

“INSIDER TRADING IN THE AGE OF SOCIAL MEDIA: A LEGAL AND ETHICAL ANALYSIS OF THE WHATSAPP LEAK AND GAMESTOP CASES”

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ABSTRACT

In the digital age, social media has emerged as a powerful force influencing financial markets, challenging traditional definitions and enforcement of insider trading laws. This paper critically examines the intersection of social media and insider trading through the lens of two high-profile cases: the WhatsApp Leak case in India and the GameStop short squeeze in the United States. By analysing the legal frameworks governing insider trading in both jurisdictions, the study explores how platforms like WhatsApp and Reddit have been used to disseminate market-sensitive information or mobilize retail investors, often resulting in dramatic price movements and regulatory scrutiny. The research further delves into the evidentiary challenges posed by encrypted digital communication, the ethical implications of viral misinformation, and the constitutional dilemmas surrounding privacy and freedom of expression. Through a comparative legal analysis, this paper identifies regulatory gaps and enforcement limitations in the current system and proposes policy recommendations to address the evolving nature of financial misconduct in the social media era. Ultimately, the paper argues for a nuanced and technologically informed legal response that balances innovation with market integrity and investor protection.

INTRODUCTION

Insider trading, in its traditional sense, refers to the buying or selling of a company's securities by individuals who have access to material, non-public information (MNPI) about the company. This practice is considered unfair as it gives an informational advantage to a select few, undermining market integrity and investor confidence.³⁴² In legal terms, insider trading is typically prohibited because it involves the abuse of fiduciary duty or breach of trust by corporate insiders such as directors, officers, or employees, who trade based on confidential information not available to the general public. The objective of prohibiting insider trading is to promote fairness, efficiency, and transparency in the securities market.³⁴³ Under Indian law, insider trading is regulated primarily by the SEBI

(Prohibition of Insider Trading) Regulations, 2015, which define "insider" as any person who is a connected person or in possession of or having access to unpublished price sensitive information (UPSI). Similarly, in the United States, insider trading is governed by the Securities Exchange Act of 1934, particularly under Rule 10b-5 of the U.S. Securities and Exchange Commission (SEC), which prohibits fraud or deceit in connection with the purchase or sale of any security. Courts have historically relied on two primary theories to regulate insider trading:

The "classical theory", where corporate insiders breach fiduciary duties by trading on confidential information. The "misappropriation theory", where an individual misuses confidential information obtained through a relationship of trust, even if they are not a corporate insider. These foundational principles are increasingly being tested in the digital age,

³⁴² See *Dirks v. SEC*, 463 U.S. 646, 653-54 (1983) (explaining unfair advantage through access to non-public information).

³⁴³ *Ibid.*

where non-traditional actors and platforms—such as Reddit forums or WhatsApp groups—can disseminate market-sensitive information to large audiences in real time, complicating enforcement efforts. Emergence of social media as a tool in financial markets.³⁴⁴

The rise of social media platforms has transformed how information is created, shared, and consumed in the financial world. Unlike traditional media channels, these platforms allow real-time, anonymous, and often unregulated communication, making them fertile ground for the rapid spread of material, market-sensitive information. The increasing use of such platforms to share tips, leak confidential information, or coordinate collective trading actions has raised serious concerns about market manipulation, insider trading, and regulatory evasion.³⁴⁵ Cases such as the WhatsApp leak in India and the GameStop short squeeze in the United States illustrate how social media can be used—intentionally or otherwise—to distort market functioning. In such scenarios, identifying the original source of the information, verifying its authenticity, and establishing intent becomes increasingly difficult for regulators. Furthermore, the encrypted nature of platforms like WhatsApp and the viral amplification possible on Reddit and Twitter make it harder to distinguish between legal speculation and illegal trading activity.³⁴⁶

This evolution presents a serious challenge to traditional legal frameworks, which were not designed for such fluid, decentralized, and anonymized information flows. As a result, social media-based insider trading has become a growing concern for regulators, scholars, and market participants alike, calling for updated legal tools, digital surveillance capacity, and a nuanced understanding of how online behaviour intersects with securities laws.

The WhatsApp Leak case in India (2017) brought to light the risks posed by encrypted messaging platforms in the unauthorized dissemination of sensitive financial information. Unpublished price-sensitive information (UPSI), including quarterly earnings data of major listed companies, was found circulating in private WhatsApp groups before official announcements. This raised serious regulatory concerns about the admissibility of digital evidence, traceability of leaks, and the limitations of existing insider trading laws in addressing informal, tech-based communication channels.³⁴⁷

The GameStop case in the United States (2021) highlighted a different but equally complex dimension of market disruption through social media. A group of retail investors on Reddit's r/WallStreetBets coordinated a mass buying of GameStop shares, resulting in a dramatic price surge and inflicting heavy losses on hedge funds that had shorted the stock. Though not a classic case of insider trading, it blurred the lines between legal collective trading and potential market manipulation, prompting global regulators to rethink enforcement strategies in the age of viral financial influence.³⁴⁸

Together, these cases reflect the evolving landscape of securities regulation, where information no longer flows through traditional, traceable channels, and legal definitions of misconduct face new digital challenges.

LITERATURE REVIEW

The evolving discourse on insider trading in the digital age has drawn increasing scholarly attention, particularly regarding the influence of social media platforms. Traditional studies on insider trading, such as those by Bainbridge (2000) and Manne (1966), focused on corporate insiders exploiting non-public information for personal gain. However, recent literature has

³⁴⁴ SEBI v. Kanaiyalal Baldevbhai Patel, (2017) SCC OnLine SAT 36.

