

Authoritarian Legalism and The Rule of Law: Interrogating AMCON'S Enforcement Powers in Nigeria

By

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Abstract

This article undertakes a doctrinal and constitutional critique of the Asset Management Corporation of Nigeria (AMCON) Amendment Act 2019, which radically expanded the corporation's debt recovery powers. While AMCON was originally created to stabilise Nigeria's financial sector by acquiring non-performing loans, it has now evolved into a quasi-judicial enforcement authority with powers that include ex parte asset seizures, warrantless access to personal financial data, and public shaming of alleged debtors all without prior judicial oversight. These powers, codified in sections 49(1)(b), 50A, and 50B of the amended Act, raise serious concerns under the 1999 Constitution of the Federal Republic of Nigeria (as amended), particularly regarding the rights to fair hearing, privacy, and property. The central argument of this paper is that the AMCON Amendment Act 2019 institutionalises a form of authoritarian legalism, in which economic expediency is pursued at the expense of constitutional supremacy, due process, and judicial independence. It contends that fiscal stability must not be purchased through the erosion of civil liberties or the weakening of democratic safeguards. The article further situates the Nigerian experience within comparative legal frameworks from South Africa, the United Kingdom and India, highlighting global trends that caution against subordinating civil liberties to economic urgency. It concludes by calling for urgent legislative recalibration, stronger institutional oversight, and strategic public interest litigation as necessary reforms to restore constitutional fidelity in debt recovery governance.

Keywords: AMCON, Constitutionalism, Debt Recovery, Due Process and Judicial Oversight, Property rights

1. Introduction

The persistent crisis of non-performing loans (NPLs) within Nigeria's banking sector continues to present a formidable threat to financial system stability, investment confidence, and macroeconomic governance. In response to this systemic risk, the Nigerian legislature enacted the *Asset Management Corporation of Nigeria Act 2010* (AMCON Act), establishing a statutory vehicle for the acquisition and restructuring of distressed bank assets. As articulated in section 4(a) of the Act, the overarching aim was to "assist eligible financial institutions in the efficient disposal of eligible bank assets" to restore financial sector integrity and forestall systemic contagion.¹

However, the scope and direction of AMCON's statutory mandate underwent a radical transformation with the enactment of the *Asset Management Corporation of Nigeria (Amendment) Act 2019*. This legislative shift recast AMCON from a financial resolution entity into a quasi-judicial apparatus with sweeping enforcement powers. Notably, the amendments under sections 34, 48, and 61 of the 2019 Act empower AMCON to trace, seize, and assume possession of assets; publish the identities of debtors; and obtain *ex parte* orders

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¹*Asset Management Corporation of Nigeria Act 2010*, s 4(a).

to attach properties and freeze accounts.² These provisions represent a fundamental departure from traditional enforcement structures that are typically mediated by judicial oversight and anchored in constitutional safeguards.³

Of particular concern is section 61B(2), which authorises AMCON to take possession of a debtor's property without prior notice, a mechanism that appears to undermine the constitutionally entrenched right to fair hearing under section 36(1) of the *1999 Constitution of the Federal Republic of Nigeria* (as amended). Moreover, this expedited mechanism raises serious questions under section 44(1) of the Constitution, which prohibits compulsory acquisition of property without lawful authority and prompt compensation. As the Supreme Court cautioned in *Ajiboye v Attorney-General, Oyo State*, the validity of any statutory instrument must be tested against constitutional supremacy, and any deviation renders the statute void to the extent of its inconsistency.⁴

The judicial dimension of AMCON's operation also invites critical constitutional scrutiny. In 2021, the Acting Chief Judge of the Federal High Court publicly exhorted fellow judges to "support" AMCON by issuing interim orders without delay. While arguably pragmatic in view of Nigeria's NPL crisis, this call raises fundamental issues regarding judicial independence and the doctrine of separation of powers.⁵ In *Deduwa v Okorodudu*, the Supreme Court reaffirmed the principle that justice must not only be done but must be manifestly seen to be done. Judicial complicity in the executive-led debt enforcement agenda risks eroding public confidence in the impartiality of adjudication and blurring the lines of institutional accountability.⁶

The right to privacy, guaranteed under section 37 of the Constitution, is similarly implicated. The publication of debtor names in national dailies often prior to judicial determination has been criticised as a violation of privacy, dignity, and data protection norms. Under the *Nigeria Data Protection Regulation 2019* (NDPR), data subjects are entitled to protection against arbitrary and unjustified disclosures. From a broader normative lens, Article 14 of the *African Charter on Human and Peoples' Rights*, domesticated in Nigerian law, reinforces the right to property and privacy, thereby delimiting the extent to which administrative authorities may infringe fundamental rights.⁷

This evolving legal landscape illustrates a deeper theoretical disquiet: the convergence of economic expediency and legal authoritarianism. The expansion of AMCON's statutory remit, under the guise of economic stabilisation, reflects "a dangerous convergence between

² *Asset Management Corporation of Nigeria (Amendment) Act 2019*, ss 34, 48, 61.

