INSIDER TRADING REGULATIONS: AN EMPIRICAL ANALYSIS

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ABSTRACT

This paper examines the loose ends inside the SEBI ("Securities and Exchange Board of India") as a regulatory authority ("regulator") charged with enforcing insider trading rules and reforms in the Indian economy. The paper focuses on the role of regulatory authorities in dealing with insider trading cases, as well as the factors that may cause delays in resolving matters, resulting in a backlog of unresolved matters in insider trading, which can disrupt the economy and cause investors to lose faith in stock market trading. The research further aims to investigate the legislative process in place in India and determine the extent to which it has been implemented by interpreting instances taken up by the courts. Insider trading has become common in many developed countries. The study will also compare the legal frameworks of India and the United States in terms of insider trading, highlighting the benefits and drawbacks of each by looking at cases that have occurred on a global scale and resulted in the breach of fiduciary duties by connected persons and the misappropriation of large sums of money. The study will also look into whether India might benefit from assimilating certain aspects of the US legal system, and if so, whether aspects would help India develop its regulatory framework. The research will be limited to the laws of these two countries. Furthermore, the research will not address whether insider trading should be authorized or not, as this is a question of economics rather than legislation.

INTRODUCTION

Insider Trading is the practice of trading a company's stock based on information that has been made illegally available to a select number of people. "No person shall directly or indirectly deal in securities while in possession of material or non-public information, or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the Rules or the Regulations," says Section 12-A of the Securities and Exchange Board of India (Amendment) Act, 1992.

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Section 12-A of the Act carries a civil penalty of up to twenty-five crore rupees or three times the number of profits made from insider trading, whichever is higher. Insider trading is also a criminal offence under Section 24 of the Act, punishable by imprisonment for a period of up to ten years, a fine of up to twenty-five lakh rupees, or both. With the increase in financial crimes as a result of the expansion of the financial market, adequate policy formulation and action by the regulatory body are required to curtail the scandalous transactions emerging from insider trading.

Henry G. Manne, the proponent of law and economics discipline defined it as:

"Insider trading generally refers to the practice of corporate agents buying or selling their corporation securities without disclosing to the public significant information which is known to them but which has not affected the price of the security." The globe has become a global village as a result of the globalization of world economies, and insider trading has begun to cross national lines. In this aspect, Indian law is outdated because it does not apply beyond India's borders, i.e., it has no extraterritorial application. To attain this goal and to improve the efficiency of the Indian financial system in the future, some statutory and other adjustments, as represented in the preceding ideas, are required. It is hoped that if the above suggestions are given due consideration, the problem of insider trading in India will be better addressed and that the economy will be able to provide basic economic services to the investing public, thereby maintaining their trust and confidence in the securities market. However, if the aforementioned ideas are not implemented swiftly and the issue is left unaddressed, the possibility of insider trading would jeopardise the securities markets' efficiency and integrity.

SCOPE & SIGNIFICANCE

The regulation of insider dealing has proven to be the most complex of all the challenges that the securities market regulator in India has to deal with. The unpleasant moniker of "the unwinnable battle" has been applied to such regulation, prompting a rethinking of the subject.

OBJECTIVES

- ➢ Investigating the regulations regarding prohibiting insider trading in India and define the lacuna in the present legislation.
- ➢ Analyzing landmark case on insider trading— Hindustan Lever Ltd. V SEBI

- ➢ Comparative analysis of legislation governing insider trading in India and the USA
- ➢ Providing solutions for the difficulties faced by insider trading in India

REVIEW OF LITERATURE

Sarkar (2020) stated that, Despite the fact that SEBI, as a regulator, and the government have taken this threat seriously by introducing updated laws and efforts to strengthen investigative efforts on a regular basis, the desired effect of the law has yet to be realized, with insider trading still rampant in the capital market. In such a case, it is necessary to evolve and strengthen the legislation as it stands now, keeping in mind the interests of investors and the losses they have incurred, in order to make it more deterrent in a way that insiders are barred from misusing secret information in any way possible. To attain this goal and to improve the efficiency of the Indian financial system in the future, some statutory and other adjustments, as represented in the preceding ideas, are required. It is hoped that if the above suggestions are given due consideration, the problem of insider trading in India will be better addressed, and that the economy will be able to provide basic economic services to the investing public, thereby maintaining their trust and confidence in the securities market. It's not about enforcing a set of regulations or plugging purported gaps when it comes to combating insider trading. It's all about a commitment to stop illegal deals in their tracks. Insider trading will continue to thrive unchecked until SEBI shows it is serious about policing it.

