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Insider Trading in Bharat: Appraising the Repercussions on Economic Participants and the National Exchequer

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ABSTRACT

This scholarly exposition delves into the multifaceted implications of insider trading on the economic constituents and the macroeconomic landscape of Bharat - our beloved India. Insider trading, epitomizing both unethical and illicit conduct, manifests as transactions carried out in the clandestine shadows of privileged knowledge, conveniently shielded from the public eye. This nefarious practice invariably gnaws at the bedrock of trust underpinning our capital market, imposing a deleterious toll on its expansion and the overarching economic equilibrium. The discourse meticulously unravels the immediate aftermath of insider trading, encompassing the distortion of market efficiency, the alarming erosion of investor faith, and the emergence of a skewed arena wherein a privileged few capitalise on the unsuspecting majority. The indirect ramifications extend to a contraction in market liquidity and a surge in risk, as investors, burdened with trepidation, retract their funds, or withhold future investments. The treatise attempts to quantify the fiscal erosion engendered by insider trading in India, transcending mere market capitalisation, and encompassing its broader ramifications on economic proliferation. The discourse elucidates how insider trading deters the influx of foreign direct investments (FDI), thereby tarnishing India's allure as an investment haven. The analysis further traverses the labyrinth of regulatory frameworks erected to thwart insider trading in India and their effectiveness. It accentuates the urgent imperative for rigorous enforcement of existing statutes, an enhancement of corporate governance standards, and an escalation of investor awareness to engender a more transparent and equitable financial milieu. In summation, this analysis emerges as an exhaustive compendium elucidating the pervasive fallout of insider trading on India's macroeconomic fabric and individual investors, while proffering strategic countermeasures to this scourge. It beckons our policymakers, regulators, and stakeholders to orchestrate a collective, concerted endeavour to fortify India's capital markets and secure their sustainable trajectory.

Keywords: Insider trading, SEBI, Economy

Introduction

Insider trading, an intriguing conundrum that oscillates between the realms of information disparity and market equity, has perennially commanded the intellectual discourse in both India and the United States. Despite their geographical and cultural differences, these two robust democracies have similar challenges in putting an end to this illicit conduct that undermines investor trust and disrupts market equilibrium. The Securities and Exchange Board of India (SEBI), which was established in 1992, is in charge of protecting the capital market in India. These are the SEBI (Restriction of Insider Exchanging) Guidelines., whose provisions have gradually evolved to support the legal and regulatory framework, are the primary instrument used to fight insider trading in Indian society. [1]However, India's engagement with a multitude of high-profile cases manifests the persistent spectre of insider trading. The struggle is further intensified by the hurdles in detection and enforcement, a consequence of the labyrinthine nature of such transactions and the intricate maze of Indian corporate edifices.

The spirit of entrepreneurship, the essence of trade, and the sanctity of professional engagements are inherently safeguarded under the expansive umbrella of Article 19(1)(g) of our Indian Constitution, a unique testament of our nation's commitment to fostering commercial freedom. Yet, one mustn't overlook the fact that this liberty is not an unfettered one; it comes with its share of reasonableness and limitations, as explicitly outlined under Article 19(6). A salient instance where this clause comes into play revolves around the realm of securities trading, particularly the nefarious practice of insider trading. This malpractice, akin to a pernicious weed in the garden of fair commerce, exploits confidential information to procure unmerited advantages in the stock market. It births an ecosystem of disparity, where a select few, armed with confidential knowledge, can manoeuvre the market to suit their whims, eroding the trust of common investors and destabilising the foundation of the market. It's an economic ailment that weakens the financial vitality of our nation. Therefore, the constitution, in its infinite wisdom, has deemed it necessary to place reasonable restrictions on practices like insider trading to preserve the financial health of the nation and to ensure the true essence of Article 19 isn't tarnished.

