LEGAL LOCK JOURNAL

2583-0384

VOLUME 3 || ISSUE 5

2024

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CROSS-CONTINENTAL PERSPECTIVE OF INSIDER TRADING REGULATIONS IN INDIA, USA, AND UK: A CONTRASTIVE APPRAISAL

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ABSTRACT

The principle objective of this paper is to demonstrate and analyze various aspects of Insider Trading and to evaluate its effect. An extensive examination of insider trading in the context of the Indian financial markets is given in this paper. Using the substantial research of academicians like Ankit Sharma, Dr. Ritu Gupta, Michael J. Jung, Anil K. Manchikatla, and Rajesh H. Acharya, among others, the literature study charts and later the evolution of insider trading laws in India over time. The paper provides a detailed account of the development of these laws, starting with post-independence committee recommendations and ending with the founding of the Securities and Exchange Board of India (SEBI) in 1992.

The scope of the inquiry encompasses the intricate details of insider trading in the Indian capital market, the complexity of insider threats, and the subtle effects of the COVID-19 epidemic on these operations. Critical analysis is applied to emerging issues and trends, tackling the difficulties brought on by global market integration, technology breakthroughs, and the rising power of social media platforms. A comparative study of insider trading laws in the US, UK, and India highlights differences in each country's legal systems and highlights areas where current laws fall short.

Chapter by chapter, the paper reveals its contents via rigorous assessments of the literature and investigations of insider trading in the Indian stock market. It carefully traces the development of laws from the 1948 Thomas Committee to the founding of SEBI, highlighting the recommendations of committees like Sachar (1979), Patel (1986), and Abid Hussain (1989). The story continues to shed light on the present insider trading situation while highlighting new issues that the securities industry is facing, such as the influence of social media, internationalization, and technology.

A comparative viewpoint is presented via a critical examination of the legal systems in the US, the UK, and India, highlighting the distinctive regulatory strategies of each country.

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Examining the shortcomings in the law as it is now bringing to light the difficulties regulatory agencies have, such as poor methods of investigation, overworked compliance officers, and the lack of a thorough self-evaluation procedure.

The paper concludes with several smart ideas to close the loopholes in India's insider trading laws. These recommendations include better regulatory monitoring, better investigation techniques, and international cooperation. The paper also highlights the necessity of preserving securities market integrity in the face of changing financial landscapes by highlighting the need for proactive measures, technological adaptability, and ongoing examination of regulatory procedures.

INTRODUCTION

When the price of securities would be significantly altered if the information were disclosed, insider trading is the deliberate exploitation of unpublished price-sensitive information obtained through or from a privileged relationship to trade in shares and securities to gain (or avoid) a loss at the expense of the general public who is not informed about the situation.

Henry G. Manne provides the following definition of the term "Insider Trading":

"Insider trading generally refers to the practice of corporate agents buying or selling their corporation securities without disclosing to the public significant information which is known by them but which has not affected the price of the security."[3]

Insider trading is a persistent concern in the constantly changing financial markets, giving rise to a complicated web of issues and discussions. The present paper undertakes a thorough investigation of insider trading, specifically concentrating on its development, current discussions, and prevailing patterns within the Indian setting. Insider trading has gained significant attention in the global business landscape, especially with the expansion of trading instruments in the financial markets. It involves individuals using non-public information to buy or sell stocks, and while permissible trading exists, insider trading is considered a fraudulent malpractice. This practice poses threats to economic stability, contributing to issues like wealth disparity, stock market collapses, and economic downturns. Many countries have enacted laws to regulate or prohibit insider trading, with about 87 nations adopting such laws by the end of the 20th century.

[3] See M.L. Gopichandra, *Insider Trading Insights*, JayshreeBose (ed.) Insider Trading: Perspective and Cases 3 (2007).

Despite substantial growth in Indian stock markets, they face challenges such as insider trading, price-rigging, lack of transparency, high transaction costs, excessive speculation, and administrative lapses. Insider trading stands out as a particularly challenging problem due to the difficulty in obtaining circumstantial evidence required for regulatory actions. The complexity of insider trading arises from basic human instincts like greed, making it challenging to eradicate. The study aims to comprehend the extent of the problem and explore existing regulatory practices.