Arun Kumar Singh (2018) mentions that the lack of sufficient proof to demonstrate mental purpose, as well as whether or not access to unpublished price sensitive material was available in the facts and circumstances of a particular case, are major obstacles in establishing insider trading accusations. Based on an examination of India's regulatory framework, the only conclusion that can be drawn is that the rules in place are inadequate to fight insider trading and are incompatible with the needs of a fast-evolving economy and corporate structure. Based on a comparison of the laws in both nations, it has been determined that the laws in the United States are better equipped to prevent and punish insider trading than the laws in India. The regulation of insider trading in India has many problems associated with it. To begin with, Regulation 2(e) of "insider" is noticeably unclear. Though India's legal system would have to greatly improve and evolve. Second, while a relationship with the corporation is not required to qualify as an insider under Regulation 2(e)(ii), it is necessary to actually establish receipt of the information and a long further list. Furthermore, India's regulatory mechanism must remain watchful in order to keep up with the fast-growing securities market, preventing unfair practices such as insider trading from stifling the market's balanced expansion and shaking the faith of ordinary investors.

RESEARCH METHODOLOGY

A doctrinal research technique is used for this project. It entails gathering information from a variety of other eminent authors' publications on the subject. We may gather, analyses, and compare the current literature using this technique. In order to proceed with the investigation, the issue required basic research and in-depth expertise. The doctrinal research technique helps you to strengthen the most important parts of your proposal, which simplifies the goal even more. Secondary material, such as publications, research papers, travels, and newspaper stories, was used in the course of this research to aid in better comprehending and enhancing comprehension of the issue.

LIMITATIONS

Because the data employed was secondary, it created uncertainty, making it harder to reach a conclusion.

Time constraint: The amount of time allotted to finish the investigation was limited.

Pandemic: Due to the exceptional circumstances, obtaining materials essential for research became difficult.

LEGISLATIONS GOVERNING INSIDER TRADING IN INDIA

Insider trading has a significant negative impact on the growth of a healthy market. Even a small number of securities sold on the basis of inside knowledge can compromise market integrity. The Bombay Stock Exchange was founded in 1875, and it was the catalyst for the development of India's security market. The origins of Insider Trading can also be traced back to its inception. It was realized that such a structure is harmful to the Indian stock exchange's interests. Insider trading was primarily addressed prior to the establishment of the Securities Exchange Board of India (SEBI) by provisions of the Companies Act, 1956 that required disclosure by directors and other company officials.

Sachar and Wani (2018) The first attempt by the government to regulate insider trading was the establishment of the Thomas Committee in 1947, which issued a recommendation in 1948, based on which the provisions relating to insider trading were incorporated into the Companies Act of 1956 in the form of a disclosure requirement. Sections 307 and 308 of the Companies Act were enacted as a remedy to the problem of insider trading. Sections 195 and 198 of the English Companies Act, 19487 were used as a model for these provisions. The Sachar Committee was established in 1977 to evaluate the 1956 Companies Act and the 1969 Monopolies and Restrictive Trade Practices Act. In a 1979 report, it said that insiders with access to price-sensitive information can sometimes make unjust profits in share trading by using proprietary knowledge that is not generally available to the investing public.

It was suggested that Sections 307 and 308 of the Companies Act, 1956 be amended to prevent and restrict insider trading by insiders and their relatives. Following that, the Patel Committee, a high-powered committee on stock exchange reforms, was established in 1984 and recommended that the Securities Contracts (Regulation) Act, 1956 be amended to make stock exchange manipulations, including insider trading, punishable in its report submitted in 1986. Following that, in 1989, the Abid Hussain Committee's Working Group on the Development of the Capital Market suggested, among other things, a prohibition on insider trading and punishment for it, and that the SEBI be requested to draught the required legislation giving it the authority to implement it. SEBI produced a consultative document in 1991 that included procedures to prevent insider trading.

