A single word could criminalize every informed investor in India

Trading on information that's simultaneously material and non-public is mischievous—but is routine on either of the two

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The Securities Markets Code of 2025 contains a drafting error in Clause 93(b) so small that it is monosyllabic. The conjunction used is "or." It should be "and." In ordinary writing, this would be a copy-editor's note. In a provision that carries up to ten years of imprisonment, a fine of ₹25 crore and qualifies as a scheduled offence under India's Prevention of Money-Laundering Act (PMLA), the difference between these two words is the difference between a law that targets guilty traders and one that can ensnare every investor who reads the morning newspaper before placing a trade.

Clause 93(b) prohibits a person from dealing in securities "while in possession of material or non-public information that would affect the value of such securities." The target is obvious: front-running, or trading akin to insider dealing that exploits information asymmetry, corrupts price discovery and destroys investor confidence. The instinct is right. The drafting is not. As written, the clause creates two independent sufficient conditions, either of which by itself triggers the prohibition. A person who possesses information that is material but entirely public is caught. A person who possesses information that is non-public but wholly immaterial is caught too. On a literal reading, an institutional fund manager who trades after studying a company's publicly released quarterly results possesses information that is, beyond argument, material. If the market has not yet fully priced in those results, the information may also affect the value of the securities. Clause 93(b), read with 'or,' reaches that fund manager. Parliament surely does not intend this.

The real vice that securities law across every major jurisdiction has identified is the following combination: information that is simultaneously material and non-public. Trading mischief arises in this conjunction, not in either qualifier separately. An investor trading on public information, however significant, is doing precisely what efficient markets depend on. An investor trading on non-public information that is wholly immaterial gains no meaningful advantage and causes no market harm. The law is designed to catch only the person who trades while knowing something the market does not know and would care about if it did. That person can be identified only when both conditions are present together. 'Or' captures too much; 'and' captures exactly enough.

Every significant securities jurisdiction encodes this as a conjunctive standard. In the US, the concept is Material Non-Public Information (MNPI), a compound noun in which the conjunctive logic is embedded in the very terminology. The Securities and Exchange Commission's insider trading framework under Rule 10b-5 of the US Securities Exchange Act of 1934 has never treated materiality and non-public character as alternatives. They are a single, inseparable test. The UK's Market Abuse Regulation requires inside information to be both precise and not generally available—both conditions together. This reflects a considered understanding, refined over decades, of where harm lies and where not.

An irony is that this is not a new error in Indian securities law. Section 12A of the Securities and Exchange Board of India (Sebi) Act of 1992 carried the same formulation and the Securities Markets Code (SMC) has simply reproduced it without correction. Indian securities regulation had arrived at the right answer through its own regulatory evolution. The Sebi (Prohibition of Insider Trading) Regulations of 2015 built their framework around Unpublished Price Sensitive Information (UPSI), which captures information that is both price-sensitive and unpublished. The two qualities are not presented as alternatives anywhere in Sebi's prevention of insider trading (PIT) regulations. The Justice N.K. Sodhi Committee, constituted to review the PIT framework, recognized this alignment directly when it observed that MNPI in international usage and UPSI in Indian regulation are interchangeable concepts, both requiring materiality and non-public conditions to be met together. In other words, Indian regulation corrected through subordinate legislation what the parent statute got wrong. The SMC had an opportunity to codify that correction into the statute itself. It has instead carried forward the error of Section 12A, so the conjunctive understanding under PIT regulations survive only in subordinate legislation rather than in the Code that governs everything else. That is a significant step backward.

Clause 93(b) presents a second difficulty that compounds the first. The phrase "deal in securities" has been the subject of intense and unresolved judicial contest for years. Courts and the Securities Appellate Tribunal (SAT) have grappled repeatedly with whether "dealing" requires a completed transaction—an executed purchase or sale—or whether placing an order, instructing a broker or any preparatory step suffices. Sebi's whole-time members and adjudicating officers have on occasion held that dealing extends even to advising on securities, a reading that stretches the phrase well beyond its natural meaning. In front-running, which is the primary mischief Clause 93(b) is designed to address, harm occurs before any transaction is completed. A dealer who receives advance knowledge of a large client order and places personal positions ahead of it has already exploited information asymmetry at the moment those positions are placed. Whether profits are later realized is secondary. In multiple enforcement orders, Sebi has held that 'dealing' encompasses ordering and instructing. The SAT has not always agreed. These inconsistencies have generated contested enforcement that weakens deterrence while exposing intermediaries to unpredictable liability. The SMC could have resolved this by defining "deal in securities" for the purposes of Chapter XII, but has not. As ambiguity survives, litigation will continue.

Both difficulties are compounded by a third: Clause 93(b) is not a standalone provision. It sits within the market abuse chapter, whose violations, under Clause 96, attract criminal punishment and PMLA consequences. The interpretive latitude currently exercised by Sebi's enforcement officers and inconsistently reviewed by the SAT will now translate directly into criminal prosecutions and Enforcement Directorate attachment proceedings. The stakes of definitional imprecision are thus constitutional. A person imprisoned under Clause 93(b), or whose assets are attached under the PMLA, is entitled to know with certainty from the statute what conduct triggered this. The current text does not provide that certainty.

The fixes are not complex. Replace 'or' with 'and.' This correction will align the SMC with the UPSI framework Indian regulation developed. For "deal in securities," Parliament's Standing Committee on Finance should insert a definition for Chapter XII that expressly includes placing orders and instructing intermediaries, so that front-running is captured where it actually occurs rather than made contingent on transaction completion. Since these are technical rather than political fixes, India's legislative process should welcome them.

A provision governing criminal liability and PMLA consequences must say exactly what it means. Revisions need to be made before the Code is enacted.