

Securities Fraud in India: A Criminological Examination of Insider Trading in India

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Abstract

Securities fraud, mainly insider trading, poses a formidable challenge to the integrity and fairness of financial markets worldwide. In the Indian context, where investor confidence is pivotal for economic growth and development, addressing the complexities of insider trading is paramount. This paper comprehensively examines insider trading through a multidisciplinary lens, encompassing criminological perspectives, judicial interpretations, regulatory frameworks, and enforcement mechanisms.

Drawing on prominent case studies such as Dilip Pendse v SEBI, Hindustan Lever Limited v SEBI, Rakesh Aggarwal v SEBI, and others, the paper elucidates the motivations, methods, and consequences of insider trading. It underscores the detrimental impact of this illicit practice on market efficiency, investor confidence, and overall market integrity. Through criminological theories such as rational choice theory, social learning theory, and neutralization techniques, the paper delves into the psychological and social factors that drive individuals to engage in insider trading, offering valuable insights into the decision-making processes of perpetrators.

Furthermore, the paper critically evaluates the legal framework established by the Securities and Exchange Board of India (SEBI) to combat insider trading. It analyses the effectiveness of regulations such as the (Prohibition of Insider Trading) Regulations, 2015 while highlighting challenges in defining and proving unpublished price-sensitive information (UPSI) and enforcing penalties. The paper elucidates the evolving landscape of insider trading regulation and enforcement in India by examining judicial interpretations and case law.

Despite regulatory efforts, the gap between law and enforcement persists, necessitating innovative strategies to strengthen deterrence against insider trading. Recommendations are proposed to enhance surveillance and monitoring, streamline enforcement processes, impose stricter penalties, protect whistleblowers, promote international cooperation, and foster a culture of compliance and transparency.

Combating insider trading requires a concerted effort from regulators, market participants, and stakeholders. By addressing the root causes of insider trading, enhancing regulatory oversight, and promoting ethical conduct, we can cultivate a more resilient and transparent securities market that instils trust, encourages investment, and fosters long-term economic prosperity.

Key Words - Insider Trading, UPSI, SEBI, White Collar Crime, Market Integrity, Criminological Theories.

Introduction

Investor confidence is the lifeblood of any healthy securities market. It underpins trust in the market's integrity and fairness, encouraging participation and investment. This confidence is essential for maintaining liquidity, facilitating price discovery, and promoting overall market stability and growth. However, fraudulent practices like insider trading can quickly erode this trust because when insiders exploit privileged information for personal gain, it creates an uneven playing field, eroding investor confidence in the fairness and integrity of the market. This erosion occurs because insider trading violates the principles of transparency and equal opportunity, essential for maintaining trust among market participants.¹ This pervasive crime grants unfair advantages to a select few, distorting market prices and undermining the entire system.²

Examining insider trading within the Indian market provides crucial insights into this specific type of securities fraud. By exploring the motivations and methods employed by those who engage in insider trading, a deeper understanding of the mechanisms behind such illicit activities can be gained.³

The Indian securities market is vital in channelling economic growth and development capital by providing a platform for companies to raise funds through the issuance of stocks and bonds. This capital enables businesses to expand operations, invest in innovation, and create employment opportunities, driving economic growth. Additionally, the securities market allows investors to allocate capital efficiently, fostering liquidity and supporting the flow of investment into promising sectors, further fuelling economic development. However, its integrity and fair functioning are constantly

¹ (Meulbroek, 1992a)

² (Manchikatla & Acharya, 2017a)

³ (Bhattacharya & Daouk, 2002)

threatened by the pervasive issue of securities fraud like market manipulation, accounting fraud, and Ponzi schemes etc. Among these fraudulent practices, insider trading stands out as a particularly damaging one.⁴

