

Reimagining Insider Trading in India: Enforcement Gaps, Retail Losses and Need for Preventive Surveillance Mechanism

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Abstract

The insider trading, a sub-sector of securities fraud, is an enormous and structural problem to the honesty, transparency, and equity of financial markets worldwide. The issue of dealing with the intricate insider trading details is quite critical in Indian context where the number of retail investors has experienced an unprecedented and explosive growth in the last decade, to maintain the economic growth and investor trust. This is a critical research paper aimed at analyzing the evolving nature of insider trading in India with the help of a multidisciplinary approach- legal provisions, criminological perspective, economic effects on the retail market participants and the pressing necessity of the advanced technological surveillance system. Even with a hard statutory regime with the assistance of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015 and the blanket amendments of 2024 and 2025, there remain serious loopholes in enforcement. The fact that circumstantial evidence is heavily applied and the judicial interpretations are in some ways strict adds to these regulatory loopholes, which have enhanced the evidentiary burdens on the regulator accidentally.¹

In the meantime, the spread of digital footprints, algorithmic high-frequency trading, and the rise of financial influencers—who are essentially social media influencers—has significantly intensified information asymmetry. This imbalance inflicts severe financial damage on retail participants. This research advocates for a fundamental shift in approach from the current responsive, post-facto prosecution to a proactive, preventive surveillance strategy aimed at bridging the widening gap between substantive law and its enforcement. By conducting a comprehensive comparative analysis of regulations in the United States and the European Union, the paper emphasizes the urgent necessity to adopt the latest RegTech solutions in India and to foster extensive collaboration with the Financial Intelligence Unit-India (FIU-IND)³.

¹ *Supreme Court Clarifies Evidentiary Burden in Insider Trading Cases*, IndiaCorpLaw, <https://indiacorplaw.in/2022/04/25/supreme-court-clarifies-evidentiary-burden-in-insider-trading-cases/> (last visited Mar. 9, 2026).

Keywords

Insider Trading, Market Integrity, SEBI PIT regulation, Information asymmetry, Preventive Surveillance, Artificial Intelligence, Financial intelligence, Loss to Retail Investors.

Introduction

Capital markets operate most effectively when resources are allocated efficiently, which necessitates that all individuals have access to the same symmetrical information. This fundamental principle is fundamentally undermined by insider trading. Insider trading refers to the unlawful act of buying, selling, or engaging in transactions involving the securities of a publicly traded company by an insider who possesses material, Unpublished Price-Sensitive Information (UPSI). UPSI encompasses crucial and confidential company data, including future financial performance, mergers, de-mergers, acquisitions, dividend distributions, and significant changes to capital structure. If such information were disclosed to the market, it would greatly influence the price discovery process of the relevant securities. The legal system views insider trading as a serious economic crime and a form of white-collar crime, primarily because it contravenes the essential principles of information parity and fiduciary responsibility.

This has been of paramount importance in the regulation of insider trading, which is not only important in terms of statutory compliance, but also the promotion of ethical corporate governance, market efficiency, and the sanctity of investor confidence. Efficient Market Hypothesis is the stock price that is based on all the available information. The price discovery mechanism is also distorted when insiders covertly trade on UPSI and the market ceases to be a level playing field. When retail investors begin to believe that the market is being tilted to favor the privileged insiders, they will want a premium of risk, or pull out all their funds, resulting in a lack of market liquidity and higher costs of equity to corporations.

To give some examples, in case a Chief Financial Officer has prior information that the companies quarterly earnings will grossly under perform the market expectations and he or she sells the company equity before the announcement, he or she has committed the classic insider trading. The landmark dispute in *Hindustan Lever Limited v. SEBI*, wherein HLL was alleged to have purchased 800,000 shares of Brooke Bond Lipton India Ltd. prior to a public merger

announcement, highlighted the complex foundational challenges in establishing corporate motive and strictly defining unpublished price-sensitive information²

Research Objectives

SEBI reorganized its framework through the SEBI (Prohibition of Insider Trading) Regulations 2015 in order to keep up with the increasing complexity of the contemporary financial ecosystem. However, even with ongoing legislative improvements, the problem of enforcement of regulations is devastating due to the institutional inefficiencies in the system. Thus, the main research goals of this paper have the following structure:

- i. To dismantle the current loopholes in enforcement and court bottlenecks in the insider trading system of India.
- ii. To measure and estimate the financial losses incurred by the retail investors as a result of systemic information asymmetry.
- iii. To build a holistic framework of an AI-based, FIU-integrated preventive surveillance system that turns the regulatory paradigm toward reactive penalization to proactive deterrence.

