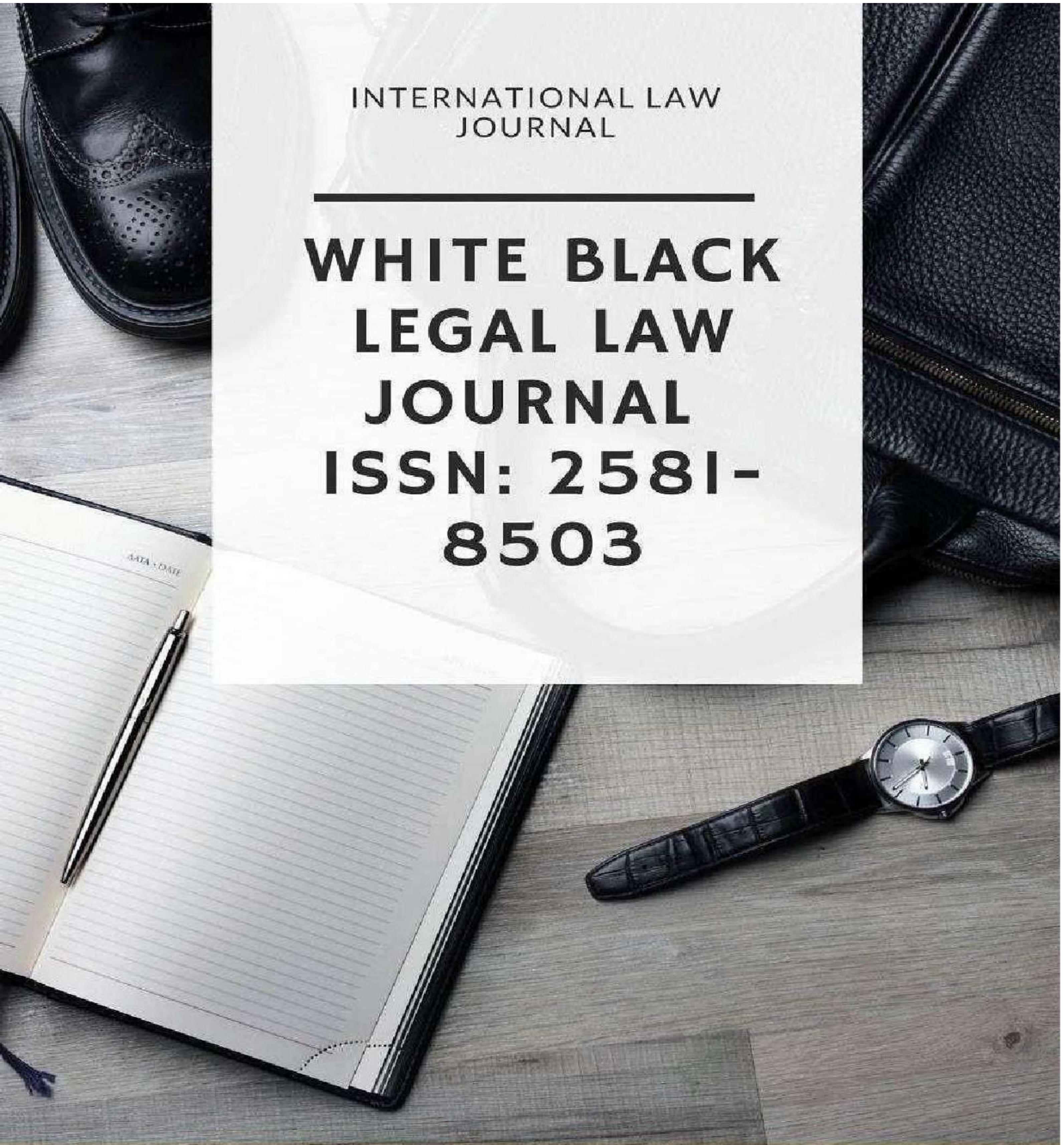

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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Volume 4 Issue 1 | Sep 2026 ISSN: 2581-8503

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THE KING OF GOOD TIMES AND THE LONG ARM OF THE LAW: WILFUL DEFAULT, EXTRADITION AND THE LIMITS OF THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018

AUTHORED BY - SHREYA KUMARI & SAGAR GAUTAM

Abstract

Greed has a way of dissolving the line between what a person has earned and what a person has simply taken. The Sanskrit precept of *asteya* — abstention from stealing — treats that line as a moral absolute. The pursuit of Vijay Mallya is a study in how readily wealth, reputation and political access can blur it in practice, and in how poorly the law is equipped to redraw it once an offender has left the jurisdiction. This paper traces India's decade-long effort to recover from, and prosecute, the promoter of Kingfisher Airlines, and treats that effort as a diagnostic exercise. Its central claim is that the Kingfisher collapse exposed not one failure but four: lending advanced against reputation rather than security; supervision that did not follow the money once it was disbursed; a recovery architecture that could not reach assets held abroad; and an extradition framework unequal to a well-resourced litigant. The paper then asks whether the Fugitive Economic Offenders Act, 2018 — legislation conceived in the shadow of this very case — has answered any of those failures, and concludes that its reach is considerably narrower than its rhetoric. It also examines two features of the contemporary fugitive's toolkit that the statute does not address at all: the reputational campaign conducted through podcasts and social media, and the argument that repayment ought to extinguish criminality. The paper closes with reform proposals directed at the points where Indian law is weakest, namely cross-border enforcement, end-use supervision, and accountability inside the lending institutions themselves.

