing director ahead of public disclosure of adverse financial developments. It supports the principle that significant adverse financial information is price sensitive and that insiders in possession of it cannot trade.

**Chandrakala v SEBI (Supreme Court, 2012).** The Supreme Court examined the evidential approach in an insider trading dispute and is cited for the proposition that securities law violations may be established on a preponderance of probabilities, using circumstantial evidence, with the burden shifting to the insider once basic facts are shown.

**SEBI v Abhijit Rajan (Supreme Court, 2022).** The Supreme Court emphasised that insider trading is typically proved by inference from surrounding circumstances, since direct evidence is rarely available, and confirmed the civil standard of preponderance of probabilities.

**Themes.** First, adjudicators examine the *nature of the information and its likely effect*, not merely its label. Second, circumstantial evidence, including timing and pattern of trades, is relevant to showing both the existence of UPSI and its use. Third, the presumption in Regulation 4 that a person in possession of UPSI who trades was motivated by it is rebuttable,

and the burden then shifts to the insider. Disputes thus tend to centre on evidence of possession and trading motive, with UPSI itself usually inferred from the nature of the event.

## 10. Critical Analysis

### 10.1 A flexible standard with limited guidance on materiality

The "likely to materially affect the price" test gives SEBI room to treat novel information as UPSI. This is a strength for enforcement but a weakness for legal certainty. The Regulations contain no reference-person standard and no quantitative benchmark. The same event may be viewed as immaterial by an insider and material by an adjudicating officer after the event, with the benefit of hindsight. The risk of hindsight bias is acute, since the price movement that follows disclosure often colours the later view of whether information was price sensitive.

### 10.2 The "ordinarily" qualifier

By describing the listed events as ordinarily UPSI, the Regulations create something between an irrebuttable presumption and a mere illustration. This allows companies to argue that a particular event was not price sensitive. But it also leaves compliance officers uncertain whether they can safely *exclude* a listed event from their UPSI database. In practice, conservative treatment is likely, which magnifies the effect of the 2025 amendment.

### 10.3 Alignment with the Listing Regulations: benefits and mismatch

The PIT and LODR regimes have different purposes. LODR asks *what must the market be told and when*; PIT asks *what must insiders not trade on*. Information may be required to be disclosed under LODR without being likely to move the price materially, and vice versa. Importing the Regulation 30 list into the UPSI definition improves uniformity but blurs this difference. The better view is that the list identifies categories for presumption, with materiality still doing the work in individual cases.

### 10.4 Crystallisation of information

The most practically important question is the *stage* at which information becomes UPSI. Early-stage discussions about a merger, an internal proposal to raise funds or an anticipated regulatory decision may or may not be sufficiently concrete. Indian regulation provides no equivalent of the EU's precision requirement, nor an express rule on protracted processes. Companies therefore adopt cautious internal policies, which can result in large insider lists and frequent trading restrictions.

### 10.5 Possession-based liability

The Indian regime is built around possession rather than use. Regulation 4(1) prohibits trading while in possession of UPSI, and the proviso lists defences such as non-reliance in specified circumstances, transactions between insiders under conditions, off-market inter-se transfers, and trades under approved plans. A possession approach combined with a wide UPSI definition places great weight on the first step. If the definition is vague, the possession standard becomes harsh.

### 10.6 Legitimate purpose and information flow

Regulation 3(2A), introduced in 2019, permits sharing UPSI for legitimate purposes in the ordinary course of business, subject to notice and confidentiality obligations. As more events are classified as UPSI, more routine information flows, such as to lenders, auditors, advisers and counterparties, must be documented. The legitimate-purpose exception thus becomes central, but the Regulations offer limited guidance on its boundaries.

### 10.7 Enforcement and fairness

Because the definition depends on a likelihood assessment, enforcement actions require an evidential narrative linking the information, its nature and the trading. Cases therefore tend to turn on circumstantial proof. This benefits the regulator when evidence is strong but raises fairness concerns where the information is ambiguous and the accused trades for independent reasons.