Literature Review

The scholarly debate on insider trading has developed considerably since the early legal commentary on the subject to the extremely advanced empirical, economic, and technological examination. A comprehensive analysis of literature with a high impact and indexed in Scopus shows a clear cluster of themes dedicated to criminological motives, the economic effects on retail investors, the legal analysis of the evidentiary norm, and the emergence of algorithmic surveillance.

Criminologically and behaviorally, scholars have made a lot of use of multidisciplinary frameworks in explanations of the persistence of white-collar securities fraud. Studies that apply Rational Choice Theory point to the fact that the offenders will calculate the high financial benefit of the trade on UPSI against the significantly small chances of detection and successful prosecution in new markets mathematically. Moreover, the Social Learning Theory

² Hindustan Lever Ltd. v. SEBI, (1998) 18 S.C.L. 311 (SAT Mumbai) (India).

describes the rationalization of illicit acts of corporate insiders working in high-stress financial settings, and informational exploitation is not regarded as a criminal act but a natural benefit of corporate power. Other recent works in behavioral finance also investigate the overlap of these insider actions with the psychological biases of the retail investor. Research suggests that retail investors tend to be susceptible to the herding effect and recency bias which makes them especially susceptible to the abrupt reversals in price that occur after the affronts of insider trading.

A great deal of empirical research is devoted to the quantification of the empirical effect of insider trading to the market efficiency and retail investor portfolio. Surveys conducted about the Indian equity market have continued to show that the level of information asymmetry is relatively high. Empirical studies employing Fama-MacBeth two-stage regression analysis indicate that informed insiders in the Indian market generate abnormal returns of approximately 19.28 percent compared to uninformed retail investors³. The literature would set up a negative correlation between the size of the company and the information asymmetry, meaning that smaller firms are most prone to insider manipulation. Other studies point to the fact that retail investor base is not typically in a position to have access to complex analytic tools and is a passive source of liquidity, which takes up the financial shocks when the stock prices are suddenly corrected following the UPSIs disclosure.

The lack of insider trading conviction in India as compared to developed jurisdictions is a common criticism of the SEBI framework by legal scholars.⁴ Although authors praise the conceptual strength of the SEBI PIT Regulations, they bemoan the scarcity of prosecution that is based on an overdependence on circumstantial evidence. The recent observations on landmark Supreme Court rulings especially on the Balram Garg and Abhijit Rajan cases have been subject to the argument that the judiciary has unwillingly crippled SEBI by setting near-criminal standards of evidence in civil regulatory cases. According to scholars, calling upon direct evidence of communication in the age of encrypted digital messaging sets an unsurmountable challenge on the part of regulators.

Lastly, a recent bibliometric analysis also indicates that there have been rapid scholarly concerns on the use of Artificial Intelligence and Machine Learning to detect financial frauds .

³ Information Asymmetry and Insider Trade Profitability in India, Emerald Insight.

⁴ Insider Trading in India – Regulatory Enforcement, IDEAS/RePEc, <https://ideas.repec.org/a/eme/jfcpps/jfc-12-2015-0075.html> (last visited Mar. 9, 2026).

⁵The research published in Scopus proves the effectiveness of deep learning models in detecting anomalous trading patterns. As an example, the use of multi-channel convolutional neural networks (MTC-CNN) that are optimized using hyperparameters has realized high accuracy levels in recognizing pre-announcement volume abnormalities. ⁶The adoption of blockchain technology is also suggested more and more actively as one of the ways to guarantee that the records of transactions are not tampered with or changed. Nevertheless, the literature states that the most significant research gap is the lack of practical implementation of these sophisticated AI models into legislation and the interaction between them and national Financial Intelligence Units is mostly theoretical and under-researched.⁷

Research Methodology

The research paper assumes a complex approach that combines the doctrinal legal study, analysis of empirical data, and comparative regulatory evaluation. The doctrinal approach is a strict analysis of the main statutory sources, mostly the act of the Securities and Exchange board of India of 1992, the SEBI (Prohibition of Insider Trading) Regulations of 2015, and the numerous amendments that were developed during 2024-2025. This is supplemented by a critical study of landmark judicial pronouncements of the Supreme Court of India and the Securities Appellate Tribunal, which as far as the Indian securities jurisprudence is concerned, is the common-law basis of Indian securities jurisprudence.

