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# **COMBATING PONZI SCHEMES IN INDIA: EVALUATING SEBI'S ENFORCEMENT STRATEGY AND POLICY GAPS.**

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## **Abstract**

This paper looks at how Ponzi schemes have impacted India's financial system and how well SEBI has responded to them. Although SEBI has strong legal powers, its efforts are often slowed down by poor coordination with other agencies and delays in recovering assets. By examining real-world cases like Saradha, PNB, and Allied Deals, the paper uncovers key weaknesses in the system that allow such frauds to happen. Learning from what other countries have done well, it suggests legal updates, better teamwork among regulators, and the use of AI to catch scams early. Strengthening SEBI's role, clearly defining what counts as a Collective Investment Scheme, and encouraging whistleblowers are some of the main steps proposed. In the end, the study shows that fighting financial fraud—and winning back investor trust, means updating our laws, using smarter tools, and making institutions work better together.

## **Introduction: (definition of Ponzi scheme)**

SEBI defines a Ponzi scheme as a fraudulent investment scheme promising high rates of return to investors. The scheme generates returns for earlier investors from their own money or money paid by subsequent investors, rather than any actual profit earned.

A Ponzi scheme is a type of pyramid scheme in which the operator, at the pyramid's top, acquires a small group of investors that is initially provided with tremendous investment returns via funds secured from a second group of investors (similar to classic fraud, Robbing peter to pay Paul). The second group, in turn, is paid with funds obtained from a third group of investors, and so on until the number of potential investors is exhausted and the scheme collapses. The operator may either appropriate a portion of incoming investments as the scheme progresses or wait until the operation is about to collapse before absconding with the funds.<sup>1</sup>

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<sup>1</sup> "Britannica Money" (Britannica Money) <https://www.britannica.com/money/Ponzi-scheme>. accessed June 20, 2025.

Ponzi schemes do not invest funds as legitimate financial instruments do which is why they cannot last and are considered fraudulent. Ponzi schemes in India are made illegal and are handled by laws such as the Banning of Unregulated Deposit Schemes Act, 2019. Although there have been new rules to combat them, Ponzi schemes may appear offline or online, showing it is still necessary to be alert and informed about them.

### **Research questions:**

1. What issues in legislation and enforcement let Ponzi schemes continue despite being watched by regulators?
2. How does the Securities and Exchange Commission (SEC) in the US and the Financial Conduct Authority (FCA) in the UK deter Ponzi schemes and how can India use their experience?
3. Which new laws or changes in policies could strengthen SEBI's work in preventing, detecting and prosecuting Ponzi schemes?

### **Historical prominence:**

The term "Ponzi scheme" originates from Charles Ponzi. In August of 1919, Charles Ponzi in Boston received from an acquaintance in Italy an International Postal Reply Coupon. These coupons had been created to handle small international transactions. The recipients of such coupons could exchange them in at their local post office for stamps. Ponzi noticed that the coupon he had received from Italy had been purchased in Spain and found that the reason for this was that the price in Spain was exceptionally low. In fact, the cost of the International Postal Reply Coupon in Spain, given the current exchange rate between the Spanish peseta and the dollar, was only one sixth the value of the U.S. postage stamps it could be traded for in the U.S. This seemed to be an extraordinary opportunity for arbitrage.<sup>2</sup>

In 1920, Ponzi attracted attention by offering his investors the chance to profit with 50% earnings in just 45 days and 100% earnings in 90 days, though he actually was not exploiting any difference in postal coupons. It is said that nearly 75% of Boston's police officers invested their money with Charles, and sometime in late July of 1920, he made as much as \$1M in one day and an estimated \$15M in just eight months.<sup>3</sup>

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<sup>2</sup> [https://www.bauer.uh.edu/nlangberg/teaching\\_files/Fall\\_2007/ponzi.pdf](https://www.bauer.uh.edu/nlangberg/teaching_files/Fall_2007/ponzi.pdf)

<sup>3</sup> Seaver C, "10 of the Biggest Ponzi Schemes in History" (*History Defined* -, November 15, 2022) <https://www.historydefined.net/the-biggest-ponzi-schemes-in-history/> accessed June 20, 2025.

On the other hand, instead of earning profits, he gave early investors their money from the funds obtained from later investors which meant the business broke down eventually. Because of its requirement for constant new members, low-earnings possibility and pledge of big rewards, this model has inspired much fraudulent activity after its creation.

Among the first widely known Ponzi schemes in India was the Sanchaita Investments scam which took place in West Bengal in the early 1980s. Citing the potential to earn as much as 48% annually, the company fooled thousands of investors mostly from rural and semi-urban areas. Just like traditional Ponzi schemes, it depended on new funds to pay the earliest investors and it fell apart when fundraising ended. Concerns were raised and NBFCs and chit funds were found to have little oversight because of the scam. It was also the first time the term Ponzi scheme entered into the Indian market. After that event, the RBI along with the government increased oversight which triggered improvements in financial regulation. The Banning of Unregulated Deposit Schemes Act, 2019, is a result of the things we learned from the fraud.<sup>4</sup>

In recent times, the Ponzi model has changed so it fits well with digital options, namely in cryptocurrency and online financial schemes. Because of these schemes, financial rules have been revised, and more people question their investments. The name Ponzi scheme has become a red flag in both finance and popular culture, through many books, documentaries and news stories about important cases.

