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# INSIDER TRADING REGULATIONS IN INDIA AND THE UNITED STATES: A COMPARATIVE LEGAL ANALYSIS

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## I. ABSTRACT

*Insider trading poses a serious threat to the fairness, transparency, and integrity of securities markets by allowing certain market participants to exploit unpublished price sensitive or material nonpublic information for personal gain. This research paper undertakes a comparative legal analysis of insider trading regulations in India and the United States, examining their conceptual foundations, regulatory frameworks, and enforcement mechanisms. The study analyses the evolution of insider trading law in India under the Securities and Exchange Board of India Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015, and contrasts it with the United States regime developed primarily through the Securities Exchange Act of 1934, Rule 10b-5, and judicial doctrines such as the classical theory, tippee liability, and the misappropriation theory. The paper highlights how India follows a predominantly possession based and rule driven regulatory approach, while the United States relies on a fiduciary duty and deception-based model shaped by judicial interpretation. Through an examination of statutory provisions, landmark judicial decisions, and enforcement practices of SEBI and the US Securities and Exchange Commission, the study evaluates the effectiveness of both regimes in protecting investors and maintaining market integrity. The paper concludes by identifying regulatory gaps and best practices and offers reasoned suggestions for strengthening the Indian insider trading framework in light of comparative insights.*

## II. KEYWORDS

Insider Trading, Securities Regulation, Unpublished Price Sensitive Information, Market Abuse, Comparative Securities Law.

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### III. INTRODUCTION

#### A. Background of Securities Markets and Insider Trading

Securities markets channel household and institutional savings into productive enterprise, so they shape patterns of growth, employment and innovation in any modern economy. They also offer a continuous mechanism for price discovery and risk sharing between informed and less informed investors. Global regulatory standards describe three core objectives for securities regulation, namely investor protection, fair and efficient markets, and reduction of systemic risk.<sup>3</sup> These objectives run through the design of insider trading regulations in both India and the United States, and they influence how each system reacts when information asymmetry becomes abusive rather than benign.

In India, equity markets have expanded at a very rapid pace in terms of listed companies, market capitalization and retail participation. The National Stock Exchange has seen a steady rise in the number of listed entities and a sharp increase in aggregate market capitalization, with recent reports recording market value in the range of several hundred lakh crore rupees and double digit annual growth.<sup>4</sup> At the same time, the number of individual investors entering the market through direct equity and mutual funds has expanded into tens of millions, which makes questions of fairness and integrity of trading particularly sensitive. A single episode of information-based abuse can easily erode fragile confidence among new investors and can damage the legitimacy of the market as a preferred savings vehicle.

The United States securities markets developed earlier but through a crisis driven trajectory, particularly after the stock market crash of 1929 and the Great Depression. Legislative responses in the 1930s, most notably the Securities Exchange Act of 1934,

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<sup>3</sup> Int'l Org. of Sec. Comm'ns, Objectives and Principles of Securities Regulation 2-3 (2010), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf> (last visited Jan. 24, 2026).

<sup>4</sup> Market Capitalisation of NSE Increased to \$5.13 Trillion, up 21.5% in 2024, TIMES OF INDIA (Jan. 1, 2025), <https://timesofindia.indiatimes.com/business/india-business/market-capitalisation-of-nse-increased-to-5-13-trillion-up-21-5-in-2024/articleshow/116845651.cms> (last visited Jan. 24, 2026).

created a comprehensive framework for regulating secondary market trading in securities and for supervising exchanges and broker dealers.<sup>5</sup> That statute also established the Securities and Exchange Commission as the specialised regulator and entrusted it with the task of ensuring that trading in listed securities occurs in an environment that is fair, orderly and protective of investors. The United States experience therefore links the emergence of a powerful federal regulator very closely with episodes of market failure rooted in inadequate disclosure and misuse of information.

Insider trading sits at the intersection of market structure, information economics and fiduciary responsibility. In simple terms, insider trading involves dealing in securities while in possession of confidential, price sensitive information that the market as a whole does not yet know. Writers on securities regulation in India emphasise that when such trades occur, insiders exploit an unfair informational edge that ordinary investors cannot realistically overcome.<sup>6</sup>

Doctrinal development in the United States illustrates how courts and regulators gradually identified insider trading as a distinct form of securities fraud. In the landmark decision in *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), the Second Circuit treated trading by insiders in advance of a major ore discovery announcement as inconsistent with obligations of disclosure or abstention owed under the anti fraud provisions of the Exchange Act.<sup>7</sup> Later jurisprudence refined the classical and misappropriation theories, but the early cases already linked insider dealing with deception of either shareholders or those who entrusted information to the trader. This case law history explains why United States policy makers treat insider trading enforcement as central to preserving confidence in the integrity of securities markets.

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<sup>5</sup> Securities Exchange Act of 1934, 15 U.S.C. § 78a; What Is the Securities Exchange Act of 1934?, INVESTOPEDIA, <https://www.investopedia.com/terms/s/seact1934.asp> (last visited Jan. 24, 2026).

<sup>6</sup> SANDEEP PAREKH, FRAUD, MANIPULATION AND INSIDER TRADING IN THE INDIAN SECURITIES MARKETS (5th ed. 2025).

<sup>7</sup> *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968); W.N. Ozier, *Texas Gulf Sulphur: Its Holdings and Implications*, 22 VAND. L. REV. 361 (1969).

In India, the establishment of the Securities and Exchange Board of India as a statutory regulator under the SEBI Act, 1992 followed the liberalisation of the economy and the rapid expansion of public issues and secondary market activity.<sup>8</sup> The long title of the SEBI Act itself stresses three goals, namely protection of investors, promotion of the development of the securities market and regulation of that market. Within this mandate, SEBI gradually issued and refined a dedicated framework to control insider trading, culminating in the SEBI (Prohibition of Insider Trading) Regulations, 2015, which define unpublished price sensitive information, lay down duties of insiders and connected persons, and require codes of conduct within listed entities.<sup>9</sup> The evolution of these regulations shows how the Indian system has moved from broad anti fraud concepts towards a specialised insider trading code that is closer in sophistication to that of mature markets.

### **B. Research Objectives**

1. To examine and analyse the statutory and judicial development of insider trading regulation in India and the United States.
2. To comparatively evaluate the conceptual foundations of insider trading liability in both jurisdictions, with specific reference to possession, disclosure, fiduciary duty, and misappropriation theories.
3. To assess the effectiveness of enforcement mechanisms, penalties, and institutional roles of SEBI and the US Securities and Exchange Commission in addressing insider trading violations.
4. To identify regulatory gaps and best practices through comparative analysis and to suggest reforms for improving the Indian insider trading regime.

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<sup>8</sup> Securities and Exchange Board of India Act, 1992, No. 15 of 1992, INDIA CODE, <https://www.indiacode.nic.in/handle/123456789/1890> (last visited Jan. 24, 2026).

<sup>9</sup> Securities and Exchange Board of India, Preamble and Introduction 1-2, [https://www.sebi.gov.in/sebi\\_data/commondocs/eoi\\_p.pdf](https://www.sebi.gov.in/sebi_data/commondocs/eoi_p.pdf) (last visited Jan. 24, 2026).

