ILLUSTRATION: AJAYA KUMAR MOHANTY

Shielding homes in financial distress

A decade-long delay in individual insolvency protections leaves families vulnerable

Consider a citizen who owns a single home and takes a small loan to start a modest business. Through no fault of her own, perhaps due to adverse economic conditions, she fails to repay an instalment of the loan. Should her only home be taken away, rendering her and her family homeless merely because she attempted entrepreneurship? The legislature, through the Insolvency and Bankruptcy Code, 2016 (IBC), has answered this question with compassion and principle. Part III of the IBC, which provides for individual insolvency, incorporates a humane safeguard protecting a debtor's single dwelling unit. However, this protection has remained dormant for about a decade because Part III is still awaiting notification, leaving those it seeks to protect without recourse.

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Two recent developments heighten the constitutional and legislative rationale for bringing this protection into effect. First, in *Mansi Brar Fernandes (2025)*, the Supreme Court has reaffirmed that the right to shelter is an integral part of the right to life guaranteed under Article 21 of the Constitution. The court has emphasised that a home is not merely a roof over one's head; it embodies hopes and dreams, provides a safe space for a family, and offers a refuge from life's uncertainties. The case highlighted the recurring injustice meted out to homebuyers who invested their life's savings in housing projects, only to be left stranded due to the developer's default. The court recognised the legislative initiative giving homebuyers a voice in insolvency proceedings, enabling them to secure their homes when the developers faced financial distress.

This reasoning builds on a robust line of constitutional jurisprudence treating shelter as part of the moral architecture of the Constitution. In *Olga Tellis (1985)*, the court held that livelihood and shelter were inseparable facets of the right to life, reading Article 21 as a positive guarantee. In *Chameli Singh (1996)*, it described a home as the space where a person could grow physically, mentally, intellectually, and spiritually. Together, these decisions affirm the state's constitutional obligation to create and enforce legal frameworks that secure housing and prevent exploitation of homebuyers.

Second, on October 9, the Kerala Legislative Assembly passed the Kerala Single Dwelling Place Protection Bill, 2025, to shield vulnerable families from losing their only home to small-loan foreclosures. The Bill extends protection to modest loans up to ₹5 lakh and caps dues, including interest and penalties, at ₹10 lakh. Eligibility is calibrated to economic vulnerability: The borrower must own no more than five cents of land in urban areas or 10 cents in rural areas, and must lack alternative assets and realistic repayment capacity. The statute establishes district and state-level committees that examine cases, mediate with lenders, and, in deserving situations, recommend financial assistance to help settle dues. Its design is targeted, not to write off debt indiscriminately but to prevent families from losing their sole dwelling to a small debt spiral.

Part III of the IBC sets the process for resolving the stress of individuals, proprietorships, and partnerships, and, where necessary, liquidating their assets. It, however, keeps certain assets beyond the reach of the insolvency process. These include tools of the trade essential for livelihood, basic household furniture and effects, and limited personal ornaments of sentimental or religious value. Significantly, it excludes a single unencumbered dwelling unit value up to the prescribed threshold. The principle is not to immunise wealth but to preserve a minimum platform for a dignified living, balancing both sides, and enabling creditors to recover what is due in a predictable manner, while ensuring that the process does not render people homeless.

Since Part III of the IBC is not yet operational, individuals with small business debts or personal borrowings cannot invoke the Code's protection for a single dwelling unit. For such families, access to Part III can be the difference between recovery and ruin. They have access to colonial era statutes, namely, the Provincial Insolvency Act, 1920, and the Presidency Towns Insolvency Act, 1909. These antiquated regimes are largely non-functional and ill-suited to modern economic realities.

Notifying Part III would enable individual debtors to approach the adjudicating authority, negotiate repayment plans, and obtain a discharge after reasonable effort. It would provide a transparent forum for creditors and debtors to negotiate under judicial oversight, bringing predictability to a space that currently invites ad hoc responses. For lenders, clarity about protected assets improves risk assessment and encourages responsible underwriting. For households, it restores the possibility of good-faith resolution without the threat of destitution.

This is not a call to privilege debtors over creditors. Credit markets thrive on certainty, and Part III respects creditor rights while establishing a baseline of dignity for debtors. By drawing the boundary openly, the Code enhances the quality of credit, allowing lenders to design contracts and security structures that reflect protected assets from the outset.

There is also a pragmatic administrative advantage. A functioning individual insolvency regime channels disputes into a specialised forum, reducing the multiplicity of proceedings and social costs. The adjudicating authority can consolidate issues, supervise repayment plans, and monitor compliance, while enabling households to re-enter the economy with a clean slate. The fresh start process under Part III will particularly alleviate the suffering of individuals with almost no income or assets, offering them a structured and dignified exit from unmanageable debt.

Had Part III been operational, it was unlikely that the Kerala government would have enacted a separate statute to protect single-dwelling units. If the delay continues, other provincial governments may craft piecemeal solutions, risking inconsistency and suboptimal outcomes, including a fragmented national credit market. Each passing year of inaction widens the gap between constitutional promise and practical protection, and it does so at the cost of families already suffering due to financial distress, families for whom the right to shelter is not a matter of legal abstraction but a matter of daily survival and dignity.

Finally, the constitutional dimension merits emphasis. When the judiciary reaffirms shelter as integral to the right to life and the legislature provides a statutory framework that concretely advances the right of indebted individuals, including the protection of their dwelling unit, an indefinite executive pause in its implementation undermines both constitutional fidelity and moral responsibility.

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