Keywords — wilful default; extradition; fugitive economic offender; Kingfisher Airlines; asset recovery; Debt Recovery Tribunal.

1. Introduction

When Kingfisher Airlines stopped flying in October 2012 it left behind unpaid dues of roughly nine thousand crore rupees, several thousand employees who had gone months without wages, and a chairman whose personal expenditure had not visibly contracted. That juxtaposition — a company unable to meet payroll alongside a proprietor whose lifestyle continued undisturbed — is what turned an ordinary corporate failure into a national grievance. Loan defaults are common enough in Indian banking; Kingfisher's became a cause because it could not be squared with the image its promoter went on projecting.

Vijay Mallya was not an obscure borrower. He had inherited and then considerably expanded the United Breweries Group, sat in the Rajya Sabha as a member from Karnataka, owned an Indian Premier League franchise and a Formula One team, and had built a personal brand on conspicuous consumption. That visibility worked in both directions. It helped him obtain credit on terms a less celebrated borrower would never have secured, and it later ensured that every rupee of his spending was read as a rupee withheld from Kingfisher's creditors and staff.

The litigation proper begins in early 2016. A consortium of lenders led by the State Bank of India moved the Supreme Court for orders restraining Mallya from leaving India. By the time the Court took up the question, the Attorney-General informed it that he had already flown to the United Kingdom on 2 March 2016.[1] Everything that followed — extradition proceedings through three levels of English courts, contempt proceedings before the Supreme Court, insolvency litigation in London, and confiscation proceedings in Mumbai — has been conducted with the principal respondent outside the jurisdiction. That single fact has shaped the outcome more than any doctrinal question in the case.

Parliament's answer was the Fugitive Economic Offenders Act, 2018,[2] and Mallya became the first person declared a fugitive economic offender under it in January 2019.[3] The statute is often described as the legislative legacy of the Kingfisher scandal. This paper asks whether that legacy is as substantial as the description suggests. The argument advanced here

[1] *Vijay Mallya Has Left the Country, Government Tells Supreme Court*, NEW INDIAN EXPRESS (Mar. 9, 2016), https://www.newindianexpress.com/nation/2016/Mar/09/vijay-mallya-has-left-the-country-government-tells-supreme-court-901734.html.
[2] Fugitive Economic Offenders Act, No. 17 of 2018, INDIA CODE (2018).
[3] Directorate of Enforcement v. Mallya, Special Court (Prevention of Money-Laundering Act), Mumbai (Jan. 5, 2019) (Azmi, J.) (India) (unreported); *see also Vijay Mallya Becomes First Person to Be Officially Tagged as a Fugitive Economic Offender*, BUS. TODAY (Jan. 5, 2019), https://www.businesstoday.in/latest/economy-politics/story/vijay-mallya-becomes-first-person-to-be-officially-tagged-as-a-fugitive-economic-offender-157748-2019-01-05.

is that it is not, because almost every failure the collapse exposed occurred upstream of the moment the offender boarded a flight. A statute that operates only after departure addresses the symptom and leaves the disease untouched.

There is a further dimension that the 2018 Act does not contemplate at all. The modern economic offender does not merely litigate; he campaigns. Long-form podcast appearances, curated social media threads and sympathetic commentary now function as a parallel forum in which the offender argues his case to a public that will never read a chargesheet. Where the accused is abroad and cannot be produced before a court, that parallel forum becomes the only place his version is heard at all. The law has no vocabulary for this, and the paper argues that it needs one.

2. The Factual Matrix

Kingfisher Airlines was launched on 9 May 2005, reportedly as a gift to Mallya's son on his eighteenth birthday. The carrier positioned itself at the premium end of an already crowded market and was, for a period, genuinely popular. It was never profitable. Between 2004 and 2012 the airline drew substantial credit from a consortium eventually numbering seventeen banks, led by the State Bank of India, with a significant proportion of the funds applied to routine operating expenditure rather than to capital formation.[4] Lending to meet running losses is not by itself unlawful, but it is a poor foundation for recovery, because it leaves nothing behind that can be sold.

By the time operations ceased in late 2012 the airline owed in excess of nine thousand crore rupees to financial creditors, together with unpaid wages, airport charges and statutory dues. Recovery proceedings before the Debt Recovery Tribunal at Bengaluru began in 2013. Mallya left India on 2 March 2016, shortly before the Tribunal was due to rule, and thereafter transferred approximately forty million United States dollars received on the disposal of a group interest into trusts of which his children were the sole beneficiaries. The Supreme Court would later hold that this disbursement was made in the teeth of restraint orders passed by the High Court of Karnataka and in breach of an undertaking given to the Court itself.[5]

The allegations pressed by the investigating agencies fall into a recognisable pattern: misrepresentation of the borrower's financial position at the time of sanction, inflation of the value of the securities offered, and application of the disbursed funds to purposes wholly

[4]Mallya v. Gov't of India [2020] EWHC (Admin) 924, [3]–[12] (Eng.). The English Divisional Court's recital of the lending history is the most complete judicial account of the Kingfisher facts available in the public domain.
[5]State Bank of India v. Mallya, 2022 INSC 700 (India).

outside the sanction. Proceedings were commenced under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993,[6] the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,[7] the Prevention of Money-Laundering Act, 2002,[8] the Fugitive Economic Offenders Act, 2018, the Companies Act, 2013 and the Indian Penal Code, 1860. The breadth of that list is itself instructive. It is not that India lacked statutes; it is that the statutes were engaged too late and, in several instances, against a respondent the courts could not reach.