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ['SEBI Regulations'] were issued by the SEBI in 1992. The Insider Trading Regulations had some flaws, such as being brief (only 12 regulations) and insufficient to cope with the problem of insider trading. These Regulations had the following major flaws: the definition of "insider" provided in the Regulations is not clearly defined and appears to be ambiguous; the regulations did not contain any provision prescribing a penalty for violating the regulations' provisions, and the power to seize documents and detain suspected offenders/violators under these regulations. Thus, these regulations have been revised several times.

THE LACUNAS IN REGULATION

McGee (2007) The present law on the regulation of insider trading is suffering from certain defects in its structure, approach and draft. They are:

1. The absence of direct inclusion of 'public servants' and 'servants of SEBI' in the definition of 'connected person' in the Regulation of 2015 is notable, due to which, many of them enjoy price-sensitive information during their jobs.

2. The Regulation does not provide a realistic time range for the investigation to be completed. Cases of insider trading where there is an unusually long delay in the completion of an investigation could result in a fine. The loss of critical evidence offers the white-collar criminals a chance to get away with the impact of the course of the investigation

3. The 2015 Regulation also makes no reference to any unique method for carrying out the procedure Insider trading instances are being investigated.

4. No procedure has been provided by SEBI Regulation or any other regulation to encourage private individuals to share information that leads to the exposure of insider trading. In India, there is no unique provision in the law that provides a reward for persons with insider trading information and who communicate that information.

5. The word 'planned to be listed' is used as an adjective in Regulation 3 and 4 of 2015 for securities about which no UPSI can be disclosed, furnished, or granted access, and securities that cannot be traded on the basis of UPSI. However, because the term 'intended to be listed' is not defined in the Regulation, it is unclear what the expression means. It's unclear whether such a broad word is meant to include companies who are in the earliest stages of listing, whose Articles of Association need to be approved, who have filed a draught red herring prospectus with SEBI, or have already proposed an IPO. This is a significant flaw in the Regulation since it casts doubt on the applicability of the Regulation's core provisions.

6. The Regulation forbids dealing in securities while in possession of insider information, as well as transmitting or procuring insider information, unless it is for "legitimate reasons," "performance of duty," or "discharge of a legal obligation." Because these terms aren't defined in the Regulation, it's unclear what kinds of purposes, performances, or discharges are legitimate enough to allow insider knowledge to be transmitted or obtained.

7. In most of its Regulations, the 2015 Regulation provides explicit legislative comments to reflect on the legislative intent and rationale for the formulation of the specific legal obligation. The notes are an inherent and operative component of the Regulations, according to the report of the High-Level Sodhi Committee, such mention/clarification does not find a place in the

Regulations. This may impact the enforceability and reliability of these appendices to the Regulation.

8. Because the interpretive notes of the Regulation of 2015 describe 'trading' in a broader sense than 'dealing' (as defined in the SEBI Act, 1992), it extends beyond the ambit of the Parent Act. Being outside the purview of the parent legislation, such an extension widens the extent of the authorized term beyond the interpretation limitations and may be challenged in court.

9. When in possession of unpublished price sensitive information, the Regulation of 2015 defines 'trading' in a broad sense in order to limit activities based on unpublished price sensitive information (UPSI) that are strictly not buying, selling, or subscribing, such as pledging. Such a wide definition of trading is bound to give rise to uncertainty and ambiguity as to what all transactions can amount to trading.

10. Another unforeseen effect of the Regulation language is the use of the term "frequent communication" in the definition of "connected person.". Even if one has frequent communication with someone who is completely unrelated to the company's operations, the Regulation effectively turns that person into a connected person, and if that person happens to trade during a period when a merger or acquisition transaction is imminent, he must now prove his innocence. It would be a terrible circumstance for the individual simply because he is in continuous contact with a company official.

