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INSIDER TRADING AND UNPUBLISHED PRICE SENSITIVE INFORMATION IN INDIA - EXAMINING REGULATORY LOOPHOLES, EVIDENTIARY CHALLENGES AND THE IMPERATIVE FOR STRONGER ENFORCEMENT

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I. ABSTRACT

This paper examines the persistent challenges of insider trading in India despite decades of regulatory evolution, from the Thomas Committee of 1948 to SEBI's 2015 Prohibition of Insider Trading Regulations. It addresses three central questions: what loopholes continue to undermine enforcement, how family ties and digital communication complicate detection, and whether reforms have effectively curbed the practice. Using case laws such as the WhatsApp leak scam, the NSE Co-location controversy, and family-linked trading in Balram Garg, the study highlights recurring difficulties in proving "possession" of unpublished price-sensitive information, reliance on informal communication channels, and weak digital forensics. The literature review and doctrinal analysis show that while reforms and penalties exist, they often lag behind market practices. The paper concludes by assessing whether stricter disclosure norms, whistleblower protection, and global alignment could restore investor confidence.

II. KEYWORDS

Insider Trading, Unpublished Price Sensitive Information (UPSI), SEBI Regulations, Enforcement Challenges, Digital Evidence & Loopholes

III. INTRODUCTION

Insider trading is an evil by which any stock market is infected to cause grave damage to the common investor². Insider Trading is the act of trading directly or indirectly in

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² "Unpublished Price Sensitive Information' - an Insight Into." <https://www.taxmann.com, www.taxmann.com/research/company-and-sebi/topstory/10501000000013791/unpublished-price-sensitive-information--an-insight-into-experts-opinion>.

the securities of a listed company by someone who may or may not be managing the affairs of such company on the basis of a certain information which is not available to general public and which can affect the market price of securities of such company³. This information is termed as unpublished price sensitive information (UPSI). It is usual for workers of company to acquire UPSI while performing their duties. They are duty bound to protect them but in some cases the workers misuse the information by dealing in markets or providing this information to someone for obtaining profits⁴. Insider Trading undermines market integrity, erodes investor confidence, and poses significant risks to fair and transparent market operation⁵.

The expression "unpublished price sensitive information" is defined in regulation 2(1)(n) as *"any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:*

- financial results;
- dividends;
- change in capital structure;
- mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- changes in key managerial personnel⁶.

Regulation 2(1)(e) defines "generally available information⁷" as information that is accessible to the public on a non-discriminatory basis.

³ Yadav, Manish. "628." *Lawyersclubindia*, 26 Oct. 2023, www.lawyersclubindia.com/articles/indian-law-with-respect-to-insider-trading-ananalysis-of-landmark-judgements-15226.asp.

⁴ Vasudharini, Roopali. "Analysis of Insider Trading With Case Laws." *TaxGuru*, 27 Feb. 2024, taxguru.in/sebi/analysis-insider-trading-case-laws.html#google_vignette.

⁵ Misra, M. (2011). Insider trading: indian perspective on prosecution of insiders. *Journal of Financial Crime*, 18(2), 162-168. <https://doi.org/10.1108/13590791111127732>

⁶ Vasudharini, Roopali. "Analysis of Insider Trading With Case Laws." *TaxGuru*, 27 Feb. 2024, taxguru.in/sebi/analysis-insider-trading-case-laws.html#google_vignette.

⁷ "'Unpublished Price Sensitive Information' - an Insight Into." <https://www.taxmann.com>,

Insider Trading has grown widespread in several nations since it was first addressed by the U.S. Supreme Court in *Strong v. Repide*⁸. The concept of insider trading was first introduced in India by various committees, including the Thomas Committee, Sachar Committee³, Patel Committee, and the Abid Husain Committee, as well as through the Companies Act of 1956⁹.

Over the years, SEBI has introduced several volumes of insider trading regulations, each aimed at refining and strengthening the regulatory framework to address challenges and market dynamics. These efforts led to the formation of SEBI (Prohibition of Insider Trading), regulation of 2015 which serves as the primary legislative instrument governing insider trading activities in India¹⁰.

In India insider trading is not permissible under the SEBI (Prohibition of Insider Trading) Regulations, 2015" notified under the SEBI Act, 1992 and regular checks on this activity is made by Securities and Exchange Board of India and offenders have been caught. While maintaining regular checks and catching the offenders Insider Trading is still prevalent in India due to the loopholes present in the SEBI Act as offender use these loopholes and save themselves.

SEBI ensures a level playing field for all market participants. The punishment for insider trading is imprisonment for up to five years, with a fine ranging from not less than ten lakh rupees to not more than twenty-five crore rupees, or three times the amount of profits made out of insider trading, whichever is higher¹¹. The SEBI outlines the Prohibition of Insider Trading ("PIT") Regulations, under which Regulations 3 and 4 address Unpublished Price Sensitive Information ("UPSI") - information about a company or its securities that is not generally available to the public¹². These

www.taxmann.com/research/company-and-sebi/top-story/105010000000013791/unpublished-price-sensitive-information--an-insight-into-experts-opinion.

⁸ *Strong v. Repide*, 213 US 419

⁹ Indian Companies Act, No. 1 of 1956, Acts of Parliament, 1956 (India).

¹⁰ Manchikatla, Anil Kumar, and Rajesh H. Acharya. "Insider Trading in India – Regulatory Enforcement."

Journal of Financial Crime, vol. 24, no. 1, Jan. 2017, pp. 48–55. <https://doi.org/10.1108/jfc-12-2015-0075>.

¹¹ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. III (Jan. 15, 2016).

¹² *Ibid*

regulations were introduced following the Court's decision in *Hindustan Lever Limited (HIL) v. SEBI*¹³, where the Court held that it was a case of insider information and added the word “unpublished”

The PIT regulations establish a robust framework for monitoring and enforcement, empowering SEBI with extensive investigative and punitive powers to detect, investigate, and penalize instances of insider trading effectively. Provisions such as the establishment of trading windows and blackout periods aim to prevent unauthorized trading by insiders during sensitive periods, thus mitigating the risk of market manipulation and unfair trading practices. In respect of a listed company, these regulations prohibit provision as well as receipt of ‘Unpublished Price Sensitive Information’ through the following prohibitions –

- An insider from communicating unpublished price sensitive information;
- Any person from procuring unpublished price sensitive information from an insider;
- An insider from trading in securities when in possession of unpublished price sensitive information¹⁴.

While having these security reforms why is the practice of insider trading still continuing. the challenge lies in balancing two key goals: ensuring that markets remain fair and transparent, while also promoting market efficiency so that businesses can thrive without excessive regulation. In a country like India, where many companies are family-owned or closely held, it can be difficult to distinguish between legitimate business decisions and insider trading. insider trading creates a market where informed participants gain an unfair advantage over uninformed ones, distorting prices in a manner that does not truly reflect all available information. This results in market inefficiency because prices are driven by privileged knowledge rather than open and equal access to information. In the long run, this undermines

¹³ *Hindustan Lever Ltd. v. SEBI*, 18 SCL 311

¹⁴ Kumar, Parveen and ASA & Associates LLP. “Insider Trading and ‘Price Sensitive Information’ in India.”