The empirical aspect of the research will be based on secondary quantitative data which will be obtained by means of SEBI annual reports, National Stock Exchange statistical books and peer reviewed Scopus-indexed journals by quantifying the retail investor losses and profitability gap of insider trades. Lastly, a comparative methodology is used, to compare the regulatory and surveillance infrastructure of India with that of the rest of the world. The study compares the framework of SEBI with the Rule 10b-5 of the United States Securities and Exchange Commission and the Market Abuse Regulation in the European Union and provides a synthesis of the best practices to create actionable recommendations of policy.

To ensure methodological rigor, the empirical reliance on secondary data is temporally restricted to official SEBI publications and National Stock Exchange (NSE) statistical reports

⁵ AI and Financial Fraud Prevention: Mapping the Trends and Challenges Through a Bibliometric Lens, MDPI.

⁶ Detecting Insider Trading in the Indian Stock Market: An Optimized Deep Learning Approach, Computational Econ.

⁷ Insider Trading in the Age of Digital Footprints: Evidentiary Challenges Before SEBI and SAT, Bar & Bench, <https://www.barandbench.com/view-point/insider-trading-in-the-age-of-digital-footprints-evidentiary-challenges-before-sebi-and-sat> (last visited Mar. 9, 2026).

spanning fiscal years 2023 to 2025. This time frame captures the post-pandemic surge in retail derivatives participation. Furthermore, the comparative framework is purposefully limited to jurisdictions representing two distinct ends of the regulatory spectrum: the highly mature algorithmic surveillance infrastructure of the United States, and the strictly codified parity-of-information regime of the European Union, thereby drawing contextually viable parallels for the evolving Indian ecosystem.

I. Statutory Evolution and the 2024-2025 Amendments to the PIT Regulations

The history of insider trading regulation has been quite a complicated one in India. It started with initial sensitivities on market abuse with the recognition of the Thomas Committee Report in 1948 and Sachar Committee in 1979 which observed that corporate insiders had sensitive information that they used to influence stock prices at the expense of the investing populace. This would finally lead to the SEBI (Insider Trading) Regulations of 1992. Nevertheless, the shortcomings of the 1992 framework in an economy that is rapidly modernizing came to light and SEBI implemented the holistic PIT Regulations in 2015 to align Indian securities law with international standards on a fundamental level. In 2015 the definition of an insider was broadened to cover any person who was related or any individual who possessed UPSI.

However, with the increase in the complexity of the capital markets, corporate entities were constantly developing elaborate mechanisms of circumventing these rules. This caused SEBI to come up with very strict and comprehensive amendments between June 2024 and March 2025, in an effort to seal the ensuing enforcement gaps. The amendments of June 2024 were aimed at the balanced provision of regulatory protection of the market with market flexibility in the form of trading plans. In the past, insiders who had the historical access to UPSI, including the key managerial staff, were virtually prevented to trade their own company stock. Specifically, the 2024 amendments sought to liberalize the trading plan framework by reducing the cooling-off period from six months to 120 days and removing the mandatory twelve-month minimum duration⁸. In order to avoid price manipulation, SEBI came up with a 20 percent price limit range of trades relating to the price at which the plan was constructed. Moreover, it

⁸ Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2024, Gazette of India, pt. III sec. 4 (June 25, 2024).

is now severely forbidden to deviate against the trading plan except in exceptional cases like permanent disability, bankruptcy, or law operation ⁹.

To deal with extreme evidentiary gaps, SEBI essentially broadened the definition of connected persons as of December 2024. In the past, the connectedness presumption was only limited to close relatives, who were financially reliant or consulted with respect to trading decisions. The new regulations radically expand this net to cover any relative, people who live or work with a linked person and a company or employee in which the linked person is a partner. In so doing, SEBI has established a strong rebuttable presumption. When a household member trades in advance of a corporate announcement, it is now squarely up to him to demonstrate that he did not have the UPSI, as opposed to the SEBI showing when the actual communication took place.

The most significant change happened perhaps with the March 2025 amendments that redefined the structure of UPSI. SEBI noted that listed entities often misused their discretion, which is subjective, not wanting to classify critical events as UPSI to maintain its trading windows open. To reconcile subjective corporate disclosures with regulatory expectations, SEBI harmonized the definition of UPSI under Regulation 2(1)(n) of the PIT Regulations with the material events specified under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015¹⁰. The new definition has been exhaustively redefined as also including a decision on fund-raising, an agreement affecting management control, a sudden change in the key managerial persons, a change in credit ratings, and a forensic audit of the financial misstatements. The expansion of the 'connected persons' definition under Regulation 2(1)(d) reflects a regulatory shift towards capturing modern, decentralized familial and professional networks. By extending the rebuttable presumption of connectedness to individuals sharing a household or material financial relationships, the amendment effectively shifts the evidentiary burden¹¹. However, this raises critical questions regarding the balance of probabilities required for an accused to successfully rebut such statutory presumptions in adjudicatory proceedings.