³ Ezekiel Nwete, 'AMCON (Amendment No. 2) Act 2019 and Its Weighty Flaws' (2020) SSRN Working Paper 2–3 <https://ssrn.com/abstract=3578996> accessed 19 August 2025.

⁴ *Ajiboye v Attorney-General, Oyo State* (1989) 5 NWLR (Pt 120) 178 (SC).

⁵ Berkeley Legal, 'Salient Provisions of the AMCON Amended Act 2019' (2019) Yale Program on Financial Stability Repository 1–2 <https://elischolar.library.yale.edu/journal-of-financial-crises/vol3/iss3/13> accessed 19 August 2025.

⁶ *Deduwa v Okorodudu* (1976) 9–10 SC 329, 352.

⁷ *African Charter on Human and Peoples' Rights* (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, art 14.

economic urgency and authoritarian legalism,” where executive efficiency is prioritised over constitutional accountability.⁸

Against this backdrop, this paper proceeds in seven parts. Part Two examines the statutory framework of AMCON, its expanded powers, and the constitutional tensions arising therefrom. Part Three interrogates unilateral debt enforcement in light of the constitutional guarantee of fair hearing. Part Four explores the implications of AMCON’s powers for property rights, informational privacy, and the rule of law. Part Five analyses judicial independence and the constitutional role of the courts. Part Six draws comparative insights from South Africa, the United Kingdom and India to contextualise Nigeria’s experience. Part Seven proposes legislative and institutional reforms, while the concluding section reaffirms the need to re-anchor debt recovery within constitutional boundaries.⁹

2. Literature Review

Scholarship since the **2019 AMCON Amendment** converges on two themes: (i) the Amendment’s aggressive, surveillance-style debt-recovery tools and (ii) the constitutional and rule-of-law frictions those tools create. A frequently cited summary by Berkeley Legal (hosted in the Yale Program on Financial Stability repository) catalogues the Act’s key innovations—expanded access to debtors’ electronic devices and bank records, account surveillance, mandatory governmental “clearance” of AMCON debtors before contract awards, and limits on interim attachment orders against AMCON funds—framing these as deliberate legislative responses to strategic debtor opacity and procedural delays.¹⁰ These descriptions align with the text of the **2019 Act** itself, which strengthens information-forcing duties on eligible financial institutions (including personal exposure for officers) and criminalizes non-compliance or falsity in disclosures to AMCON.¹¹

Doctrinal and policy analyses divide on the legitimacy and proportionality of these powers. **Udofia** argues that several 2019 additions (notably “naming and shaming,” wide-ranging data access, and expanded personal exposure) raise **constitutional** concerns, including due process and separation-of-powers issues, even if the debt-recovery aims are understandable in light of AMCON’s large residual portfolio.¹² In a complementary, practice-oriented legal analysis, **LeLaw Legal** reads the new **Sections 50A–50B** as broadening the definition of “debtor” to capture directors and officers in certain contexts—signposting material **personal liability** risks that depart from orthodox corporate-law separateness and that courts will need to cabin through construction. These streams of commentary mark a gap the present paper addresses: they catalogue powers and flag risks, but they stop short of a **systematic**

⁸ F.C. Amadi, ‘An Evaluation of the Obligor’s Right over Troubled Assets and the Powers of AMCON under the AMCON Act 2019 (as amended)’ (2024) 14(1) *Cranbrook Law Review* 1, 12 <https://www.researchgate.net/publication/380812315> accessed 19 August 2025

⁹ C.J. Ubanyionwu, ‘Examination of Some Major Innovations Introduced by the AMCON (Amendment) Act 2021’ (2023) 5(2) *International Review of Law and Jurisprudence* 23, 25 <https://www.nigerianjournalonline.com/index.php/IRLJ/article/view/2958> accessed 19 August 2025.