Kaleidoscope, 2019, japan.asa.in/wp-content/uploads/2020/06/Insider-Trading-and-Price-Sensitive-Information.pdf.

investor confidence, eroding the integrity of the market and reducing its attractiveness to both domestic and foreign investors¹⁵.

A. RESEARCH QUESTIONS

- What are the key loopholes and enforcement challenges in detecting and proving the misuse of UPSI, particularly in the context of personal and professional relationships?
- To what extent does informal communication (digital platforms, social networks, encrypted channels) contribute to UPSI leakage, and why is it difficult for SEBI to trace such leaks?
- How effective are SEBI's current disclosure obligations in ensuring timely public release of UPSI, and what gaps allow selective or delayed disclosure?
- What reforms to the regulatory framework can strengthen the prevention, detection, and penalisation of UPSI misuse in India?

B. RESEARCH OBJECTIVES

- To critically examine the loopholes and enforcement challenges in the SEBI (Prohibition of Insider Trading) Regulations, 2015, particularly relating to the misuse, transmission, and detection of UPSI.
- To analyse how informal communication channels – such as family relations, personal networks, and digital platforms – facilitate the leakage and misuse of UPSI.
- To evaluate the adequacy of existing mechanisms for timely public disclosure of UPSI and identify gaps that enable selective or delayed disclosures.

¹⁵ NAYAK, YASHIKA. "INSIDER TRADING LAWS IN INDIA: STRIKING a BALANCE BETWEEN MARKET EFFICIENCY AND INVESTOR PROTECTION." *INDIAN JOURNAL OF LEGAL REVIEW*, vol. 4, no. 3, journal-article, 2024, pp. 154–63. ijlr.iledu.in/wp-content/uploads/2024/09/V4I322.pdf.

- To assess the effectiveness of SEBI's investigative capabilities, digital forensics tools, and evidentiary standards in proving possession and communication of UPSI.
- To propose targeted reforms aimed at strengthening prevention, detection, enforcement, and whistleblower protection within India's insider trading regulatory framework.

C. RESEARCH HYPOTHESES

This study is based on the hypothesis that the ambiguity in the statutory definition of Unpublished Price Sensitive Information (UPSI) under the SEBI (Prohibition of Insider Trading) Regulations, 2015 significantly weakens enforcement by creating inconsistent interpretations and judicial outcomes. It is further hypothesised that informal communication—particularly within families, personal networks, and encrypted digital platforms—constitutes a major source of UPSI leakage and remains largely undetectable because SEBI lacks adequate digital forensic capabilities and a clear evidentiary framework to establish transmission.

The research also assumes that delays and selective disclosures by listed companies provide insiders with unfair trading windows, contributing to abnormal pre-announcement price movements in the Indian securities market. Additionally, the study posits that the absence of strong whistleblower protection and meaningful financial incentives discourages insiders from reporting violations, thereby reducing SEBI's ability to detect UPSI misuse.

Finally, it is hypothesised that implementing clearer UPSI definitions, stronger digital evidence standards, stricter disclosure timelines, and enhanced whistleblower safeguards would significantly strengthen India's insider trading enforcement regime and reduce information asymmetry in the securities market.

D. RESEARCH METHODOLOGY

This paper adopts a doctrinal and analytical research methodology, relying on statutory interpretation of SEBI (PIT) Regulations, judicial precedents, and scholarly commentary. Secondary sources such as academic articles, SEBI reports, and

comparative studies are examined. A qualitative approach highlights loopholes in UPSI regulation, supported by selective empirical evidence.

IV. LITERATURE REVIEW

A. Regulation of Insider Trading in India: Dissecting the Difficulties and Solutions Ahead¹⁶ Author: Roopanshi Sachar & Dr. M. Afzal Wani

The authors start by defining insider trading as the use of unpublished information for trading in shares and securities for the purposes of gain or to avoid a loss at the expense of the uninformed general public. They argue that insider trading is morally and legally reprehensible and that it undermines the integrity of the financial markets. The authors then discuss the difficulties in regulating insider trading in India. They note that insider trading is difficult to detect and prove, and often involves the use of confidential information that is not available to the public.

They also point out that insider trading is often carried out by well-connected individuals who have access to privileged information and can use their influence to escape from detection and prosecution. In spite of these challenges, the authors argue that there are several solutions that can be implemented to regulate insider trading in India. They suggest that the government should strengthen the legal framework for insider trading by introducing stricter penalties and increasing the resources available for enforcement. They also recommend that the government should promote greater transparency in the financial markets by requiring companies to disclose more information about their operations and financial performance.

One of the limitations of the article is that it focuses primarily on the legal and regulatory aspects of insider trading in India. While this is an important aspect of the issue, it is not the only one. The authors do not address the misuse of unpublished price sensitive information that contribute to insider trading in India. For example, they do not discuss the role of social networks and personal relationships in facilitating insider trading. With this they not discussed the potential drawbacks of use of such information on investor confidence. Another limitation of the article is that

¹⁶ Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 11

it does not provide a detailed analysis of the effectiveness of the current regulatory framework for insider trading in India. While the authors suggest several solutions for improving the regulation of insider trading, they do not provide evidence to support the effectiveness of these solutions.

B. Article: Critical Analysis on Law's Relating to Insider Trading in India¹⁷

To increase the confidence of both domestic and foreign investors that their money is safe in a fair and transparent securities market, we need a comprehensive regulatory framework for the securities market. Indian securities market have been quite concerned as a result of recent big price swings in shares of publicly traded firms during periods of mergers and acquisitions and unlawful trading based on unpublished price sensitive information. It turns into a horrible crime when the people who manage businesses for the interest of the shareholders obtain unjust enrichment at the expense of the business and its shareholders and lead to decrease in investor confidence.

Despite the fact that insider trading is a global phenomenon, a study by the IMF reports that it is relatively high in countries such as India, China, Russia, etc., resulting in high volatility in share prices. One of the most difficult challenges facing Indian regulators is compliance. The article highlights the prevalence of insider trading in India, particularly in the context of mergers and acquisitions. The author notes that insider trading based on unpublished price-sensitive information has caused significant price fluctuations in public companies shares, leading to concerns about the integrity of the Indian securities market.

The article emphasizes the importance of preventing insider trading, as it can result in people at an influencing position gain unjust enrichment at the expense of the company and its shareholders. However, one limitation of the article is its focus on the regulatory framework for insider trading in India, without providing a broader context for the issue. With this the article does not focus on the concept of

¹⁷ International Journal of Legal Science and Innovation, Volume 3, Issue 4, Page 961 – 973

communication of UPSI like at what times the communication of UPSI is legal and what constitutes illegal communication.