Insider trading an illegal practice occur when insider of a company involves in buying or selling of securities based on material, non-public information that could impact the stock price. Individuals with access to such information, known as "unpublished price-sensitive information" (UPSI), exploit their privileged position for personal gain, often at the expense of other market participants. This information, yet to be publicly available, can significantly influence stock prices. When insiders trade based on this knowledge, they gain an unfair advantage over ordinary investors without access to such information.⁵

The consequences of insider trading are far-reaching. It leads to market inefficiency as prices become distorted, reflecting insider knowledge rather than accurate company fundamentals. This discourages long-term investment and hinders efficient capital allocation. Reduced investor confidence follows as investors lose trust in a market where insiders can manipulate prices with impunity. This discourages participation and dries up vital investment capital. Additionally, insider trading creates an unfair advantage, leaving honest investors disadvantaged, thus fostering a sense of injustice and further undermining market integrity. In essence, insider trading undermines the foundation of a fair and transparent market, jeopardizing its long-term stability.⁶

In this paper, the multifaceted dimensions of insider trading within the Indian context are explored. Specifically, the motivations behind insider trading are examined, the legal framework governing securities markets is analysed, and the challenges associated with enforcement are discussed. Through the analysis of prominent cases and judicial interpretations, the complexities of insider trading and its impact on market integrity are highlighted. Additionally, gaps between law and enforcement are addressed, strategies for enhancing deterrence measures are discussed, and the importance of international cooperation in combating insider trading is emphasized. Through these discussions, insights into the intricacies of insider trading are provided, and strategies for strengthening regulatory frameworks to safeguard investor interests and uphold market integrity are proposed.

A Criminological and Legal Perspective

Understanding insider trading requires a multifaceted approach. Examining it solely as a legal violation overlooks the deeper social, economic, and psychological factors that contribute to this white-collar crime. Adopting a criminological perspective, let's explore insider trading within the Indian context.

Criminology delves into the intricate motivations and underlying reasons behind criminal behaviour. It meticulously examines the opportunity structures that facilitate these crimes and the complex interplay of social and psychological factors that drive individuals towards illicit activities. Examining insider trading through this lens helps us understand the "what" and the "why" behind this financial misdeed.⁷

The legal framework plays a crucial role in combating insider trading. There are Securities and Exchange Board of India Act, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015, Companies Act, 2013 to deter this practice in India. These regulations define insider trading, outline prohibited activities, and prescribe penalties for violations.

However, legal frameworks alone are insufficient. Effective enforcement requires a robust system that investigates potential offences, gathers evidence, and prosecutes offenders. Additionally, continuous review and adaptation of the legal framework are crucial to address evolving methods used by perpetrators and ensure its continued effectiveness.

Insider Trading as a White-Collar Crime

Unlike violent crimes, which involve physical harm or force, white-collar crimes encompass non-violent acts driven by financial gain or professional advantage. These offenses typically occur within business or professional settings and are often perpetrated by individuals in positions of trust or authority. White-collar crimes are characterized by their complex nature and include various forms such as fraud, embezzlement, bribery, money laundering, and insider trading.

Insider trading, a type of white-collar crime, exemplifies this category's traits. As discussed earlier it involves the illegal buying or selling of securities based on material, non-public information, usually obtained by individuals within a company or organization. Perpetrators of insider trading exploit their access to confidential information for personal financial gain, often at the expense of other market participants. This type of financial misconduct falls under the broader umbrella of white-collar crimes, which share common features of financial motivation, non-violent methods, and exploitation of positions of trust or authority. They are often characterized by:

⁴ (Sapkota, Kumar, & Mathur, 2021)

⁵ (Gębka et al., 2017a)

⁶ (Li et al., 2022)

⁷ (Fernandes & Ferreira, 2007)

Deception: Insider trading involves a calculated manipulation of information by individuals with privileged access, aiming to mislead the market for personal gain. By leveraging non-public information, insiders distort market perceptions, leading to transactions that are not based on fair and accurate assessments of a security's value.

Breach of trust: Insiders, entrusted with confidential information, betray the confidence placed in them by their employers or the broader market. This breach of trust not only undermines the integrity of the financial system but also erodes the foundational principles of transparency and fairness upon which it relies.