### **Characteristics of a Ponzi scheme:**

1. It will be a good, though not clear, investment.
2. Money under the control of the operator; actual cash profits not produced.
3. Begins appearing legal and honest.
4. Gains rapidly by paying back old investors with new investors funds.
5. There is no actual economic activity; it offers quick and high returns.<sup>5</sup>

### **Socio-economic impact on investors and financial system:**

Ponzi schemes pose a significant socio-economic effect not only on the investor but also on the finance system at large. The victims, who mostly belong to vulnerable socio-economic

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<sup>4</sup> *Sanchaita Investments and Others v State of West Bengal and Others [1981] AIR Cal 157.*

<sup>5</sup> *Chen J, "Ponzi Scheme: Definition, Examples, and Origins" Investopedia (November 25, 2003) <https://www.investopedia.com/terms/p/ponzischeme.asp> accessed June 20, 2025.*

categories, lose substantial amounts of money, which results in them being in debt, poor, and emotionally devastated. Such programs undermine popular confidence in official finance institutions and investment vehicles. Financial system is in trouble as the rise in the perception of risk and the low turnout of investors threaten its stability. Regulatory authorities are left with investigation, enforcement and responsibility of regaining investor confidence and integrity of the markets.

### **Regulatory framework in India:**

#### **The Chit Funds Act, 1982**

Chit funds were introduced as spontaneous credit facilities to the lower income populations who were not able to get formal banking facilities. They promised easy loans and good returns which in many cases transformed into a Ponzi style of operations. The Chit Funds Act, 1982 requires that all the chit schemes be registered in every state and are maintained by the Registrar of Chits (Section 61). The operators of the chit fund have to secure money and they cannot take any deposits publicly and they cannot misuse the money that is collected as a pool. But this necessitated the emergence of numerous unregistered chit funds due to the excessive cost involved in their operations. Many of them referred to the gullible rural investors with promises of easy borrowing prospects.<sup>6</sup>

Any unregistered chit should not be more than 100 rupees that are legally permissible. The most common chit is composed of 12 members (with a foreman) where the members of this group fund 4000 rupees every month without fail for 12 months (48000 rupees per month). Members bid in an auction each month with the prize generally being 75 percent of the pool. The discount in the auction (25%) is distributed both to the members and to the foreman, who obtains a 5 percent fee as well. As an example, when there is 36,000 prize money and foreman receives 2,400, then the other 9,600 is shared between the other 10 values. The cycle repeats itself even after every month and the winners of the month do not participate in the next bid. Laxity in enforcing the Act has led to uncontrolled operators who are a major threat to investors. Tighter regulation, publicity and computerized register may guard the small investors against the fraud.

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<sup>6</sup> Sowmiya, "New Chit Fund Regulations: How They Secure Your Investment!" (September 25, 2024) <https://kopuramchits.com/blogs/the-latest-chit-fund-regulations-what-they-mean-for-you/> accessed June 20, 2025

### **Prize Chits and Money Circulation Schemes (Banning) Act, 1978**

The Act came into force in 1996 as a follow up to the 1975 RBI Study Group (headed by James S. Raj), prohibiting schemes that served the promoters mostly and disturbed monetary policy. Although, traditional chits (Section 2(a)) that is, fixed contributions and prize distribution by lot or by auction, are tolerated, prize chits and money circulation schemes (Section 2(c)) are illegal. Such plans either reward payments in advance or financial gains by recruiting others. Under Section 2(e), prize chits consist on raising money and giving away prizes or repaying unclaimed entries leading to deception of the citizens. The Act is meant to stem exploitive practices.

### **Companies Act, 2013**

The Companies Act 2013 (No. 18 of 2013) is an Act of the Parliament of India which forms the primary source of Indian company law. It received presidential assent on 29 August 2013, and largely superseded the Companies Act 1956.

The Companies Act, 2013 in India plays a significant role in identifying and preventing fraudulent business activities, including Ponzi schemes.