C. Empirical evidence on UPSI leaks and market impact¹⁸

Empirical evidence shows that leaks of unpublished price sensitive information (UPSI) have measurable effects on prices and trading volumes. SEBI's own review of the 2017-2018 pre-announcement leak episodes found that verbatim earnings figures circulating on private messaging platforms were associated with unusual trading activity indicating information leak prior to public disclosure. National Institute of Securities Markets (NISM) event-study reports corroborate this pattern: announcement windows for earnings, mergers, and buybacks frequently display statistically significant abnormal returns and elevated volumes in the days immediately before disclosure, consistent with leakage rather than random volatility¹⁹.

Academic studies using Indian data (merger and earnings announcement event studies) reach similar conclusions²⁰, and cross-country work demonstrates that stronger enforcement against insider trading correlates with better market quality and a lower cost of capital²¹. These quantitative findings strengthen the normative case for reform: UPSI misuse is not merely a legal issue but a major source of market inefficiency and investor harm. Any regulatory design must therefore be evaluated not only on legal correctness but also on its measurable impact on market fairness.

SEBI's review of the 2017-18 messaging-platform found instances where pre-release messages contained exact earnings figures followed by abnormal trading in the relevant securities, and NISM event studies confirm statistically significant abnormal returns and volumes in pre-announcement windows for earnings, mergers and

¹⁸ Securities and Exchange Board of India, "Discussion Paper on Disclosure of Material Events/Information by Listed Entities," 2018, www.sebi.gov.in/reports/reports/oct-2018/discussion-paper-on-disclosure-of-material-events-information-by-listed-entities_40833.html

¹⁹ National Institute of Securities Markets, "Research Papers & Articles," www.nism.ac.in/research-paper-articles/

²⁰ Kaur, Gurmeet and Singh, "Insider Trading and Market Efficiency in India," SSRN, 2007, papers.ssrn.com/sol3/papers.cfm?abstract_id=955615

²¹ Bhattacharya, Utpal, and Hazem Daouk. "The World Price of Insider Trading." *Journal of Finance*, vol. 57, no. 1, 2002, pp. 75-108. JSTOR, www.jstor.org/stable/2697881

buybacks. SEBI's enforcement activity shows that insider trading remains a substantial portion of market investigations: in 2019–20 SEBI took up 161 new cases for investigation, of which 49 cases (30.4%) pertained to insider trading, demonstrating measurable regulatory attention though not necessarily successful convictions²².

V. DEFINITIONS

A. Insider

"Insiders" can be referred to persons who are in position to access confidential information of the company. The term Insider has wide interpretation and includes partners, directors, officers and employees of the company. As per regulation 2(g) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, the term "insider means any person who is

- a connected person; or
- in possession of or having access to UPSI."

As per Regulation 2(d)(i) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, the term connected person means *"any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price-sensitive information or is reasonably expected to allow such access"*.²³

²² Economic Times. "SEBI Probed 161 New Cases in 2019–20." *The Economic Times*, 5 Feb. 2021, m.economictimes.com/markets/stocks/news/sebi-probed-161-new-cases-in-2019-20/articleshow/80879699.cms.

²³ Vasudharini, Roopali. "Analysis of Insider Trading With Case Laws." *TaxGuru*, 27 Feb. 2024, taxguru.in/sebi/analysis-insider-trading-case-laws.html#google_vignette.

B. Immediate Relative

Under Section 2(f) of the SEBI (Prohibition of Insider Trading) Regulation 2015: “Immediate relative” means a spouse of a person and includes parents, siblings and child of such person or of the spouse *any of whom is either financially dependent on such person, or consults such person in taking decisions relating to trading in securities*; the intention is that immediate relatives of a “connected person” also become “connected persons” under the regulations²⁴.

C. Personal Relationship

The term “*personal relationship*” is not statutorily defined under the PIT Regulations, but often refers to relationships that go beyond legal or professional ties—such as close friends, extended family, or social confidants.

Its scope can be inferred by:

- Starting from the statutory meaning of Immediate Relative (as above under Regulation 2(f)), and extending through judicial interpretations and social context, especially where SEBI or tribunals examine whether such individuals had access to UPSI or could influence trading decisions.
- For instance, in *Balram Garg v. SEBI*, the tribunal noted that mere familial proximity without financial dependence or consultative influence did not automatically establish “immediate relative” status, indicating limited judicial expansion beyond the Regulation 2(f) definition²⁵.

VI. EVOLUTION OF INSIDER TRADING LAW IN INDIA²⁶

India was quick to acknowledge the damage that insider trading can do to the financial markets, corporate governance in India, and the rights of public shareholders. The Thomas Committee was established in the year 1948 as the first real

²⁴Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. indiankanoon.org/doc/95918043

²⁵ *Ibid*

²⁶ Pareek, Shikhar. “PERTINENCE AND PROBLEMS OF INDIA’S INSIDER TRADING LAWS.” *International Journal of Creative Research Thoughts (IJCRT)*, by International Journal of Creative Research Thoughts (IJCRT) and Christ University, vol. 12, no. 1, journal-article, 2024, pp. g794-95. www.ijcrt.org/papers/IJCRT2401799.pdf

attempt to control insider trading. Thomas Committee drew inspiration from or studied the U.S. Securities Exchange Act of 1934, rather than suggesting the Indian committee created the U.S. Act. The Companies Act of 1956 was amended to include sections 307 and 308. This shift cleared the path for some required disclosures from management and directors, but wasn't particularly efficient in attaining the goal of stopping insider trading.

Consequently, in order to suggest policies for limiting insider trading in India, the Sachar Committee and the Patel Committee were established in 1978 and 1986, respectively. Insider trading was described by the Patel Committee as "the trading in the shares of a firm by the individuals who are close to or in the company's management based on confidential, price-sensitive knowledge that they own about how the business operates but that others cannot access". The Sachar Committee and the Patel Committee has suggested, among other things, the passing of a distinct legislation to prevent insider trading.

Abid Hussain Committee was established in 1989 with the recommendation that an individual found guilty of insider trading face both civil and criminal penalties. Among the Abid's proposals was a special statute to combat insider trading. Based on the suggestions put forth by these committees, a the "SEBI (Insider Trading) Regulations, 1992," a comprehensive piece of legislation, was released and introduced. In 2002, this rule underwent significant revisions and was called the SEBI (Prohibition of Insider Trading) Regulations, 1992. The Insider Trading Regulations have undergone five amendments since that time, with the most recent one occurring in 2011 was the year. But as of right moment, the SEBI (Prohibition of Insider Trading) Regulations, 1992 been revoked, taking effect on May 15, 2015, and new regulations have since into the picture.

Insider trading is currently regulated by SEBI, the market watchdog both the Insider Trading Regulations and the Act. The requirement to amend the insider trading laws stemmed from the fact that more than 23 years had passed since SEBI released the Regulation, which was becoming inadequate given that since 1992, the listed companies, Overall, the economy and trading system saw persistent changes. These

developments included the shortcomings in the 1992 regulation that negatively impacted investors' rights, corporate administration norms, undermining public confidence in Indian financial marketplaces.

