



INSIDER TRADING, “EFFICACY OF THE LATEST AMENDMENT”: A COMPARATIVE STUDY WITH SPECIAL REFERENCE TO THE LEGISLATIVE FRAMEWORK IN THE U.S.A.

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Abstract

“Higher the risk, higher the profit”. Given the high amount of speculations surrounding Stock Market Trading, risks involved are higher when the group of stake-holder misappropriate the unpublished price sensitive information to reap more profit, leaving at bay, the larger interest of general public, which in corporate terms known as insider trading. Insider trading as a negative concept is not merely a loss to the general public but it also encompasses the entire financial market.

This research paper firstly outlines the concept of insider trading and gives a glimpse of historical background of this concept practice in US and India. The second part of this paper gives an insight to the Indian perspective regarding the concept of insider trading with special reference to The Companies Act 2013, The Competition Act 2002 and SEBI Act 1992. It further gives an insight into various regulations implemented by the SEBI to prohibit insider trading since 1992 till present, adopting the intermittent market conditions.

It further demonstrates a comparative analysis of U.S.A Laws vis-a-vis Indian laws highlighting various protection being implemented to guard the rights of general public, encompassing the significance of the terms insider, material information and penalties. By this comparative analysis, the author tries to compare the Indian Model to that of the US Model by referring to various enactment as mentioned. It further focuses on the recent amendment brought in by SEBI as SEBI (PIT) Amendment Regulations 2020 and highlights its implications in the market. This research paper finally ends with an insight for adoption of best existing practices for sustained market stability.

Keywords: Stock market, Insider trading, Security Exchange Commission, SEBI, SEBI (PIT) Amendment Regulations 2020.

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Introduction

“Stock market forms the backbone of any financial system across the world as it aids in stimulating growth and investment by bringing together companies and people who invest in them. While on the one hand, it has been considered by the common investor, both nationally and globally, as an avenue for investing their surplus in the economy, on the other hand, it has facilitated the corporate entities in utilizing public money in their undertaking”². Stock market requires utmost good faith and transparency as these forms the base for a market and the investor’s interest.

The corporate world is quite possibly the most intriguing and propelling universes in contemporary occasions. It diverts the brains and interests of a wide scope of men who seek after the craving to encourage in this world and make a lot of fortune. In any case, this corporate world is inclined to specific complexities just as unlawful acts and ventures. With the extending and quick development of the worldwide business sectors, there is advancement in all the areas in the corporate world including that of the financial market sectors.³

There are various instances which disrupt the stock market or capital market and one of them is insider trading.⁴ “*Insider trading is one such heinous crime which disrupts the normal functioning of capital markets and the flow of information to the market participants thus effecting their decision-making capabilities and also affecting the fair play in the whole system*”⁵. “*Insider trading is the purchase or sale of stocks or other securities based on information that is not available to the general public. It involves a direct breach of fiduciary duty or other violation of trust in which the trader uses insider knowledge to benefit financially*”⁶.

² Christopher N. Sutton & Beth Jenkins, “*The role of the financial services sector in expanding economic opportunity*”, Corporate Social Responsibility Initiative Report no. 19., Cambridge, MA Kennedy School Of government, Harvard University.

³ Roopanshi Sachar & M. Afzal Wani, *Insider Trading Laws In India – Status Before And After The Enactment Of SEBI (Prohibition Of Insider Trading) Regulation, 2015*, International Journal Of Legal Developments And Allied Issues [Volume 3 Issue 1]

⁴ Ishita Agarwal, *Amendment to the Insider Trading Regulations: Incentive to the Traders Versus Tightening the Loop*, International Journal of Legal Developments and Allied Issues Volume 5 Issue 3 (May 2019)

⁵ Stanislav Dolgoplov, “Insider Trading”, <https://www.econlib.org/library/Enc/InsiderTrading.html> accessed on August 7, 2021

⁶ Joshua Kennon, *What Is Insider Trading?*, available at <https://www.thebalance.com/what-is-insider-trading-and-why-is-it-illegal-356337> visited on December 3, 2020



Conceptualization

English writer Daniel Defoe rightly observe that

“Every Degree of Business has its Invitation to do Evil:

Necessity tempts the poor man.