Financial gain: The allure of personal profit serves as the primary driving force behind insider trading activities. By exploiting non-public information, insiders seek to gain an unfair advantage in the market, often at the expense of unsuspecting investors who lack access to such privileged insights.

Complex schemes: Insider trading schemes often entail intricate and sophisticated methods to obfuscate the origins of illicit information and the nature of subsequent trades. These schemes may involve elaborate networks of communication, shell companies, or offshore accounts, making them challenging to detect and prosecute.

Concealment: Perpetrators of insider trading meticulously conceal their activities to evade detection and legal consequences. They employ a range of tactics, such as encrypted communications, multiple layers of intermediaries, and carefully timed transactions, to mask their illicit behaviour from regulatory authorities and enforcement agencies. This concealment further exacerbates the difficulty of uncovering and prosecuting insider trading offenses, contributing to the persistence of this form of financial fraud.

The consequences of insider trading extend far beyond the perpetrators' immediate financial gains. It undermines the market's integrity, discourages long-term investment, and erodes investor confidence, which can, in turn, hinder economic growth and development.⁸

Criminological Theories Explored in the Context of Insider Trading

Criminology offers various theories to understand the motivations behind white-collar crimes like insider trading. Here, there will explore three prominent theories:

Rational Choice Theory posits that individuals weigh the potential risks and rewards before committing a crime. In insider trading, perpetrators calculate the expected gains from a prosperous trade against the potential for detection and punishment. If the perceived benefits outweigh the risks, they may be more likely to engage in insider trading.⁹

Social Learning Theory: This theory suggests that criminal behaviour is learned through social interaction and observation. Aspiring insiders might observe others engaging in insider trading and perceive it as a successful strategy for accumulating wealth. This observation, coupled with an environment that condones or encourages such behaviour, can increase their likelihood of committing the crime.

Neutralization Techniques: This theory argues that individuals develop justifications to neutralize the moral wrongness of their actions. In the case of insider trading, perpetrators might convince themselves that everyone does it, that they are simply "playing the game," or that they deserve the financial gains due to their superior knowledge or position.

Understanding these criminological theories provides valuable insights into the thought processes and motivations of those who engage in insider trading. By analysing the factors contributing to the decision-making process, there can identify potential red flags and develop strategies to deter this white-collar crime.¹⁰

The Legal Framework in India

Combating insider trading requires a robust legal framework that defines the offence, outlines prohibited activities, and prescribes penalties for violations. In India, the Securities and Exchange Board of India (SEBI) plays a pivotal role in regulating the securities market and deterring insider trading.¹¹ Here focus shifts to the legal framework established by SEBI, analysing its effectiveness and examining the challenges associated with its enforcement.

The foundation of India's legal framework against insider trading is entrenched in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) and the SEBI Act, 1992. These legislative instruments delineate various facets of this unlawful practice, encompassing:

Insider trading: Insider trading refers to the illegal practice of trading in a company's securities by individuals who possess access to Unpublished Price-Sensitive Information (UPSI), utilizing such privileged information to gain an unfair advantage in the market. This includes buying or selling securities based on material facts that have not been made available to the public, thereby exploiting their position or relationship with the company for personal gain.¹²

⁸ (Gębka et al., 2017b)

⁹ (Zey, 2015)

¹⁰ (Lee, 2015)

¹¹ (Dey, 2016)

¹² (Companies Act, 2013, s 195)

Insider: As per the regulations, "insiders" are individuals endowed with access to Unpublished Price-Sensitive Information (UPSI) owing to their position, relationship with the company, or occupational engagement. This category encompasses directors, officers, employees, auditors, and specific categories of consultants.¹³

Unpublished Price-Sensitive Information (UPSI): UPSI is defined as information not disseminated to the public but possessing the potential to significantly influence a company's stock price upon disclosure. Illustratively, UPSI encompasses material facts such as mergers, acquisitions, primary financial results, or shifts in governmental policies.¹⁴

Prohibited Activities: The regulations meticulously delineate activities proscribed in relation to insider trading. These encompass trading in a company's securities while in possession of UPSI, inducing or procuring others to trade predicated on UPSI, and tipping, which involves divulging UPSI to individuals who subsequently trade based on such information.¹⁵

The PIT Regulations empower SEBI with investigative and enforcement powers to deter and punish insider trading. These powers include conducting investigations, issuing search warrants, and imposing penalties on violators.

