A SMALL LEAK CAN SINK A GREAT SHIP: AN OVERVIEW OF INSIDER TRADING

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INTRODUCTION

Insider trading is the most violent white collar crime of the security market. The scope, violations and penalties of this crime are different in India as compared to the other countries. Trading by an insider in the shares of a company by compliance of laws, rules and regulations is not considered the violation of law(s). For an instance a person is aware about the insider information but he is trading in the securities of the Company according to the trading plan, which he submitted to the company's compliance officer at least six months before will not come under fraud or fraudulent activity. Otherwise trading/investment by directors, officers, employees and other insiders of the company in the shares of their own company is a positive feature it need be encouraged because it affects the interests of other persons who wants to invest in the company. Law only prohibits the insiders ie. Person is having UPSI within the limits of law. Insider trading violation includes "using such information about securities to make the profits by the insider which is "tipped"".[1]

Law provides the duties and obligations to live in the society and guide the people how they can enjoy the rights by performing few duties. Same in the case of corporate world the officers of the companies need to perform some duties prescribed by law to enjoy the rights in the company. Out of them few duties are disclosure of interest, not to make secret profits, not to do Insider trading etc. The way to perform its duties in ethical manner is called the corporate

[1]Insider Trading, *available at* file:///C:/Users/ACER/Downloads/Patrolman%20Articles.pd (last visited on December 11, 2017)

governance. When we work in any corporation in unethical manner it definitely effect the efficiency of any company.

Insider trading is a branch of corruption where officers of the company having unpublished price sensitive information and they make undue advantage or avoid the losses by trading in the securities. “Unpublished price sensitive information” means information that relates to present or future condition of the company which is having potential to affect the market value of the companies securities that has not been introduced in the public. Insider deals in the securities of the company by making unwanted gains by virtue of his employment.

This act defeat the law of equality and investors lose their confidence in the capital market. That’s why appropriate authorities need to prohibit insider trading in order to protect the investor’s confidence in the security market. India is having various laws to curb the insider trading as ‘Companies Act 2013’, ‘SEBI (Prohibition of insider trading) regulation, 2015’, ‘Securities and Exchange Board of India Act, 1992’ etc.

MEANING OF INSIDER

“Someone who is an accepted member of a group and who therefore has special or secret knowledge or influence[2]”.

An “Insider is a person who is having control over the affairs of the management of the company and who has deep knowledge of the internal affairs of the company and holding knowledge about "price sensitive information" which is relating to the affairs of the company which impacts the prices of the shares of the particular company”. It means the insider is in fiduciary position he may or may not use this information for making his personal profits which is against the corporate governance. Taking this issue in to account SEBI prescribes some “do’s" and "Don't s" with reference to these "insiders" in ‘SEBI (prohibition of insider trading) regulation, 2015’. These regulations are framed and regulated by the SEBI to protect the

[2]Insider Trading, *available at:* https://dictionary.cambridge.org/dictionary/english/insider (Last visited on Feb.01,2018)

interest of the genuine shareholders and prevent the insider to make undue profits by misusing his position.

MEANING OF TRADING

"The buying and selling of shares and securities[3]".

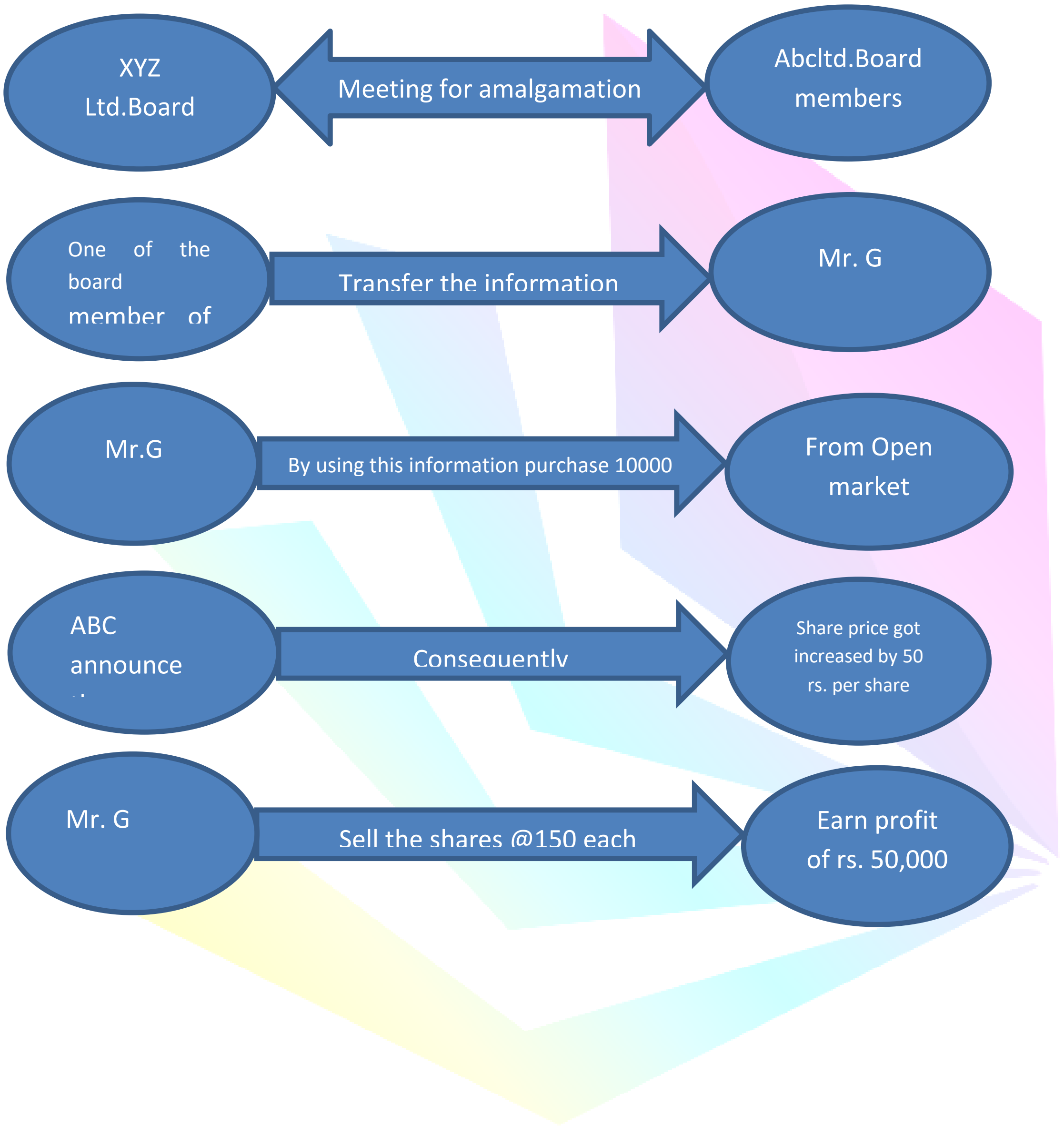
The action or activity of buying and selling of securities is called trading in security market. Security market is the important component of financial market. Where securities can be bought or sold in lieu of money by looking the trend of the market.

MEANING OF INSIDER TRADING

Insider Trading is defined as a professional misconduct done by insiders due to their work position by which they are able to access non-public material information of the company and help them to take crucial investment decisions. It is highly discouraged by the Securities and Exchange Board of India. There are various laws framed for insider trading to cub this white collar crime. The main reasons to making laws on 'insider trading' is to promote fair trading in the market for the benefit of the genuine investor. In this illegal activity few group of people enjoy the benefits due to their position on the other hand remaining stock holders suffers from disadvantage due to lack of important insider non-public information and it amounts to inequality. However, in certain cases if the information has been made public and all the concerned investors are able to access that information then it will not amounts to insider trading.[4]

[3]Insider Trading, *available at:* https://dictionary.cambridge.org/dictionary/english/trading (Last visited on Feb.01,2018)
[4]Insider Trading, *available at*https://economictimes..com/definition/insider-trading (last visited on Dec. 11, 2017)

Example:


XYZ
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Share price got
increased by 50
rs. per share
Mr. G
Sell the shares @150 each
Earn profit
of rs. 50,000

DEFINITION OF INSIDER TRADING AS PER 'SEBI (PROHIBITION OF INSIDER TRADING) REGULATION, 2015'

Insider: Insider means "any person who is the holder of unpublished price sensitive information eg. Manager, company secretary, chief financial officer,chief executive officer, auditors etc". It also include persons who are connected with any insider by the way of frequent communication, relation with employees/manager/director etc.[5]

Trading: Trading simply means trading or dealing in the securities by the way of sales, agree to sale, purchase, agree to purchase etc. [6]

OTHER RELATED DEFINITIONS

Connected Person: Connected person means any person who isin the link with any insidersuch as director, employee, partner, associate etc. of the company directly or indirectly; by the way of any business link or any contract or by frequent communication shall be considered as connected person. [7]

Unpublished Price Sensitive Information:unpublished price sensitive informationmeans any material (important) information which is in the hands of officials and related persons of the company and can affect the price of the securities but not yet generally available to public is known as unpublished price sensitive information. As per regulation 2(n) this definition is very wide but it includes,"delisting, dividends, change in the capital structure, mergers, de-mergers, acquisitions, financial results, disposals and expansion of business and such other transactions, changes in key managerial personnel, material events in accordance with the listing agreement etc."[8]

[5] SEBI (Prohibition of Insider Trading) Regulations, 2015,Regulation 2(g)

[6] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(l)
[7] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(d)
[8]SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(n)

FEW GLIMPSE ON INSIDER TRADING

History of insider trading is very old. It was traced by USA in 1720. In India insider trading cases were noticed in the 1940s. The Thomas Committee Report[9] in 1948 finds that directors, agents, officers, auditors are able to possess the material information relating to the economic conditions of the company in result they can predict the size of the dividends which company is there to declare, or issue of bonus shares and other crucial contracts prior to public disclosure. "Thus, Sections 307 and 308 were inserted in the 'Companies Act, 1956. The purpose of Section 307 is to maintain the registers to record the director's shareholdings in the same company by the companies. Section 308 provided the duty of the directors and persons deemed to be the directors to make disclosure of their shareholdings in the company. In 1979, The Sachar Committee[10] recommended amendments to 'Companies Act 1956' to restrict or prohibit the dealings of the employees according to this committee Sections 307 and 308 of the 'Companies Act' were insufficient to curb insider trading". In 1986 the Patel Committee was constituted it defined Insider Trading as "Trading in the shares of a company by the person who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others". The Patel Committee[11] suggested that the 'Securities Contract (Regulation) Act ("SCRA"), 1956' need to be amended to curb insider trading and unfair stock deals. Section 21 of the SCRA, 1956 mandated to comply with the conditions of the listing agreement for the dealings between the company and the stock exchange. Each stock exchange has authority to make its own terms and conditions of the listing agreement. In 1989 the

[9]The Thomas Committee Report, *available at:* https://www.sebi.gov.in/History/HistoryReport1948.pdf (last visited on Jan. 01, 2018)

[10]Mr. Karn Gupta, Insider Trading in Capital Markets: An Overview, *available at:* http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=275878d3-e9c8-4de4-9bd03f30b34db853&txtsearch=Subject:%20Capital%20Market/, (Last Visited on Dec. 12, 2017)

[11]The Patel Committee, *available at:* http://www.legalserviceindia.com/article/l199-Insider-Trading.html (Last Visited on Dec. 12, 2017)

AbidHussain Committee[12] recommended that insider trading need to be declared as offence and convicted under civil and criminal laws and SEBI should formulate the regulation and codes to prevent unfair deals. In 1992 Securities and Exchange Board of Indiaintroduced 'SEBI (Insider prohibition of Insider Trading) Regulations, 1992' which was subsequent amended in 2002 to cover the certain loopholes revealed in the cases of Hindustan Lever Ltd. v. SEBI[13], and RakeshAgarwal v. SEBI[14]. "In 2013 the Securities and Exchange Board of India's (SEBI) panel suggested that transactions made by promoters, employees, directors and their immediate relatives would need to be disclosed to the company. The Justice Sodhi Committee[15] on Insider Trading Regulations recommended the legal framework for prohibition of insider trading in India and makes these regulations more precise,predictable, and clear by suggesting a various principles-based regulations and rule". Finally, the Justice Sodhi Committee clearly define "the expression "trading" in order to distinguish it from the wider expression "dealing". "Trading" means the acquisition and disposal of securities."[16]

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[12]AbidHussain Committee, *available at:*http://www.legalserviceindia.com/article/l199-Insider-Trading.html (last seen on Dec. 12, 2017)

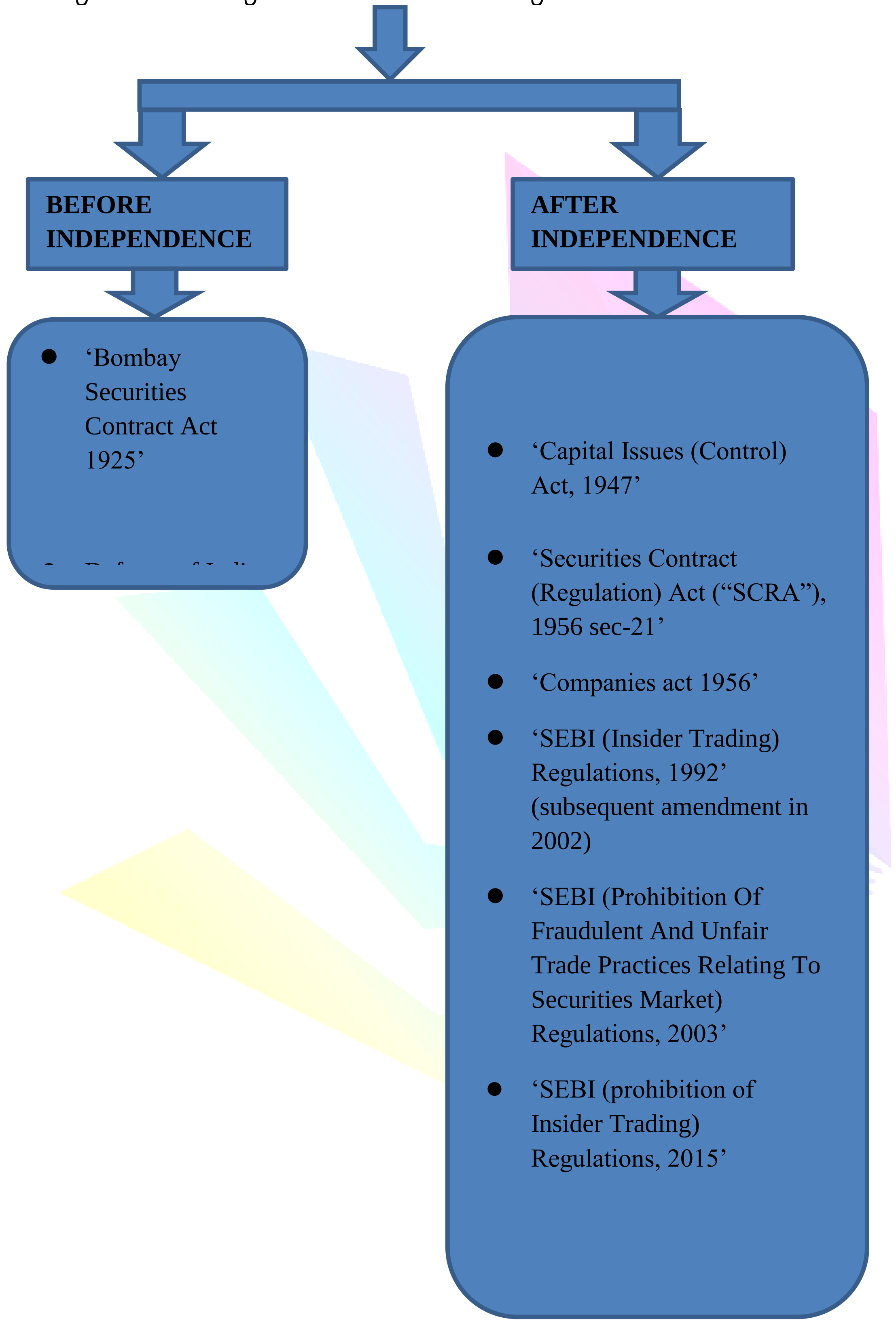
[13]*Hindustan Lever Ltd.* v. *SEBI (*1998) (18) S.C.L. 311AA

