



## Brewing Insider Trading Provision in India with E-Governance

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**Abstract-** Electronic governance is a recent and developing field of importance in both the “public” and “private” sectors. It is diverse and complex, in terms of degree, emphasis, importance, and validity. Regulatory authorities and policymakers have gradually shifted to make E-governance practices obligatory with the emergence of major fraudulent activities in the Indian and multinational stock markets and have added fines for breaching these corporate governance regulations.<sup>1</sup> In the insider trading sense, this paper approaches the need for combining corporate governance with disciplinary regulations in India. The researchers in this paper are attempting to unravel the link between insider trading and E-governance and to address the impact of e-governance on insider trading. This paper explores some major case laws in the scope of insider trading. The paper also suggests that some specific and formal standards be adopted in order to improvise E-governance and to better track insider trading in India.

**Keywords:** E-governance, Corporate governance, SEBI, Insider trading, Prohibition, Regulation, SEBI

### I. INTRODUCTION

Insider trading is connected to E-governance and corporate value, as well as principal-agent issues, knowledge sharing, and other corporate governance challenges. Although insider trading on material nonpublic information is prohibited by laws (e.g., Rule 10b-5 of the Securities Exchange Act of 1934)<sup>1</sup>, previous studies show that insiders exploit their private information and earn significant abnormal profits from their trading (Seyhun (1986), Piotroski and Roulstone (2005), Jagolinzer (2009), Ravina and Sapienza (2010)). The profitability of insider trading, however, is significantly reduced when firms have policies that restrict insider trading. Trading of the shares of a corporation by an insider in a company is not a breach of laws<sup>2</sup>. In reality, trade of the stock of their own company by insiders, including executives, managers, and staff of the company, is a good aspect that companies promote. In simple words, trading on inside knowledge will benefit only those who know about it and not those who do not. It identifies that the board of director's role in the monitoring of businesses is main especially E-governance on insiders, as a principal mechanism of e-government and in particular studies, it is revealed that the effect of board independence, the board size, concentration of ownership, and institutional ownership restrict the use of knowledge by insiders. To state this simply, electronic governance or e-governance is the use of information and communications technology to track and regulate the operations of an entity. Technology may be used at all stages of government to support every function, whether that is in politics or business. UNESCO states that “E-governance may also be described as the accomplishment of government and administration through the digital platform and methods to speed up the procedures of communicating information to the public and various agencies.”

**E-governance** is applied to help accomplish SMART governance that means simple, moral, accountable, responsive, and transparent management of an organization. Better services include equipment of hardware, software technologies routing and networking, and a transformation of processes. India has gradually developed its e-governance from the automation of government institutions and the implementation of electronic governance in the corporate sector. Many governments are embracing e-governance with the aim of more citizen participation, some legislative reforms, a service-oriented mindset, and greater government accountability.

<sup>1</sup> “The Insider Trading and Securities Fraud Enforcement Act” (ITSFEA) and the “Stock Enforcement Remedies and Penny Stock Reform Act” (SERPSRA) make top management and the firm both responsible for employees “illegal trading”.

<sup>2</sup>Pritchard, Adam C. "United States v. O'Hagan: Agency Law and Justice Powell's Legacy for the Law of Insider Trading." *BUL Rev.* 78 (1998): 13.

**Corporate governance**, on the other side, is a mixture of regulations, processes, or legislation that governs, regulates, or controls corporations and companies.<sup>3</sup> The concept of corporate governance covers internal and external factors influencing stakeholder's interests, which include shareholders, consumers, vendors, governmental regulators, and administrators. The Management Board is responsible for developing a corporate governance structure that best matches up and incorporates business behavior with goals. A well-defined and enforceable framework benefits all those entities who are involved by ensuring that the organization complies with agreed moral practices, standardized behavior, and formal regulations.

The highlight of India's economy is the presence of a large number of public and private entities. Therefore, in order to manage the largest democracy like India, it is important to revitalize good e-government and e-governance from the base to the tip.