Judicial Interpretations and Case Studies

In securities regulation, judicial interpretations of insider trading cases play a pivotal role in shaping legal precedents and defining the boundaries of permissible conduct in the financial markets. Through a review of significant legal decisions, we gain insights into the application of insider trading laws and the evolving accountability standards for market participants. Several landmark cases have clarified the definition of insider trading, the scope of liability, and the enforcement mechanisms employed by regulatory authorities. Here, we examine vital judicial interpretations in the context of insider trading cases:

In the Dilip Pendse case, the Securities and Exchange Board of India (SEBI) charged Pendse, the Managing Director of Nishkalpa, a subsidiary of Tata Finance Ltd., with insider trading. Pendse allegedly disclosed confidential information about Nishkalpa's substantial losses to his wife, who sold many shares in anticipation of an impending decline in stock value. SEBI's investigation focused on Pendse's breach of fiduciary duty and misuse of privileged information for personal gain. This case underscores the importance of preserving the integrity of confidential corporate information and the severe penalties associated with unauthorized disclosures.¹⁶

In the Hindustan Lever Limited (HLL) case, SEBI investigated allegations of insider trading related to HLL's purchase of shares in BBLIL (Brooke et al. India Limited) before an official merger announcement. SEBI found HLL to be an insider under the regulations due to its status as a subsidiary of Unilever, the parent company of both HLL and BBLIL. This case established that companies with access to material non-public information about impending corporate actions might be held liable for insider trading violations, even if the information pertains to a subsidiary entity.¹⁷

In Rakesh Aggarwal's case, SEBI investigated allegations of insider trading involving the acquisition of shares in ABS Industries before a public tender offer by Bayer AG. Aggarwal, the managing director of ABS Industries, was accused of facilitating insider trading by his brother-in-law, who purchased shares before the public announcement. SEBI's ruling emphasized the duty of corporate insiders to prevent unauthorized disclosures of material information and the need for robust enforcement measures to deter illicit trading activities.¹⁸

The case involving Shreejesh Harindranath, a SpiceJet general Manager, centred on allegations of insider trading based on undisclosed information about the company's financial performance. Harindranath was found to have purchased shares in SpiceJet and shared confidential information with his brother, who also traded securities based on the insider information. SEBI's enforcement action highlighted the responsibilities of corporate executives to uphold the principles of fair market conduct and the serious consequences of breaching insider trading regulations.¹⁹

In the Shruti Vohra case, SEBI investigated allegations of insider trading against a senior executive at a pharmaceutical company. Vohra was accused of purchasing shares in her company based on confidential information about successful clinical trials for a new drug. SEBI's findings underscored the importance of safeguarding sensitive corporate information and the strict penalties imposed on individuals guilty of insider trading violations.²⁰

¹³ SEBI (Prohibition of Insider Trading) Regulations, 2015, regulation 2(1)(g)

¹⁴ SEBI (Prohibition of Insider Trading) Regulations, 2015, regulation 2(1)(n)

¹⁵ SEBI (Prohibition of Insider Trading) Regulations, 2015, regulation 3(1)

¹⁶ (2006 SCC OnLine SAT 39 : [2006] SAT 39)

¹⁷ (1998) 18 SCL 311 MOF

¹⁸ (Rakesh Aggarwal v SEBI (2004) 1 Comp LJ 193 SAT, (2004) 49 SCL 351 SAT)

¹⁹ (Fazli, 2021a)

²⁰ Shruti Vohra vs. SEBI, AIR 2020 SSC 28

These judicial interpretations exemplify the judiciary's role in upholding the integrity of financial markets and promoting transparency and fairness in securities transactions. Courts deter insider trading and protect investor interests by holding violators accountable and establishing clear legal standards.

