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Insider Trading in India

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ABSTRACT

This research paper delves into the critical issue of insider trading within India's securities markets and evaluates the effectiveness of the Securities and Exchange Board of India (SEBI) regulations, specifically the SEBI (Prohibition of Insider Trading) Regulations of 2015. Insider trading's profound impact on market integrity and investor trust is highlighted, with a focus on the transition from the earlier 1992 regulations to more recent 2015 regulations. These rules are intended to address the shortcomings of the prior ones and reduce the likelihood of insider trading. Indian company legislation mandates the creation of a yearly account that summarizes the business's financial results for the previous year. It also mandates that the business disclose its assets and obligations at the conclusion of each bookkeeping period. To guarantee accountability in the business's administration, this has been made available. This meeting is held to monitor and evaluate the operations of the business. Nonetheless, some data is known to the employers of the business straightforwardly or who are generally associated with it before it is really disclosed. For instance, a chartered accountant audits the company's financial data; business directors make decisions; etc. Because they have access to this price-sensitive, unpublished information, those associated with the companies are in a better position than those who do not. insider trading, one of the most severe charges in the securities market, is the result of such a transaction. Considering this, the current study paper provides a critical analysis of SEBI's 2015 insider trading regulations and examines the concept of insider trading in India. The study also underscores the significance of annual reporting and discloser requirements imposed by Indian company legislation, which plays a crucial role in transparency and accountability. Furthermore, it examines the susceptibility of individuals associated with companies to access sensitive, price-sensitive information and the consequent risk of insider trading. Through case studies, the paper illustrates real-world examples of insider trading in India and its regulatory challenges. Ultimately, the study aims to provide insights into the current state of insider trading regulations in India and suggests areas for improvement to strengthen market integrity and investor protection.

Keywords: SEBI, Securities Market, Regulations, Insider

I. INTRODUCTION

The introduction of this research paper immerses us in the intriguing landscape of insider trading, phenomenon that has captivated financial markets worldwide. It begins by casting a spotlight on two pivotal moments in the evolution of insider trading discourse. In 1992, a prominent Bombay Stock Exchange figure boldly claimed that insider trading was the most common form of trading in India, sparking a closet examination of the issue. In 1998, Arthur Levitt, the- Chairman of the U.S. Securities and Exchange Commission (SEC), unequivocally stated that insider trading has no place in any fair and law-abiding economy[1].

The narrative then navigates into the core concept of insider trading. It elucidates insider trading as the purchase or sale of securities of a publicly traded company by an individual, possibly with affiliation to the company's management. Crucially, these individuals leverage undisclosed information, inaccessible to the public, which possesses the potential to exert a profound impact

on the market value of the company's securities. This clandestine activity, while potentially lucrative for those with inside knowledge, can inflict substantial loose on shareholders unaware of the privileged information, thus posing a significant threat to their interests. The international backdrop of insider trading regulation unfolds, highlighting the pioneering role played by the United States. It was the United States that, notably, became the first nation to formally sanction regulations aimed at controlling insider trading. This decision, initially met with astonishment, challenged the global perception that access to confidential information for personal benefit was a hallmark of success and authority. Even in places like the United Kingdom, where such practices were once satirically labeled "the crime of being something in the city" in 1973, the understanding gradually evolved, necessitating regulatory interventions.

At the heart of insider trading discourse lies a fundamental conflict between "Efficiency" and "fairness". The paper underscores the inherent unfairness of allowing individuals with varying levels of information about a company's activities to engage in trading its publicly listed assets. The imbalance of information can result in substantial economic disparities, as insider use their privileged, price- sensitive knowledge to gain advantage or avoid losses. Consequently, numerous nations, following the lead of the United States, have instituted regulations to curtail insider trading. India's unique role in the global context of insider trading regulation is acknowledged. The nation was among the first to recognize the pernicious effects of insider trading on corporate governance, financial markets, and the rights of public shareholders. This recognition traces its roots back to 1948 when a committee led by Mr. P.J. Thomas initiated the first steps towards regulating insider trading in India.

The narrative segues into an exploration of India's regulatory landscape, emphasizing the pivotal role of the Securities and Exchange Board of India (SEBI). It highlights two critical regulations governing insider trading in India: the SEBI (prohibition of insider trading) Regulations of 1992 and the SEBI act of 1992.