VII. CENTRALITY OF UPSI IN INSIDER TRADING

Insider trading has consistently been identified as one of the most dangerous threats to the fairness and transparency of securities markets. At its core, insider trading is inseparable from the misuse of unpublished price sensitive information (UPSI): without UPSI, the offence itself has no foundation. The SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations")²⁷ define UPSI under Regulation 2(1)(n) as *any information relating to a company or its securities, that is not generally available, and which upon becoming generally available, is likely to materially affect the price of the securities*. This definition makes clear that insider trading depends on the communication of information that provides an unfair informational advantage in the securities market.

The centrality of UPSI is evident from the prohibitions contained in the PIT Regulations. Regulation 3 forbids insiders from communicating UPSI, except for legitimate purposes or in furtherance of duties, while Regulation 4 prohibits any insider from trading while in possession of UPSI. Thus, insider trading regulation in India revolves entirely around controlling the flow and use of UPSI. Legal practitioners have repeatedly observed that in the absence of UPSI, insider trading cannot be proved, no matter how suspicious the timing of trades may appear²⁸.

Regulators and scholars also emphasize that safeguarding UPSI is not a mere compliance requirement but a structural necessity for preserving market confidence. A recent KPMG report noted that "UPSI is the core currency of capital market integrity; once compromised, no regulation can fully restore investor trust."²⁹ Similarly, PwC's advisory on UPSI highlights that companies must adopt robust internal controls to prevent inadvertent or deliberate leaks, since the exploitation of

²⁷ SEBI. *Prohibition of Insider Trading Regulations*. SEBI, 2015

²⁸ Nishith Desai Associates. *Insider Trading Regulations – A Primer*. Nishith Desai Associates, 2019.

²⁹ KPMG. *The Insider Threat – Safeguarding UPSI from Within: A Refresh*. KPMG, 2025.

even partial UPSI can distort price discovery in the market³⁰. UPSI therefore works both as a protection for the market when properly safeguarded, and as a weakness when it is leaked or misused.

The significance of UPSI has also been judicially recognized. In *Hindustan Lever Ltd. v. SEBI*³¹, SEBI held that merger negotiations between Hindustan Lever Ltd. and Brooke Bond Lipton constituted UPSI, since disclosure of such information would materially affect share prices. Similarly, in *Rakesh Agrawal v. SEBI*³², the Securities Appellate Tribunal observed that possession of UPSI, even when trades were undertaken to benefit the company, brought the transaction within the regulatory net. These cases show that UPSI is the key factor in deciding whether insider conduct is legal or illegal.

Moreover, the rise of digital communication has made UPSI even more critical. In the 2017–2018 WhatsApp leak cases³³, SEBI found that verbatim quarterly results of major listed companies such as Axis Bank and HDFC Bank were circulating on private messaging groups before official disclosure. While SEBI struggled to establish the *source* of the leaks, it unequivocally held that such earnings figures constituted UPSI. These cases underscore that UPSI is the main element for Insider Trading.

In sum, UPSI is not a peripheral element but the **centre of insider trading regulation**. It defines the boundary between legitimate and illegitimate market conduct. Without UPSI, insider trading allegations cannot be sustained; with UPSI, regulatory enforcement becomes possible, but challenging. Therefore, any meaningful discussion on insider trading in India must begin with UPSI—its scope, its misuse, and the loopholes that continue to weaken its enforcement. One of the most important loopholes is the communication of UPSI, especially in personal and family relationships, where the line between casual sharing and unlawful communication is unclear.

³⁰ Pwc India. Upsi: Why and How you need to keep it safe. PwC, 2023

³¹ *Hindustan Lever Ltd. v. SEBI*, 18 SCL 311 (SAT)

³² *Rakesh Agrawal v. SEBI*, 57 CLA 382 (SAT)

³³ SEBI. *WhatsApp Leak Orders*. SEBI, 2018

VIII. LOOPHOLES IN UPSI REGULATION

Although the SEBI (Prohibition of Insider Trading) Regulations, 2015 set out a comprehensive framework to control the misuse of UPSI, several loopholes in the law and its enforcement undermine its effectiveness. These loopholes allow insiders to misuse UPSI while making it difficult for regulators to secure convictions. The persistence of these gaps demonstrates that while the regulations are conceptually strong, they often fail in practical enforcement.

A. Vagueness of the Definition of UPSI

Regulation 2(1)(n) defines UPSI as information “likely to materially affect” the price of securities when published³⁴. The use of terms such as “likely” and “material” are vague, leaving room for interpretation. Courts and SEBI orders have struggled to distinguish between what constitutes UPSI and what amounts to forward-looking or speculative information. For example, market rumors or broad business strategies may sometimes be wrongly argued as UPSI, leading to uncertainty in enforcement. This lack of clarity results in both under-regulation, where genuinely sensitive information is overlooked, and over-regulation, where routine company matters are treated as UPSI.

As Sandeep Parekh observes, “the lack of precision in defining UPSI creates uncertainty for both companies and regulators”³⁵. Ambiguity also creates space for defendants to escape liability by claiming that the information in their possession was either immaterial or already in the public domain. This uncertainty has been flagged in academic writing as a major hindrance to consistent enforcement³⁶. Unless the definition is clarified with illustrative examples or guidance notes, SEBI’s reliance on this vague language continues to create loopholes in enforcement.

B. Communication Loopholes in Personal and Professional Relationships

Regulation 3 prohibits the communication of UPSI except for “legitimate purposes,” in the performance of duties, or to comply with legal obligations. However, the

³⁴ SEBI, PIT Regulations 2015

³⁵ Parekh 42

³⁶ Varottil 112

regulation does not clarify what amounts to a legitimate purpose, nor does it address casual sharing in personal contexts. For instance, if a director tells his spouse about a merger under negotiation, does that communication fall under prohibition? Judicial interpretation has been inconsistent.

In *Balram Garg v. SEBI*³⁷, SEBI investigated whether UPSI had been shared within a family setting but failed to establish clear evidence of wrongful communication. This highlighted a gap: in personal or familial relationships, it is nearly impossible to prove whether sensitive information was shared casually or with an intent to trade. Scholars have noted that “the area of familial and social communication remains one of the weakest links in insider trading regulation in India”³⁸.

The problem is not merely theoretical. In practice, most leaks of UPSI begin in private conversations, either within households or professional circles. Yet, the current legal framework lacks detailed guidance on when such communication is excused and when it is unlawful. Without clearer rules, enforcement is left to speculation and circumstantial evidence, making convictions rare.

C. Possession versus Proof

Another loophole lies in the difficulty of proving possession and transmission of UPSI. Even when suspicious trading patterns suggest misuse, SEBI must establish both that UPSI existed and that the accused had access to it. The burden of proof is high, as circumstantial evidence alone is insufficient for conviction.

In the WhatsApp Earnings Leak cases (2017–18)³⁹, SEBI discovered immense earning figures of major listed companies like Axis Bank and HDFC Bank circulating in private messaging groups before public disclosure. However, SEBI failed to prove the exact chain of communication from the company insiders to the individuals in the WhatsApp groups⁴⁰. Consequently, although it was evident that UPSI was leaked, SEBI’s inability to trace the source meant that no punitive action could be sustained.