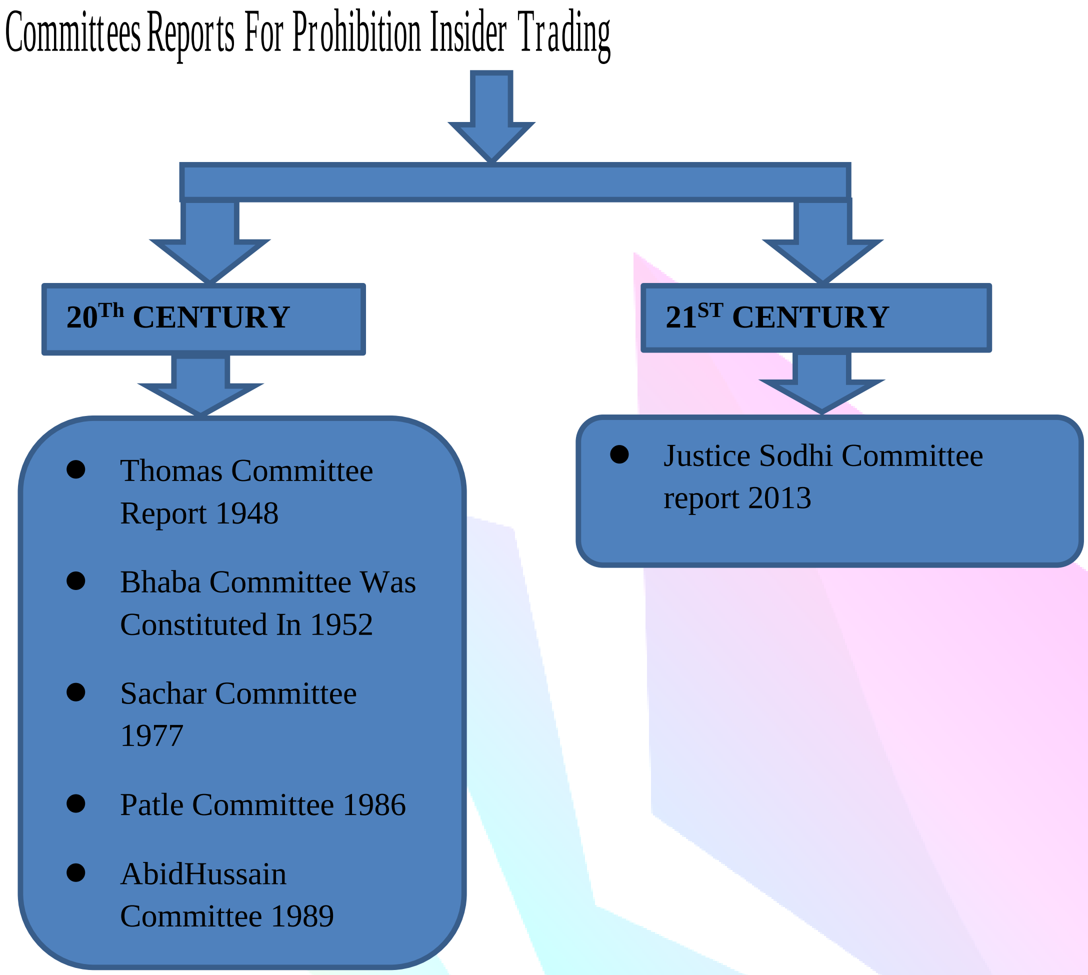
[14]*RakeshAgarwal*v. *SEBI*(2004) 1 Comp LJ 193 SAT, 2004 49 SCL 351 SAT

[15]Justice Sodhi Committee,*available at:*https://www.sebi.gov.in/media/press-releases/dec-2013/justice-sodhi-committee-on-insider-trading-regulations-submits-report-to-sebi_25863.html (last seen on Dec. 12, 2017)

[16]Insider Trading, *available at:* https://www.lawctopus.com/academike/know-insider-trading-decades-corruptive-prevention/ (last visited on Dec. 17,2017)

Few Legislation To Regulate The Insider Trading





HISTORY OF INSIDER TRADING

This unit tracks the historical background of Insider Trading. Its origin and Laws formed by legislations to curb this problem.

ORIGIN OF INSIDER TRADING

Origin of Insider Trading has been traced in UnitedStatesofAmerica from 1720s J.P Morgan & Co., was working in 'unofficial central bank' of the UnitedStatesofAmerica and it was found the company was using its high influence with the Republican Party to make profits. The first case related to Insider Trading is reported in 1792. William Duer[17], virtue of his position arranged insider knowledge and involved in speculative trading to earn profits from newly issued debt of the US government. He was spending his days near bars. Hence, the need for Laws against Insider Trading was raised and United States of America firstly formed laws for the same. Therefore, it is very important to study Insider Trading from USA point of view.

The market crashed in 1929 due to great depression of US economy and investors lost their confidence in the securities market. US introduced Securities Act of 1933 to improve the conditions and gain the interest of investor in security market. Strong vs. Repide[18] become the foundation for the Insider Trading laws. Then SEC (Securities Exchange Commission) Act, 1934 was introduced to regulate the secondary trading and to provide the guidelines to commission. The main purpose to introduce the acts was to make the laws more transparent so that investor's interest and confidence could be earned.[19]

INSIDER TRADING IN INDIA

Insider Trading cases traced in 20th century in India. It was noticed that people having inside unpublished information of the company were misusing their powers. Which for the time being may be beneficial at individual level but it will be caused for market crash in future. To preserve the security market there was eminent need for laws to regulate it. There are several of laws which were enacted to curb or reduce the effect of insider trading from time to time.

Period of 1757 to 1847

History of security market in India is not very old as USA. Initially people of India were not showing interest in security market. There were only 6 brokers in recognized stock exchanges till 1840. Interest in stock market was increased, in 19th century, which formed a group named

[17] Assistant Secretary in the US Department of Treasury in 1792

[18] *Strong vs. Repide*, 213 U.S. 419 (1909)

[19] History and evolution of Insider Trading *available at* http://www.riskpro.in/download/insider_wp.pdf (Last Visited on 01.05.2018)

"The Native Share & Stock Brokers Association" was headed by PremchandRoychand, it was later know as Bombay Stock Exchange[20]

Origin and Development of Security Market in India:

The earliest records traced back in the history of dealing in the securities in India by East India Company's loan securities in 18th century. In 1830 shares of Bank of Bombay, Oriental Bank and Chartered Bank were traded in Bombay. In 1840 there were not more than six (6) brokers in stock and shares recognized by the banks and merchants of in Mumbai.[21]

Period of 1857 to 1947

Fever for trading in securities was increasing day by day which results in enhancement in the number of members. Till 1874 this group of member was not having any permanent place to conduct meetings they were shifting form one place to another and it became an official organization in 1875 known as "The Native Share & Stock Brokers Association". It was later named as Bombay Stock Exchange. Bombay Stock Exchange was the first stock exchange in India. It is the oldest stock exchange in Asia.[22]

First Indian Legislation to Regulate The Stock Exchange

The first Indian legislation to regulate the stock exchange was the 'Bombay Securities Contract Act 1925' which was came in to force in 1st January 1926. The main purpose to introduce this act was to regulate the sale and purchase of securities in the city of Bombay and elsewhere in the Bombay presidency. In the period of 1928 to 1938 huge loss wasswallow by the investors due to the shortcomings of the legislation many unrecognized Stock Exchanges and individual

[20] History of BSE and how share trading began in India, *available at*: https://www.moneycontrol.com/news/business/markets/book-excerpt-historybsehow-share-trading-beganindia-953146.html (Last Visited on 02.05.2018)

[21] Chalking the phases of Insider Trading laws in India, *available at:* https://www.lawctopus.com/academike/know-insider-trading-decades-corruptive-prevention/ (Last visited on 02.05.2018)

[22] History Of BSE And How Share Trading Began In India, available at: https://www.moneycontrol.com/news/business/markets/book-excerpt-historybsehow-share-trading-beganindia-953146.html (Last Visited on 02.05.2018)

were caring on business in forward contracts. Therefore government was compelled to constitute some committees[23] to make the legislation more effective.

Further Legislation(s) To Regulate the Stock Exchange and Curb the Insider Trading

India noticed the insider trading cases in 20th century. It was found people having inside information of the Company; they use it for their personal benefits. It results the reduction of investor's confidence in the Security Market. The need for efficient laws was raised to curb the insider trading.

(a) **Enactment of Defence of India Act 1939:** Then **Defence of India Act 1939** was introduced in May, 1943 which included the provisions related to capital issue and imposes the restrictions on capital issues. The Defence of India Act 1939 makes the provisions that prior approval of government for capital issue was mandatory[24].

(b) **Enactment of 'Capital Issues (Control) Act, 1947'**: After the independence of India the provisions of previous act was enforced and a new act '**Capital Issues (Control) Act, 1947'** was introduced. There were provisions related to constitution of the office of Controller of Capital Issues (CCI) was made, which use to had authority to approve issue of securities, the amount, type and price of securities, etc. However Capital Issues (Control) Act, 1947 was repealed and office of CCI was abolished in 1992 with the effect of liberalization process in India.[25]

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[23] The Morrison Committee in 1936, The Thomas Committee in 1948, and The Gorwala Committee whose report was submitted in 1951

[24] History of defence act, *available at:* https://catalog.hathitrust.org/Record/005137607 (Last visited on 02.05.2018)

[25]Main Legislations Governing the Securities Markets of India, *available at:*

http://www.yourarticlelibrary.com/investment/the-four-main-legislations-governing-the-securities-markets-of-india/1279 (Last Visited on 03.06.2018)

Period of 1947 to 2000

On 15 August 1947, a remarkable day in Indian history, when Indian independence was inaugurated, the First formal Prime Minister, ‘ Pt. Jawaharlal Nehru’ raised the Indian flag above the Lahori Gate of the Red Fort in Delhi. Now it was the time when India was having authority to make its own laws, rules and regulations.

Constitution of Committees to Curb the Cases of Insider Trading

Various committees were constituted to trace the insider trading activities and provide the framework of legislation to curb it.

(a) THOMAS COMMITTEE

In 1948under the chairmanship of P.J. Thomas ‘Thomas Committee’ was constituted. The issue before the Thomas Committee was framing “a central legislation to regulate the stock market activities and appointing competent public authority to execute the laws framed. Thomas Committee suggested to adopt the U.S. model of setting up a commission such as the SEC and proposed to set up the ‘National Investment Commission by providing them independence to perform their duties by making more strict provisions.

Cases of insider trading in India were initially noted in 1940. Directors, agents, auditors and other officers of companies were using the company’s confidential information for doing profitable speculation in the securities of their own companies.[26]

Thomas committee examine these incidents and observed that insider trading occurred due to the possession of confidential information by the insiders before it goes to public which can affect the economic conditions of the company eg. Effect the dividend to be declared or issue of right shares or issue of bonus shares etc. On 14 June 1947 the president of Bombay Stock Exchangecited few instances of leading companies which were not providing prompt public

[26] Thomas Report of the regulation of the stock market in India *available at*: http://reports.mca.gov.in/Reports/40-Thomas%20report%20of%20the%20regulation%20of%20the%20stock%20market%20in%20India,%201948.pdf (Last Visited on 06.06.2018)

declarations of dividend, issue of bonus share etc. which provide the room to leak the information prior the public disclosure. However at that time public was not so aware about the companies and securities market that's why these frauds didn't get much attention but law makers were aware about these issues and started work on these to curb these practices. Thomas committee pointed out India have no special laws to deal with the cases which were raises due to "unfair use of inside information" in 1948 after independence of India, India got its first legislation to curb the unfair use of inside information".

Numbers of committees were constituted in India to improve the corporate regulation framework in India. These committees also examined the then existing framework in the U.S.[27], as the U.S. had elaborate laws on the same subject. The provisions provided in the Exchange Act 1934 of US were considered effective[28]. For instance, "the regulations framed by the SEC under Section 14(d) of the Exchange Act", provide the facility to security-holders and the investors for active participation in the affairs of the companies.

On the other hand, there was no such provision in the structure of Indian laws. The innocent investing public was unaware from the monetary loss caused to them due to unfair use of material information by the directors, managers, etc. in a company. They were losing their confidence in the market. It was suggested that there is need to make changes in company law by making more stringent provisions to curb insider trading.[29]

(b) BHABA COMMITTEE

The Bhaba Committee[30] was constituted in 1952 in order to change the then existing Companies Act, 1913. In its report, the committee found the trend of fraudulent dealings in the

[27] Securities Exchange Act of 1934, Section 16

[28] Securities Exchange Act of 1934, Section 12

[29] Thomas Report of the regulation of the stock market in India available at http://reports.mca.gov.in/Reports/40-Thomas%20report%20of%20the%20regulation%20of%20the%20stock%20market%20in%20India,%201948.pdf (Last Visited on 06.06.2018)

[30] Bhaba Committee Report, *available at* http://reports.mca.gov.in/Reports/22-Bhabha%20committee%20report%20on%20Company%20law%20committee,%201952.pdf (last Visited on 02.03.2018)

shares by the directors of the companies. The report observed that there is the existence of wicked directors who are dealing in the shares of their own companies, although trade done by them is at very low scale. The "Bhaba Committee also discussed the Cohen Committee Report of England and the report of Millin Commission of South Africa. These reports differentiate between the directors who buy or sell shares while possessing general information and those who buy or sell shares based on the material information (such as declaration of dividend, issue of bonus shares etc.). The committees in England had emphasised to maintain the records of the directors like number of shares held by directors, nominees etc. The reports specifically expressed that intention behind making the laws is only to curb the insider trading, not to restrict or suppress the directors.

Further, the Bhaba Committee suggested to insert the a provision in the Companies Act as provided in Section 96 A of the Canadian Companies Act, 1934[31], which restrict the director of a public company to speculate his personal account directly or indirect, in the shares or other securities of the company where he is in the position of a director. It director contravene this provision the fine or imprisonment of six months will be attracted". Later on, The Bhaba decided not to adopt this provision for India. Further explaining this phrase "speculative buying and selling of shares", the committee decided to adopt Section 195[32] of the English Companies Act, 1948. Section 195 provides that, "every company is required to maintain a register showing in respect of each director, the number, description and the amount of shares in and the debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him or even in trust for him or of which he has a right to become the holder whether on payment or not. Whenever there is a purchase or a sale of shares or debentures by directors, this register should also show the date, price or other considerations for the transaction. This register is maintained at the company's registered office, and is open to inspection by any member or the

[31]Bhaba Committee Report, *available at:* http://reports.mca.gov.in/Reports/22-Bhabha%20committee%20report%20on%20Company%20law%20committee,%201952.pdf (last Visited on 02.03.2018)

[32]English Companies Act, 1948, Section 195

debenture holder of the company in the manner referred to in sub-section 5 and at all times by any person acting on behalf of the Board of trade."

For the proper enforcement of these provisions, committee suggested, the whole responsibility should be put on the shoulders of the director to make the disclosures of their holdings i.e. shares, debentures etc. by giving the notice to the company. It is also observed if law will not enforce the director or person deemed to be director to make the disclosures it will be very difficult for the company to maintain the records related to directors holdings.

Companies Act, 1956[33]provides the provision related to maintain the register of director's holdings by the companies. Further companies act 1956[34]fix the duty of the director(s) and person(s) deemed to be the directors to disclosures of their holdings in the company on initial bases and event basis. Then 'The Companies Amendment Act, 1960' took place it make the compulsory to disclose their holdings not only to directors or deemed directors but also to the managers. Now 'section 307' of the 'Companies Act, 1956'includes every director of the company, including "deemed directors", which covers every person in accordance with whose directions or instructions, the Board of Directors is accustomed to act. The register maintained by company of shareholdings, must carry details regarding names, amount and description of the shares holding by each and every director including deemed director of the company, this register will also include the nature and the interest in particular shares or debentures of such person i.e. the sale and purchase of the shares. It will be helpful to trace the major change occurs in the interest of the director. Even if the Company or its Board of Directors are not working according to such persons' who person holds or controls one third of the total voting rights in that body corporate then also records are mandatory to maintain.

Section 308 provides a statutory responsibility for the directors and managers to make the disclosure in particular form prescribed by the company so can company can maintain the records. Before the specific laws framed to crack the problem of insider trading in India, India

[33]Companies Act, 1956, Section 307
[34]Companies Act, 1956, Section 308

attempts to curb the malpractice, by taking small steps as disclosures made by insiders and records maintained by company etc.[35]

(c) **SACHAR COMMITTEE**

In 1977, Sachar Committee[36] was constituted to review the provisions of the 'Companies Act' and "the 'Monopolies and Restrictive Trade Practices Act, 1969' (the current Competition Act, 2002). This Committee viewed that Sections 307 and 308 of the Companies Act[37], were not sufficient to curb insider trading. The Committee's view was merely the detail of sale and purchase of the shares by the directors and other key managerial persons is not sufficient to solve the problem. Certain class of people still making unfair profits by the use of non-public confidential information.