Challenges in Defining and Proving UPSI

While the legal framework provides a clear structure, challenges remain in effectively enforcing regulations against insider trading. A significant hurdle lies in defining and proving unpublished price sensitive information.

Ambiguity in UPSI Definition: The definition of UPSI within the regulations often lacks precision. Determining what qualifies as "price-sensitive" information can be subjective, especially in ambiguous scenarios. This vagueness poses challenges for companies and investors alike, as it complicates decisions regarding disclosure requirements and timing. For instance, an impending merger announcement might be unequivocally price-sensitive, while projections about future market trends could be open to interpretation, blurring the line between what must be disclosed and what can remain confidential.²¹

Challenges in Establishing Knowledge and Intent: Demonstrating that an insider not only had access to UPSI but also traded based on that information presents significant hurdles. This often necessitates reliance on circumstantial evidence and communication records, which can be intricate to collect and interpret. For example, establishing that a trader's actions were directly influenced by privileged information may require piecing together various financial transactions, communications, and market movements to construct a compelling case. Additionally, proving intent—whether the individual knowingly acted on non-public information for personal gain—adds another layer of complexity, often involving psychological assessments and behavioural analyses. These difficulties in establishing both knowledge and intent underscore the intricacies involved in prosecuting insider trading cases and highlight the need for thorough investigative processes and legal expertise..²²

Enforcement Mechanisms and Gaps

Ensuring the integrity of financial markets requires robust enforcement mechanisms to detect and deter insider trading violations effectively. Regulatory authorities such as the Securities and Exchange Board of India (SEBI) play a pivotal role in upholding securities laws and ensuring accountability for wrongdoing. However, despite their efforts, the enforcement landscape faces persistent challenges and gaps that demand ongoing refinement and innovation in enforcement strategies. These challenges include the evolving nature of financial crimes, such as insider trading and market manipulation, which often involve sophisticated schemes designed to evade detection. Additionally, regulatory authorities may encounter obstacles related to jurisdictional issues, resource constraints, and the need to keep pace with rapidly advancing technology. Moreover, perpetrators of financial crimes may exploit loopholes in existing regulations or engage in cross-border activities to avoid prosecution, further complicating enforcement efforts. In response, regulatory authorities must adopt proactive measures, including enhanced surveillance techniques, collaboration with international counterparts, and the development of robust legal frameworks, to effectively combat financial misconduct and safeguard the integrity of the securities market.²³

As India's primary regulatory authority for securities markets, SEBI wields considerable investigative powers to uncover insider trading and other securities violations. These powers are essential for maintaining market integrity and investor confidence. SEBI's investigative toolkit includes a range of measures such as surveillance, inspections, audits, and the issuance of subpoenas.

Surveillance is a critical component of SEBI's enforcement strategy. It involves monitoring trading activity and market behaviour to identify suspicious patterns or anomalies indicative of potential insider trading. Advanced data analytics and algorithmic surveillance systems enable SEBI to sift through vast volumes of trading data in real-time, flagging transactions that warrant further scrutiny.

Inspections and audits provide SEBI with direct access to market participants' records, documents, and premises, allowing investigators to gather evidence and assess compliance with securities laws and regulations. SEBI conducts routine and targeted inspections of market intermediaries, listed companies, and other entities to ensure adherence to regulatory standards.