E-governance can also be defined as the adaptation of Information Technology to the operations of government to improve the efficiency of processes to make it SMART means Smart, Moral, Accountable, Responsive, and Transparent Governance.<sup>4</sup> Indian Government has started the implementation of the E-governance project state-wise. The road toward the emergence of good governance has been streamlined with methods provided by developments in the IT sector. Various advancements that have been made in the adoption of ICT resources have led nations throughout the globe to make their governance fiscal, effective and efficient. E-governance takes governance to a person's doorstep. It manages to push processes to provide an inclusive atmosphere with a firm concept of non-discrimination<sup>5</sup>. Under E-governance, customer service cannot be hindered by the class, color, language, and area or religion oceans. All citizens who meet the prescribed standards and criteria are entitled to privileges and are exempt from the judgmental biases associated with human participation. The period of e-governance would help to combat illegal money accumulation and the creation of a shadow economy. People have the right to get their worth for their money. E-governance offers the right approach for distributing information, improving sustainable development, and raising masses above the level of poverty.

This section highlights the common laws in India on rights to information and privacy that are the major components of e-governance. These are some of the laws which have been developed since the introduction of the e-governance framework:

- **"Right to Information Act", 2005:** India's Constitution has mandated the right to information within "Article 19" since its inception. This Act assures that the government operates transparently by mandating the Centralized and Provincial governments to provide information about the laws, guidelines, and policies to the people that they have framed and enforced, as well as including penalties in the scenario if the government loses control to do so. The Department of Information Technology is encouraging the adoption of technology to assist the government in providing people with information about it through the e-governance system, and the Central Information Commission has set up a website, [www.cic.gov.in](http://www.cic.gov.in), to access the information<sup>6</sup>
- **Information Technology Act, 2000:** Now that people trust the government with all of their personal details, security problems have emerged to obtain access to the e-governance network. Section 72 of the 'Information Technology Act 2000' protects the security and privacy of the data<sup>7</sup>. Section 43 of the 'Information Technology Act 2000' similarly protects computer systems from unauthorized access by imposing a huge penalty of up to 1 crore rupees.

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<sup>3</sup> Carney, Michael. "Corporate governance and competitive advantage in family-controlled firms." (2005): 249-265.

<sup>4</sup> Nirmaljeet Singh Kalsi, and Ravi K. "A strategic framework for good governance through e-governance optimization." *Program* (2015).

<sup>5</sup> Nair, Pradeep. "E-Governance: A step towards digital democracy." 2007.

<sup>6</sup> Saxena, Kul Bhushan Chandra. "Towards excellence in e-governance." (2005).

<sup>7</sup> Kolekar, Yogesh. "Protection of Data Under Information Technology Law in India." *Available at SSRN 2599493* (2015).

Insider trading is one of the most violent crimes on the faith of fair dealing in a capital market. The scope and stringency of the violation and penalties differ wildly from country to country. Insider trading allows investors to exchange stocks on sensitive details and those who don't know to remain on the losing end of the deal. There have been some claims in support of allowing insider trading for productivity reasons and as a way of rewarding a company's management and directors. Several countries do not have a ban on insider trading. <sup>8</sup>Certain nations, such as the US, do not automatically ban trade on the grounds of inside knowledge ownership<sup>9</sup>. The insider's fiduciary agreement with the business must occur before the employee can be punished. More blanket provisions (and cast a broader net) against selling by any insider are included in Indian regulations.

The United States was the first nation to pass legislation restricting insider trading <sup>10</sup>. The Thomas Committee was established in 1947 in India as the first attempt to handle this issue<sup>11</sup>. The findings of the committee were later reinforced by the passage of the Companies Act, 1956. Following the progression of the corporate sector, SEBI was founded in 1988. In 1992, there was the "SEBI Act" as well as the SEBI (Prohibition of Insider Trading) Regulations. This in turn made it mandatory for insiders to register their trades with the government in India. The primary goal of these provisions is to safeguard investors by preventing an insider from gaining an unfair advantage from insider trading. Major amendments were made in 2002 and 2008. Changes have been made to the SEBI's regulations in the year 2002 to better protect on-the-spot investors. The changes that were made in 2002 are notable since they required companies to enforce a code of conduct for their directors and officers, separating these duties, and preventing them from conducting their financial transactions with one another to the fullest extent possible. In 2008, three major rule changes were put in place that took effect.

