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Hindsight on Insider Trading

The regulation of insider trading has emerged as a critical challenge in India's securities law regime, with implications for corporate governance, investor protection, and market fairness. This article undertakes an in-depth doctrinal and comparative analysis of insider trading under the SEBI (Prohibition of Insider Trading) Regulations, 2015. It critically examines the statutory framework, judicial interpretations, and enforcement practices in India, while synthesizing case law from foreign jurisdictions such as the United States and the United Kingdom. By integrating legal reasoning with policy considerations, the article identifies gaps in enforcement, ambiguities in definitions of unpublished price-sensitive information, and challenges in proving intent. It further explores how Indian jurisprudence has evolved from a formalistic approach to a more substantive understanding of fiduciary duties and fair disclosure. The study concludes with recommendations for strengthening India's legal framework by enhancing clarity, reducing compliance costs, and ensuring alignment with global best practices.

Insider Trading: Doctrinal Underpinnings and Global Parallels

Insider trading—trading in securities while in possession of unpublished price-sensitive information (UPSI)—directly undermines market fairness and investor confidence. The prohibition extends even to informal tip-offs among friends or casual conversations. Across major jurisdictions, including India (SEBI), the U.S. (SEC), and the U.K. (FCA), the foundational doctrine remains the same: “disclose or abstain.”

In India, the SEBI (Prohibition of Insider Trading) Regulations, 2015, embody this principle through stringent preventive measures and penalties. The 2015 overhaul shifted the framework

from mere prevention to absolute prohibition, ensuring that no person connected with a company can exploit UPSI for personal gain or secret profits.

India's approach aligns closely with U.S. securities law. In *Cady, Roberts & Co. (1961)*, the SEC held that information entrusted for corporate purposes must not be misused for personal advantage, emphasizing the intrinsic unfairness of allowing selective access to material information. The Supreme Court of India echoed this in *Rakesh Agrawal v. SEBI (2003)*, affirming the duty to “disclose or abstain” and reiterating that the use of material non-public information is inherently fraudulent as it gives unfair advantage over uninformed investors. In *Dirks v. SEC*, the U.S. Supreme Court clarified that insider trading requires

a breach of fiduciary duty involving manipulation or deception, supported by intent (*mens rea*).

The U.K. adopts a dual enforcement system: insider dealing constitutes both a criminal offence under the Criminal Justice Act 1993 and a civil offence under the Market Abuse Regulation (MAR). The severe penalties imposed under both tracks highlight the strong stance taken by developed markets against insider trading.

The Pitfalls of Insider Trading

a) India – SEBI Act, 1992 & PIT Regulations, 2015

Section 15G of the Securities and Exchange Board of India Act,

1992 stipulates that any person contravening the Prohibition of Insider Trading (PIT) Regulations, 2015 shall be liable to a monetary penalty of not less than ₹10 lakh, which may extend to ₹25 crore or three times the amount of profits made out of the insider trading transaction, whichever is higher. Violations may also lead to prosecution and a prohibition on accessing the securities market for a specified period. In practice, SEBI orders in such matters usually impose monetary penalties coupled with market bans, though notably, there has not been any criminal conviction for insider trading in India so far.

b) United States – Securities Exchange Act, 1933

Under U.S. law, a criminal violation of insider trading provisions may attract a fine of up to USD 5 million and/or imprisonment for up to 20 years. Civil remedies include disgorgement of unlawful gains and other monetary penalties.

It is pertinent to note that insider trading is not *per se* illegal; liability depends on proving, on a preponderance of probabilities, that such trading occurred. The legal test revolves around the materiality of the non-public information and whether the evidence outweighs a plea of innocence.



c) United Kingdom – Criminal Justice Act, 1993

In the UK, insider trading offences can result in unlimited fines and custodial sentences of up to seven years.