³⁴⁵ John C. Coffee Jr., *Market Manipulation and the Internet: How Social Media Changed the Rules*, 71 *Bus. Law.* 257, 259 (2016).

³⁴⁶ Anirudh Rastogi, *Law, Privacy and Surveillance: Implications of the WhatsApp Leak Case*, *Indian Journal of Law and Technology*, Vol. 15 (2020)

³⁴⁷ SEBI, *Order in the Matter of Circulation of Unpublished Price Sensitive Information (UPSI) through WhatsApp Messages*, WTM/SR/EFD-1/DEC/2017-18.

³⁴⁸ U.S. Securities and Exchange Commission, *Staff Report on Equity and Options Market Structure Conditions in Early 2021* (Oct. 2021).

expanded this understanding to include the informal, decentralized spread of sensitive information via digital platforms, creating new enforcement challenges.

Scholars like Verstein (2016) and Allen (2019) have explored how online forums, chat groups, and algorithm-driven news cycles create informational asymmetries akin to classic insider trading but through less traceable mechanisms. These works highlight how the "meme stock" phenomenon and viral content blur the lines between public discussion and manipulative intent.

In the Indian context, works like SEBI's Discussion Paper on Strengthening Insider Trading Regulations (2021) and articles in the NLSIU Law Review discuss limitations in current laws, particularly the challenges of proving intent and admissibility of electronic evidence. Legal commentaries have also examined how Section 65B of the Indian Evidence Act can hinder the prosecution of digital financial crimes due to procedural rigidity (Pathak, 2020).

Case-based studies, especially those analyzing the GameStop short squeeze, such as those by Gerding (2021) and the SEC's own post-event report (2021), have explored how Reddit threads, Discord chats, and celebrity tweets act as catalysts for market movements. These studies argue for policy innovation and cross-border regulatory cooperation in addressing the unique risks of social media-based manipulation.

Collectively, the literature suggests a growing consensus that legal frameworks must evolve to keep pace with technological developments. The emerging view supports reform in both enforcement mechanisms and statutory definitions, with an emphasis on balancing innovation, free speech, and market fairness

LEGAL FRAMEWORK: INSIDER TRADING & MARKET MANIPULATION

INDIA:

In 1948, India took its first step towards curbing insider trading by establishing a committee to

assess and recommend appropriate restrictions on short-swing profits. In 1992, the Securities and Exchange Board, the Act 1992 (the "SEBI Act") and the SEBI (the Prohibition of Insider Trading) Regulations of 1992 ("1992 Regulations") which were published in accordance with the Act, adopted the first couple of laws dealing with insider trading.

The concept of prohibition on insider trading in the securities was incorporated into section 195 by virtue of the enactment of the Companies Act, 2013 ('the Act'). In 2015, in order to revamp an existing capital market regulatory structure, SEBI (Insider Trading Prohibition) Regulations 2015 ('2015 Regulations') remolded and revised the 1992 Regulations.

The SEBI Regulations on the Prohibition of Insider Trading, 1992 regulate insider trading in India in general. Section 2(e) of the Act defines the trading of insiders. In the company's law of 1956, however, the term "insider trading" is not defined. However, Section 195 of the Act of 2013 prohibits insider trades by the principal manager.

Securities & Exchange Board of India

The Government of India has created the Securities and Exchange Board of India (SEBI) as the first regulatory body to regulate securities markets since the 1991 reforms on the basis of the recommendations of several committees. A notice was issued on 12 April 1988 and SEBI was established as an interim administrative body under the overall supervision of the Government of India, Ministry of Finance. However, it soon became necessary to implement the legislation supporting it: (1) give SEBI authority, in accordance with the so-called Regulations, to issue the sector regulations and to supervise; (2) authorize investigations, adjudicative, fines and other sanctions. (3) Enforce the credibility of SEBI by providing for the review of regulatory action in court appeals with specialized domain knowledge; Securities Appellate Tribunals

("SAT").³⁴⁹ In 1992, the SEBI was created as a statutory body, by adoption of the Securities and Exchange Boards of India Act, 1992 and 30 January 1992, that addresses all these needs. All of this called for special enabling legislation and empowerment that addressed all the above needs.

The power and functions of the Board of Directors are outlined in Section 11 of the Securities and Exchange Board of India Act 1992. According to Article 11(1) of the Act, it is SEBI's duty, through the measures it sees fit, to protect investors' securities interests and to support and regulate the development of the securities market. Section 11(2)(g) specifically mentions the prevention of insider trading as one of its obligations.

Following the 2002 amendment of Section 12-A to the Securities and Exchange Board of India Act of 1992, insider trading in securities of bonded companies is explicitly forbidden³⁵⁰

Section 12-A provides that: "No person shall be engaged in insider trading directly or indirectly – deal with securities while possessing any other person material or information, in any way that is in contravention of this Law and of the Rules or the Rules of Procedure thereof"

Section 11(c) of the SEBI Act empowers SEBI to investigate when there is reasonable ground for the Board to believe that securities transactions are being handled in a way that is to the detriment of investors or the securities market or any intermediary or any person involved in the securities market has breached one of the provisions or rules of that Act or the Regulation. The Board may conduct investigations of books, records etc., in accordance with Section 11(2A) of the Act with respect to public companies about to be listed on stock exchanges where it feels that the company is engaged in insider trading.

