INSIDER TRADING REGULATION IN INDIA: INTEGRATING THE SECURITIES MARKETS CODE, 2025 WITH GLOBAL BEST PRACTICES

Umang Dubey, LL.M., School of Law, ITM University, Gwalior

Kaushal Sharma, Assistant Professor, School of Law, ITM University, Gwalior

ABSTRACT

Insider trading remains one of the most significant threats to the integrity, fairness, and efficiency of securities markets worldwide. It involves the exploitation of material, non-public information by corporate insiders or other persons in possession of such information for personal financial gain, often at the expense of ordinary investors who lack access to the same information. This practice not only distorts price discovery and market liquidity but also erodes public confidence in the capital markets, which are essential for economic growth and resource allocation. In India, the regulatory framework governing insider trading has evolved considerably over the decades, beginning with early committee recommendations in the post-independence period and culminating in the comprehensive SEBI (Prohibition of Insider Trading) Regulations, 2015. Despite these advancements, challenges related to enforcement, definitional clarity, technological adaptation, and cross-border cooperation have persisted. The introduction of the Securities Markets Code, 2025 marks a transformative development by statutorily embedding the prohibition of insider trading within the broader concept of market abuse under Section 93, while introducing robust criminal penalties under Section 96. This article provides a detailed and critical examination of India's insider trading regime, integrating insights from the Securities Markets Code, 2025 with comparative perspectives from the United States, United Kingdom, and European Union. It analyses the conceptual foundations, historical evolution, key provisions, enforcement mechanisms, and persistent gaps in the Indian framework. Drawing upon landmark judicial decisions and global best practices, the article proposes targeted reforms aimed at strengthening deterrence, enhancing surveillance capabilities, improving definitional precision, and fostering greater international regulatory cooperation. The ultimate objective is to ensure that India's securities markets operate with the highest standards of integrity, transparency, and investor protection, thereby supporting sustainable capital formation and economic development.

I. Introduction

Insider trading constitutes a fundamental challenge to the principles of fairness, transparency, and equal access that underpin modern securities markets. At its core, insider trading occurs when individuals who possess material, non-public information often referred to as unpublished price-sensitive information (UPSI) in the Indian regulatory context use that information to trade securities or communicate it to others who subsequently trade, thereby securing an unfair advantage over market participants who do not have access to the same information. According to Black's Law Dictionary, insider trading refers to the utilisation of material, non-public knowledge in the trading of a company's shares by a corporate insider or another individual who owes a fiduciary obligation to the company.[1]

The practice of insider trading has profound implications for market integrity. When insiders exploit confidential information, they effectively transfer wealth from uninformed investors to themselves, undermining the level playing field that is essential for investor confidence. This not only discourages retail participation but can also deter institutional and foreign investment, as sophisticated investors become wary of markets perceived to be rigged in favour of a privileged few. Furthermore, insider trading distorts the price discovery mechanism, which is critical for the efficient allocation of capital in the economy. Prices that do not fully reflect all available information lead to misallocation of resources, higher costs of capital for honest issuers, and increased systemic risk.

India recognised the dangers of insider trading relatively early in its post-independence regulatory journey. The Thomas Committee, constituted in 1948, was among the first formal bodies to examine the issue of short-term profitability and the need for constraints on insider dealings.[2]

Over the subsequent decades, various committees, including the Sachar Committee (1977), Patel Committee (1984), and Abid Hussain Committee (1989), progressively built the case for dedicated legislation. This culminated in the establishment of the Securities and Exchange Board of India (SEBI) under the SEBI Act, 1992, and the promulgation of the SEBI (Insider Trading) Regulations, 1992. These regulations were substantially strengthened over time, with

[1]Black's Law Dictionary 898 (10th ed. 2014).
[2]Report of the Committee on Short-term Profitability (Thomas Committee), 1948.

the most significant overhaul occurring through the SEBI (Prohibition of Insider Trading) Regulations, 2015, which remain the cornerstone of India's current framework.[3]