Innocence or Evidence – The Rajaratnam Case

Insider trading becomes illegal when a person trades securities based on material, non-public information obtained through private or privileged channels. Proving that such trades are intentional rather than the result of innocent coincidence or independent analysis is one of the most challenging tasks for regulators. A notable example is *United States v. Rajaratnam* (No. 11-4416, 2nd Cir. 2013). In this case, two former business school friends were implicated—one of whom served as a director on the board of a multinational corporation. They exchanged a series of phone calls discussing unpublished price-sensitive information (UPSI) concerning the company's balance sheet ahead of its Annual General Meeting. The Director disclosed this confidential information to his friend, who, in turn, purchased shares of the company based on it. The trial lasted nearly three years. Despite compelling evidence, including wiretap recordings and trading records, the defendants argued that their actions were merely the outcome of legitimate market research—an argument the court rejected.

The penalties were severe:

- **Raj Rajaratnam (Chief of a hedge fund):** 11 years' imprisonment—one of the longest terms ever imposed for insider trading in the U.S.—along with substantial monetary penalties.
- **Rajat Gupta (Director and source of UPSI):** two years' federal imprisonment, USD 13.9 million civil penalty, USD 5 million fine, and a permanent ban from serving as an officer or director of a public company.

This case illustrates the complexity of proving intent in insider trading prosecutions, especially where parties appear to be at arm's length. The conviction ultimately rested on clear evidence that UPSI was transferred from a board member to a hedge fund manager, resulting in profitable trades.

What Level of Proof is Necessary in Insider Trading Cases?

In *Dilip S. Pendse vs SEBI*, decided on 19 November 2009 (Appeal No. 80 of 2009), the Securities Appellate Tribunal, while referring to the judgement delivered by Lord Denning, L.J., in *Bater v. Bater* (1950) 2 All E.R. 458, observed:

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases, the charge must be proved beyond a reasonable doubt, but there may be degrees of proof within that standard. So also, in civil cases. The case may be proved by a 'preponderance of probability', but there may be degrees of probability within that standard. The degree depends on the subject matter."

Key Changes and Challenges in the PIT Amendments

SEBI, through its notification of March 11, 2025 (published March 12, 2025), introduced major amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015. Effective June 10, 2025, these changes broaden the scope of Unpublished Price Sensitive Information (UPSI), ease compliance for UPSI originating outside the listed entity, expand the definition of "connected person" to include more relatives, and tighten the sensitivity attached to UPSI. Regulation 2(1) (n) continues to define UPSI as non-public information relating to a company or its securities that could materially affect their price, supported by a non-exhaustive list of examples such as dividends and financial

results. The definition aligns with the events under Para A and B of Part A of Schedule III, read with Regulation 30 of the LODR Regulations, which require each event to be examined for potential price sensitivity.

Expanded Scope of UPSI under SEBI Regulations

Key Disclosure Events

- **Financial & Credit Events:** Rating changes (excl. ESG), planned fund-raising, loan resolution/restructuring or one-time settlements, winding-up/CIRP matters.
- **Governance & Control:** Agreements impacting management/control, changes in KMP (UPSI unless due to superannuation, term end, or auditor resignation).
- **Compliance & Licensing:** Grant, withdrawal, or suspension of key licenses/approvals.
- **Misconduct & Investigations:** Fraud/defaults/arrests (India/abroad), forensic audits for misstatements/misuse of funds, adverse authority orders.
- **Contracts & Business Operations:** Awards or terminations of non-routine contracts/orders.
- **Legal Outcomes:** Litigation/dispute results with significant company impact, guarantees/indemnities/sureties given outside normal business.

Who All Are Covered Under a Connected Person?

The revised definition of 'connected persons' broadens coverage beyond relatives to include the new categories mentioned, placing compliance obligations on them, with a presumption of inclusion unless they can prove otherwise.

A connected person is anyone associated with a company in a way that gives them access to UPSI. The definition now also covers:

“Insider trading becomes illegal when a person trades securities based on material, non-public information obtained through private or privileged channels.”

- (a) firms, their partners, or employees where a connected person is a partner; and
- (b) individuals sharing a household or residence with a connected person.

These additions extend compliance obligations beyond relatives, with a presumption of inclusion unless rebutted by the concerned person.

Obligation of Connected Persons

Connected persons, as insiders, must comply with key rules:

- 1) Under Regulation 3, they cannot share UPSI except for legitimate purposes, duties, or legal obligations;
- 2) Under Regulation 4, they cannot trade while in possession of UPSI, and any permitted off-market insider trades must be reported to the company within two working days, which then informs the stock exchange within two trading days; and
- 3) Under Regulation 5, they may submit a pre-approved trading plan, a provision now extended to relatives of connected persons.