1. Avarice tempts the rich”⁷.

“Insider trading occurs when a corporate insider trades on the information before it is disclosed to the general public”⁸. It is a term which has legitimate as well as illegitimate ambits. It is the concept wherein exchanging the securities or while dealing with the securities in the stock market, the one who invests having the preferred position as he gets to the access of classified and non-public data of a specific organization⁹.

This trading can be made lawful if the trading is managed with neither benefit to the merchant nor any loss to the company, while not taking any influence of the non-public data, which so disclosed. Notwithstanding, with the developing patterns of this action, it pretty much falls into the negative zone. It fundamentally manages to penetrate the companies’ guidelines and consequently is a deceitful action.

The term certainly implies any individual, who has admittance to the unpublicized information, including ones which are of value to the company. It is in this way, just spillage of secret data by some individual who is an insider and along with these lines capacities as a white-collar crime¹⁰. “*The act of trading of securities of a company by an insider based on unpublished price sensitive information (UPSI) is known as insider trading*”¹¹. “Insider trading is the practice of using information that has not been made public to execute trading decisions. It gives traders an unfair advantage over others and most forms of insider trading are illegal.

⁷ Hartmut Berghoff & Uwe Spiekermann, *Shady business: On the history of white-collar crime*, 60(3) business history 289-304 (2018)

⁸ Tripti Kejriwal, *The Concept Of Insider Trading* , available at https://racolblegal.com/the-concept-of-insider-trading/#_ftn1 visited on January 3,2021

⁹ Geetika Sood & Shivani Sharma, “*A Small Leak Can Sink A Great Ship: An Overview Of Insider Trading*”, International Journal Of Legal Developments and Allied Issue,s Volume 4, Issue 4, July 2018

¹⁰ Dennis W. Carlton and Daniel R. Fischel, “*The Regulation of Insider Trading*” Stanford Law Review ,[Vol. 35, No. 5 \(May, 1983\)](#), pp. 857-895

¹¹ Insaf Ahamad T.K. and Mathangi K, *Emerging Trends of Insider Trading: A Law and Economics Interplay*, RFMLR (2020)



Many investors are tempted to make quick returns from insider trading, but doing so can be dangerous¹². This investment market solely based on the concept of speculation of the data and the one who best analysis the given information, receives the most profit. The purpose of these business sectors is to remunerate financial specialists who can make the best investigations of the protections they want to put resources into.

In any case, some decide to control the framework by utilizing data that don't have access to them. "Insider trading happens when someone makes an investment trade based on "material" information that's not publicly available. In market terms, material information is any detail that could affect a company's stock price. This information gives the individual an edge that few others don't have"¹³.

As Francis Bacon quotes that "*Knowledge is power*". This quote holds weight or considered to be more authentic in the matter of price-sensitive information in a company. "Such information ought to be released in a manner that benefits all investors equally, without prejudice, and not in a manner to make a profit secretly. Insider trading relates to such unpublished information which can materially affect the price of securities, and is only permissible by employees as long as it does not rely on substantive information unknown to the general public"¹⁴.

This term insider trading revolves around two concepts, one is "price-sensitive information" and the other one is "insider". Insider is the one who is related to the company and its affairs by anyway through direct means or indirect ways and the position one holds in the company as authority or employee or holds relationship or connect with anyone from the company and due to which one has access to the price-sensitive information (as discussed above) and on that information, market transaction too place. This whole concept reflects the illegal utilization of price-sensitive information by the insiders to make big cheque and ultimately a loss to the general public¹⁵.