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## 11. Comparative Perspective

### 11.1 United States

The US regime is based on Section 10(b) of the Securities Exchange Act, 1934 and Rule 10b-5, developed largely by case law. The key term is "material nonpublic information". Under *TSC Industries v Northway* (1976) and *Basic Inc v Levinson* (1988), information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to act, or that it would significantly alter the total mix of information; for contingent events such as mergers, *Basic* balances probability and magnitude. Liability requires a breach of duty (classical theory) or misappropriation, as developed in *Chiarella v US* (1980), *Dirks v SEC* (1983), *US v O'Hagan* (1997) and *Salman v US* (2016). Rule 10b5-1 adopts an "awareness" standard for trading, and Regulation FD restricts selective disclosure by issuers.

### 11.2 European Union and United Kingdom

The EU Market Abuse Regulation (Article 7) defines *inside information* as information of a precise nature, not made public, relating directly or indirectly to issuers or financial instruments, which if made public would be likely to have a significant effect on prices. Information is of a precise nature if it indicates circumstances that exist or may reasonably be expected to occur and is specific enough to enable a conclusion about the possible effect on prices. For protracted processes, intermediate steps may themselves be inside information. The price-effect limb is assessed by asking whether a reasonable investor would be likely to use the information as part of the basis of investment decisions. The UK retained a similar approach after Brexit.

### 11.3 Lessons for India

- The EU requires *precision*; India does not expressly require it, leaving earlier-stage information uncertain.
- The US and EU define materiality by reference to a *reasonable investor*; India does not state a reference person.
- The EU expressly addresses *protracted processes*; India's Regulations do not.
- Indian law, unlike the US, does not make liability depend on a breach of duty, so a precise UPSI definition matters more in India.

## 12. Suggestions

1. **Introduce a reasonable-investor materiality standard.** The definition or accompanying SEBI guidance should state that information is price sensitive if a reasonable investor would likely use it as part of the basis of an investment decision.
2. **Add a precision requirement.** Following the EU model, information should be UPSI only if sufficiently specific to permit a conclusion about its likely effect on price.
3. **Address protracted processes.** SEBI should issue guidance on when multi-stage events, such as mergers, fund-raising and restructuring, crystallise as UPSI, and whether intermediate steps count.
4. **Allow structured rebuttal of listed events.** A company should be able to document, under a board-approved materiality policy, why a particular listed event is not likely to have a material price effect, with defined safe-harbour consequences.

5. **Introduce thresholds for certain categories.** For litigation, guarantees, licences and regulatory actions, objective thresholds aligned with the Regulation 30 materiality policy would reduce over-classification.
6. **Issue illustrative guidance and FAQs.** Regular anonymised guidance on borderline scenarios would help practitioners.
7. **Clarify legitimate purpose.** Detailed guidelines on permitted sharing of UPSI with advisers, lenders, auditors and counterparties would reduce disputes.
8. **Review periodically.** The list should be reviewed at regular intervals so that its categories keep pace with new forms of corporate events.

## 13. Conclusion

The definition of UPSI is the foundation of India's insider trading law. Its structure, an open standard with an illustrative list, reflects a regulatory preference for flexibility. That approach has allowed SEBI and the tribunals to deal with new fact patterns, but it has also left basic questions unresolved: how materiality is measured, who the reference person is, and when evolving information crystallises into UPSI.

The 2025 amendment, expanding the illustrative list from five to sixteen categories and aligning it with major events under the Listing Regulations, is a significant step towards consistency and compliance clarity. It also carries risks of over-inclusion and heavier compliance burdens, and it does not itself resolve the problems of materiality and timing. The hypothesis of this paper, that the definition continues to leave significant interpretive uncertainty, is therefore largely borne out.

A balanced reform would retain the flexible, effect-based test but anchor it with a reasonable-investor standard, a precision requirement, guidance on protracted processes and a structured means of excluding immaterial listed events. Such measures would better serve both objectives of the regime: protecting market integrity by capturing genuinely price-sensitive information, and giving companies and insiders fair notice of what conduct is prohibited.

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