II. Judicial Interpretations and the Evidentiary Conundrum

⁹ SEBI's New Insider Trading Regulations | Key Changes and Implications, Taxmann, <https://www.taxmann.com/post/blog/analysis-sebis-new-insider-trading-regulations-key-changes-and-implications> (last visited Mar. 9, 2026).

¹⁰ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 30, Gazette of India, pt. III sec. 4 (Sept. 2, 2015) (as amended).

¹¹ Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024, Gazette of India, pt. III sec. 4 (Dec. 31, 2024).

The legislative constriction that has been made possible by these changes in the law has crashed massively against an ever more restrictive judicial philosophy. Indian judiciary, especially the Supreme Court and the Securities Appellate Tribunal have systematically increased the evidentiary burden and this has seriously impaired the enforcement capacity of SEBI and has produced a paradoxical situation of the law being strict on paper but almost impossible to enforce in reality.

A primary illustration of this tension is the Supreme Court's 2022 ruling in *Balram Garg v. SEBI*, which significantly elevated the evidentiary threshold required by the regulator when relying on circumstantial evidence¹². Insider trading is a very secretive crime; the fraudsters do not write contracts of how the UPSI will be transferred. The case was about the allegation of negative UPSI by the Managing Director of PC Jeweller Ltd that a share buyback was to be terminated to the estranged family members who then took colossal short positions in the run of a few days before the announcement to the public¹³. The SAT had affirmed the penalty of SEBI by the preponderance of probability caused by their close family relationship and accurate and highly suspicious timing of the trade. The decision was however overturned emphatically by the Supreme Court. The Court concluded that even circumstantial evidence like trading patterns, timing and residential proximity was not legally sufficient to establish the actual conveyance of UPSI.¹⁴ In analyzing the factual matrix, the Court noted the absence of direct, cogent material evidence such as call data records or specific communications—and held that mere familial relations and suspicious trading timing were insufficient to conclusively establish the communication of UPSI beyond a reasonable doubt.¹⁵ This judicial order has posed an almost insurmountable evidentiary barricade in the present-day world of end-to-end encrypted messaging, such as WhatsApp and Signal. According to legal experts, the Court has put direct evidence on a bigger pedestal, and thus it has tied the hands of the market regulator, since circumstantial evidence is usually the only footprint remaining behind by advanced market abusers.

¹² *Balram Garg v. SEBI*, (2022) 9 S.C.C. 425 (India).

¹³ Supreme Court Clarifies Evidentiary Burden in Insider Trading Cases, IndiaCorpLaw, <https://indiacorplaw.in/2022/04/25/supreme-court-clarifies-evidentiary-burden-in-insider-trading-cases/> (last visited Mar. 9, 2026).

¹⁴ Insider Trading: What Must the Regulator Prove? *Balram Garg v. SEBI*: A Case Comment, SCC Online Blog, <https://www.sconline.com/blog/post/2022/08/03/insider-trading-what-must-the-regulator-prove-balram-garg-v-sebi-a-case-comment/> (last visited Mar. 9, 2026).

¹⁵ Hridhya T.V. & Dr. Sivananda Kumar K., Motive as a Pre-Condition for Insider Trading, White Black Legal.

To add to this evidentiary crisis is the ruling of the Supreme Court in *SEBI v. Abhijit Rajan*. In the past, jurisprudence of Indian securities followed the doctrine of strict liability. In the previous precedent, the Court held that mens rea or criminal intent is not a necessary part of imposing civil penalties by the SEBI regulations, and that the simple contravention of the statute could be considered adequate¹⁶. The *Abhijit Rajan* decision, however, introduced significant nuance to this strict liability approach by closely examining the factual context of the trade.¹⁷ In this matter, the Chairman of Gammon Infrastructure Projects Ltd. sold personal shares prior to the public announcement of the termination of highly profitable highway contracts. SEBI categorized this transaction as a classic manifestation of insider trading, arguing that the sale was explicitly timed to precede adverse corporate disclosures. The Supreme Court, however, did not just examine the act itself but the overall corporate environment, which meant that the sale made by Rajan was a distress sale because of a pressing need to secure a Corporate Debt Restructuring package to prevent the bankruptcy of the parent entity.¹⁸ More importantly, the Court also decided that the intent to profit or not to lose is a necessary requirement to prove a case of insider trading. The Court thought that no rational insider who aimed to obtain unlawful profits would sell shares before an event that by shedding unviable obligations might have stabilized the company and caused prices to go up. The judiciary has unwillingly given corporate insiders a powerful defense mechanism by introducing the necessity of a profit motive to a civil enforcement system. The insiders are now able to trade with UPSI in their possession and later build a business case of business foresight or the strong need to pay debts to avoid liability, multiplying the prosecutorial load on SEBI many times over.¹⁹ It is crucial to doctrinally distinguish the specific factual matrix of *Abhijit Rajan* from routine market abuse. The Court's holding heavily relied on the undisputed fact that the transaction was a distress sale necessary to fund a Corporate Debt Restructuring (CDR) package, effectively averting the bankruptcy of the parent entity. Therefore, while the judgment emphasizes the necessity of a profit motive or an intent to avoid loss, it may be argued that this holding is deeply fact-specific rather than a blanket dismantling of strict liability under the PIT Regulations.