In contrast, the United States, which has seasonal and emerging financial markets, has a historical perspective in the war against insider trading. The US Securities and Exchange Commission (SEC) has been in the vanguard of this struggle since its inception in the early 20th century. Unlike India, where insider trading is strictly regulated, the United States does not have such a legislation.. Insider trading is not highlighted by its legal framework in the broader financial environment of the United States. Instead, it was incorporated into the Securities Act of 1934, a comprehensive statute that more broadly covered securities fraud.[2]. Yet, even with the firm grip of stringent enforcement mechanisms and the looming shadow of substantial punitive measures, the United States, mirroring other nations, has not been immune to the snares of insider trading scandals. These instances only serve to underscore the issue's ubiquity, echoing ominously across the global financial theatre. As we embark on this scholarly expedition—our minds set on unravelling the complex layers of insider trading in the diverse settings of India and the United States—our quest is threefold. We aspire to navigate the intricate maze of their legal and regulatory structures, to cast a critical eye on their effectiveness, and to meticulously examine the tireless endeavours of these nations. Each step, each revelation, brings us closer to understanding how they strive, against the odds, to cultivate a market ecosystem that thrives on transparency, fairness, and efficiency. This comparative scrutiny promises to illuminate the invaluable lessons that these two diverse economies can glean from each other in their concerted endeavour to extirpate insider trading.

Integrity, as sagaciously articulated by Mr Buckminster Fuller, constitutes the very quintessence of all that culminates in success. Ethical trading represents the confluence of the interests of the corporate entity, the astute investor, and the public, ensuring that no detriment befalls any stakeholder during the commercial exchange. Insider trading, on the other hand, is the acquisition, disposition, or Possession of undisclosed price sensitive information (UPSI) about stocks by engaging in securities transactions in gross contravention of applicable rules or regulations and undermining trust and confidence in the institution. Insider trading can take both legal and unethical forms. When insiders trade stocks by properly notifying the Indian stock and exchange boards, it is legal insider trading. In contrast, illegal insider trading develops when insiders attempt to profit from confidential knowledge at the expense of the organization, which contradicts the basic idea of ethical business. [3]This scholarly

[1] India's Securities and Exchange Board's 2015 rules prohibiting insider trading [as updated on August 5, 2021]. Securities and Exchange Board of India Insider Trading Prohibition Regulations, 2015, as Amended on August 5, 2021 (_41717.html), accessed May 2, 2023 at the following link: https://www.sebi.gov.in/legal/regulations/aug-2021/.

[2] W. Kenton. 8 May. 2023. The Exchange Act of 1934 refers to what? influence and background. Investopedia has this information. Visit this link for more information: https://www.investopedia.com/terms/s/seact1934.asp. (link expired 5/9/2023)

[3] Chauhan, C. S. S. (2021, September 11). Unpublished price sensitive information (UPSI)- why and how need to keep it safe.available at TaxGuru. https://taxguru.in/sebi/unpublished-price-sensitive-information-upsi-safe.html ,(last visited 8 May 2023)

exposition endeavours to identify the lacunae within the extant regulatory framework governing insider trading, a phenomenon that has witnessed an alarming surge in recent times. By examining the efficacious methods employed by other jurisdictions, this paper elucidates the shortcomings of the Indian legal landscape and proffers recommendations to bolster and refine the statutes overseeing insider trading within the nation. The capital market and diminutive shareholders often bear the brunt of the illicit practice of insider trading. It is germane to acknowledge that amidst those championing the prohibition of insider trading, a dissenting faction contests such a ban. Advocates of insider trading prohibition contend that it undermines investor confidence and inflicts harm upon those who trade with or against the insider in the market. Adversaries of insider trading proffer two interrelated yet somewhat distinct arguments: firstly, that insider trading impedes the dissemination of information both publicly and within the corporation, thereby impairing market and corporate efficiency; and secondly, that it detrimentally affects organizations by precipitating the premature leakage of confidential information. [4]The ultimate contention, which holds in any circumstance, is that insider trading simply lacks any semblance of fairness. Insider trading, a devious act of utilizing exclusive data for trading stocks and bonds to generate gains (or dodge losses) at the cost of the oblivious masses, is unequivocally ethically and legally reprehensible. The phrase has so permeated everyday lexicon that its import is nearly axiomatic. In vernacular dialogues, insider trading pertains to securities transactions hinged on data yet to be revealed to the public domain. The conspicuous the attribute of behaviour potentially tantamount to insider trading, surpassing the manifest prerequisites of buying or selling securities, is the trader's possession of information bearing substantial relevance to the securities' value, Possession of undisclosed price-sensitive information (UPSI) about stocks by engaging in securities transactions in gross violation of applicable rules or regulations and undermining confidence in the firm. Insider trading can take both legal and unethical forms. When insiders trade in shares by properly informing the Board of Exchange and Stock Exchange of India, it is considered as legitimate insider trading. In contrast, illegal insider trading develops when insiders attempt to profit from confidential knowledge at the expense of the organization, which is contrary to the basic idea of ethical business.'