### **The Companies Act, 2013- Provisions**

Insider trading is prohibited under the Act of 2013, and any insider as specified in the Act who is tried and convicted of insider trading faces a sentence of up to five years in prison and/or financial punishment. Insider trading (S 195(1)(a)) and price-sensitive information (S 195(1)(b)) are specified in the Act. There was no clause against insider trading in the 1956 Act. S 195 contains a clause that addresses acts taken by directors, key management personnel; any other individual, their associates, or employees based on unpublished price sensitive information can deal with stocks, either directly or indirectly. It states that no one, including a company's directors or key management staff, can engage in insider trading.<sup>12</sup>

- In S 2 (77) of the Companies Act, 2013, "relative" is defined as "any person who is connected to another if – (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is connected to the other in such a nature as may be prescribed<sup>13</sup>."
- The Regulation uses a different definition of "insider," defining it as "any person related to the business who has access to undisclosed price sensitive information." As a result, there are various meanings of the term "insider."
- UPSI is specified in the Companies Act of 2013.
- The 2013 Act applies to BOD's, Key Managerial Staff, and any other individual operating directly or indirectly on behalf of their representatives who may be charged with violating Section 195.
- The Regulation applies to "connected persons" who may face insider trading charges.

### **An Overview- SEBI Insider Trading Regulation:**

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<sup>8</sup> David, Bach and A. L. Newman. "Tran governmental networks and domestic policy convergence: Evidence from insider trading regulation." *International Organization* (2010): 505-528.

<sup>9</sup>Andreas, Peter. *Smuggler nation: how illicit trade made America*. Oxford University Press, 2013

<sup>10</sup> Securities and Exchange Act, 1934, 15 U.S.C. 78a.

<sup>11</sup> Anand K. Tripathi, 'The Concept of Insider Trading in India', (174), 2011.

<sup>12</sup> Rajanikanta K. "Companies Act, 2013—A New Wave of Effective Regulation and Corporate Governance in India." *International Journal of Advancements in Research and Technology* 3.7 (2014): 148-158.

<sup>13</sup> Das, Arindam, and Sourav Dey. "Role of corporate governance on firm performance: a study on large Indian corporations after implementation of Companies' Act 2013." *Asian Journal of Business Ethics* 5.1 (2016): 149-164.

- To stop insiders from taking advantage of price information, SEBI notified and enacted the SEBI (Insider Trading Regulations, 2015), on January 15, 2015. These regulations were placed to complement the structure of SEBI (NYSE insider trading regulations), which have been in force for two decades now following the 1992 requirement of law.<sup>14</sup>
- While the meaning of “unpublished price sensitive information” was expanded in 2015, the significance of this approach lies in what we call “broadening meanings” for officials engaged in selective sharing of the confidential pricing information.<sup>15</sup>
- So according to the new rules, even correspondence UPSI would be subject to penalization. But under SEBI, 1992 case was not the same. Additionally, Corporates still have a role to play in figuring out the way to specially control UPSI.

Insider trading in India is regulated by sections 195 of the **Companies Act, 2013** and sections 12A and 15G of the SEBI (Securities and Exchange Board of India) Act, 1992. In addition to these rules, the SEBI (Prohibition of Insider Trading), 2015, regulates insider trading in India. The two parts of the SEBI (Regulation, 2015) have both the provisions and the exceptions.<sup>16</sup>

Section 12 A (d) of the SEBI Act explicitly bans insider trading, other than mutual fund, trading though Section 15G lays a fine between 10 lakh to 25 crores rupees (3 times the amount of profit earned). Section 195 of the Companies Act, 2013 also includes a new prohibition that can be given to people in addition to definitions, stating that a jail sentence of five years and/or a fine of twenty-five million rupees can be levied.<sup>17</sup>

In 2018, under the Chairmanship of ‘T.K. Viswanathan’ SEBI formed a committee<sup>18</sup> to better understand the problems related to new regulations and provide some recommendations. After getting the Committee’s report<sup>19</sup>, the new regulations were introduced in India, which are currently in place against insider trading.