Efficient stock markets are crucial for creating favorable investment climates and economic growth. However, the competition for external capital in financial markets underscores the importance of investor protection laws to ensure market competitiveness. Controlling the behavior of insiders engaged in illegal insider trading becomes a key aspect of these laws.

EMERGING PROBLEMS AND TRENDS OF INSIDER TRADING IN THE SECURITIES MARKET

Insider trading has long been a major problem in the Indian securities industry. Even though there are stringent rules and regulations in place to prohibit insider trading, insiders have sometimes participated in unlawful acts for personal benefit. As India's securities market develops further, there are emerging trends and difficulties in the field of insider trading that need attention. Using technology more often to detect and stop insider trading is one of the newer developments in insider trading. Thanks to artificial intelligence and machine learning developments, businesses are using complex algorithms to track and examine trade trends to identify any questionable activity. This trend is expected to continue as companies spend more on technology to improve their compliance programs.

The internationalization of the securities industry is another developing trend that creates additional obstacles for insider trading regulations. As more and more businesses expand abroad, the securities market becomes increasingly linked, making it more difficult to detect and control insider trading on a global scale. To prevent insider trading and the exchange information across national boundaries, regulators need to collaborate.[4]

Social media's ongoing rise presents new challenges for insider trading identification and prevention. Social media sites like X (formerly Twitter) and YouTube are becoming more and more important information sources for investors, but insiders may also release information

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[4] See Samie Modak, "*India's market capitalization cross 100 trillion*" Business Standard, Volume 4 issue 5, The Law Brigade (Publishing) Group, (2014).

on these platforms that can be regarded as confidential and sensitive. Regulators need to come up with fresh ideas for keeping an eye out for any questionable insider trading behaviour on social media and other internet platforms.

Another barrier to regulating insider trading is the intricacy of financial products. With the advent of new financial tools like exchange-traded funds (ETFs) and derivatives, the danger of insider trading has grown. These technologies may make it more difficult for authorities to detect insider trading by masking trade patterns.[5] To handle the risks presented by these instruments, authorities must adjust and develop new regulations as the financial environment changes.

A breakthrough in the responsible investment space has consequences for insider trading regulations. Responsible investors consider governance, social, and environmental issues while making investment choices. As investors become more aware of the necessity of transparency and openness, responsible investment places an increasing emphasis on these elements. This tendency may lead to heightened examination of companies and their compliance with insider trading regulations.[6]

SEBI has stepped up its efforts in the last several years to stop insider trading and make sure the law is properly enforced. The regulator has been pursuing legal action against corporations and their executives for their failure to put an end to insider trading, and it has been vigorously investigating and prosecuting people and organizations involved in insider trading operations. Recently, a corporation named Magma FinCorp. was penalized by SEBI for not having an adequate internal control mechanism in place to prevent insider trading. In UK companies comply with the "MiFiD II 2014/65/EU (Markets in Financial Instruments Directive II)" of May 15, 2014. In this the companies are allowed to monitor their directors and employees' trades for potential insider trading and other non-compliant behavior. Pre-clearance procedure should be established in companies wherein Directors and Employees would require permission before executing any trade.

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[5] See Partha Sinha, *Insider trading is rampant on Dalal Street*, (June 18, 2012, 6:26 A.M.). https://economictimes.indiatimes.com/insider-trading-is-rampant-on-dalal-street/articleshow/14222302.cms?from=mdr

[6] See ENS Economic Bureau, *Stricter Disclosure Norms soon for Research Analysts*, (July 18, 2015 01:10 IST) https://indianexpress.com/article/business/business-others/uk-sinha-stricter-disclosure-norms-soon-for-research-analysts/

To address some of these issues, the SEBI has proposed several regulations, including the SEBI (Prohibition of Insider Trading) (Amendment) Regulation 2018, which enhanced and expanded the existing regulations. The revisions included clauses mandating the disclosure of trading strategies, the upkeep of a database listing all individuals with access to UPSI, and the need that staff employees to receive insider trading instruction.[7]