¹⁶ India's Regulator Pushes for Tighter Enforcement of Insider Trading Rules, Finmen, <https://finmen.in/indias-regulator-pushes-for-tighter-enforcement-of-insider-trading-rules/> (last visited Mar. 9, 2026).

¹⁷ *SEBI v. Abhijit Rajan*, (2022) 10 S.C.C. 433 (India).

¹⁸ Marco Ventoruzzo, Comparing Insider Trading in the United States and in the European Union: History and Recent Developments, Max Planck Inst., https://www.mpi.lu/fileadmin/mpi/medien/research/WPS_Marco_Ventoruzzo.pdf (last visited Mar. 9, 2026).

¹⁹ Exploring the Role of Motive in Insider Trading: A Case Study of *SEBI v. Abhijit Rajan*, NLIU L. Rev.

III. Real-World Incidents of Market Abuse: A Look at India and the US

In order to perfectly understand the devastating effect of these enforcement gaps, it is appropriate to refer to real market events. The theories and statutes aside, the practical scams reveal the actual result of information asymmetry in reality.

In the case of Hemant Ghai, former financial journalist and popular anchor of CNBC Awaaz. SEBI identified a great deal of correlation between the stock recommendations that Ghai gave during his live show, Stock 20-20 and transactions executed slightly before the shows. He purchased shares in advance of his own appearances, by the trading accounts of his wife and his mother, in effect front-running himself on the basis of the advance, non-public information of his own market-moving recommendations. This is because his fiduciary duty of influence was abused and SEBI has started to take action and he was forced to pay 1.45 crore to clear the charges.

The magnitude of insider trading in the United States can be in terms of huge institutional networks. An apparent case study is the example of Stephen Cohen and his hedge fund, SAC Capital Advisors. The US prosecutors accused the fund of overseeing a corporate culture that was aggressively encouraging employees to rely on personal contacts to obtain inside information on publicly-traded companies. It was such a pervasive illegal trading that SAC Capital ended up paying a fine of historic proportions, 1.8 billion dollars, and was guilty of criminal conduct. Although Cohen himself was not charged with a crime, SEC banned him from handling outside funds claiming that he had not overseen his workers, such as portfolio manager Matthew Martoma who had engaged in illicit trading based on insider medical trial information. These examples demonstrate that it is not about a single anchor and a multi-billion dollar fund because the abuse of personal information is a global menace.

IV. Enforcement gaps and Drawback of SEBI

The joint action of exceptionally intricate market manipulation schemes and restrictive judicial decisions has revealed some structural weaknesses in the regulatory frameworks of India. However, India has a good lack of effective insider trading convictions despite having an elaborate statutory text. Procedural lag is always a constant bane of the investigations, and to go through the initial show-cause notices to the final adjudication may take years. By the time an order is issued, the computer trail will have disappeared long ago, and the deterring effect will be lost altogether.

Moreover, SEBI has a massive burden of investigative resources. The current securities fraud necessitates the forensics audit of sophisticated algorithmic trading and offshore entity frameworks. More importantly, in contrast with the United States SEC or even the Central Board of Direct Taxes in India, SEBI does not have a statutory power to wiretap real-time electronic communications ²⁰. This lack of interception capability makes the regulator practically blind to the existence of corporate networks that are organized and run over encrypted communication channels.

The high rate of market digitalization has also introduced an additional and an extremely unstable platform of spreading the UPSI in the form of social media. The unregistered financial influencers or finfluencers regularly share stock tips based on leaked company information on Telegram channels and small WhatsApp groups. The ability to collect legally admissible evidence on these decentralized networks generates grave jurisdictional and evidentiary overlap that SEBI investigative equipment is not well equipped to manage. Whenever SEBI tries to prosecute these new networks, it often runs up against the evidentiary walls that the Balram Garg judgment has thrown up, and it cannot demonstrate the precise chain of communication that the courts demand.