The following provisions of Companies Act, 2013 deal with Ponzi Schemes: -

- Section 447

*Punishment for fraud.— Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.<sup>7</sup>*

- Section 212

*Investigation into affairs of Company by Serious Fraud Investigation Office (SFIO). — (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—*

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<sup>7</sup> The Companies Act 2013, s 447

- (a) on receipt of a report of the Registrar or inspector under section 208;
- (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
- (c) in the public interest; or
- (d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.
- (2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office
- (3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.<sup>8</sup>

**Serious Fraud Investigation Office (SFIO):** The Serious Fraud Investigation Office (SFIO) which inspects serious frauds in corporations after an order from the government, is authorized by the Companies Act, Section 211. The Central Government may instruct SFIO to carry out an investigation under Section 212 of the Act when a Registrar or public interest requires it. The Ministry of Corporate affairs<sup>9</sup>(MCA) also covers statutes like the Chit Funds Act, 1982 which is centrally enacted and is meant to be followed by state governments, while MCA supervises the central law's application. The Banning of Unregulated Deposit Schemes (BUDS) Act was built in 2019 to prevent pyramid schemes, giving certain Competent Authorities the power to take actions like freezing pyramid scheme assets and arrange restitution. Many Ponzi cases have been advanced by MCA using SFIO as an example, out of the 85 companies in 9 Ponzi cases investigated by MCA in 2019–22, SFIO was alerted to all.

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<sup>8</sup> The Companies Act 2013, s 212

<sup>9</sup> T A, "Serious Fraud Investigation Office" IndiaFilings (March 10, 2020)<https://www.indiafilings.com/learn/serious-fraud-investigation-office-sfio/> accessed June 20, 2025.

SFIO charges offenses after the Companies Act investigation and these are heard in special courts.

### **The Banning of Unregulated Deposit Schemes Act, 2019**

It is an Act to safeguard depositors against fraud or other means of unregulated deposits that takes advantage of the loopholes in the laws due to scams such as Saradha and Rose Valley. It considers the unregulated schemes to be any scheme not registered with RBI, SEBI or IRDAI. Presented as an ordinance on February 21, 2019, and based upon a lapsed Bill of the dissolved 16th Lok Sabha, it touched upon the Tax experts. The Act also bans such schemes and makes important amendments in important legislations, such as the RBI Act, SEBI Act and Multi-State Co-operative Societies Act to ensure greater control and protection of the interests of the investors.<sup>10</sup>

Section 2(17) defines, Unregulated deposit scheme as a deposit-taking scheme is defined as unregulated if it is taken for a business purpose and is not registered with the regulators listed in the Ordinance.<sup>11</sup>

Important Parts of the Law Governing Ponzi Schemes:

Section 3 (Banning of Unregulated Deposit Schemes) From the time the Act comes into effect, all unregulated deposit schemes are ceased. It is unlawful for any deposit taker to encourage, operate or advertise such schemes or to solicit or process deposits from them.<sup>12</sup>

Under Section 4, deposit takers are required not to misrepresent or avoid paying back what they owe or delivering the promised services which is called a fraudulent default, for a deposit transaction.<sup>13</sup>

Section 5 – Wrongful Inducement: Makes it illegal for anyone to make misleading statements or hide facts about a deposit scheme to convince others to invest or join.<sup>14</sup>

The law addresses Ponzi promoters who do not honor their promises to return what was invested (Section 6) which often happens in these schemes. “A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (43 of 1978) shall be deemed to be an Unregulated Deposit Scheme under this Act.”

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<sup>10</sup> “Buds Act: Banning Of Unregulated Deposit Schemes Act, 2019” <https://www.legalserviceindia.com/legal/article-17681-buds-act-banning-of-unregulated-deposit-schemes-act-2019> accessed June 20, 2025.

<sup>11</sup> *The Banning of Unregulated Deposit Schemes Act 2013, s 2 (17)*

<sup>12</sup> *The Banning of Unregulated Deposit Schemes Act 2013, s 3*

<sup>13</sup> *The Banning of Unregulated Deposit Schemes Act 2013, s 4*

<sup>14</sup> *The Banning of Unregulated Deposit Schemes Act 2013, s 5*

Anyone found guilty under the Act may be imprisoned for up to 10 years and must pay a fine of up to ₹25 crores. As stated in the Act, District Magistrates can seize property of those who have not repaid depositors and courts can arrange asset sales to repay depositors. By creating a central database online, it becomes easier to tell apart regulated and unregulated businesses.

### **SEBI Act, 1992**

The Securities and Exchange Board of India Act, 1992 (SEBI Act) is a legislation enacted in India to establish the Securities and Exchange Board of India (SEBI) as the regulatory authority for the securities market. SEBI is responsible for regulating and promoting the development of the securities market in the country.

Ponzi schemes are not directly named in SEBI laws, but SEBI acts strongly against them when they operate in the guise of investment schemes.

The following provisions of SEBI Act, 1992 deal with Ponzi Schemes: -

- *Section 11 – Functions of the board*<sup>15</sup>

*[11AA. Collective investment scheme. —*

*(1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) 2 [or sub-section (2A)] shall be a collective investment scheme: 2 [Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.]*

*(2) Any scheme or arrangement made or offered by any 3 [person] under which, —*

*(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;*

*(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;*

*(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*

*(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.*<sup>16</sup>

- *Section 11B – Directions by SEBI*

*Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the*

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<sup>15</sup> SEBI Act 2013, s 11

<sup>16</sup> SEBI Act 2013, s 11 A

*Board is satisfied that it is necessary, -*

- (i) in the interest of investors, or orderly development of securities market; or*
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; Or*
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions, -*
  - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or*
  - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market]<sup>17</sup>*

These two provisions of SEBI help in combating Ponzi schemes in India.