SITUATION OF INSIDER TRADING IN THE UNITED STATES, THE UNITED KINGDOM, AND INDIA

4.1. The United States of America

“According to the legal framework of the US, the fundamental provisions relating to insider trading are Security and Exchange Commission Rules (SEC) Rule 10 b-5 (anti-fraud rule), Rule 14 e-3 (relating to tender offers) and Section 16 (b) (recovery of short-swing profits) of the Securities Exchange Act 1934. [8]

4.1.1 Rule 10 b-5[9]

Rule 10b-5[10] of SEC Rules was carved in the light of Section 10(b)[11] which is also known as the anti-fraud rule and allows the Securities and Exchange Commission (SEC) to enforce the prohibition on insider trading. It is worth mentioning that neither Section 10(b)[12] nor Rule 10b-5[13], expressly prevents insider trading. Rule 10b-5[14] of SEC Rules prohibits the acts and business practices that amount to fraud or deceit on any person, about the sale or purchase of securities. To establish fraud or deceit, the U.S. courts have laid their basis on the principle of fiduciary duty on the part of the person acting as an insider towards the company or the shareholders, i.e., only if the fiduciary duty existed for an insider and there was a breach of such fiduciary duty, such a person would be considered to be an insider liable for fraud under this Rule. The burden of proof that fiduciary duty existed was on the Regulator.

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[7] *Ibid*
[8] See Barbara Ann Banof, *The Regulation of Insider Trading in the United States, United Kingdom, and Japan*, Michigan Journal of International Law, Vol 9 no.1,(1988).
[9] Securities Exchange Commission Rule, 1934, §10 b-5, 17 CFR 240, 1934 (U.S.A).
[10] *Ibid*
[11] Securities Exchange Act, 1934, § 10 (b), 15 U.S Code, 1934 (U.S.A).
[12] *Ibid*
[13] Securities Exchange Commission Rule, 1934, §10 b-5, 17 CFR 240, 1934 (U.S.A).
[14] *Ibid*

4.1.2 Rule 14 e-3

Apart from Rule 10b-5[15], Rule 14e-3[16] of SEC Rules specifies prohibition against insider trading during tender offer which prohibits any person who has material non-public information relating to the commencing of a tender offer, directly or indirectly, either of the bidder company or the target company, from trading in the securities of the target company. This provision provides a complete ban on insider trading and it differs from Rule 10b-5 as there is no need to prove the existence of fiduciary duty. Nevertheless, the Rule has its exceptions. Sub-section (1) to Rule 14e-3[17] of SEC Rules eliminates purchases by a broker or by an agent on behalf of an offering person. The Rule is so designed to allow bidders to utilize outside brokers to make open market purchases before the filing requirement.

4.1.3 Section 16(b)

Another important provision concerning insider trading in the U.S. is Section 16(b) of the Securities Exchange Act, 1934, which permits the issuers of securities to recover short-swing profits from an insider. In the U.S., trading by corporate insiders is regulated by Section 16(b)[18] of the Act. As per this provision, the short swing profit (i.e. profits out of purchase and sale transactions within a period of six months) made by insiders is restricted. It is immaterial as to whether the violator has non-public information. An issuer or a shareholder, under Section 16(b)[19], has a right to recover any profits made by an officer, director, or controlling shareholder from purchases and sales that occur within six months of each other. Liability is determined solely if the purchase-sale transactions have taken place within the statutory period of six months.

4.2 United Kingdom

[15] Securities Exchange Commission Rule, 1934, §10 b-5, 17 CFR 240, 1934 (U.S.A).
[16] Securities Exchange Commission Rule, 1981, §14 e-3, 17 CFR 240, 1981 (U.S.A).
[17] *Ibid*
[18] Securities Exchange Act, 1934, § 16 (b), 15 U.S Code, 1934 (U.S.A).
[19] *Ibid*

The Financial Services and Markets Act, 2000 ("FSMA") and Part V of the Criminal Justice Act, 1993 ("CJA") provide the statutory framework for insider trading regimes in the UK. However, neither of the Acts defines the term 'insider trading'. [20]

The FSMA provides a regime for preventing market abuse and also empowers the UK Financial Services Authority ("FSA") to sanction anyone who engages in market abuse. Section 118(2)[21] defines 'market abuse' as including behaviour where an insider deals, or attempts to deal, in a qualifying investment or related investment based on insider information relating to the investment in question. In addition to this, it also applies to those who require or encourage others to engage in conduct that would amount to market abuse. Market abuse is regarded as a civil offence and therefore does not require that a person must have acted deliberately or recklessly.

