EFFICACY OF THE CURRENT LEGAL FRAMEWORK AGAINST BORROWER DEFAULTERS AND FUGITIVE ECONOMIC OFFENDERS

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ABSTRACT

India's banking sector has, for over two decades, grappled with wilful loan default and the flight of high-profile debtors beyond the reach of domestic courts.[1] Parliament has responded through a layered statutory architecture, namely the Recovery of Debts and Bankruptcy Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Insolvency and Bankruptcy Code, 2016, and, more recently, the Fugitive Economic Offenders Act, 2018, each designed to close gaps left by its predecessor. This paper examines whether that architecture, taken together, has succeeded in deterring default, expediting recovery, and bringing offenders who abscond abroad to account. Drawing on the trajectories of prominent absconders such as Vijay Mallya, Nirav Modi and Mehul Choksi, it is argued that while the 2018 Act has proved effective at confiscating domestic assets, its coercive value is substantially blunted by the slow pace of foreign extradition proceedings, jurisdictional friction with requested states, and insufficient coordination among India's own enforcement agencies. The paper concludes with recommendations for tightening inter-agency coordination, strengthening mutual legal assistance mechanisms, and aligning India's asset-recovery regime more closely with comparable civil recovery models abroad.

[1] See generally Reserve Bank of India, Report on Trend and Progress of Banking in India (various years) (discussing non-performing asset trends and the incidence of wilful default in Indian banking).

I. INTRODUCTION

The Indian banking system has, since the early 2000s, repeatedly confronted a class of borrowers who default not out of genuine business failure but as a calculated strategy to avoid repayment while relocating their persons and assets beyond the territorial reach of Indian courts. Non-performing assets in the banking sector rose sharply through the mid-2010s, and a visible subset of that stress was attributable not to ordinary commercial risk but to what regulators term wilful default, meaning a conscious refusal to honour repayment obligations despite the capacity to do so.[2] The public departure of promoters such as Vijay Mallya, Nirav Modi, Mehul Choksi and Lalit Modi crystallised a distinct policy problem: existing civil recovery mechanisms were designed on the assumption that the debtor remains within the jurisdiction, and none of them contained a dedicated response to a debtor who leaves the country altogether.[3]

Parliament's response has unfolded in stages rather than as a single coherent code. The Recovery of Debts and Bankruptcy Act, 1993 created specialised tribunals for banks and financial institutions; the SARFAESI Act, 2002 permitted secured creditors to enforce security without court intervention; the Insolvency and Bankruptcy Code, 2016 consolidated and time-bound the resolution of corporate and personal insolvency; and the Fugitive Economic Offenders Act, 2018 was enacted specifically to address the absconding debtor, empowering the state to attach and confiscate the fugitive's property even before conviction.[4] Each statute was, in its own time, presented as the missing piece that would finally close the loophole exploited by the preceding generation of defaulters.

This paper asks whether that cumulative architecture has, in practice, achieved its stated objectives of deterrence, recovery and accountability. Part II traces the ordinary civil recovery framework. Part III examines the Fugitive Economic Offenders Act, 2018 in detail. Part IV tests the framework against three well-documented case studies. Part V identifies the structural gaps that persist notwithstanding the statutory layering. Part VI situates the Indian regime

[2]Reserve Bank of India, Master Circular on Wilful Defaulters (defining wilful default as a borrower's failure to repay despite having the capacity to do so, or diversion or siphoning of borrowed funds).
[3]See infra Part IV (discussing the departures of Vijay Mallya, Nirav Modi, Mehul Choksi and Lalit Modi from India).
[4]Recovery of Debts and Bankruptcy Act, No. 51 of 1993, India Code; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code; Insolvency and Bankruptcy Code, No. 31 of 2016, India Code; Fugitive Economic Offenders Act, No. 17 of 2018, India Code.

against comparable mechanisms abroad, and Part VII offers recommendations for reform.