Negotiating, communicating, consulting, or obtaining "unpublished price sensitive information" is prohibited under the current Regulations, with the aim of preventing "insider trading." The Company previously referred to the regulation known as "The Code for the prevention of insider trading" as legal regulations that the Board members and Authorized Employees would follow. At that time, the earlier code was brought in-up to comply with regulation 9 of the SEBI (PROHIBITION OF INSIDER TRADING) regulation since, 2015.

“Code” means this Code of Conduct for ‘Prevention of Insider Trading’<sup>20</sup>.

Effective May 15, 2015, the Code shall be applied to and be obligatory on all Executives, Key Managerial Officials, Agents, and Authorized Employees of the Company, as well as their immediate family members, when dealing with the Company’s stocks<sup>21</sup>.

<sup>14</sup> Bali, Reema. "INSIDER TRADING IN INDIA-RULES TILL NOW." *International Journal of Research GRANTHAALAYAH* 8.9 (2020): 49-53.

<sup>15</sup> Hem Senthil Raj”, ‘Analysis of SEBI (prohibition of insider trading) Regulations, 2015’, 18th April,2015, last accessed on 1st September,2020.

<sup>16</sup> The Companies Act, 2013, Sec. 195 and Securities and Exchange Board of India Act, 1992, Sec. 12A. and Sec. 15G. Langevoort, D. "Insider Trading Regulation, 1991 Edition." New York: Clark Boardman (1991).

<sup>17</sup> Manish Agarwal and Harminder Singh. "Merger announcements and insider trading activity in India: an empirical investigation." *Investment Management and Financial Innovations* Vol 3 (2006): 140-154.

<sup>18</sup> SEBI, *Report of Committee on Fair Market Conduct "under chairmanship of Dr. T. K. Viswanathan"* (Jun 8, 2020, 19:30),

<sup>19</sup> *Ibid*

<sup>20</sup> Donald C. Langevoort, "Rereading Cady, Roberts: The ideology and practice of insider trading regulation." *Colum. L. Rev.* 99 (1999): 1319.

<sup>21</sup> Joseph Weiss. *Business ethics: A stakeholder and issues management approach.* 2014.

On August 21, 2019, SEBI adopted a third amendment to the SEBI (Prohibition of Insider Trading) to regulate insiders and to protect the interests of investors. Whistle-blowing programs shall be implemented in the pursuit of this goal. Any responsible individuals who supply useful information leading to disgorgement of at least INR 1 crore after the recovery, the concerned person will be rewarded with 10% of the amount recovered.

On July 17, 2020, the Securities and Exchange Board of India "SEBI" issued a more restrictive insider trading rules amendment. PIT amendment 2020, has instructed all organizations dealing with UPSI to create a structured database of UPSI information including the essence of shared content and identities of individuals sharing that UPSI (In addition to details of the recipients)<sup>22</sup>.

The guidelines include a new concept of price-sensitive information, as well as a prototype standard of conduct for insider trading prevention for publicly traded companies and other organizations including merchant bankers, legal firms, and experts who provide advice to publicly traded companies on stock trading. Additional reports were made in connection with shareholdings in the publicly traded companies at the beginning and at regular intervals<sup>23</sup>.

The very first restriction on insider trading is laid out in Regulation 3(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015, which specifies that no insider should transmit any UPSI relevant to a business to any individual. Any insider of the business was included in the phrase "any person." As a result, it notes that anyone in ownership of UPSI must not disclose it to outsiders or insiders<sup>24</sup>.

It does, however, make an exception, stating that such revelation of information can be permissible if it is made for lawful reasons, the performing of duties, or the fulfillment of contractual responsibilities. Another exception to this prohibition is found in sub-regulation 3 of regulation 3<sup>25</sup>, which allows certain UPSI to be revealed or accessed in two situations:

- When the Board members are of the objective and clear perspective that making an open offer due to takeover regulations will be in the better interests of the business.
- Even if no commitments exist, the Board of Directors believes that sharing such details is in the company's best interests.