The committee noticed that the instant developments in corporate laws in India and in other countries are strongly emphasis on the need for disclosures made by management. Transparency and openness in a company's affairs can be considered as the best tool to secure the mature behaviour of the directors and other key managerial employees. Committee observed that "the disclosure requirements were primarily fulfilled by submitting balance sheets and profit and loss accounts of the company once in a year. But there is need to include more a provision in the Companies Act to the effect that that all public limited companies whose shares are listed on any stock exchange should publish an abstract of the half- yearly unaudited accounts of the company along with a brief report. Such a report should be published in a public within sixty days of the close of the half-year and the report should highlight the important financial and other developments in the company during the half-year." The committee expected that these provision would be beneficial for the investing public, creditors and others stakeholders who are connected with the company. The Sachar Committee also prescribed certain categories of persons who could be included in the category of insiders, "such as the company's directors, statutory auditors, cost auditors, financial accountants or

[35]Bhabha committee report, *available at*: http://reports.mca.gov.in/Reports/22-Bhabha%20committee%20report%20on%20Company%20law%20committee,%201952.pdf, (Last visited on 03.05.2018)

[36] This committee was headed by Justice ShriRajindarSachar, the then judge of the High Court of Delhi

[37] 1956

financial controller, cost accountants, tax management consultants or advisers and the whole time legal advisers or solicitors who would generally have access to the price sensitive information not available to the outsiders". Thomas Committee had also suggested about the broader categories of insiders to be identified within the regulatory framework, no legislative actions were initiated in this regard."[38]

The Sachar Committee further identified that it is very difficult to prove whether material non-public information has been used or not. The committee was of the view that "the law should provide that an insider including the categories mentioned above, should be restricted from purchasing or selling the shares of the company, either directly or indirectly, for at least two months prior and after the closing of the accounting year of the company. This period was specifically considered crucial as there were more chances that an insider would misuse the possessed confidential information during such time." Another recommendation made by the Sachar Committee was "impose the fine on the persons who put their contribution to identifiable loss by reason of the misuse of materially significant information and in addition, an insider should be held to be accountable to the company for his unjustifiable profits." Despite the foregoing recommendations, till date, the Indian securities laws were fail to provide sufficient remedies to the sufferers. In India, the SEBI put its efforts to stop the manipulators and insiders to make the profits illegally made by market, Section 11B of SEBI Act, 1992 empowers the SEBI to make laws and provide directions in the interest of the investors and to protect the integrity of the securities market. Till 2009 the Securities Appellate Tribunal had not any such enforcement order, because SEBI did not have any specific statutory powers to order disgorgement. In 2009, the SAT, recognized SEBI's power to pass an order against the illegal profits made by market manipulators.[39]

[38] Report of the High Powered expert committee on Companies & MRTP *available at;* http://reports.mca.gov.in/Reports/30-Rajindar%20Sacher%20committee%20report%20of%20the%20High-powered%20expert%20committee%20on%20Companies%20&%20MRTP%20Acts,%201978.pdf (visited on 03.06.2018)

[39] *Dhaval Mehta v. SEBI*, appeal number 155 of 2008, dated September 8, 2009 (www.sebi.gov.in)

Committee recommended that Section 307[40] should be extended "to cover the employees of the company drawing a remuneration of more than Rs. 3000 per month, statutory auditors, cost auditors, financial accountants or financial controller, cost accountant, tax and management consultants or advisers, whole time legal advisers or solicitors, and the provision should also be extended to their spouses and children and also the shareholdings of private companies, partnership firms, and joint ventures or trusts in which the above categories of persons have any pecuniary interest. "The committee also suggested that the register maintained by the company needs to contain details relating to the sale and purchase of the shares of the company, its holding company and its subsidiary companies by the above mentioned category of persons.

The main suggestions made by the committee were as follows:

(i) "maximum disclosure of transactions by those who have 'price-sensitive information; and

(ii) Prohibition of transactions by persons possessing price-sensitive information during certain specified periods, unless there are exceptional circumstances. However, the recommendations given by Sachar Committee, regarding the prohibition of transactions by persons possessing price-sensitive information during specific period was only implemented recently in 2008, i.e, the short swing regulations."

The Sachar Committee recommended few provisions which are required to be inserted in the disclosures provided under the Companies Act and the disclosures by other persons, who are deemed insiders or who become insider due to the possession of information. The corporate governance norms included in the Insider Regulations in 2002 mandated exhaustive disclosures by insiders.[41]

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[40] Companies Act 1956, Section 307

[41] Sachar Committee Report, *available at*: http://reports.mca.gov.in/Reports/30-Rajindar%20Sacher%20committee%20report%20of%20the%20High-powered%20expert%20committee%20on%20Companies%20&%20MRTP%20Acts,%201978.pdf (Last Visited on 05.05.2018)

(d) PATEL COMMITTEE REPORT

The Patel Committee had constituted in May 1984 by Government of India. This committee was headed by G. S. Patel (the “Patel Committee”) to review the functioning of the stock exchanges.

The Patel Committee highlighted that “insider trading was unethical as it involves misuse of confidential information and betrayal of fiduciary position of trust and confidence. The Patel Committee had suggested that a malpractice such as ‘insider trading’ should be made a cognizable offence”[42]. The report submitted by the Patel Committee defined ‘insider trading’ as “trading in the shares of the company by the persons who are in the management of the company or are close to them, on the basis of unpublished price sensitive information, regarding the working of company, which others do not have.” The term “insider trading” was first time defined and proposed to make separate legislation, to the Indian Government.

Indian government committee first time recommended the particular statutory provisions to prohibit the insider trading. It is also recommended by the Sachar Committee that transactions done by directors and key managerial persons need to be restricted but the laws related to particular problem of ‘insider trading’ was supposed to be proposed by the Patel Committee.

The Patel Committee suggested that India should have its codified provisions relating to insider trading. Those provisions should be similar to the Australian law to counter the malpractice of ‘insider trading.’ The committee also submitted draft framework of laws prohibiting insider trading.

As per the legal mechanism, “the Patel Committee suggested to amend the provisions of the ‘Securities Contracts Regulation Act, 1956’, by taking the guidance from Australian legislation. The committee also show its interest to incorporate the few provisions of the U.K. Company Securities (Insider Dealing) Act, 1985.

Significant and efficient suggestions are provided by the Patel Committee to the laws on ‘insider trading’. This committee provides the offence of insider trading in a thorough and

[42] Patel committee report, *available at:* http://www.mgutheses.in/page/?q=T%202082&search=&page=&rad=# (Last Visited on 05.05.2018)

comprehensive manner. The committee provides the penal provision in case of non-compliance of laws or for violation of laws of was fined heavily for first offence[43]and imprisonment up to five years should be given for subsequent attempts. The Patel Committee report also highlights the term ‘fiduciary standards’ which is used in US laws. There is no doubt that there are various legislations for insider trading but there is need of true spirit to comply with that law. Fiduciary standards are provided along with insider trading laws by US courts as well as the court of appeals of various states”.

The committee had also discussed about the insider trading laws in the U.S. and U.K. the committee appreciated that SEC in 1983 Securities Exchange Commission recommended the civil penalties in addition to the criminal proceedings to deal with the cases of insider trading c, and the U.K made the amendments in insider trading laws in 1981 and declare it a criminal offence. The Patel Committee recommended that insider trading should be taken under the criminal offences in India. The Patel Committee also discussed in its report regarding “the U.K.’s model code with regard to restrictions on the transactions carried out by directors and their relatives and employees of listed companies. “The Patel Committee reviewed and analysed the insider trading legislations of U.S.A, U.K and Australia, and make suggestions for the advancement of “insider trading” laws in India. Few of the suggestions of the committee reflected these legislations, the committee observed certain significant provisions for jurisdictions relating to insider trading which, if introduced in India, would have significantly improved the Indian laws on insider trading.

The committee’s report also provided certain remedial measures to deal with the menace of insider trading. The Committee identified that lack of immediate disclosure of corporate news encourage the excessive speculation in the stock exchanges during 1980s. For an example at the time of declaration of annual result of any company, rumours starts in the market by looking at its previous working results that such number of dividends or bonus shares or right shares or convertible bond issues by the companies. These rumours later on give birth to speculative activities in the shares of the companies concerned. To regulate this problem, the Patel Committee recommended that the un-audited balance sheet of all listed companies should

[43] Patel committee report, *available at* ;
http://www.mgutheses.in/page/?q=T%202082&search=&page=&rad=# (Last Visited on 05.05.2018)

publish at least on a half -yearly basis and the companies having paid up capital more than 10 crore on a quarterly basis. The committee further recommended that the company should immediately inform about any significant financial news or other news or developments which affect the price of the company's securities, to stock exchange as soon as such matters are placed on the agenda of the board meetings and circulated to other directors.

The committee also proposed that if on the contravention of such provisions or any failure to comply with such provisions relating to material disclosures, persons in-charge of the management of the company should also be penalized for non-compliance. The committee recommended that such statutory responsibility for non-compliance of disclosure obligations should be inserted in the provisions of 'the Companies Act, 1956', and the SCRA. However, after 20 years in 2002, these provisions of imposing monetary penalty for non-compliance were inserted in SCRA as Section 23E[44].

Disclosures Made Under Listing Agreement:

Sections 306 and 307 of the Companies Act, was the first step towards disclosures from directors and other insiders to regulate the 'insider trading' in India. The idea behind to insert the provisions of disclosures to the public bring the transparency in the working of the company and aware the directors and management they can be traced if any contract which spread the message of equality. The whole process was done to control the insider trading.

The idea behind the listing of company was formally introduced in India under the Companies Act and the SCRA, i.e., a company was required to register itself with the recognized stock exchange (s) prior to offering its securities to the public. Section 73[45]of the Companies Act 1956 make it compulsory that if company intended to offer its securities to the public through prospectus it should get itself listed in one or more recognized stock exchanges. Section 21[46] of the SCRA provides the provisions to comply with of the conditions prescribed under the listing agreement. Each stock exchange has authority to formulate its own listing agreement and decide its clauses. As per the listing agreement several disclosures decided by stock

[44]Securities Contracts (Regulation) Act, 1956, Section 23E

[45]Securities Contracts (Regulation) Act, 1956, Section 21

[46] ibid

exchanges are mandatory to make by companies in addition to the disclosures required by the Companies Act 1956 and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and Insider Regulations. Provisions of the listing agreement with a focus on preventing insider trading are discussed below:

Under clause 41 of the listing agreement, it is mandatory for every public company whose securities are listed on a recognized stock exchange to publish unaudited working results twice a year.[47]

In 1985, the Ministry of Finance proposed an amendment that clause 41 of the listing agreement should be substituted with a new clause 41[48] regard to insider trading. These disclosure

[47] press note No: F2/5/SE/76 dated 14 November 1977

[48] The proposed clause 41 of the listing agreement "That the company has to give an undertaking to the stock exchange that within 10 days from the date of admission to listing on the exchange, a statement on the number of equity shares held by any director, statutory auditor, cost auditor, financial accountant, tax and management consultant or adviser and whole time legal adviser or Solicitor of the company. The statement shall also contain information about the number of equity shares held by the spouse and children of each one of them. Thereafter, the company shall submit a statement to the stock exchange indicating the ownership of equity shares by each one of the officers mentioned above, their spouses and the dependent children as at the close of the calendar month and the changes which have occurred in this said on a ship during the month within 10 days following the calendar month. The statement shall contain information about the prices at which shares have been bought or sold during the previous month. But the company has to incorporate the above information in the annual report of the company as an annexure.

The company to agree that it will not register the transfer by way of either purchase or sale of equity shares of the company effected by the persons mentioned above during the period of two months prior to the close of the accounting year of the company and two months thereafter;

However if for any compelling reasons, the persons mentioned above want to register such transfers within the prohibited period, they should intimate their intention to the board before the transaction is affected. If the board does not refuse within a period of 15 days from the date of receipt of such intimation, the person concerned would be entitled to complete the transaction within the prohibited period;

The company shall maintain a register disclosing the holdings and dealings in the equity shares of the company by the persons mentioned above. This disclosure shall be full and complete and also it should include the number and price at which the shares are sold or purchased along with the dates of the transactions. The register should be available for information to the public at the registered office of the company during business hours (reasonable restrictions may be imposed by the company in its articles of association or in general meeting, however at least two hours each day should be allowed) on payment of five rupees."

provisions were further strengthened in 1991 by providing disclosure of the financial performance of the listed companies to the investing public. Under the amended clause 41, a new comprehensive format for publication of the financial results was prescribed. Also, a more effective and faster mode of publication was provided for.

In order to protect the interests of the shareholders who were not aware with the takeover, and to regulate the secret takeover bids, the listing agreement was amended in April, 1984, to incorporate disclosure provisions in relation to the take-over bids as clause 40. Later on, in May 1990, this provision was split into two separate provisions 40 A and 40B. Clause 40A explained the disclosures relating to substantial acquisition of shares and Clause 40B prescribed takeover offers. These provisions mandate disclosures to the stock exchanges, shareholders and the public about any change in control of the company by acquisition of shares. Thus, under this provision, the target company as well as the acquirer is required to disclose all relevant information regarding the acquisition of shares.

Further, Clause 36 requires the company to promptly inform the stock exchange about the events having a bearing on the performance/operations of the company, such as the strike, etc., as well as the price-sensitive information. The clause 36 was amended in 1998 by issuing a circular[49] by SEBI, to include additional material events to be disclosed. Following material events that were included in the amended clause:

1. “changes in the general character or nature of business;
2. disturbance in the operations due to natural calamity;
3. introduction of commercial production or commercial operations;
4. developments with respect to pricing arising out of change in the regulatory framework;
5. litigation or dispute with a material impact;
6. revision of ratings;
7. any other information relating to the operations or performances of the company as well as price sensitive information, including but not restricted to:

    a) issue of any class of securities;

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[49] Circular: SMD/Policy/Cir-12/98; dated 7-04-1998, *available at* https://www.sebi.gov.in/legal/circulars/apr-1998/to-e-ds-presidents-m-ds-of-all-stock-exchanges_18573.html (Last Visited on 05.06.2018)

b) acquisition/merger /de-merger/amalgamation/restructuring/scheme of arrangement/ spin off or selling divisions of the company,etc.;

c) change in market share of the company, sub-division of equity shares of company;

d) voluntary delisting by the company from the stock exchange(s);

e) forfeiture of shares;

f) any action by any person, which will result in the alteration of the terms regarding redemption or cancellation or retirement in whole or in part of any securities issued by the company;

g) information regarding the status of ADR, GDR, or any other class of securities issued or to be issued by the company abroad; and

h) cancellation of dividend or right issue or bonus issues,etc."

A major change is introduction corporate governance norms in the listing agreement was the amendment of clause 49[50] of the listing agreement, which was mandated by the SEBI in 2006. Clause 49 was at first intended to adopt for certain basic corporate governance practices in Indian organizations, for example, the base number of independent directors required on the leading body of an organization, the setting up of an Audit Committee, and a Shareholders' Grievance Committee as compulsory. The Narayana Murthy Committee set up by SEBI to survey the adequacy of corporate governance clauses and Indian Securities Laws, which wound up successful from 1 January 2006.The altered clause 49 provides the independent criteria for the directors. The roles and obligations of the managerial department of organizations were enhanced by the altered clause. The disclosure policies had been improved. The Audit Committee's roles and duties identifying with inward controls and money related revealing were consolidated, and their responsibility was chosen to top administration, particularly the CEO and CFO.

The additional disclosure requirements specified in the revised clause 49 are as follows:

[50] revised Clause 49 of the Listing Agreement *available at* https://www.sebi.gov.in/media/press-releases/jan-2006/changes-to-the-revised-clause-49-of-the-listing-agreement_8619.html (Last Visited on 05.06.2018)

(i) "Statement on transactions with related parties in the ordinary course of business shall be placed before the Audit Committee periodically;

(ii) Details of material transactions with the related parties which are not in the normal course of business shall be placed before the Audit committee;

(iii) Details of material individual transactions with related parties or others, which are not on arm's length basis, should be placed before Audit committee together with management's justification for the same;

(iv) Financial statements should be disclosed together with the management's explanation of any accounting treatment different from that prescribed in Accounting Standard;

(v) The company shall disclose to the Audit committee on a quarterly basis the use of funds raised through public or rights or preferential issues. Annually, a statement showing the details of use of funds of the company for the purposes other than those stated in offer document and prospectus should be placed before the audit committee, certified by the statutory auditors; and

(vi) New disclosure requirements have been prescribed for remuneration of directors, which include the criteria of for making payments to non- executive directors, shares and convertible instruments held by non- executive directors and shareholding (both own and held on beneficial basis) of non-executive directors to be disclosed in the notice of general meeting called for approving appointment of such director."

With the concept of the listing agreement a strong disclosure tool was presented. Now the listing agreement was one of the most active instruments towards prohibition of insider trading in India.

(e) ABID HUSSAIN COMMITTEE

In 1989, the Abid Hussain Committee was set up to examine the adequacy of the existing institutions, instruments and the structures in the Indian capital market and the rules governing its functioning. "One of the first and foremost problems identified by the committee was insufficiency of the basic rules of the capital market. The basic rules were adjudged to be insufficient because of the fast changing needs capital market especially in the area of investor protection and guidance. The committee also acknowledged that despite the continuing efforts on the part of various authorities, many aspects of trading practices still required improvement. Rules and standards emphasizing fairness in securities dealings were perceived to be insufficient and amenable to misuse by the traders. The committee also observed that the absence of effective checks and penalties was encouraging the speculators and not the genuine investors.

In April 1988, the Government of India constituted the SEBI, with the essential appreciation of investor protection. . At the time of the discussions of the, the SEBI presented the process of incorporating the legal framework to control the conduct of all the main players of the market, i.e., the issuers, intermediaries and the exchanges with the discussion of Abid Hussain Committee. The Abid Hussain Committee had confessed its difficulty in recommending remedies to each one of the trading misconducts in the Indian stock market, it is further observed the problems of insider trading and secret takeover bids. The committee suggested that insider trading must to be viewed as a dangerous offense, liable for criminal punishments." The committee prescribed that the SEBI must requested to plan the important enactment, engaging itself with the expert to implement the arrangements.[51]

(1) Insider Trading and the SEBI:

Controller of Capital Issues was the main authority to ratify the issue of securities, and the amount, type and the price of securities. The Controller of Capital Issues was set up in 1947, under the Capital Issues Act. With the repeal of Capital Issues Act, the Controller of Capital Issues was abolished and the SEBI was set up in April 1988, its essential goal was the development of capital market and protection of investor's interest. "The SEBI Act had set up SEBI as an administrative body to ensure the payments of the investors in securities, develop the security market, and to direct the security market. The Preamble of the SEBI Act mandates SEBI to ensure investor protection and strong and systematic growth of the securities market. In July 1988, before the Ordinance, the SEBI had prepared document on a complete legislative framework for securities market which included measures to curb fraudulent and unfair practices. Depending on the 'elevated requirement of conduct' worried by the Cohen Committee as for insider managing, the SEBI had issued an official statement dated 19 August 1992 with a proposal to plan the 'inner code of conduct' for the organizations to check the act of insider exchanging".