II. STATUTORY FRAMEWORK GOVERNING BORROWER DEFAULT

A. The Recovery of Debts and Bankruptcy Act, 1993

The Recovery of Debts and Bankruptcy Act, 1993 was the first legislative attempt to free banks from the delay inherent in ordinary civil suits.[5] It established Debts Recovery Tribunals with summary procedure and prescribed time limits for disposal, and an appellate tier in the Debts Recovery Appellate Tribunal.[6] In principle, a bank could obtain a recovery certificate within months rather than the years an ordinary civil suit would take. In practice, tribunals have remained chronically under-resourced relative to caseload, and appellate stays have become routine, so that the promise of speed is rarely realised for high-value, contested defaults.[7] The Act's central limitation for present purposes, however, is structural rather than procedural: it presupposes a debtor and assets that can be located and proceeded against within India, and offers no mechanism addressed to a debtor who has already left the jurisdiction.

B. The SARFAESI Act, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 went further, permitting secured creditors to enforce their security interest without approaching a court or tribunal at all.[8] On classification of an account as a non-performing asset, a secured creditor may issue a demand notice under Section 13(2), and, on the borrower's failure to comply, take possession of and sell the secured asset under Section 13(4).[9] The Act's constitutional validity, including the summary character of this remedy, was upheld by the Supreme Court in Mardia Chemicals Ltd. v. Union of India, subject to the borrower's right to raise objections before the Debts Recovery Tribunal.[10] SARFAESI has proved administratively efficient for recovering secured, adequately collateralised loans, and enforcement data consistently show it recovering greater value than the Debts Recovery Tribunal route.[11] Its

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[5] Recovery of Debts and Bankruptcy Act, No. 51 of 1993, India Code (enacted originally as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993).
[6] Id. §§ 3, 17 (constituting Debts Recovery Tribunals and the Debts Recovery Appellate Tribunal).
[7] See sources on chronic pendency before Debts Recovery Tribunals, cited supra note 1.
[8] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code, § 13.
[9] Id. § 13(2), (4).
[10] Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.
[11] See Reserve Bank of India, annual data on recovery through the SARFAESI Act, Debts Recovery Tribunals,

efficacy nonetheless depends on the existence of identifiable, unencumbered security within India; it offers the creditor no purchase on unsecured exposure, on assets that have already been dissipated or moved offshore, or on a promoter who has structured the default through layered corporate vehicles precisely to defeat enforcement.

C. The Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 reoriented the objective of the recovery regime from creditor-led enforcement toward the time-bound resolution of the underlying business.[12] A financial creditor may trigger the corporate insolvency resolution process on default under Section 7, whereupon control of the corporate debtor passes to a resolution professional and a committee of creditors, subject to a moratorium under Section 14.[13] Section 29A, inserted in 2018, disqualifies the very promoter who caused the default, including a wilful defaulter, from bidding to regain control of the company through the resolution process, a provision the Supreme Court upheld in Swiss Ribbons Pvt. Ltd. v. Union of India as a legitimate response to the moral hazard of promoters buying back distressed assets at a discount.[14] The Code has undeniably improved recovery rates and reduced the average time to resolution compared to the earlier regime, but insolvency proceedings against an absent promoter still proceed on Indian soil against Indian assets; they neither compel the promoter's presence nor reach wealth that has already been relocated abroad.

III. THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018

A. Legislative Background and Rationale

By 2017 it was apparent that the existing framework, however improved, addressed only the debtor who remained within reach. The Fugitive Economic Offenders Bill, 2018, introduced in the Lok Sabha in March 2018 and enacted as Act No. 17 of 2018, was framed explicitly as a response to that gap, with its object being to preserve the sanctity of the rule of law against offenders who use their absence abroad as a shield.[15] The Act does not create a new economic

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Lok Adalats and the Insolvency and Bankruptcy Code, published in its Report on Trend and Progress of Banking in India.

[12]Insolvency and Bankruptcy Code, No. 31 of 2016, India Code, pmbl.

[13]Id. §§ 7, 14.

[14]Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17; Insolvency and Bankruptcy Code, No. 31 of 2016, India Code, § 29A.