## II. BASIC CONCEPTS ASSOCIATED WITH INSIDER TRADING

The term "**insider trading**" has multiple meanings, and it encompasses both legitimate and illegal activities. Insider trading occurs on a regular basis, as organizational leadership and the Board of Directors purchase, sells, or negotiate with their own corporation's shares under the boundaries of the company's trading standards and procedures<sup>26</sup>.

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<sup>22</sup> Kaur, Harpreet. "Securities Market in India: Regulation of Undesirable Practices by the Securities and Exchange Board of India.", 2018. 273-293.

<sup>23</sup> Coffee Jr, John C. "Introduction: Mapping the Future of Insider Trading Law: Of Boundaries, Gaps, and Strategies." *Colum. Bus. L. Rev.* (2013): 281.

<sup>24</sup> Ghosh, Anuradha. "The Need to Legalize and Regulate Insider Trading-An Analysis." *Christ University Law Journal* 9.1 (2020): 49-71.

<sup>25</sup> Manchikatla, Anil Kumar, and Rajesh H. Acharya. "Insider trading in India—regulatory enforcement." *Journal of Financial Crime* (2017).

<sup>26</sup> "Insider Trading in India", '[http://www.riskpro.in/download/insider\\_wp.pdf](http://www.riskpro.in/download/insider_wp.pdf)', accessed on 31st August,2020

“An act of trading, directly or indirectly, in the securities of a publicly listed company by any person, who may or may not be managing the affairs of such company, based on certain information, not available to the public at large, that can influence the market price of the securities of such company.<sup>27</sup>”

#### **Examples of Insider Trading:**

- a. A government official clearly applies his expertise on a new law that benefits a sugar exporting company and shall buy its stocks before it becomes publicly available
- b. Officers, executives, and employees of the corporation who exchanged the company's shares after knowing of important, sensitive corporate discoveries.
- c. Employees of law, finance, investment, and publishing firms who were provided with such knowledge to offer services to companies whose shares they exchanged.
- d. A high-level executive overhears a discussion about an amalgamation and realizes the implications for the industry, so he buys the company's stock in his parent's account.

**"Insiders"** are an individual who is or has been linked to the Organization and who is supposed sufficiently to have exposure to unpublished price-sensitive information concerning the shares of a company, that overall impacts the stock prices of the business.<sup>28</sup>

Directors, executives, the company's chairman, supervisor, MD/CEO/CFO, and all other appointed employees like external auditor, will be classified as Insiders. Insider trading can also apply to a terminated employee, but only if the employee was employed for at least 6 months previous to the activity of insider trading.

**"Connected person"** is a subset of the term "connected individual." Any person who is a director of a corporation or is presumed to be a director of that corporation by implication of section 307(10) of the Companies Act, 1956, is described as a "related person" under Regulation 2(c) of the Insider Trading Regulations. Companies under the same leadership, subsidiaries, Notaries & Share brokerage firms, Fund Managers, bankers to the subject, members of the Board of Directors of public financial institutions, and relatives of the above persons fall into this group. Section 6 of the Companies Act, 1956, determines who is a relative of a connected person<sup>29</sup>.

**"Unpublished Price Sensitive Information"** refers to any details about a company that, if made public, has the potential to substantially affect the prices of the shares of a company. Periodical fiscal performance of firms, dividend announcement, issue or buy-back of shares, any major growth prospects or implementation of new ventures, amalgamation, acquisitions or takeovers, dissolution of an entire or substantial part of the undertaking, and substantial improvements in the company's strategies, plans, or activities are examples of these.

**"Dealing in securities"** means listing, purchasing, selling or promising to subscribe or deal in securities by any individual, whether as a principal or broker. It simply refers to the purchase and sale of shares on the primary or secondary markets. The purchase can be made directly or by any of his family or corporations in which he has a significant stake.

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<sup>27</sup> Nishith D. Associates, 'Insider Trading Regulations- A Primer' (Jun. 8, 2020, 17:50)

<sup>28</sup> "SEBI (prohibition of insider trading), regulation" 2015.

<sup>29</sup> As defined under section 2(13), of Companies Act, 1956.