### **C. Research Questions**

1. How is insider trading conceptually defined and regulated under Indian securities law as compared to United States federal securities law?
2. What are the key differences between the possession-based insider trading framework under Indian law and the fiduciary duty-based framework developed under United States jurisprudence?
3. How effective are the enforcement mechanisms and sanctions for insider trading in India and the United States in ensuring market integrity and investor protection?
4. What comparative lessons can India draw from the United States insider trading regime to strengthen its regulatory and enforcement framework?

### **D. Research methodology**

The present study adopts a doctrinal and comparative research methodology.

It is primarily based on the analysis of statutes, delegated legislation, judicial decisions, regulatory orders, and scholarly writings relating to insider trading in India and the United States. Indian laws such as the SEBI Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015 are examined alongside United States federal securities laws, particularly the Securities Exchange Act of 1934 and Rule 10b 5, as interpreted through landmark judicial precedents.

Secondary sources including commentaries, law review articles, reports of regulatory bodies, and international best practice materials are used to support the analysis. The study employs a comparative approach to identify similarities, differences, and emerging trends, with the objective of drawing reasoned conclusions and reform-oriented suggestions relevant to the Indian securities' regulatory framework.

## IV. CONCEPT AND THEORETICAL FOUNDATIONS OF INSIDER TRADING

### A. Definition and nature of insider trading

Insider trading, in its core sense, refers to buying or selling securities while holding confidential information that the market does not yet know, and that information would probably move the price once it becomes public.<sup>10</sup> Law and economics writers usually describe this practice as an exploitation of an informational edge that arises from a special relationship with the company or with the source of the information, rather than from skill, analysis or legitimate research. The concept therefore carries both a descriptive element, about how trades occur, and a normative element, about what kind of advantage the legal system is willing to tolerate in a securities market.

Indian law builds its operative definition of insider trading primarily through the SEBI (Prohibition of Insider Trading) Regulations, 2015, framed under the Securities and Exchange Board of India Act, 1992. Regulation 2 defines an “insider” as a connected person or a person in possession of unpublished price sensitive information in relation to a company and its securities, while a separate clause defines “unpublished price sensitive information” as information that is not generally available and which, upon becoming generally available, is likely to materially affect the price of the securities.<sup>11</sup> The prohibition in Regulation 4 then links these two ideas by restraining insiders from trading in listed or proposed to be listed securities when in possession of such information, subject to limited defences. As a result, the legal definition does not depend only on formal designation as a director or officer but on access and possession of sensitive information.

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<sup>10</sup> Y. Papa Rao & V. Suryanarayana Raju, *Insider Trading an Unethical Practice with Special Reference to Indian Securities Market*, NLU L. & Pol’y Rev. vol. 7, 115, 116–17 (Nat’l L. Univ. Assam 2021).

<sup>11</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, regs. 2(1)(g), 2(1)(n), 4(1) (as amended June 26, 2024).

Commentary on the 2015 Regulations points out that this functional definition marks a deliberate shift from earlier regime that focused more on position and less on actual informational advantage. It recognises that lawyers, auditors, consultants, lenders and even frequent business partners may regularly receive inside information in the course of their work.<sup>12</sup> The nature of insider trading under this framework therefore turns on misuse of this access, not on whether the holder appears in a particular corporate organogram. This broader understanding aims to close obvious loopholes, where traditional insiders could route trades through seemingly independent associates and escape liability by technical arguments on status.

Indian case law has helped to clarify how these concepts work in practice. In *Hindustan Lever Ltd. v. SEBI*, the Securities Appellate Tribunal considered trades in shares of a group company just before a merger announcement and examined whether the buyer stood in a position that allowed access to unpublished price sensitive information and whether the trades misused that position.<sup>13</sup> The case highlighted that insider trading analysis focuses on the informational quality of the transaction context and not simply on the volume of shares or the identity of the counterparty.

Later, in *Rakesh Agrawal v. SEBI*, 2003 SCC OnLine SAT 38, the tribunal discussed whether a director who traded to facilitate a beneficial foreign joint venture, while in possession of inside information, still committed insider trading or whether absence of profit motive could affect culpability.<sup>14</sup> The reasoning in these decisions shows that the nature of insider trading in India is increasingly tied to questions of purpose, misuse of confidence and fairness to outside investors.

The 2015 Regulations also move the regime from a pure “on the basis of” standard to a “possession” oriented model, though with certain statutory defences and evidentiary

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<sup>12</sup> ASA & Assocs. LLP, Insider Trading and “Price Sensitive Information” in India 3–4 (2019), <https://japan.asa.in/wp-content/uploads/2020/06/Insider-Trading-and-Price-Sensitive-Information.pdf> (last visited Jan. 24, 2026).

<sup>13</sup> *Hindustan Lever Ltd. v. Sec. & Exch. Bd. of India*, (1998) 18 S.C.L. 311 (SAT) (India).

<sup>14</sup> *Rakesh Agrawal v. Sec. & Exch. Bd. of India*, 2003 SCC OnLine SAT 38 (India).

presumptions. Scholars note that this choice reflects a policy preference for easier enforcement, by allowing the regulator to infer that trades executed while in possession of unpublished price sensitive information are tainted unless the insider can show that the information did not influence the decision.<sup>15</sup> This approach treats insider trading as a strict information based wrong, and it signals a regulatory belief that insiders bear a heavy burden to justify trading at times when the informational field is tilted in their favour.

In the United States, there is still no single statutory definition of insider trading in the Securities Exchange Act of 1934, and the concept has evolved through judicial interpretation of the general anti fraud provision in Rule 10b 5. The Supreme Court in *Dirks v. SEC*, 463 U.S. 646 (1983), described liability as arising when an insider breaches a fiduciary duty or duty of trust and confidence by secretly using or tipping material non public information for personal benefit, and when the tippee knows or should know of that breach.<sup>16</sup> This case law builds a definition that centres on deception and betrayal of a relationship, rather than on trading by insiders as such. The nature of insider trading in the United States thus combines elements of information, status, breach of duty and intent to derive a benefit at the expense of uninformed traders.

### **B. Types of insiders and nature of inside information**

Insider trading law focuses first on the person who holds the information and then on the character of the information itself. Writers usually separate primary insiders, who sit inside the corporate structure, from secondary or constructive insiders, who come from outside but still receive confidential data because of a position of trust. This typology appears in both Indian and United States practice and it helps courts decide when an

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<sup>15</sup> Unpublished Price Sensitive Information An Insight into Experts' Opinion, TAXMANN (2020), <https://www.taxmann.com/research/company-and-sebi/top-story/10501000000013791/unpublished-price-sensitive-information--an-insight-into-experts-opinion> (last visited Jan. 24, 2026).