[51] Insider Trading in India *Available at* http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Insider_Trading_Regulations_-_A_Primer.pdf (last visited on 05.06.2018)

SEBI (PROHIBITION OF INSIDER TRADING IN THE SECURITIES MARKET), REGULATIONS, 1992

Under the SEBI Act, Section 11(2) (g)[52] enabled the SEBI to take such measures, inter alia, to prohibit the insider trading, to ensure the enthusiasm of investors and to promote the development of and regulate the securities market. The SEBI has empowered to make regulations constant with the SEBI Act under Section 30[53] of the SEBI Act. Pursuant with such powers, the SEBI had confined the SEBI (Prohibition of Insider Trading in the Securities Market), Regulations, 1992 on 19 November, 1992 for restricting the offense of 'insider exchanging.' Thus, the Insider Regulations were made by SEBI seven months after the Indian Legislature passed the SEBI Act.[54]The Insider Regulation 1992 comprises of 12 clauses separated in three sections. Part I manage short title, beginning and definitions. Part II comprise of the correspondence of unpublished price sensitive information, prohibition on dealing, or counseling on matters relating to insider trading.

Section 3, under which the offense of insider exchanging is restricted is a part of Chapter II. Part III provides powers of SEBI to examine and impose the penalties for insider trading. The offense of insider trading is prescribed under Regulation 4 of the Insider Trading Regulations. Regulation 4 provides that any insider who deals in securities[55] in by contravening the provisions of Regulation 3 (or 3A) is guilty of 'insider trading'. Regulation 3 seeks to restrict dealing, communication and counseling on the basis of unpublished price sensitive information. Along these lines the elements for the offence of insider trading are distinguished in Regulation 3.

The Insider Trading regulation describes “the expression "insider" as any individual who, is or was associated with the organization or is deemed to be associated with the organization and who can be relied upon to get to unpublished price sensitive data of the organization due such association. If a person is an ‘insider’ and if he is in possession of ‘unpublished price sensitive

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[52]Securities and Exchange Board of India Act, 1992; Section 11 (2) (g)

[5353]ibid

[54]SEBI Act came into effect from 4 April, 1992

[55] “The amendment dated 20-2-2002 removed the clause “or communicates any information or counsels any person dealing in securities”.

information'[56], then he will be covered within the prevention contained in Regulation 3 of the Insider Regulations. Though, prior to the amendment of 2002, the restriction applied to the circumstances where the insider had actually used the UPSI while trading in securities. The main reason to bring this amendment was it was easy to find the people with unpublished price sensitive data but it was quite difficult to trace either they use that data or not for their personal use or not. This is where the notable discussion on possession v. use[57]becomes illustrations of insider trading and becomes relevant. However, the issue remained in cases where there was the informal connection between a person in possession of UPSI and his trade in securities.

In 1993, the references made by SEBI to form certain internal norms relating to the company's sensitive data vis-à-vis the Insider Trading Regulations.[58] The by suggesting parameters in the press release were:

"(i) Identification of the types of information which could be considered as price sensitive information in relation to the business of the company and its subsidiaries and associate companies, for example:

a) earnings forecast or material changes therein;

b) proposals for mergers & acquisitions;

c) significant changes in investment plans;

d) acquisition or loss of a significant contract;

e) significant disputes with major suppliers, consumers or sub- contractors; and

f) Significant decision affecting the product pricing, profitability, etc.

[56]SEBI (Prohibition of Insider Trading) Regulation, 1992, Regulation 2(k)

[57] Possession vs. Use *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1138258 (Last Visited on 02.05.2018)

[58] SEBI Press note dated September 13, 1993

(ii) Identification of the employees or officers or sections of employees/officers of the company who are likely to have access to such information and considered as insiders.

(iii) Nomination of an officer or officers of a company who would give clarifications to the employees of the company on their ability to deal in the company's shares without attracting the charges of insider trading.

(iv) Controls on handling the price-sensitive information identified above and the publication of such information, wherever possible, so as to eliminate the non-public character of the information.

(v) The norms to be followed by all officers and the employees of the companies, such as not dealing in the shares of the company for a particular period (before and after the declaration of periodical financial results), the time period for which the employees and officers of the company have to wait before they deal in the shares of the company (after any price-sensitive information has been made public), etc.

(vi) Declaration of purchase and sale of the shares of the company to be obtained from employees and officers including transactions done by the relatives of employees and officers.

(vii) The procedure to be laid down for handling information which may affect the price of the securities of other companies in situation such as mergers, takeovers, etc."

In 2002, the above norms were additionally changed and the Model Code of Conduct introduced under the Insider Regulations came into force. Further, it was just in 2002 that a particular arrangement with respect to the restrictions on insider trading was inserted in the SEBI Act[59]. Section 12A of the SEBI Act prevents insider trading exercises, manipulative exchange rehearses, and considerable acquisition of securities.

As respects sub-clauses (d) and (e) above, in spite of the fact that the SEBI had incorporated the arrangements identifying with insider exchanging the SEBI Act, the SEBI Act did not

[59] "Chapter V A was inserted in the SEBI Act in 2002 and Sections 12A (d) & (e) of Chapter VA specifically related to insider trading. This amendment, inter alia, incorporated the provisions of Insider Trading Regulations into the SEBI Act."

provide the definition of "insider trading." Further, these provisions on insider trading are conflicting with the provisions of Insider Regulations. For example, Section 15G of the SEBI Act and Regulations 3 and 4 of the Insider Regulations are worded differently.[60]

In spite of the fact that the Section 12A did not have any material effect on the analyses and enforcement of the insider trading cases in India, the request among the legal scholars for a particular provisions under the SEBI Act was restricting insider trading. In this way, the SEBI revised the Insider Regulations on a few events. A nearby take a look at the planning of these alterations even makes it possible to conclude that the encounters increased. Through the way toward testing different requirement activities of the Indian controller and the perspectives of the courts and councils regarding the matter, was the foundation of these changes.

India's First Insider Trading Case:

The main case started by SEBI was the Hindustan Lever Case .For this situation, "Hindustan Lever Limited (HLL) and Brooke Bond Lipton India Ltd (BBLIL)" were the subsidiaries of the common parent company, differentt. "A merger declaration amongst BBLIL and HLL was intimated to the stock trades on 19 April, 1996. SEBI was SEBI was informed about the insider trading by the market as well as the media. In this way, the SEBI had started investigations concerning the issue. SEBI found that HLL as an insider had obtained the securities of BBLIL from the Unit Trust of India ("UTI") based on the UPSI about the approaching merger, in this way abusing the arrangements of the Insider Trading Regulations and the SEBI Act. Accordingly, UTI suffers from hardships. Powers of SEBI, provided under Section 11B of the SEBI Act read with Regulation 11 of the Insider Regulations[61] had ordered the HLL to reimburse the UTI up to an extent as much UTI had suffered losses. SEBI measured the disaster caused to the UTI by virtue of the insider trading of Rs.3.04 crores. The figuring of the same was the contrast between the market cost of the offers of BBLIL at which the offers were sold by UTI to HLL after the declaration of the merger and the cost of the offers preceding the declaration of the merger, restricting dividends. SEBI justified its action as remedial steps".

[60] Securities and Exchange Board of India Act, 1992; Section 12A

[61] SEBI (Prohibition of Insider Trading) Regulation, 1992

"UTI and HLL" recorded separate appeals against the SEBI before the appellate authority, the central government[62]. By interpreting the term 'insider' under regulation 2(e) was one of the key issues under considered before the appellant authority. In such manner, the appellate authority observed three ingredients in the definition of 'insider':

"(i) the individual ought to be a characteristic individual or legitimate substance;

(ii) the individual ought to be an associated individual or an esteemed associated individual;

(iii) acquisition of the UPSI ought to be by ideals of the association."

The SEBI had also interpreted in its order, the third requirement of 'acquisition of UPSI' by the insider by virtue of the connection with the company by envisaging two alternate situations: "(1) where the insider is easily expected to access to UPSI due to the connection with the company;or

(ii) where the insider has actually received or had access to such UPSI."

SEBI had quoted "that if a connected person actually make profits or receives such data independently, notwithstanding his position in the company, such person will fall within the definition of 'insider' and therefore, SEBI regarded HLL as an insider. This was upheld by the appellate authority". Later on , the appellate authority overruled the SEBI's order, inter alia, on the following grounds:

(i) The news about the merger cannot be considered as unpublished price sensitive information as it was generally known and acknowledged by the market;

(ii) The information relating to merger could not have weighty impact on the price of the shares for which the transaction was concluded;

[62] Securities and Exchange Board of India Act, 1992, Section 20 of the SEBI Act, "any order of the Board passed before the Securities Law Amendment, 1999 shall be appealable to the Central Government. It was in the year 1995, with the insertion of chapter VI A of SEBI Act, 1992 that the Securities Appellate Tribunal (SAT) was set up. Initially only the orders of A.O. were appealed before the SAT. However, with the amendment of 1999, SAT was conferred with the powers to decide the appeals preferred against orders of SEBI as well as that passed by A.O."

(iii) The SEBI's decision was suffers from procedural deficiencies to award compensation to UTI;

(iv) SEBI's direction to HLL to compensate UTI lacks jurisdiction; and

(i) SEBI's order for prosecution under Section 24 of the SEBI Act was bad in law as the order did not state the reasons for prosecution and also SEBI did not invoke its specific powers for adjudication under Section 15G of the SEBI Act. Therefore, the SEBI's decision to prosecute HLL was set aside by the appellate authority.

PERIOD OF 2000 TO 2018

(a) KUMAR MANGALAM BIRLA COMMITTEE

In mid-1999, the SEBI had set up a committee headed by Kumar Mangalam Birla, an individual from the SEBI Board, to advance and raise the guidelines of good corporate governance. "The Kumar Mangalam Birla Report on Corporate Governance elaborately discussed about the significance of restriction of insider exchanging for good corporate governance. A portion of the significant proposals in the report are as per the following:

"suitable amendments to the listing agreement executed by the stock exchanges with the companies and any other measures to improve the standards of corporate governance in the listed companies, in areas such as continuous disclosure of material information, both financial and non-financial, manner and frequency of such disclosures, responsibilities of independent and outside directors;

2. drafting a code of corporate best practices; and
3. safeguards to be instituted within the companies to deal with the inside information and insider trading."

The report likewise observed that the presence and enforceability of regulations identifying with insider data and insider trading are essential to great corporate governance. Further, the provisions in regards to presence and enforceability of insider trading regulations were examined separately investigated by a panel appointed by SEBI under the Chairmanship of

Kumar Mangalam Birla.Though, no distinct report is publicly accessible which was prescribing precautions for companies to deal with insider trading or proposing any changes in the Insider Regulations. Yet, the amendment of 2002 of Insider Regulations is supposed to be a result of the debates of this committee

(b) JUSTICE SODHI COMMITTEE:

The High Level Committee was constituted under the Chairmanship of Justice NK Sodhi[63] to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992, committee submitted its report to SEBI Chairman, UK Sinha, on December 7, 2013 at Chandigarh. The Committee has made a range of recommendations "to the legal framework for prohibition of insider trading in India and has focused on making this area of regulation more predictable and The Committee has made a scope of proposals to the legal system for denial of insider trading in India and has concentrated to make this area of regulation more predictable and specific by providing suggestions on mishmash of principles-based regulations and rules that are supported by principles of corporate governance". The Committee has also suggested that each regulatory provision need to be supported by a note on legislative intent.

***Highlights of Justice Sodhi Committee*:**

"A portion of the remarkable highlights of the proposed regulations are set out as under:

1. While widening the definition of "insider", the term "connected person" has been provided more clearly and immediate relatives are presumed to be "connected persons", with a right to rebut the assumption.
2. The term "immediate relative" would cover all members of the family, who either are financially dependent or taking advice for investment in securities. Insiders would be prohibited from shared, given that or allowing to take UPSI unless required for discharge of duties or compliance with law.
3. The regulations would bring greater clarity on what constitutes "unpublished price sensitive information" ("UPSI") by defining what constitutes "generally available

[63] "former chief justice of Karnataka and Kerala High Courts and former presiding officer of the Securities Appellate Tribunal"

information" (essentially, information to which non-discriminatory public access would be available)

4. A list of kinds of data that may normally be regarded as price sensitive data has also been provided. Trading in listed securities at the time of possession of UPSI would be banned except circumstances provided in the regulations. Insiders who are subject to have UPSI all-round the year would have the alternative provision, they are required to provide the detail of trading plans. In such cases, the insider would not attract the contraventions but changes in plan would be strictly adhered to.

5. Trade in the securities within a calendar quarter of a value beyond rupees 10 lakhs or such other amount as SEBI may specify, need to be disclosed to the stock exchanges.

6. Every element that has issued securities which are listed in a stock trade or which are proposed to be listed would be required to frame and publish a Code of Fair Disclosure representing exposure of occasions and conditions that would affect value revelation of its securities..[64]

INSIDER TRADING LAWS IN INDIA

Laws related to prohibition of insider trading have always been a center of attraction. It is now under the limelight because of the new rules were introduced in recent past which effected the capital market regulator[65]. Basically the whole regulation[66] moves around the restriction on the use of company's unpublished price sensitive information by any person. If someone is convicted for the same could be penalized with the imprisonment of 10 years or has to pay a fine up to Rs.25 crore or thrice the amount of profits made[67]. There are several officers in a company who may be able to always possess unpublished price sensitive information which

[64]Justice Sodhi Committee report, Available at: https://www.indiainfoline.com/article/news/justice-sodhi-committee-submits-report-to-sebi-on-insider-trading-norms-5841677996_1.html (Last Visited on 27.03.2018)

[65]on 15th May 2015.

[66] SEBI (Prohibition of insider trading) regulation 2015

[67] The Securities and Exchange Board of India Act, 1992, Section 24

could be misused. In order to prevent the misuse of UPSI Insider Trading Regulation[68] has been introduced. The rules and regulation governing the insider trading are not the total solution to the particular problem because unethical or unprincipled traders find out new ways or loopholes to escape from the regulations and will continue to make the secret by avoid prosecution. Even if we keep that aside for a moment, the capital market regulators come in to the picture and affect the stock market which often lead to a huge loss for genuine investors.

By keeping in the view drawbacks of previous insider regulation[69]Securities and Exchange Board of India (SEBI) introduced new regulation ie.SEBI (Prohibition of Insider Trading) Regulations, 2015 which have more stringent provisions then previous regulation.[70]

SODHI COMMITTEE

After analysing the various cases and loopholes in present regulation(s) related to insider trading SEBI decided to make amendments in it in order to make it stringent to curb the insider trading in India. For the amendments in previous regulation or for providing the framework of new regulation SEBI constitute a High Level Committee under the Chairmanship of Justice (Shri.) N.K. Sodhi[71] submitted its report to Chairman of SEBI, Shri U.K. Sinha, on December 7, 2013 at Chandigarh. Few recommendations has been provided by Committee to the legal framework to curb the insider trading in India and has focused on making this area of regulation more predictable, precise and clear by various principles-based rules and regulations. The Committee has also suggested that each regulatory provision supported by legislative intent.[72]

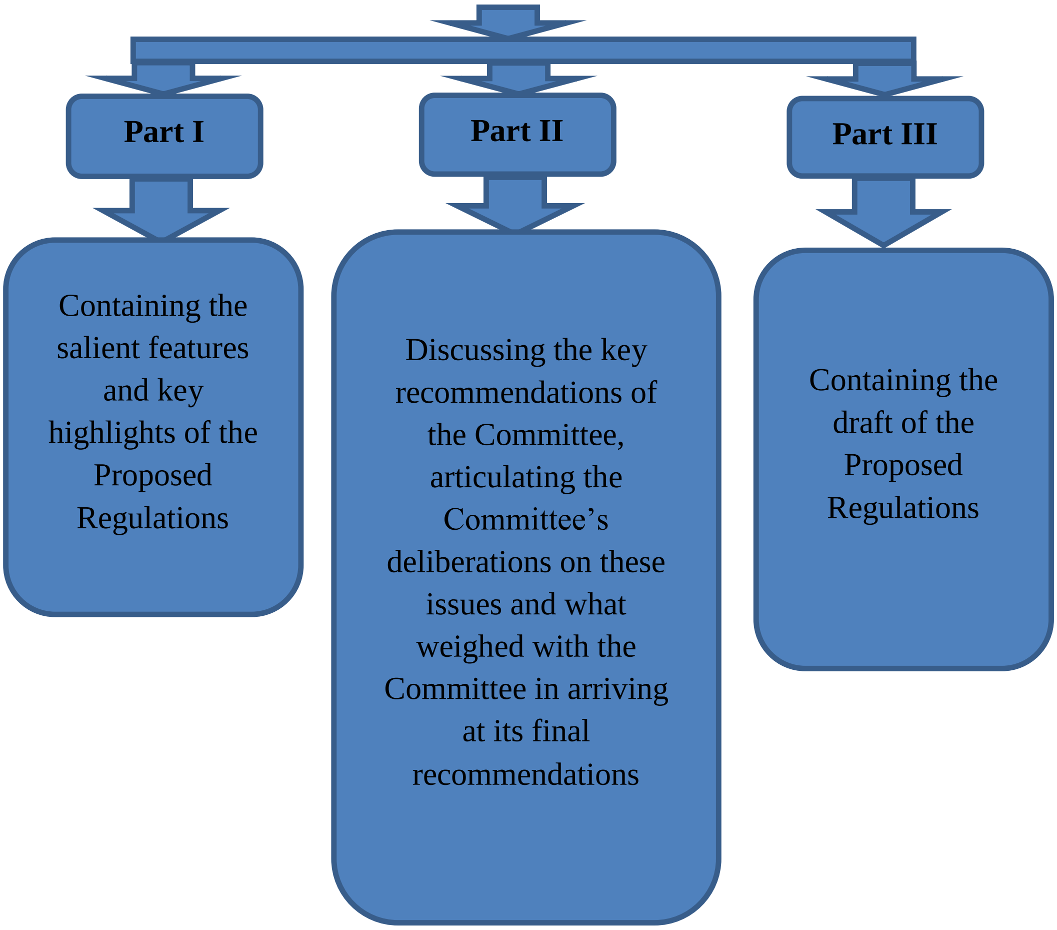
The story was to amend the laws or making framework for new regulation is to protect the investor, shareholders etc. These regulations were mainly introduced for listed companies, where public interest was involved.