Despite these regulatory advancements, enforcement has often been criticised as reactive rather than proactive, with relatively low conviction rates in serious cases and a heavy reliance on civil penalties rather than criminal sanctions. High-profile cases such as SEBI v. Hindustan Lever Ltd. (1998) and Rakesh Agarwal v. SEBI (2001) highlighted both the prevalence of insider trading and the difficulties in proving violations under the existing framework.[4] [5]

The Securities Markets Code, 2025 (Bill No. 200 of 2025) represents a paradigm shift in India's approach to securities regulation. By consolidating the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, and the Depositories Act, 1996 into a single comprehensive legislation, the Code provides a unified statutory foundation for market regulation. Crucially, it elevates the prohibition of insider trading from a purely regulatory construct to a statutory prohibition embedded within the broader offence of market abuse under Section 93. Section 96 further introduces stringent criminal penalties, including imprisonment of up to ten years and substantial fines. This legislative development necessitates a fresh and comprehensive analysis of India's insider trading regime in light of both domestic needs and international best practices.[6] [7]

This article seeks to provide such an analysis. It examines the conceptual underpinnings of insider trading regulation, traces the historical evolution of India's framework, analyses the key provisions of the Securities Markets Code, 2025, undertakes a comparative study with the United States, United Kingdom, and European Union, identifies persistent challenges, and offers targeted recommendations for reform. The analysis draws extensively upon judicial precedents, regulatory developments, and scholarly literature to present a balanced and forward-looking perspective on strengthening India's insider trading regime.

II. Conceptual Framework and Regulatory Imperative of Insider Trading

Understanding insider trading requires distinguishing between its legal and illegal forms. Legal

[3]Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended).
[4]SEBI v. Hindustan Lever Ltd., Writ Petition No. 1837 of 1998 (Bombay High Court).
[5]Rakesh Agarwal v. SEBI, Appeal No. 33 of 2001 (Securities Appellate Tribunal).
[6]The Securities Markets Code, 2025, § 93 (Bill No. 200 of 2025).
[7]Id. § 96.

insider trading occurs when corporate insiders such as directors, key managerial personnel, or designated persons trade in the securities of their company in compliance with applicable disclosure requirements and during permitted trading windows, without possessing or using any unpublished price-sensitive information. Such trading is considered legitimate because it occurs on a level playing field where all material information has already been disclosed to the market.

Illegal insider trading, on the other hand, involves the use of UPSI for personal benefit or to avoid losses. This includes not only direct trading by the person in possession of UPSI but also the communication of such information to others (tipping) who then trade on the basis of that information. The distinction is critical because insiders, by virtue of their position, inevitably possess sensitive information. The regulatory challenge lies in preventing the misuse of that information without unduly restricting legitimate trading activities that contribute to market liquidity.

The economic rationale for regulating insider trading rests on several pillars. First, insider trading creates information asymmetry that disadvantages retail and institutional investors who do not have access to the same information. This asymmetry leads to a wealth transfer from uninformed traders to insiders, which is widely regarded as inequitable. Second, the perception that markets are rigged in favour of insiders discourages participation, reduces liquidity, and increases the cost of capital for issuers. Third, unregulated insider trading can distort price discovery, leading to inefficient allocation of capital across the economy. Empirical studies have shown that markets with strong insider trading prohibitions tend to exhibit greater liquidity, lower volatility, and higher levels of investor participation.

From an ethical and corporate governance perspective, insider trading represents a breach of fiduciary duty. Corporate insiders owe duties of loyalty and care to the company and its shareholders. Using confidential information for personal gain violates these duties and undermines the trust that is fundamental to the principal-agent relationship between shareholders and management. Landmark decisions such as Dirks v. SEC in the United States have reinforced the principle that insiders who receive UPSI by virtue of their position must either disclose the information or refrain from trading.[8]

[8]Dirks v. SEC, 463 U.S. 646 (1983).