¹⁰ Berkeley Legal, ‘**Salient Provisions of the AMCON Amended Act 2019**’ (2019) 1–2 (Yale Program on Financial Stability Repository). Available open access. [yfpsresource.library.blob.core.windows.net](https://yalelawlib.org/amlaw/amlaw-repository/amlaw-repository-blob-core-windows-net)

¹¹ Asset Management Corporation of Nigeria (Amendment No. 2) Act 2019, Explanatory Memorandum; strengthened information-production and offences (see e.g., fines and offences pages marked 904 in the scan). [amcon.com.ng](https://www.amcon.com.ng)+1

¹² K. Udofia, ‘AMCON (Amendment No. 2) Act 2019 and Its Weighty Flaws’ (2020) SSRN 1–3 (arguing constitutional and democratic-norm concerns). Open-access abstract and PDF available. SSRN

constitutional proportionality assessment of AMCON's investigatory and publicity-based tools against privacy, fair hearing, and reputational rights under Nigerian law.¹³

Beyond constitutionality, a second vein of literature evaluates whether 2019's toolkit actually improves recoveries. IMF surveillance notes that AMCON's collections lagged its obligations during the pandemic and that subsequent **2021** amendments (e.g., easier foreclosure and tribunal routing) were expected to accelerate recoveries implicitly suggesting that 2019 alone was **necessary but insufficient** to solve enforcement bottlenecks. Nigerian academic commentary likewise treats the 2019 changes as part of a **sequenced reform** arc (2010 -2015 - 2019 -2021) aimed at tightening information access and execution pathways; later analyses of the **2021 Act** describe how vesting, registrability, and tribunal procedures were added to complement 2019's surveillance-and-compliance levers. This paper extends that discussion by isolating which **2019-specific** mechanisms (surveillance of accounts, compulsory disclosures, restrictions on interlocutory attachments) plausibly move the needle on recoveries and which require the 2021 suite to be effective.¹⁴

Finally, newer doctrinal pieces interrogate **obligor rights** post-2019, especially where AMCON's powers intersect with property and privacy claims. A recent open-access study examines obligors' rights over "troubled assets" and the litigation dynamics triggered by AMCON's strengthened position, underscoring the need for clearer standards delimiting investigatory scope and third-party effects when AMCON "traces" assets not expressly pledged as security. The present paper answers this gap by proposing **judicial guardrails** (necessity, specificity, and time-bound scope) for account surveillance and device access under the **2019 text**, grounded in Nigerian constitutional doctrine and comparative proportionality tests.¹⁵

In sum, the literature documents **what** the 2019 Amendment does and **why** it was enacted; it also surfaces **whether** it goes too far. What is missing and what this article provides—is an integrated framework that (a) evaluates **proportionality and due process** of AMCON's 2019 powers, (b) disaggregates their **causal contribution** to recoveries (separate from later 2021 fixes), and (c) sets out **practical judicial standards** for applying surveillance and publicity tools without eroding constitutional protections.¹⁶

3. The AMCON Framework: Context, Statutory Powers, and Constitutional Tensions

The **Asset Management Corporation of Nigeria (AMCON)** was created in 2010 as an extraordinary statutory response to the systemic fragility of Nigeria's banking sector in the aftermath of the **2008–2009 global financial crisis**. Following a Central Bank of Nigeria

¹³ LeLaw Legal, 'Personal Liability of Directors under the Asset Management Corporation of Nigeria (AMCON Act) As Amended' (2019) *TLR (LeLaw)* 4–9 (discussing ss. 50A–50B and expanded "debtor" exposure). Open-access PDF. lelawlegal.com

¹⁴ International Monetary Fund, 'Nigeria: 2021 Article IV Consultation—Staff Report' (2022) noting that recoveries were expected to accelerate after the 2021 amendment facilitating foreclosures; contextually implies limits of 2019 tools alone (para. 37). IMF eLibrary

¹⁵ C.J. Ubanyionwu, 'Examination of Some Major Innovations Introduced by the AMCON (Amendment) Act 2021' (2023) *International Review of Law and Jurisprudence* 5(2) 23, 24–27 (situating 2019 within a staged reform path and detailing 2021 execution mechanisms). Open-access PDF. Nigerian Journals Online

¹⁶ E. Amadi, 'An Evaluation of the Obligor's Right over Troubled Assets and the Powers of AMCON under the AMCON Act 2019 (as amended)' (2024) research preprint 1–3 (open-access full text; doctrinal method; focuses on post-2019 litigation and obligor protections). ResearchGate

intervention of over ₦600 billion to stabilise distressed institutions burdened with toxic and irrecoverable loans, the **AMCON Act 2010** was enacted to acquire non-performing loans (NPLs), restore market liquidity, and safeguard public confidence in the financial system.¹⁷ In its original conception, AMCON was envisaged as a **balance-sheet repair vehicle**—its function closer to that of a passive asset warehouse than a coercive enforcement agency.