**“Prohibited”**- Although, in possession of UPSI, an insider cannot interact, advise, or obtain any unpublished price-sensitive information to any individual or trade-in securities. {Regulation 3}<sup>30</sup>.

In addition, if in ownership of any undisclosed price-sensitive information, Regulation 3 A prohibits the company from trading in stocks of another organization or an employee of the company.

The Insider Trading Regulations took effect on November 19, 1992, which apply to all publicly traded firms that are required to publish price-sensitive information including the financial reports, dividend/bonus announcements, merger and acquisition, and other significant developments that affect the company's stock prices.

Over time, the laws became tougher and tighter to close any gap that could be found. The SEBI's powers were improved to some degree as a result of the vulnerabilities exposed by alleged criminals in insider trading cases. Following that, substantial changes were made in 2002, 2008, and 2019. The SEBI implemented Prohibition of Insider Trading Laws, 2015 in 2015, which substituted the outdated regulations of 1992 and resolved several of the issues with the earlier regulations.

### **Means of controlling insider trading**

**Criminal Sanctions:** The one approach is by imposing strict laws on those who commit certain offences, as well as criminal punishments for them. Similar to every law enforcement initiative, this is intended to send a strong message to others to refrain from breaking the laws. With a conviction rate of less than 3% in India, SEBI should really concentrate on efforts to economically paralyze insider traders instead of the more high profile and far less successful criminal sanctions<sup>31</sup>. The recent actions against Hindustan Lever, India's biggest toiletries manufacturer, is an excellent illustration. Two years after they had possession of the case, the authorities have now handed it over to the prosecuting attorney to treat it as a criminal case.

**Civil and Administrative Sanctions:** Civil monetary fines and administrative agreements are like exemption from the industry without going to courts and is a more effective remedy with the improved powers vested to the regulator to impose the penalties of 25 crores or three times of the profit made, economic harm can more easily be inflicted and deterrence more effectively administered<sup>32</sup>. Unsurprisingly, the civil monetary fines are formulated in bad manner that sometimes, penalties would be nullified (or severely considered unconstitutional).

**Prophylactics:** The third way of attacking the problem is by encouraging the companies to practice self-regulation and taking prophylactic action<sup>33</sup>. This is part of the domain of E-governance in terms of creativity. A good mechanism of E-governance shows to the investors that the business is adequately self-regulated and to trust with their money. Besides banning acts that may not be acceptable, it has also been shown to contribute to shareholders' wealth in other ways, namely self-regulation. Managers are still able to act within the bounds of their statutory authority.

### **E-Governance in Insider Trading**

Insider trading is when someone trades a publicly traded company's stock or other shares based on unpublished price-sensitive information (UPSI). SEBI, the stock market authority, bans the exchange of UPSI, as a measure to avoid insider trading except in accordance with the provisions of valid purposes for the execution of duties or fulfillment of legal obligations<sup>34</sup>.

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<sup>30</sup> SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 3(1)

<sup>31</sup> Silver, Carole B. "Penalizing Insider Trading: A Critical Assessment of the Insider Trading Sanctions Act of 1984." *Duke LJ* (1985): 960.

<sup>32</sup> Thanitcul, Sakda, and Tir Srinopnikom. "Monetary penalties: An empirical study on the enforcement of Thai insider trading sanctions." *Kasetsart Journal of Social Sciences* (2018).

<sup>33</sup> Sachar, Roopanshi, and Afzal Wani. "Regulation of Insider Trading in India: Dissecting The Difficulties and Solutions Ahead." *Journal on Contemporary Issues of Law (JCIL) Vol 2* (2017).

<sup>34</sup> Manchikatla, Anil Kumar, and Rajesh H. Acharya. "Insider trading in India—regulatory enforcement." *Journal of Financial Crime* (2017).

As the necessity the control management and ownership of UPSI have become more important in recent years to discourage and punish insider trading, SEBI made substantial amendments to improve enforcement related to insider trading avoidance<sup>35</sup>. Thus, maintaining a Standardized Digital Database is added as an obligation for people who own or handle UPSI (Unpublished Price Sensitive Information). To guarantee that the database is not tampered through, it is also critical to enforce and retain a structured digital database with sufficient internal monitoring and inspections such as time-stamping and audit trails.