Impact on Listed Entities

Listed entities mainly need to remind connected persons about the proper handling of UPSI. With the expanded definition, connected persons must exercise extra caution, as in any alleged violation of Regulation 4(1) of SEBI PIT Regulations, the burden is on them to prove they did not possess UPSI. Pre-clearance and

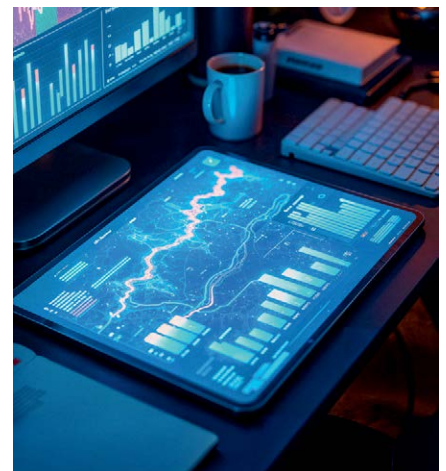
disclosure obligations still apply only to designated persons and their immediate relatives, not all relatives. While SEBI allows listed entities to seek disclosures from connected persons, such requirements should be imposed after careful consideration. As a precaution, entities may obtain relatives' PAN details to monitor trading activities.

'Relative' becomes 'Super Relative'

The amended framework broadens "immediate relatives" into a wider "relative" category by removing the earlier requirements of financial dependency or involvement in trading decisions. Now, a relative includes a spouse, parents (own and spouse's), siblings (own and spouse's), children (own and spouse's), and the spouses of those siblings or children. This change ensures clearer identification of connected persons, effectively covering all close family members in insider trading regulations. The onus remains on such persons to prove that their connection did not involve influence from UPSI.

Is 'Profit Motive' Essential to Prove a Charge in the Case of Insider Trading?

In *SEBI v. Abhijit Rajan* (2022), the Supreme Court held that proving insider trading requires establishing a profit motive; a "distress sale" to save a company from bankruptcy is not insider trading. For information



from outside the company, entries in the structured digital database can be made within two days, and a new proviso to Schedule B, Clause 4(1) allows the trading window to remain open for such information.

The Responsibility of Professionals in Handling Insider Trading

A compliance officer—typically a whole-time company secretary designated as a KMP under SEBI (LODR)—plays a central role in preventing insider trading by ensuring full regulatory compliance, protecting confidential board deliberations, guiding directors on secure audio/video participation, monitoring disclosures and shareholdings, and identifying conflicts, including excluding directors with over 2% interest from relevant proceedings. Well-versed in corporate and securities laws, the officer safeguards UPSI, maintains accurate records, and upholds strong governance standards.

SEBI's recent actions against promoters of Kvality Limited, Edelweiss Financial Services and its compliance officer, and entities involved in insider trading in Zee Entertainment Enterprises Limited reinforce the importance of this role.

For KMPs and connected persons, ethical conduct remains essential: trade only on public information, avoid ESOP or F&O dealings when in possession of UPSI, recognise that “relatives” may extend broadly, disclose all holdings, and abstain from trading when uncertain—since in insider-trading cases, evidence prevails and violations can lead to disgorgement, trading bans, and loss of holdings.

SEBI's ongoing investigation into insider trading at a private bank is examining why the CEO and Deputy CEO traded in the bank's shares despite knowing about major accounting lapses involving derivative losses of ₹2,329 crore—information

that qualified as UPSI. The case raises broader concerns about the timing of disclosures, fraud reporting, internal controls, adherence to the code of conduct by key managerial personnel, and the bank's overall governance and risk management. Regulators and stakeholders are also scrutinizing whether the auditors should have treated the derivative-related losses as fraud.

The Ethical Behaviour for Key Managerial Personnel

- Trade only on publicly available information; never trade while holding UPSI.
- You may be connected to the company, but avoid ESOP or F&O trades if you possess UPSI.
- “Relatives” can include extended or proximate relations.
- Studying insider trading is fine—just avoid becoming part of an insider network.