2.1 The Principal Charges

- **Cheating the public sector banks.** In 2016 the Central Bureau of Investigation registered a case against Mallya and Kingfisher Airlines on the complaint of the State Bank of India, alleging default on loans of approximately Rs 6,900 crore drawn from seventeen public sector banks, together with conspiracy and cheating in the manner of their procurement.
- **The IDBI Bank facility.** After Mallya's departure the Bureau filed a chargesheet in relation to loans of about Rs 1,300 crore extended by IDBI Bank, and notably arraigned officers of the bank itself for having processed and approved the facility in collusion with the borrower.[9] The Enforcement Directorate separately alleged that the sanctioned sum was never deployed for the purposes for which it was released.[10]
- **The Indian Overseas Bank facility.** In June 2024 a special court issued a non-bailable warrant in respect of a facility of Rs 180 crore sanctioned in 2012. The chargesheet in that matter records that, in August 2010, the Reserve Bank of India had directed the State Bank of India to consider a restructuring proposal for the airline as part of a broader policy of supporting the aviation sector — a detail that complicates any simple account of the lenders as passive victims.[11]

[6] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, INDIA CODE (1993), renamed the Recovery of Debts and Bankruptcy Act, 1993, by the Insolvency and Bankruptcy Code, No. 31 of 2016, § 250, INDIA CODE (2016).
[7] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, INDIA CODE (2002).
[8] Prevention of Money-Laundering Act, No. 15 of 2003, INDIA CODE (2003).
[9] *CBI Files Chargesheet Against Mallya in IDBI Loan Case*, BUS. STANDARD (Jan. 24, 2017), https://www.business-standard.com/article/news-ians/cbi-files-chargesheet-against-mallya-in-idbi-loan-case-117012401278_1.html.
[10] Shaswati Das & Jayshree P. Upadhyay, *ED Files Charges Against Vijay Mallya in Case over IDBI Bank Loans to Kingfisher Airlines*, MINT (June 15, 2017), https://www.livemint.com/Politics/VUWHexf9LQwbwgTDNPBt2M/Vijay-Mallya-chargesheeted-by-ED-in-case-over-IDBI-Bank-loan.html.
[11] *Vijay Mallya Receives Non-Bailable Warrant in Loan Default Case Linked to Indian Overseas Bank*, HINDU

- **Diversion and laundering.** The Enforcement Directorate traced a chain of transfers said to account for roughly Rs 3,547 crore of the sanctioned facilities, routed through group entities and applied to a motorsport venture, the acquisition of a private aircraft, and the Royal Challengers Bangalore franchise.[12]
- **Evasion of service tax.** The service tax authorities complained that Kingfisher had collected service tax from passengers during 2011 and 2012 without remitting it to the exchequer; a Mumbai court issued a non-bailable warrant on that count.[13] This is a distinct species of wrong. Money collected from passengers as tax was never the airline's to deploy, and its retention is difficult to characterise as an ordinary business failure.
- **Corporate misgovernance.** In 2016 the Serious Fraud Investigation Office issued notices to seventeen companies to trace the ultimate source of funds channelled into the defunct airline, several of which had themselves borrowed from banks in order to keep Kingfisher liquid.[14]

2.2 Proceedings in the United Kingdom

Two parallel tracks opened in England. On the civil side, the lenders registered the Debt Recovery Tribunal's award under the Foreign Judgments (Reciprocal Enforcement) Act 1933 and obtained a worldwide freezing order, which the Commercial Court declined to set aside.[15] That was a significant moment: it was the first occasion on which an English court gave direct enforcement effect to the decision of an Indian debt recovery forum. On the criminal side, the Westminster Magistrates' Court held in December 2018 that there was a prima facie case of fraud capable of being tried in India and sent the matter to the Home Secretary,[16] and the Divisional Court dismissed the appeal in April 2020.[17]

Since then the position has been static. Mallya has exhausted the appellate remedies available to him, yet remains in the United Kingdom because a further legal matter, described

(July 2, 2024).

[12]Press Trust of India, *Vijay Mallya Fraudulently Diverted Rs 3,700 Crore for Jet Sorties, F1, IPL Teams: Enforcement Directorate*, NDTV (June 20, 2018), https://www.ndtv.com/india-news/vijay-mallya-charged-with-fradulently-diverting-rs-3700-crore-1870614.

[13]Press Trust of India, *Mallya Flew Away Just Like 'Kingfisher' Bird: HC*, MUMBAI MIRROR (Sept. 19, 2016).

[14]*Money Laundering Case: Fraud Office Probes 17 Firms Who Took Loans to Fund Vijay Mallya*, INDIAN EXPRESS (July 22, 2016). The Serious Fraud Investigation Office derives its investigative mandate from the Companies Act, No. 18 of 2013, §§ 211–212, INDIA CODE (2013).