SEBI stated in July 2019 (later symbolized by an amendment in 2020), explaining that not only listed companies, even SEBI-registered middlemen and financial professionals such as audit firms, law firms, consultants, and others who manage UPSI of listed companies, must establish and maintain their digital documents and catalogs.

In effect, the July 2020 amendment confirmed that this database would specify the type of UPSI involved as well as the names of individuals with whom actual recipients exchanged such information. All collected data must be held for a period of eight years, and notably, if SEBI receives any information about a pending inquiry or proceeding, the important information in the organized digital database should be "protected until the conclusion of such cases."<sup>36</sup>

### III. INSIDER TRADING REGULATION IN "INDIA"

In India, the government of India has consistently set up committees to propose and review the legal system for insider trading. In 1948, in accordance with a related suggestion by the Cohen Committee in the United Kingdom, the Thomas Committee proposed the improvement of the notification process under corporate law<sup>37</sup>.

In June 1977, the Sachar Committee considered that Sections 307 and 308 of the Companies Act of 1956 were inadequate to combat the malaise of insider trading and proposed that transactions be more thoroughly reported by those with price-sensitive knowledge and that transactions by such individuals be banned during particular times.

The Patel committee was formed by the Government of India, which proposed that insider trading be regulated and declared as a crime with a constitutional ban and avoidance of such practices<sup>38</sup>. By statute, the stock exchange authorities should be empowered to take corrective measures to own their own and to bring civil and criminal prosecutions against criminals in order not to go unpunished. Another suggestion made by it was that people who exploit inside knowledge be therefore required by regulation to surrender to the stock exchanges, the benefit they may have made, or the amount equal to the damages they have avoided.

In 1989, the Abid Hussain Committee was considered to be the gateway to the implementation of insider trading legislation in India and suggested that adequate compliance mechanisms be addressed to a large degree, thus recommending that insider trading be criminalized with both civil and penal sanctions. It claimed that India's Securities and Exchange Board should draft the requisite regulations under which it is allowed to enact the provision.

Framing SOPs is also an effective method to regulate Insider trading in India. SOPs (Standard Operating Procedures) are process documents that describe how an operator can conduct a particular task. Standard Operating Procedures (SOPs) are directive-like collections of guidelines that cover those aspects of operations that contribute itself to a defined or structured procedure without sacrificing efficiency. Standardized protocols guide the Company's Promoters, Directors, and Senior Management in regulating,

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<sup>35</sup> Dey, Shantanu. "Insider Trading Regime in India: Learning Lessons from the US and UK Regulatory Experience." *Business Law Review* 37.1 (2016).

<sup>36</sup> Agarwal, Ishita. "AMENDMENT TO THE INSIDER TRADING REGULATIONS: INCENTIVE TO THE TRADERS VERSUS TIGHTENING THE LOOP." (2019).

<sup>37</sup> Cheffins, Brian R. "Does law matter? The separation of ownership and control in the United Kingdom." *The Journal of Legal Studies* 30.2 (2001): 459-484.

<sup>38</sup> Kumar, Praveen. *Communal Crimes and National Integration: A Socio-legal Study*. Readworthy Publications, 2010.



monitoring, and reporting trading to reduce the risk of suspicious insider trading by any Authorized Individual.

These SOPs should be considered in accordance with the following, among other things:

- SEBI (Prohibition of Insider Trading) Regulations 2015, as timely revised;
- Provisions of the Companies Act of 2013, as revised from time to time
- The company's code of corporate ethics and conduct;

Developing and preserving because it provides a code of ethics to guarantee that no Insider utilizes his or her position for personal gain or to provide advantages to any third party, with or without the permission of the Company this Code aims to provide instructions to "Authorized Personnel" for them to understand their responsibilities under the SEBI Regulations, including the steps to be undertaken when trading in the Company's securities.