Who is an Insider?

The term "insider" is used to describe someone who is either a "connected person" or who owns or obtains access to substantial nonpublic information that might affect the price of a security.

Who is a Connected Person?

In the six months before to the events at hand, a "affiliated person" was someone who had some kind of connection with the organization in question, either directly or indirectly. This involves meeting contractual and fiduciary responsibilities as well as serving in a director, officer, or employee capacity for the corporation. Any individual, whether current or former, in a corporate or professional capacity, who has access to material that is either highly confidential or potentially so must be considered a "connected person" by the organization...[5]

To clarify the difference between a "Insider" and a "Contact Person" under the SEBI (Prohibition of Insider Trading) Regulations, 2015, see Regulation 2(g).

Regulation 2(d) defines an "insider" as either a "connected person" or someone who owns or has access to private price-sensitive information.

Then again, a 'communicator' is depicted as:

(I) any individual straightforwardly or in a roundabout way related or connected with the Organization during the a half year going before the direct being referred to. Being obligated by a contract or other form of trust or loyalty, serving as a director, officer, or employee of the company, or having regular contact with executives are all examples of this. It also includes any function that is likely to give people access to cost-sensitive and confidential information, whether it's business-related or professional, temporary or permanent.

Unless proven otherwise, the following groups are considered "contact persons":

(i) a relevant person who is an immediate relative, (ii) a holding company, associate or subsidiary,
(ii) a third party as defined in section 12 of the SEBI Act 1992 or its staff or member of the board of directors,
(iii) investment firm, trustee company, asset management company (AMC) or any representative thereof,

[4] ibid
[5] TaxmannThere is a full-time Research & Editorial Staff here at Taxmann Publications. Chartered Accountants make up this group. (2023, March 14). An outline of the SEBI's rules against insider trading (pit rules).accessible via Taxmann's Weblog. , https://www.taxmann.com/post/blog/overview-of-sebis-prohibition-of-insider-trading-regulations/9. (page seen on May 10, 2023)

(iv) clearinghouse, trading and stock exchange representative,
(v) An officer or employee of a publicly traded financial institution;
(vi) A trustee or officer of a mutual fund or an affiliated management company; or
(vii) A recognized self-regulatory employee or officer,
(viii) Company Banker,
(ix) A corporation, corporation, trust, Hindu Undivided Family (HUF), corporation or possession or interest in an AOP by a director, his immediate family, or the corporation's banker constitutes insider trading. More than 10%.[6]

What Constitutes a UPSI?

Unpublished price-sensitive information pertains to any specific data or insights, intimately linked to a company or its securities, which is currently not in the public domain. Upon its dissemination, it possesses the potential to considerably influence the market value of the securities in question. It generally encompasses but is not limited to, data associated with financial outcomes, dividends, alterations in capital structure, amalgamations, splitting, acquisitions, and the like[7]. Turning the pages of history, it is observed that the United States was among the pioneers to establish stringent legislation aimed at regulating and curtailing insider trading. The cataclysmic crash of the market led to an extended wave of disbelief and mistrust among investors towards the capital market, a chilling period that reached its nadir with the notorious Great Depression. During these turbulent times, a ground-breaking piece of legislation known as the Securities Exchange Act of 1933 was born. The law is full of demands for accountability and transparency and was enacted to prevent dishonest securities sales practices. This was further expanded by the Securities Exchange Act of 1934, which referred to information about a company or its securities that was not made public as "unpublished price sensitive information." UPSI).), a phrase of prime importance in the world of securities and corporate governance. If this information were made public, it may have a major impact on the stock price of the firm. Changes in key management people (KMP) are only one of many variables that may affect a business's financial performance and profitability. Other examples include changes in the firm's capital structure, mergers, acquisitions, de-listings, corporate expansions, and other major events. Data that is relevant. Regulation 3 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 forbids the sale or purchase of UPSI. Companies and their securities that are listed or being proposed for listing are protected against disclosure by insiders, including other insiders. Except if such action is required to accomplish a lawful purpose, carry out an official duty, or satisfy a legal obligation. It is also against the rules for any UPSI employee or contractor to seek or apply for a listing for the firm or its securities unless doing so is necessary to carry out an assignment or comply with the law. The "Fair Disclosure and Behavior Rules" stipulate that a listed company's board of directors must establish a process for identifying "legitimate interests." This includes sharing UPSI with partners, business partners, creditors, customers, suppliers, commercial banks, auditors, insolvency professionals, and other advisors or consultants in the normal course of business, as long as the sharing does not violate or circumvent the prohibitions outlined in the Regulations. Anybody possessing UPSI for a "genuine object" is assigned a "source" under these rules and is expected to keep up with the privacy of such data. In order to prevent manipulation, the Board is responsible for maintaining an organized digital database of UPSI and those with access to it, complete with sufficient internal controls and checks like time stamps and audit trails. This record shall be kept for at least eight years after the relevant transactions have been finalized, or until the conclusion of any investigations or enforcement processes conducted by SEBI. Brokers, dealers, national stock exchanges, and the trading processes for listed and registered securities are all subject to oversight under the Securities Act of 1934. By ensuring that markets for buying and selling securities are transparent and fair, it hopes to protect investors' capital from abuse. Some US courts and the SEC have held that insider trading constituted "fraud" under Section 10(b) of the Securities Act, based on the "insider trading doctrine." In the 1934 Anti-Fraud Act Regulations. Insider trading is highly frowned upon and is thus heavily regulated by the Securities Exchange Act..[8]