Part V[22], on the other hand, prohibits dealing in price-effected securities based on insider information, encouragement of another person to deal in price-affected securities based on insider information, and knowing disclosure of inside information to another. Criminal sanctions for insider trading and market manipulations can incur custodial sentences of up to 7 years and unlimited fines.

Both the Indian and the UK laws have similar definitions of 'price sensitive information' as well as 'insider' (as far as civil liability is concerned). In India, one common statute applies for both criminal and civil liability whereas in the UK, both liabilities are dealt with under different statutes.

U.K Market Abuse Regulation: MAR applies to financial instruments traded in UK and EU financial markets under this act. Under UK MAR the FCA can carry out both civil and criminal proceedings for enforcement of the regulation and prevent market abuse. Market abuse is governed in the UK by the Market Abuse Regulations (MAR), which came into force in July 2016. MAR is overseen by the Financial Conduct Authority (FCA), which has investigatory and enforcement powers against individuals and organizations for alleged breaches. The MAR prescribes three specific behaviors, any one of which can, on its own, comprise a breach. The three behaviors are:

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[20] See Barbara Ann Banof, *The Regulation of Insider Trading in the United States, United Kingdom, and Japan*, Michigan Journal of International Law, Vol 9 no.1,(1988).
[21] Financial Services and Markets Act, 2000, § 118 (2), C.8, 2000, (U.K).
[22] Criminal Justice Act, 1993, § Part V, C. 36, 1993, (U.K).

- Insider Dealing: This is the act of utilizing inside information to make, change, or cancel deals, or to encourage a third party to deal using this knowledge.
- Unlawful disclosure of inside information: This is the act of releasing information without correct permissions and
- Market manipulation: This is the umbrella term for a series of actions which distort market performance.

This offense arises where an individual or company possesses "***inside information***" and discloses that information to any other person, except where the disclosure is made in the normal exercise of their employment, profession, or duties. An exemption to the offense is where inside information is disclosed in the course of a "***market sounding***", which is a communication of information, before the announcement of a transaction, to gauge the interest of potential investors.

4.3 India

Section 12A (d) & (e) of the Securities Exchange Board of India Act 1992, read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 and Section 15G of the Securities Exchange Board of India Act 1992 regulates insider trading in India. However, none of these provisions give a specific definition of 'insider trading'. Section 15G[23] is an enabling provision for SEBI to impose penalties in insider trading cases, and SEBI relies on the nature of the violation and description of the prohibited activities under this provision for imposing such penalties. The cases of violation are defined within the provision itself. On the other hand, Section 12A[24] of the Act lists prohibited activities that primarily include manipulative trades, insider trading activities, and substantial acquisition of securities.

Although the term 'insider trading' has not been defined specifically, Regulation 4[25] of the Insider Regulations provides that contravention of Regulation 3[26] Communication or Procurement of Unpublished price-sensitive information (UPSI) amounts to the offense of insider trading. Under Regulation 4[27] of the Insider Regulations, an insider who deals with the

[23] Securities and Exchange Board of India Act, 1992, § 15 G, No. 15, Act of Parliament, 1992 (India).
[24] Securities and Exchange Board of India Act, 1992, § 12 A, No. 15, Act of Parliament, 1992 (India).
[25] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, § 4, LAD-NRO/GN/2014-15/21/85, SEBI Regulation, 2015 (India).
[26] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, § 3, LAD-NRO/GN/2014-15/21/85, SEBI Regulation, 2015 (India).
[27] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, § 4, LAD-NRO/GN/2014-15/21/85, SEBI Regulation, 2015 (India).

securities of a listed company, while in possession of any UPSI is said to be guilty of insider trading. It also prohibits an insider from procuring, counselling, and communicating UPSI to any other person.