SEBI (Prohibition of Insider Trading) Regulations, 2015

In a meeting on 19 November 2014 to revamp SEBI regulations, the report of the Sodhi Committee was discussed and approved and formed the basis for the introduction of the SEBI (Insider Trading Prohibition) Regulations of 2015. SEBI's exercise of its authorization pursuant to SEBI Act 1992 resulted in the 2015 Regulation replacing the former Regulations on insider trade in India of 15 January 2015.³⁵¹

The present Regulations were published in the official Gazette on the 120th day, 15 May 2015. The press release accompanying the Regulation of 2015 stated that the main aim of the Regulation is to strengthen the legal and implementing framework, harmonies the Indian rule with international practices, clarify definitions and concepts and facilitate legitimate business transactions³⁵². (a) establish a legal structure in conformity with global best practices;

(b) address the inadequacies set out in the Regulation of 1992; and (c) consolidate, since 1992, modifications of circular notifications and judicial precedents relating to Indian Securities Law. The 2015 SEBI regulation includes five chapters, two schedules and 12 regulations. The SEBI (Prohibition of Insider Trading) Regulation definitions are covered in Chapter I. The Restriction of communications and trade in insiders is discussed in Chapter II. The information to be provided by companies when trading its securities for insiders is highlighted in Chapter III. The Fair Disclosure and Conduct Code is prescribed by Chapter IV.

Salient features of 2015 Regulations are as follows:

i. The act revised and added a few integral definitions based on the changing paradigms in trading and accessibility. Insider' means any person who is either a connected person, has

³⁴⁹ Dharmishta Raval, "Improving the Legal Process in Enforcement at SEBI", available at <http://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf>.
³⁵⁰ Chapter V inserted by SEBI (Amendment) Act, 2002 w.e.f. 29th October, 2002.

³⁵¹ SEBI vide its Notification No. LAD-NRO/GN/2014-2015/21/85 dated 15th January, 2015 in the Gazette of India, Extra Ordinary Part III, Section 4 published by Authority, New Delhi.
³⁵² Press Release No. 130 of 2014 dated 19th November, 2014.

unpublished price sensitive information or is in possession or has access to it. It therefore includes persons connected on the basis of a contractual, trust or employment relationship allowing such person access to unpublished price sensitive information (“UPSI”).

ii. UPSI was defined as UPSI means any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. This definition offers a test of price-sensitive information, aligns it with the Listing Agreement and offers a disclosure platform

iii. Insider trading charges was extended to securities listed and proposed to be listed on bourses. Only listed securities were covered by the 1992 Regulations.

iv. Interpretation notes: each provision in the Regulations shall be accompanied by specific notices establishing the legislative purpose for which that provision was formulated. As India moves from a “form approach” to a “substance approach,” these statements will help to capture the spirit of the legislation and how the regulator can view the implementation of the legislation.

v. Communication, procurement, and securities trading were restricted when one was in possession of UPSI.

vi. The regulations contained certain exceptions, including the trade carried out in the absence of any information or trade leakage conducted under trading plans when conducting due diligence for off-market transaction.

vii. In conducting due diligence in off-market transactions, the regulations laid down certain exclusions which include trade carried out in the absence of a leakage of information and trade executed in accordance with the trading plans.

viii. The quality criteria for compliance officers have been established which report, as the case may be, to the Board of Directors or to the head of the organization.

ix. Under the SEBI Act, the penalty imposed on Insider Trading is INR 250,000,000 or three times the amount of consideration earned from insider trading, whichever is higher. Anyone who violates or tries to breach or inculcates the law may face fines upto INR 250,000,000 or imprisonment for 10 years, or both. The rules also require some disciplinary sanctions which companies or market intermediaries may take in order to ensure the regulations are duly complied with.

The Companies Act, 2013

Under section 195 of the Companies Act, directors or principal executives of an enterprise are prohibited from engaging in insider trading. Under the law, ‘insider trade’ means an act by which any manager or principal or other officer of a company, or by which he is reasonably expected to have access to any non-public price sensitive information relating to the company’s securities, is subscribing, buying, selling, dealing or agreeing to purchase, sell or deal in any securities. Section 458 of the companies Act 2013 delegates or grants SEBI power to prosecute both companies that are listed and companies that are considered to be doing illegal insider trading.

Landmark Judgements: Insider Trading in India

1. Hindustan Lever Limited v. Securities and Exchange Board of India

This was the first instance in which SEBI took action against violators of the insider trading rule. M/s Hindustan Lever Ltd. (“HLL”) was a subsidiary of Unilever in India, with the latter owning 51% of HLL. Additionally, Unilever owned 50.2 percent of Brook Bond Lipton India Ltd. (“BBLIL”). Thus, HLL and BBLIL were both owned by Unilever, Inc., UK, and were thus subsidiaries of the same parent company, Unilever. With the disclosure of HLL and BBLIL’s merger to the stock market on 19th April 1996, there were reports of intelligence theft and insider dealing.³⁵³ When SEBI became aware of these, it resolved to

³⁵³ Supra 37.

launch an inquiry, during which it was discovered that a core team comprising of common directors of HLL and BBLIL had been created to explore the modalities of amalgamation for both companies. On 6 March 1996, the HLL Board of Directors voted to purchase 8 lacs shares of BBLIL. On 25 March 1996, HLL purchased 8 lacs shares of BBIL from Unit Trust of India (“UTI”) for Rs. 350.35 per share, a 10% premium over the trading price of Rs. 318. This deal happened two weeks prior to the integration of HLL and BBIL being announced publicly on 19th April 1996. A day after the launch, the price of BBIL's stock surged to Rs. 405, resulting in a notional benefit to HLL of Rs. Rs. 4.37 crores and UTI experienced a loss as a result.