Dirks vs SEC [9]case led to the evolution of the concept of 'constructive insiders', individuals who were privy to critical or unpublished sensitive information, not for their gain, but with the intent to stymie fraudulent activities. These constructive insiders could be any individual who, in the process of their services to the company, had access to such crucial information. The legal interpretations made by U.S. courts concerning insider trading have been pivotal in crafting the structural blueprint for the Securities Exchange Commission. This body of legal rulings and decisions can be classified into two primary theoretical constructs.

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[6] ibid
[7] Chauhan, C. S. S. (2021a, September 11). Unpublished price sensitive information (UPSI)- why and how need to keep it safe. Available at TaxGuru. https://taxguru.in/sebi/unpublished-price-sensitive-information-upsi-safe.htmlt. (last visited on 7 May 2023)
[8] ibid
[9] SEC - 463 U.S. 646, 103 S. Ct. 3255 (1983)

1 Section 10(b) and Rule 10b-5, which deal with the "disclosure or withhold" or classical theory, are both violated when an insider of a company, such as an officer or director, trades company shares based on information that they do not know about the company.

The individual, ensconced in a position of fiduciary trust, is obliged towards the corporation, its investors, and shareholders. This necessitates either prudential abstinence from trading or a forthright disclosure of pertinent insider information before embarking on such activities.

The Misappropriation Theory: This judicial prism of viewing insider trading, eloquently christened as the 'misappropriation' theory, received affirmation from the august bench of the U.S. Supreme Court in the seminal case of **United States v. O'Hagan...** [10]

The aforesaid lawyer became aware of the impending takeover due to confidential information obtained by his legal team on behalf of the bidding company. He had no relationship with, nor did he represent, the target company, so the traditional premise of insider trading did not apply. But the court held that he was involved in fraudulent insider trading. [11]They elucidated that the lawyer had fiduciary responsibilities towards his law firm and by trading on the firm's confidential information, he had effectively "misused" such data. In light of this, the Court reasoned that an "offshore" when a firm " misuses classified data for the reasons for protections exchanging break of the trustee obligation owed to the source." the company violates Section 10(b) and Rule 10b-5 by disclosing information that is directed at businesspeople. The "misappropriation doctrine" is based on the trustee's liability for concealing the identity of the person or persons who really provided him with access to the protected information. This well-crafted idea aims to protect the corruption of stock markets from malicious tricks by "outsiders" to the company. Outsiders have access to sensitive data that, when disclosed, can affect a company's share price, but they don't have to. No Loyalty to Company Shareholders The Stop Trading on the Knowledge of Congress Act, or the SHARES Act for short, was introduced in 2006 in the halls of the esteemed Senate. It was subject to legislation, before it came into force in 2012. It was debated in Parliament for six years..[12] The law included provisions that would make it illegal for members of Congress and their staff to engage in any insider trading using information obtained on Capitol Hill, the center of government. Moreover, it has forced government officials to remain transparent by disclosing financial transactions. In the 2016 lawsuit, Salman v. United States, Citibank employee Mahir Cara was accused of giving his brother Michael Cara unauthorized access to important and non-public information, when he realized that Michael planned to use the information for financial gain. Michael told his friend Bassam Salman, Mahar Kara's friend and son-in-law, about the wisdom. Salman uses this knowledge to his advantage when trying to cover up his transgressions. Salman's case gave the Supreme Court an opportunity to show how insider trading laws apply to "remote tippies," or traders who indirectly obtain information from corporate insiders, but are not actively involved in an insider's breach of fiduciary duty. The Thomas Commission in 1948 and other government entities in the 1940s laid the groundwork for what is now known as insider trading in India. Subsequently, sections 307 and 308 of the Companies Act 1956 were enacted to contain restrictions against insider trading and to demand holdings declarations from company directors and management..[13]