[68] SEBI (Prohibition of insider trading) regulation 2015
[69] SEBI (Prohibition of insider trading) regulation 1992
[70] Analysis of new SEBI regulation, *available at*: https://blog.ipleaders.in/analysis-new-securities-exchange-board-india-regulations-2015/#_ftn2 (last visited on 12.04.2018)
[71] "former chief justice of Karnataka and Kerala High Courts and former presiding officer of the Securities Appellate Tribunal"
[72] Justice Sodhi Committee, *available at:* https://www.sebi.gov.in/media/press-releases/dec-2013/justice-sodhi-committee-on-insider-trading-regulations-submits-report-to-sebi_25863.html (Last Visited on 12.04.2018)

STRUCTURE OF THE REPORT

The report was divided in to three parts its first part contains key features and main highlights of the proposed regulation Second part provides the key recommendations of the Committee, the Committee's deliberations on these issues and what weighed with the Committee in arriving at its final discussing the key recommendations of the Committee. Last or final part includes the framework of the proposed regulation. The proposed regulation was having more wider coverage to trace the insider trader as it enhance the area of the definitions like insider, connected person, unpublished price sensitive information etc.. The whole process was done to protect the investor who may be affected if unpublished price sensitive information is misused by the insiders. If holders of the insider information misuse it the prices of the securities will badly fluctuated moreover message of inequality will be delivered to the society. In the result society will start losing interest and confidences in the security market, which will be great loss not only to a particular company but to the whole security market. It is clear from the history it took ages to earn the confidence of investors in the market. So insider trading could be considered as a slow poison for the security market which will swallow the whole market in near future if not curbed.

Structure of the Report



FEATURES OF THE PROPOSED REGULATIONS

The committee has provide framework for new insider trading regulations and and gives different proposals to check the insider trading in India. The notable highlights of the Proposed Regulations prescribed by board of directors are as follows:-

A. General Aspects Provided In Report:

1. "The regulations will cover securities which listed or proposed to be listed on stock exchanges. As the public interest is involved in these securities.

2. The term "connected person" include every person connected with UPSI it may be public servants who handle UPSI relating to listed companies.

3. The term "generally available information" is defined the information which is not unpublished price sensitive information and formulate a test based on whether the information in question is accessible to the general public on a non –discriminatory basis.

4. The term "immediate relative" is defined as close relatives either financial dependent or the person depends on insider for trading in securities.

5. The term "unpublished price sensitive information" is defined to mean information that is not generally available to the public but can affect the price of the securities as information related to merger, amalgamation, declaration of dividend etc."

B. Charging Prohibitions

(a) "Communication of information

1. Insiders are restricted to communicating, providing or allowing access to UPSI unless required for discharge of duties.

2. A general restriction is imposed on all persons from procuring and causing communication of UPSI unless required for discharge of duties.

(b) Due diligence

1. Conducting due diligence on listed companies for purposes of transactions entailing an obligation to make an open offer under the Takeover Regulations.

2. Due diligence is allowed to making diligence findings constituting UPSI "generally available" at least two trading days prior to the proposed trading.

3. The board of directors of the listed company will have to opine that permitting the conduct of due diligence is in the best interests of the company and will also have to ensure execution of non-disclosure and non-dealing agreements."

C. Trading with possession of information

1. "Trading in listed securities when in possession of UPSI is prohibited.

2. Few defences are recommended by the committee as the safeguard of insider. The defences include[73]:

    a. the trade(s) done by insider is contrary to the nature of UPSI
    b. the insider is an innocent recipient of UPSI as he/she was not aware that information used by him was UPSI
    c. the trade was between counter parties having parity in possession of the UPSI
    d. the exercise of stock options entailing a pre-determined price
    e. the trades were decided upon and executed by authorized persons / agents of a — "blind trust" without access to the UPSI that the insider had
    f. the trades were pursuant to a trading plan compliant with the requirements of the regulations."

D. Trading plans

1. "Insiders who can possess UPSI permitted to formulate a trading plans with appropriate safeguards
2. The compliance officer's role in monitoring and approving a trading plan has been made important"

E. Disclosure Obligations:

1. "Trades by promoters, employees, directors and their immediate relatives are required to be disclosed to the company
2. Trades of a value beyond certain materiality thresholds are required to be disclosed in the public domain
3. Company to keep record of all holdings by all employees
4. Companies are entitled to require third-party connected persons who are not employees to disclose their trading and holdings in securities of the company."

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[73]Sodhi committee's report *available at* https://www.sebi.gov.in/sebi_data/attachdocs/1386758945803.pdf(last Visited on 03.06.2018)

F. Codes of Disclosure and Conduct:

1. "code of fair disclosure governing disclosure of events and circumstances that would impact price discovery of its securities need to be disclosed by every company either listed or proposed to be listed and required to formulate and publish the same[74]
2. market intermediaries are required to formulate a code of conduct to regulate, monitor and report trading in securities by its employees and other connected persons
3. All other persons who hold the UPSI in their ordinary course of work need to formulate a code of conduct to enable compliance, monitoring and administration.[75]"

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Change is the law of nature, with the passage of time previous laws become less effective for the society and people find loopholes to make secrete profits which creates harm for the investors and other stakeholder. Many amendments took place (ie. till 2008) in previous insider trading regulation[76]. Then in 2013 Sodhi Committee gave the recommendations to bring the new regulations with wider scope and strict provisions and submit the report for the same on December 7, 2013 to SEBI. On 15th January,2015 SEBI came with new regulation on insider trading ie. Securities And Exchange Board Of India (prohibition of insider trading) Regulations, 2015.

SEBI (prohibition of insider trading) Regulations, 2015 consist of 12 regulations, V chapters and two schedules. Section 11(2)(g) of chapter IV provides the functions of the board to prevent the insider trading and section 15(g) provides the penal provisions for insider trader.

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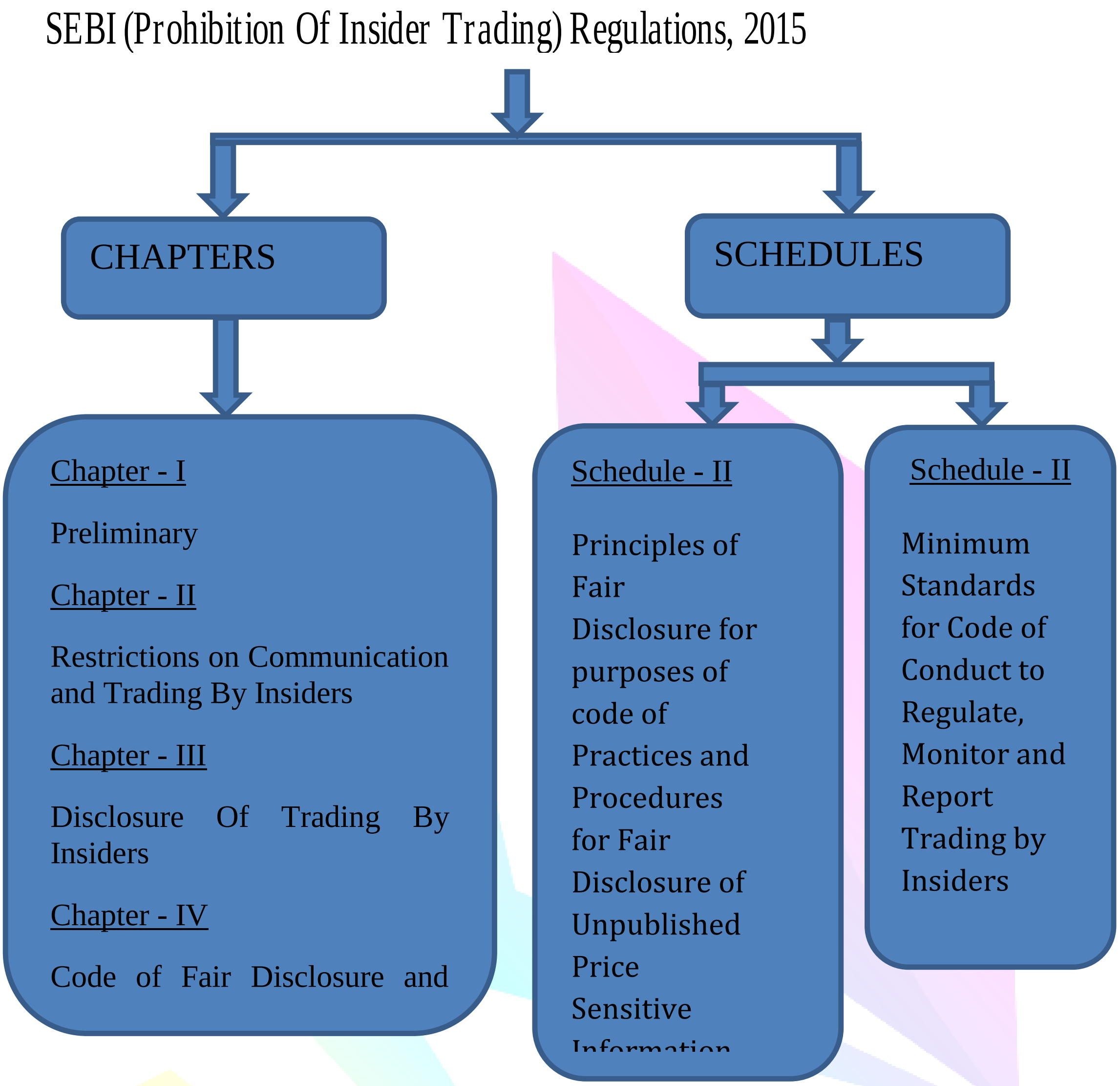
[74] Salient features of regulation *available at* http://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20Hotline/Regulatory_Hotline/Salient_Features_of_the_Regulations.pdf (Last Visited on 03.06.2018)
[75] Report of the high level committee to review the SEBI (PIT) Regulations, 1992 https://www.sebi.gov.in/sebi_data/attachdocs/1386758945803.pdf (Last Visited on 30.03.2018)
[76] Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992



The entire regulation focused to restricts communications of unpublished price sensitive information by the insider and impose the obligations on each and every insider to use or handle such information with care and deal with information with them when transacting their business strictly in a need to know basis.[77] And try to make the competition transparent and fair.

Chapter I of the regulation specifically deal with the short title and definitions, few definitions of the regulation are as follows:

[77] Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015

1. ***Insider*****:** Insider means any person who is the holder of unpublished price sensitive information eg. Manager, chief executive officer, chief financial officer, company secretary, auditors etc. and also include persons who are connected with any insider by the way of frequent communication, relation with employees/manager/director etc.[78]
2. ***Trading:*** Trading simply means trading or dealing in the securities by the way of sales, agree to sale, purchase, agree to purchase etc.[79]
3. ***Insider Trading*****:** insider trading means trading done by insider to make its own profits by virtue of its position.

OTHER RELATED DEFINITIONS

1. ***Connected Person*****:** Connected person includes every person who is in the link with any insider as director, auditor, employee, partner, associate etc. of the company directly or indirectly from the duration of six months by the way of any business link or any contract or by frequent communication shall be considered as connected person.[80]
2. ***Unpublished Price Sensitive Information:*** Unpublished price sensitive information means any material (important) information which is in the hands of officials and related persons of the company and can affect the price of the securities but not yet generally available to public is known as unpublished price sensitive information. As per regulation 2(n) this definition is very wide but it includes, "financial results, Dividends, change in the capital structure, mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and all other material affairs of company such as changes in key managerial personnel, material events in accordance with the listing agreement etc."[81]
3. ***Generally Available Information:*** Generally available information means the information which is available for general public. That is publically available via internet, newspaper or any other medium of media.[82]

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[78]SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(g)

[79] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(l)

[80] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(d)

[81] SEBI (Prohibition of Insider Trading) Regulations, 2015,Regulation 2(n)

[82] SEBI (prohibition of insider trading) regulation, 2015, Regulation 2(e)

4. ***Immediate Relative:*** immediate relative means all those persons who are directly related to person may be by virtue of financial dependence or for decision making related to trade in the securities.[83]
5. ***Securities:*** securities mean all the instruments of security market such as security bonds, debentures, shares etc. It is a financial instrument which is tradable mainly used by companies to raised money/funds from market.[84]

Chapter II of the regulation deals with not to communicate UPSI to any other person and if insider himself wants to trade in such securities then he has to prepare trading plan etc. The purpose of whole chapter is not to misuse UPSI by any person. Specifically divided in to further three parts which are as follows:

1. Non communication of Unpublished Price Sensitive Information
2. Trading in securities if Unpublished Price Sensitive Information is in the possession
3. Trading plans for those who holds the Unpublished Price Sensitive Information

A. Non Communication Of Unpublished Price Sensitive Information

Regulation 3 (1) and (2) are almost seems same but there is very thin line difference between two which are as follows:

Regulation 3 (1)	Regulation 3 (2)
No **insider** shall provide the UPSI to any other person including insider. It is the duty of insider to handle the UPSI with due care.[85]	No **person** shall compel any insider or try to arrange the UPSI directly or indirectly from illegal sources.[86]
Relating to its listed securities or securities proposed to be listed or a company itself, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.	

[83] SEBI (prohibition of insider trading) regulation, 2015, Regulation 2(f)
[84] SEBI (prohibition of insider trading) regulation, 2015 , Regulation 2(i)
[85] Regulation of SEBI (prohibition of insider trading) regulation, 2015, Regulation 3(1)
[86] SEBI (prohibition of insider trading) regulation, 2015, Regulation 3(2)

On one hand regulation 3(1) restricts the "insider" and put the obligation not to communicate the UPSI to any person and handle the information with due care, on the other hand regulation 3(2) restricts the "person" to obtain the information or become the reason of communication to take the information ie. UPSI illegally from the insider which is not generally available to general public.

Regulation 3(3) provide the guidelines for the situation where insiders are allowed to provide "unpublished price sensitive information by the way of communicated, provided, allowed access to or procured, in connection with a transaction"[87]:

Compulsory To Make An Open Offer	Voluntary Open Offer
Under the takeover code if the person who holds the shares of the company touch the prescribed limit (i.e. 25% of total share capital of the company) then he or she have to make an compulsory open offer.	Under the takeover code even the person who holds the shares of the company have not touched the prescribed limit (i.e. 25% of total share capital of the company) he or she is willing to make an open offer then they can come with the proposal for at least 10% of total share capital of company.
This disclosure shall be made within two days by publication in at least in two news newspapers.	

Regulation 3(4) provides instructions to the board and the parties not to disclose the confidential information to any one and execute non-disclosure agreement.

B. Trading in Securities If Unpublished Price Sensitive Information is in the Possession

Regulation 4(1) restricts the insider to trade in the securities those are listed or proposed to be listed on stock Exchange. If he/she is trading in the securities, it would be presumed that trade have been supported by knowledge and awareness of UPSI which is in his possession. The reason or the purpose for which he had made the transaction would not intend to be relevant until unless he prove his innocence by proving the situations mentioned below[88]:

[87]SEBI (prohibition of insider trading) regulation, 2015, Regulation 3(3)
[88]Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015, Regulation 4 (1)

In case of insider is Individual	**In case of insider is non-Individual**	**In other case**
Transaction is: (i) off market (ii) between the promoters and both are having knowledge of UPSI (iii) without breaching regulation-3	Individuals who made the transaction and individual who hold the UPSI : (i) both are different (ii) no evidence that UPSI has been communicated	Trade were done as per trading plan[89]

Connected persons and UPSI is mentioned in Regulation 4(2)[90] which clearly defines the onus of proof of not having unpublished price sensitive information has been shifted on on such connected persons.