II. HISTORY OF INSIDER TRADING IN INDIA

Mehta rose to conspicuousness in the Indian value market by 1990. He began purchasing substantial shares. He was most keen on the portions of Related Concrete Organization (ACC), the biggest concrete maker in India, and it is realized that the scalawag expanded the cost of the concrete organization from 200 to 9000 (roughly) on the financial exchange, an ascent of 4400%. Before the Indian stock market was automated, the Harshad Mehta fraud occurred after economic liberalization[2]. As a result, the badla system was eliminated, and the stock market was subsequently automated and shares were converted to digital form. These common customers, like Damayanti Group, whose entire decision-making process took place at Harshad Mehta's office in Nariman Point, accumulated unusually large 47 positions in these scrips, including those of Sterlite, BPL, and Videocon. The market's balance was disturbed, leading to an artificial market for certain stocks. Damyanti Group took advantage of the rise in hawala prices during consecutive settlements to expand their positions in carry forward, pay margins, and make additional cash purchases at both the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE), using profits made from the price hike. They also employed the badla system for leading offer transactions, using acquired shares to generate money. It was discovered that Harshad Mehta and Damayanti Group owned significant concentrated holdings in the stocks and utilized several intermediaries to conduct business. Approximately 40% of employment at Sterlite was related to this job SEBI's decision to bar Sterlite Industries from participating in the capital market for two years resulted in a lawsuit against the company and its leaders, Shri Anil Aggarwal, Shri Tarun Jain, and Shri Shashikant. However, in 2002, the Securities Appellate Tribunal (SAT) overturned SEBI's decision. Unfortunately, individual investors who had placed their trust in the government, regulators, and other organizations to uphold the market's integrity were the most affected, while BPL and Videocon escaped punishment. Anand Rathi's resignation as President of the Bombay Stock Exchange (BSE) did little to quell the panic rush in the stock market, and many investors were almost bankrupted. Ketan Parekh, who received training from Harshad Mehta, was found guilty of a scam in 2001 and barred from trading on Indian stock exchanges until 2017. He also received a two-year prison sentence in 2008. Aiyer (2003), who was part of the Joint Parliamentary Council (JPC), stated that the Indian stock market collapsed between March and April 2001 due to the Ketan Parekh scam. The scam involved several banks, corporations, and brokers exploiting every opportunity left by the government and regulators, and it took more than two years for the financial markets to recover. The ongoing irregularities in all major banks and the network of relationships between banks, agents, and businesses seeking to undermine market integrity made the Ketan Parekh scam possible. The misuse of the Mauritius route for stock market investments and the Calcutta Stock Exchange payment crisis were the primary causes of this crisis. In 2012, Mr. V.K. Kaul, a non-executive independent member of Ranbaxy Laboratories Ltd., faced legal action for alleged insider trading by SEBI [3].

The AP High Court allowed the merger of Satyam Computers despite ongoing debt recovery proceedings due to the fraud committed by the company's managing director and CEO, Mr. Ramalingam Raju, which led to its downfall. While Harshad Mehta and Ketan Pareek were the focus of SEBI and the Indian legal system, no significant actions were taken against any major companies for insider trading allegations in India. In contrast, the United States took action against Rajat Gupta, a director of several companies, for disclosing confidential information to Raj Rajaratnam, the founder and Managing General Partner of Galleon Management, a hedge fund investment advisory firm. The confidential information was then used for trading, and both defendants were found guilty and imprisoned in one of the largest insider trading cases in American history. Similarly, the Enron promoters were subjected to severe action for insider trading while running the company.

III. INSIDER TRADING AND ITS REGULATION IN INDIA

India is perhaps of the quickest developing economy on the planet, and its monetary business sectors are developing quickly also. Nonetheless, this development has likewise been joined by an increment monetary wrongdoing, including insider exchanging.
Insider exchanging is the unlawful trading of protections situated in material, non-public data. It is a significant wrongdoing since it subverts the honesty of the protections markets and gives insiders an out of line advantage over different financial backers.
India has an exhaustive administrative structure set up to forestall insider exchanging. The Securities and Exchange Board of India (SEBI) is the essential controller of the protections markets in India, and it has given various guidelines to address insider exchanging.
One of the key guidelines is the SEBI Regulations, 2015, these guidelines characterize insider exchanging and deny insiders from taking part in insider exchanging. Insiders are characterized as people who approach material, non-public data about an organization by excellence of their position or work.
The regulations likewise expect insiders to unveil their property in the organization's protections and to swear off exchanging those protections during specific periods, like before the declaration of monetary outcomes.