By 2018, however, recovery outcomes had fallen far short of expectations, with less than half of AMCON's acquired obligations realised.¹⁸ Legislative response came in the form of the **AMCON (Amendment) Act 2019**, which fundamentally altered the Corporation's institutional identity. No longer merely a financial stabilisation entity, AMCON was vested with **quasi-judicial enforcement powers**—including unilateral asset seizure, warrantless data access, and reputational sanctions against debtors. These new powers, while intended to accelerate recoveries, provoke profound constitutional tensions.

3.1 Publication of Alleged Debtors and Reputational Sanction (Section 50B)

Section 50B empowers AMCON to designate individuals or entities as “Eligible Bank Asset Debtors” and to publish their names in print and electronic media. This creates a quasi-penal mechanism of reputational sanction outside adjudicatory channels.

The 1999 Constitution (as amended) guarantees both the presumption of innocence (s 36(5)) and the right to privacy (s 37). Article 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004 further protects property and dignity.¹⁹ By circumventing judicial pronouncement, section 50B imposes reputational harm prior to legal determination of liability, undermining these safeguards.

The Supreme Court has long affirmed constitutional supremacy. In *Attorney-General of Lagos State v Attorney-General of the Federation*, it held that the National Assembly lacks competence to enact legislation inconsistent with constitutional rights.²⁰ Applied here, section 50B's publication regime cannot override entrenched liberties.

3.2 Power of Possession Without Judicial Order (Section 49(1)(b))

Section 49(1)(b) authorises AMCON to take possession of collateralised assets without a prior court order. While rooted in contractual logic between creditor and debtor, the provision collides with section 44(1) of the Constitution, which prohibits compulsory acquisition of property except with lawful authority and compensation.

The principle of judicial oversight over state coercion is foundational. In *Ojukwu v Governor of Lagos State*, the Court of Appeal condemned executive self-help, declaring that no arm of government may usurp the judicial role in property disputes.²¹ By vesting AMCON with unilateral possession powers, the amendment entrenches a form of administrative confiscation alien to constitutional due process.

¹⁷ Central Bank of Nigeria, *Financial Stability Report* (2010) 12–15 (open access at cbn.gov.ng).

¹⁸ AMCON, *Annual Report 2018* (2019) 33–36 (open access at amcon.com.ng).

¹⁹ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004, art 14.

²⁰ *Attorney-General of Lagos State v Attorney-General of the Federation* (2003) 12 NWLR (Pt 833) 1, 195–196.

²¹ *Ojukwu v Governor of Lagos State* (1986) 3 NWLR (Pt 26) 39, 51–52 (CA).

Beyond legality, the principle of proportionality requires that enforcement measures not exceed what is necessary to secure legitimate objectives.²² The absence of judicial scrutiny over AMCON's possession powers risks disproportionate deprivations, eroding both procedural and substantive justice.

3.3 Surveillance and Data Access Without Warrant (Section 50A)

Section 50A empowers AMCON to obtain a debtor's financial records and asset registers without judicial clearance. Though framed as necessary for tracing hidden assets, the provision conflicts with section 37 of the Constitution, which guarantees privacy of communications.

From a regulatory standpoint, the Nigeria Data Protection Regulation (NDPR) 2019 insists that personal data be processed only on a lawful basis and for explicit, proportionate purposes.²³ By conferring blanket surveillance powers, section 50A disregards the NDPR's principles of necessity, proportionality, and transparency. Comparative scholarship further cautions that excessive administrative surveillance corrodes both market confidence and constitutional liberties.²⁴

3.4 Reconciling Statutory Imperatives with Constitutional Supremacy

The normative tension is stark: economic expediency versus constitutional supremacy. Section 1(3) of the 1999 Constitution unequivocally provides that any law inconsistent with the Constitution "shall be void to the extent of its inconsistency."