#### Case Laws:

- **Dilip Pendse vs. SEBI<sup>39</sup>:**  
Nishkalpa was owned and controlled by the parent company, Tata Finance (or TFL), which is a publicly traded corporation. He was TFL's managing director for several years. Tata Finance was sure to face a major negative impact on earnings on March 31st of the following year, as Nishkalpa had lost nearly 79.37 crore rupees. Basically, this was a UPSI that Pendse knew about. This data was made public on April 30th, 2001. This means that any trade from March 31, 2001, to April 30, 2001, was almost definitely Insider Trading. Dilip Pendse transferred the details to his wife, who sold 2,90,000 shares in her name and in addition to the shares in the name of businesses owned by her and her father-in-law. The Securities and Exchange Commission penalized Dilip Pendse for insider trading. Here, investors are left in the drift showing that SEBI lacks a rigorous investigation and a cautious approach. SEBI failed to provide facts and/corroborate with the findings before the court in most of the cases.
- **Rakesh Agrawal vs. SEBI<sup>40</sup>:**  
MD of ABS Industries "Mr. Rakesh Agrawal", was involved in discussions with Bayer AG (a German corporation), about their desire to acquire ABS. Mr. Rakesh Agrawal with the help of his Brother in law purchased shares on the market and sold the shares before the tender offer was issued, thus violating rule 3 and rule 4 of the insider trading legislation. Honorable SAT held that: With respect to trading in securities when holding undisclosed price sensitive information, it was decided that the unfair advantage must be involved for an infringement to occur.

#### Few recommendations for enhancing e-governance so that insider trading can be properly monitored

- Creating a welcoming atmosphere is a requirement for effective e-Governance implementation. This can be done by actively encouraging e-Governance, combating government opposition to change, and raising public awareness to create demand for change.
- Government institutions at the federal and state levels must recognize e-Governance initiatives that can be introduced within their operational domains while keeping citizens' interests in mind, and instead of introducing all initiatives at once, these can be prioritized based on convenience of execution<sup>41</sup>.
- SEBI must develop an effective regulatory approach to address these issues of Insider trading, specifically the intrinsic gaps and threats that will eventually occur over a period of time.
- Capacity-building activities must address both organizational capacity building and technical and skills improvement of individuals involved in e-Governance projects for stopping Insider trading.

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<sup>39</sup> Chepuri, V., and Suvarchala Devi Parankusam. "Insider trading in capital markets." *ZENITH International Journal of Multidisciplinary Research* 8.11 (2018): 242-251.

<sup>40</sup> Singh, Arjun. "Insider Trading-Analysing the Indian Perspective." *Available at SSRN 2368299* (2013).

<sup>41</sup> Bandy, Mohamad Tariq, and Muzamil M. Mattoo. "Social media in E-governance: A study with special reference to India." (2013).

- In the effective implementation of e-Government initiatives related to Insider Trading the Technological solutions must be developed to encourage the use of "enterprise architecture".
- Autonomous agencies can evaluate the effectiveness or failures of e-governance projects on the grounds of criteria previously set.

#### IV. CONCLUSION

The most important feature of securities regulation is providing equity ownership to all investors. Injustice based on differing information should not be ignored. At the top of the laws, the rules, the SEBI should mandate an optional method for monitoring insider trading opportunities.

Rules infringement of E-governance will result in being penalized by the shareholders of the corporate. The implementation of E-governance ratings would provide corporate management with strong motivation to comply with these guidelines. Laws related to Insider trading have changed significantly from the time of its introduction. Laws have only become more complex when every new law has been passed. This has served as a reminder to us that now authorities see our collective misconduct as a major concern and have instituted new and stricter regulations to deal with it. Now, it cannot be taken for granted and the authorities take the protection of the laws in the region seriously and that any infraction would have grave major consequences.

Therefore, it is imperative that any person entering the stock market familiarizes themselves with these rules and restrictions to escape significant attention and sanctions in the future. Several measures that the SEBI introduced in the year 2002 have made insider trading rules even more stringent. It seems that insider trading has contaminated the stock market as a whole. Insider trading disrupts businesses. Reasonable attempts should be made to eliminate insider dealing at the outset, rather than a full termination.

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