¹² Kalen Smith, What Is Insider Trading and How to Avoid It – Definition, Laws & Cases, available at <https://www.moneycrashers.com/what-is-insider-trading-definition-laws-cases/> visited on December 4, 2020

¹³ Kennon Supra Note 5

¹⁴ Tanvi Praveen, Price sensitive information, available at <https://www.lawctopus.com/academike/price-sensitive-information/> visited on December 7, 2020

¹⁵ Maulik Madhu, "All you wanted to know about Insider trading", The Editorial, The Hindu , June 07, 2021. Available at <https://www.thehindubusinessline.com/opinion/columns/slate/all-you-wanted-to-knowabout/article34755136.ece> accessed on August 7, 2021



The infamous *Harshad Mehta scam 1992*, when there was as such no online portal and proper guidelines and authority to deal with such white-collar crime. “*Harshad Mehta got the insider information of a company and when he sees growth in that company, then he, with the insider information he buys the shares of the company before the information reaches the stock exchange. After when the information reaches the stock exchange, it gets forwarded to the public and then accordingly the public starts buying the shares, which led to an increase in the share price. After the increase in the share price, Harshad Mehta used to sell the shares and used to book his profit*”¹⁶. Due to this insider trading, Harshad Mehta earned a lot which is against this theory of stock market as he already possesses the information which public didn’t and, on that basis, he earned money which considered as illegal.

¹⁶ Shailesh Menon & Maulik Vyas, *The Harshad Mehta case: Where time has overtaken justice by a mile*, The Economics time, available at <https://economictimes.indiatimes.com/news/politics-and-nation/the-harshad-mehta-case-where-time-has-overtaken-justice-by-a-mile/articleshow/53052771.cms?from=mdr>



Historical Development of Insider Trading

1. U.S.A

“The United States has formerly been the first to trace the notion of insider trading law. In 1909, US Supreme Court ruled in *String v. Repide*¹⁷, that a director of a corporation owning lands in the Philippine Islands, and he was the one controlling the actions of the entity has been keeping his shareholders ignorant of sale to the government from whom he purchased, keeping the shareholders in disguise while selling his shares would be fraudulent concealment to shareholders”¹⁸.

Insiders trading have advanced with the open market since its initiation. Insider trading wasn't viewed as unlawful toward the start of the twentieth century. “In 1966, Henry Manne argued that insider trading does not harm investors and can indeed be an efficient way of compensating insiders when they enhance an issuer's stock price”¹⁹. “A Supreme Court ruling once referred to it as a “perk” of being an executive.

It was banned with serious penalties being imposed on those who engaged in the practice after the excesses of the 1920s”²⁰. “The United States was the first country to create the backbone of almost any regulation against insider trading as well as other types of securities fraud through the Securities Exchange Act, 1934. Thereafter SEC (Securities Exchange Commission) was created to regulate the secondary trading of securities. It was enabled to prevent insider trading in the United States”²¹.

After the enactment of Securities Exchange Act and the establishment of Securities Exchange Commission, there was numerous precedent lay down to govern the issues of insider trading in the US which not only frame guidelines and regulations but impose penalties too to restrict such activities as it is against the norms of market and the interest of the general public.

¹⁷ 213 U.S. 419 (1909)

¹⁸ Arun Kumar Singh and Anil Kumar, *Insider Trading: Comparative Analysis Of India And USA*, SSRN, (December 1, 2014) available at <http://ssrn.com/abstract=2552418>

¹⁹ Henry G. Manne, *Insider Trading And the Stock Market* 138-41 (1966) (arguing that insider trading may be appropriate compensation for individual entrepreneurs to reward their contributions to building a successful corporation).