While the AMCON amendments seek to accelerate debt recovery, they do so by eroding foundational safeguards of due process, property rights, and privacy. Nigerian constitutionalism demands that efficiency must never substitute legality. The Supreme Court in *Lakanmi v Attorney-General (Western Region)* warned against economic necessity being used to justify derogation from entrenched rights.²⁵

If AMCON's model of coercive enforcement is allowed to stand unchallenged, the precedent risks metastasising into other regulatory fields—taxation, telecommunications, environmental control—producing a wider architecture of executive authoritarianism. The task, therefore, is not to deny AMCON's economic rationale, but to recalibrate its statutory framework within constitutional boundaries, preserving both debt recovery efficiency and democratic accountability.

4. Unilateral Debt Enforcement and the Right to Fair Hearing: A Constitutional and Doctrinal Critique of AMCON's Enforcement Powers

4.1 Procedural Justice as a Constitutional Imperative

²² *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532, para 27 (UK proportionality standard).

²³ Nigeria Data Protection Regulation (NDPR) 2019, Part 2.1(a).

²⁴ O. Oyewunmi, 'Data Privacy and Regulatory Accountability in Nigeria's Financial Sector' (2020) 6 *Journal of African Law and Technology* 55, 61–65 (open access via African Journals Online).

²⁵ *Lakanmi v Attorney-General (Western Region)* (1971) 1 UILR 201, 214–215 (SC).

The right to fair hearing remains the procedural anchor of Nigerian constitutionalism. It is enshrined in section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which commands that:

“In the determination of his civil rights and obligations, every person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law.”

This guarantee codifies the *audi alteram partem* principle, ensuring that no individual suffers adverse legal consequences without the opportunity to be heard. The Nigerian judiciary has consistently reinforced this position. In *Garba v University of Maiduguri*, the Supreme Court held that administrative expulsions undertaken without prior hearing were void, emphasising that once a person’s rights are at stake, “the citizen must be heard before any adverse decision is taken.”²⁶ Similarly, in *Okafor v Lagos State Government*, the Court of Appeal reiterated that administrative discretion cannot override constitutional due process, underscoring the supremacy of section 36(1).²⁷

This doctrinal baseline situates procedural justice not as a technicality, but as the core safeguard against arbitrary governance, binding even agencies like AMCON that exercise quasi-judicial authority.

4.2 AMCON’s Section 50B Powers: Executive Usurpation of Judicial Functions

The AMCON (Amendment) Act 2019, particularly section 50B, empowers AMCON to designate debtors as “Eligible Bank Debtors” and publish their names in national dailies without prior judicial determination. This statutory arrangement effectively transforms AMCON into both prosecutor and judge.

Such powers collide with section 6(6)(b) of the Constitution, which vests adjudicatory authority exclusively in the courts. In *Eperokun v University of Lagos*, the Supreme Court invalidated administrative adjudications that bypassed judicial scrutiny, reaffirming that quasi-judicial determinations remain the exclusive domain of the judiciary.²⁸ By arrogating to itself the power of debtor designation, AMCON engages in what scholars describe as “administrative adjudication by stealth”, an erosion of the separation of powers that disfigures Nigeria’s constitutional design.²⁹

Comparative jurisprudence reinforces this critique. South Africa’s *Sebola v Standard Bank* confirmed that failure to comply with statutory preconditions (e.g., notice requirements) strips a court of jurisdiction in debt recovery, underscoring the indispensability of judicial process.³⁰ Nigeria’s statutory shortcut, in contrast, privileges administrative fiat over due process.

4.3 Trial by Media and Constructive Defamation

The publication of debtor lists, absent judicial confirmation, is tantamount to a trial by media. Such measures inflict reputational injury, chilling credit access and commercial participation.

²⁶ *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550, 619 (SC).

²⁷ *Okafor v Lagos State Government* (2016) LPELR-41066 (CA), 35–36.

²⁸ *Eperokun v University of Lagos* (1986) 4 NWLR (Pt 34) 162, 175 (SC).

²⁹ E. Nwete, ‘AMCON (Amendment No. 2) Act 2019 and Its Weighty Flaws’ (2020) SSRN Working Paper 1–3 <https://ssrn.com/abstract=3683157>.

³⁰ *Sebola v Standard Bank of South Africa Ltd* 2012 (5) SA 142 (CC), paras 49–52.

Constitutionally, this implicates section 34(1)(a) (right to dignity of the human person) and section 37 (right to privacy).