[15]State Bank of India v. Mallya [2018] EWHC (Comm) 1084 (Eng.). The Debt Recovery Tribunal's award was registered in England under the Foreign Judgments (Reciprocal Enforcement) Act 1933, c. 13 (U.K.).

[16]Gov't of India v. Mallya (Westminster Magistrates' Ct. Dec. 10, 2018) (Arbuthnot, C.M.) (Eng.) (unreported).

[17]*Kingfisher Airlines Tycoon Loses Appeal Against Extradition to India*, GUARDIAN (Apr. 20, 2020).

by the British authorities only as confidential, must be resolved before surrender can take place. It is widely understood to be an application for asylum.[18] The practical lesson is uncomfortable. India won the extradition litigation and has still not obtained the extradition. Judicial success and executive outcome have come apart, and nothing in the 2018 Act closes that gap.

3. Systemic Failures and the Reforms They Have Produced

3.1 Asset Recovery Across Borders

Recovery is the point at which the Indian system has performed best and still fallen short. After Mallya's departure the lenders pursued recovery before the Debt Recovery Tribunal, and in July 2022 the Supreme Court held him in contempt for having disbursed forty million dollars in defiance of restraint orders, directing that the transfers be treated as void and that the sums be redeposited with interest.[19] It is worth being precise about what that judgment did and did not decide: it was a contempt ruling on wilful disobedience, not an adjudication of the underlying fraud allegations, which remain untried.

In England the lenders secured freezing relief over Mallya's assets,[20] but converting orders into money proved slow. His holdings are layered through offshore vehicles and trusts, a substantial proportion consists of shares in unlisted companies whose value is difficult to establish, and much of the rest is in depreciating chattels such as motor cars.[21] His withdrawal in October 2025 of the application to annul the bankruptcy order removed one procedural obstruction and allowed the trustees to proceed with realisation.[22]

The deeper difficulty is structural. Asset recovery in the international sense is not a single act but a sequence — identification, tracing, freezing, confiscation and repatriation — and each stage depends on the cooperation of a state that has no direct stake in the outcome. Chapter V of the United Nations Convention Against Corruption, to which India is a party, declares the return of assets a fundamental principle,[23] but the Convention creates an obligation to cooperate

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[18]Ron Emler, *Vijay Mallya Debt Recovery Cannot End Criminal Case, Indian Court Told*, DRINKS BUS. (Sept. 14, 2026), https://www.thedrinksbusiness.com/2026/09/vijay-mallya-debt-recovery-cannot-end-criminal-case-indian-court-told/.
[19]State Bank of India v. Mallya, *supra* note 5.
[20]Press Trust of India, *Mallya Assets Freeze Order in UK Courts Until April 2018*, ECON. TIMES (Dec. 13, 2017), https://economictimes.indiatimes.com/news/politics-and-nation/mallya-assets-freeze-order-in-uk-courts-until-april-2018/articleshow/62057873.cms.
[21]Naomi Canton, *Indian Banks Face Uphill Task to Determine What Mallya Owns in England*, TIMES INDIA (July 11, 2018), https://timesofindia.indiatimes.com/business/india-business/indian-banks-face-uphill-task-to-determine-what-mallya-owns-in-england/articleshow/64937513.cms.
[22]Press Trust of India, *Vijay Mallya Discontinues Bankruptcy Annulment Application in UK*, ECON. TIMES (Oct. 13, 2025), https://economictimes.indiatimes.com/news/india/vijay-mallya-discontinues-bankruptcy-annulment-application-in-uk/articleshow/124531165.cms.
[23]United Nations Convention Against Corruption arts. 51–57, *opened for signature* Dec. 9, 2003, 2349 U.N.T.S.

rather than a mechanism of automatic enforcement. Working Group V of the United Nations Commission on International Trade Law is presently developing legislative principles for cross-border civil asset tracing in insolvency,[24] and Indian practitioners have observed that domestic law is not yet configured to take advantage of such instruments even where they exist.[25]

Proposal. The reform most often suggested — a treaty providing for direct enforcement of an apex court's order in the territory of a signatory state — is unlikely to be accepted, because no state will surrender the power to scrutinise a foreign judgment against its own residents. A more attainable objective is a reciprocal fast-track registration regime within existing regional and plurilateral groupings, under which a judgment of a designated superior court is registrable in the receiving state on proof of service and jurisdiction, with review confined to narrow public policy grounds. India already has a template in the reciprocating territory notifications under section 44A of the Code of Civil Procedure, 1908; the task is to extend the list and shorten the process rather than to invent a new instrument.

3.2 Extradition

India and the United Kingdom have been bound by an extradition treaty since 1993,[26] and the Mallya proceedings demonstrate that the treaty works in the courtroom and stalls outside it. The defence relied, predictably, on prison conditions, arguing that detention in India would not meet the standards required by the European Convention on Human Rights. Indian authorities responded by producing video evidence of the barrack in which Mallya would be held, and the Chief Magistrate accepted it. British prosecutors have since inspected Tihar Jail in connection with pending requests, and official figures indicate roughly twenty outstanding Indian extradition requests in the United Kingdom and a further one hundred and seventy-eight elsewhere.[27]

41 (ratified by India May 9, 2011). Article 51 declares the return of assets a fundamental principle of the Convention.