²⁰ Fisch, Jill E., "Start Making Sense: An Analysis and Proposal for Insider Trading Regulation" (1991). Faculty Scholarship at Penn Law. 1036. available at https://scholarship.law.upenn.edu/faculty_scholarship/1036

²¹ Michael A. Perino, *The Lost history of Insider Trading*, University Of Illinois Law Review [Vol. 2019 No. 3]



In the case of *SEC v. Texas Gulf Sulphur Co*²² which sets Insider Precedent in the year of 1968. “The Texas Gulf Sulphur Company had discovered a site near Timmins, Ontario, rich with copper ore, company officials traded heavily in the stock before disclosing the find. The officials were sued by the Securities and Exchange Commission and by shareholders, who contended that the executives had traded on inside information. The United States Court of Appeals for the Second Circuit in New York ruled that anyone who possessed inside information of a consequential nature must either disclose it to all of the investing public or abstain from trading until that information was public”²³.

To make these provisions more rigid, US government enacts *US Sanction Act* in the year of 1984. The core object of implementing this act was to impose a fine which should be three times the profits one earns from gains or loss of significant unpublished price sensitive information (UPSI). This act directs all the directors, officers and beneficial owners who acquire more than 10% of its registered equity securities, to file an initial statement with SEC as well as with the exchange on which the stock may be listed. After the implementation of both the acts mentioned above, US Supreme Court laid down various precedents on insider trading based on numerous cases that “insider trading laws applied to people who had confidential information even if they did not have any connection to the company whose shares were being traded”²⁴.

2. INDIA

The first Indian legislature to control securities market was *Bombay Securities Contract Act, 1925*; it was authorized to manage to buy and offer of securities. However, the lawmaking body had a few deficiencies which came about into financial specialists making colossal misfortunes during the period 1928 to 1938. Thereafter “*The Defense of India Act, 1939*” enacted which incorporated provisions related to Capital Issue which specified that earlier Government endorsement was compulsory for the capital issue.

²² 258 F.Supp. 262 (S.D.N)

²³ Editorial, “*Timeline: A History of Insider Trading*”, The New York times, Dec6, 2016. available at <https://www.nytimes.com/interactive/2016/12/06/business/dealbook/insider-trading-timeline.html>

²⁴ Supra note 22



“When India got independence in 1947 the same rule was incorporated in *Capital Issue (Control) Act, 1947*. Under this act²⁵, the office of Controller of Capital issue was set up, which was an authority to approve the issue of securities, the amount, type and price of securities etc”²⁶. “The first instance of insider trading in India can be seen during the 1940s when directors, agents, managers and promoters were found to be using the information to speculate market prices of the securities of their own companies”²⁷.

“In 1948, first concrete governmental attempt to put regular restriction towards insider trading was the formation of Thomas committee to recommend restrictions on short-swing profits”²⁸. “This was followed by other reports of the Sachar Committee, the Patel Committee²⁹, and the Abid Hussain Committee, all of which led to the formulation of India’s first standalone legislation on insider trading, SEBI (Prohibition of Insider Trading) Regulations, 1992 (*1992 Regulations*)”³⁰.

This Act became effective from the 100th day from the date of its publication in the official gazette. The SEBI (Prohibition of Insider Trading Act 1992) has been amended three times till now. The latest amendment came into effect on 17th September 2019. Be that as it may, given the dynamic idea of the securities market, the 1992 Regulations went under the skimming of the N.K. Sodhi Committee which, in its report, focused upon the significance of "parity of information"³¹ in insider trading and the requirement for the guidelines to be more stringent.

²⁵ The Act was however, repealed in 1992 and the office of CCI was abolished in 1992, as a part of liberalization process.

²⁶ Available at [https://www.icsi.edu/media/portals/72/year%202018/presentation/role%20played%20by%20sebi%20in%20restr icting%20insider%20trading.pdf](https://www.icsi.edu/media/portals/72/year%202018/presentation/role%20played%20by%20sebi%20in%20restr%20icting%20insider%20trading.pdf) visited on Jan 8, 2021

²⁷ Government of India (GOI), *Report on the Regulation of Stock Exchanges in India* (1948). Available at <http://www.sebi.gov.in/History/HistoryReport1948.pdf>.