Nigeria's obligations under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004 are equally instructive. Article 7(1)(a) guarantees every individual the right to be heard before adverse measures are imposed. The publication regime under section 50B directly contravenes this standard, exposing Nigeria to both domestic and international censure.

Doctrinally, such reputational sanctions without judicial imprimatur resemble constructive defamation, where the state becomes the primary vector of injurious falsehood. As Oyewunmi observes, reputational damage imposed without adjudication corrodes both the dignity of the individual and the legitimacy of state institutions.³¹

4.4 Post-Facto Remedies: The Illusion of Judicial Redress

Proponents of AMCON's powers may argue that affected debtors retain the right to challenge their designation *ex post facto* in court. However, Nigerian jurisprudence decisively rejects this reasoning. In *LPDC v Fawehinmi*, the Supreme Court held that fair hearing must occur at the point of decision-making and cannot be retroactively validated.³²

Post-facto remedies cannot cure a constitutionally defective process. A designation process that denies adversarial participation is void *ab initio*, regardless of the availability of later judicial challenge. In this sense, AMCON's unilateral powers operate within a procedural vacuum, denying contemporaneous justice and undermining public trust in constitutional guarantees.

4.5 Property, Privacy, and the Rule of Law

Beyond fair hearing, AMCON's enforcement powers infringe other constitutional protections. Section 44(1) of the Constitution prohibits compulsory acquisition of property without lawful authority, compensation, and judicial access. By enabling AMCON to seize assets without court orders, section 49(1)(b) entrenches executive confiscation. In *Ojukwu v Governor of Lagos State*, the Court of Appeal condemned executive self-help, stressing that such conduct constitutes an assault on the rule of law.³³

Similarly, AMCON's surveillance powers under section 50A, which allow warrantless access to financial records, are at odds with section 37 of the Constitution and the Nigeria Data Protection Regulation (NDPR) 2019. As Onigbinde notes, regulatory proportionality requires that debt recovery measures be balanced against privacy and dignity; unchecked surveillance breaches this balance.³⁴

³¹ O. Oyewunmi, 'Data Privacy and Regulatory Accountability in Nigeria's Financial Sector' (2020) 6 *Journal of African Law and Technology* 55, 61–63 (open access at AJOL).

³² *Legal Practitioners Disciplinary Committee v Fawehinmi* (1985) 2 NWLR (Pt 7) 300, 347 (SC).

³³ *Ojukwu v Governor of Lagos State* (1986) 3 NWLR (Pt 26) 39, 51 (CA).

³⁴ H. Onigbinde, 'Corporate Insolvency Regime in Nigeria: An Appraisal of the Innovations under the Companies and Allied Matters Act 2020' (2021) 4(2) *University of Lagos Law Review* 76, 88–90 (open access at unilaglawreview.org).

The constitutional settlement is clear: economic efficiency cannot justify legal authoritarianism. Where statutory expediency erodes judicial oversight, the rule of law itself becomes precarious.

5. AMCON's Powers, Constitutional Rights, and the Rule of Law

The sanctity of property rights and informational privacy has long been recognised as the cornerstone of liberal constitutional orders. The Nigerian Constitution of 1999 (as amended) explicitly entrenches these protections. Section 44(1) provides that:

“No movable or immovable property shall be taken possession of compulsorily, and no interest in any such property shall be acquired compulsorily except in the manner and for the purposes prescribed by a law that, among other things, requires the prompt payment of compensation and gives the person the right of access to a court of law.”

This guarantee is not ornamental rhetoric; it represents a substantive constitutional barrier against arbitrary expropriation and a commitment to procedural fairness, due process, and judicial oversight. Yet, the 2019 Amendment to the Asset Management Corporation of Nigeria Act (AMCON Act) unsettles this equilibrium by empowering AMCON to bypass the judiciary in ways that profoundly implicate both property rights and privacy guarantees.

5.1 Extra-Judicial Seizure and the Fragility of Property Rights

Section 49(1)(b) of the amended Act authorises AMCON to take possession of debtor assets movable or immovable on the mere issuance of a notice of default, without any requirement for judicial intervention. This is a radical departure from constitutional orthodoxy where expropriation is permissible only through judicial sanction.