Therefore, the offense of 'insider trading' as provided under Regulation 3[28] of Insider Regulations, read with Section 12A of the Act[29], requires any of the following activities:

a) Any person dealing in securities, while in possession of UPSI or
b) By encouraging another person to deal in securities or
c) By disclosing the UPSI to another person is guilty of insider trading.

An analysis of the provisions governing the prohibition on insider trading (Regulation 3 and 4 of the Insider Regulations and Section 12A (d) and (e) and Section 15G of the SEBI Act, 1992) is imperative to understand the legal framework for the prohibition of insider trading in India and to demonstrate the efficacy as well as deficiency of the provisions."

DEFICIENCIES IN CURRENT LEGISLATION PERTAINING TO INSIDER TRADING

Over the decades, insider trading laws have changed, and organizations now have a greater responsibility to safeguard UPSI. In *Hindustan Unilever Limited vs SEBI (1998) 18 SCL 311 MOF*[30] and *Dilip Pendse vs SEBI (2004) 49 SCL 351 (SAT)*[31], it was clear that a lack of appropriate investigation methodology and evidence corroboration allowed many criminals to escape or get light sentences. Using these loopholes encourages illicit insider trading again. Thus, insider trading investigations should be enhanced. Due to difficulty in proving linkages, the absence of effective monitoring techniques, and accumulating evidence, SEBI has been unable to demonstrate the gravity of this violation. Trading using UPSI information in securities might dramatically alter market-issued securities prices. It is easy to imagine how deeply embedded insider trading is in a nation like India, yet the number of instances investigated and actual convictions show that insider trading rules are poorly implemented. SEBI investigated 85 cases in 2017 and 2018, however just 25 were concluded. Most of these

[28] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, § 3, LAD-NRO/GN/2014-15/21/85, SEBI Regulation, 2015 (India).
[29] Securities and Exchange Board of India Act, 1992, § 12 A, No. 15, Act of Parliament, 1992 (India).
[30] See Reena Zachariah, *SEBI set to overhaul Insider Trading rules; to form a committee led by former SAT chief*, (Feb. 25, 2013, 6:26 A.M).

https://economictimes.indiatimes.com/sebi-set-to-overhaul-insider-trading-rules-to-form-a-committee-led-by-former-sat-chief/articleshow/18665458.cms?from=mdr
[31] See Kotak Committee Report Uday Kotak, R*eport of the Committee on Corporate Governance*, 49-51 (2017).

instances included UPSI trading and lack of disclosure, however proving the relationship between insider knowledge and stock market playout is absent, resulting in poor implementation.

5.1 Inadequate investigative mode

Recently, a scandal in 2017 has come to light. According to Reuters, a WhatsApp group chat was used to transmit (startlingly accurate) unpublished Price Sensitive Information (UPSI) related to the quarterly results of at least 12 organizations just a few days before the numbers were publicly disclosed. These pauses involve large corporations' finances, such as the Dr. Reddy's Laboratories Ltd., which has a large market share.[32] Although SEBI is now looking into the incident, this has renewed criticism of the controller's careless investigation and indictment of insider trading cases over the previous twenty years. SEBI is said to have used its search and seizure powers—which it employs occasionally—at around 34 locations in investigating the WhatsApp leak.[33]

In the USA, investigating and pursuing claims concerning publicly traded securities is the MIMF Unit's (Market Integrity and Major Frauds) area of expertise. These incidents involve market manipulation, insider trading, fraudulent claims, accounting fraud at publicly listed corporations, and other scams.