[15]The Fugitive Economic Offenders Bill, 2018, Bill No. 79 of 2018 (Statement of Objects and Reasons);

offence; it instead attaches civil and quasi-penal consequences, namely confiscation and disentitlement, to the fact of flight itself, once the underlying offence crosses a monetary threshold of one hundred crore rupees.[16]

B. Key Provisions

A person qualifies as a 'fugitive economic offender' under Section 2(1)(f) if an arrest warrant has been issued against them for a scheduled offence and they have either left India to avoid prosecution or, being abroad, refuse to return to face it.[17] The Director of Enforcement, on reasonable belief that an individual meets this description, may apply to a Special Court for a declaration to that effect, and may in the interim provisionally attach the individual's properties, including proceeds of crime, for up to one hundred and eighty days under Sections 4 and 5.[18] Once declared a fugitive economic offender, the person's properties, movable and immovable, and not limited to the proceeds of the specific offence, may be confiscated and vest in the Central Government free of encumbrances under Section 12.[19] Section 14 additionally bars the fugitive, and any company in which they are a promoter or key managerial person, from bringing or defending any civil claim before an Indian court, effectively shutting them out of the domestic legal system until they submit to jurisdiction.[20] The Act was invoked within months of enactment: Vijay Mallya became the first person declared a fugitive economic offender under it, with Nirav Modi and Mehul Choksi following soon after.[21]

C. Procedural Safeguards and Criticism

The Act builds in some due-process protection: a person served notice under Section 10 has an opportunity to appear before the Special Court and contest the declaration, and confiscation orders are appealable to the High Court under Section 17.[22] Commentators have nonetheless questioned whether attachment and eventual confiscation before any criminal conviction sits comfortably with the presumption of innocence, and whether the monetary threshold arbitrarily

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Fugitive Economic Offenders Act, No. 17 of 2018, India Code, pmbl.
[16]Fugitive Economic Offenders Act, No. 17 of 2018, India Code, § 2 & sch.
[17]Id. § 2(1)(f).
[18]Id. §§ 4-5.
[19]Id. § 12.
[20]Id. § 14.
[21]See sources cited infra notes 25-32 (discussing the declarations of Mallya, Modi and Choksi as fugitive economic offenders).
[22]Fugitive Economic Offenders Act, No. 17 of 2018, India Code, §§ 10, 17.

excludes a large volume of default that falls just below the one-hundred-crore mark from any comparable remedy.[23] The bar on civil claims under Section 14 has also been criticised as potentially disproportionate where it extends to companies with only a tenuous continuing connection to the fugitive, and litigation over the precise scope of that provision continues before the High Courts.[24]

IV. TESTING THE FRAMEWORK: SELECT CASE STUDIES

A. Vijay Mallya

Vijay Mallya left India in March 2016, owing a consortium of seventeen banks in excess of nine thousand crore rupees on account of the collapsed Kingfisher Airlines. A United Kingdom court ordered his extradition in December 2018, a decision upheld on appeal, yet Mallya remains in the United Kingdom as of 2026, his surrender held up by what UK authorities have repeatedly described as a separate, confidential legal proceeding that must first be resolved.[25] On the domestic side, enforcement agencies have had considerably more success: assets attached and sold under the Prevention of Money Laundering Act and the Fugitive Economic Offenders Act have reportedly recovered a sum exceeding the principal amount owed, and Indian courts have continued to press Mallya, through his counsel, to return and contest his fugitive status directly.[26] The case illustrates a recurring pattern: domestic asset confiscation functions reasonably well, while physical rendition of the offender does not.[27]

B. Nirav Modi and Mehul Choksi

Nirav Modi and his uncle Mehul Choksi left India in early January 2018, days before the roughly thirteen-thousand-crore-rupee Punjab National Bank letter-of-undertaking fraud became public.[28] Nirav Modi was arrested in London in March 2019 and has remained in