SEBI sent a show cause notice to the Chairman, all Executive Officers, the Group Secretary, and the then Chief Executive Officer of HLL in August 1997. SEBI found HLL responsible for insider trading after extensive inquiries. According to SEBI, HLL was well aware of the imminent merger and took advantage of the UPSI. SEBI determined that HLL was an insider because it acquired 8 lakh shares of BBLIL on the basis of UPSI prior to the announcement of BBLIL's merger with HLL on 19th April, 1996, and thus violated Rule 3(i) of the SEBI (Prohibition of Insider Trading) Rules, 1992. The case was then pushed to the SAT where it was overturned on the following grounds: Thus, the Appellate Authority overturned the SEBI's order on the following grounds: a) the news about the merger was not UPSI as it was generally recognized and accepted by the industry as it was published in the newspapers, and thus was public information; b) the SEBI's decision to pay compensation to UTI was procedurally deficient; c) SEBI's guidance for prosecution under Section 24 was procedurally deficient; d) SEBI's direction for prosecution under Section 15G was not invoked.

Rakesh Agarwal v. Securities and Exchange Board of India³⁵⁴

³⁵⁴ Supra 38.

ABS Industries Limited was managed by Rakesh Agarwal. In October 1996, Bayer AG, a German company with branches in various countries, gained ownership of ABS. SEBI claimed that prior to the announcement of the takeover, Rakesh Agarwal acquired ABS shares from the market through his brother-in-law, Mr. I.P. Kedia. These shares were bought and sponsored by Rakesh Agarwal. The investigation found that the shares were purchased based on UPSI about the upcoming takeover, which was made available to the Appellant as the MD of ABS and also as a negotiator from ABS.

SEBI alleged that he was an insider with respect to ABS and that by trading in ABS shares through his brother-in-law while the purchase details were not public, he violated Regulations 3 and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

An inquiry was conducted, and Appellant was served with a show cause notice requesting him to demonstrate cause why no action should be taken against him for violating the SEBI Regulations. The Appellant responded that his action was in the best interests of the firm, when Bayer suggested that any joint venture with Bayer would enable Bayer to own 51% of the company. SEBI found Appellant guilty of violating Regulation 3 of the SEBI (PIT) Regulations, 1992 and ordered Rakesh Agarwal to deposit Rs. 34,00,000 with the Investor Education and Protection Fund of Stock Exchanges and the National Stock Exchange to pay any investor who might file a lawsuit in the future.

The SEBI's order dated 10th June 2001 was appealed to the SAT. After considering the submissions of all parties and the material on record, the SAT concluded that the funding for the purchase of shares and acquisition of shares by Sh. I.P. Kedia had to be seen in the following context: “It seems that the Appellant was desperate to get in Bayer, and that because Bayer's entry was conditional on it associating with ABS only if it held in that proceeding, the Appellant was adamant on not

reducing his holding to less than 26%. The significance of the magical number of 26% is that a person with 26% capital has the ability to veto those decisions. In the instant case, the Appellant was desperately seeking a joint venture partner to strengthen the business with the stringent condition of owning 51 percent capital in the company, and the Appellant's purpose in obtaining the share was to encourage Bayer's entrance for the benefit of the company and its other owners, staff, and other stakeholders, not to achieve undue personal gain. It was correct that the shares he had bought at a discount fetched a premium when sold in the public auction. However, this advantage was incidental, and most emphatically not by deception of another. Thus, SAT concluded that since the Appellant was behaving in the best interests of the corporation, he should not be held to have breached Regulation 3.

UNITED STATES OF AMERICA:

The United States was the first country to effectively tackle insider trading.³⁵⁵ The U.S. parliament rejects the definition of insider trade. In the context of the U.S., prohibitions on insider trading, the term insider is not defined by the Statute. Section 10(b) of the Securities Exchange Act, 1934 or Rule 10b-5 (or any federal statute, regulation or regulations) do not define "insider trading" (or "misappropriation").³⁵⁶ The American case law, which is nevertheless highly developed, is based on the Securities and Exchange Act's general anti-fault provisions.³⁵⁷ According to current US law, there are three fundamental theories under which information trading becomes illegal.³⁵⁸ In accordance with Section 10(b) of the Securities Exchange Act, 1934 and Rule 10b-5, the court established the rules on insider trading through

theories on disclosure or abstention and misappropriation³⁵⁹. These theories are as under-

1. The Disclose or Abstain Theory: The SEC proposed the disclose or abstain theory in the case of Cady Roberts & Co, holding that it is the insider's responsibility to disclose unpublished price sensitive information and to refrain from using it if it has not been made public. Classical theory is another name for this theory. In this case, the Securities Exchange Act of 1934's Sections 25(b), 15A, and 19(a) (3) were also discussed³⁶⁰. In SEC v. Texas Gulf Sulphur ("TGS") Co. the modern federal insider prohibition began to emerge.³⁶¹ The TGS opinion was based on an equal access to information policy.

The federal insider trading prohibition, according to the court, was designed to ensure that "all investors trading on impersonal exchanges have relatively equal access to material information." In other words, the majority believed Congress intended for "all members of the investing public to be exposed to the same market risks." As a result, under TGS and its descendants, almost anyone with material non-public information had to either disclose it before trading or refrain from trading in the affected company's securities. Abstention was the only option if the would-be trader's fiduciary duties prevented him from disclosing the information prior to trading.