<sup>16</sup> *Dirks v. Sec. & Exch. Comm'n*, 463 U.S. 646 (1983).

informational advantage is legitimate research and when it becomes an unfair use of corporate secrets.<sup>17</sup>

Under the SEBI (Prohibition of Insider Trading) Regulations, 2015, an insider means a connected person or any person who is in possession of or has access to unpublished price sensitive information in respect of a company and its securities. The term connected to the person covers directors, key managerial personnel, employees, promoters, immediate relatives and also any person who has a professional or business relationship with the company that allows access to unpublished price sensitive information. The definition even extends to people associated with the company in the previous six months, which shows a wide and purposive reach to capture those who might still hold current information about events inside the issuer.<sup>18</sup>

Practitioners in India therefore speak of several layers of insiders. At the core lie directors, managing directors, chief financial officers and other senior officers who routinely shape and receive strategic decisions. Around them stand employees with access to financial results or sensitive projects and then an outer ring of professional advisers such as auditors, lawyers, merchant bankers and credit rating agencies. SEBI enforcement orders and explanatory notes highlight that even public sector officials or lenders can become insiders when they receive unpublished price sensitive information about borrowings, restructuring or disinvestment proposals. The Hindustan Lever episode, where trades occurred before the announcement of a merger between group companies, illustrates how a large corporate buyer can be treated as an insider because of its knowledge of a price sensitive combination and its position in group governance.<sup>19</sup>

United States doctrine, which grows mainly out of Rule 10b 5 case law rather than a detailed statutory definition, divides insiders into classical corporate insiders, temporary

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<sup>17</sup> Amanda M. Rose, *The "Reasonable Investor" of Federal Securities Law*, 43 J. Corp. L. 77, 80–82 (2017).

<sup>18</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, regs. 2(1)(g), 2(1)(d), as amended June 26, 2024, SEBI, <https://www.sebi.gov.in> (last visited Jan. 24, 2026).

<sup>19</sup> Securities and Exchange Board of India, *Action Against Hindustan Lever Limited*, Press Release (Mar. 4, 1998), <https://www.sebi.gov.in> (last visited Jan. 24, 2026).

insiders and tippees. Classical insiders include directors, officers and controlling shareholders who owe a clear fiduciary duty to the corporation and its shareholders. Temporary insiders include lawyers, investment bankers and other experts who obtain confidential information through their engagement for a specific transaction. Tippees are persons who receive material nonpublic information from insiders and who may incur liability if they know that the insider breached a duty and that the disclosure involved some personal benefit, as clarified in *Dirks v. SEC*, 463 U.S. 646 (1983).<sup>20</sup>

Courts in the United States have also recognised a further category, often called misappropriators, who do not owe duties to the issuer whose securities they trade but who betray a duty to the source of the information. In *United States v. O'Hagan*, 521 U.S. 642 (1997), the Supreme Court upheld liability for a lawyer who secretly used confidential information about a planned tender offer by a client of his firm to buy securities in the target company. The Court treated the misuse of that information, in breach of the duty owed to the law firm and its client, as a deceptive device in connection with the purchase or sale of securities. This reasoning extends insider trading law to people who stand completely outside the issuer but still unfairly convert entrusted information into private trading gains.<sup>21</sup>

The nature of inside information itself combines elements of confidentiality, specificity and price sensitivity. United States jurisprudence often speaks of material nonpublic information and applies the reasonable investor standard, under which a fact is material if there is a substantial likelihood that its disclosure would be viewed by a reasonable investor as having significantly altered the total mix of information available in the market. The Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), applied this test in the context of merger negotiations and stressed that information can be material even at a probabilistic stage if the magnitude of the transaction is large enough.<sup>22</sup>

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<sup>20</sup> *Dirks v. Sec. & Exch. Comm'n*, 463 U.S. 646 (1983).

<sup>21</sup> *United States v. O'Hagan*, 521 U.S. 642 (1997).

<sup>22</sup> *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

## V. REGULATORY FRAMEWORK ON INSIDER TRADING IN INDIA

### A. Overview of the Indian securities law framework

The Indian securities law framework rests on an integrated set of primary statutes and delegated legislation that place the Securities and Exchange Board of India at the institutional centre of market regulation. The Securities and Exchange Board of India Act, 1992 creates SEBI as a statutory regulator with a mandate to protect investors, promote the development of the securities market, and regulate that market through appropriate measures, which form the legal base on which insider trading regulation later develops.<sup>23</sup>

This framework operates in conjunction with the Securities Contracts (Regulation) Act, 1956, which regulates stock exchanges and transactions in securities, seeks to prevent undesirable speculation, and provides for recognition and supervision of stock exchanges, so that trading in listed securities takes place on regulated platforms under common standards.<sup>24</sup> By defining key expressions such as “securities” and “stock exchange”, the SCRA sets the structural perimeter of the market within which SEBI’s insider trading regulations apply in practice.

Within this statutory matrix, SEBI draws extensive regulatory, investigative and remedial powers from Chapter IV and Chapter VI-A of the SEBI Act, including the duty in section 11 to protect investors and regulate the market, and the power to issue directions, levy monetary penalties and order disgorgement where violations occur.<sup>25</sup> The Supreme Court in *The Chairman, SEBI v. Shriram Mutual Fund*, (2006) 5 SCC 361, underlined the deterrent design of this framework by holding that civil penalties under securities law do not depend on proof of mens rea, which makes compliance with SEBI regulations, including insider trading rules, a strict obligation for market participants.

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<sup>23</sup> Securities and Exchange Board of India Act, No. 15 of 1992, INDIA CODE, long title (India).

<sup>24</sup> Securities Contracts (Regulation) Act, No. 42 of 1956, INDIA CODE, statement of objects and key definitions; see also GKTODAY, Securities Contracts (Regulation) Act, 1956 (6 Jan. 2026).

<sup>25</sup> Securities and Exchange Board of India Act, No. 15 of 1992, ss. 11, 11B, ch. VI-A; *The Chairman, SEBI v. Shriram Mutual Fund*, (2006) 5 SCC 361 (India).

Insider trading regulation in India sits primarily in delegated legislation made under the SEBI Act, most notably the SEBI (Prohibition of Insider Trading) Regulations, 2015, as periodically amended, which govern trading in securities that are listed or proposed to be listed on recognised stock exchanges.<sup>26</sup> These regulations define “insider”, “connected person” and “unpublished price sensitive information”, prohibit communication and trading while in possession of such information, and require formulation of codes of conduct and codes of fair disclosure at the level of listed entities and intermediaries, thereby embedding the prohibition into everyday compliance architecture.

The Companies Act, 2013 complements this framework by prescribing the corporate governance, financial reporting and board oversight norms that underpin fair and timely disclosure, which in turn reduces information asymmetry that fuels insider trading.<sup>27</sup> Provisions on listed companies, audit committees, independent directors and related party transactions work together with SEBI regulations to impose continuous and event based disclosure duties, while directors remain exposed to civil and criminal consequences if they permit false statements or material omissions in public documents relevant for investors.

### **B. SEBI (Prohibition of Insider Trading) Regulations, 2015 - key provisions**

The SEBI (Prohibition of Insider Trading) Regulations, 2015 form the central and most specialised code on insider trading in India, replacing the earlier 1992 regulations and reshaping the regime in an access based manner that focuses on possession of information rather than motive alone.<sup>28</sup> The regulations apply to trading in securities that are listed or proposed to be listed on recognised stock exchanges and they operate alongside the

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<sup>26</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended on 26 June 2024), notified under the SEBI Act, 1992.

<sup>27</sup> Companies Act, No. 18 of 2013, INDIA CODE, ss. 2(52), 129, 134, 177; KPMG, Related party provisions and disclosures (2022).