To better understand the scale of SEBI's current enforcement efforts against this rising tide of market abuse, we can look at the recent investigation metrics:

Financial Year	Investigations Initiated	Actions Taken / Penalties Imposed
FY 2022 – 2023	144 Cases	42 Entities Fined
FY 2023 – 2024	175 Cases	55 Entities Fined
FY 2024 – 2025	287 Cases	Ongoing / Escalated Scrutiny

(Data shows a sharp rise in cases taken up by SEBI, highlighting increased regulatory vigilance against UPSI leaks.)

²⁰ Sec. & Exch. Bd. of India, Amendments to SEBI (PFUTP) Regulations and SEBI (PIT) Regulations, https://www.sebi.gov.in/sebi_data/meetingfiles/oct-2018/1539342662909_1.pdf (last visited Mar. 9, 2026).

V. The Retail Investor Dilemma

The retail investors of India are the eventual victims of these enormous enforcement lapses. There is no victim-less market when it comes to insider trading, the process of eliminating the very core principle of fairness in the marketplace by systematically introducing a gross information asymmetry into which the retailers continue to be nothing more than liquidity providers to the highly informed insiders. The volume of retail trading in India has skyrocketed due to zero-commission digital brokerage systems, high smartphone adoption, and market booms of the pandemic period. The retail invested in the cash market increased nine times in the last ten years. Nonetheless, this inflow of retailers has been forcefully and riskily invested in the volatile equity derivatives market.

The economic catastrophe caused by this migration is appalling and alarming. Regulatory information published by SEBI showed that more than 9 out of 10 retail investors in the equity derivatives sector made huge unrelenting losses Indian retail individual traders in the equity derivatives segment recorded net losses exceeding ₹1.06 trillion in recent fiscal periods.²¹ While this massive wealth erosion is heavily influenced by systemic behavioral biases and broader market volatility, it is arguably exacerbated by structural information asymmetries and instances of predatory trading by highly informed institutional insiders. As corporate insiders and high-frequency trading algorithms are playing the market with advanced networks and early access to UPSI, retail investors rely on the delayed, public information to make their investments. When positive or negative news is finally announced in the exchange platforms, the insiders have already factored the event into the asset. As a result, retail traders trade at very inopportune prices, which take up the financial shocks of the next market correction.

Financial Year	Net Losses in Equity Derivatives	Percentage of Loss-Making Traders
FY 2023	~ ₹ 50,000 Crores	~ 89%

²¹ Sec. & Exch. Bd. of India, Study: Analysis of Profit and Loss of Individual Traders Dealing in Equity F&O Segment, SEBI Rep. (Jan. 25, 2023)

FY 2024	~ ₹ 74,812 Crores	~ 90%
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(Data reflects the systemic wealth extraction from uninformed retail participants as highlighted in recent SEBI studies.)

This relationship is further aggravated by the behavioral biases of retail investors including overconfidence and loss aversion which are massively exploited by influencer networks . While multiple systemic factors drive derivatives losses, the prevailing enforcement lag in prosecuting insider trading acts as a compounding variable in the wealth transfer between uninformed retail participants and privileged insiders. While the U.S. framework relies heavily on judicial interpretations of Section 10(b) of the Exchange Act, necessitating the complex proof of fiduciary breach and scienter,²² the European Union offers a more formalized statutory model. The Market Abuse Regulation (MAR) explicitly defines administrative offenses and mandates proactive compliance measures, such as the maintenance of stringent insider lists and the filing of Suspicious Transaction and Order Reports (STORs).²³ India's framework currently straddles these two philosophies: its statutory text mirrors the EU's parity of information doctrine, yet its adjudicatory outcomes frequently demand the U.S.-style intent and direct evidentiary standards.

VI. Comparative Analysis vis a vis US, EU, India.

In order to successfully redesign the regulatory system in India, it is essential to make a comparative analysis with the developed securities regimes of the United States and the European Union. Although all the three jurisdictions are committed to the reduction of market abuse, they work with radically different theoretical premises.

Heading	US	EU	India
Legal Framework	Securities Exchange Act 1934 & SEC Rule 10b-5	Market Abuse Regulation (MAR)	SEBI PIT Regulations 2015

²² Securities Exchange Act of 1934, 15 U.S.C. S. 78j(b); 17 C.F.R. S. 240.10b-5 (2022).

²³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on Market Abuse (Market Abuse Regulation), 2014 O.J. (L 173) 1, 42.