Apart from the regulatory framework, SEBI also actively monitors insider trading laws, it has its own insider trading department which investigates suspected insider trading. Sebi additionally has the power to impose civil and criminal penalties against persons discovered to be involved in insider trading. Regardless of regulatory and aggressive enforcement with the aid of the securities and exchange Board of India (SEBI), insider trading stays a problem in India. In current years, there have been some of high-profile insider buying and selling instances concerning executives, employees and other insiders of publicly traded businesses. one of the problems with preventing insider trading is that it is hard to discover. Insider trading often takes place covertly and gathering evidence of insider trading can be difficult. another problem is that country wide change policies are complicated and tough to interpret. this can lead to confusion and confusion amongst insiders and other marketplace individuals. in spite of those challenges, SEBI has made huge progress in fighting insider trading in India. The regulatory framework is strong and SEBI actively video display unit's insider trading. However, more needs to be done to educate insiders and other market participants about insider trading laws and prevent insider trading.

IV. DISCUSSION

The first case of insider trading faced by India was during 1940's. in the report of the Importation Committee, led by P.J. Thomas identified several cases in 1948 where directors, officers, agents and accountants were in possession of confidential information about the financial state of the company, such as declaring dividends, issuing bonus shares or entering into a lucrative contract before disclosure.
The Bhabha Committee also suggested in 1952 that the business require the directors to disclose their share sales and purchases in a separate register.
"Sections 307 and 308" were added to the "Companies Act of 1956" after taking into consideration the committee's suggestions. Where "Section 307" required companies to maintain a register to track the shares that directors owned in the company and "Section 308" mandated that directors and those presumed to be directors disclose their ownership interests in the company, the Manager of the Company was later added to such section and required to make the required disclosure in accordance with the "Companies Amendment Act, 1960."
In 1978, the Sacher Committee's report recommended that India should have stronger laws to gather information regarding transactions where one party may have gained an unfair advantage by obtaining price-sensitive information.
The Patel Committee, led by "G. S. Patel," provided a good definition of insider trading in their report from 1986, stating that insider trading occurs when management of a company trades shares based on confidential, price-sensitive information that is not revealed to the public. Additionally, it was suggested that the SCRA, 1956 be amended to permit the exchanges to implement strict insider dealing regulations.

Moreover, the "Abid Hussain Committee" in 1989 suggested that the illegal practice of insider trading should be covered under both civil and criminal law and SEBI should implement stricter regulations to curb it.
The SEBI Regulations, 1992, which were later amended in 2022, were create I response to the need for proper and strict laws to deal with those who engage in unfair practices in financial markets.

The problem must be investigated
Insider trading is understood as the unethical practice of securities trading by persons with access to non -public information. Despite various legislative reforms implemented in India, regulatory bodies have not been able to completely eliminate insider trading from the financial markets. According to the regulator, "criminals are becoming smarter and do not leave traces in traditional channels". Therefore, the agency is forced to find new ways to hold them accountable.

Insider trading begins with the acquisition of "unpublished price sensitive information" (UPSI), which is then distributed to a select group of individuals to unfairly exploit information that would not be possible without it. The number of breaches is currently increasing rapidly as investors are given more freedom and information to trade in the financial markets.
This clearly shows that SEBI has tried to address this issue by putting in place the necessary laws and regulations to punish those who try to exploit loopholes in government reforms and gains an unfair advantage.

Over the years, there have been advancements in the laws that regulate insider trading. The SEBI (Prohibition of Insider Trading) Regulations, 2015 replaced the previous SEBI (Prohibition of Insider Trading) Regulations, 1992, and became effective on April 1, 2019. In December 31, 2018, SEBI amended the regulations to address several concerns, such as:

1. These amendments covered the disclosure of certain employees and other connected people who, prior to the changes, were exempt from the Regulations' requirement to disclose their access to "UPSI."
2. To prevent rules from being broken, the phrase "legitimate purposes" was made more explicit.
3. A few drafting ambiguities that caused market players to be uncertain about a few provisions were also resolved.

Additionally, a recent Regulations amendment, which took effect on December 26, 2019, provides the authorities with additional assistance in dealing with "insider trading." This help incorporates monetary compensations to the clue to reinforce the structure for social occasion data about the hint, as well as the counteraction of exploitation of representatives by bosses who go about as sources to the division.

Despite these attempts, numerous large businesses and corporations engaged in insider trading, including Ambit Capital, which on December 13 paid Rs. 6 Crores in accordance with the SEBI Settlement Agreement. Similar proceedings were settled in October 2019 in the case of Crisil Ltd. with the tepee imposing a Rs. 2 crores in accordance with the ruling from the SEBI.

Mere notification or implementation of laws and regulations is not sufficient to tackle the issue of insider trading. This is because identifying and penalizing insider trading requires diligent efforts in any jurisdiction. The real challenge lies in effectively enforcing the rules to serve the greater good and prevent wrongdoing. The unauthorized disclosure of confidential information through various channels, including social media platforms, poses a significant challenge in preventing insider trading. Such acts exploit sensitive information to benefit select individuals, at the expense of the general public, making it an unfair practice.