### **The Bhartiya Nyaya Sanhita, 2023.**

This latest code (Bharatiya Nyaya Sanhita, 2023, taking over the Indian Penal Code, 1860) now penalizes economic and financial fraud, including Ponzi schemes.

Within the BNS, Ponzi schemes come under economic offences related to organized crime. Due to this type of fraud classification, the authorities can enforce strict rules against people involved in organized schemes. The BNS puts Ponzi schemes in the organized crime category to help destroy the criminal communities responsible and assist the victims of these frauds.

The act defines "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

Section 111 of BNS covers organized crime and financial fraud, so it can apply to smooth-running Ponzi schemes that target several people. They are also classified as cognizable and non-bailable crimes, so prompt action can be taken and perpetrators detained if needed.<sup>18</sup>

Section 316 (criminal breach of trust) are frequently used, since operators often cheat their investors and take their money unfairly. "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal

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<sup>17</sup> SEBI Act 2013, s 11 B

<sup>18</sup> Bharatiya Nyaya Sanhita 2023, s 111

contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”<sup>19</sup>

### **Role of other regulatory bodies:**

**Ministry of Corporate Affairs (MCA):** The MCA has the responsibility of managing company law and relevant financial programs. The MCA has the right to inspect or investigate cases, as stated in Companies Act Ch XIV, Section 209–215 and also prosecute firms who break the law (Companies Act Ch XIX, section 254–261).

**Reserve Bank of India (RBI):** RBI oversees the activities of banks and financial institutions that deal with money deposits and lending. The RBI Act says (especially section 45-IA) that only Non-Banking Financial Companies authorized by the RBI are allowed to accept deposits; any entity that takes deposits without proper authorization breaks the law (RBI FAQ: “It is not allowed for anyone to claim they are regulated by the RBI and use that to collect money from the public”). RBI has the authority to inspect NBFCs, set out directives and cancel registrations for those who do not follow the rules. RBI provides warnings to the general public about potential Ponzi activities using notices and press releases. In addition, the Department works with different agencies: the Reserve Bank of India’s

**Enforcement Directorate (ED):** The ED implements PMLA and FEMA and probes Ponzi-related money laundering, attaches illegal proceeds and files chargesheets. It has the liberty to search, seize, and record statements, but with more stringent conditions with bail on the application of the PMLA. Ponzi inquiries The year 2019 saw the ED initiate 87 Ponzi investigations and bring 8 arrests, frequently depending on FIU-IND indicators or agency referrals. It can either work with or substitute the CBI in the cases of high values tracking funds across borders. Similar powers of freezing are also enabled by the BUDS Act.

### **Study of challenges in India’s regulations and policy gaps:**

Lots of agencies like SEBI, RBI, IRDAI, MCA, and others have been given responsibilities in regulating India’s financial and corporate sectors. The lack of clear boundaries has allowed multiple authorities to overlap and clash in their functions, carrying out slow enforcement and ineffective (not well-deterred) crackdowns, as there are gaps in their right to regulate

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<sup>19</sup> *Bharatiya Nyaya Sanhita 2023, s 316*

unregulated companies and people find it difficult to identify fraudulent assets. Each challenge is studied using recent cases, its major causes are explained, and possible remedies are outlined.

### **1. Problems with Regulations and Responsibility**

There is a jumbled control system that India finds itself in many cases when it comes to doing business. The most famous is the ReligareBurman takeover (2023-2025), which saw SEBI takeover regulations interfere with the NBFC control regulations prescribed by RBI. By contrast, after acquiring a 25 percent stake in the company, the Burmans were supposed to offer an open offer to other shareholders by SEBI, and RBI demanded a prior consent before change in control of the target company of which the latter failed to do so. This instilled a deadlock in regulation. The same notion happened in the year 2010 where SEBI and IRDA were at loggerheads over ULIPs and no formal process existed to get out of the problem. The different regulators that work on the basis of different laws cannot have a single authority under which a decision can be made easily, and mostly merger, acquisition, or new product launch are stopped due to the lack of unified authority. Policy changes should involve inter-regulatory coordination panels, harmonization of the compliance standards, and a merging of the major financial regulator to avoid similar wrangles in the future.<sup>20</sup>