The Equal Access Policy was struck down by the United States Supreme Court in Chiarella v. US.³⁶² Instead, the Court stated that liability could only be imposed if the defendant was required to disclose prior to trading. The required duty to disclose arises as a result of the inside trader's

³⁵⁵ Davies, Paul L., *Gower's Principles of Modern Company Law* (6th Edn., Sweet and Maxwell, 1997) 444.

³⁵⁶ Engle, *supra* note 6, 27

³⁵⁷ Parekh, Sandeep, 'Prevention of Insider Trading and Corporate Good Governance' (January 2003). Indian Institute of Management, Ahmedabad Working Paper No. 2003-01-03. 7, available at SSRN: <http://ssrn.com/abstract=653741> or DOI: [10.2139/ssrn.653741](https://doi.org/10.2139/ssrn.653741)

³⁵⁸

Ratner, David L., *Securities Regulation: In a Nutshell* (3rd Edn., Minn. West Publishing Co., 1988) 140T.

³⁵⁹ Disclose or abstain theory was originated in the case of Cady Roberts & Co, where rule 10b-5 was applied, which held that insiders and those who would come to be known as "temporary" or "constructive" insiders, who possess material non-public information, must disclose it before trading or abstain from trading until the information is publicly disseminated. Several years later in a landmark case dealing with insider trading, *SEC v. Texas Gulf Sulphur Co.*, court upheld the ruling of Cady, Roberts & Co. and further built upon the, disclose or abstain rule, by including the tipper as being liable under rule 10b-5. See for detail, Sharma, *supra* note 7, 27-28. See also, Bainbridge, *in* *supra* note 25, 2-3.

³⁶⁰ 40 SEC 907 (1961).

³⁶¹ 401 F.2d 833 (2d Cir. 1968), cert. denied, 394 U.S. 976 (1969).

³⁶² *Chiarella v. US*, 445 U.S. 222 (1980).

fiduciary relationship with the people with whom he trades. Chiarella made it clear that the trader's obligation to disclose or abstain is not triggered simply because he or she has material non-public information. There can be no fraud without a duty to speak in a securities fraud action based on non-disclosure, and no such duty arises from the mere possession of non-public information.

2. The Misappropriation Theory: According to this theory, if a person receives unpublished price sensitive information and breaches his or her fiduciary duty by disclosing the information to a third party, who then uses the information to trade, he or she will be held liable. This theory was discussed in depth by the United States Supreme Court in the case of Vincent F. Chiarella vs. United States.³⁶³ The Court was asked whether a person who learns from a company's confidential documents that it is planning to take control of another company violates Section 10(b) of the Securities Exchange Act of 1934 if he fails to disclose the impending takeover before trading in the target company's securities.

The petitioner was a printer by trade, and he worked as a "markup man" in Pandick Press's New York composing room. Five announcements of corporate takeover bids were among the papers handled by petitioner. The identities of the acquiring and target companies were obscured by blank spaces or false names when these documents were delivered to the printer. On the night of the final printing, the real names were sent to the printer. However, using other information contained in the documents, the petitioner was able to deduce the names of the target companies before the final printing. Petitioner purchased stock in the target companies without disclosing his knowledge and sold the shares as soon as the takeover attempts were made public. The petitioner was found guilty by the Court of Appeal, but his conviction was later overturned by the Supreme Court on the

grounds that if the petitioner had no obligation to disclose the information, he could not be found guilty of violating it.³⁶⁴

In another case, United States v. O'Hagan,³⁶⁵ the US Supreme Court upheld the misappropriation theory, ruling that insider trading occurs when a person obtains unpublished price sensitive information and uses it in securities transactions in violation of a fiduciary duty. James O'Hagan was a partner at the Minneapolis law firm Dorsey & Whitney in this case. In the case of Dirks v. SEC,³⁶⁶ the United States Supreme Court held that when a corporate insider (tipper) tips inside information to a party unaffiliated with the corporation (tippee) who trades on the information, the information is considered confidential. The Court determined that a tippee is only liable for insider trading if she trades on the information in violation of a fiduciary duty, she assumes by receiving information from a tipper who has breached his fiduciary duty. Also, because courts are dynamic in determining the culpability of insiders, this case is significant. Nobody was held liable for insider trading violations in this case because Dirks disclosed the information in order to expose a fraud rather than for personal gain. The Court defined constructive insiders and held that someone who uses inside information to expose ongoing corporate malpractice and does not use it for personal gain cannot be held liable for violating insider trading regulations.³⁶⁷

The Supreme Court upheld mail and wire fraud convictions for a defendant who received information from a journalist rather than from the company itself in the case of United States v. Carpenter.³⁶⁸ In this case, the defendant received the information from a Wall Street Journal journalist who passed it on to him. In this case, the journalist, along with the defendant, was found guilty of misappropriating information belonging to his

³⁶⁴ 445 U.S.222(1980)

³⁶⁵ 521U.S.642(1997)

³⁶⁶ 463 U.S.646,103S.Ct.3255(1983)

³⁶⁷ 463U.S.646(1983)

³⁶⁸ 463U.S.646(1983)

³⁶³ Supra86

employer. The Supreme Court “It is well established, as a general proposition, that a person who acquires special knowledge or information through a confidential or fiduciary relationship with another is not free to exploit that knowledge or information for his own personal benefit, but must account to his principal for any profits derived therefrom.”³⁶⁹ In the widely publicized case of *United States v. Rajaratnam*, the Supreme Court unanimously upheld the legality of phone tapping and upheld the conviction based solely on information obtained through phone tapping.³⁷⁰ It was the largest insider trading case involving hedge funds in US history.