<sup>28</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended on June 26, 2024), SEBI, Legal – Regulations (Jun. 26, 2024),

<https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-as-amended-on-june-26-2024-84494.html> (last visited Jan. 24, 2026).

SEBI Act, the SCRA and the Companies Act to create a dense compliance environment for listed entities and market intermediaries.<sup>29</sup>

The conceptual foundation of the 2015 Regulations lies in a cluster of definitions that enlarge the enforcement perimeter and try to capture modern patterns of information flow inside and outside companies.<sup>30</sup> “Unpublished price sensitive information” means any information that is not generally available and which, upon becoming generally available, is likely to materially affect the price of securities, and the text provides an illustrative list of such events.<sup>31</sup> “Generally available information” covers information accessible to the public on a non discriminatory basis, so that data selectively circulated to a small group still stays within the UPSI net in spite of being leaked to a few people.<sup>32</sup>

The definition of “insider” combines a status based and a possession based test, because it covers connected persons as well as any person who is in possession of or has access to UPSI regardless of their formal designation.<sup>33</sup> As a result, lawyers, auditors, consultants, lenders, customers, suppliers and even close relatives may fall within the insider category if they are linked to the company in a manner that reasonably gives access to UPSI.<sup>34</sup> The regulations also create a rebuttable presumption that certain classes of persons are connected, and the burden then may shift on them to show that they did not hold UPSI while trading, which pushes firms to document information flows with greater care.<sup>35</sup>

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<sup>29</sup> Securities and Exchange Board of India, Regulations List, <https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&smid=0&ssid=3> (last visited Jan. 24, 2026).

<sup>30</sup> GUIDANCE NOTE ON PREVENTION OF INSIDER TRADING 3-5 (Institute of Company Secretaries of India 2021).

<sup>31</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(n).

<sup>32</sup> Id. reg. 2(1)(e).

<sup>33</sup> Id. reg. 2(1)(g).

<sup>34</sup> UNDERSTANDING THE EXPANDED DEFINITION OF CONNECTED PERSONS UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 (Corporate Professionals 2024), <https://www.corporateprofessionals.com/articles/understanding-the-expanded-definition-of-connected-persons-under-sebi-prohibition-of-insider-trading-regulations-2015-and-its-impact/> (last visited Jan. 24, 2026).

<sup>35</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(d).

Regulation 3 restricts communication of UPSI and bars any person from communicating, providing or allowing access to such information unless the communication is for legitimate purposes, performance of duties or discharge of legal obligations.<sup>36</sup> Boards of listed companies must frame a written policy for determination of “legitimate purpose”, treat persons who receive UPSI for such purposes as insiders, and ensure that every sharing of UPSI flows through confidentiality arrangements or fiduciary obligations that bind the recipient.<sup>37</sup> The same provision also obliges entities to maintain internal lists of persons with whom UPSI is shared, so that SEBI can later trace the origin and trajectory of leaks.<sup>38</sup>

Regulation 4 prohibits trading in securities by an insider when in possession of UPSI, and it moves away from the earlier “on the basis of” test to a stricter “while in possession” standard which is easier to apply in practice.<sup>39</sup> The regulation however carves out defences for certain transactions, such as off market inter se promoter transfers and trades undertaken pursuant to statutory or regulatory obligations, and allows insiders to rebut the presumption that their trade was motivated by the UPSI.<sup>40</sup> In *Balram Garg v. Securities and Exchange Board of India* the Supreme Court read these provisions and held that mere reliance on trading patterns and family relations is not enough, and that SEBI must still establish a credible link between the alleged UPSI and the impugned trades which marks an important check on over broad inferences.<sup>41</sup>

The regulations insist on a robust internal control architecture that rests on trading window norms, pre clearance procedures and continuous monitoring by compliance officers.<sup>42</sup> Schedules A, B and C require listed entities, intermediaries and fiduciaries to

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<sup>36</sup> Id. reg. 3(1).

<sup>37</sup> Id. reg. 3(2)–(3) & reg. 3(2A).

<sup>38</sup> Id. reg. 3(5).

<sup>39</sup> Id. reg. 4(1).

<sup>40</sup> Id. proviso to reg. 4(1) & reg. 4(3).

<sup>41</sup> *Balram Garg v. Sec. & Exch. Bd. of India*, Civil Appeal No. 7054 of 2021 (Supreme Court of India Apr. 19, 2022), available at [https://www.sebi.gov.in/enforcement/orders/apr-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-7054-of-2021-balram-garg-vs-sebi-and-civil-appeal-no-7590-of-2021-ms-shivani-gupta-and-ors-vs-sebi\\_59462.html](https://www.sebi.gov.in/enforcement/orders/apr-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-7054-of-2021-balram-garg-vs-sebi-and-civil-appeal-no-7590-of-2021-ms-shivani-gupta-and-ors-vs-sebi_59462.html) (last visited Jan. 24, 2026).

<sup>42</sup> GUIDANCE NOTE ON PREVENTION OF INSIDER TRADING, *supra* note 3, at 25–35.

adopt a Code of Practices and Procedures for Fair Disclosure of UPSI and a Code of Conduct for designated persons, which together govern when trading windows stay closed, when employees must seek pre clearance and how contra trades are to be restricted or reported.<sup>43</sup> Company secretaries and compliance officers therefore supervise UPSI lists, approve or reject trading requests, ensure gap between clearance and trade, and they also interact with stock exchanges and SEBI during investigations, which turns them into key gatekeepers for the regime.<sup>44</sup>

### C. Enforcement mechanism and notable Indian case law

SEBI enforces insider trading norms through a mix of supervisory, investigative and quasi judicial powers rooted in the SEBI Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015, which together treat insider trading as a species of market abuse that threatens investor protection and market integrity.<sup>45</sup> These powers allow SEBI to monitor trading on recognised stock exchanges, to call for records from intermediaries and listed entities, and to initiate proceedings wherever trading appears linked to unpublished price sensitive information.

Section 11 of the SEBI Act sets out SEBI's core duty to protect investors and to regulate the securities market, and it operates as the substantive foundation for insider trading enforcement, since the provision authorises SEBI to take "such measures as it thinks fit" including investigation and preventive directions against persons associated with the market.<sup>46</sup> Section 11B then allows SEBI, after inquiry, to issue binding directions in the interest of investors and the orderly development of the securities market, which can include restraint orders, debarment from accessing the securities market and directions to disgorge unlawful gains that arise from insider dealing.<sup>47</sup>

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<sup>43</sup> Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Sch. A-C.

<sup>44</sup> GUIDANCE NOTE ON PREVENTION OF INSIDER TRADING, *supra* note 3, at 41-52.

<sup>45</sup> Securities and Exchange Board of India Act, No. 15 of 1992, INDIA CODE, pmb. (India).

<sup>46</sup> Securities and Exchange Board of India Act, No. 15 of 1992, § 11, INDIA CODE (India).

<sup>47</sup> Securities and Exchange Board of India Act, No. 15 of 1992, § 11B, INDIA CODE (India).