In 1979, the Sachar Committee realized that the Companies Act needed to be changed to prevent employees of a company from trading insider information. In order to curb insider trading, the Sachar Commission made changes to the Securities Contracts (Regulation) Act 1956 recommendations in 1986. The Abid Hussain Commission had chosen utilizing both lawbreaker and common regulation to forestall insider exchanging by 1989. They also called on SEBI to pass legislation to stop unethical business practices. The Indian government enacted the law in 1992. "Securities and Exchange Board of India (Insider Trading) Regulations Act 1992" to prevent fraudulent insider trading. Penalties for insider trading in this case are outlined in Sections 24 and 15g of the Securities and Exchange Board of India Act, 1992.. The Act consists of 4 Chapters and 3 Schedules with a total of 15 provisions. The meanings of the terms associated persons, deemed persons, insiders, price sensitive knowledge etc. used in the regulations are explained in the first chapter. The bylaw's definition of internal affairs, communication and consulting is explained in Chapter Two. In the third chapter, SEBI describes its investigative powers under the regulation and provides a list of any prohibitory orders or directives it may issue in an attempt to regulate the stock market. The policies and internal code of conduct, disclosure requirements for company directors, CEOs and major shareholders and the appeals process are outlined in Chapter Four, where listed companies and other entities must comply. The clause allows an aggrieved person to take legal action against the decision of SEBI. Significant changes were made to the rules in 2002, renaming them as "SEBI (Prohibition of

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[10] 521 U.S. 642, 117 S. Ct. 2199 (1997)
[11] Legal Information Institute. . Classical theory of insider trading. Legal Information Institute. Available at https://www.law.cornell.edu/wex/classical_theory_of_insider_trading (last visited on 4 May 2023)
[12] ibid
[13] India, legal S.. Insider trading in India. Legal Service India. Available at https://www.legalserviceindia.com/article/l199-Insider-Trading.html (last visited on 6 May 2023)

Insider Trading), 1992". India is now ranked sixth among the top 10 countries in the world. Unfortunately, India's market capitalization fell below $3 trillion for the first time in the last nine months. This significant decline can largely be attributed to continued selling pressure, a direct result of aftershocks of volatility reverberating across the US and European financial sectors. Given the significant changes in listed companies, the stock market and the economy as a whole since 1992, such regulation seemed inadequate. These changes highlighted the shortcomings of the 1992 regulation, which had a negative impact on corporate governance standards, shareholder equity and ultimately the level of confidence in Indian financial markets. To close these legal loopholes, SEBI has decided that a new legislative framework needs to be developed. Achieving this objective requires a thorough study of the existing law. [14]

In light of this, SEBI appointed Judge N. to chair a High Level Sodhi Committee consisting of 18 members. The committee is responsible for examining the insider trading laws and making recommendations for changes. The Sodhi Committee Report served as the basis for the SEBI (Prohibition of Insider Trading) Regulations 2015, which were tabled in 2015 and considered and approved by SEBI at a meeting on November 19, 2014. These terms replace any and all prior terms. The main objectives of the 2015 Act, according to a press release, are to improve the legal environment and enforcement, align Indian law with international standards, provide clarity about terminology and concepts, and promote legitimate business activities. The importance of skilled and specialized labor cannot be overstated. For a strong defense against market fraud, SEBI would do well to bring together teams of corporate legal experts, from data scientists and accountants to software engineers and academics. Sebi's ability to eavesdrop on telephone conversations, which it no longer has, is crucial in detecting illegal activities. Despite legitimate concerns about potential abuse, proper regulation of this power can tip the scales in favor of market integrity. A striking example of the effectiveness of this investigative method is the insider trading case involving Raj Rajaratnam and Rajat Gupta in the United States..[15]