HINDUSTAN LEVER LTD. V SEBI, 1998[1]

Thomas (2019) The case of Hindustan Unilever vs. SEBI is a well-known insider trading case, and the ruling resulted in various modifications. It is one of the most well-known insider trading cases. The controversy arose from Hindustan Unilever's purchase of 8 lakh Brook Bond shares two weeks before the merger was officially announced (Hindustan Unilever and Brook Bond). This transaction took place on March 25, 1996, just 25 days before the HLL-BBLIL merger was announced on April 19, 1996. In August 1997, SEBI issued a show-cause notice to the Chairman, all Executive Directors, the Company Secretary, and the then-Chairman of HLL after nearly 15 months of examining insider trading charges. SEBI charged Hindustan Unilever with insider trading later that year, in March 1998. SEBI ordered Hindustan Unilever to compensate United Trust of India, and the five common directors of Hindustan Unilever and

[1] Hindustan Lever Limited V SEBI (1998) 18 SCL 311 MOF

Brook Bond were charged with criminal offences. Hindustan Unilever then filed an appeal with the appellate board, which upheld its decision. Everyone in the business world was taken aback by SEBI's decision. On the one hand, SEBI was attempting to establish that Hindustan Unilever had engaged in insider trading. Hindustan Unilever, on the other hand, was attempting to protect itself.

Bali (2010) According to SEBI, the purchase of shares prior to the merger was based on UPSI, making Hindustan Unilever liable. The core committee that negotiated the merger included S.M. Datta, K.V. Dadiseth, R. Gopalakrishnan, A. Lahiri, and M.K. Sharma SEBI ordered them to pay Rs 3.4 crore in compensation to United Trust of India, and criminal charges were filed against them. As a result, HLL has opted to appeal the SEBI decision to the Union Ministry of Finance, which is the last resort in such circumstances. HLL contends that it only obtained the information because it was a party to the transaction, not because of its relationship with Brook Bond. Hindustan Unilever argued that it was the 'principal party' in the merger because it was both the originator and the transferee. The merger was the subject of a lot of market and media speculation before it happened. According to accounts, no one was surprised by the merger after it was officially announced. Brook Bond's share price increased from Rs 242 to Rs 320 between January and March, showing that the transaction was widely recognized. Only the swap ratio information was price-sensitive, and Hindustan had no idea what the swap ratio was. Unilever further maintained that the merger news was not price-sensitive because it was widely publicized before the official announcement.

WAS HLL ABLE TO MAKE A PROFIT?

To prove insider trading, SEBI needed to show a financial gain from the transaction. "Though the SEBI regulations did not express any particular condition requiring the presence of any element of profit or loss," Justice Bhagwati observed, "this feature is inherent in the offence of insider trading." Hindustan Unilever filed an appeal with the Appellate Authority, requesting that the allegations of insider trading be removed. United Trust of India then filed an appeal with the Appellate Authority, demanding Rs. 7.52 crore in compensation. It claimed that because it was ignorant that the two Unilever group firms were combining, it had no choice but to suffer a probable loss.

WHAT WAS THE TOPIC OF DISCUSSION?

The Appellate Authority's decision was based on "prior market awareness of the transaction," as indicated by press reporting. However, the company admits that only a few reports were released prior to the purchase. The Authority cited 21 news stories to back up its claim that the merger's potential was well understood. The Appellate Authority decided that SEBI could not launch investigations without first issuing an order under Regulation 11B, and then exercising Act authorities to pay compensation. It further stated that standards set forth in Section 2(k) of the 1992 Regulations had not been met. The information was likewise priced sensitive, but not unpublished, according to the Appellate Authority. The matter is still before the Supreme Court.

WHAT HAPPENED ONCE THE DECISION WAS MADE?

With the SEBI (Insider Trading) Amendment Regulations, 2002, SEBI changed the term under Section 2(k): "Unpublished" refers to information that is not specific in nature and is not published by the firm or its agents. In the same Amendment Act, SEBI included a new section, Section 2(ha), that defined "price-sensitive information." "UPSI" is now defined in section 2(1) (n) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. However, the amendments did not provide a clear and precise definition of "commonly available information." The 2015 Regulations eventually defined "generally available information" as "information that is open to the public without prejudice" under Section 2(1) (e).