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[23]See generally commentary critiquing the pre-conviction character of confiscation under the Act, discussed alongside sources cited supra note 15.
[24]See litigation before various High Courts on the scope of § 14 of the Act, noted in commentary cited supra note 23.
[25]Vijay Mallya Misses Mumbai Court Deadline in Fugitive Offender Case, The Drinks Business (Feb. 20, 2026).
[26]Id.; Vijay Mallya's Extradition to India, Not Yet, Says Britain, India Legal (June 4, 2020); Legal Issues Delaying Mallya Extradition from UK, India Tells Top Court, Eastern Eye (Jan. 22, 2021).
[27]Vijay Mallya Misses Mumbai Court Deadline in Fugitive Offender Case, supra note 25 (noting the Bombay High Court's direction giving Mallya a final opportunity to return and contest his fugitive status).
[28]Belgium Police Arrest Fugitive Diamond Trader Mehul Choksi, News on Air (Apr. 14, 2025); We Are Working Closely with Belgian Side on Mehul Choksi's Extradition: MEA, The Tribune (Apr. 17, 2025).

custody there while contesting extradition; the UK Home Secretary approved his surrender in 2021, and as of 2026 he continues to pursue further appeals, illustrating how a multi-tier extradition process in a cooperative jurisdiction can nonetheless extend well beyond half a decade.[29] Choksi's trajectory has been more circuitous: he acquired citizenship of Antigua and Barbuda in 2017, was found in Dominica in 2021 amid disputed allegations that he had been unlawfully removed from Antigua, and was eventually traced to Belgium, where he was arrested in April 2025 on India's request.[30] Belgian courts rejected his challenges to that arrest through late 2025, and an appellate court in Antwerp advised in favour of his extradition on most of the charges in April 2026, leaving the final decision with the Belgian executive.[31] Both men have been declared fugitive economic offenders, and substantial quantities of jewellery, art and other assets linked to them have been auctioned by Indian authorities, again underscoring that domestic confiscation has outpaced the far slower process of securing the offenders' physical return.[32]

C. Lalit Modi and Earlier Absconders

Lalit Modi's departure from India in 2010, prior to the enactment of the 2018 Act, is instructive precisely because no comparable confiscation remedy existed at the time; enforcement action against him proceeded solely under the Prevention of Money Laundering Act and ordinary extradition channels, with little practical effect over more than a decade.[33] The contrast between his case and the more recent ones supports the inference that the 2018 Act has meaningfully improved the state's ability to reach a fugitive's Indian assets, even where it has done comparatively little to shorten the time taken to secure the fugitive's actual return.

[29] Mehul Choksi to Remain in Custody of Dominican Authorities: MEA, Deccan Herald (June 11, 2021) (noting the UK Home Secretary's order of Apr. 15, 2021 approving Nirav Modi's extradition).
[30] Mehul Choksi Extradition: Belgium Court Backs India's Request in Rs 13,000-Crore PNB Fraud Case, Open (Apr. 12, 2026).
[31] Belgian Court Approves Mehul Choksi's Extradition to India in PNB Fraud Case, News on Air (Oct. 18, 2025); Belgium's Top Court Rejects Indian Fugitive Mehul Choksi's Appeal Against Arrest, News on Air (Dec. 10, 2025); Mehul Choksi Extradition, supra note 30 (noting the Antwerp Court of Appeal's April 2026 advisory ruling in favour of extradition on six of seven charges).
[32] See generally sources cited supra notes 25-31 (on the confiscation and auction of assets linked to the three offenders under the Fugitive Economic Offenders Act and the Prevention of Money Laundering Act, No. 15 of 2003, India Code).
[33] See commentary on Lalit Modi's 2010 departure from India and subsequent enforcement action under the Prevention of Money Laundering Act, No. 15 of 2003, India Code, cited supra note 1.