C. **Trading Plans For Those Who Holds The Unpublished Price Sensitive Information**

Trading plans provide an effective defence for the insiders (who have material unpublished price sensitive information) to trade in the securities of the same company. If insider is having knowledge of UPSI when he trade in the securities he/she can take the defence for the same that the trade was done as per the terms of trading plan which is required in regulation[91] The defendant who has done a wrongful act may prove that there exist circumstances which under the law either justify or excuse his otherwise wrongful actions. Another illustration of a defence in criminal cases is action taken in 'self-defence'.[92]

To reduce the insider trading or misuse of the Trading Plans, few safeguards have been provided by PIT Regulations, which are as follow:

(1) Trading plan shall be submitted by insider at least six months prior to the transaction;

[89]Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015, Regulation 5
[90] Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015
[91] Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015
[92]Trading Plan Under SEBI Regulation *available at*https://www.caclubindia.com/articles/trading-plan-under-sebi-prohibition-of-insider-trading-regulations-2015-25770.asp (Last Visited on 23.04.2018)

(2) Insider cannot do trading at the time of material agreements or events or transitions made

(3) Trading plan shall be made at least 12 for months period;

(4) New trading plan shall be submitted after the end of previous period ie. no overlapping of trading period in two trading plans,

(5) approval of trading plan is must only submission of plan doesn't fulfil the requirement;

(6) public dissemination of trading plan;

(7) Its mandatory to follow the trading plan;

Chapter III of the regulation provides the disclosure requirements. Every director of company shall disclose the holding in listed securities[93] in form –MBP-1[94] in the beginning of every financial year or at the time of appointment. Other persons such as KMPs, promotes etc. need to disclose their holdings along with board report[95] in form- Mgt-9. Every promoter key managerial personnel anddirector of company shall disclose to the company within two days from the transaction if they made. As per the regulation 6 of the regulation provides even immediate relative and other dependents of the insiders need to disclose their holdings. And these records shall be maintained by Company at-least for five years.[96]

Regulation 7 of the regulation consist of different types of disclosures which every insider i.e. the holder of unpublished price sensitive information need to be made which is as follows:

Initial Disclosures	**Continual Disclosures**	**Disclosures by Connected person**
Every promoter, key managerial personnel anddirector of a listed company shall disclose their holding Within 7 days from	Everydirector, promoter and employee of the company shall disclose the company securities purchased or disposed of within two	The regulation has increased responsibility of the compliance officers of the Company. compliance officers are

[93]Companies act, 2013,Section 184
[94] MBP-1 mandatory to file with to ROC (Registrar of the Company) at the beginning of financial year
[95] Companies act, 2013, Section 184
[96]Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015, Regulation 6 (1)

the date of appointment and becoming promoter[97].	trading days from such transaction & every company shall inform such details to stock exchange within two trading days from the receipt of such disclosures.[98]	required to report about the trades initiated by any connected person .[99]

Chapter IV of the regulation consists of code of fair disclosures and code of conduct formulated by the board of the company. It is mandatory to publish the code of conduct and disclosures on the website of the company.

[97]Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015, Regulation 7 (1)
[98]Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015,Regulation 7(2)

[99] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015, Regulation 7(3)

Code of Fair Disclosure	Code of Conduct
Code of fair disclosure amounts to policies made by company to disclose the unpublished price sensitive information to avoid insider trading and to boost the principle of equity. 1) Regulation 8[100] provides that the management Panel of every company shall frame a code of practice for the fair disclosure of unpublished price sensitive information and publish it on the website of the company. 2) If there is any amendment in code made by company then immediately shall inform to the stock exchange where the securities arelisted.	Code of conduct means social ethics and responsibilities. Here SEBI mandate through regulation to formulate code of conduct for company to control and regulate the company and to promote the principle of equity as well. 1) As per regulation 9[101] The Board of every listed company, market intermediaries[102] and other persons (who handle the UPSI) are required to formulate the code which will be binding on every person who is directly or indirectly connected with company. This code is required to adopting the minimum standards set out in Schedule B to these regulations. 2) Compliance officer shall be appointed to administer the code of conduct and other requirements under theseregulations.

Chapter V of the regulation[103] deals with the power of SEBI to make amendments and repeal and saving clauses of previous regulations. The process of audit and investigation, penalties, punishments etc. will be considered from the previous regulation.

[100] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015 Regulation 8

[101] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 2015 Regulation 9

[102] Registered with SEBI

[103] SEBI (Prohibition Of Insider Trading) regulation, 2015

I. Power to make an investigation & inquiry: If the Board[104] suspected that the any person has violated the any provision the regulation, the Board may itself or appoint an Investigation Authority to make an inquirywhether the provisions are violated or not.[105]

II. Right of SEBI to Investigation: SEBI may appoint the investigating authority to investigate in to complaint made by investors, intermediaries or any other person for insider trading or investigate suo-moto to protect the interest of the investor.[106]

III. Process of Investigation Insider Trading

(a) *Appointment of Investigating Authority*: On complaint or suo-moto SEBI may appoint the investigating authority. The purpose of his appointment is to investigate the matters related to insider trading.

(b) *Notice to Insider*: Notice shall be issued to suspected insiders regarding insider trading investigation.

(c) *Investigation of Books*: Investigation authority on the directions of the SEBI shall commence the investigation and inspection of books of account of the insider. Insider is bound to provide all the assistance to investigating authority under Regulation 7[107]

(d) *Preparation of Report*: After making an inquiry and investigation, Investigation Authority will prepare a report and submit it to SEBI within reasonable time.

(e) *Communication of Report:* Report prepared by, Investigation Authority shall be communicated with the insider to obey the principle of natural justice.

(f) *Directions by SEBI:* After receiving the report from the, Investigation Authority SEBI may give the directions to insider if he/she found guilty. Regulation 11 authorise the SEBI to initiate the criminal proceedings or impose the penalties.

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[104]Securities and Exchange Board of India
[105] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 1992,Regulation 4(a)
[106] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 1992, Regulation 5
[107] Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 1992, Regulation 7(1)

III. Penalties for Violation Of Provisions: As per section 15 G of SEBI Act, 1992, insider and person who violates the provisions of SEBI (PIT) Regulation, 1992"shall be punishable with fine minimum ten lakh rupees which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

Methods of Prevention of Insider Trading

1. *Disclosure of Interest by corporate insiders*: If disclosures will be made my insider then it will be easy to trace the interest of the insider in particular entities. Generally disclosures are of two types:

    a) Initial Disclosures

    b) Periodical Disclosures

    c) Event Based Disclosures

2. *Disclosure of Price Sensitive Information*: with in time prescribed by law. Board of directors need to make policies like code of practice or code of conduct etc. and publish it on the official website of the Company.

Corporate governance and Insider Trading

Corporate governance means "govern the company/corporate" by its management by complying with laws and by creating own laws with in the limit of present laws which helps the company to work in more efficient way. Corporate governance basically focused on the transparency in the working of the company because the interest of the public is involved in it. Restricting insider trading is the part of corporate governance. It is the self-governance of companies where a company to increases its firm's value by qualitative disclosure. It must be different from the regulations which are levied by the law and which maintain the risk of penalty. In other scene it is like "govern the corporate" by following the laws in best possible manner. It basically a tool which improves the health of the corporate by doing compliance(s), reducing penalties and increasing the good will by earning the trust of the stakeholders. However Regulation 27 (2) of SEBI Listing Regulations 2015 (LODR) provides "The listed entity shall submit a quarterly compliance report on corporate governance **within fifteen days** from close of the quarter." Further it may be noted that "it **shall not apply**, in respect of -

(a) the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year:

Provided that where the provisions of the regulations specified in this regulation becomes applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.[108]

(b) the listed entity which has listed its specified securities on the SME Exchange."

Concept of Corporate Governance

(i) Corporate governance is more than company's management. It refers to a fair, efficient and transparent functioning of the corporate management system.

(ii)Corporate governance refers to a code of conduct; the Board of Directors must abide by, while running the corporate enterprise.

(iii)Corporate governance denotes a set of systems, procedures and practices which ensure that the company is managed in the best interest of all corporate stakeholders.

Principles OF Corporate Governance

The following are the basic corporate governance principles which are required to be followed by every organization:-

(i) Transparency

(ii) Accountability

(iii) Independence

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[108]Compliance calendar, *available at:*https://www.bseindia.com/corporates/compliancecalendar.aspx (Last Visited on 03.06.2018)

COMPARATIVE STUDY OF THE LAW ON INSIDER TRADING IN U.S. AND INDIA

This chapter deals with the comparison of the Indian insider trading laws with the laws in the U.S., specifically in respect of the foregoing issues.

The "Insider Trading" is originated in US in early 1720s.J.P Morgan & Co., was working in unofficial central bank of the US and it was found they used their high influence with the Republican Party to make profits. Hence the laws related to Insider Trading were formed in US to curb its effects. On the other hand history of Insider Trading is not so old in India. Interest in stock market developed in 19th century in India. India faces the problems related to Insider Trading in 20th century. In this chapter we will do the comparative studies related to particular issue 'Insider Trading'of the both nations the U.S. and India have attempted to recognise the issues and try to prepare the legal framework for Insider Trading.

Legal Framework of Insider Trading consists of following questions:

> "a. What is insider trading?
> b. Who can be considered as an insider?
> c. What can be considered as inside information?
> d. How to prevent insider trading?
> e. What sanctions and enforcement measures should be implemented?"

INSIDER TRADING IN US

United States of America is known as powerful economy. Problems related to Insider Trading are also faced by the US. US have a rich history in Insider Trading. US gave the concept of legal insider trading and illegal insider trading.

Legal insider trading: Legal Insider trading refers to trading in securities dine by insider by following rules and regulations provided by law.

Illegal insider trading: Illegal Insider trading is comes under the criminal activity. Thomas C. Newkirk,[109] in one of his speech, specified "Illegal insider trading refers generally to buying or selling of a security, in breach of a fiduciary duty or other relationship of trust and confidence, on the basis of material, non-public information about the security. Insider trading violations may also include 'tipping' such information, securities trading by the person 'tipped', and securities trading by those who misappropriate such information.[110]"

(a) Other Types of Insider

The category of primary insiders also includes "classical" and "constructive" insiders.

(a)Classical Insider: A "classical insider" is specifically a director or an officer of a company.

(b)Constructive insider: The "constructive insiders" are those who are aware about the material corporate information legally by virtue of their position in the company, such as an "underwriter, accountant, lawyer or consultant working for a company" and able to access the company's inside information. The deemed insidersare also known as "temporary insiders." The liability for insider trading covers the all categories of insiders, either they are directly with in the connection of the company or not.

(b) Tippers: Insiders are also included the category of tippers. Tippers attract liability for insider trading by disclosing the inside information of the company to any other person who is directly or indirectly connected to him, following are some situations which attracts the violation of particular activity:

(i) Breach of fiduciary duty by the tipper and

(ii) The tipee is aware that tipper was breaching his duty still he is using such information for his personal use.

[109] "the former Chief Litigation Counsel of SEC's Enforcement Division"
[110] Speech by SEC Staff: Insider Trading –A U.S. Perspective Remarks by Thomas C.Newkirk, *available at:* http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm(Last visited on 21.03.2018)

Brief History of insider trading in US

Insider Trading has been traced back in United States from 18th century. In 1720J.P Morgan & Co., was working in 'informal central bank' of the United States of America and it was found that company was using its high influence with the Republican Party to make profits. Laws against Insider Trading were framed in the United States of America from 18th century. Therefore, it is very important to understand Insider Trading from American perspective. The market crashed in 1929 due to "lack of investor's confidence" in securities market this leads to economy of US in the depression. Then America came with the enactment of the Securities Act, 1933. It was the first official law specially formed for this particular problem. The Insider Trading laws were framed by the Supreme Court of US in Strong vs. Repide.[111] Statutory Insider Trading Laws were firstly framed in the year 1933 and subsequently in 1934 Securities Exchange Commission introduced 'Securities Exchange act in 1934'. The act was formed by SEC (Securities Exchange Commission) to control the secondary market. These Acts were meant to create more transparency among the investors and placing due diligence on the preparers of the documents containing detailed information about the Security In 1909, Supreme Court Establishes Insider Rule "The Supreme Court established a rule that the director of a company must either disclose the inside information or abstain from trading. Although the case, Strong v. Repide, made it clear that an executive could not use privileged information for profit, it did not address the issue of who was an insider." In 1934 The Securities Exchange Act passed by Congress, "The law contains a key provision, Section 10, broadly outlawing certain forms of stock fraud. Based on Section 10, the Securities and Exchange Commission in 1942 adopted Rule 10b-5, making the fraud provisions applicable to purchases as well as sales of securities. Section 10 and Rule 10b-5 became the key provisions to prosecute illegal insider trading. Neither provision actually defines insider trading. "In 1966 Texas Gulf Case[112] Sets Insider Precedent. "Acting on a tip that the Texas Gulf Sulphur Company found a site near the Timmins, rich with copper ore, Ontario, company officers start heavily traded in the stock of the company before disclosing the news. The officers of the company and the shareholders who used this information and traded in the securities of the company were sued by the Securities and Exchange Commission. The United States Court of Appeals for the Second Circuit in New

[111]*Strong vs. Repide,* 213 U.S. 419 (1909)

[112]*Securities and Exchange Commission v. Texas Gulf Sulphur Company*, 258 F. Supp. 262 (S.D.N.Y. 1966)

York ruled that anyone who obtained inside information of an important nature must either disclose it to all of the investing public or refrain from trading until that information made public."

In 1978, the S.E.C. said "Vincent F. Chiarella, a printer at Pandick Press, had sorted out the names of corporates aims from private documents and then traded on that information. A federal court convicted Mr. Chiarella for fraud in 17 securities and sentenced him for one year imprisonment". The Supreme Court said "there must be a confidential relationship, or fiduciary duty, between any defendant and someone else for there to be a violation of the securities law." In 1983, in the case of Dirks vs. SEC,[113] nobody was held liable for 'Insider Trading' as they disclosed the information for revealing a scam not for personal gains. It gives birth to to the concept of "constructive insiders". Constructively Insiders are known as deemed insiders who are indirectly linked with the company as Investment Bankers, Lawyers and others who obtain confidential information due to at the time they provide service to the corporation. In 1983 Supreme Court's Analyst Who Warned about the of Fraud then The Supreme Court ruled that "Raymond Dirks, a financial analyst, did not commit illegal insider trading by telling clients to sell their stock in Equity Funding. Mr. Dirks was trying to uncover a huge fraud in 1973. Rather than make his discovery public, he told clients to get clear their stocks in the company. The court further added that the duty of a person who receives an inside tip, known in securities jargon as a tippee, depended entirely on whether the source of the tip had breached a legal duty to the corporation's shareholders in passing the information along." In 1987, the United States vs. Carpenter,[114] the Supreme Court referred that the utilization of Inside Information got due to goodness of private relationship must not be utilized or revealed, if the same act done by any individual revealed he/she get charged for Insider Trading. In 1997, O'Hagans Case[115], the court recognized that a company's confidential information is its personal property: "A Company's confidential information is recognised as property on which the company has a exclusive right to use. The misappropriation of such information in violation of fiduciary duty

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

[114]*Carpenter v. United States*, 484 U.S. 19 (1987)

[115]United States v. O'Hagan, 521 U.S. 642 (1997)

constitutes fraud similar to embezzlement or the fraudulent appropriation to one's own use of money or goods trusted to one's care by another."

In December 2016 The Supreme Court said that “gifts of confidential information from business executives to relatives violate securities laws. It is interesting to note that the U.S. insider trading laws do not have a specific definition of ‘insider trading’, although insider trading is regarded as an offence and is legally prohibited. “In 1988 Drexel, a Wall St. Powerhouse, Pays $650 Million Fine on the violation of laws made by federal securities, Drexel Burnham Lambert was held guilty for six frauds. It took more than two years to investigate the matter that Drexel’s and Mr. Boesky were in relation. This agreement was come in the picture after the argument between the firm’s chief executive and the United States attorney, Rudolph W. Giuliani. In august 1989, six people were convicted for Stock Conspiracy .The five leaders of illegal game plan were traced, New Jersey investment partnership and a former trader with Drexel Burnham Lambert were found guilty of creating illegal tax losses through fraudulent stock deals. The defendants in the case, which focused on trading by the partnership, Princeton/Newport Partners, were the first to be charged with fraudulent dealing as part of the government’s investigation that began in 1986 into crime on Wall Street. In august 1989 Sandy Lewis Admits Rigging a Stock Price Salim B. Lewis, a main Wall Street broker who was at one time an extraordinary guide to the Securities and Exchange Commission, conceded to criminal allegations that he controlled a stock cost in 1986, in an activity that profited the American Express Company. Mr. Lewis, known as Sandy, said that he had acted subsequent to watching that a rush of short-offering was depressing the stock. President Bill Clinton absolved him, and a government court judge later believed that Mr. Lewis carried on of neat and improving drive. In APRIL 1990 Giuliani Called too enthusiastic in Goldman Sachs Case[116] There was a long-held doubt of insider exchanging the information about each significant takeover in the 1980s. "It resembled free sex," said the head of one of Wall Street's biggest speculation banks. "You certainly observed the misuse developing, yet you additionally observed the nonattendance of individuals getting captured." Sweeping charges were leveled by the legislature and afterward dropped in 1987, five months after prosecutors captured Robert a Freeman of Goldman Sachs and two different merchants, one being driven from his office in

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binds and another spending a night in prison before being charged. The previous head of hazard arbitrage at Goldman was condemned to four months in jail and fined $1 million for a solitary occurrence of insider exchanging. Mr. Giuliani later said the case was maybe the greatest mix-up he had made as a prosecutor in light of the fact that the arraignment had been brought too quickly. In November, 1990 Milken, King of 'Garbage Bonds,' imprisoned and fined with $600 million. Michael R. Milken, who made the "garbage security" financed frequent huge corporate takeovers in the 1980s, he confessed the six criminal allegations which were identified with securities exchanges. He didn't acknowledge with charges of fraudulent activity or insider information exchanging. Mr. Milken had since quite a while ago prove his innocence, however he was separated in court and cried, by saying he had "hurt the individuals who are nearest to me." Mr. Milken, the previous leader of the garbage bond office at the dead Drexel, was condemned to 10 years in jail; however Judge Kimba M. Wood diminished the sentence with the goal that he served just two years. In 1995, seventeen people charged for‘AT&T’s’ Insider Trading. In one of the biggest instances of insider exchanging on record, the administration charged the seventeen individuals for utilizing the secret data of AT&T's in order to get four organizations from 1988 to 1993 to acknowledge $2.6 million in illicit benefits. Court Upholds the Securities Exchange Commission’s theory of Insider Trading. In 1997, the Supreme Court decided that insider exchanging laws connected to individuals who had classified data regardless of whether they didn't have any association with the organization whose offers were being exchanged. In 2000, Affair with Adult Film Star leads to the conviction of James J. McDermott Jr. The previous director and CEO of the Manhattan speculation bank Keefe, Bruyette and Woods, were sentenced for stock misrepresentation and convicted for releasing secret monetary data of a progression of bank arrangements to a X-appraised motion picture star. Mr. McDermott, the principal Wall Street CEO accused of insider exchanging, was not blamed for making any illicit benefits himself. Actually, every one of the benefits included was irrelevant, considering the wealth he may have passed up a great opportunity for. In 2004, Martha Stewart sentenced for imprisonment.