### **2. Not enough deterrence plus delays in carrying out enforcement**

The system of enforcing the law in India has been faced with slow investigation and mild punishments which have affected its efforts to prevent financial crimes. The investigations initiated by SEBI and the police can stretch years where there is no limitation period on cooling-off time during violation under SEBI Act- so the show-cause may be issued long after everyone has forgotten. The unreasonable delays in the orders of SEBI have often resulted in such orders being quashed by Tribunals. Convictions prove hard to come by: the ED has won convictions in only a small percentage of more than 4,000 money laundering prosecutions although it has seized large amounts of assets. Majority of offenders evade punishment because trials take long duration and there are weak procedure loopholes. Such leniency promotes repeated frauds and lacks trust. Professionals suggest the introduction of statutory deadlines on action, establishment of special fast-track courts and imposing heavier penalties to be served in jail in the case of major frauds. More stringent structure of penalties should be employed by SEBI, and there should be better coordination between ED, CBI and courts so that there can be

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<sup>20</sup> *IRDA v SEBI, [2010] dispute on ULIPs; see 'SEBI, IRDA row escalates' Economic Times (Mumbai, 13 July 2010).*

effective enforcement.

### **3. The failure of SEBI to cover unregistered companies in its scope of regulation**

SEBI has powers over the registered intermediaries only, and that too, there is a regulatory gap and the unregistered promoters take an advantage. Such individuals advertise stocks or investment plans that are not licensed and because SCORES program on SEBI does not accept complaints against entities not registered, complainants are hardly able to do anything. Even the police in many cases do not say anything, because giving unlicensed financial advice is not a crime. This loophole is more evident now that the influencers are on the rise who share risky advice through YouTube and WhatsApp. SEBI has published its guidelines to limit such an activity, like there are rules for the so-called specimen digital platforms but has no power to do anything against unregistered entities directly. Better legal action is required SEBI ought to be provided with a mandate to govern all investment suggestions and requests (licensed or not). The required financial advisor registry and compliance with IT legislation and collaboration with online platforms might improve enforcement. SEBI Act 11 should protect all individuals who cause financial decisions so as to make effect to investors.

### **4. Issues related to informing investors and providing remedy for their troubles**

Poor financial literacy in India only 27 percent of the people is one of the biggest factors that lead financial scams on retail investors. This is also exploited by the fraudsters to offer high returns as was the case of the Agri Gold and Falcon Ponzi schemes where lakhs lost money through social media promotions. A majority of the victims are ignorant of the safe investing practices, complicated financial products. The grievance system carried by SEBI is useful only when the complaint is directed towards a registered entity; complaint against an unregistered fraudster usually remains unaddressed. It will take a lot of time to file FIRs or civil cases and even after years, justice will be delayed due to ED action. To change this, financial education needs to be made wider especially in the rural and in young populations. Literacy programs should also be integrated in the school and banking programs, and specific awareness campaigns should be run by regulators. One point of single attack against all financial players, including unregistered ones could be a unified complaint portal such as a Financial Ombudsman. Better coordination among the authorities, easier redressal through mobile apps, and liability of delayed response should be imposed.<sup>21</sup>

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<sup>21</sup> "Financial Crime – Don't Become a Victim!" <https://www.interpol.int/en/Crimes/Financial-crime/Financial-crime-don-t-become-a-victim> accessed June 20, 2025

## **5. Problems with tracing assets and recovering them**

Financial frauds constitute a serious challenge to asset recovery because of the complex tracing of money, shell companies and international transfers. The cases such as of Nirav Modi and Vijay Mallya illustrate that assets are either stashed in overseas countries or through layers of entities. Although ED and courts have recovered some money, high amounts are not recovered— as of 2022, 67,000 crore was held up in legal traffic. Cryptocurrencies only make things more difficult because any transaction trace would involve the help of exchanges worldwide and the keys to these exchanges. Chemical steps, such as insolvency reforms implemented by IBBI, and the 2024 Dilip Jiwrajka case, which permitted a claimants to seek assets of personal guarantors, provide an optimism. Yet more serious measures are required: electronic transmission of records requirements, improved reporting of suspicious activity, MLATs, crypto-forensics units, and expanding the definition of proceeds of crime to PMLA. India can also look into the establishment of specialized asset recovery bureau and unexplained wealth laws to put the burden of proving innocence to be on the accuser. Targeted laws should support the introduction of new criminal law changes in order to achieve quicker trials in the cases of financial crimes.

### **Comparative Analysis**

Ponzi schemes have become international in the last 10 years; they are more sophisticated. Such countries as the US and UK fight against them by means of powerful legislation and regulators.

### **Laws in United States**

In the U.S., Ponzi schemes are tackled through federal and state laws, with agencies like the SEC, FTC, and DOJ working together to detect, prevent, and prosecute fraud using various legal tools.<sup>22</sup>

### **Securities and Exchange Commission (SEC)**

SEC is the U.S. agency which balances the level of financial markets to the states; it focuses on the transparency of investments, as well as the controls and supervises the brokers, advisors, exchanges and publicly traded companies.

The broad definition of “security” under federal law allows the SEC to intervene in many cases

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<sup>22</sup> <https://attorneys.media/pyramid-ponzi-scheme-laws/>

where pyramid or Ponzi schemes masquerade as legitimate investment opportunities.