V. STRUCTURAL GAPS AND CHALLENGES

A. Extradition Bottlenecks

Every case study above shares one feature: asset confiscation under Indian law has proceeded at a materially faster pace than extradition through a foreign legal system. The Extradition Act, 1962 permits India to seek surrender only where a treaty exists or an ad hoc arrangement is made, and even where a treaty exists, as with the United Kingdom, the requested state's own procedural safeguards, including separate proceedings that can run in parallel to the extradition hearing itself, can extend the process for years beyond the point at which a court has already ruled in India's favour.[34] No amendment to Indian domestic law can shorten this foreign-law bottleneck; at best, India can strengthen mutual legal assistance arrangements and maintain sustained diplomatic engagement, neither of which is a legal remedy in the ordinary sense.

B. Multiplicity of Proceedings and Forum Overlap

A single default typically triggers parallel proceedings, including a Section 7 application under the Insolvency and Bankruptcy Code, SARFAESI enforcement against specific security, a Prevention of Money Laundering Act attachment, and, now, Fugitive Economic Offenders Act proceedings, often before different fora with different evidentiary standards and different timelines.[35] Section 32A of the Code and the Supreme Court's decision in Innoventive Industries Ltd. v. ICICI Bank Ltd. have gone some distance toward establishing the primacy of insolvency proceedings once admitted, but coordination between the Enforcement Directorate, the Central Bureau of Investigation and secured creditors pursuing SARFAESI or Code remedies remains largely informal, and creditors frequently report duplicated effort in establishing the same facts before multiple tribunals.[36]

C. Delay and Pendency

Despite statutory time limits, Debts Recovery Tribunals and the National Company Law

[34]Extradition Act, No. 34 of 1962, India Code; see sources cited supra notes 25-27 (on the separate, confidential legal process in the United Kingdom delaying Mallya's surrender notwithstanding a final extradition order).
[35]See Insolvency and Bankruptcy Code, No. 31 of 2016, India Code, § 7; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code, § 13; Prevention of Money Laundering Act, No. 15 of 2003, India Code, § 5; Fugitive Economic Offenders Act, No. 17 of 2018, India Code, §§ 4-5.
[36]Insolvency and Bankruptcy Code, No. 31 of 2016, India Code, § 32A; see Innoventive Industries Ltd. v. ICICI Bank Ltd., (2018) 1 SCC 407 (on the primacy of insolvency proceedings once admitted).

Tribunal continue to face heavy pendency, and available data show that the average time to resolve a corporate insolvency has consistently exceeded the outer limit prescribed by the Code.[37] Delay of this kind erodes recoverable value, since distressed assets depreciate the longer resolution is deferred, and it also weakens the deterrent signal the framework is meant to send to prospective defaulters.

D. Due Process Concerns

The pre-conviction character of confiscation under both the Prevention of Money Laundering Act and the Fugitive Economic Offenders Act continues to generate constitutional challenge, and while the Supreme Court's decision in Vijay Madanlal Choudhary v. Union of India upheld the broad contours of attachment powers under the Prevention of Money Laundering Act, that judgment remains under review before a larger bench, leaving an element of doctrinal uncertainty over the precise limits of pre-trial confiscation.[38] A framework whose principal enforcement tool remains constitutionally contested carries an inherent risk that a future ruling could unwind or constrain confiscations already effected, undermining the finality that creditors and the state currently treat as settled.

VI. COMPARATIVE PERSPECTIVES

India is not alone in confronting this problem, and the comparative experience of two common-law jurisdictions is instructive. The United Kingdom's Proceeds of Crime Act 2002 permits both conviction-based confiscation and, since 2017, Unexplained Wealth Orders that reverse the burden of proof onto a respondent to explain the lawful source of assets disproportionate to known income, without requiring a prior criminal conviction.[39] The mechanism has been used sparingly and its practical yield has been modest, but it offers a template for civil, non-conviction-based recovery that operates independently of a slow-moving criminal trial. The United States, through civil asset forfeiture, similarly permits the government to proceed against property connected to unlawful activity through an action against the asset itself, a

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[37] See Insolvency and Bankruptcy Board of India, quarterly data on the average time taken to resolve corporate insolvency resolution processes, published in its periodic newsletters; Insolvency and Bankruptcy Code, No. 31 of 2016, India Code, § 12 (prescribing a three-hundred-and-thirty-day outer limit).