Furthermore, SEBI has the authority to issue subpoenas, summon witnesses, and compel the production of documents or records relevant to its investigations. This power enables SEBI to compel cooperation from individuals and entities involved in suspected securities violations, facilitating the gathering of evidence and the pursuit of enforcement actions.²⁴

²¹ (Kacperczyk & Pagnotta, 2023a)

²² (Iqbal & Shijin, 2018)

²³ (Manchikatla & Acharya, 2017b)

²⁴ (Saraswat, 2020)

Despite SEBI's extensive investigative powers, certain limitations and challenges hinder its effectiveness in combating insider trading. The complexity of modern financial markets, characterized by electronic trading platforms, high-frequency trading, and complex financial instruments, poses significant challenges for surveillance and detection efforts. Perpetrators of insider trading often employ sophisticated techniques to conceal their illicit activities, making it difficult for regulators to detect and prosecute violations.

Moreover, resource constraints and workforce limitations may impede SEBI's ability to conduct thorough and timely investigations. The sheer volume of trading data and market activity necessitates substantial resources and expertise to analyse effectively. This may strain SEBI's investigative capabilities, particularly in cases involving complex financial transactions or cross-border securities violations.

To address these challenges, SEBI continues to invest in technology and infrastructure to enhance its investigative capabilities. Collaborative efforts with other regulatory agencies and international counterparts strengthen SEBI's ability to pursue cross-border security enforcement actions. However, ongoing vigilance and innovation are essential to overcome the evolving threats posed by insider trading and safeguard the integrity of India's securities markets.²⁵

Penalties and Investor Protection

SEBI imposes penalties on individuals and entities found guilty of insider trading to deter misconduct, preserve market integrity, and protect investors. These penalties serve as a deterrent against future violations and help uphold the credibility of India's securities markets. Additionally, SEBI's focus on investor protection extends beyond punitive measures, including restitution and compensation for affected investors.

When insider trading violations are substantiated through SEBI's investigative process or adjudicated in courts, SEBI can levy monetary penalties on the perpetrators. The amount of these penalties varies depending on the severity of the offense, the extent of harm caused, and other relevant factors. Penalties may be imposed on individuals, such as company executives or directors, and on corporate entities culpable for insider trading activities.

In addition to monetary fines, SEBI may impose non-monetary sanctions, such as temporary or permanent bans from trading in securities markets, prohibition from holding positions of authority in listed companies, or suspension or cancellation of registration for market intermediaries involved in insider trading.²⁶

SEBI's enforcement actions are guided by investor protection principles, focusing on compensating affected investors for losses incurred from insider trading activities. SEBI may order the disgorgement of ill-gotten gains obtained through insider trading, requiring violators to surrender profits derived from their unlawful activities. Disgorged funds are typically deposited into investor protection funds administered by stock exchanges, where they are used to compensate investors who have suffered financial harm due to securities violations.²⁷

Moreover, SEBI facilitates investor redressal by providing avenues for affected investors to seek compensation through regulatory mechanisms or legal proceedings. Investors who have suffered losses from insider trading or other securities violations may file complaints with SEBI, which investigates misconduct allegations and takes appropriate enforcement actions against perpetrators. Additionally, investors can pursue civil remedies through courts, seeking damages for financial losses incurred due to insider trading activities.

SEBI's emphasis on penalties and investor protection underscores its commitment to maintaining fair, transparent, and orderly securities markets. By imposing deterrent measures against insider trading and ensuring restitution for affected investors, SEBI aims to foster investor confidence, promote market integrity, and uphold the rule of law in India's securities markets.²⁸

The Gap Between Law and Enforcement

The effectiveness of insider trading regulations in India is contingent upon robust enforcement mechanisms that bridge the gap between legal provisions and their implementation. Despite clear legal frameworks established by SEBI, several challenges persist in enforcing these regulations, leading to a gap between the law and its enforcement.

One of the primary challenges is the complexity of proving insider trading offences in a court of law. Establishing guilt requires concrete evidence demonstrating possession of unpublished price-sensitive information (UPSI) and misuse of it for personal gain through securities transactions. However, gathering such evidence can be challenging, particularly in cases involving sophisticated insider trading schemes or where perpetrators take steps to conceal their activities.