Legal Framework of America

The Securities Exchange Act of 1934 was passed by Congress and marked by President Franklin D. Roosevelt following the 1929 securities exchange crash as first federal law to manage securities exchange. Under this Act, the US Securities Exchange Commission (SEC) was made to control and manage the US securities oversee the laws to ensure investor protection and keep the corporate sector free from frauds. The Act has been reconsidered throughout the years by Congress and supplemented by guidelines and directions set forth by the SEC. The Act remains the federal government law that administers insider trading in the United States. Individual states can make their own laws. The law structure of US laws related to Insider Trading is as follows.

A. Securities Exchange Act of 1934

List of provisions which are specifically framed to control the insider trading in United States are as follow:

"Section 10b - Manipulative and Deceptive Devices
Section 14e - Proxies
Section 16b - Directors, Officers, and Principal Stockholders
Section 20A - Liability to Contemporaneous Traders for Insider Trading
Section 21A - Civil Penalties for Insider Trading
Section 32 - Penalties"

Securities Exchange Commission of United States introduced 'Securities Exchange act in 1934'. The act was formed to control the security market, the key provisions identified with regard to insider trading are Rule 10 b-5 provides "anti-fraud rule", Rule 14 e-3 consists with the provisions relating to "tender offers" and Section 16 (b) deals with the "recovery of short-swing profits" of the Exchange Act.

(a) Rule - 10b-5 Employment of Manipulative And Deceptive Devices

Section 10(b) of the Exchange Act covered under the rule 10b-5. It restricts the insider to execute fraudulent activities; this rule is identified as "anti-fraud rule" and empowers the Securities Exchange Commission to levy the prohibition on insider trading. The Rule provides that:

"It shall be unlawful for any person, who directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person?

In connection with the purchase or sale of any security."[117]Contrary to the prevalent view, neither Section 10(b) of the Exchange Act, nor Rule 10b-5, clearly forbids insider trading. Rule 10b-5 restricts any activity and business practices related to sale or purchase of securities which is subject to the fraud on any person. The U.S. courts relied on the principle of 'fiduciary duty'. Principle of fiduciary duty' restricts the insider's involvement in any fraudulent activity. In case, where insiders breach the principle of fiduciary duty, it will amount to fraud and insider will be held liable for fraud under this rule. The Burden of proof is on the regulator, either there is breach of fiduciary duty or not. Though, the U.S. courts' recently come with the concept of "principle of parity of information", and discarding the reliance on the principle of fiduciary duty.In 2000, Security Exchange Commission provides the clarification on, rule 10b-5-1 as, "A purchase or sale of a security by an issuer is on the basis of material non- public information about that security or issuer if ,is the person who is making the purchase or sale was aware of the material non- public information when he made the transaction of purchase and sale shall be liable guilty for the violation of Rule 10 b-5 and considered as insider trading if it is proved that the person has knowingly possessed material non-public information."

[117]Employment of manipulative and deceptive devices, *available at:*https://www.law.cornell.edu/cfr/text/17/240.10b-5(last visited on 28. 03.2018)

(b) ***Rule 14e-3 Transaction in Securities On The Basis Of Material, Non Public Information in Context of Tender Offer***

Rule 14 e-3 is specifically deals with the prohibition of insider trading during 'tender offer'. Tender offer is known as open offer. This rule strictly states that if the statement provided with regard to the tender offer found untrue or misleading or there is any omission or misrepresentation in the offer will held liable under this rule. It further added the manipulative acts which harms the interest of public by favouring any particular shareholder shall covered under this rule. Under this provision, a total boycott exists on insider trading. It is not at all like Rule 10b-5, there is no need to prove existence of fiduciary duty. The Rule has its own exceptions. Sub-section (1) to Rule 14e-3 prohibits the purchase of securities by an intermediary or by an agent of person who comes with tender offer, on behalf of an offering person. The idea behind such provision is restriction on the participation in trading of insiders or people who hold the non-public information, prior to the offer made. The Rule does not defending the persons who bought the securities on the behalf of bidder and the purchase is based on the facts received from the bidder. Even if, the bidder tipped in advance about the takeover will be guilty under this act. Sub-section (2) provides that the sales of securities by any person to the bidder is based on the information received from the bidder are exempted from the 'abstain or disclose' rule. Consequently, a person (for example, a major shareholder of the target company) who obtained material non-public information from the bidder and act upon it does not attract any violation. As the deal proceeds with the seller without any informational benefit to the purchaser, doesn't make such deal unlawful. These are the exceptions of this rule.

(c) ***Section 16(b)***

Another important provision identified with regard to insider trading in the U.S. is the Section 16(b) of the Exchange Act. It allows issuers of securities to recover short-term profits from an insider. Here the short term profit means profit earned on the short term securities i.e. within the period of six months.

The trading by corporate insiders in the U.S. is controlled by Section 16(b)[118] of the Exchange Act. Under this provision, the short term profit (i.e., profits out of from the transactions within a period of six (6) months) made by insiders banded from taking positions in derivative contacts in the shares of the corporation. Only possession of non-public data is irrelevant to establish violation of this provision. Under Section 16(b),an issuer or a shareholder has a right to recover any profits made by an officer, director, or controlling shareholder from purchases and sales transaction made within six (6) months. Liability is resolved exclusively if the contrary exchanges include occurred inside the statutory period. This was the main arrangement under the government securities law which had distinguished the classes of insiders, for example, officer, director and controlling investor and the utilization of within information by these corporate insiders. Though, the narrow restrictions on insider trading, provided under Section 16 (b) applied only on the contracts made within the period of six (6) months, with the persons who are holding designated position or to the transactions made in the securities which were registered. Another downside of Section 16(b) is that it is restricted to a private enforcement administration, i.e., just the issuer could start activity against the violator and the Regulator did not have a part for open enforcement.

The anti-fraud provision under Rule 10b-5 can be directly applied to a company's insider who secretly trades in his own company's stock while holding the inside information because such conduct comes under the fraud. Though, the Section 10(b) of the Exchange Act and Rule 10b-5 do not specifically ban the insider trading by a corporate "outsider", in 1961, Cady Roberts & Co.'s case[119]the commission provided a comprehensive amendment to these provisions and applied them to the company's outsiders. The SEC held that the obligation of the company's insiders could also attach to assured group of people outside the insiders' territory, in certain circumstances. The Security Exchange Commission reasoned that: "Analytically, the obligation (not to engage in insider trading) rests on two principal elements: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal

[118], Insider trading, Liability standards, *available at:*https://corpgov.law.harvard.edu/2017/03/01/section-16b-if-at-first-you-dont-succeed/ last visited on 18.03.2018
[119] In Cady, Roberts &Co. 40 S.E.C 907 (1961)

benefit of anyone, and second, the inherent unfairness involved where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing. In considering these elements under the broad language of the anti-fraud provisions, we are not to be circumscribed by fine distinctions and rigid classifications. Thus, it is our task here to identify those persons who are in a special relationship with a company and privy to its internal affairs, and thereby suffer correlative duties in trading in its securities. Intimacy demands restraint lest the uninformed be exploited."

The present insider trading laws in the U.S. is a production of SEC's authoritative activities and legal estimates in view to understanding the statutory language. After the Texas Gulf Sulphur Co.'s case[120] it was decided that any person who obtained the material non-public data was mandatory to disclose such information before trading in securities or abstain from trading in the company's securities. The fiduciary obligation on the insider towards the company barred him from disclosing the information and consequently, nonparticipation was the only possibility. Then, Chiarella Case cleared that fiduciary obligation was a "sine qua non" founding fraud under the Rule 10b-5. Mere possession of non-public information was not enough to prove the guilty. In Chiarella, the Court also stated that "prohibition of insider trading applied not only to a person possessing and trading based on non-public information, but also to the tippees who trade based on the information received from an insider."

Thereafter, in *Dirks Case*[121], the court specified that "the liability could also be imposed on the persons who casually tip the material inside information without any intention to profit from such dissemination of information, because it is analogous to the situation in which the tipper trades on the basis of the information and then gives the profits to the tippee." However, the court did not prohibit the corporate insiders from selectively revealing the information to certain group of people such as market predictors. Thus, subsequent to the decision in the *Dirks Case*, the SEC enacted the Regulation for fair disclosure and formalized the principle of fair disclosure of information in the securities market in the year 2000.

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[120] SEC v. Texas Gulf Sulphur Company 401 F.2d 833 (2d Cir. 1968)
[121]Dirks v. SEC, 463 U.S. 646 (1983)

The U.S. Supreme Court for the first time allowed the "liability of misappropriation of information" in *U.S. v. O'Hagan*[122]The court detected that a fiduciary's secretusage of datarelated to his principal for personal benefit, produces fraud in association with the buying or sellingthe securities and therefore, it is the violation of Rule 10b-5. The court labeled it as the use of "confidential information for securities trading purposes, in breach of a duty allocated to the source of the information."

Penalties

The volume of the punishment which might be imposed on any individual whose identity, directly or in indirectly controlled by the insider will be decided by the court in light of the certainties and conditions, but shall not exceeds from $1,000,000, or three times the amount of the profit gained or loss avoided.

(a) Any person who wilfully violates any provision of the act (other than section 30A), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this title, or any person who wilfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder or undertaking contained in a registration statement as provided in subsection(d) of section 15 of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000,or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

[122]*U.S. v. O'Hagan*, 521 U.S.642 (1997)

INDIA

Indian securities law regulates insider trading under Section 12A (d) & (e)[123] of the SEBI Act read with the Insider Regulations[124] and Section 15G of the SEBI Act. However, none of these provisions or any other provision under the Indian securities law provides a specific definition of "insider trading." Section 15G is an enabling provision for SEBI to impose penalty in insider trading cases and the SEBI relies on the nature of the violation and description of the prohibited activities under this provision for imposing such penalties. The instances of violation are described within the provision itself. It says:

"If any insider who,-

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

Contrary to the above Section 15G, the Section 12A of the SEBI Act lists prohibited activities primarily including manipulative trades, insider trading activities and substantial acquisition of securities. The insider trading related prohibitions under Section 12A are:

(I) engaging in insider trading;[125] and

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[123]"Section 12A (d) & (e) of SEBI Act was part of Chapter VA inserted by the SEBI (Amendment) Act, 2002, which came into effect from 29-10-2002which came into effect from 29-10-2002. This amendment, inter alia, incorporated the provisions of Insider Regulations into the SEBI Act."
[124]SEBI(Prohibition of Insider Trading) Regulation,2015, Regulations 3 &4
[125] In fact the term 'insider trading' has not been defined anywhere in the SEBI Act.

(ii) dealing in securities or communicating to any other person while in possession of material or non-public information to any other person in violation of the provisions of the SEBI Act or the rules and regulations thereunder.

Although the term 'insider trading' has not been defined specifically, Regulation 2(g) defines the insider and Regulation 2(l) defines the trading. Regulation 3 of Insider Regulations restrict the insider or the holder of UPSI to communicate or procure the UPSI and Regulation 4 of the Insider regulation prohibits the insider (as defined under regulation 2(g)) to trade in the securities.

Although the Regulation 3 extends to that "No insider shall….." and is clearly applicable to an insider for "not to communicate the UPSI" and the Regulation 4 is applicable to insider for "not to trade". Therefore, the offence of 'insider trading' as provided under Regulation 3 and 4 read with Section 12A of the SEBI Act requires any of the following activities:

a. Dealing in securities, while in possession of UPSI;

b. By encouraging another person to deal;

c. By disclosing the UPSI to another person.

Under Section 15G of the SEBI Act, an insider who deals or counsels or communicates on the basis of price sensitive information, shall be liable for a penalty. Earlier, the position was that an insider ought to have dealt in securities on the basis of UPSI. In the case of Hindustan Lever Limited also, SEBI had held HLL liable for insider trading on the ground that HLL traded on the basis of the UPSI relating to the merger of HLL & BBLIL and the appellate authority also upheld SEBI's finding in this regard. However, subsequent to the HLL case, in 2002, SEBI had amended this provision, presumably to simplify the burden of proof in the insider trading cases.

Further, in the U.S. also, the controversy among the circuit courts relating to the word 'possession' and'use' was settled by the SEC by amending the **Rule 10b-5 in 2000**, wherein SEC clarified that purchase or sale of a security of an issuer is on the basis of material non-public information if the person making the purchase or sale was aware of the material non-public information when the person made the purchase or sale.

Therefore, knowing possession became the standard in the U.S. Notwithstanding the U.S. and the Indian amendments, the words "on the basis of UPSI" somehow continued to remain in Section 15G. With the Supreme Court's judgement in **Shriram Mutual Fund case,**[126] the SEBI does not require to establish the mensrea. However, the consequence of these words continuing in Section 15G is that the SEBI continues to have a higher burden of proof in insider trading cases to impose penalty under the Section 15G on the offenders, which is cumbersome.

Another provision prohibiting instances of insider trading is provided under the **SEBI (Buy-Back of Securities) Regulations, 1998** (the "Buy-back Regulations"), in the specific context of buy-back of securities. It provides that "any person or an insider is prohibited from dealing in securities of the company on the basis of unpublished information relating to buy-back of [shares or other] specified securities of the company." The notable elements of this provision are that this provision specifically includes the category of "insiders" and secondly, this provision also includes the words 'on the basis of UPSI', similar to the provision under Section 15G. The legislative intent behind including the category of 'insider' in the buyback specific provision could be to extend the prohibition of insider trading to specific instances of buy back of securities as this was not covered specifically under the Insider Regulations prior to the amendment of 2002. However, with the amendment of 2002, the cases relating to buy-back of securities was specifically included in the Insider Regulations by incorporating the buy-back relating information within the category of deemed price sensitive information. Therefore, with the amendment of 2002, the buy-back related provision has practically become infructuous.

Further, under the **SEBI (Merchant Bankers) Regulations, 1992,** Regulation 26 provides that "no merchant banker, or any of its directors, partner or manager, or principal officer shall either on their respective accounts or through their associates or relatives, enter into any transaction in securities of bodies corporate on the basis of UPSI obtained by them during of any professional assignment either from the clients or otherwise."

[126]*Shriram Mutual Fund v. SEBI* 2006 (5) SCC 361

Although the provision does not use the term "insider trading" in so many words, a close reading of the provision reveals that the provision, in effect, prohibits insider trading by merchant bankers as the provision includes any securities transaction by merchant bankers based on UPSI. With the introduction of new Insider Regulations in 2015, the category of merchant bankers and others under the Merchant Bankers Regulation was included in the definition of "insider" as defined in Regulation 2(g) as it includes every person who is in the possession of or having access to unpublished price sensitive information and thus, merchant bankers were also brought within the purview of the prohibition on insider trading. Consequently, the restrictions under Merchant Bankers Regulation have become practically redundant, similar to the buy-back related provisions.

As discussed above, India has sufficient provisions to explain the prohibited activities in securities transaction and the instances of insider trading. Further, the new Insider Regulations has introduced significant clarity in the insider trading laws, and has made the Indian insider trading laws comparable to the laws of the developed countries. Although broadly covered under the Insider Regulations, probably, a provision related to insider trading in tender offer cases may be incorporated as a similar provision in the U.S. (Rule 14 e-3 of the Exchange Act) has strengthened the legal regime on insider trading and has proved to be effective.

If India had tender offer specific provisions and the exceptions, similar to the Rule 14 e-3, it is possible that many of the reported cases of insider trading violation in India such as the Rakesh Agarwal Case[127] and the KLG Industries Case[128], would be interpreted liberally by the courts and had different outcome. Finally, it is recommended that SEBI may formulate and adopt a more exhaustive and streamlined definition of 'insider trading', which will resolve many interpretational issues faced by the regulator and the courts while deciding the insider trading cases.

[127]*RakeshAgarwal v. SEBI*, 2004 49 SCL 351 SAT
[128] KLG Industries Limited, (SEBI's order dated 10 June 2009)

WHO IS AN INSIDER - A COMPARISON BETWEEN THE U.S AND INDIA

(a) Insider in the U.S.

At the outset, the U.S. law on insider trading does not define the term "insider." The primary provision dealing with insider trading, i.e., Rule 10b of the U.S.' Exchange Act is worded such that "no person shall employ any device, etc., to defraud another, in connection with the purchase or sale of the security" and does not use the term "insider" and instead uses the term "any person".