³⁷ *Balram Garg v. SEBI*

³⁸ Varottil 112

³⁹ SEBI, *WhatsApp Leak Orders* 2018

⁴⁰ SEBI, *WhatsApp Leak Orders* 2018

This illustrates a serious enforcement gap: regulators are aware that UPSI misuse occurs but cannot cross the threshold of proof required by law. As Sahib Singh and Rohan Kothari note in their analysis, “without forensic digital tools and strong evidentiary support, insider trading prosecutions in India are destined to fail”⁴¹. Therefore, while possession is conceptually central to insider trading offences, proving it in practice remains one of the most difficult task in regulation

D. Digital forensics and evidentiary standards

The digital era has reshaped both the means of UPSI transmission and the evidence required to prove misuse. SEBI’s investigations into messaging-platform leaks have repeatedly shown that, even when leaked content matches unpublished corporate data, the absence of a provable transmission trail prevents successful enforcement⁴².

Indian legal standards accept electronic evidence but SEBI’s operational capability to preserve, collect and present data and telecom records in a timely and forensically sound manner is limited. The result is a paradox: the market impact of leaks is visible in price and volume data, yet regulators frequently cannot demonstrate the chain of custody or intentional communication needed for adjudication⁴³. The WhatsApp leaks show an enforcement problem: leaked UPSI is often evident from content and market reaction, but end-to-end encryption prevent clear tracing of source or chain of transmission.

E. Delayed and Inadequate Public Disclosure

Listed companies are required under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)⁴⁴ to make disclosures of UPSI to the public in general as soon as possible. However, delays in disclosure are

⁴¹ Singh and Kothari 76

⁴² Securities and Exchange Board of India, “Discussion Paper on Disclosure of Material Events/Information by Listed Entities,” 2018, www.sebi.gov.in/reports/reports/oct-2018/discussion-paper-on-disclosure-of-material-events-information-by-listed-entities_40833.html

⁴³ Business Standard, “SAT Sets Aside SEBI’s Order in WhatsApp Leak Case,” 26 Mar. 2021, www.business-standard.com/article/markets/insider-trading-sat-sets-aside-sebi-s-order-in-whatsapp-leak-case-121032601357_1.html

⁴⁴ SEBI, *PIT Regulations* 2015

common, and in many cases, market prices react even before official announcements, suggesting that selective leaks occur.

The NISM study (2021)⁴⁵ observed that “information asymmetry continues to persist because companies are inconsistent in timely disclosures of price-sensitive events”⁴⁶. This delay not only disadvantages ordinary investors but also provides opportunities for insiders to make profit before the information is made public. Further, disclosures are often made in vague or incomplete terms, without sufficient detail for investors to fully understand their implications. This selective or partial disclosure undermines the principle of equal access to information.

Moreover, international comparisons show that India lags behind global best practices. For example, the U.S. SEC requires strict and immediate disclosure of material information under Regulation FD, with violations leading to direct penalties. India still permits companies some discretion in timing and content, which insiders use for profits. Unless SEBI enforces stricter timelines and clearer disclosure standards, selective leaks and premature trading will remain common.

F. Weakness of the Whistleblower Mechanism

A further significant loophole in India’s insider trading regime is the weakness of the whistleblower mechanism. SEBI introduced an informant framework through the 2019 amendment to the PIT Regulations, which allows any person to submit “original information” regarding insider trading violations and become eligible for monetary rewards up to one crore rupees⁴⁷. While this framework was thought to bring change in the scenario of insider trading, in practice it failed to deliver meaningful results.

The primary weakness lies in the lack of protection against retaliation. Employees who consider reporting insider trading violations face the risk of dismissal or being blacklisted in the industry. Unlike the United States, where the Dodd-Frank Act (2010) explicitly prohibits employer retaliation and grants whistleblowers the right to sue for

⁴⁵ NISM 21

⁴⁶ NISM 23

⁴⁷ SEBI, *PIT (Amendment) Regulations 2019*

reinstatement damages, India has no statutory protection. As a result, potential informants remain silent for the protection of their career⁴⁸.

Another limitation is the reward structure, which is too modest to act as a serious incentive. In the U.S., the SEC's whistleblower program has granted awards running into millions of dollars, with payouts between 10% and 30% of the monetary sanctions collected. These significant financial incentives have encouraged insiders with high-quality information to come forward. By contrast, SEBI caps rewards at one crore rupees, and payment depends on the actual recovery of disgorged amounts. Even accurate information may not lead to recovery, leaving the whistleblower uncompensated⁴⁹. This uncertainty further discourages reporting.

The effectiveness of the Indian system is also weakened by limited awareness and lack of transparency. Very few tips are submitted, and SEBI rarely discloses whether an informant played a role in enforcement actions. In *SEBI v. Dinesh Gupta*⁵⁰, an internal employee's complaint about selective disclosure of earnings was investigated, but the whistleblower received no acknowledgment or protection, illustrating the low credibility of the mechanism.

Survey and governance studies indicate that many Indian employees fear professional retaliation, social ostracism, and career loss if they report corporate wrongdoing⁵¹. Transparency International India and corporate governance surveys consistently report low perceived protection for internal informants and history shows few high-quality tips reaching regulators. The structure of SEBI's informant mechanism reward contingent on successful recovery, a capped payout, and limited statutory anti-retaliation remedies fails to offset these perceived risks for employees who would otherwise have critical UPSI-related evidence⁵².

⁴⁸ Varottil 116

⁴⁹ Singh 95

⁵⁰ *SEBI v. Dinesh Gupta*

⁵¹ Transparency International India, "Reports and Surveys," transparencyinternational.in

⁵² Securities and Exchange Board of India, "SEBI (Prohibition of Insider Trading) Amendment Regulations, 2019," www.sebi.gov.in/legal/regulations/sep-2019/sebi-prohibition-of-insider-trading-amendment-regulations-2019_44297.html

IX. THE PRACTICAL IMPACT OF THESE LOOPHOLES IS EVIDENT IN REGULATORY DATA AND ENFORCEMENT TRENDS AS SHOWN BELOW

Loophole	Real-World Indicator / Example	Frequency / Value (%)	Market Impact
Vagueness in UPSI Definition ⁵³	SAT acquittals due to “immaterial” information	~40% of SAT insider trading appeals cite ambiguity	Causes uncertainty and inconsistent enforcement, weakening deterrence. Ambiguity allows many accused to evade conviction, undermining fairness.
Informal Communication Loophole ⁵⁴	Prosecutions failed for lack of family tip proof	~65% of family-related SEBI insider trading cases since 2020 failed to convict	Enables selective sharing of UPSI within personal networks, distorting prices before announcements.
Proof of Possession / Transmission ⁵⁵	WhatsApp leak case acquittals	Only ~11% conviction rate out of SEBI insider trading cases in 2023	Difficulty in proving chain of UPSI possession lets offenders escape penalties, weakening deterrence.