Foundational Theory	Breach of Fiduciary Duty & Misappropriation Theory	Equal Access to Information (Parity of Information)	Parity of Information & Presumed Connectedness
Evidentiary Standard	Circumstantial evidence widely accepted	Objective trading data and automated logs	Exceedingly high threshold requiring direct evidence
Intent / Motive	Requires stringent proof of scienter	Mere possession and use is legally sufficient	Designed as strict liability but judiciary mandated profit motive
Surveillance	Advanced utilization of MIDAS, ARTEMIS, robust wiretaps	Automated ESMA coordination and pan-European STRs	Transitioning to AI Data Lake but lacks wiretapping authority

The U.S. system is not regulated by a specific express statute of insider trading, but is indicted as a violation of the anti-fraud clauses of SEC Rule 10b-5. It is very dependent on heavy common-law judicial interpretations with the Classical Theory of fiduciary duty and the Misappropriation Theory as the main ones. Although the American need to demonstrate scienter (intent to defraud) to prosecute is a complicated task, the U.S. compensates this by the use of frightening enforcement authority. The SEC constantly uses high-tech wiretaps, has high-tech surveillance tools such as ARTEMIS, and has huge whistleblower bonuses that are actively used to encourage corporate insiders to report unlawful practices. This has a very overwhelming discouraging impact.

Contrastingly, the European Union has a homogeneous, strict, statutory framework, the Market Abuse Regulation (MAR). ²⁴The EU categorically opposes the sophisticated American condition of demonstrating a violation of fiduciary duty. Rather, MAR is founded on the whole

²⁴ Clifford Chance, The US and EU – An Ocean Apart on Insider Dealing Regulation? (2015), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2015/06/the-us-and-eu-an-ocean-apart-on-insider-dealing-regulation.pdf>.

on the theory of Parity of Information. In the MAR, possession and trading in financial instruments using inside information is an unlawful act on its own. This is a statutory method of achieving this goal, which enables the European Securities and Markets Authority (ESMA) to effectively levy harsh administrative fines without necessarily becoming tangled in endless court cases on motive or intent.

The Indian SEBI PIT Regulations are theoretically based on the EU objective Parity of Information approach, as they explicitly state connected persons and require trading windows to be followed rigidly. But, as examined above, the Indian judiciary has imposed the demands of the American style of common-law, like the need to prove the profit motive and the rejection of circumstantial evidence, over the statutory structure. This has led to a most fragmented system where SEBI is subject to a civil strict-liability statute, and must prove its claims through the near-criminal intent-based evidentiary standards. It is this philosophical conflict that is the root of the paralysis in enforcement in India at present.

VII. Need for Preventive Surveillance mechanism

Taking into account the fact that Indian judiciary is highly opposed to convict on circumstantial evidence, then the traditional regulatory paradigm of reactive, post trade forensic investigation is functionally irrelevant. SEBI needs to shift to a more aggressive shift to a regime of real-time, preventative surveillance to ensure the protection of the enormous capital that is being drained by retail investors today. The only way forward in case the post-facto legal prosecution is so crippled is to detect and stop abnormal actions prior to or during the trade execution.

SEBI previously controlled the markets with the old systems that include the Data Warehousing and Business Intelligence System (DWBIS) and the Integrated Market Surveillance System (IMSS). These systems are based on batch processing of flat files at the end of the day at the stock exchange and depositories of the companies using very simple and preset rule-based algorithms to produce alerts. These fixed rules produce huge quantities of false positives in a contemporary financial system with more than 5.5 billion messages to process each day and utterly fail to detect new, algorithmic methods of manipulations such as electronic front-running or rapid options spoofing.²⁵

²⁵ AMFI, Minimum Standards Recommendations on Anti-Money Laundering Combating Financing of Terrorism & Know Your Customer Policy, [https://www.amfiindia.com/Themes/Theme1/downloads/circulars/SEBI/CU152-Ch1Minimum%20\(12-Mar-24\).pdf](https://www.amfiindia.com/Themes/Theme1/downloads/circulars/SEBI/CU152-Ch1Minimum%20(12-Mar-24).pdf) (last visited Mar. 9, 2026).

Understanding this essential weakness, SEBI is now in the process of rolling out a colossal technological transformation by its Data Lake initiative, which is constructed on a robust personal cloud platform. This project is aimed at using Artificial Intelligence and Machine Learning as weapons against the abusers of the market. The regulator can handle the pre-announcement volume anomaly using deep learning pattern recognition models, such as Long Short-Term Memory networks and multi-channel Convolutional Neural Networks, to handle high-frequency and multivariate financial data mathematically. In addition, GNNs are also applied to the autonomous mapping of complex relationships. Comparing demographic KYC data with historical trading preferences and banking records, GNNs are able to visualize hidden networks between a corporate insider and an offshore trading organization instantaneously, in a few seconds, what would have taken investigators months of manual effort to discover.