Moreover, delays in the judicial process and resource constraints within enforcement agencies contribute to the gap between law and enforcement. Legal proceedings related to insider trading violations often involve lengthy investigations,

²⁵ (Chhabra, 2021)

²⁶ (SEBI Act, 1992, s 15G)

²⁷ (Misra, 2011)

²⁸ (Puthran, 2021)

complex legal arguments, and appeals processes, leading to delays in securing convictions or imposing penalties on perpetrators. Limited human and financial resources allocated to enforcement agencies further exacerbate these challenges, hindering their ability to investigate and prosecute insider trading cases promptly.

Furthermore, the proliferation of new technologies and financial instruments presents additional challenges for regulators in detecting and preventing insider trading activities. Rapid advancements in electronic trading platforms, algorithmic trading, and data analytics have enabled perpetrators to devise increasingly sophisticated methods to exploit market inefficiencies and conceal insider trading activities. Regulators must continuously adapt their enforcement strategies and leverage technology-driven surveillance tools to keep pace with evolving market dynamics and detect potential instances of insider trading effectively.

Addressing the gap between law and enforcement requires a multi-pronged approach involving collaboration between regulatory authorities, law enforcement agencies, judicial bodies, and market participants. Strengthening investigative capabilities, enhancing coordination among regulatory agencies, streamlining legal procedures, and investing in technology-driven surveillance infrastructure are essential steps toward closing the gap and ensuring effective insider trading regulations in India. Additionally, raising awareness among market participants about the consequences of insider trading and promoting a culture of compliance with ethical standards can contribute to fostering a more transparent and equitable securities market ecosystem.²⁹

Enhancing Deterrence Measures against Insider Trading

Addressing this pervasive issue necessitates a collective effort from regulators, policymakers, and market stakeholders to implement robust strategies aimed at deterring illicit behaviour and cultivating a culture of compliance. Key initiatives pivotal in advancing these objectives include:

Strengthening Corporate Governance and Internal Controls: Effective corporate governance practices and robust internal controls are essential to a sound regulatory framework. Companies can deter insider trading and promote market integrity by fostering a culture of transparency, accountability, and ethical behaviour within organizations. Implementing stringent codes of conduct, providing regular training on compliance requirements, and establishing independent oversight mechanisms are critical components of this strategy.³⁰

Whistleblower Protection and Incentives: Whistleblowers are crucial in uncovering insider trading violations and other illicit activities. To encourage individuals to come forward with valuable information, adequate protection against retaliation and financial incentives must be provided. By enhancing whistleblower protections and incentivizing disclosures, regulators can leverage the insights of whistleblowers to strengthen enforcement efforts and hold wrongdoers accountable.³¹

Technological Solutions and Market Monitoring: Advancements in technology have revolutionized surveillance and monitoring capabilities, enabling regulators to detect and deter insider trading more effectively. By leveraging advanced analytics, machine learning algorithms, and blockchain technology, authorities can identify suspicious trading patterns, conduct real-time monitoring of market activity, and enhance transparency and accountability in the financial markets.³²

International Cooperation and Collaborative Enforcement: Insider trading is a global phenomenon that transcends national borders, necessitating coordinated efforts among regulatory authorities worldwide. By promoting information sharing, joint investigations, and harmonizing regulatory standards, international cooperation can enhance the effectiveness of enforcement actions and deter cross-border violations. Collaborative initiatives strengthen the global regulatory framework and promote a level playing field for market participants.³³

Considering Criminal Law Penalties: To deter insider trading effectively, regulators must impose meaningful criminal penalties on perpetrators to hold them accountable for their actions. By prosecuting insider trading offences as criminal offences and imposing significant fines, imprisonment, and disgorgement of ill-gotten gains, authorities send a strong deterrent message and reinforce the seriousness of the violation. Strict enforcement of criminal law penalties enhances market integrity and instils confidence in investors and stakeholders.³⁴

Conclusion and Recommendations

²⁹ (Fazli, 2021b)

³⁰ (Meulbroek, 1992b)