COMPARATIVE ANALYSIS OF LEGISLATION GOVERNING INSIDER TRADING IN INDIA AND THE USA

Economic and Political Weekly p.138 (2000) It's important to remember that the two regimes are at such different phases of development, with the US regime has evolved significantly over the last eight decades, whereas India's regulatory regime is only roughly two decades old. To begin with, the SEBI oversees the regulatory structure in place to prevent insider trading in India. The Securities and Exchange Commission ['SEC'] is SEBI's counterpart in the United States of America. Both the SEBI and the SEC have supervisory and regulatory duties in both legal systems' procedures. Insider trading in India is governed by the SEBI (Prohibition of Insider Trading) Regulations, 1992, and certain provisions of the SEBI Act, 1992, whereas in the United States of America, the law governing insider trading is primarily governed by the provisions of the Securities Exchange Act, 1934, which provide the substantive provisions, violations of which can result in penalties.

Beny (2005) The second key component of both jurisdictions that must be compared is whether or not a breach of fiduciary duty is required in order for insider trading liability to arise. In the United States of America, fiduciary standards have been gradually but consistently abandoned when it comes to assigning blame for insider trading. The most important case emphasizing the need for a fiduciary breach was the United States Supreme Court's decision in **Chiarella v. the United States**,[2] in which the Court stated unequivocally that there is no policy of equal access to information underlying the securities laws that creates a general duty to disclose material, non-public information or refrain from trading, and that this duty must arise from a special relationship between the trader and the market. The 'classical idea' of insider trading was coined after the Supreme Court's ruling in the Chiarella Case. A similar shift away from the breach of fiduciary duty need to affix culpability has been noticed in the Indian regime, particularly since the 2008 modification. In the matter of **Rakesh Agrawal v. SEBI**, [3]the SAT made some noteworthy observations about the fiduciary duty requirement prior to the 2008 amendment to Regulation 2(e).20 "The criterion for showing a breach of fiduciary duty in order to properly make out an insider trading violation under Regulation 4 is implicit in the terms of Regulation 3, and must be read into the same," it said. The culpability of a person who trades on the basis of pirated information is the next crucial component of both regimes that have to be compared.

Bhattacharya and Douk (2002) The 'misappropriation hypothesis' of insider trading is now widely accepted in the United States of America, which states that if a person misappropriates important non-public information for the purpose of trading in violation of a duty of confidence or loyalty, Section 10(b) and Rule 10b-5 are violated. In India, it appears that the SEBI has gone beyond the bounds of insider trading theories established in the United States, particularly in light of the 2008 modifications. The SEBI has widened the obligation under Regulation 3 to anyone who may have received unpublished price sensitive information by creating Regulation 2(e)(ii). Thus, it appears that in India, anyone who has received unpublished price sensitive information may be accountable, not just those who are accused of misappropriating information in violation of any duty or confidence, business or personal. Thus, based on a combined reading of the Regulations, it appears that any individual receiving unpublished price sensitive information and dealing in securities would be liable for insider trading, even if he had not breached any responsibility to the company or to the source of the information.

[2] Chiarella v. United States, 445 U.S. 222 (1980)
[3] Rakesh Agarwal v. SEBI, **(2004) 49 SCL 351 (SAT)**.

Another point of contention in both India's and the United States' legal systems is the issue of 'possession v. use,' or whether liability for insider trading can be imposed if the insider was in possession of the relevant information at the time of the trade, or whether it is necessary to prove that the relevant information was actually used in the trade. It was held in the United States that there was no need to prove a causal link between the pirated information and the securities trading. Trading stocks 'on the basis of' substantial non-public information has been viewed as trading while 'knowing.' Regulation 3 of the Indian regime applies the 'possession' criteria, prohibiting insiders from trading shares "while in possession of" unpublished price sensitive information. The specific position within the Indian government is unknown. Both jurisdictions have a comparable liability regime in the sense that they both allow for criminal responsibility. However, the law of the United States of America incorporates a number of different liability provisions that are not contained in Indian law. Section 15G of the SEBI Regulations in India imposes a civil penalty of twenty-five crore rupees or three times the profit made from insider trading, whichever is greater. Section 19 21 of the Criminal Code provides for the prosecution of insider trading. An insider who:

(1) deals in securities of a body corporate listed on any stock exchange on the basis of unpublished price sensitive information, either on his own behalf or on behalf of any other person, or

(2) communicates any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law, is liable under Section 15G of the SEBI Act, 1992. Section 24(2) additionally states that if the individual in question does not pay the civil penalty issued by the adjudicating official, he may be penalized by imprisonment for up to ten years, but no less than one month, and a fine of up to twenty-five crores, or both. Section 32(a) of the Securities Exchange Act of 1934 establishes criminal liability in the United States of America. If a person is convicted of a 'willful' infringement, he may be punished up to $5,000,000 or imprisoned for not more than 20 years, or both, according to Section 32(a), except that if the individual is not a natural person, a fine of up to $25,000,000 may be imposed. When the regulatory regimes in India and the United States of America are compared, it is clear that the regulatory regime in the United States is not only more aggressive, but also has evolved dramatically over the last eighty years. In comparison, India's regulatory framework is still in its early stages of development.

ADDRESSING CHALLENGES

Jaffe (2018) The identification of a problem, while the first and most important step in dealing with a problem, may be in vain unless it is accompanied by an understanding of possible solutions. SEBI should explore the following ideas to address the challenges caused by insider trading in India:

- **Education, training, and awareness** - Raising public awareness about insider trading and its negative consequences can go a long way toward reducing abuse. SEBI may, in order to facilitate this, publish an insider trading manual (booklet) and distribute it to the relevant section of the public, either directly or through the assistance of various NGOs, stock exchanges, companies or intermediaries, etc. SEBI may also conduct regular programmers, discussions, and seminars to raise awareness among investors who are caught up in such abuses about the harmful effects of such abuses and how to protect themselves from such harmful activities. Individuals are not the only ones who are ignorant; many organizations are as well, and not only SEBI, but also the Central Government, directors, and workers of every business and corporation must consider how to educate people about this issue and its consequences. Furthermore, firm management, especially experts linked with the company, must raise awareness of the applicable rules and requirements among the company's insiders in order to ensure proper compliance.
- **Corporate Governance / Prophylactics** - At the grass-roots level, companies must cooperate in order to ensure effective application of insider trading rules. Because corporate governance is one of the foundations on which effective enforcement against insider trading rests, organizations must practice self-regulation and take preventative measures. Companies must maintain constant vigilance and stringent reporting and monitoring of its directors and officials. As a first line of defense against insider trading, each company should adopt a watertight insider trading code and ensure strict adherence as their first line of defense, and the compliance officer should monitor employees' personal trading in accordance with best practices and industry regulations.
- **Multijurisdictional Insider Trading** - In order to properly protect the home market and investors from the impact of insider trading, it was necessary to change the law to extend the reach of Indian insider trading rules beyond national territory. This requirement has been met in the United States by Section 27 (b) of the Securities Exchange Act of 1934, which grants the regulator extraterritorial jurisdiction. SEBI's

extraterritorial authority will let it deal with insiders who try to escape the law by committing the act outside of India's borders.

Summers and Sweeney (2020) SEBI should welcome any tip that leads to the discovery of insider trading and should encourage people to share information with it. Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 11 linked to ongoing insider trading practices. In the United States, the Securities and Exchange Commission (SEC) offers incentives for information that leads to the discovery of an insider trading scheme under Section 21A(e) of the Securities Exchange Act.

❖ **Consent Order** - It is suggested that in cases of insider trading, the use of the consent mechanism be eliminated in order to maintain an effective deterrent effect of punishment. Other than limiting the formation of court doctrine on insider trading, such an approach has no disincentive for insiders because it leads them to believe that insider trading is low-risk.

❖ **Mergers and Acquisitions** - Given that the period immediately preceding the announcement of a merger, acquisition, or other corporate restructuring is the most favorable for the commission of insider trading, India also requires a prohibition similar to Rule 14e-3 of the Securities and Exchange Rules, 1942 in the United States, so that trades conducted during this time are given special attention.