The narrow scope of the individuals who can be subjected to investigation under Section 11B (3) of the SEBI Act, 1992 is [16] Another obstruction of justice. In contrast, UK law allows "any person" who has relevant information to be summoned for questioning. Another weakness is the non-applicability of Indian law to foreign countries. In an era of global economy and transnational crime it is imperative that Indian law extends its application beyond national borders. Additionally, by not requesting proactive action, SEBI may miss opportunities to shut down insider trading. There is no provision for safeguards under the existing law, which allows for investigation in the event of a breach.

Last but not least, the absence of a realistic deadline to conclude the investigation can damage vital evidence and weaken the prosecution's case.

Those who fall within the scope of the SEBI (Prohibition of Insider Trading) Regulations 2015 are required to provide the following disclosures:

(7) Regulation of Disclosure of Certain Persons

Initial revelations.

Standing Disclosures:

(a) Inside two exchanging days after the aggregate sum executed, each advertiser, individual from the advertiser gathering, chosen one, and head of the business ought to uncover to the organization the quantity of protections bought or sold by them. Ten million rupees, or a value of securities of your choice, in any calendar quarter.

(a) The firm must provide the aforementioned data to the Stock Exchange no later than two business days after it is received or becomes publicly available.

(c) The aforementioned information must be supplied in a manner and following any procedures that SEBI may establish from time to time. Information Revealed by Other Associated Parties: A listed firm may optionally request that any other affiliated individual report their ownership and trading activity in securities as and when the company thinks necessary for the purposes of monitoring compliance. [17]

[14] ibid
[15] ibid
[16] Sebi Act 1992
[17] Securities and Exchange Board of India Prohibition of Insider Trading Regulations, 2015 (15 January 2015). Present at https://www.sebi.gov.in/legal/regulations/jan-2015/sebi-prohibition-of-insider-trading-regulations-2015-issued-on-15-jan-2015-_28884.html (last visited 0n 11 May 2023)

Thus, there is a pressing need for a comprehensive overhaul of SEBI's investigative mechanism, as illuminated by the case of **Dilip Pendse v. SEBI (2001).** [18] The case serves as a devastating reminder of the flaws in SEBI's investigation and the need for corrective action. Among the many difficulties faced by the stock market regulator in India, the issue of controlling insider trading has emerged as the most difficult. The effort earned the somewhat depressing nickname "The Unwinnable War," prompting a complete reassessment of the situation. It is disconcerting to learn that India is one of the countries that rarely enforces internal trade rules codified in their legal system.

When the Securities and Exchange Board of India (SEBI) realizes that it has done nothing but launch an investigation, sadly, often only in response to media reports, the situation becomes even more troubling. Recently, two high-profile insider trading cases have given more confidence to the Indian judiciary; However, understanding these cases requires navigating a complex web of legal rules and financial requirements.

In the case of **Shruti Vora v. SEBI,** [19] The Unpublished Price Sensitive Information (UPSI) puzzle created by the humble method of sharing WhatsApp chats is under court scrutiny. In its judgment, the Apex Court set aside the decision of the Security Court of Appeals (SAT) which did not classify the transferred information as UPSI due to non-identification of the source. While this decision may seem logical, it ignores the importance of the information conveyed and the consequences of wide disclosure of sensitive financial results to the investing public. The International Organization of Securities Commissions in its report on insider trading reasonably emphasized the need to evaluate the "use" of this insider knowledge, which appears to have been overlooked in this context.

The Sebi vs. Abhijit Rajan case is next in the stack of legal legends.[20], where the managing director of Gammon Infra Projects Limited, Mr Rajan, found himself caught in the vortex of insider trading allegations. The Supreme Court, after careful deliberation, deemed the transaction to be devoid of any malicious intent to profit from the unpublished information, as the termination news would indeed have been positive UPSI for Gammon. A third recent case, Balram Garg vs SEBI, presented the Supreme Court with the conundrum of determining the evidentiary burden in cases of Insider Trading. The Supreme Court astutely observed that trading patterns alone couldn't be conclusive proof of communication of UPSI and reiterated the need for concrete evidence to prove such communication.