In the UK, the Financial Conduct Authority oversees upholding the CJA and “UK Market Abuse Regulation” (UK MAR). UK MAR applies to financial instruments traded UK and EU Financial Markets. Under this regulation, the FCA can carry out both civil and criminal proceedings for enforcement of the regulation and prevent market abuse. The Financial Conduct Authority can ban regulated businesses and permitted individuals, issue injunctions, and take enforcement action against anybody, whether they are regulated by them who does insider trading.[34]

5.2 Overburdening Compliance Officer

One of the most notable aspects of the 2015 Regulation is the extensive role and responsibilities of the Compliance Officer. In addition to their representatives, they must disclose communications between all associated parties. The word 'employee' encompasses

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[32] See Reuters, *Predictive messages about Indian cos results circulate in WhatsApp groups*, (Nov.22, 2017, 2:56 A.M). https://www.google.com/amp/s/www.business-standard.com/amp/article/companies/predictive-messages-about-indian-cos-results-circulate-in-whatsapp-groups-117111600539_1.html

[33] See Lubinisha Saha, *Insider Trading: SEBI Regulation*, 50 Corporate Law Adviser 76-77,(2002).

[34] See Dr. Jinesh Panchali and M. Ravindran, *Insider Trading Issues*, 1 Knowledge for Markets 48-49,(2011).

all representatives of an organization under disclosure laws. This increases the consistency officer's responsibilities, since the number of employees in a large organization may exceed the number of high-ranking authorities. The need to monitor and report the behavior of linked individuals might include organization investors, legal advice, close relatives, and others. Due to the broad definition of a linked person in the Regulation, it is a repetitive task for the compliance officer. A large outsider network is now a 'connected person', making it challenging for recorded organizations to maintain consistent disclosure as well as secrecy. A single element communicating onerous duty increases default risk.

Due to heightened regulatory scrutiny and the need for organizations to guarantee conformity to rules and regulations, there has been a constant demand for compliance officers in the United States.

The UK has seen a strong need for compliance specialists, much as the USA and India have, especially in the financial services industry.[35]

5.3 Consent mechanism

SEBI approved a settlement mechanism for insider trading cases without precedent to reduce costs, authorization, and implementation efforts. Settlement by assent orders involves a fine that is low compared to the amount in dispute. Settlement of insider trading charges by consent arrangement reduces the perceived risk of financial loss and detention. Potential insider dealers may prioritize reducing fear, leading to a negative and grievous outcome. Moreover, such aims limit legal progress and lack knowledge of the first inquiry order technique.[36]

5.4 Self-evaluation process

The Securities and Exchange Board of India (SEBI) is not well-known for its ability to self-evaluate its processes and examine the cases of insider trading that were not proven. By periodically analysing its procedures, the Securities and Exchange Commission (SEC) of the United States performs self-exams to discover issue areas in their examinations. The purpose of the study titled "Examination of SEC Disappointment to Reveal Bernard Madoff's Ponzi Scheme" is to investigate the shortcomings of the SEC that enabled Madoff to run a Ponzi scheme and dodge arraignment for a considerable amount of time successfully. There are

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[35] *Ibid.*

[36] See Montagano & P. Christopher, *The Global Crackdown on Insider Trading: A Silver Lining to the Great Recession*, Indiana Journal of Global Legal Studies 19, no. 2, 575-598 (2012).

recurrent flaws in the discovery process because of the absence of execution examination that originates from SEBI.

5.5 Mens rea

The current statutes lack an essential consideration of motive, leading to the punishment of insider trading without establishing mens rea, undermining the intended purpose of penalizing such practices. The mere possession of unpublished price-sensitive information should not suffice for insider trading allegations, as many company executives have access to such data. Mens rea should be the decisive factor in imposing liability for insider trading, with a high standard required, placing the burden on the prosecution to prove knowing and unlawful actions by the defendant.

The prevalent viewpoint in Indian judiciary and regulatory circles, dispensing with mens rea for insider trading, is deemed incorrect. Despite commendable efforts by SEBI to strengthen regulations, the broad framework created, lacking mens rea, makes it challenging for citizens to know when they violate the law. A just legal system demands punishment only in the presence of fault, necessitating the revitalization of the mens rea requirement for criminal punishment in India.

In the context of globalized financial markets, it is urged that India follows the precedent set by the SEC and U.S. courts, criminalizing insider trading based on mens rea. Establishing a clear standard through statutory provisions or judicial precedents, rooted in mens rea, would provide clarity on what conduct attracts criminal liability, acting as a deterrent and fostering confidence among both domestic and foreign investors in a fair and transparent securities market.