³¹ (Frijns, Gilbert, & Tourani-Rad, 2011a)

³² (Kacperczyk & Pagnotta, 2023b)

³³ (Lobão & Baptista, 2023)

³⁴ (Frijns, Gilbert, & Tourani-Rad, 2011b)

Insider trading persistently challenges the integrity and fairness of financial markets, undermining investor confidence and eroding trust in the regulatory framework. As evidenced by the cases discussed and the regulatory landscape outlined, combating insider trading requires a multifaceted approach that addresses legal, regulatory, and enforcement gaps while promoting a culture of compliance and ethical behaviour. In this conclusion, key findings are summarized, reflect on the effectiveness of current measures, and propose recommendations to strengthen deterrence against insider trading.

Throughout this examination, this research explored the motivations behind insider trading, the legal framework governing securities markets, and the challenges associated with enforcement. Prominent cases, such as *Dilip Pendse v SEBI*, *Hindustan Lever Limited v SEBI*, and others, to illustrate the complexities of insider trading and its detrimental impact on market integrity. From criminological perspectives to judicial interpretations, we gained valuable insights into the factors driving illicit conduct and the limitations of existing regulations.

While regulatory bodies like the Securities and Exchange Board of India (SEBI) have made strides in combating insider trading through regulations like the (Prohibition of Insider Trading) Regulations 2015, challenges remain in enforcement and prosecution. As highlighted, the gap between law and enforcement poses a significant hurdle, with issues such as defining and proving unpublished price-sensitive information (UPSI) complicating efforts to hold perpetrators accountable. Additionally, while essential, penalties and investor protection measures may only sometimes serve as effective deterrents with robust enforcement mechanisms.

To address the shortcomings identified and enhance deterrence against insider trading, the following recommendations are proposed:

Enhanced Surveillance and Monitoring: Invest in advanced technological solutions, such as data analytics and artificial intelligence, to improve surveillance capabilities and detect suspicious trading activity in real time. Implement proactive monitoring systems to identify potential instances of insider trading and facilitate timely intervention by regulatory authorities.

Streamlined Enforcement Processes: Streamline enforcement processes and enhance coordination between regulatory agencies to expedite investigations and prosecution of insider trading offences. Provide adequate resources and training to enforcement personnel to ensure effective implementation of regulatory measures.

Stricter Penalties: Enact legislation to impose stricter penalties on individuals found guilty of insider trading, including significant fines, imprisonment, and disgorgement of profits. Enhance the deterrent effect of penalties by publicizing enforcement actions and imposing sanctions that reflect the severity of the offence.

Whistleblower Protections: Strengthen whistleblower protection laws to encourage individuals with knowledge of insider trading to come forward and report misconduct without fear of retaliation. Establish anonymous reporting mechanisms and offer financial incentives to incentivize whistleblowers to disclose valuable information.

International Cooperation: Foster greater collaboration and information sharing among regulatory authorities at the national and international levels to effectively address cross-border insider trading activities. Establish mutual assistance agreements and participate in joint enforcement efforts to enhance regulatory oversight and enforcement capabilities.

Educational Initiatives: Launch public awareness campaigns and educational initiatives to increase market participants' awareness of insider trading laws and regulations, including investors, corporate executives, and financial professionals. Promote ethical conduct and transparency through training programs and industry certifications.

In conclusion, insider trading remains a significant challenge for regulators, market participants, and investors. While existing regulations and enforcement measures have made progress in deterring illicit conduct, much work still needs to be done to strengthen deterrence and promote market integrity. By implementing the above recommendations, regulatory authorities can enhance surveillance capabilities, streamline enforcement processes, and impose stricter penalties to combat insider trading effectively. Fostering compliance, transparency, and ethical behaviour is essential to creating a level playing field and restoring investor confidence in financial markets. Through concerted efforts and collaborative initiatives, we can work towards a more transparent, fair, and resilient securities market that serves the interests of all stakeholders.

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