²⁸ Reena Zachariah & Shaji Vikaraman, *SEBI set to overhaul insider trading rules; to form a committee led by former SAT chief*, Feb 25, 2013. available at <https://economictimes.indiatimes.com/sebi-set-to-overhaul-insider-trading-rules-to-form-a-committee-led-by-former-sat-chief/articleshow/18665458.cms>

²⁹ “Patel Committee in its report explained it as: Insider trading generally means trading in shares of a company by the persons who are in management of the company or are too close to them, on the basis of undisclosed price sensitive information, regarding the working of company which they possess but are not available to others.” Government of India, *Report: High Powered Committee on Stock Exchange Reforms* (Ministry of Company Law and Administration, 1986) Para 7.25

³⁰ Prateek Bhattacharya, *India’s Insider Trading Regime: How Connected Are You?*, IndiaCorpLaw (February 4, 2020) available at <https://indiaincorp.com/2020/02/indias-insider-trading-regime-connected.html>

³¹ As situation in which both parties in a transaction have equal information related to the transaction.



These observations brought about the SEBI (Prohibition of Insider Trading) Regulations, (2015 Regulations) which were packed with authoritative notes to disperse any extension for the confusion. These guidelines were amended by and by in 2018 by the T.K. Vishwanathan Committee, which set the burden on the enterprises to characterize their strategies and practices of what can be considered as being "legitimate" while additionally demarcate a line between what might comprise real direct for corporate insiders, (for example, employees of a company) as being not quite the same as market delegates, (for example, evaluators, law offices, or experts).

“The main objective behind the formulation of SEBI is to protect the interests of the investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit”³².

³² The chairman, SEBI v. Shriram Mutual Fund and Anr 2003 46 SCL 571 SAT



Insider Trading – Indian Perspective

Under Indian model, there are various enactments which discuss directly or indirectly the concept of insider trading such as the Companies Act 2013, the Competition Act 2002 and the Sebi Act 1992 and its regulations. As section 195 of the Companies Act which prohibits insider trading by the director or key managerial person by imposing heavy penalties i.e. imprisonment for 5 years and the minimum fine of Rs 5 lakh which may extend to 25 Crore or extend to three times the amount of profit. Section 194 which prohibits forward dealings by the director and section 458 highlights the delegation power of government to SEBI to prosecute insider trading.

However, provisions of the Competition Act 2002 whereby section 4 prohibits acts which are abusing in nature by the entity in dominant position. The provision could be interpreted under securities market too where entity possess UPSI use its position to make profit. After the enactment of the SEBI act 1992, the issue of insider trading dealt by authorities in more stringent way.

By virtue of Section 11 of the Sebi act which has detail discussion encompassing most of the aspect related to the broaden power of Sebi, where to protect the interest of consumer Sebi inspect activities which are illegal under the securities market including insider trading. Sebi brought amendments too as the market demands to make clarity in the provisions as Section 11(2A) added through 2002 amendment where if SEBI finds that the person is being involved in insider trading then after the inspection it can adopt certain measures as follows

- Impound and retain the securities under investigation.
- Attach banks accounts of the person involved in such securities for not more than one month.
- Direct not to dispose or alienate securities involve under such transaction.

Under this amendment only, chapter VA including section 12A inserted which explicitly prohibits insider trading in securities of companies listed in stock exchanges. Moreover penalty provision has been incorporated through section 15G.



Furthermore Insider trading is considered as a criminal offence by virtue of Section 24 whereby attention has been given to the aspect of penalty.

SEBI also brought regulations in 1992 to inspect illegal activities in the market and thus framed (Insider Trading) Regulations, 1992. Due to the changing market conditions SEBI (Insider Trading) Regulations, 1992 amended as follows:

- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2002*
- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2003*
- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008*
- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011*

“With regards to the changes and several scams which led to a loss in shareholder confidence, Sodhi committee was constituted which gave a new set of regulations called as SEBI (Prohibition of Insider Trading) Regulations 2015”³³. The SEBI (Prohibition of Insider Trading) Regulations, 1992 was repealed and replaced with SEBI (Prohibition of Insider Trading) Regulations, 2015. Furthermore to strengthen the regulation of 2015, two more amendment has been brought in the year of 2018 and 2020.

- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018*
- *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2020.*

Thus, this chapter broadly states about the concept of insider trading as a prohibiting act under the Indian model highlighting various provision of the enactment such as The Companies Act 2013, The Competition Act 2002 and the Sebi act 1992 and its various regulations. It reflects the standard of Indian laws regulating the white collar crimes wherein big companies and the reputed market entities are prohibited from disturbing the whole market structure.

³³ Ishita, Supra note 3



Comparative Analysis between India and the U.S.A.

USA was the first country which recognizes this illegal activity of insider trading whereby companies or individual dealing with security market misuse sensitive information for their own personal benefit. USA recognizes this prohibiting activity by including under the ambit of fraud through securities exchange act 1933. “USA has been the most successful in prohibiting insider trading and the first country to tackle insider trading effectively”³⁴.

It brought in the enactment quite early in the year of 1961 whereby insider trading was marked as prohibiting act as compared to other developed countries which brought enactments dealing with securities market and the insider trading from 80’s and 90’s. India, so as to achieve the goals of privatization, liberalization and globalization also prohibited insider trading in the year 1992. The aforementioned discussion reflects the matured jurisdiction of USA, having immense experience in prohibiting such illegal activity so as to cater the need of strong market dealings.

Further, as author has already highlights the enactment in the comparative chart which reflect the effective stronghold of authorities in USA in controlling white collar crimes not limited to the national border but encompass transnationally as The Securities Exchange Commission (SEC), being the ultimate regulating body of securities law in USA dealing with securities market (similar to SEBI under Indian Model) has managed to ratify 32 arrangements with foreign counterparts for the purpose of effective investigation procedure by sharing information and cooperation while investigation by virtue of MoU (memorandum of understanding) and Mutual legal assistance treaties.

Author has highlighted the comparative analysis of USA and India laws relating the concept of insider trading as USA was the considered to be one of the most matured and experienced jurisdiction handling such incidental crime not limited to its national border but at international level by enacting various MoU and legal assistance. This comparative analysis tries to reflect India’s model with the USA model and areas of improvement for making India as stringent as the USA for dealing with securities market.

³⁴Himanshu C, “*Insider trading & International Overview*”, Legal service India. Available at <https://www.legalserviceindia.com/article/199-Insider-Trading.html> accessed on 8th August 2021.



Below mentioned table is the comparative analysis between the USA and Indian model reflecting various enactment, the interpretation clause for the insider trading, terminologies used for sensitive information, the prohibiting activities, the role of intermediaries and penalty provisions.

AREA	INDIA	USA
Acts governing insider trading	<ol style="list-style-type: none"> 1. The Companies Act of 2013. 2. The competition act 2002 3. SEBI Act1992 4. SEBI Regulations2015 	<ol style="list-style-type: none"> 1. Securities Act of1933 2. The Securities Exchange Act of 1934(SEA) 3. Insider Trading Sanctions Act of1984 4. The Insider Trading and Securities Fraud Enforcement Act of1988.
Definition – not defined directly in any of the act but through a different source, the present meaning exist here	Insider trading is the buying, selling or dealing in securities of a listed company by a director, member of management, employee of the company, or by any other person such as internal auditor, advisor, consultant, analyst etc, who has knowledge of material inside information which is not available to the general public.	In the case of <i>Chiarella v. United States</i> ³⁵ define the term insider trading as “it is unlawful for a corporate fiduciary to trade in the securities of his or her own company based on material, non- public information”.
Prohibition	1. Sec 195 (1) (a) of companies act 2013 prohibits insider trading.	1. Section 17 of the Securities Act of 1933 prohibits fraud in the sale of securities.
	2. Sec 11 (2) (g) and Sec 12 A of SEBI act1992 directly deal with insider trading.	2. The Securities Exchange Act 1934 address insider trading directly through Section 16(b) and indirectly through Section10(b).