[38] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929; see Review of the Supreme Court's 'Vijay Madanlal' Judgement, Supreme Court Observer (noting the constitution of a three-judge bench to hear review petitions against the ruling).

[39] Proceeds of Crime Act 2002, c. 29 (UK), pt. 2, pt. 5; Criminal Finances Act 2017, c. 22 (UK), § 1 (introducing Unexplained Wealth Orders by inserting § 362A into the Proceeds of Crime Act 2002).

structure that has attracted its own due-process criticism for allowing forfeiture even where no individual is ever charged.[40] Both regimes illustrate a broader point: reaching a fugitive's assets without first securing a criminal conviction is not a uniquely Indian innovation, but every jurisdiction that has attempted it has had to negotiate the same tension between efficient recovery and the rights of the person whose property is taken. India's Fugitive Economic Offenders Act sits within this comparative family, closer in structure to the United Kingdom's civil recovery model than to a purely punitive confiscation regime, though it lacks an equivalent to the Unexplained Wealth Order's reversed burden of proof for assets whose origin is otherwise difficult to trace.

VII. RECOMMENDATIONS

First, India's network of extradition treaties and mutual legal assistance agreements should be expanded and periodically renegotiated to reduce the scope for parallel proceedings to extend extradition timelines, and Indian authorities should invest in presenting evidence in the form and standard most likely to satisfy the requested state's courts at the earliest possible stage, rather than only after an initial rejection.[41] Second, a statutory coordination mechanism between the Enforcement Directorate, the Central Bureau of Investigation, the Insolvency and Bankruptcy Board of India and secured creditors, potentially through a designated inter-agency committee with defined information-sharing obligations, would reduce the duplication currently inherent in parallel SARFAESI, Insolvency and Bankruptcy Code, Prevention of Money Laundering Act and Fugitive Economic Offenders Act proceedings arising from the same default. Third, Parliament could consider introducing an Indian analogue to the Unexplained Wealth Order, allowing courts to require an individual to explain assets disproportionate to declared income once a threshold of suspicion is met, which would strengthen the evidentiary basis for attachment in cases where proceeds have been layered through offshore structures. Fourth, the monetary threshold under the Fugitive Economic Offenders Act warrants periodic review, since defaults marginally below one hundred crore rupees currently fall outside its reach despite causing comparable harm in aggregate. Finally, sustained investment in Debts Recovery Tribunal and National Company Law Tribunal capacity, including additional benches, filled vacancies and digitised case management,

[40] 18 U.S.C. §§ 981, 983 (2018) (civil forfeiture procedure in the United States).

[41] See sources cited supra notes 25-31 (illustrating how parallel proceedings in a requested state can extend extradition timelines well beyond the point of a favourable ruling).

remains a prerequisite for any of the foregoing to translate into faster recovery, since even the best-designed statute is only as effective as the forum charged with applying it.

VIII. CONCLUSION

The cumulative statutory architecture examined in this paper, namely the Recovery of Debts and Bankruptcy Act, the SARFAESI Act, the Insolvency and Bankruptcy Code and the Fugitive Economic Offenders Act, has undeniably strengthened the state's ability to identify, attach and confiscate the domestic assets of a defaulting or absconding borrower, a marked improvement on the position that prevailed when earlier absconders such as Lalit Modi left the country. What the framework has not solved, because it largely cannot, is the separate problem of physically securing the offender's return once they have relocated to a cooperative but procedurally cautious foreign jurisdiction. The Mallya, Modi and Choksi cases each demonstrate the same pattern: assets recovered, offender still abroad. Genuine efficacy will require India to treat asset confiscation and extradition as related but distinct problems, strengthening the diplomatic and evidentiary tools relevant to the latter with the same seriousness that has already been applied to the former, while remaining alert to the due-process questions that any pre-conviction confiscation regime necessarily raises.