[24] U.N. Comm'n on Int'l Trade Law, Working Grp. V (Insolvency Law), *Civil Asset Tracing and Recovery in Insolvency Proceedings*, U.N. Doc. A/CN.9/WG.V/WP.189 (63d Sess., Dec. 11–15, 2023).

[25] Surbhi Pareek & Monil Chheda, *Asset Tracing and Recovery: Is India Ready?* (INSOL Int'l, Tech. Paper Series No. 63, June 2024), https://www.cyrilshroff.com/wp-content/uploads/2024/07/asset-tracing-and-recovery-is-india-ready.pdf.

[26] Extradition Treaty Between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland, India-U.K., Sept. 22, 1992 (entered into force Nov. 15, 1993); *see also* Extradition Act, No. 34 of 1962, INDIA CODE (1962).

[27] *Why UK Prosecutors Toured Tihar Jail Before Deciding on Vijay Mallya and Nirav Modi's Fate*, MONEYCONTROL (Sept. 7, 2025), https://www.moneycontrol.com/news/india/why-uk-prosecutors-toured-tihar-jail-before-deciding-on-vijay-mallya-and-nirav-modi-s-fate-13526640.html.

Three structural asymmetries favour the wealthy respondent. First, the requesting state must satisfy an evidentiary threshold in a foreign forum applying its own rules, while the respondent need only raise a sustainable doubt. Second, each successive appeal costs the respondent money he already has and costs the requesting state diplomatic capital it may not wish to spend. Third, an asylum or human rights application filed at the end of the process can suspend surrender indefinitely without any further adjudication of the merits.

India's domestic responses have been mixed. Trial in absentia is now expressly available: sections 355 and 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 permit inquiry, trial and judgment in the absence of a proclaimed offender.[28] The Central Bureau of Investigation has established a global operations centre to coordinate the pursuit of fugitives,[29] and the Union Government has proposed dedicated detention facilities built to international standards in order to neutralise the prison-conditions defence.[30] The last of these is the most promising, because it addresses the argument on which foreign courts have most often hesitated.

Look-Out Circulars deserve more scepticism than they usually receive. They are frequently presented as the lesson learned from Mallya's departure, but in April 2024 the Bombay High Court struck down the clause of the Ministry of Home Affairs Office Memorandum that authorised the heads of public sector banks to request their issuance, holding that the right to travel abroad under Article 21 cannot be curtailed by executive instruction unsupported by statute, particularly where no criminal charge has been laid.[31] That conclusion follows directly from *Maneka Gandhi*,[32] and it is difficult to fault. The Supreme Court stayed the judgment in August 2024 while the appeals are heard,[33] and the Delhi High Court has since applied the reasoning in its own decisions.[34] The position is therefore unsettled, and a paper that presents Look-Out Circulars as a settled reform misdescribes the law. The honest formulation is that India presently lacks a statutory basis for restraining the travel of a borrower

[28]Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 355–356, INDIA CODE (2023). Section 356 permits inquiry, trial or judgment in the absence of a proclaimed offender.
[29]Press Info. Bureau, Gov't of India, Release No. 2179886 (Oct. 16, 2025), https://pib.gov.in/PressReleasePage.aspx?PRID=2179886.
[30]Neeraj Chauhan, *Shah Calls for Special Jails to Aid Extradition*, HINDUSTAN TIMES (Oct. 17, 2025), https://www.hindustantimes.com/india-news/shah-calls-for-special-jails-to-aid-extradition-101760641216821.html.
[31]Viraj Chetan Shah v. Union of India, 2024 SCC OnLine Bom 1195 (India). The High Court quashed clause 8(b)(xv) of the Ministry of Home Affairs Office Memorandum of 27 October 2010 (and its equivalent, clause 6(B)(xv) of the consolidated Office Memorandum of 22 February 2021), which had authorised the heads of public sector banks to request Look-Out Circulars.
[32]Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[33]Union of India v. Viraj Chetan Shah (S.C. Aug. 20, 2024) (India) (interim stay of the High Court's judgment, with liberty to affected borrowers to seek travel permission from the High Court).
[34]Ritu Singal v. Bureau of Immigration, 2026:DHC:3806 (India) (following *Viraj Chetan Shah*).

against whom no criminal case has been registered, and that Parliament — not the Home Ministry acting through an office memorandum — is the body that must supply one, with a judicial check built in.

3.3 The Absence of Due Diligence in Lending

The consortium's own explanation for its delayed recognition of the position is, in substance, an admission of institutional failure. Seventeen lenders shared exposure, and with that sharing came a diffusion of responsibility in which no single bank regarded close monitoring as its own task. Credit decisions rested on surface indicators of financial health and on the strength of a brand rather than on interrogation of the borrower's actual cash position. The lenders have conceded that they did not adequately understand the structure of the group to which they were lending.[35]

Two further features of the arrangement deserve emphasis, because they recur in Indian corporate defaults. The first is the absence of any effective inter-bank communication, which permitted the borrower to service interest to one lender out of fresh drawings from another; punctual interest payments then signalled health to each bank in isolation. The second is that the consortium reached the Supreme Court only after the borrower had left the country. Recovery machinery, however well designed, cannot compensate for the failure to act while the debtor is within the jurisdiction.