❖ **Media hype** - One of the most effective ways to persuade insiders and others to refrain from insider trading is to hype up and publicize situations involving insider trading. It should be a priority for SEBI to publicize successful insider trading charges in India.

❖ **Mens Rea** - It is imperative that the criterion of mens rea in insider trading prosecutions be stated clearly, as it has been for a long time. In Indian law, the criminal intent or mens rea required for an insider trading offence is not clearly defined. Although the burden of proof is moved to the defendant to prove that he had a different intention to engage in the trade, mens rea is regarded a crucial factor for the offence of insider trading in both the UK and the US.

❖ **Clarity on the nature of the offence** - SEBI and Indian courts have yet to issue a definitive statement on whether a violation of the SEBI Regulation is a civil or criminal offence. The SAT acted in Rakesh Agarwal v. SEBI65 on the basis that insider trading is a criminal offence. However, in Cabot International v. SEBI66, the Bombay High Court held that all violations of the SEBI Act and the Regulations promulgated thereunder are of a civil nature, which was upheld by the Supreme Court in SEBI v. Shriram Mutual Fund and Others, which held that the imposition of penalties under Chapter VIA of the SEBI Act does not require mens rea.

As a result, there must be clarity and consistency in opinions regarding whether insider trading is a civil or criminal offence. The basic components for establishing a case of insider trading under Indian law must be clearly distinguished for a civil or criminal action. Insider trading in the United States is punishable by law where the defendant's activity expressly constitutes a purposeful breach of the securities crime under Section 32 (a) of the Securities Exchange Act of 1934. SEBI requires a timely complete performance audit of its procedures, structure, and practices in order to be aware of where more efforts are required.

CONCLUSION

The lack of sufficient proof to demonstrate mental purpose, as well as whether or not access to unpublished price sensitive material was available in the facts and circumstances of a particular case, are major obstacles in establishing insider trading accusations. Based on an examination of India's regulatory framework, the only conclusion that can be drawn is that the rules in place are inadequate to fight insider trading and are incompatible with the needs of a fast-evolving economy and corporate structure. Based on a comparison of the laws in both nations, it has been determined that the laws in the United States are better equipped to prevent and punish insider trading than the laws in India. Certain recommendations for reforming the Indian government are also detailed, including

I. Regulation 2(e)(ii) of the SEBI Regulations has enlarged the definition of an "insider" beyond its desirable boundaries following the 2008 modifications, and this has to be controlled.

II. There must be a connection between Regulation 3 of the SEBI Regulations and Section 15G of the SEBI Act, 1992.

III. The factor of Mental Intent must be legally recognized.

Though India's legal system would have to greatly improve and evolve. Furthermore, India's regulatory system must remain attentive in order to keep up with the fast-growing securities market and avoid unfair practices such as insider trading stifling the market's balanced expansion and eroding investor trust.

Despite the fact that SEBI, as a regulator, and the government have taken this threat seriously by introducing updated laws and efforts to strengthen investigative efforts on a regular basis, the desired effect of the law has yet to be realized, with insider trading still rampant in the capital market. In such a case, it is necessary to evolve and strengthen the legislation as it stands now, keeping in mind the interests of investors and the losses they have incurred, in order to make it more deterrent in a way that insiders are barred from misusing secret information in any way possible. To attain this goal and to improve the efficiency of the Indian financial system in the future, some statutory and other adjustments, as represented in the preceding ideas, are required. It is hoped that if the above suggestions are given due consideration, the problem of insider trading in India will be better addressed and that the economy will be able to provide basic economic services to the investing public, thereby maintaining their trust and confidence in the securities market. However, if the aforementioned ideas are not implemented swiftly and the issue is left unaddressed, the possibility of insider trading would jeopardise the securities markets' efficiency and integrity. The above efforts may appear to be daunting initially but it may be said, in the words of John F. Kennedy" All this will not be finished in the first hundred days, nor in the first thousand days, nor perhaps in our lifetime on this planet earth, but let us begin!"

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