3. **Tipper Theory:** Naffziger and Parker argue that the U.S. law concerning the tipper-tippee liability is “confusing” and for “decades the US Congress has avoided clarifying the matter”.³⁷¹ This has resulted in the “lower federal courts grappling with the issue” and the U.S. Supreme Court has “declined to provide guidance for the last two decades”.³⁷² However, in the recent case of *Salman*, it seems that the court has brought a “degree of clarity” in regards to the “criminal liability of tippees”.³⁷³ In *Salman’s* case, the Ninth Circuit declined to follow the decision in *Newman*³⁷⁴ and instead chose to interpret *Dirks* (where it was established that receipt of any form of monetary benefit, received by the tipper from the tippee for the inside information will render them both liable) more broadly. The Supreme Court upheld *Salman’s* conviction and it is now established that “if a tipper passes on the information to a tippee in return for some benefit, the tipper bears liability”.³⁷⁵ However, there is still a “degree of uncertainty as when there is a very close relationship between the tipper and tippee”, “a gift of inside information to a trading tippee” will lead to liability. However, when there is “a more tenuous relationship

between the tipper and tippee”, the court will determine the outcome on a case-by-case basis.³⁷⁶

In accordance with the Securities and Exchange Commission’s (SEC rule-making) authority, under Exchange Act Section 14(e), Rule 14e-3 was introduced to ban insider trading with tender offer information. Section 10(b) of the Act states that by using any means or instruments of interstate trade and email or any facilities of any national securities exchange for the purpose of purchasing or selling security registered on a national exchange for securities, or by any security not so registered, it is illegal for any person, whether directly or indirectly, to exchange or use any security.³⁷⁷

Rule 10b-5 of the Securities Exchange Act, 1934, promulgated in accordance with paragraph 10(b) that it is illegal for any person, directly or indirectly, to take any action, practice or course of business operating or acting as fraud or deception of any person in connection by means of any inter-status or mail or any facilities on a national securities exchange.³⁷⁸

ROLE OF SOCIAL MEDIA IN MARKET MANIPULATION

Social media has emerged as a powerful tool capable of both disseminating and distorting financial information in real time. Unlike traditional news outlets that are subject to editorial checks and legal accountability, platforms like Reddit, Twitter, and WhatsApp enable users—often anonymous—to share unverified content instantly with millions. This creates a fertile ground for information asymmetry, where certain market participants react swiftly to misleading or premature information while others remain unaware or misinformed.³⁷⁹ The velocity at which information spreads online often bypasses regulatory filters, allowing speculative narratives, insider leaks, or coordinated trading

³⁶⁹ *Id.*

³⁷⁰ 09 Cr.1184(RJH) (S.D.N.Y.Nov.29,2010).

³⁷¹ F.J.Naffziger&D.Parker, “InsiderTradingintheUS:recentclarificationbytheSupremeCourt andsomeethicalobservations”, *Journal of International Banking Law and Regulation*, 41(9)at1-39(2017).

³⁷² *Id.*

³⁷³ *Salman v United States*, 580U.S.137 S.Ct.420 (2016).

³⁷⁴ *United States v Newman*, 665F.2d 12 (2d Cir.1981).

³⁷⁵ *Supra*90.

³⁷⁶ *Id.*

³⁷⁷ Section 10(b) is codified at 15 U.S.C. § 78j (b).

³⁷⁸ SEC Rule 10b-5 is codified at 17 C.F.R. § 240.10b-5.

³⁷⁹ Mark Fenwick et al., *Regulating Financial Markets in the Age of Reddit and Robinhood*, 23 *Stan. J.L. Bus. & Fin.* 43 (2022).

signals to influence prices before regulators or the broader market can respond. This dynamic undermines the principle of a level playing field and can lead to artificial inflation or deflation of stock values, often benefiting a small, tech-savvy group at the expense of less-connected retail investors.³⁸⁰

The proliferation of digital communication platforms such as Reddit, WhatsApp, Telegram, Twitter, and Discord has revolutionized how market-related information is shared and consumed. These platforms enable instant, large-scale communication, often without oversight, allowing users to exchange financial opinions, leaks, or rumours in real time. WhatsApp and Telegram, with their encrypted messaging features, have become preferred tools for private, often untraceable dissemination of sensitive or insider information. Meanwhile, Reddit and Twitter allow viral amplification of trading sentiments, often driven by memes, trending hashtags, or influential users. Discord, originally a gaming platform, has also evolved into a space where investing communities coordinate trades and discuss market strategies. While these platforms democratize access to financial conversations, they simultaneously blur the boundaries between legal discussion, unethical coordination, and outright market manipulation.

Case Study I: The WhatsApp Leak Case (India)

Background of the Case

In 2017, a major regulatory concern surfaced when unpublished price-sensitive information (UPSI)—including earnings data of prominent companies like Axis Bank, HDFC Bank, and Tata Motors—was found circulating through private WhatsApp groups prior to official announcements. These messages contained near-accurate projections of quarterly financial results, leading SEBI to suspect potential insider trading through informal digital channels.

Legal Proceedings and SEBI's Response

The Securities and Exchange Board of India (SEBI) launched an investigation under the SEBI (Prohibition of Insider Trading) Regulations, 2015. It conducted search and seizure operations at the premises of several brokerage houses and individuals, attempting to trace the origin of the leaks. While SEBI acknowledged the circulation of UPSI, it faced difficulties in establishing whether the information was sourced from legitimate insiders and whether it was used for trading, which are essential elements under Indian insider trading law³⁸¹.