³⁵ 445 U.S. 222 (1980)



	<p>Sec 11 (2)(g) mention about prevention of insider trading.</p>	<p>Sec 12 A specifically prohibit such activities related to insider trading and manipulate Securities.</p>	<p>Section 16(b) prohibits short-swing profits (from any purchases and sales within six month period) made by corporate directors, officers, or stockholders owning more than 10% of a firm's shares.</p>	<p>Section 10(b) prohibits fraud related to securities trading.</p>
<p>Who is the insider?</p>	<p>As per regulation 2(g) of SEBI (PIT) 2015 "insider" means any person who is:</p> <ul style="list-style-type: none"> i) a connected person; or ii) In possession of or having access to unpublished price sensitive information. <p>"Anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information"³⁶.</p>	<p>An "insider" includes officers, directors, major stockholders and employees of the company whose securities are traded. "Along with this, these also include under the category of insiders:</p> <ol style="list-style-type: none"> 1. Fiduciaries 2. Tippees 3. Temporary Insiders 4. Misappropriater"³⁷ 		

³⁶ Note of Regulation 2(g) of SEBI (PIT) Regulations 2015

³⁷ Barbara A. Banoff, *The Regulation of Insider Trading in the United States, United Kingdom, and Japan*, 9 MICH. J. INT'L L. 145 (1988). Available at <https://repository.law.umich.edu/mjil/vol9/iss1/5>



The <i>terminology</i> used for the internal information of securities of the company	“Unpublished-price sensitive information” ³⁸	“Material or non-public information” ³⁹ .
Penalty	<ol style="list-style-type: none"> 1. “Ten lakh rupees extend to twenty- five crore rupees or 2. Three times the amount of profits made out of insider trading, whichever is higher”⁴⁰. 3. “A criminal offence punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both”⁴¹. 	<p>The Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) empowers SEC:</p> <ol style="list-style-type: none"> 1. “Impose stiff monetary penalties 2. Guilty parties may spend considerable time up to 5 years in jail, depending upon the gravity of the crime 3. The fine went up at either 300% of the amount of the money made through trades or \$1 million whichever is higher”⁴².

This comparative analysis reflects the understanding of the concept under the both the model i.e. USA and India. USA has adopted various numbers of the enactment of the securities market distributing the burden of authorities for better clarity whereas Indian model has the SEBI as the ultimate authority which deals with every aspect of the securities market which results in burdening the institution and being less effective. The concept of insider is very limited as the criteria to be included under the same as mentioned in the table. USA model reflects the category of all the persons to be included under the same as mentioned in the table. Furthermore, penalty provisions are also stringent whereby USA imposes 300 % more than profit earned or the \$ 1million dollar as the fine. This comparative analysis reflect India’s position as compare to the most experienced jurisdiction and this model sets precedent for developing countries in securities market such as India for effective functioning of the securities market and the handling of the frauds are concerned.

³⁸ Regulation 2(n) of SEBI (PIT) Regulations 2015

³⁹ “Material non public information is data relating to a company that has not been made public but could have an impact on its share price” available at <https://www.investopedia.com/terms/m/materialinsiderinformation.asp>

⁴⁰ Sec 15 G of SEBI act1992

⁴¹ Sec 24 of SEBI act 1992

⁴² Subramanian Natarajan ,*Insider trading in USA: Its evolution, current rules and other titbits*, Taxguru (06 April 2020) available at <https://taxguru.in/income-tax/insider-trading-uss-evolution-current-rules-titbits.html>



Recent Amendment

On July 17, 2020, SEBI notified the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020 (“PIT Amendment”), to introduce further changes to the PIT Regulations.