Regulatory responses followed. From 2018, non-performing accounts with exposure above Rs 50 crore must be examined for indicators of fraud and the examination reported to the bank's committee for the review of non-performing assets; public sector banks were also permitted to publish photographs of wilful defaulters and directed to rotate officers between postings.[36] These are sensible administrative measures, but their effect is diagnostic rather than preventive. They improve the speed at which a bank recognises that it has been defrauded; they do not improve the quality of the decision that exposed it to fraud in the first place. The IDBI chargesheet, which arraigned the bank's own officers, indicates where the more difficult reform lies. Where sanction has been procured with internal assistance, no amount of post-hoc classification will help.

[35]Kiran Ashok Kadam, *State Bank of India v. Dr. Vijay Mallya*, INT'L J. LEGAL STUD. & SOC. SCI. (July 2024), https://ijlsss.com/wp-content/uploads/2024/07/18.-KiranKadam.pdf.
[36]Press Info. Bureau, Gov't of India, *Union Minister of Finance and Corporate Affairs Launches New Initiatives for Corporate Sector* (Feb. 20, 2019), https://www.pib.gov.in/pressreleasepage.aspx?prid=1555992.

3.4 End-Use of Borrowed Funds

Facilities drawn for operating expenditure were, on the prosecution case, applied to overseas investments and personal consumption. The warning signs were available well before the collapse: unpaid employee salaries, grounded aircraft, and a reported net loss of Rs 2,328 crore in 2011–12, by the end of which only a handful of the airline's fleet remained operational. The Reserve Bank's master circular of 2015 requires lenders to inspect the application of disbursed funds, to satisfy themselves that no siphoning has occurred, and to obtain certification from the borrower that the money has been used for the sanctioned purpose.[37] That framework is adequate on paper. What the Kingfisher file shows is that a borrower certificate is worth precisely as much as the verification behind it, and that a lender with no independent line of sight into the borrower's accounts is certifying its own ignorance.

4. Wilful Default Is Not a New Problem

It is tempting to treat Kingfisher as an aberration produced by one flamboyant promoter. The regulatory record suggests otherwise. Concern about deliberate non-repayment dates to the liberalisation period and the balance of payments crisis that preceded it. The Narasimham Committee recommended a specialised recovery forum,[38] and Parliament gave effect to that recommendation through the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which established the Debt Recovery Tribunals. The Reserve Bank's successive master circulars developed the concept of wilful default and, from 2013, introduced categories such as the unauthorised disposal of secured assets, together with a committee-based procedure that gave the borrower an opportunity to be heard before classification.

The framework was consolidated in July 2024, when the Reserve Bank issued directions governing the treatment of wilful and large defaulters. The directions require examination of non-performing accounts with exposure of Rs 25 lakh and above, prescribe a non-discriminatory and transparent classification procedure consistent with natural justice, bar wilful defaulters and associated entities from the restructuring of credit facilities, and — significantly for the present discussion — extend accountability to third parties such as auditors and valuers who facilitated the default.[39] The extension to professional gatekeepers is the most

[37]Reserve Bank of India, *Master Circular on Wilful Defaulters*, RBI/2015-16/100, DBR.No.CID.BC.22/20.16.003/2015-16 (July 1, 2015), https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=1458.
[38]Reserve Bank of India, REPORT OF THE COMMITTEE ON THE FINANCIAL SYSTEM (1991) (Chairman: M. Narasimham).
[39]Reserve Bank of India (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024, RBI/DoR/2024-25/122, DoR.FIN.REC.No.31/20.16.003/2024-25 (July 30, 2024) (India).

interesting development, because it recognises that a large fraud requires more participants than a borrower and a compliant bank officer.

The scale of the problem nonetheless remains considerable. As at 31 October 2025 the Government informed the Lok Sabha that fifteen individuals had been declared fugitive economic offenders, collectively responsible for a principal loss of Rs 26,645 crore to public sector banks, with accrued interest of a further Rs 31,437 crore and recoveries of Rs 19,187 crore.[40] Those figures describe only the fugitives. The wider population of wilful defaulters who have never left India is an order of magnitude larger, and it is a mistake of emphasis to treat flight as the defining feature of the problem when it is in fact the rarest of its manifestations.

5. The Fugitive Economic Offenders Act, 2018

The legislation was foreshadowed in the Union Budget for 2017–18 and introduced in the Lok Sabha on 12 March 2018. When both Houses were prorogued before it could be passed, the Government promulgated an ordinance on 21 April 2018. The Bill was subsequently passed by the Lok Sabha on 19 July and by the Rajya Sabha on 25 July 2018, received presidential assent on 31 July 2018, and is deemed by section 1(3) to have come into force on 21 April 2018.[41] The sequence matters to the argument of this paper: the statute was drafted after Mallya had already left, and its design reflects an attempt to solve the problem of the departed offender rather than the problem of the offender who is still present and still borrowing.

The Act applies to an individual against whom a warrant of arrest has been issued in respect of a scheduled offence and who has either left India to avoid criminal prosecution or, being abroad, declines to return to face it. It does not apply unless the value involved is at least one hundred crore rupees,[42] a threshold that confines the statute to the largest cases and leaves the great mass of economic offending untouched.