Regulation of insider trading therefore serves multiple interconnected objectives: protecting investors by ensuring equal access to material information, preserving market integrity and the efficiency of price discovery, upholding fiduciary standards and corporate governance norms, and maintaining public confidence in the securities markets as fair and transparent mechanisms for capital formation. These objectives are not merely theoretical; they have direct implications for economic growth, as robust capital markets are essential for mobilising savings and directing them towards productive investments.

III. Historical Evolution of Insider Trading Regulation in India

India's regulatory response to insider trading has developed incrementally over more than seven decades, reflecting both domestic experiences and international influences. The journey began with the Thomas Committee in 1948, which was tasked with examining constraints on short-term profitability in the context of the newly independent nation's economic priorities. The Committee's recommendations led to the incorporation of disclosure requirements for directors and managers under the Companies Act, 1956, although these provisions lacked effective enforcement mechanisms and a clear conceptual definition of insider trading.

The need for more robust regulation became evident in the 1970s and 1980s as India's capital markets expanded and instances of market manipulation and insider dealing came to light. The Sachar Committee (1977) and Patel Committee (1984) both emphasised the necessity of dedicated legislation prohibiting insider trading. The Patel Committee, in particular, provided a clear definition of insider trading as the exploitation of confidential, price-sensitive information by company management or their affiliates to obtain an unjust trading advantage over the public. These recommendations laid the groundwork for the establishment of SEBI and the promulgation of the SEBI (Insider Trading) Regulations in 1992.

The 1992 Regulations represented a significant advancement by introducing the concepts of "insider" and "price-sensitive information" and prohibiting both trading and communication of such information. However, the initial framework suffered from several limitations, including ambiguous definitions, limited investigative powers, and a lack of clarity regarding the burden of proof. These shortcomings were exposed in several high-profile cases. In SEBI v. Hindustan Lever Ltd. (1998), SEBI alleged that the company had traded in the shares of Brooke Bond Lipton India Ltd. on the basis of unpublished price-sensitive information relating to a proposed merger. The case highlighted the difficulties in establishing violations and the need for stronger

procedural and substantive provisions.

Similarly, Rakesh Agarwal v. SEBI (2001) involved allegations against a company executive who traded in shares ahead of a takeover announcement. The Securities Appellate Tribunal's decision in this case underscored the evidentiary challenges in insider trading prosecutions and the need for clearer standards regarding what constitutes UPSI and how possession and use of such information should be proved.

In response to these experiences and evolving market realities, SEBI undertook a comprehensive review of the insider trading regulations. This process culminated in the SEBI (Prohibition of Insider Trading) Regulations, 2015, which introduced several landmark changes. The 2015 Regulations expanded the definition of "insider," introduced the concept of "designated persons," established a rebuttable presumption of guilt when trading occurs while in possession of UPSI, strengthened disclosure obligations, mandated the maintenance of structured digital databases, and required companies to formulate codes of conduct and fair disclosure policies. These reforms significantly enhanced SEBI's enforcement toolkit and aligned India's framework more closely with international standards.

Subsequent amendments in 2018, 2019, and 2020 further refined the framework, particularly in relation to the definition of UPSI, legitimate purpose exceptions, and disclosure requirements for intermediaries. Despite these improvements, scholars and practitioners have continued to highlight gaps in enforcement intensity, technological capabilities, and the balance between deterrence and legitimate market activity. The Securities Markets Code, 2025 addresses many of these concerns by providing a statutory foundation and introducing criminal sanctions, thereby marking the beginning of a new phase in India's insider trading regulation.

IV. The Securities Markets Code, 2025: A Transformative Framework

The Securities Markets Code, 2025 constitutes the most comprehensive legislative reform in India's securities regulation since the establishment of SEBI. By consolidating three major statutes the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, and the Depositories Act, 1996 into a single Code, it provides a coherent and modern statutory architecture for the regulation of securities markets. One of the most significant innovations is the explicit statutory prohibition of insider trading as a form of market abuse under Chapter XII.