The following amendment brought under the 2015 regulations:

1. **Regulation 5** – The BOD or heads of the company or every person have to maintain a digital database of UPSI and the details of the person whom the information is outsourced to find out where the information or by whom that information leaked and used.
2. **Regulation 6** – “Maintenance of structured digital database for 8 (eight) years after completion of the relevant transaction, except in case of any pending enforcement or investigative proceeding by SEBI”⁴³. This period was chosen to align with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and similarly, Section 128 of the Companies Act, 2013.
3. **Regulation 7 (2) (b)** - disclosure by the companies regarding the trading should be done as per the forms given by the board from time to time.
4. **Schedule B Code of conduct to Regulate, Monitor and Report Trading by Insiders**–

Clause 4, sub-clause 3 (b)	Clause 12	Clause 13
Trading window restriction mentioned where parties are not allowed to trade if one possess the UPSI or the transactions which board mentioned time to time.	“Contravention of code of conduct that one would be liable and disciplinary actions taken such as suspension, recovery and that amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act” ⁴⁴	“Violation of code of conduct regulations it shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time” ⁴⁵ .

⁴³ Rohan Banerjee, Tanya Nayyar & Anushka Shah, *Recent Amendments to the Insider Trading Regime*, Cyril Amarchand Mangaldas Blog (August 3, 2020) Available at <https://corporate.cyrilamarchandblogs.com/2020/08/recent-amendments-to-the-insider-trading-regime/>

⁴⁴ SEBI (PIT) Amendments Regulations 2020

⁴⁵ *Ibid*



5. Schedule C – Code of Conduct for Intermediaries and Fiduciaries

<i>Clause 10</i>	<i>Clause 11</i>
<p>The contravention of code of conduct stipulates disciplinary actions such as suspension, recovery, imposed by the intermediary or fiduciary.</p> <p>That amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.</p>	<p>Observed by the intermediary or fiduciary that there has been a violation of these regulations, such intermediary or fiduciary shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time.</p>

With every one of these alterations or amendment, SEBI has laid out extra obligations on intermediaries and fiduciaries, along with smoothed out its administrative forces with the stock exchange, the general effect regarding the market sanctity yet to be seen. While there appear to be concerned regarding the extent and degree of control that might be practiced by the stock exchange over unlisted entities, a similar will rely upon effective usage of the PIT Amendment and issuance of additional explanations and circulars by SEBI.



CONCLUSION

A comparative investigation of insider trading was valuable for two reasons.

1. To start with, worldwide collaboration in requirement is simpler if the nations included have comparable laws.
2. Second, the presence of created protections markets in nations gives a lab to the future exact examination which may uphold or discredit a portion of the cases made by its advocates and adversaries.

The insider trading laws of the United States and India are similar, although certainly not identical. The regulatory structure is also similar as discussed above. “Insider trading in the U.S.A. was intentional with the expectation; India would follow the path of that country. “Insider trading has started occupying an important role with SEBI who has shown admirable results with the number of amendments as per the present market requirement”⁴⁶.

This change brought by SEBI by observing develop countries regulations such as the US has streamlined the undertaking of checking and finding the act of insider trading more than one different way. With the development of the different areas or scope including the persons going under the classification of 'Insiders', an alternate pattern is seen in the cases that followed the change. The people who were prior blocked from the domain of insiders have now been added to the rundown. Furthermore, endeavors have been made to demonstrate their obligation too in instances of insider trading. Of course, the divulgences needed to be made by the directors, officials and significant shareholders of an organization under the code of conduct.

All these comparative analyses, observing different countries regulations and the amendments brought just to make more clarity regarding the activities including insider trading, manipulating securities for the wrongful gain. The act of insider trading can't be annihilated, yet an exertion can be made to restrict it by and large. This can be as it was conceivable if there are obstructions to set models for all the guilty parties and the individuals liable to include in this malicious practice.

⁴⁶ Subramanian, Supra note 41