The mens rea in insider trading seems to be taken into account by US and UK regulations as well.[37]

5.6 Internal Control Mechanism of Company

The majority of Public listed and private Indian companies lack an internal control mechanism of the company i.e. company themselves have no particular code of conduct to prevent insider trading within them. The Indian companies should have a code of conduct to prevent insider trading which can include having a list of insiders (insiders are the ones who have access or hold UPSI), a pre-trade clearance process i.e. all the insiders must take prior approval from the company before executing any buy sale transactions into the market. At the

[37] *Ibid.*

bare minimum, Indian companies should invest in Developing policies that can help in the formulation of a particular code of conduct to prevent insider trading and implement them accordingly. In "UK MiFiD II (Markets in Financial Instruments Directive II)" are the instructions to be followed by the UK public listed companies wherein the companies should monitor the director's and employees' trades for potential insider trading and other non-compliant behaviour.

CONCLUSION

The purpose of these recommendations is to fill in loopholes in India's insider trading laws. The main flaw in the laws is that they don't have a strong structure for conducting investigations, which causes insider trading charges to be decided incorrectly. Problem identification is the first and most crucial step in fixing a problem, yet it may be unsuccessful if it is done without consideration for subsequent suggestions. In examining the issues raised by insider trading in India, SEBI ought to consider the following suggestions:

6.1 Education / Training / Awareness: Reducing this misuse can be achieved in part by raising public knowledge of insider trading and its detrimental repercussions. To help with this, SEBI may publish an insider trading manual (booklet) and distribute it to the appropriate public segment, either on its own or with the assistance of various NGOs, stock exchanges, companies, intermediaries, etc. Additionally, SEBI may regularly hold programs, discussions, or seminars to educate investors who fall victim to these abuses about the harmful effects of insider trading and how to protect themselves from such activities. The Central Government, directors, and staff members of all organizations and businesses should also be concerned about the widespread ignorance that exists not just among individuals but also inside numerous companies, according to SEBI. To guarantee proper compliance with the applicable rules and regulations, the company's management, including specialists connected to the company, must educate the insiders of the organization on these requirements and laws.

6.2 Corporate Governance: Companies must cooperate to guarantee that insider trading regulations are implemented effectively at the local level. As one of the cornerstones of successful enforcement against insider trading is corporate governance, companies need to exercise self-regulation and adopt preventative measures. The necessity of the hour is for

businesses to keep a close eye on their directors and officers and to report and monitor them strictly. As a first line of defense against insider trading, every company should adopt a strict insider trading code and enforce strict adherence to it. The compliance officer should also keep an eye on employees' trading activities according to industry regulations and best practices.

6.3 Multi-Jurisdictional Insider Trading: To adequately protect domestic markets and investors from the effects of insider trading, it has become necessary to alter the legislation to expand the scope of Indian regulations against insider trading beyond national borders. Section 27(b)[38] of the Act, which grants the regulator extraterritorial authority, satisfies this necessity in the USA. Having such extraterritorial authority over SEBI would help combat insiders who attempt to break the law by operating outside of India. Ensuring international collaboration between India and several other countries is crucial to the effective investigation and prosecution of cases having transnational elements, which is another facet of this issue. The US model, in which the SEC has agreements with overseas equivalents for reciprocal legal assistance in situations of securities law violations, is the one taken by the solution. Even though India has signed Memorandums of Understanding and Multilateral Agreements (MLATs) with other nations, it still has to pay more attention to this sector and sign more agreements with other nations.

6.4 Protection of Whistleblower: Any input that leads to the identification of insider trading activity must be welcomed by SEBI, and it should also encourage people to provide it with information on ongoing insider trading activities. In the United States, the Securities and Exchange Commission (SEC) offers incentives under Section 21A(e)[39] of the Act to anybody who provides them with information that leads to the discovery of an insider trading scheme.