Section 93 of the Code prohibits any person from directly or indirectly engaging in insider trading. It further prohibits dealing in securities while in possession of material or non-public information and communicating such information to any other person in a manner that contravenes the provisions of the Code or the rules and regulations made thereunder. The provision also covers related market abuse conduct, including the publication of false or misleading information with intent to manipulate prices and the placement of orders while in possession of non-public information regarding substantial impending transactions. This broad formulation modernises and expands the scope of prohibited conduct beyond the traditional insider trading paradigm.

Section 96 introduces criminal liability for market abuse, including insider trading. Any person who commits, attempts to commit, or abets the commission of market abuse shall be punishable with imprisonment for a term which may extend to ten years, or with fine which shall not be less than ten lakh rupees but may extend to twenty-five crore rupees, or with both. This represents a deliberate policy shift towards treating serious integrity offences with criminal sanctions, while most other regulatory contraventions are addressed through civil penalties and administrative directions. The retention of criminal penalties specifically for market abuse underscores the gravity with which the legislature views insider trading and related misconduct.

The Code also introduces several procedural and institutional reforms that strengthen enforcement. It establishes an eight-year limitation period for initiating inspection or investigation, with carve-outs for matters having systemic impact or referred by investigating agencies. It enhances the independence of adjudicatory processes by prohibiting officers who authorised or participated in an investigation from acting as adjudicating officers in the same matter. Furthermore, the Code strengthens provisions relating to disgorgement of unlawful gains, restitution to affected investors, interim orders, and asset attachment. These measures collectively aim to improve the effectiveness, fairness, and timeliness of enforcement actions against insider trading and other market abuses.

Importantly, the Code preserves SEBI's power to make detailed regulations on specific aspects of insider trading prevention, including the definition of material non-public information, disclosure norms, conduct requirements, and compliance mechanisms. This hybrid model statutory prohibition combined with flexible subordinate legislation allows for both legal certainty and regulatory adaptability in a rapidly evolving market environment. The Code thus

provides a robust foundation upon which SEBI can build a more effective insider trading regime aligned with global best practices.

V. Comparative Analysis with Global Jurisdictions

United States

The United States pioneered modern insider trading regulation through judicial interpretation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.[9]

The classical theory of insider trading liability, articulated in Chiarella v. United States (1980), holds that a corporate insider who trades on the basis of material non-public information violates a fiduciary duty to the company's shareholders.[10]

The misappropriation theory, affirmed in United States v. O'Hagan (1997), extends liability to persons who trade on confidential information in breach of a duty owed to the source of the information, even if they owe no duty to the shareholders of the company whose securities are traded.[11]

The US regime is characterised by aggressive enforcement by the Securities and Exchange Commission (SEC), sophisticated market surveillance technology, strong whistleblower incentives under the Dodd-Frank Act, and significant criminal penalties, including lengthy prison sentences and substantial fines. High-profile cases such as those involving Raj Rajaratnam and Rajat Gupta have demonstrated both the reach and the deterrent effect of US enforcement.

United Kingdom and European Union

The United Kingdom regulates insider dealing primarily through the Financial Services and Markets Act 2000 and the Criminal Justice Act 1993, supplemented by the retained elements of the EU Market Abuse Regulation.[12]

[9]Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b) (US).
[10]Chiarella v. United States, 445 U.S. 222 (1980).
[11]United States v. O'Hagan, 521 U.S. 642 (1997).
[12]Financial Services and Markets Act 2000 (UK); Criminal Justice Act 1993 (UK).

The Financial Conduct Authority (FCA) adopts a dual-track approach, pursuing both civil and criminal sanctions. The EU's Market Abuse Regulation (MAR) provides a harmonised framework across member states, prohibiting insider dealing, unlawful disclosure of inside information, and market manipulation, with significant administrative and criminal penalties.[13]

Both the UK and EU regimes emphasise prevention through robust disclosure obligations, market surveillance, and cooperation among regulators. They also provide for substantial fines and, in serious cases, imprisonment.

Lessons for India

The Securities Markets Code, 2025 brings India closer to these global standards by providing a clear statutory prohibition and criminal penalties. However, India can draw further lessons in areas such as technological surveillance capabilities, whistleblower protection and incentives, extraterritorial jurisdiction, and the balance between administrative efficiency and procedural fairness. Strengthening these aspects will be essential for India to achieve enforcement outcomes comparable to leading jurisdictions.