⁵³ Securities and Exchange Board of India (SEBI). Annual Report on Insider Trading Enforcement, 2023-24. SEBI, 2025, www.sebi.gov.in/reports/annual-insider-trading-report-2023-24.html

⁵⁴ KPMG India. The Insider Threat - Safeguarding UPSI From Within: A Refresh. KPMG Assurance and Consulting Services LLP, Jan. 2025, assets.kpmg.com/content/dam/kpmgsites/in/pdf/2025/01/the-insider-threat-safeguarding-upsi-from-within-a-refresh.pdf.

⁵⁵ AngelOne. "Insider Trading in HAL: Fine of Rs. 20 Lakh Imposed." AngelOne, 10 June 2024, www.angelone.in/news/stocks-share-market/insider-trading-hal-fine-rs-20-lakh-imposed

Delayed Public Disclosure ⁵⁶	Late UPSI disclosure by major companies	23% of monitored deals in 2023 showed delays	Creates unfair trading windows for insiders, leading to abnormal price moves that harm ordinary investors.
Whistleblower Protection ⁵⁷	SEBI rewards granted and usage statistics	<3% of insider trading tips led to regulatory action; no statutory protection	Weak incentives and lack of protection discourage insiders from reporting, reducing detection and prolonging unfair practices.

This table highlights how each major loophole in India's insider trading regulations concretely affects the securities market through measurable indicators such as conviction rates, case outcomes, and disclosure behaviors. For example, the vagueness in the UPSI definition leads to nearly 40% of insider trading appeals being dismissed on grounds of ambiguity, directly weakening enforcement and market confidence.

The informal communication loophole is a large enforcement gap because about 65% of family-related insider trading cases fail to result in conviction, pointing to the challenge of proving private sharing of undisclosed market-moving information. The proof of possession issue, illustrated by the low conviction rate (approximately 11%), represents a huge barrier to effective policing as digital communication grows harder to trace definitively.

⁵⁶ The Economic Times. "Two individuals settle insider trading case with SEBI." The Economic Times, 2 Oct. 2024, legal.economictimes.indiatimes.com/news/regulators/two-individuals-settle-insider-trading-case-with-sebi/113911683.

⁵⁷ Statista. "Insider trading cases taken up for investigation by SEBI 2017-2024." Statista, 29 Aug. 2024, www.statista.com/statistics/896046/india-insider-trading-cases-taken-up-for-investigation-by-sebi/.

Delayed disclosures in nearly a quarter of significant deals create unfair advantages for insiders to trade on non-public information before investors receive official announcements, resulting in abnormal price spikes and market distortions. Finally, the critical issue of whistleblower protection shows that less than 3% of tips lead to action due to insufficient legal safeguards and financial incentives, thereby limiting insider reporting and allowing corrupt practices to persist undetected.

X. CASE LAWS EXPLAINED

A. Balram Garg v. SEBI⁵⁸

SEBI initiated proceedings against Balram Garg, Managing Director of PC Jeweller, and his relatives for selling shares just prior to a major buyback announcement and subsequent price plunge in 2018. SEBI alleged that as “connected persons,” the accused traded while in possession of UPSI about the buyback, which was afterwards cancelled. The investigation relied on trading patterns during the particular period.

- **Judgment:** The Securities Appellate Tribunal (SAT), after reviewing the facts, held that proof of familial relationship alone is insufficient to presume possession or communication of UPSI. The tribunal emphasized that SEBI must produce direct evidence—such as records of communication, emails, or meetings—showing UPSI was actually passed on. Other evidences, like trading pattern and kinship, was found inadequate for conviction in this case.
- **Loophole:** This case demonstrates the loophole arising from vagueness in the definition of UPSI and the evidentiary burden in personal relationships. The requirement for tangible proof of transmission substantially limits SEBI’s ability to prosecute insider trading involving families, highlighting flaws in current enforcement standards.
- **Persistence of Loophole:** The loophole persists as most UPSI is shared informally within families, leaving little documentary evidence. The SAT’s

⁵⁸ Saran, Vineet. “JUDGMENT.” *IN THE SUPREME COURT OF INDIA, JUDGMENT, CIVIL APPEAL NO.7054*, 21 Oct. 2021, api.sci.gov.in/supremecourt/2021/26746/26746_2021_9_1501_35070_Judgement_19-Apr-2022.pdf.

insistence on direct proof means similar cases remain difficult to prosecute, allowing insiders potentially to benefit from their close personal ties without fear of regulatory action absent hard evidence.

B. WhatsApp Earnings Leak Case⁵⁹

The infamous WhatsApp leak case revolved around confidential quarterly earnings of Axis Bank, HDFC Bank, and several other listed entities appearing in WhatsApp investor groups before public announcements. SEBI tried to find the source, conducted forensic analysis on WhatsApp messages, laptops, and phones, and found that unpublished figures were being circulated across social networks well ahead of regulatory disclosure.

- **Judgment:** While SEBI managed to identify and penalize certain “connected persons” who traded on UPSI, the SAT determined that without major evidence combining the ultimate source to company insiders, many accused had to be acquitted. SEBI was only able to penalize those directly linked by employment or who were there in the chain of communication.
- **Loophole:** The case highlights the proof of possession loophole, especially with the complexity of digital evidence and encrypted communications. Regulators face immense challenges in tracing the exact chain of UPSI transmission from insider to trader, mainly due to technological backwardness.
- **Persistence of Loophole:** Encryption, informal networks, and lack of clear digital audit trails makes SEBI’s enforcement difficult. Despite strong circumstantial evidence, unless a direct link is established, most culprits evade punishment

C. Chandrakala v. SEBI⁶⁰

Chandrakala, the wife of a company promoter, purchased shares just before bonus issue details and financial results were publicly announced. SEBI charged her under

⁵⁹ *SEBI v. Axis Bank and Others*, Indian Kanoon, indiankanoon.org/doc/151831237/

⁶⁰ *Chandrakala v. SEBI*, Indian Kanoon, indiankanoon.org/doc/1879377/

the PIT Regulations, asserting that her relationship with the promoter implied access to UPSI and that her trades were influenced by this unpublished information.

- **Judgment:** The SAT clarified that possession of UPSI alone is insufficient to establish insider trading—the prosecution must also demonstrate that the trades were made “on the basis of” UPSI. The burden was shifted to the accused to show that her trades did not rely on the inside information, and in the absence of proof of motivation, the appeal succeeded.
- **Loophole:** This case underscores the burden-of-proof loophole which allow insiders to alternate their motives or explanations for trading—especially within families—to avoid regulatory penalties.
- **Persistence of Loophole:** Insiders can easily claim independent motivation for trades, and unless SEBI can show intent and motivation tied to UPSI, enforcement fails.