6.5 Private Right of Action: It is necessary to create legislation that is similar to that of the United States, which offers a variety of civil remedies. Under Section 16 (b)[40] and Section 20-A[41] of the Act as well as Rules 10b-5[42] and 14e-3[43] of the SEC Rules, private individuals may bring civil actions. Indian law should give anyone harmed or losing money as a result of

[38] Securities Exchange Act, 1934, § 27 (b), 15 U.S Code, 1934 (U.S.A).
[39] Securities Exchange Act, 1934, § 21A (e), 15 U.S Code, 1934 (U.S.A).
[40] Securities Exchange Act, 1934, § 16(b), 15 U.S Code, 1934 (U.S.A).
[41] Securities Exchange Act, 1934, § 20A, 15 U.S Code, 1934 (U.S.A).
[42] Securities Exchange Commission Rule, 1934, §10 b-5, 17 CFR 240, 1934 (U.S.A).
[43] Securities Exchange Commission Rule, 1981, §14 e-3, 17 CFR 240, 1981 (U.S.A).

insider trading the private right to pursue legal action against the insider, which would effectively include paying the harmed parties for the losses they sustained.

6.6 Judicial: The US legal system has been able to address instances of insider trading because of the solid interaction between the legislative and the judiciary, both of which have demonstrated extraordinary dynamism in tackling the many challenging facets of insider trading regulation. Within our regulatory framework, we must acquire and duplicate this dynamic and passionate attitude. By being dedicated to the goal of penalizing offenders of harmful conduct, the Indian judiciary should contribute to the field of developing jurisprudence about insider trading. Up until now, there has been a tendency for the courts and the appeal body to interpret the law in a way that gives the accused offenders a large benefit of the doubt. This is clear from the way the SAT has overruled SEBI's unusual guilt rulings in insider trading cases, beginning with the *Hindustan Unilever v. SEBI (1998) 18 SCL 311 MOF* case and continuing to this day. The approach of the Indian judiciary towards insider trading should be matched with the USA where the judges contribute by sustaining insider trading convictions based on circumstantial evidence and under the federal sentencing guidelines, impose lengthy periods of incarceration.

6.7 Structural changes: The first step in addressing the ineffective enforcement of insider trading laws is to increase funding and staffing. Such a proposal is supported by the information that SEC employs 3958 people nationwide, but SEBI only employs 643 people altogether throughout its numerous offices. Additionally, SEBI must take the investigation of insider trading seriously and assemble a team of experts who would work effectively to find evidence of the crime. One US example that can serve as guidance is the Market Abuse Unit, which was formed by the SEC to be proactive by attempting to detect ties, trends, and connections between traders and institutions from the beginning of investigations.

6.8 Merger and Acquisition: To prevent insider trading, India should enact a prohibition akin to Rule 14e-3[44] of the SEC Rules. This will allow for special attention to be paid to trades made in the period immediately preceding the announcement of a merger, acquisition, or other corporate restructuring.

6.9 Media Hype: One of the most effective ways to persuade insiders and others to refrain from insider trading is to hype up and publicize situations involving insider trading.

[44] *Ibid*

Publicizing India's successful insider trading cases in the media needs to be part of SEBI's purview.

6.10 Performance Audit: SEBI, to be sensitized of where more efforts are required, needs a timely thorough performance audit of its processes, structure, and practices.

6.11 Limit on Investigatory Powers: SEBI should remove the limit on its investigatory power, which only applies to the persons listed in Section 11B(3) of the Act[45] and hinders it in situations where the person requiring assistance does not fall within the sub-sections list of persons. The limit includes the ability to call for information, produce books, registers, or other documents, or record before him or any person authorized by it in this regard.

In summary, India is doing a respectable job of enacting laws to limit the threat of insider trading. Although the Prohibition of Insider Trading Rules, 2015, is a commendable piece of law, it does not address the shortcomings inherent in the preceding rules.

Furthermore, even the present legislation falls short of what is required. One of the primary disadvantages is that, even with these restrictions in place, SEBI still has difficulties looking into insider trading instances since it lacks some authority. The fact is that although total elimination of insider trading may not be achievable, we can always make every effort to do so, which will ultimately contribute to genuine economic progress .

[45] Securities and Exchange Board of India Act, 1992, § 11B (3), No. 15, Act of Parliament, 1992 (India).