Proving Insider Knowledge and Electronic Evidence

One of the key legal hurdles was determining whether the recipients of the WhatsApp messages qualified as “insiders” under the law, i.e., persons in possession of UPSI by virtue of their position or connection with the company. The informal and encrypted nature of WhatsApp conversations complicated the process of tracing the source, identifying the original tipper, and establishing a clear trading motive or benefit gained from the leaked data. SEBI also faced complications around the admissibility of electronic evidence. Under the Indian Evidence Act and the Information Technology Act, electronic records must meet specific requirements for authenticity, including certification under Section 65B. In many instances, WhatsApp chats lacked metadata, timestamps, or authentication, making them difficult to present as credible evidence in quasi-judicial proceedings³⁸².

The case brought into sharp focus the tension between the right to privacy and the need for regulatory oversight. On the one hand, WhatsApp is an end-to-end encrypted platform protected by constitutional privacy rights under the Puttaswamy judgment. On the other hand, SEBI must have investigatory powers to ensure

³⁸⁰ U.S. Securities and Exchange Commission, *Staff Report on Equity and Options Market Structure Conditions in Early 2021* (Oct. 2021).

³⁸¹ SEBI, *Order in the Matter of Circulation of UPSI through WhatsApp Messages*, WTM/SR/EFD-1/DEC/2017-18.

³⁸² Anirudh Rastogi, *Law, Privacy and Surveillance: Implications of the WhatsApp Leak Case*, *Indian Journal of Law and Technology*, Vol. 15 (2020).

market fairness and prevent insider trading. Balancing these competing interests remains a complex policy and legal challenge in India.

5. Case Study II: The GameStop Short Squeeze (USA)

Timeline of Events: Reddit's r/WallStreetBets, Robinhood, and Hedge Funds

In late 2020 and January 2021, users on the Reddit forum r/WallStreetBets began rallying around the stock of GameStop (GME), a struggling video game retailer heavily shorted by major hedge funds like Melvin Capital. The campaign encouraged retail investors to buy and hold GameStop shares en masse, causing a dramatic short squeeze in January 2021, where the stock price soared from around \$20 to nearly \$483 within weeks.³⁸³ The trading app Robinhood, used by many retail investors, temporarily restricted purchases of GME and other volatile stocks, citing liquidity and risk concerns, which sparked public outrage and congressional scrutiny.

Debate on Manipulation vs. Collective Action

The GameStop event ignited a global debate: was this market manipulation or simply collective action by informed retail investors? Traditional definitions of manipulation involve the spread of false information or deceptive practices to distort market prices. In this case, the Reddit posts were largely public, driven by open discussions and sentiment rather than concealed fraud. Supporters argued it was a grassroots democratization of the stock market, while critics—including some institutional investors—claimed it created volatility and systemic risk akin to manipulation.

Role of Social Media Personalities and Online Forums

The rally was amplified by viral content, memes, and endorsements from online influencers and streamers, who created a sense of camaraderie and rebellion against Wall Street elites.

Youtubers, Twitter personalities, and anonymous Reddit users with usernames like "DeepF*ingValue"*** became cult figures among retail traders. This digital collective consciousness, fueled by humor and ideology, blurred the line between financial activism and speculative frenzy.

SEC's Stance and Public Reaction

The U.S. Securities and Exchange Commission (SEC) issued a staff report in October 2021, concluding that while GameStop's volatility raised concerns, there was no evidence of "systemic wrongdoing" or classic manipulation.³⁸⁴ However, it recommended reviewing payment-for-order-flow practices, the gamification of trading apps, and social media's growing role in shaping investor behavior. The public, particularly younger investors, largely viewed the episode as a symbolic victory over institutional power, reflecting broader discontent with financial inequality and lack of access to wealth-building tools.

LEGAL AND ETHICAL CHALLENGES

- Privacy Rights vs. Market Regulation

One of the most pressing legal dilemmas in the digital trading era is balancing the right to privacy with the need for effective market regulation. Encrypted platforms like WhatsApp and Telegram protect user privacy through end-to-end encryption, but the same feature makes it nearly impossible for regulators to trace the origin or flow of potentially illicit financial communications. This conflict becomes sharper in jurisdictions like India, where the Supreme Court has affirmed privacy as a fundamental right, yet market watchdogs like SEBI are entrusted with protecting market integrity and investor trust.³⁸⁵

- Admissibility of Digital Evidence – Encryption, Authenticity, Chain of Custody

The admissibility of digital evidence is another complex challenge in insider trading

³⁸³ U.S. House Committee on Financial Services, *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide* (Hearing, Feb. 18, 2021).

³⁸⁴ U.S. Securities and Exchange Commission, *Staff Report on Equity and Options Market Structure Conditions in Early 2021* (Oct. 2021).

³⁸⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

investigations. Courts require stringent compliance under provisions like Section 65B of the Indian Evidence Act, which mandates certification to authenticate electronic records. Issues such as encrypted chats, the lack of metadata, and tampering risks often undermine the reliability of such evidence. Regulators must also demonstrate an unbroken chain of custody, which is increasingly difficult when dealing with informal, peer-to-peer communications shared across decentralized platforms.

- “Heard on Street” Defense – When Is Viral Info Insider Info?

The “Heard on Street” defense complicates enforcement by arguing that market-sensitive information, even if accurate, was obtained from public rumor or speculation, not from insiders. This defense was notably raised in the WhatsApp Leak case, where the similarity of leaked figures to public earnings triggered questions about whether the information truly qualified as unpublished price-sensitive information (UPSI). Distinguishing between random online chatter and actual insider leaks is legally and ethically thorny.