The SEC brings civil action against those it alleges broke securities laws or regulations.

The SEC also refers criminal cases to the U.S. Department of Justice (DOJ).

#### Ponzi Scheme Crimes and the Role of the DOJ

The DOJ investigates and prosecutes Ponzi activities, then applies the necessary punishments, usually in partnership with agencies such as the FBI, SEC and CFTC.

##### 1. Investigation

A lot of the time, the DOJ uses the FBI or IRS-CI to examine cases of suspicious financial actions. They can investigate cases that were reported by whistleblowers, SEC employees or investors who lost money.

##### 2. Prosecuting and Charging

Those who operate Ponzi schemes can face various charges. Wire fraud, Mail fraud, Securities fraud, Money laundering, Conspiracy. The jail sentences for these crimes can last for decades, depending on how big the crime was.

##### 3. Taking Assets from Criminals

It is common practice for the DOJ to:

Recover illicitly acquired properties and valuables such as cars, homes and money. Give money back to the victims using the process of restitution or remission.

#### Some Important Frauds Prosecuted by the DOJ

DOJ prosecuted big Ponzi cases like Bernard Madoff (\$65B fraud, 150 years) and Allen Stanford (\$7B fraud, 110 years). DOJ works with SEC, FBI and IRS to investigate, freeze assets and bring offenders to justice in federal court.

## **Laws in United Kingdom**

In UK Ponzi Scheme comes under the purview of investment fraud

What is the penalty for investment fraud UK?

The UK courts do not impose sentences as long as 150 years like the U.S. courts do. However, the penalty for investment fraud can include jail time. The maximum penalty for fraud in England and Wales is:

1. 10 years' imprisonment if convicted on indictment
2. 12 months' imprisonment if convicted on a summary basis

These are the maximum sentences available to the courts. It is unlikely that you would receive the maximum sentence if convicted.

A 2018 case saw a man get 6 years for a £14.5 million Ponzi. After conviction courts can also

use the Proceeds of Crime Act (POCA) to seize assets gained through a confiscation order.<sup>23</sup>

Financial Conduct Authority (FCA)

As the regulator of the financial services industry in the United Kingdom, the Financial Conduct Authority (FCA) is responsible for the functioning of the U.K.'s financial markets. The goal of the organization is to ensure honest and fair markets for individuals, businesses, and the economy as a whole. The Authority does this by protecting consumers, protecting the financial markets, and promoting competition. The FCA is an independent financial regulator and falls under the purview of the Treasury, which is responsible for the UK's financial system, and the Parliament.<sup>24</sup>

### **FCA and Ponzi Schemes**

It is the role of the Financial Conduct Authority (FCA) to discourage, catch and deal with Ponzi schemes and similar scams. Though the UK's biggest Ponzi case is not as well-known as Madoff's, notable cases can show the differences and difficulties in the FCA's way of dealing with such practices. The FCA and the Role They Play in Catching Ponzi Scheme Operators

The Key Functions of FCA in Ponzi Regulation

1. Licensing & Supervision guarantees that financial industries follow regulations regarding their actions.
2. With the help of monitoring tools and receiving consumer complaints, the industry can identify unusual activity.
3. In case of a violation, they may levy fines, freeze assets, take legal action and close firms that operate illegally.
4. It produces a list of possible scams and unregulated service providers, informing the public about them.

### **Lessons India Can Learn from International Enforcement Models**

1. Better cooperation among different parts of the State Structures

In the United States, the SEC (Securities and Exchange Commission), FBI and IRS communicate and act promptly because they are all involved in the same department. Suggestion for India: Better collaboration between SEBI, RBI, ED, CBI and state police forces can be made through either joining forces in task forces or by using a single database.

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<sup>23</sup> <https://www.ashmansolicitors.com/articles/can-you-go-to-jail-for-a-ponzi-scheme/>

<sup>24</sup> <https://www.investopedia.com/terms/f/financial-conduct-authority-uk-fca.asp>

## 2. Discovering Abuse with Help from Whistleblowers

The Dodd-Frank Act in the United States offers incentives and shields whistleblowers from legal risks. As a result, the massive Ponzi scheme led by Bernie Madoff was found out. The government should ensure that those reporting fraud in financial markets get extra protection under SEBI guidelines and are properly rewarded.

## 3. Regulatory Technology is usually referred to as RegTech.

With data analytics and artificial intelligence, the FCA is able to find irregularities in financial transactions. The lesson here is that SEBI and RBI might use RegTech solutions to keep watch over suspicious activities and trends among NBFCs, fintech and crypto firms.

## 4. Processes for getting back stolen money and compensating victims

In Switzerland and the U.S., a big part of seized funds goes to victims and less to tax authorities. An option could be to appoint special fast-track courts for both expediting attachment of assets and giving compensation to the victims, using the existing legal process.