Section 11C of the SEBI Act provides a detailed investigative code and permits SEBI to order an investigation wherever it has reasonable grounds to believe that transactions in securities are being handled in a manner prejudicial to investors or the market, or that any person associated with the market has violated the Act or regulations. The investigating authority may require production of books and records, examine people on oath, and retain documents for analysis, which in insider trading matters normally means call data, emails, board papers, deal notebooks and broker level trade logs that help to reconstruct the flow of UPSI and the sequence of trades.<sup>48</sup>

On the penal side, section 15G of the SEBI Act prescribes monetary penalties for insider trading, with a minimum of ten lakh rupees and a ceiling of twenty five crore rupees or three times the amount of profits made from insider trading, whichever figure is higher.<sup>49</sup> These penalties are imposed through an adjudication process conducted by a designated adjudicating officer, and they operate in addition to remedial directions and disgorgement, which means that a single insider trading violation can trigger both restitutionary and punitive financial consequences.

SEBI's enforcement strategy in recent years shows a strong focus on market abuse, and public enforcement data indicates that a large majority of investigations and final orders relate to insider trading and manipulation in illiquid scrips, which are often detected through exchange surveillance and pattern analysis.<sup>50</sup> The appellate structure gives a right of appeal from SEBI orders to the Securities Appellate Tribunal and then, on

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<sup>48</sup> Securities and Exchange Board of India Act, No. 15 of 1992, § 11C, INDIA CODE (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_2\\_11\\_00014\\_199215\\_1517807319932&sectionId=4666](https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00014_199215_1517807319932&sectionId=4666) (last visited Jan. 24, 2026).

<sup>49</sup> Securities and Exchange Board of India Act, No. 15 of 1992, § 15G, INDIA CODE (India), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_2\\_11\\_00014\\_199215\\_1517807319932&sectionId=4682](https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00014_199215_1517807319932&sectionId=4682) (last visited Jan. 24, 2026).

<sup>50</sup> Manjari Tyagi et al., India: A Deep Dive into SEBI and Related Legislation Amid Insider Trading and Market Manipulation Investigations, THE GUIDE TO INT'L ENFORCEMENT OF THE SECURITIES LAWS (3d ed. 2023), <https://www.lexology.com/library/detail.aspx?g=8b5a7b59-8c1c-4a06-9c3e-7a8c0d76be46> (last visited Jan. 24, 2026).

substantial questions of law, to the Supreme Court, so the contours of enforcement are continuously refined through higher judicial review.

The Hindustan Lever Limited matter, arising out of the 1990s merger of Hindustan Lever Limited and Brooke Bond Lipton India Limited, is one of the earliest and most cited enforcement actions on insider trading in India. SEBI held that Hindustan Lever Limited was an insider because it purchased eight lakh shares of Brooke Bond from the Unit Trust of India while it had knowledge of the impending merger, which was price sensitive and not yet public, and therefore the purchase violated the then SEBI (Insider Trading) Regulations, 1992, leading to directions against the company and its directors.<sup>51</sup> The case shows how SEBI was prepared, even in the early regime, to treat large corporate acquirers as insiders and to treat dealings with institutional investors as suspect when linked with corporate events.

In *Rakesh Agrawal v. SEBI*, the Securities Appellate Tribunal examined trades carried out by a managing director who had shared UPSI with a foreign collaborator in order to complete a strategic transaction that was seen as vital for the company's survival.<sup>52</sup> The Tribunal accepted that although the literal ingredients of insider trading were present, the trades were undertaken to protect the company's interest and not to secure personal gain, and on that reasoning it set aside SEBI's order and declined to impose penalty, which brought the question of motive and bona fide purpose into sharper focus in Indian insider trading jurisprudence.

In *Securities and Exchange Board of India v. Kishore R. Ajmera*, the Supreme Court dealt with synchronised trades and circular dealing, and it clarified the standard of proof and the

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<sup>51</sup> Securities & Exch. Bd. of India, Action against Hindustan Lever Limited (Mar. 11, 1998), [https://www.sebi.gov.in/media/press-releases/mar-1998/action-against-hindustan-lever-limited\\_18764.html](https://www.sebi.gov.in/media/press-releases/mar-1998/action-against-hindustan-lever-limited_18764.html) (last visited Jan. 24, 2026).

<sup>52</sup> *Rakesh Agrawal v. Sec. & Exch. Bd. of India*, Order of the Securities Appellate Tribunal, Appeal No. 47 of 2003 (Nov. 3, 2003), summary discussed in Hridhya T. V. & Sivananda Kumar K., Motive as a Pre Condition for Insider Trading, WHITE BLACK LEGAL (2022), <https://www.whiteblacklegal.co.in/details/motive-as-a-pre-condition-for-insider-trading-by-hridhya-t-v-dr-sivananda-kumar-k> (last visited Jan. 24, 2026).

role of circumstantial evidence in market abuse cases.<sup>53</sup> The Court held that regulators can rely on inferences from patterns such as matching of trades and volumes in illiquid scrips, but it also insisted that such inferences must rest on a coherent chain of circumstances and cannot be speculative, which has important implications for insider trading inquiries that often depend on circumstantial reconstruction of information flows rather than direct proof.

The decision of the Supreme Court in *Balram Garg v. SEBI* marks a turning point for enforcement under the 2015 Regulations, since the Court examined SEBI's findings that trades by relatives of a promoter during the period of a proposed buy back amount to insider trading.<sup>54</sup> The Court emphasised that while possession based standards and presumptions exist, SEBI must still establish a credible link between the specific UPSI and the impugned trades, and that mere suspicion from timing, relationships and profit figures is not enough, which effectively raises the evidentiary bar and pushes the regulator to conduct deeper forensic work on communication trails and trading rationale.

## VI. REGULATORY FRAMEWORK ON INSIDER TRADING IN THE UNITED STATES

### A. Overview of United States federal securities regulation

United States securities regulation grows around a federal disclosure model that uses mandatory reporting, antifraud rules and administrative supervision to discipline capital markets.<sup>55</sup> The federal layer sits over state "blue sky" laws, but in practice the main structure for public offerings and trading in listed securities now lies in federal statutes and in the rules of the Securities and Exchange Commission.

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<sup>53</sup> Sec. & Exch. Bd. of India v. Kishore R. Ajmera, (2016) 6 SCC 368 (India).

<sup>54</sup> *Balram Garg v. Sec. & Exch. Bd. of India*, (2022) 9 SCC 425 (India), judgment summary, Sec. & Exch. Bd. of India, Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7054 of 2021 (Apr. 19, 2022), [https://www.sebi.gov.in/enforcement/orders/apr-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-7054-of-2021-balram-garg-vs-sebi-and-civil-appeal-no-7590-of-2021-ms-shivani-gupta-and-ors-vs-sebi\\_59462.html](https://www.sebi.gov.in/enforcement/orders/apr-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-7054-of-2021-balram-garg-vs-sebi-and-civil-appeal-no-7590-of-2021-ms-shivani-gupta-and-ors-vs-sebi_59462.html) (last visited Jan. 24, 2026).

<sup>55</sup> JOHN C. COFFEE JR. & HILLARY A. SALE, *SECURITIES REGULATION: CASES AND MATERIALS* 3-12 (13th ed. 2015).