However, different U.S. courts through the decisions in various cases of insider trading have made a distinction between the liabilities of primary insiders and secondary insiders. The classification of insiders as developed by the courts is given as "Any person who has an affirmative duty to disclose material information, such as officers, directors and controlling shareholders, who traditionally owe fiduciary duties to the owners or non-controlling owners of the company, is a primary insider. A person is a fiduciary to the other if the person purports to act on behalf of or for the best interests of another, and the other accepts that trust, alternatively, it can be imposed as a matter of law on anyone in a position of dominance over another."[129]

Insider in India

Indian law on insider trading contained the definition of "insider" from the inception of the Insider Regulations in 1992. However, the initial definition of "insider" was amended first in 2002 and subsequently, in 2008. The existing definition under new Insider Regulations defines an 'insider' under Regulation 2(g) means "any person who is:

i)a connected person; or

ii)in possession of or having access to unpublished price sensitive information";

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[129] Donald C Langovert, Insider Trading: Regulation, Enforcement and Prevention (Vol 18 Clark Boardman Callaghan Securities Law Series 1994) at 3-3.

Whereas connected person is defined under section 2(d) "any person who is connected with company six months prior to the concerned act it may be with relation of frequent communication of employee or officer or by being a director or officer or employ of a company or holds the professional or business relationship between company or himself or allowed by company to such person to directly or indirectly, permanent or temporary access unpublished price sensitive information. And 2(d)(ii) defines the deemed to be connected person.

1) an immediate relative of connected persons specified in clause (i); or
2) a holding company or associate company or subsidiary company; or
3) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
4) an investment company, trustee company, asset management company or an employee or director thereof; or
5) an official of a stock exchange or of clearing house or corporation; or
6) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
7) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
8) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
9) a banker of the company; or
10) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest";

One of the plausible reasons for the regulator to include such an extensive list of persons under the "deemed connected persons" could be to make it easier for the regulator to bring more categories of persons within the ambit of "connected persons" and thereby, effectively deal with the cases of insider trading. However, despite this definition, the regulator has been facing difficulties in interpreting the term "insider" in many instances of insider trading. The SAT has also criticized the above definition of "deemed connected person" for its wide scope encompassing all categories of persons to be insiders.

Recent amendment made by MCA (Ministry of corporate affairs) in companies act 2013, section 195, Prohibition of insider trading has been omitted with the effect from 09th February, 2018.

An interesting observation is that the detailed definitions of the "connected persons" and the "deemed connected person" above have somehow omitted to include the categories of "promoters"[130] and "controlling shareholders", despite their crucial involvement in the management and decision making in the company. However, it is unclear whether the omission is deliberate or inadvertent.

One reason for non-inclusion of "promoters" could be that once the lock-in period is over; there is no role of the promoters in the management of the company. Another reason could be that if the promoter is in possession of UPSI, he will automatically come within the purview of the definition of "insider."

The SAT in Dr. Anjali Beke'[131]case, has clarified that "a person who has received UPSI or has had access to UPSI is an insider. This position was confirmed subsequently in Rajiv B Gandhi Case".

Sr	Basis	India	USA
1.	Regulatory Mechanism To Curb Insider Trading	Securities and Exchange Board of India (SEBI)	Securities and Exchange Commission (SEC)

[130]SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 2(h)

[131]*Dr. Anjali Bekevs The Adjudication Officer* (on 26 October, 2006)

2.	Legislation To Govern Insider Trading	SEBI (Prohibition of Insider Trading) Regulations, 2015	The Securities Exchange Act of 1934
3.	Related acts and regulations	1) SEBI (Prohibition of Insider Trading) Regulations, 2015 2) SEBI act 1992 3) Companies act 2013 (Repealed section -195 w.e.f. of 2018) 4) SEBI (LODR) Regulations, 2015	1) Exchange Act 1934
4.	Insider Trading	Means "Insider trading is defined as a malpractice wherein trade of a company's securities is undertaken by people who by virtue of their work have access to the otherwise non-public information which can be crucial for making investment decisions[132]."	Means "Illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, on the basis of material, non-public information about the security. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped," and securities trading by those

[132] https://economictimes.indiatimes.com/definition/insider-trading

			who misappropriate such information.[133]”
5.	Separate legislation	No separate legislation provided in India to govern insider trading, which is governed by the SEBI (Prohibition of Insider Trading) Regulations, 2015 and certain provisions of the SEBI Act, 1992,	the law governing insider trading is predominantly governed by the provisions of the Securities Exchange Act, 1934
6.	Breach of a fiduciary duty	Breach of a fiduciary duty” noticed after the 2008 amendment. Prior to the 2008 amendment in Regulation 2(e), the SAT[134] observed the fiduciary duty requirement in case of RakeshAgrawal v. SEBI[135] It observed that: “The requirement for establishing a breach of fiduciary duty to successfully make out a violation of insider trading under Regulation 4 is implicit in the provisions of Regulation 3, and necessarily needs to be	fiduciary breach was the part of the decision of the United States Supreme Court in Chiarella v. United States[136], the Supreme Court, clearly held that “there was no policy of equal access to information underlying the securities laws that creates a general duty to disclose material, non-public information or refrain from trading, and this duty had to stem from a special relationship between the trader and the shareholders of the issuer corporation.” The Supreme Court’s decision in the

[133] https://www.investor.gov/additional-resources/general-resources/glossary/insider-trading
[134] Securities Appellate Tribunal
[135] (2004) 49 SCL 351 (SAT)
[136]19 445 U.S. 222 (1980).

		read into the same"	Chiarella Case came with the 'classical theory' of insider trading.
7.	Liability of a person who has traded on the basis of misappropriated information	SEBI has gone beyond the parameters of the insider trading theories laid down in the US in 2008 amendments. By creating Regulation 2(e)(ii), the SEBI has expanded the liability under Regulation 3 to any person who may have been in receipt of unpublished price sensitive information. Thus, in India, it appears to not merely a person who is alleged to have misappropriated information in violation of any duty or confidence, business or personal, may be liable, but any person who has 'received' unpublished price sensitive information. Thus, on a conjoint reading of Regulations 2(e)(ii), 18	the 'misappropriation theory' of insider trading has now come to be widely accepted i.e. if a person misappropriates material non-public information for the purpose of trading in breach of a duty of confidence or loyalty, there is a violation of Section 10(b) and Rule 10b-5.
8.	Unpublished price Sensitive information		
9	Power of	Authorities if India is	In US laws SEC need to take

	regulating authorities	more powerful as SEBI can decide the case and give the punishment to offender.	the case in front of US courts.
10	Duties of Regulating Authorities	1.Protect the interest of investor and other stake -holders 2. maintain the confidence of share -holders in securities market Make strict provisions to regulate the security market	the 'misappropriation theory' of insider trading has now come to be widely accepted i.e. if a person misappropriates material non-public information for the purpose of trading in breach of a duty of confidence or loyalty, there is a violation of Section 10(b) and Rule 10b-5.
11	Possession v. Use	In the Indian regime, Regulation 3 adopts the 'possession' standard and prohibits an insider from dealing in securities 'while in possession of' unpublished price sensitive information. The exact position in the Indian regime remains unclear	In the United States, it was held that it was not necessary to prove a causal relationship between the misappropriated information and the dealing in securities. The dealing in securities 'on the basis of' material non-public information has been interpreted to mean trading while being 'aware'.
12	Penalty	Indian regime, Section 15G of the SEBI Regulations provides a civil penalty of	Criminal Penalties. The maximum prison sentence for an insider trading violation is

		twenty five crore rupees or three times the amount of profits made out of insider trading whichever is higher The criminal prosecution for insider trading is envisaged in Section 24(1) which provides for a punishment of a maximum of ten years imprisonment, or a maximum fine of 25 crores or both. Section 24(2) also provides that if the person concerned does not pay the civil penalty imposed by the adjudicating officer, he may be punished with imprisonment which may extend to ten years, but which shall not be less than one month, and a fine that may extend to twenty five crores or both.	now 20 years. The maximum criminal fine for individuals is now $5,000,000, and the maximum fine for non-natural persons (such as an entity whose securities are publicly traded) is now $25,000,000. Civil Sanctions. Persons who violate insider trading laws may become subject to an injunction and may be forced to disgorge any profits gained or losses avoided. The civil penalty for a violator may be an amount up to three times the profit gained or loss avoided as a result of the insider trading violation.
13	Courts and Tribunals	SAT	US Courts
14	Recent Developme nts	On 16th April 2018 SEBI passed an order face book friends will also conceded as connected person.	

On a comparison of the regulatory regime in India and in the United States of America, it is apparent that the regulatory regime in the United States is not only more aggressive, but it has also evolved significantly over the last eighty years. In comparison, the Indian regulatory regime is at a nascent stage in its growth.

CONCLUSION AND SUGGESTIONS

As per study we revealed that there are various laws have been framed by different legislations to curb the insider trading. The key challenge is effectively enforcement of those laws. India is still facing problems with this white color crime. To curb this particular problem, various amendments have been made but still legislations couldn't find adequate solution, in result laws considered not sufficient. Generally Insider trading seems a very small problem but it is like a termite. It is having capacity to ruin the whole market as well. The whole study consist of five chapters, chapter one deals with introduction and meaning, chapter two clears the history of this white color crime, chapter three puts the light over the present laws in India chapter four deals with comparative studies and chapter five describes about the conclusions.

Chapter one of the study consists of introduction of insider trading. In India insider trading means, trading done by insider by using material information of the company which is not yet published publically/generally by any medium like website of company, newspaper etc. by the company and can affect the price of the securities of particular company. It is considered as most violent crime in Indian laws and regulations. This chapter deals with the important definitions like connected person, insider, unpublished price sensitive information and trading. One interesting fact found in the study is the definition of "insider trading" is not provided directly in the whole regulation, SEBI (prohibition of insider trading) regulation, 2015. Regulation 2(g) provides the definition of insider and 2(l) consist of trading. But these definitions are deeply connected with each other and are very wide. As connected person defined under regulation 2(g) covered almost every person who is directly or indirectly connected with insider and having unpublished price sensitive information. Definition of insider defines insider means person who is connected person or have or could have unpublished price sensitive information. On 16th April 2018, SEBI passed an order[137] Facebook friends will also conceded as connected person.

Chapter two of the study consists of historical background of insider trading. History of Insider Trading could be traced from U.S.A., the first case related to insider trading was traced in 1720, "J.P Morgan & Co., was working in unofficial central bank of the US and it was found they used their high influence with the Republican Party to make profits". Journey of insider trading started from 1940. From then various committees were constituted to develop the laws relating to insider trading and protect the security market. First committee constituted in 1948, "Thomas Committee" it advised to adopt the US model to constitute authority who can deal with the cases. The main purpose was to delegate the powers to experts to decide the cases more effectively. After that in 1952 The Bhaba Committee was constituted. This committee came with the idea to change the Companies Act, 1913 to control the fraudulent activities of directors, manages etc. this committee proposed to introduce the provision by which these people could be restricted to trade in the shares of company where they hold such positions. Then Sachar Committee was set up in 1977, to review the provisions of the Companies Act 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, committee finds that these laws are not sufficient to curb insider trading. Transparency and openness in the affairs of the company was considered the best method to secure the responsible behaviour of the directors and other key managerial employees. Key recommendations were "maximum disclosure of transactions by those who have 'price-sensitive information; and Prohibition of transactions by persons possessing price-sensitive information during certain specified periods". In 1948 The Patel Committee was constituted committee highlighted that "insider trading is unethical as it involves misuse of confidential information and betrayal of fiduciary position of trust and confidence". The report submitted by the Patel Committee defined 'insider trading' as "trading in the shares of the company by the persons who are in the management of the company or are close to them, on the basis of unpublished price sensitive information, regarding the working of company, which others do not have." The Narayana Murthy Committee set up by SEBI to review the adequacy of corporate governance clauses and Indian Securities Laws, which became effective from 1 January 2006. In 1989, the Abid Hussain Committee was set up to

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[137] Oder passed by SEBI for Deep Industries Ltd. a*vailable at* https://barandbench.com/wp-content/uploads/2018/04/1523966098348.pdf (last visited 23.06.2018)

examine the adequacy of the existing institutions, instruments and the structures in the Indian capital market and the rules governing its functioning. In April 1988, the Government of India constituted the SEBI, with the primary mandate of investor protection. SEBI came with the SEBI (Prohibition of Insider Trading), Regulations, 1992 which was specifically consist of Insider trading laws. This regulation was amended time to time to fulfilling in demand of time, in 1995, 1999, 2002, 2008 etc. In 1999, the SEBI constituted Kumar Mangalam Birla committee to establish the relation between insider trading and corporate governance.

Chapter three of the study specifically deals with insider trading laws in India. Current regulation related to insider trading "SEBI (Prohibition of Insider Trading), Regulations, 2015" (regulation 2015) was proposed by Sodhi Committee. It submits its report in 2013, with major changes, maximum of its proposed provisions adopted in regulation 2015.the regulation 2015 work along with the SEBI Act, 1992. Basically the regulation 2015 is divided in to twelve sections, five chapters and two schedules. All the regulations are pointed to save the company's material information from getting misused. So that interest of investor can be protected and principle of equity could be spread. It will help the market to grow. The whole regulation work to earn the confidence of the investors/stakeholders. Insider trading is not harmful for any particular company but it can clash the health of whole market. In 1929 American market was clashed badly due to the Insider Trading.

Chapter one of the regulation deals with the short title and definitions, chapter two restricts the insider to communicate or use the material information which is not yet published. Chapter two consist of trading plans if insider desires to invest in the company they not only need to prepare a trading plan at least six months prior from trading but get this plan approved from compliance officer. The validity of plan shall be for twelve months. Chapter three deals with the disclosures, i.e. initial disclosure, means in the beginning of year continual disclosure, on the happening of particular event i.e. sale or purchase of securities. Chapter four clears that the codes are required to prepared by company and disclosed on the official website of the company. The code of fair disclosures will consist of rules prepared by company for disclosure and code of conduct will consist of rules behavior of the members and employees of the company. Chapter V is consist of saving clause which save the inquiry and investigation process obligation, liability, penalties provided by previous regulation.

Chapter IV of the study deals with the comparison of Indian Laws with US laws related to Insider trading. The main reason of comparison is to learn new things from US laws as these laws are more mature. In study we find the US is the nation who first time faces the problem of insider trading and make laws for it. There are approximately 3958 employees employed by SEC on the other hand India have approximately 643 employees. So it could be said India is lacking behind due to work load. It could be said that there is effective enforcement of laws which help in the growth of the economy.

SUGGESTIONS

After revealing the study of laws of insider trading it is clear it is very difficult to cure the market from this problem call "Insider Trading". There are few points noted which may provide more efficiency to the regulations:

1. Regulation 3 (1) provides "….except where this is in furtherance of 'legitimate purposes', 'performance of duty' and 'discharge of legal obligation'" but it is unclear for what purpose, duty or legal obligation. It should be clarified.

2. Regulation 5(2) provides the trading plan need to be submitted at least six months prior if he/she wants to trade in the securities of the company and disclose it publically it may initiate the speculation in the securities of the particular company. In this case trading plan should be filed to SEBI and ROC not to the whole public.

3. Regulation 7 (3) is have increase the role and responsibility of the compliance officers. They are required to report about the trades executed by all classes of connected persons including their own employees. It is hard to comply with the same It is quietly difficult for a company to provide such kind of report. A large third-party community has been included as 'connected person' and it is a challenge for listed companies to comply with this provision. There is need to specify the list of connected persons.

General Suggestions

Few general steps can help the authorities to implication of law with full spirit which are as follows:

1. **Proper Mechanism to Trace Insider Trading**: There is a need of proper mechanism to trace the insider trading. There are no such provisions related to “way to trace the Insider Trading”. SEBI works as hit and trial method.

2. **Related Powers Should Be Given To SEBI**: UK Sinha, SEBI’s the previous Chairman said, “The SEBI does not have the power to tap phones. It can only request for call data records in suspicious cases. In India only a few economic agencies like the Central Board of Direct Taxes have the power to tap phones.”[138]Soon after the Raj Rajaratnam-Rajat Gupta insider trading case became public, SEBI had approached the government for powers to tap phone calls for suspected insider trading and other securities frauds.[139]

3. **Awareness Programs:** It is possible that people are not aware that the Insider Trading is an offence. Even the people belong from management and employees of the company are not friendly with the meaning of “Insider Trading”. SEBI should make it compulsory to company to conduct aware programs to aware the people. It will reduce the cases of insider trading.

4. **No Jurisdictional Barriers Insider Trading:** the regulation is silent about the cross border “insider trading” in Indian Security market

5. **Technology and Surveillance Technique** A stronger, thorough and proficient investigative and prosecutorial techniques that help SEBI in its investigations and ensures effective action against insider trading is needed. SEBI should overhaul the infrastructure and machinery used by it and envisage beyond the traditional investigative mechanism by employing modern and sophisticated mechanisms to detect, investigate and establish the violation. Any insufficiency of human resources or technological advancement can hurt.

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[138]Reena Zachariah, “SEBI set to overhaul Insider Trading rules; to form a committee led by former SAT chief” *The Economic Times*, Feb. 25, 2013.
[139] “Insider trading is Rampant on Dalal Street” *The Economic Times*, June 18, 2012.

6. **Resources and Manpower**: As compared to SEBI, SEC of United States is a much powerful body which has fully equipped itself with human resources as well as a strong infrastructure to detect and curb insider trading. The SEC employees staff of 3958 persons 41 while SEBI have approximately employees all over the country at its various offices

7. **Encourage The General Public To Provide Information**: SEBI should encourage the general people to provide the information about the insider trading if they know. It will become a great and effective tool for SEBI.

8. **Use of Compliance Software**: There are various software in the market which help the companies to comply with the provisions such as initial disclosure, connected party data base, continual disclosures etc. these software provide automatic reminders and alerts. Few companies are using these types software. SEBI should make it compulsory for all the listed companies under corporate governance to install this software. “Practice Legal” is used by Mahindra, Reliance etc.