5.1 The Principal Provisions

- **Hearing in absence.** Section 11 allows the Special Court to proceed with an application

[40] *Vijay Mallya Questions Minister's Statement on Recoveries from Him*, DECCAN HERALD (Dec. 2, 2025), https://www.deccanherald.com/india/vijay-mallya-questions-ministers-statement-on-recoveries-from-him-3816968. The reply placed before the Lok Sabha recorded fifteen declared fugitive economic offenders owing a principal sum of Rs 26,645 crore and accrued interest of Rs 31,437 crore as on 31 October 2025, against recoveries of Rs 19,187 crore.
[41] Fugitive Economic Offenders Act, *supra* note 2, § 1(3).
[42] Fugitive Economic Offenders Act, No. 17 of 2018, § 4(2) proviso, INDIA CODE (2018). The declaration is available only where the value involved is at least one hundred crore rupees.

even where the individual neither appears in person nor is represented by counsel.43 The provision prevents the respondent from stalling the proceeding simply by staying away, and it now sits alongside the trial in absentia machinery of the Bharatiya Nagarik Suraksha Sanhita.

- **Confiscation.** On a declaration under section 12 the Central Government may confiscate the offender's property whether situated in India or abroad, including proceeds of crime and benami holdings, and where the proceeds cannot be traced their value may be quantified instead.[44] The extraterritorial language is broad, but its practical force depends entirely on the willingness of the foreign state in which the property lies to give effect to the order — which returns the discussion to the cooperation problem considered above.
- **Bar on civil claims.** Section 14 empowers a court or tribunal to disallow a declared offender from putting forward or defending a civil claim.[45] This provision has attracted the sharpest criticism, on the ground that it denies access to justice and operates as a penalty imposed before any adjudication of guilt.[46]

5.2 An Assessment of Section 14

The case for section 14 is that a litigant who refuses to submit to the criminal jurisdiction of Indian courts cannot reasonably invoke their civil jurisdiction when it suits him, and that section 12(8) already protects the innocent third party by permitting the exclusion of property in which a bona fide interest has been acquired without knowledge of its tainted origin.[47] The case against it is that it is discretionary in form but punitive in substance, and that it attaches consequences to a declaration made in proceedings the respondent may have had no realistic opportunity to contest.

The stronger objection, in this author's view, concerns collateral consequences rather than the offender himself. A civil claim may concern a matrimonial dispute, the succession of an estate, or the rights of a minor child. The interests engaged in such proceedings are not the offender's alone, and section 12(8) protects only interests in property, not the standing of a

[43]Fugitive Economic Offenders Act, No. 17 of 2018, § 11, INDIA CODE (2018).
[44]*Id.* § 12.
[45]*Id.* § 14.
[46]Rahul Madathil, *Fugitive Economic Offenders Regulations and Securities Laws of India*, 10 INT'L J. RSCH. & ANALYTICAL REVS. 560 (2023), https://ijrar.org/papers/IJRAR23B1798.pdf.
[47]Fugitive Economic Offenders Act, No. 17 of 2018, § 12(8), INDIA CODE (2018). The provision permits the Special Court to exclude property in which a person other than the offender holds an interest acquired bona fide and without knowledge that the property represented proceeds of crime.

family member to have a dispute heard at all. The provision would be materially improved by an express requirement that the court, before disallowing a claim or defence, satisfy itself that no third party will be prejudiced, and by confining its operation to claims arising from or connected with the scheduled offence. As drafted, it invites a constitutional challenge that the statute does not need.

6. The Present Position and the Battle for the Narrative

By December 2024 the Government reported that assets worth Rs 14,131.6 crore had been restored to public sector banks from the realisation of Mallya's holdings,[48] and in June 2025 the Finance Ministry stated that Rs 6,997 crore remained outstanding against total dues of Rs 17,781 crore.[49] Mallya has since contested these figures publicly, pointing to what he says are inconsistencies between the recoveries announced in Parliament and those acknowledged by the banks, and calling for an inquiry by a retired judge.[50]

The arithmetic is less opaque than the dispute suggests, and the confusion is largely rhetorical. What has been recovered is measured against a judgment debt fixed at a particular date; what remains outstanding is measured against a figure that includes interest which has continued to accrue throughout the decade of non-payment. A borrower who declines to pay for ten years and then observes that the sums recovered exceed the original principal is describing the consequence of his own delay, not an injustice. The rhetorical move — conflating the principal with the decretal sum — is effective precisely because most listeners will not pause to separate them.

That is where the reputational campaign becomes legally relevant. Mallya's appearance on a widely circulated podcast in 2025 was not a media event so much as an argument advanced outside any forum competent to test it.[51] The device deployed there was the doctrine of separate corporate personality: the borrower was Kingfisher Airlines, a company, and its failure was a business failure rather than a theft. The response is straightforward and is unlikely to be put in that setting. Separate personality is a rule about the allocation of contractual liability; it is not a defence to allegations of misrepresentation at the point of sanction, of diversion of funds after disbursement, or of the retention of service tax collected from passengers. Those charges are

[48] *Rs 14,131.6 Crore Recovered from Vijay Mallya's Asset Sales*, BUS. STANDARD (Dec. 18, 2024), https://www.business-standard.com/india-news/vijay-mallya-assets-recovered-nirmala-sitharaman-ed-124121800573_1.html.
[49] *Mallya Still Owes Rs 6,997 Crore Out of Total Dues of Rs 17,781 Crore, Says Finance Ministry*, NEW INDIAN EXPRESS (June 12, 2025).
[50] *Vijay Mallya Questions Minister's Statement on Recoveries from Him*, *supra* note 40.
[51] Vijay Mallya, Interview by Raj Shamani, *Figuring Out with Raj Shamani* (June 2025).

levelled against an individual's conduct, and the corporate veil has never been an answer to them.