- Freedom of Expression vs. Market Integrity – Can Memes and Tweets Be Criminal?

The tension between free expression and market integrity has intensified with the rise of meme-driven stock movements. Posts, tweets, and Reddit threads—often humorous or sarcastic—can significantly influence investor behavior and stock prices. While freedom of speech is constitutionally protected in many countries, such communications could potentially be prosecuted if proven to contain false, misleading, or manipulative intent³⁸⁶. The difficulty lies in separating genuine opinion from strategic influence designed to distort market outcomes.

COMPARATIVE ANALYSIS:

Enforcement Strength: India vs. the USA

While both India and the United States prohibit insider trading and market manipulation, the enforcement mechanisms differ significantly in terms of speed, proactivity, and deterrent impact. The U.S. Securities and Exchange Commission (SEC) has a well-established culture of aggressive prosecution, often employing advanced forensic tools, whistleblower programs, and cooperation agreements to build strong cases.³⁸⁷ In contrast, India's Securities and Exchange Board of India (SEBI) has historically faced delays in investigation and enforcement, partly due to procedural constraints and technological limitations. Although SEBI has ramped up its surveillance capabilities in recent years, its actions often follow media reports or post-event detection, rather than preemptive regulation.³⁸⁸

Judicial Approach to Digital Trading and Market Behavior

The judicial temperament toward digital evidence and social media-driven market behavior also varies. U.S. courts have, on several occasions, accepted social media posts and digital footprints as valid evidence when properly authenticated, particularly under the Federal Rules of Evidence³⁸⁹. In India, however, courts require strict procedural compliance for electronic records to be admitted—most notably, Section 65B certification under the Indian Evidence Act. This legal threshold has led to the exclusion of potentially critical WhatsApp and Telegram messages in high-profile cases. Moreover, while U.S. jurisprudence has evolved to consider “intention” and “economic benefit” in manipulation, Indian courts often struggle with proving the exact source and purpose behind a digital communication.

³⁸⁶ U.S. Securities and Exchange Commission v. Elon Musk, Case No. 1:18-cv-08865 (S.D.N.Y. 2018).

³⁸⁷ U.S. Securities and Exchange Commission, *Whistleblower Program Annual Report*, 2022.

³⁸⁸ SEBI, *Annual Report*, 2021–22.

³⁸⁹ Federal Rules of Evidence, Rule 901 – Authenticating or Identifying Evidence.

Role of Regulatory Bodies: SEBI vs. SEC

The SEC functions with a high degree of autonomy and possesses expansive enforcement powers, including the ability to freeze assets, impose civil penalties, and even initiate criminal proceedings through coordination with the U.S. Department of Justice. It also operates a robust whistleblower program, which has been instrumental in detecting insider trading.³⁹⁰ In contrast, SEBI's enforcement is civil and administrative in nature, with criminal prosecution requiring coordination with external agencies like the Enforcement Directorate or CBI. Though SEBI has made strides by creating specialized surveillance units, it lacks the same degree of institutional coordination and deterrent strength as its U.S. counterpart.

SUGGESTIONS & POLICY RECOMMENDATIONS

Given the influence of platforms like Reddit, Twitter, and WhatsApp in shaping market trends, regulatory bodies should adopt real-time surveillance technology. AI-driven systems that track sentiment shifts and keyword spikes related to listed companies can help identify manipulative trends before they escalate. The U.S. SEC has begun investing in such tools, and India's SEBI could benefit from creating a dedicated digital surveillance wing with similar capabilities.³⁹¹

India must enhance its capacity for digital evidence gathering and analysis. This includes training enforcement officials in handling encrypted communications, ensuring a secure chain of custody, and leveraging blockchain or forensic audit trails. Legal reforms are also needed to streamline the admissibility of electronic records, including updates to Section 65B of the Indian Evidence Act, to make the process more practical and tech-friendly.

To prevent herd-driven or meme-based investing, regulators should launch nationwide

investor education programs. These campaigns can highlight the risks of trading based on unverified social media tips and promote long-term, research-based investment strategies. Partnering with educational institutions, fintech platforms, and influencers could ensure wider reach and resonance.

India's insider trading laws need explicit provisions addressing the digital context, especially concerning encrypted group chats, anonymous forums, and algorithmic dissemination. The definition of "insider" should be expanded to include individuals in virtual possession of price-sensitive information—even if they are not formally associated with the company³⁹². This will help close existing legal loopholes and better equip SEBI to prosecute digital-era violations.

CONCLUSION

The rise of social media-driven trading has fundamentally altered the landscape of insider trading, as seen in the WhatsApp Leak and GameStop cases. This paper finds that digital platforms create rapid information asymmetry and collective behavior that challenges traditional regulatory frameworks. A careful balance must be struck between encouraging financial innovation, upholding ethical investing standards, and ensuring robust regulatory oversight. To address these emerging challenges effectively, there is a pressing need for globally harmonized regulations that define and govern digital-era insider trading, backed by enhanced technological tools and coordinated enforcement mechanisms.

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³⁹⁰ "Insider Trading: A Comparative Study of Regulatory Frameworks in India and USA," *NLSIU Law Review*, Vol. 13 (2021).

³⁹¹ SEC, *Staff Report on Equity and Options Market Structure Conditions in Early 2021*.

³⁹² SEBI (Prohibition of Insider Trading) Regulations, 2015 – Scope for reform proposed in *NITI Aayog Discussion Paper*, 2022.

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