## 5. Cross-Border Cooperation

Many countries rely on Interpol Red Notices and use the FATF Protocol, for example, U.S., UK and Australia. It is important for India to renew and speed up current Mutual Legal Assistance Treaties (MLATs) and put into effect FATF guidelines for worldwide investigations.

## Case Study

Throughout history, numerous financial scams have rocked the global economy, with some even shaking entire governments to their core. The following cases are examples of those financial scams.

### 1. The Bernie Madoff Ponzi Scheme

Bernie Madoff's \$65 billion Ponzi scheme will go down as one of the largest acts of fraud in American history. The fraud stemmed from a hedge fund that portrayed Madoff as an investment genius, due to his consistent returns. However, when \$7 billion worth of redemptions were demanded by investors at the same time, it was revealed that Madoff was not a mastermind investment genius, but a fraudulent con artist. Madoff had successfully fooled extremely savvy investors, charitable organizations, and large investment funds by operating what is termed a Ponzi scheme, which essentially is the act of collecting money from multiple investors and redistributing the funds to

previous investors as if they are legitimate investment returns.<sup>25</sup>

**2. Subrata Chatteraj v. Union of India and the Saradha Group Financial Scam, 2010.**

The Saradha case had swindled more than 1.8 million victims in West Bengal, Assam and Odisha amassing approximately 2,460 crore rupees using 200+ shell companies that took the forms of chit funds and tourism companies. It was a Ponzi scheme that promised 24-40 percent returns and fell victim to regulatory loopholes between chit fund laws at the state level and regulation of Collective Investment Scheme (CIS) by SEBI. SEBI by Sri Saradha was avoided registering a number of companies and acting as cooperatives.

The order issued by SEBI in 2010 remained unenforced till April 2013 when the scam suffered collapse. FIRs had been lodged, stop-orders issued by SEBI and later 231 cases were transferred by the Supreme Court to CBI on interstate and political grounds. Between 2013 2024, the ED has frozen assets worth more than 600 crores, with a state commission refunding a portion of the capital to the small investors (185 crores). However, the majority of the allegations have not been heard of yet and trials are out there.<sup>26</sup>

The case showed lax enforcement, languid justice and the continuing threats of uncontrolled schemes. Learning points are that schemes above 100 crore are to be regulated compulsorily, a speedy redress to matters arising due to cross-border fraud and the reduction of lag time in courts.

**3. CBI v. Nirav Modi & Ors. – The Punjab National Bank Scam, 2018.**

PNB fraudsters made about 1,234 Letters of Undertaking (LoUs) with a total value of \$1.7 billion at one branch over a six-year period (2011–2017). Money was hidden through companies set up in Hong Kong, the UAE, Belgium, and it was used to obtain top assets in the UK and the US. The fraud was carried out beyond PNB's link to SWIFT-CBS so that its internal monitoring would not catch it. Due to errors in the RBI's audits, more LoUs were being approved for imports when the scam happened. The actions were taken without delay. Right after PNB submitted an FIR in January of 2018, the ED investigated the case under PMLA. In the month of March 2019, Nirav

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<sup>25</sup> "Britannica Money" (Britannica Money) <https://www.britannica.com/money/Ponzi-scheme> accessed June 20, 2025

<sup>26</sup> 2014 AIR SCW 2828

Modi was arrested in London. Because of the risk of escape, bail was not allowed by the Westminster Magistrates Court, and between February 2021 and May 2022, the UK wanted Assange to be extradited. The court did not grant his appeals, and in May 2025, the UK High Court turned down another request for bail because of a secret obstacle. ED attached INR 2,596 crores, and INR 693 crores out of this amount were later confiscated under the Fugitive Economic Offenders Act (FOEA) 2018. A few weeks later, Mehul Choksi, Modi's uncle, was arrested in Belgium after spending seven years hiding in Antigua, so India renewed its demand to send him back to face trial. There were some major achievements. The UK justice system approved extraditing the man to the US, and the ED was successful in getting the largest seizure of criminal proceeds made under FOEA. In addition, the RBI required that SWIFT be directly linked to the CBS system to stop any similar cyberattacks. Still, various failures continue to occur. Due to political and medical issues, Nirav Modi's physical extradition has not happened for more than five years, and only a third of what was lost has been found. It indicates that nations should boost their global cooperation and alertness at home. Suggestions made include legally embedding banking data into the public registry, finalising asset-sharing deals with the UK and BVI, and motivating whistle blowers in the financial industry, since this scam was discovered at the time loans needed to be paid.<sup>27</sup>

#### **4. United States v. Narendra Rastogi and R v. Virendra Rastogi – Allied Deals / RBG Resources Fraud**

In the Allied Deals and RBG Resources fraud, tricksters are thought to have stolen \$683 million from 20 banks around the world, mostly operating in the US, UK, India, and offshore jurisdictions such as Hong Kong and the British Virgin Islands. There were 324 phony businesses organized by the Rastogi brothers to carry out fake non-ferrous metal trades. Companies involved in the scheme were able to receive money from banks after providing fake documents and identities.