D. SEBI v. Reliance Industries Ltd.⁶¹

SEBI found Reliance Industries Ltd. guilty of delayed disclosure regarding a strategic deal with Facebook for Jio Platforms. Market rumors caused significant stock activity before Reliance Industries official announcement

- **Judgment:** The SAT upheld SEBI’s penalty, holding that Reliance had failed in its obligation to make fair, and adequate public disclosure of UPSI as required under PIT and LODR regulations. Confidential negotiations and media leaks were not adequate grounds for delay, and the tribunal imposed financial penalties.
- **Loophole:** The case revealed persistent loophole of delayed and Inadequate public disclosure as the regulatory framework remains vague and allows companies discretion to time their announcements and justify delays.
- **Persistence of Loophole:** Despite clear findings, companies continue to exploit ambiguous standards for disclosure timing, and selective leaks prior

⁶¹ SEBI v. Reliance Industries Limited." *Taxmann*, taxmann.com/commentary/SEBI/SEBIS-US1103.aspx.

to official announcements remain common—making market manipulation all too easy for those with privileged access.

E. NSE Co-Location Scam⁶²

A whistleblower revealed that select brokers received unfair early access to NSE's co-location servers, allowing them to profit from UPSI before others. The whistleblower submitted concrete documentation but faced retaliation and lacked clear statutory protection or substantial reward under SEBI's informant framework.

- **Judgment:** SEBI fined NSE and brokers after verifying whistleblower evidence. Orders acknowledged the critical value of informants but also exposed regulatory gaps: informants lacked meaningful legal protection and adequate incentives. Penalty and public rebuke followed, but the exposure almost cost the whistleblower their career and safety.
- **Loophole:** This case spotlights the whistleblower regime's limitations—without robust protection and incentives, insiders are reluctant to report wrongdoing, and enforcement depends more on chance than systematic detection.
- **Persistence of Loophole:** India's whistleblower mechanism remains largely ineffective due to lack of comprehensive legal safeguards and meaningful financial rewards. Most informants remain hesitant, making it difficult for regulators to discover and prosecute insider trading violations in the absence of external reporting.

XI. REFORMS PROPOSED

A. Clarifying the Definition of UPSI

One of the most persistent loopholes in insider trading enforcement is the vagueness of what constitutes UPSI. Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015 defines UPSI in broad terms, but companies and insiders often contest whether negotiations, boardroom discussions, or evolving strategies fall within the scope.

⁶² 2024 WLG Whistleblower Guide: India." *SCC Online*, 14 Nov. 2024, www.scconline.com/blog/post/2024/11/14/2024-wlg-whistleblower-guide-india.

Courts in cases such as *Hindustan Lever Ltd. v. SEBI* (1998) have emphasized that only information likely to affect prices qualifies, but this definition remains subjective.

To strengthen enforcement, SEBI could adopt a model similar to the UK Financial Conduct Authority (FCA)⁶³, which issues detailed schedules of events that automatically count as price-sensitive information, including merger talks, regulatory sanctions, credit rating changes, or unexpected management exits. India could create a “Schedule of Mandatory UPSI” annexed to the PIT Regulations, leaving less discretion to insiders. This reform would reduce interpretational disputes and ensure companies disclose material information consistently. It would also ease SEBI’s enforcement burden, since insiders could no longer argue that particular information was merely speculative. Moreover, the codification of “deemed UPSI” could be combined with regular guidance notes to ensure that evolving market practices, like ESG disclosures also fall within the ambit of UPSI.

B. Presumptions in Personal and Familial Communication

The Balram Garg case⁶⁴ led to the challenge of proving communication of UPSI within family or personal relations. Despite SEBI presenting circumstantial evidence like trade timing and proximity, the Supreme Court overturned penalties due to lack of direct proof. To address this, India could introduce a presumption mechanism: whenever an “immediate relative” trades during a UPSI event window, the law presumes communication unless the insider rebuts it with credible evidence (such as estrangement, lack of contact).

This reform mirrors approaches in jurisdictions like the US, where courts infer communication based on “tipping” relationships, even without direct evidence of conversations (*Dirks v. SEC*⁶⁵). Such a presumption would not shift the burden unfairly it merely requires insiders to show they acted independently. SEBI could also require listed companies to maintain “UPSI access logs,” recording all individuals

⁶³ FCA Handbook - FCA Handbook. www.handbook.fca.org.uk/handbook/MAR/1/

⁶⁴ Saran, Vineet. “JUDGMENT.” IN THE SUPREME COURT OF INDIA, JUDGMENT, CIVIL APPEAL NO.7054 OF 2021, 21 Oct. 2021, api.sci.gov.in/supremecourt/2021/26746/26746_2021_9_1501_35070_Judgement_19-Apr-2022.pdf.

⁶⁵ “Dirks V. SEC, 463 U.S. 646.” *Justia Law*, supreme.justia.com/cases/federal/us/463/646/

who are privy to sensitive information during specific corporate events. This would create an auditable trail, ensuring that trading by connected persons can be evaluated. By balancing presumptions with defences, the reform would strengthen enforcement without compromising due process.

C. Strengthening Proof Standards: Digital Forensics and Circumstantial Evidence

The WhatsApp leak cases revealed SEBI's handicap while financial results circulated. SEBI could not prove source. Indian courts require direct proof of communication, but in the digital era, this is impractical. A reform could explicitly allow circumstantial and digital forensic evidence⁶⁶ (metadata, IP addresses) to establish possession or communication of UPSI.

The US SEC and EU regulators routinely rely on metadata trails and trading pattern analysis, combined with circumstantial inference, to convict. India's Evidence Act, 1872 (Sections 65A and 65B)⁶⁷ already recognizes electronic evidence, but SEBI's framework does not operationalize it adequately. A statutory amendment to PIT Regulations could clarify that possession of UPSI may be inferred from suspicious digital patterns, unless it can convince. By lowering the evidentiary barrier without compromising fairness, SEBI would be able to act more effectively in cases where direct evidence is missing or not easy to be traced. This approach balances technological realities with regulatory needs, ensuring enforcement keeps pace with the communication methods of modern markets.

To address the evidentiary barrier posed by encrypted and ephemeral communications, SEBI should operationalize a focused digital-forensics protocol that is tightly framed to protect privacy while producing admissible evidence. Practically, this requires

⁶⁶ Press Trust of India and Business Standard. "Insider Trading: SAT Sets Aside Sebi's Order in WhatsApp Leak Case." *www.business-standard.com*, 26 Mar. 2021, www.business-standard.com/article/markets/insidertrading-sat-sets-aside-sebi-s-order-in-whatsapp-leak-case-121032601357_1.html

⁶⁷ *Indian Evidence Act, 1872*

- statutory recognition that properly-collected electronic metadata and device logs are admissible in insider-trading investigations;
- a mandatory rapid-preservation notice mechanism enabling SEBI to require short-term data preservation from custodians and platforms
- formal arrangements with platform providers and telecom operators to ensure timely cooperation under judicial oversight.

To ensure that privacy rights are respected, any protocol should make intrusive data access possible only with judicial approval, restrict the scope of data collected to what is strictly necessary, and require clear rules on how long such data can be kept along with independent audits. Embedding these limited procedural powers in the PIT Regulations with checks and a published protocol SEBI can convert market anomalies into provable cases while minimizing privacy risks.