The related contention — that recovery should end the prosecution — has now been tested. In September 2026 the Enforcement Directorate submitted to the Bombay High Court that the recovery of bank dues cannot render the proceedings under the Prevention of Money-Laundering Act, or the criminal complaints, redundant, because money laundering and the scheduled offences on which it rests are distinct from the civil obligation to repay.[52] That submission is plainly correct as a matter of principle. Restitution mitigates the consequences of an offence; it does not unmake it. Were the position otherwise, the criminal law applicable to economic offending would operate as a payment plan available to those who can afford it.

Mallya's status in the Indian proceedings meanwhile remains unresolved. In February 2026 the Bombay High Court gave him a final opportunity to appear in person to challenge his designation as a fugitive economic offender, and he did not do so, maintaining that his passport had been surrendered in the English bankruptcy and that he is restrained from leaving England and Wales.[53] The circularity is complete. He cannot contest the declaration without returning, cannot return without the resolution of the confidential matter in the United Kingdom, and the confidential matter shows no sign of resolution.

7. Recommendations

- **Put travel restraint on a statutory footing.** Following *Viraj Chetan Shah*, the power to restrain a borrower's departure requires legislative authority rather than an executive memorandum. A narrowly drawn provision — available on application by a lender to a designated court, on a demonstrated risk of flight, for a limited and renewable period, with reasons recorded — would be both constitutionally defensible and more useful than the present position, in which the power is under appeal and its validity uncertain.
- **Make end-use verification independent of the borrower.** The certification requirement in the Reserve Bank's circulars should be supplemented by lender-appointed monitoring for facilities above a prescribed threshold, with the monitor reporting to the consortium rather than to the borrower, and with the accountability of third-party professionals under the 2024 directions extended to that function.

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[52] Emler, *supra* note 18.
[53] Ron Emler, *Vijay Mallya Misses Mumbai Court Deadline in Fugitive Offender Case*, DRINKS BUS. (Feb. 20, 2026), https://www.thedrinksbusiness.com/2026/02/vijay-mallya-misses-mumbai-court-deadline-in-fugitive-offender-case/.

- **Require a consortium lead with named responsibility.** Diffusion of responsibility among seventeen lenders was a proximate cause of the delay in recognising the Kingfisher position. Consortium lending arrangements should identify a lead institution and a named officer accountable for monitoring, with a mandatory early-warning report circulated to every participant on the occurrence of defined triggers such as unpaid wages, grounded assets or the servicing of interest from fresh drawings.
- **Narrow section 14 of the 2018 Act.** The bar on civil claims should be confined to claims connected with the scheduled offence, and should be exercisable only after the court has satisfied itself that third parties will not be prejudiced.
- **Pursue registration, not enforcement, in treaty negotiation.** India should seek reciprocal fast-track registration of superior court judgments within existing groupings rather than the direct enforcement of Indian orders abroad, which no counterparty is likely to concede. Extending the reciprocating territory notifications under section 44A of the Code of Civil Procedure, 1908 is the realistic first step.
- **Answer the narrative rather than suppress it.** Proposals to restrain a fugitive from speaking about a pending matter are constitutionally fragile and practically unenforceable against a person outside the jurisdiction. The better course is institutional: the investigating agencies should publish accessible, periodically updated statements of account in significant cases, setting out principal, interest, recoveries and outstanding dues. An accurate public record is a more effective answer to a podcast than a gag order that cannot be served.

8. Conclusion

The King of Good Times has given India a decade of hard ones, and the file is not closed. What the Kingfisher episode ultimately demonstrates is that a legal system can win nearly every argument and still fail to obtain the result it sought. India secured a contempt conviction in its own Supreme Court, an extradition order in a foreign magistrates' court, an appellate affirmation of that order, a worldwide freezing order, the first declaration under a new statute, and the restoration of more than fourteen thousand crore rupees to the lenders. It has not secured the presence of the accused, and without that the criminal allegations at the centre of the matter remain untried after ten years.

The Fugitive Economic Offenders Act, 2018 is a competent piece of drafting that addresses the wrong stage of the problem. It confiscates efficiently and declares decisively, but it is triggered only once the offender has gone, and it does nothing about the credit decision, the unmonitored disbursement, the silence between consortium members, or the officer inside the bank who moved the file along. India is, so far as the author is aware, unusual in having criminalised the concept of wilful default at all; that is a genuine contribution, and other jurisdictions have something to learn from it. But the lesson of this case runs the other way as well. A statute directed at the fugitive is a statute that has already conceded the flight. The work that matters is done earlier, in the lending hall rather than at the airport, and it is measured not in confiscations but in defaults that never mature into scandals.