Housing Rights and Debt Enforcement: Comparing Section 26 of the Constitution of the Republic of South Africa, 1996 with Article 21 of the Constitution of India

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Abstract:

This article undertakes a comparative constitutional analysis of the tension between housing rights and debt enforcement in South Africa and India, focusing on section 22 of the Constitution of the Republic of South Africa, and article 22 of the Constitution of India. While section 26 of the Constitution of the Republic of South Africa and article 22 of the Constitution of India. Section 26 expressly guarantees the right of access to adequate housing and protects against arbitrary evictions. Article 22 of the Indian Constitution primarily safeguards personal liberty in the context of arrest and detention with housing protections being judicially developed under article 21 (the right to life and personal liberty). The study interrogates how courts in both jurisdictions mediate the competing interests of creditors seeking to enforce debts through execution against immoveable property and debtors asserting the right to housing or shelter. The article argues that South Africa adopts a more explicit , right-based approach that constitutionally entrenches housing protection within debt enforcement processes, whereas India relies on a broader, judicially constructed framework that indirectly protects housing through the right to life and due process guarantees. The comparative analysis reveals both convergence and divergence in constitutional reasoning, highlighting the importance of judicial oversight, proportionality and socio-economic context in balancing creditor rights with the protection of vulnerable debtors. The article concludes by proposing normative lessons for strengthening the protection of housing rights within debt enforcement regimes in both jurisdictions.

Keywords:

Housing rights, Debt enforcement, Section 26 of the Constitution of South Africa, Article 21 of the Constitution of India.