The Securities Act of 1933 governs primary offerings of securities to the public and tries to ensure that investors receive full and fair disclosure at the time of issuance.<sup>56</sup> It requires registration of public offerings with the SEC, unless a specific exemption applies, and it mandates a prospectus that contains material information about the issuer, its business and the offered securities. Liability provisions in sections 11 and 12 impose civil responsibility for untrue statements or omissions of material fact in the registration statement or prospectus, which creates strong incentives for accurate disclosure by issuers, directors and underwriters.<sup>57</sup>

The Securities Exchange Act of 1934 regulates secondary trading of securities in the public markets and establishes the SEC as the specialist federal agency. It brings stock exchanges, broker dealers and other market intermediaries within a comprehensive registration and oversight regime and it requires periodic reporting by issuers whose securities trade on national exchanges or reach specified thresholds of public shareholding.<sup>58</sup> Section 10(b) of the 1934 Act and the SEC's Rule 10b 5 under that section provide a broad antifraud standard that prohibits any device, scheme or artifice to defraud, any untrue statement of material fact, or any deceptive act in connection with the purchase or sale of securities.<sup>59</sup>

United States law does not codify a detailed statutory definition of insider trading but instead treats it as a form of securities fraud that violates section 10(b) and Rule 10b 5.<sup>60</sup> Starting with *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), federal courts held that corporate insiders who possess material non public information must either disclose that information before trading or abstain from trading, in order to prevent unfair advantage over uninformed investors.<sup>61</sup> Later, the Supreme Court in *Chiarella v. United States*, 445 U.S. 222 (1980), and *Dirks v. SEC*, 463 U.S. 646 (1983), refined this approach by

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<sup>56</sup> Securities Act of 1933 § 5, 15 U.S.C. § 77e.

<sup>57</sup> Securities Act of 1933 §§ 11–12, 15 U.S.C. §§ 77k–77l.

<sup>58</sup> Securities Exchange Act of 1934 §§ 3–4, 12–13, 15 U.S.C. §§ 78c–78d, 78l–78m.

<sup>59</sup> Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b 5.

<sup>60</sup> DONALD C. LANGEVOORT, *INSIDER TRADING: LAW AND POLICY* 1–5 (2d ed. 2018).

<sup>61</sup> *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968).

tying insider trading liability to breach of a duty of trust and confidence, and by explaining when tipper and tippee can both face liability.<sup>62</sup>

The federal regime also relies on a complex network of self-regulatory organisations such as the Financial Industry Regulatory Authority and national securities exchanges, which operate under SEC oversight.<sup>63</sup> These bodies make rules for member conduct, monitor trading, and discipline firms and individuals for violations that include misuse of material non public information, while the SEC retains ultimate authority to review and to approve their rules and sanctions.

Congress has progressively strengthened the enforcement side of this framework through targeted legislation that responds to scandals and crises.<sup>64</sup> The Insider Trading and Securities Fraud Enforcement Act of 1988 increases civil penalties for insider trading and allows the SEC to seek treble damages based on profits gained or losses avoided by the wrongdoer.<sup>65</sup> The Sarbanes Oxley Act of 2002, passed after the Enron and WorldCom collapses, tightens corporate governance, requires chief executives and chief financial officers to certify financial reports, and shortens the deadline for reporting insider trades by officers, directors and principal shareholders.<sup>66</sup> The Dodd Frank Wall Street Reform and Consumer Protection Act of 2010, adopted after the global financial crisis, expands SEC enforcement powers, enhances whistleblower incentives and protection, and strengthens systemic oversight of markets and intermediaries.<sup>67</sup>

### **B. Rule 10b 5, classical and misappropriation theories - key concepts**

Rule 10b 5 under the Securities Exchange Act of 1934 is the main antifraud provision that supports federal insider trading law in the United States. It prohibits any device or scheme from being defrauded, any untrue statement or omission of material fact, and any

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<sup>62</sup> *Chiarella v. United States*, 445 U.S. 222 (1980); *Dirks v. SEC*, 463 U.S. 646 (1983).

<sup>63</sup> FIN. INDUS. REGULATORY AUTH., ABOUT FINRA 1-3 (2024).

<sup>64</sup> JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET 559-72 (3d rev. ed. 2003).

<sup>65</sup> Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100 704, § 3, 102 Stat. 4677.

<sup>66</sup> Sarbanes Oxley Act of 2002 §§ 302, 403, 15 U.S.C. §§ 7241, 78p.

<sup>67</sup> Dodd Frank Wall Street Reform and Consumer Protection Act §§ 922-924, 15 U.S.C. §§ 78u 6, 78d 3.

fraudulent act in connection with the purchase or sale of any security, and courts have read this broad text as covering trading on material nonpublic information by insiders and others who breach duties of trust and confidence.<sup>68</sup>

Courts and scholars describe a basic fraud template for Rule 10b 5 liability that requires a material misrepresentation or deceptive silence, scienter, a connection with the purchase or sale of securities, reliance and loss causation, although the precise articulation shifts between private and public enforcement.<sup>69</sup> In the insider trading setting, the misrepresentation often lies in the insider's silent use of corporate information while other investors assume that all traders face roughly similar information, so the fraud element ties back to a hidden breach of duty.

The classical theory of insider trading treats a corporate insider as having a fiduciary duty to the company's shareholders not to trade on material nonpublic information without either first disclosing that information or abstaining from trading. The Second Circuit in *SEC v. Texas Gulf Sulphur Co.* stated that persons with access to inside information must "either disclose it to the investing public, or, if disclosure is impracticable or prohibited, must abstain from trading in or recommending the securities concerned" and this duty to disclose or abstain became the starting point of modern insider trading doctrine.<sup>70</sup>

The Supreme Court in *Chiarella v. United States* narrowed the reach of the classical theory by insisting that a duty to disclose under Rule 10b 5 arises only where there is a relationship of trust and confidence between the trader and those with whom he trades.<sup>71</sup> The Court overturned the conviction of a financial printer employee who traded in target company shares after deducing their identity from takeover documents, because he owed

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<sup>68</sup> 17 C.F.R. § 240.10b 5 (2023), <https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.10b-5>.

<sup>69</sup> DONALD C. LANGEVOORT, *INSIDER TRADING: LAW AND POLICY* 20-32 (2d ed. 2018).

<sup>70</sup> *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), <https://law.justia.com/cases/federal/appellate-courts/F2/401/833/324140/>.

<sup>71</sup> *Chiarella v. United States*, 445 U.S. 222 (1980), <https://www.govinfo.gov/app/details/USREPORTS-445/USREPORTS-445-222>.

no direct duty to the target shareholders and mere information advantage did not by itself amount to fraud under section 10(b).

In *Dirks v. SEC* the Supreme Court extended the classical theory to tippees but at the same time limited its scope by tying liability to a breach of fiduciary duty by the tipper, which must involve a personal benefit to that tipper.<sup>72</sup> A tippee inherits the duty only when the insider has disclosed information for a personal benefit, which can include a pecuniary gain, a reputational advantage or even a gift of information to a trading relative or friend, and the tippee knows or should know of that breach.