However, the dichotomy of the Supreme Court's standpoint in these cases and the case of **SEBI vs Kishore Ajmera**[21]**,** where it upheld the relevance of circumstantial evidence, is indeed intriguing. The fine line that separates direct evidence and circumstantial cues in such cases is not merely a thread of legal discourse but a crucial determinant of justice. The room for subjectivity created by these rulings calls for a robust introspection of the regulatory framework and a possible renaissance in the interpretation and enforcement of the Insider Trading Regulations

Conclusion

The world's regulators, researchers, and market players have all been fixated on trading, a phrase that always causes some ethical unease. Trading stocks or other securities of a public corporation while in possession of substantial, non-public knowledge about that firm is known as "insider trading." There is an immediate need to reevaluate and reform our approach to dealing with insider trading in the Indian setting. This issue has persistently been a complex puzzle for regulatory bodies like the SEBI. While the Indian judicial ecosystem has wrestled with the conundrums posed by insider trading, the cryptic nature of such activities warrants a more sophisticated approach. Recent pronouncements by the Supreme Court in the cases have underscored this necessity and underscore the intricacies involved in tracing the genesis of unpublished price-sensitive information (UPSI), delineating the evidentiary burden, and comprehending the nature and ramifications of such information. While the verdicts have provided crucial perspectives, they have concurrently spotlighted potential lacunae in our regulatory structure, thereby accentuating the need for more precise definitions and legal lucidity. The oversight of insider trading in India, home to one of the globe's most vibrant securities markets, demands a multi-pronged strategy. Firstly, the regulatory infrastructure warrants fortification. The definition of UPSI must be honed for further precision, and regulations should lucidly demarcate the fallout of its misuse. The utilization of 'forwarded

[18] ibid
[19] Sebi Act 1992, Available at https://www.sebi.gov.in/enforcement/orders/sep-2022/ca-no-2252-2262-2021-sebi-vs-shruti-vora-and-ors-decided-by-supreme-court_64345.html (last visited on 11 May 2023)
[20] Insider trading laws were interpreted incorrectly in Sebi v. Abhijit Rajan. A erroneous interpretation of the insider trading legislation, S&;R Associates. (2023, March 6), accessible at https://www.snrlaw.in/sebi-v-abhijit-rajan/. (viewed last on 11May2023)
[21] Reportable in the Supreme Court of India civil appellate jurisdiction, Available at...https://main.sci.gov.in/jonew/judis/43427.pdf (last visited on 11 May 2023)

as received' information and the concept of 'use' of inside information warrant comprehensive guidelines to eliminate any potential ambiguity. It was indeed a stride in the correct direction, yet persistent enhancements to the regulatory structure are imperative to stay abreast with evolving market norms. Secondly, the enforcement mechanism necessitates greater efficacy. While SEBI has shown commendable proactivity in initiating investigations, the enforcement of punitive measures has occasionally been deficient. There is an urgent requirement to ensure investigations are exhaustive, swift, and impartial. Furthermore, effective enforcement would act as a potent deterrent for potential transgressors. Third, it is vital to cultivate receptivity. Corporations should be incentivized to quickly disclose vital information, so establishing a level playing field for all investors. Fourthly, a robust surveillance mechanism is indispensable. Technological progress can aid in detecting anomalous market activities and identifying potential instances of insider trading. Machine learning algorithms and artificial intelligence can be mobilized to flag suspicious trades, which can then be subjected to thorough scrutiny. Fifthly, inculcating market participants about the ramifications of insider trading can engender a culture of compliance. Regular instructional sessions can assist employees in navigating the labyrinthine insider trading laws and discourage unethical behaviour. Lastly, there's a call to stimulate research and discourse on insider trading. Academics, market participants, and regulators must come together to comprehend the motivations driving insider trading and devise effective countermeasures. Additionally, a comparative study of global best practices can offer invaluable insights for shaping India's approach to tackling insider trading. It corrodes investor confidence, disrupts market equilibrium, and hampers efficient resource allocation. While legal determinations provide the structural framework for addressing such cases, the onus of upholding market integrity rests collectively with regulators, companies, and individuals. By augmenting regulatory standards, ensuring effective enforcement, advocating transparency, deploying robust surveillance mechanisms, educating participants, and fostering research, we can fortify our defences against insider trading. A market ecosystem that espouses transparency, fairness.

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