- As a KMP, safeguard UPSI and never misuse it.
- Always disclose your shareholdings to the company to avoid liability.
- The safest approach is to abstain and refrain from trading when in doubt.
- If you are a connected person, stay away from trading activities.
- In insider trading cases, evidence—not claimed innocence—prevails.
- Falling into the PIT results in disgorgement, trading bans, and loss of holdings.

Conclusion

Insider trading undermines market trust, and while India's regulations have evolved, adopting global best practices can make oversight more agile, data-driven, and deterrent. A resilient framework should integrate advanced surveillance, stronger cross-border collaboration, and a culture of ethics to keep capital markets transparent, fair, and inclusive.

Synthesis Table 1: A look at the SEBI (PIT) Regulations, 2015, and as Amended

S. No.	Aspect	Key Points
1	Definition of Insider Trading	Trading a company's securities using confidential, non-public information for profit or to avoid loss.
2	Prohibition	No trading, sharing, or facilitating trades using UPSI.
3	UPSI	Non-public information that could materially impact security prices if disclosed.
4	Insider	Directors, KMPs, employees, or anyone with access to UPSI.
5	Connected Persons	Immediate relatives of insiders and specified professionals/advisors.
6	Trading Window	Companies must close trading windows during sensitive periods; designated persons restricted.
7	Compliance Officer	Appointed by the company to monitor adherence and implement insider trading policy.
8	Amendments	SEBI periodically updates regulations, e.g., 2019 expanded UPSI definition; 2025 amendments added further provisions.
9	Enforcement	SEBI can investigate violations and impose fines, bans, and other disciplinary measures.

Synthesis Table 2: Insider Regulations – A Global Scenario

Feature	India	USA	UK	Australia
Standard	Possession	Use	Use	Possession
Enforcement	SEBI	SEC/DOJ	FCA	ASIC
Proof	Possession	Use & intent	<i>Mens rea</i>	Strict-like
Whistleblower	Yes	Yes	Partial	Yes
Trend	Digital forensics/WhatsApp leaks	Tippee liability	Criminal sentencing	High convictions

Synthesis Table 3: Comparative Enforcement Strength

- **India:** Strong enforcement (4/5)
- **USA:** Moderate enforcement (2/5)
- **UK:** Moderate enforcement (2/5)
- **Australia:** Strong enforcement (4/5)

The above highlights that India and Australia have the highest enforcement strength, while the USA and UK are relatively lower.

Synthesis Table 4: Indian Case Laws on Insider Trading – An Evolving Jurisprudence

Case	Facts	Facts	Significance
<i>Rakesh Agrawal v. SEBI (1998)</i>	MD of ABS Industries accused of insider trading pre-merger.	SAT ruled no intent; case was in his favor.	Introduced "subjective intent" test, later replaced by possession-based standard.
<i>Hindustan Lever Ltd. v. SEBI (1998)</i>	HLL bought BBLIL shares before merger announcement.	SEBI's allegation dismissed; news already public.	Clarified "publication" timing for UPSI.
<i>SEBI v. Rajiv Gandhi (Satyam, 2009)</i>	Promoters sold shares before fraud disclosure.	Heavy penalties imposed.	Reinforced SEBI's authority on UPSI-related fraud.
<i>Reliance Industries Ltd. (2021)</i>	Trading in Reliance Petroleum shares using UPSI pre-merger.	₹25 crore penalty by SEBI.	Showed SEBI's aggressive action against corporate insiders.

Synthesis Table 5: Global Case Laws on Insider Trading – A Stringent Approach

Case	Facts	Outcome	Impact
<i>United States v. Martha Stewart</i>	Sold ImClone shares after tip before FDA rejection.	Convicted for obstruction/false statements, not insider trading.	Highlighted SEC's broad enforcement powers.
<i>Dirks v. SEC (1983)</i>	Analyst received tip; issue of tippee liability.	Liability only if tipper breached fiduciary duty for personal benefit.	Established personal benefit test for tippees.
<i>R v. McQuoid & Melbourne (UK, 2009)</i>	UPSI passed to father-in-law, who traded.	Both imprisoned.	Showed strong penalties for familial misuse of UPSI.
<i>ASIC v. Curtis (Australia, 2010)</i>	Traded using insider info from a girl	2.5 years imprisonment.	Reinforced strict enforcement in Australia.



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