Litigation was taking place in both Europe and America. In the United States, Narendra Rastogi admitting guilt in U.S. v. Rastogi was sentenced to 84 months and was ordered to repay \$683 million. The case of R v. in the UK involves a court of law. Jury convictions came in June 2008 for Virendra Rastogi & Ors., and he received a sentence

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<sup>27</sup> Admin, "THE PUNJAB NATIONAL BANK SCAM: CASE STUDY » Lawful Legal" (Lawful Legal, May 17, 2024) <https://lawfullegal.in/the-punjab-national-bank-scam-case-study/> accessed June 20, 2025

of 9.5 years. In 2012, the board set seven more years on his jail sentence because he did not pay a confiscation order of £13 million. Authorities of the SFO took strong action to enforce the Contempt of Court Act 1981.

Cooperation between countries was very important for this purpose. Thanks to mutual legal help between the DOJ and SFO, Narendra agreed to turn witness against his brother in court, as evidence obtained from the man's phone was of great importance. Even after Jersey and the BVI hit the terrorist organizations with asset freezes, less than 10% of the losses were recovered, as a lot of the money was laundered via Dubai and hard-to-trace offshore entities.

There were several achievements in the case. Within six years of discovery, results in the court were announced. The Court showed its intent by jailing the convicts who couldn't pay their fines. Nevertheless, making up for the loss has not worked out well most of the time. Bringing each case separately ended up in more costs for all banks and brought a smaller payout for themselves. Topics covered in the lessons are early escrow, examining trade collateral, and the creation of cross-border teams to help recover assets. A possible answer is to use the UNCITRAL Model Law on cross-border insolvency for such cases.

## **Recommendations**

### **1. Enforcement and recovery:**

Although in 2014 SEBI was given the powers to attach and sell assets of the defaulters, its enforcement is weak. To enhance recovery, SEBI should come up with formal regulations named Recovery Regulations and make active use of whistleblowers, who should be incentivized. The Whistleblower program of the U.S SEC within the Dodd-Frank has cost the U.S. billions of money and huge whistleblower awards. In the UK, FCA uses the Account Freezing and Forfeiture Order to take seizures of illicit assets under POCA. SEBI ought to follow the same instruments and make sure defaulters do not hide assets by using foreign or proxies.

### **2. Regulatory Coordination:**

Good inter-agency teamwork is crucial. ASIC (Australian Securities and Investments Commission) and APRA of Australia work on a formal MoU and share the information through coordination of the joint committees of the Federal Council of Financial Regulators. MAS in Singapore cooperates with local and international organizations through MOUs and ASEAN+

taskforces in containing cross border fraud. Such models can also be replicated by SEBI through formation of joint enforcement task forces and informational agreements with RBI, MCA, SFIO and police as well as with global regulators.<sup>28</sup>

### **3. Explanation of Collective Investment Scheme (CIS):**

Indian definition of CIS is broadly defined, which builds ambiguity and opens the legal loopholes to be exploited by fraudulent schemes. Conversely, CIS is well defined and regulated by the Financial Services Act of UK and the Singapore Securities & Futures Act. SEBI ought to go ahead with amendments to the legislation or an independent CIS Act that will make a clear separation between regulated schemes and the bona fide joint ventures or property purchases. It will make enforcement focused and improve protection of investors.

### **4. Technology in Detection of Fraud:**

AI and analytics (SupTech/RegTech) are being increasingly used by global regulators in terms of market surveillance and fraud detection. The US SEC employs machine learning to detect the signals in communications and trade patterns whereas Israel central bank relies on ML to determine abnormalities in payment systems. SEBI ought to embrace technology such as text mining, network analyses, and distributed ledger to boost in real time observation and data visibility.

### **5. Investor Information and Disclosure:**

One of the first line of defence is investor awareness. ASIC, Australia has a domain extension of MoneySmart with a community program outreach covering almost 50 percent of adults. U.S. FINRA (Financial Industry Regulatory Authority) foundation conducts a series of education campaigns of multi-channel, blogs, podcasts and seminars. Learning multilingual investor education, issuing red flags on fraud, and making redressal easy are some of the models that SEBI can borrow internationally.

## **Conclusion**

Ponzi schemes are still a big threat to India's financial landscape, eroding trust and going around traditional regulations. While SEBI, RBI, ED and MCA have the tools, the current

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<sup>28</sup> "From Billion-Dollar Laundering to Shell Companies: What Singapore's AML Risk Landscape Means for Compliance Teams" <https://www.tookitaki.com/compliance-hub/from-billion-dollar-laundering-to-shell-companies-what-singapores-aml-risk-landscape-means-for-compliance-teams> accessed June 20, 2025

framework has slow execution and inter agency gaps. Learn from international models, India needs to bring in legal reforms, tech enabled supervision and better investor protection. Coordinated enforcement and quick dispute resolution mechanism is the key to reducing such frauds.