VI. Persistent Challenges and Gaps in India's Framework

Despite significant legislative and regulatory progress, India's insider trading regime continues to face several structural and operational challenges. Enforcement remains predominantly reactive, with limited proactive detection capabilities. The reliance on circumstantial evidence and the difficulty of proving both possession of UPSI and its use in trading contribute to relatively low conviction rates in criminal proceedings. Many cases result in consent orders or monetary penalties rather than robust deterrence through criminal sanctions.[14][15]

Definitional ambiguities persist, particularly regarding the precise scope of "material non-public information" and the contours of the "legitimate purpose" exception for disclosure of UPSI. These ambiguities can create uncertainty for market participants and complicate enforcement. Technological infrastructure for real-time surveillance of complex trading patterns, including those involving high-frequency trading and algorithmic strategies, requires substantial enhancement. Cross-border cooperation mechanisms, while improving, remain

[13]Market Abuse Regulation (EU) No 596/2014.
[14]See generally Sumit Agrawal & Robin Joseph Baby, SEBI Act: A Legal Commentary (Taxmann).
[15]Ayan Roy, Project Report on Insider Trading in India (SSRN, 2010).

inadequate for investigating and prosecuting sophisticated transnational insider trading schemes. Finally, investor remedies are limited; unlike the United States, India lacks a robust private right of action or effective class action mechanism for victims of insider trading.

VII. Recommendations for Strengthening the Regime

To fully leverage the opportunities presented by the Securities Markets Code, 2025 and address existing gaps, India should pursue a multi-pronged reform agenda. First, SEBI should significantly enhance its technological surveillance capabilities by deploying advanced artificial intelligence and machine learning tools capable of detecting anomalous trading patterns in real time. Integration of these tools with the structured digital databases maintained by listed companies and intermediaries will improve detection rates and evidentiary quality.

Second, SEBI should issue comprehensive regulations under the Code clarifying key definitions, expanding safe harbours for legitimate business communications, and providing detailed guidance on trading plans, Chinese Walls, and pre-clearance procedures. Greater clarity will reduce compliance costs and litigation while strengthening enforcement.

Third, dedicated resources should be allocated to specialised investigation and prosecution units focused on market abuse, with a mandate to pursue criminal sanctions under Section 96 in appropriate cases. This will strengthen deterrence and signal the seriousness with which insider trading is viewed.

Fourth, India should introduce robust whistleblower incentives and protections, modelled on successful international frameworks, to encourage reporting of insider trading and other market abuses. Fifth, SEBI should actively pursue enhanced information-sharing arrangements and mutual legal assistance with foreign regulators to address cross-border misconduct. Sixth, legislative reforms should facilitate class actions and establish mechanisms for investor compensation from disgorged amounts. Finally, a standing expert committee should be constituted to periodically review the Code and regulations in light of market developments and international best practices.

VIII. Conclusion

Insider trading poses a persistent and evolving threat to the integrity of securities markets and the interests of investors. India has made commendable progress in developing its regulatory

framework, from the early recommendations of the Thomas Committee to the comprehensive SEBI (Prohibition of Insider Trading) Regulations, 2015, and now the statutory foundation provided by the Securities Markets Code, 2025. The Code's explicit prohibition of insider trading as market abuse and the introduction of criminal penalties represent significant advancements that align India more closely with global standards.

However, legislative reform alone is insufficient. Effective implementation, technological modernisation, definitional clarity, robust enforcement, and international cooperation are essential to translate the promise of the Code into tangible improvements in market integrity and investor protection. By pursuing the recommendations outlined in this article, India can build upon the strong foundation laid by the Securities Markets Code, 2025 and develop a world-class insider trading regime that deters misconduct, facilitates efficient capital markets, and commands the confidence of domestic and international investors. The journey towards truly fair and transparent securities markets continues, and the Code provides both the legal architecture and the impetus for the next phase of this important endeavour.

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