Later, the Court in *Salman v. United States* affirmed that a gift of confidential information to a close relative satisfies the personal benefit test from *Dirks* and can support insider trading liability even without proof of a direct monetary payment.<sup>73</sup> The decision confirmed that where an insider makes a gift of valuable information to a trading relative, the law treats it as if the insider traded himself and then gifted the profits, which keeps family based tipping firmly within Rule 10b 5.<sup>74</sup>

The misappropriation theory, finally endorsed by the Supreme Court in *United States v. O'Hagan*, reframes insider trading as deception of the source of the information rather than of the counterparty in the market.<sup>75</sup> Under this theory, a person commits fraud “in connection with” a securities transaction when he misappropriates confidential information in breach of a duty owed to the source, uses it for personal trading, and thereby deceives the source who expected loyalty and confidentiality, so lawyers, bankers and consultants can be liable even when they are strangers to the issuer's shareholders.

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<sup>72</sup> *Dirks v. SEC*, 463 U.S. 646 (1983), <https://www.govinfo.gov/app/details/USREPORTS-463/USREPORTS-463-646>.

<sup>73</sup> *Salman v. United States*, 580 U.S. 39 (2016), <https://supreme.justia.com/cases/federal/us/580/39/>.

<sup>74</sup> *Salman v. United States*, 580 U.S. 39 (2016), <https://supreme.justia.com/cases/federal/us/580/39/>.

<sup>75</sup> *United States v. O'Hagan*, 521 U.S. 642 (1997), <https://www.govinfo.gov/app/details/USREPORTS-521/USREPORTS-521-642>.

### C. Enforcement mechanism and landmark United States case law

The enforcement system for insider trading in the United States works through a coordinated civil and criminal structure, with the Securities and Exchange Commission as the primary civil regulator and the Department of Justice as the criminal prosecuting authority under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b 5.<sup>76</sup> The SEC uses its civil powers to seek injunctions, disgorgement of illegal gains, civil monetary penalties and officer or director bars, while the DOJ seeks imprisonment, fines and forfeiture, so together they create a strong deterrent framework against trading on material non public information.<sup>77</sup>

The SEC usually starts enforcement with a non public investigation, often using compulsory process to obtain documents, trading records and testimony, and then issues a Wells notice before recommending charges in a civil action or administrative proceeding.<sup>78</sup> In district court actions the SEC asks for permanent injunctions, third tier penalties, and sometimes industry wide bars, while in administrative proceedings it relies on cease and desist orders, monetary penalties and collateral bars against professionals such as brokers, investment advisers and lawyers, which pressures gatekeepers to maintain robust compliance systems.<sup>79</sup>

The DOJ in turn brings criminal insider trading cases under the general securities fraud statute and, in some instances, also under the mail fraud and wire fraud statutes to capture broader schemes.<sup>80</sup> Prosecutors often proceed in parallel with the SEC, share evidence subject to legal limits, and use plea bargaining, co operating witnesses and sentencing guideline enhancements to secure substantial custodial terms for serious offenders, which raises the perceived cost of insider trading within financial markets.<sup>81</sup>

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<sup>76</sup> Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2012).

<sup>77</sup> 15 U.S.C. §§ 78u(d), 78u 1 (2012).

<sup>78</sup> U.S. Sec. & Exch. Comm'n, SEC Division of Enforcement Manual (2017).

<sup>79</sup> Donna M. Nagy, *Securities Litigation and Enforcement* 205–12 (3d ed. 2016).

<sup>80</sup> 18 U.S.C. §§ 1343, 1348 (2012).

<sup>81</sup> Ellen S. Podgor, *White Collar Crime in a Nutshell* 215–23 (5th ed. 2015).

Congress has backed this enforcement design with specific legislation, including the Insider Trading and Securities Fraud Enforcement Act of 1988, which authorises civil penalties of up to three times the profit gained or loss avoided and imposes liability on certain control persons who fail reasonably to supervise.<sup>82</sup> Later, section 922 of the Dodd Frank Wall Street Reform and Consumer Protection Act created a statutory whistleblower program that allows eligible individuals who provide original information leading to successful enforcement actions to receive a percentage of monetary sanctions, and this scheme now plays a central role in detecting complex, network based insider trading arrangements that regulators might otherwise miss.<sup>83</sup>

Courts have given content to insider trading liability through a long line of landmark decisions, starting with *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, where the Second Circuit held that insiders who possess material non public information must either disclose that information or abstain from trading.<sup>84</sup> In that case, insiders traded in shares of a mining company after highly positive drilling results, and the court treated such conduct as deceptive under Rule 10b 5, while also formulating an influential test of materiality based on whether the information would have assumed actual significance in the deliberations of a reasonable investor.<sup>85</sup>

The Supreme Court reshaped the doctrinal foundation in *Chiarella v. United States* by holding that mere possession of non public information does not create a duty to disclose, and that liability arises only when the trader owes a fiduciary or similar duty of trust and confidence to the persons with whom he trades.<sup>86</sup> Soon after, in *Dirks v. Securities and Exchange Commission*, the Court explained tipper and tippee liability, ruling that a tippee assumes the insider's duty only when the insider breaches a fiduciary duty by disclosing information for a personal benefit, which may include a gift to a relative or friend, and

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<sup>82</sup> Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100 704, 102 Stat. 4677.

<sup>83</sup> Dodd Frank Wall Street Reform and Consumer Protection Act § 922, 15 U.S.C. § 78u 6 (2012).

<sup>84</sup> SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968) (en banc).

<sup>85</sup> Louis Loss, Joel Seligman & Troy Paredes, *Securities Regulation* 3579–85 (5th ed. 2014).

<sup>86</sup> *Chiarella v. United States*, 445 U.S. 222 (1980).

the tippee knows or should know of that breach, thereby setting a demanding framework that the SEC and DOJ must satisfy in tipping cases.<sup>87</sup>

The Court later accepted the misappropriation theory in *United States v. O'Hagan*, holding that a person commits securities fraud when he misappropriates confidential information in breach of a duty owed to the source of the information and uses it for securities trading.<sup>88</sup> *O'Hagan* also upheld Rule 14e 3 in the tender offer context, so enforcement agencies can pursue traders who obtain and misuse non public tender offer information even when they are not classical insiders of the target company, which expands the reach of insider trading law into takeover and merger activity.<sup>89</sup>

#### **D. Comparative Legal Analysis - India and the United States**

Indian and United States insider trading regimes both seek fair and efficient securities markets, but they build liability on different conceptual foundations. India uses a largely possession based standard, where a person who trades while in possession of unpublished price sensitive information usually faces a presumption of misuse under the SEBI (Prohibition of Insider Trading) Regulations, 2015.<sup>90</sup> The United States instead ties liability to deception and breach of duty under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b 5, as interpreted in *Chiarella v. United States*, 445 U.S. 222 (1980), *Dirks v. SEC*, 463 U.S. 646 (1983) and *United States v. O'Hagan*, 521 U.S. 642 (1997).<sup>91</sup>

The definition of "insider" also reveals a different legislative style. SEBI Regulations adopt a very broad concept of "connected person" that includes directors, employees, immediate relatives, professional advisers and even persons who have a contractual or fiduciary connection with the company.<sup>92</sup> United States law evolves through case law and focuses on classical insiders such as directors and officers, but extends liability to

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<sup>87</sup> *Dirks v. SEC*, 463 U.S. 646 (1983).

<sup>88</sup> *United States v. O'Hagan*, 521 U.S. 642 (1997).