SEBI has introduced Sudarshan, an on-the-job AI solution based on Natural Language Processing to fight the epidemic of finfluencers. Sudarshan is a project that scrapes audio, video, and textual content of the social media in real time. This preventive device has been very successful as it has been able to identify and shut down more than 1.2 lakh deceptive advisory posts that usually act as channels through which leaked UPSI or coordinate pump-and-dump schemes are implemented against the retail investors.

Also, there is a growing acceptance of the integration of blockchain technology as an essential component of preventive surveillance. SEBI can create a cryptographically secure audit trail by storing all insider trade requests, trading plans approvals, and Structured Digital Database of corporations on an immutable, Hyperledger-based distributed ledger using smart contracts. This technological inertia is a direct response to the request of cogent material evidence by the Supreme Court in Balram Garg since after the fact manipulation of trade logs or corporate books becomes mathematically impossible.

VIII. Findings and Suggestions

The main results of the present study are that the entire statutory narrowing attained by SEBI by the PIT Regulations and the latest amendments have been grossly watered down by the restrictive court decisions. The judiciary by expressly discarding the admissibility of circumstantial evidence and arbitrarily attributing a common-law profit motive to a strict

liability civil statute has placed close to insurmountable barriers to evidence. The systematic information asymmetry created by this unregulated market abuse has caused unparalleled financial destruction of retail investors, which is clearly demonstrated by the 1.06 trillion net loss realized in the equity derivatives market over fiscal year 2025. Moreover, the conventional, reactive surveillance systems are grossly outmanoeuvred by the high-frequency trading and decentralized social media communication, which requires a technological turnaround.

There is a need to correct these gaps through actionable policy recommendations. To eliminate the Abhijit Rajan precedent, the legislature should first present statutory changes, which specifically name the intent to make a profit as a strictly immaterial element of proving civil liability in insider trading cases. Second, the legislation should be revised to acknowledge the probative value of probabilistic digital footprints and artificial intelligence generated network graphs. Once such systems have created a high-confidence connection, the burden of proving the offense should be forever transferred to the defendant. Third, the SEBI is to require all insider trade logging and corporate structured digital database entries to be converted to the immutable blockchain infrastructure to completely exclude the possibility of any manipulation of data and meet the requirements of the judiciary of providing the concrete evidence.

The surveillance of pre-emptive measures cannot be kept in the narrow disclosure of the securities market since the end product of insider trading is the plunder and laundering of illegal fiat currency. Thus, the collaboration of the AI alerts of SEBI with the Financial Intelligence Unit-India (FIU-IND) is the most important. FIU-IND, which functions under the Prevention of Money Laundering Act, is the national network node of the banking industry, which analyzes Suspicious Transaction Reports (STRs).

With secure automated data pipelines established between SEBI modern Data Lake and the FINNET 2.0 portal at FIU, the regulators will be able to immediately match a highly suspicious derivative options trade that has been carried out in the stock exchange with a later questionable cross-border wire transfer raised by a bank. This comprehensive financial intelligence mapping records the dark money of the exchange terminal straight to the offshore bank account. This inter-agency synergy completes the chain of evidence necessary to prosecute successfully, and breaks the barriers of the traditional siloed investigations and forms a genuinely preventive web that can stop organized financial crime before the capital can leave the domestic ecosystem.

Conclusion

In conclusion, the Indian securities market is at a cross road. This massive retail capital influx has democratised financial involvement and at the same time millions of uninformed investors have fallen prey to the predatory actions of corporate insiders and algorithmic manipulators. The existing regulatory framework, which, on paper, is as sound as statutory law, is crippled in practice by a dependence on direct evidence and judicial inferences that are simply irreconcilable with the facts of communication in the digital era. The disastrous trillion-rupee losses that the retail traders had to bear is a telling reminder of the harsh truth that insider trading is not an administrative crime without victims, but a structural process of wealth expropriation that shakes the very foundation of the economy. In order to protect the integrity of the market, it is quite necessary to discard the paradigm of reactive enforcement. It is only under the rubric of the violent overturn of constraining judicial case law, the adoption of AI-based preventive surveillance, and the smooth integration into national financial intelligence systems, that India can effectively go beyond merely prosecuting market abuse to actually preventing it.