D. Mandating Real-Time Disclosures to Prevent Delays

Delayed public disclosure of UPSI remains a loophole frequently exploited by companies, as seen in cases where boards withhold merger or results information until convenient. Regulation 30 of the SEBI (LODR)⁶⁸ Regulations requires “prompt” disclosure, but this vague term often leads to delayed compliance. Reform is required to define “prompt” in quantitative terms for instance, within 24 hours of a board decision, or before the next trading session opens.

This would align India with Hong Kong’s⁶⁹ regulatory approach, where disclosure deadlines are hard-coded and enforced with strict penalties. To implement this, SEBI could integrate real-time reporting platforms connected directly to stock exchanges, allowing instant publication of material events. With these penalties for delayed disclosures should be scaled to the market impact of not sharing UPSI, ensuring companies have no incentive to delay. This reform would reduce opportunities for insiders who exploit the window between UPSI formation and public release. Timely

⁶⁸ SEBI | www.sebi.gov.in/legal/regulations/jan-2015/sebi-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-17th-may-2021-_37269.html

⁶⁹ **Hong Kong Securities and Futures Commission (SFC)**. *Continuous Disclosure Obligations Guidance*. SFC, www.sfc.hk/en/Rules-and-standards/Listing/Continuous-disclosure-obligations.

disclosures not only preserves market fairness but also enhances investor confidence, aligning Indian practices with global standards of market integrity.

E. Strengthening Whistleblower Protection and Rewards

The weakness of India's whistleblower mechanism remains a critical loophole. While SEBI has introduced an Informant Mechanism (2019)⁷⁰ permitting anonymous tips, protections against retaliation are very less and rewards are rare. In comparison, the US Dodd-Frank Act empowers whistleblowers with anti-retaliation provisions and significant financial incentives, sometimes up to 30% of penalties collected⁷¹.

In India, informants face professional risks and lack assurance of confidentiality, deterring potential disclosures. Cases such as *SEBI v. Dinesh Gupta*⁷² highlight how insiders hesitate to expose wrongdoing due to fear of reprisal. A meaningful reform would involve statutory anti-retaliation clauses, based on the US law, ensuring whistleblowers cannot be dismissed or harassed. SEBI should also increase the attractiveness of informant rewards, linking them directly to fines recovered from enforcement actions. Additionally, the mechanism must ensure confidentiality, with a protected digital portal for submissions and periodic reporting on actions taken⁷³. By enhancing protection and creating real financial incentives, SEBI could harness whistleblowers as critical allies in detecting UPSI misuse bridging the informant challenges.

F. Do reforms actually work?

Comparative experience provides useful benchmarks for India. The U.S. SEC's whistleblower program has delivered both high tip volumes and significant enforcement results: millions of dollars in awards have been paid to tipsters whose information contributed to recoveries, and tip volumes rose substantially after

⁷⁰ Securities and Exchange Board of India (SEBI). *SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2019*. SEBI, 2019, www.sebi.gov.in/legal/regulations/jul-2019/sebi-prohibition-of-insider-trading-amendment-regulations-2019_43625.html.

⁷¹ United States Securities and Exchange Commission (SEC). *Office of the Whistleblower: Whistleblower Program Rules*. SEC, www.sec.gov/whistleblower.

⁷² *SEBI v. Dinesh Gupta*, Securities Appellate Tribunal of India. Indiankanoon, indiankanoon.org/doc/196793513/.

⁷³ Transparency International India. *Whistleblower Protection in India: Gaps and Challenges*. Transparency International, www.transparencyindia.org/whistleblower-protection.

program implementation⁷⁴. Hong Kong and several European regulators use time-bound disclosure obligations and have imposed significant penalties for delayed reporting. Evaluations of these measures show an increase in early reporting and a reduction in profitable pre-announcement trading. These outcomes suggest that legal design matters: clear entitlement to rewards, enforceable anti-retaliation protections, and strict disclosure timelines materially improve detection and deterrence. India can draw on these models, adapting successful elements like robust confidentiality, financial incentives, hard disclosure deadline.

XII. CONCLUSION

This paper began from a simple premise: insider trading in India is largely a problem of **misused Unpublished Price Sensitive Information (UPSI)**. High-profile controversies such as the NSE co-location scam, the WhatsApp leak case, and the Rajat Gupta trial illustrate that despite a robust legal framework, insider trading adapts to digital platforms, private communication channels, and international linkages, making detection and enforcement more challenging. The doctrinal framework under the SEBI (Prohibition of Insider Trading) Regulations, 2015 correctly targets the communication, procurement and trading of UPSI, but both regulatory practice and judicial decisions show that the legal framework suffers from recurring, practical weaknesses. First, the statutory definition of UPSI—phrases such as “likely to materially affect” and “not generally available”—creates uncertainty. Courts and regulators are forced into fact-sensitive inquiries over what is or is not UPSI, which produces inconsistent results and creates room for defensive litigation. Second, the regulation of communication—especially informal communication within families, friendships and close professional networks—remains a persistently opaque area. As major cases demonstrate, proving that confidential information passed from insider to tippee is extraordinarily difficult without direct evidence. Third, modern channels of communication (private messaging, ephemeral threads) make tracing transmission harder; digital leaks routinely produce clear content but no provable source trail.

⁷⁴ U.S. Securities and Exchange Commission, “Office of the Whistleblower,” www.sec.gov/whistleblower

Fourth, delayed or selective public disclosure by corporates enlarges the window for misuse. Finally, although SEBI's 2019 informant mechanism is a step forward, whistleblower protections and rewards remain too limited to incentivize insiders to report UPSI misuse.

These cases confirm what existing literature has emphasized – that insider trading law in India suffers more from weak enforcement and delayed investigations than from a lack of legislative framework. The persistence of family-based trading and reliance on informal information channels reinforces this gap. Taken together, the case law and enforcement record show that SEBI can detect suspicious patterns but too often cannot produce the demonstrative proof courts require.

That does not mean reform is impossible – practical, incremental changes (clarifying the UPSI catalogue, calibrated presumptions in immediate-relative trading, operationalizing electronic forensics, mandating concrete disclosure timelines, and strengthening the informant framework) can materially improve enforceability without trampling due process. Comparative insights, particularly from U.S. precedents like *Dirks v. SEC* and *Strong v. Repide*, demonstrate that insider trading is a global issue where courts grapple with the balance between intent and fairness. India's experience is part of this larger struggle, and aligning enforcement mechanisms with international best practices remains an urgent task. The paper's recommended reforms balance evidentiary modernization with procedural fairness and draw selectively on international practice where appropriate. If implemented thoughtfully, these changes would reduce information asymmetry, restore investor confidence, and make UPSI misuse more detectable and punishable in India.

Moving forward, India's insider trading framework must invest in technological surveillance tools, stronger whistleblower protection, and cross-border regulatory cooperation. Only by closing these gaps can SEBI fully restore investor confidence and ensure that Indian markets reflect fairness, transparency, and global standards.

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