Another reason for the low prosecution rate is the reality that SEBI lacks some fundamental investigative powers and resources. A further challenge for the regulator is the absence of a proper organizational framework for handling cases of insider trading. The Vishwanathan panel, which was established in August 2017, recommended against allowing SEBI to tap phone records. This advice is still in effect today.

A recent instance demonstrates the problematic aspect of insider trading persists in the Indian market despite the efforts of the regulator. A wealthy investor known as "India's Warren Buffett," Mr. Rakesh Jhunjhunwala, was recently charged with insider dealing in the shares of Aptech Limited that he and his family personally own. The market supervisor is also looking into additional relatives who own shares of stock, in addition to the Aptech board members Madhu Jayakumar and Ramesh Damani. Current ownership of Jhunjhunwala's stake in Aptech, which is 24.24 percent, is estimated to be worth Rs. 160 billion. It is essential to note that SEBI, which is currently in the final stages of its investigation into Aptech Limited's handling of money routed through GDR, has previously investigated Aptech Limited[4].

Mr. Jhunjhunwala was additionally earlier held by SEBI for insider trading in Geometric, an HCL Technologies subsidiary. The issue was eventually resolved by Mr. Jhunjhunwala's willing offering of Rs 2.48 lakh.

Methods for bridging the gap for improved issue resolution
Insider trading is a serious problem that undermines the integrity of the stock market and harms investors. It occurs when someone buys or sells securities based on material non-public information. This information is not available to the general public and can give the insider an unfair advantage. India has some of demanding situations in combating insider buying and selling. One undertaking is a lack of awareness of the problem. In May, traders or even some insiders are unaware of insider trading legal guidelines and rules. every other challenge is the problem in identifying and investigating cases of insider trading. internal traders often war to cover their activities.

The Indian government and regulatory authorities have taken several steps to address those challenges. In latest years, SEBI has accelerated its attention on insider trading and imposed more difficult penalties on violators. SEBI has also added numerous new measures to locate and investigate insider trading, consisting of actual-time market monitoring and information analysis.

- Training and awareness- SEBI and other stakeholders must continue to educate traders and insiders about internal legal guidelines and rules. this could be executed via public awareness campaigns, training and seminars.
- Detection and investigation- SEBI and other legal guidelines enforcement agencies want to make investments extra sources to detect and investigate cases of insider trading. This consists of hiring personnel, growing new technologies and participating with different jurisdictions.
- Penalties- penalties for insider trading in India should be strengthened for deterrence. The government should also consider introducing criminal sanctions for insider trading.
- Civil Liability- investors against the perpetrators. This would give investors an opportunity to seek compensation for their losses.

Apart from these recommendations, the government of India a regulatory authorities should also consider the following-

- A more proactive approach- instead of waiting for insider trading to occur and then taking action, SEBI should focus primarily on preventing insider trading. This may include conducting proactive investigations and monitoring suspicious business.
- Improve cooperation with other jurisdiction: insider trading is a global problem and it is important for India to cooperate with other jurisdictions to investigate and prosecute insider traders. This may include information and intelligence sharing and mutual legal assistance.

V. CONCLUSION

Insider trading is one of the most arguable sides of the securities law, even among the law and the economics section. Insider buying and selling is deceitful for diverse reasons. Although there are numerous other rival avenues for the market ineffectiveness. However, most argue their protest to insider buying and selling for the cause that it is really is inequitable, maybe the best final results is that insider trading makes the marketplace less efficient. The mysterious nature of the insider buying and selling makes detection complex, conviction extra complicated, and the massive sums involved no longer clean to discourage. The core of securities system is the execution of the reason that all traders must have equivalent access to the rewards of sharing in securities transactions. In different phrases all contributors of the investing public should be concern to equal market dangers. Inequities based upon unequal access to information have to no longer be shrugged off as inevitable in our way of life. Its far consequently vital for there to be markets loose from all types of fraud and especially insider buying and selling. As consistent with the 2002 new regulation, the listed businesses plus other entities are actually compulsory to frame internal policies along with tips to save you insider buying and selling by means of directors, personnel, companions, and many others. in the latest beyond, it has been located that insider trading law is fruitless and difficult to put in force and has moderate effect on securities markets. it could be made evidentiary from the low enforcement charges as well as few convictions in opposition to insiders had been mentioned. The importance of policing insider buying and selling has additionally believed global importance as remote places regulators try to boost the self-assurance of home buyers and attract the global investment network. special Courts can be set up for faster along with efficacious disposal of cases.

VI. REFERENCES

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