<sup>89</sup> Securities Exchange Act of 1934 § 14(e), 15 U.S.C. § 78n(e) (2012).

<sup>90</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, Extraordinary, Part III, § 4 (India).

<sup>91</sup> Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2012).

<sup>92</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(d) (India).

temporary insiders and mis appropriators who owe a duty of trust and confidence to the source of information.<sup>93</sup> Indian law thus codifies and enlarges the circle of insiders ex ante, while United States law lets courts identify insiders and mis appropriators ex post through flexible fiduciary principles.

On the content of information, Indian law speaks of “unpublished price sensitive information” and offers a specific statutory definition linked to particular corporate events such as financial results, dividends, mergers and changes in capital structure.<sup>94</sup> United States doctrine works with the broader expression “material non public information”, developed through cases like *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968) (en banc), where courts ask whether the information would be important to a reasonable investor.<sup>95</sup> Both systems try to capture information that can move prices, but the Indian approach gives more enumerated guidance in the text of the regulation, whereas the United States relies more heavily on judicial tests of materiality.

Compliance and governance tools show partial convergence. SEBI requires listed companies and intermediaries to frame codes of conduct, designate compliance officers, maintain structured digital databases of UPSI and implement trading windows and pre clearance mechanisms.<sup>96</sup> United States issuers, influenced by Sarbanes Oxley Act requirements on internal controls and audit committee oversight, use insider trading policies, blackout periods and Rule 10b5 1 trading plans to manage trading by insiders, with the SEC recently tightening conditions around such plans.<sup>97</sup> In India, trading plans exist in Regulation 5 of the SEBI framework but remain less popular in practice when compared to the widespread use of Rule 10b5 1 plans in the United States, which function as an important safe harbour when insiders set them up in good faith well before trades.<sup>98</sup>

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<sup>93</sup> Stephen M. Bainbridge, *Insider Trading Law and Policy* 27–45 (2014).

<sup>94</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(n) (India).

<sup>95</sup> Donald C. Langevoort, *Insider Trading: Regulation, Enforcement and Prevention* 35–42 (2014).

<sup>96</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, regs. 3, 4, 5, 9 (India).

<sup>97</sup> Sarbanes Oxley Act of 2002, Pub. L. No. 107 204, 116 Stat. 745.

<sup>98</sup> Securities Exchange Act of 1934 Rule 10b5 1, 17 C.F.R. § 240.10b5 1 (2023).

## VII. FINDINGS, SUGGESTIONS & CONCLUSION

The comparative study shows that both India and the United States now treat insider trading as a core threat to market integrity and investor confidence, not as a marginal compliance issue. Indian law does this mainly through a detailed rule based framework under the SEBI Act, 1992 and the SEBI (Prohibition of Insider Trading) Regulations, 2015, while United States law builds liability around section 10(b) of the Securities Exchange Act of 1934 and Rule 10b 5 with heavy reliance on judicial doctrine.<sup>99</sup> The two systems therefore converge in their objectives but diverge in legal technique and institutional style.<sup>100</sup>

The findings indicate that India adopts a possession based presumption of misuse of unpublished price sensitive information, supported by a very broad concept of “connected person”, which permits SEBI to cast a wide regulatory net over insiders, tippees and related parties.<sup>101</sup> United States law remains more closely tied to the ideas of deception, breach of fiduciary duty and misappropriation of confidential information, as seen in *Chiarella*, *Dirks* and *O’Hagan*, which makes the existence and scope of a duty of trust and confidence central to liability.<sup>102</sup> This makes the Indian regime more certain in textual terms, but sometimes rigid, while the United States regime allows nuanced argument in close cases but can create uncertainty for market participants.

The analysis also reveals that SEBI has developed a strong administrative enforcement model that relies on investigation, disgorgement, monetary penalties and market access bans, with criminal prosecution still relatively infrequent in insider trading matters.<sup>103</sup> The United States, by contrast, strongly integrates civil enforcement by the SEC with criminal prosecutions by the Department of Justice, uses sentencing guidelines, and deploys significant custodial sentences for serious schemes, which sends a sharper

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<sup>99</sup> Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

<sup>100</sup> Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2012).

<sup>101</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(d) (India).

<sup>102</sup> Stephen M. Bainbridge, *Insider Trading Law and Policy* 27–45 (2014).

<sup>103</sup> Securities and Exchange Board of India Act, 1992, §§ 11, 11B, 15G, 15HA (India).

deterrent signal to sophisticated actors such as hedge funds and corporate insiders.<sup>104</sup> The Indian approach is therefore more regulatory and corrective, the United States approach more punitive and expressive.

Another key finding is the growing centrality of compliance architecture in both systems. Indian regulations now mandate codes of conduct, structured digital databases for UPSI and clear responsibilities for compliance officers, while United States issuers rely on insider trading policies, blackout periods and carefully designed Rule 10b5 1 plans, recently tightened by SEC amendments.<sup>105</sup> In practice, Indian trading plans have not gained similar traction, which weakens a potentially useful safe harbour for genuine liquidity trades by insiders who wish to avoid suspicion.<sup>106</sup>

In light of these findings, one important suggestion is that SEBI could further refine the mens rea dimension in insider trading enforcement by issuing more detailed guidance on how it views “possession” and “on the basis of” in different factual patterns, including algorithmic trading, social media leaks, and complex group structures.<sup>107</sup> Clarificatory guidance notes, supported by case digests, would help lawyers and compliance officers predict regulatory risk with better precision, without diluting the core prohibition.<sup>108</sup>

A second suggestion is that India may consider strengthening criminal enforcement tools and institutional coordination for high value, multi party insider trading schemes, perhaps through designated special courts and closer linkage with economic offences wings, while still preserving SEBI’s primary role in civil and administrative action.<sup>109</sup> Drawing carefully from the United States model, Indian policymakers could also explore measured use of co operating witnesses, structured leniency or settlement frameworks,

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<sup>104</sup> John C. Coffee Jr. & Hillary A. Sale, *Securities Regulation: Cases and Materials* 832–40 (13th ed. 2015).

<sup>105</sup> Sarbanes Oxley Act of 2002, Pub. L. No. 107 204, 116 Stat. 745.

<sup>106</sup> Securities Exchange Act of 1934 Rule 10b5 1, 17 C.F.R. § 240.10b5 1 (2023).

<sup>107</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, regs. 3–5 (India).

<sup>108</sup> Umakanth Varottil, *Comparative Perspectives on Insider Trading Regulation in India*, 6 Nat’l L. Sch. India Rev. 1, 8–14 (2014).

<sup>109</sup> Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India Code (India).

and limited whistleblower incentives in market abuse cases, with appropriate safeguards against misuse.<sup>110</sup>

A third suggestion concerns governance culture inside listed entities. Boards and senior management in India should integrate insider trading risk into enterprise risk management, not treat it as a narrow compliance checklist, and should ensure that UPSI handling protocols, information barriers and training programmes operate in practice, especially in promoter driven companies and financial conglomerates.<sup>111</sup> Comparative experience from the United States shows that failures in culture and tone at the top often precede major insider trading scandals, even where formal policies exist on paper.<sup>112</sup>

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<sup>110</sup> Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100 704, 102 Stat. 4677.

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