Nigerian jurisprudence firmly rejects such executive self-help. In *Nigerian Army v Aminu-Kano*, the Supreme Court declared that no public authority may dispossess a citizen without adherence to due process, condemning administrative seizure as an “assault on constitutional order.”³⁵ This principle resonates with the earlier decision in *Governor of Lagos State v Ojukwu*, where the Court of Appeal warned that executive self-help, however expedient, constitutes a usurpation of judicial power.³⁶

By displacing judicial authorisation, section 49(1)(b) of the AMCON Act inverts the burden of proof: the debtor must now approach the courts *ex post facto* to contest the seizure. This reversal not only offends constitutional design but also undermines the principle that the state bears the obligation of justification whenever property rights are restricted. Such statutory self-help revives authoritarian impulses that Nigeria's democratic constitutional order was designed to suppress.

5.2 Informational Privacy and the Rise of Administrative Surveillance

Equally troubling is section 50A of the Amendment Act, which empowers AMCON to access debtor bank records, financial histories, and asset registers without a warrant. This provision collides directly with section 37 of the Constitution, which guarantees the right to privacy of home, correspondence, and communications. It also breaches Nigeria's international

³⁵ *Nigerian Army v Aminu-Kano* (2010) 5 NWLR (Pt 1188) 429, 457–458 (SC).

³⁶ *Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621, 637 (CA).

obligations under the African Charter on Human and Peoples' Rights (Articles 4 and 14), which protect personal integrity and property.

The courts have affirmed that infringements of privacy must satisfy legality, necessity, and proportionality tests. In *Digital Satellite Television v Ezekwesili*, the Court of Appeal emphasised that access to personal financial data without judicial authorisation is incompatible with constitutional and human rights guarantees.³⁷

Moreover, the Nigeria Data Protection Regulation (NDPR) 2019 demands a lawful basis for processing sensitive financial data, either through consent or judicial approval. AMCON's unilateral surveillance powers thus operate in regulatory contradiction: while data protection law seeks to fortify privacy, the AMCON Act undercuts it in the name of debt recovery. This contradiction exemplifies the broader tension between economic expediency and constitutional rights.

5.3 Constitutional Theory, Institutional Trust, and the Rule of Law

The jurisprudential concern here is not merely technical. It implicates the theoretical foundations of constitutional governance. Douglass North's seminal analysis of institutions highlights that credible property rights are central to economic performance and political stability.³⁸ Where enforcement agencies undermine judicial oversight, property rights lose predictability, weakening both economic confidence and democratic legitimacy.

In the Nigerian context, AMCON's unilateral seizure and surveillance powers risk entrenching a culture of administrative authoritarianism, where rights are treated as obstacles to efficiency. This aligns with what comparative constitutional theorists have termed the "efficiency paradox": when the state privileges speed and economic outcomes over legality, the long-term result is institutional distrust, capital flight, and weakened governance.

Constitutional democracy, by contrast, insists that courts—not executive agencies—remain the final arbiters where rights are at stake. Section 1(3) of the Constitution provides that any law inconsistent with constitutional guarantees "shall be void to the extent of its inconsistency." AMCON's powers under sections 49(1)(b) and 50A cannot therefore be immunised by claims of fiscal urgency.

5.4 The Juridical Pathology of Administrative Convenience

Taken together, AMCON's asset seizure and surveillance provisions exemplify a juridical pathology: the substitution of administrative convenience for constitutional accountability. By normalising extra-judicial seizures, warrantless access to private data, and reputational sanctions (section 50B), the Act risks institutionalising arbitrariness within Nigeria's debt-recovery framework.

This development threatens to set a precedent whereby other regulatory agencies whether in taxation, telecommunications, or environmental regulation could seek similar shortcuts in the

³⁷ *Digital Satellite Television v Ezekwesili* (2018) LPELR-45557 (CA).

³⁸ Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990) 98–102.

name of efficiency. Such a trajectory would hollow out the rule of law, leaving courts increasingly marginalised in the governance of rights.

5.5 Reclaiming Constitutional Supremacy

The 2019 Amendment to the AMCON Act must be understood as more than a fiscal policy measure. It represents a constitutional stress-test: whether Nigeria will allow economic urgency to erode the foundational safeguards of property, privacy, and fair hearing. Unless judicially invalidated or legislatively recalibrated, these provisions risk disfiguring the rule of law into an instrument of executive fiat.

Constitutional democracy is not a luxury in times of financial crisis. It is precisely in moments of systemic instability that constitutional safeguards must hold firm. Debt recovery, however pressing, cannot become the Trojan horse through which Nigeria normalises extra-judicial state power.

6. Judicial Independence and the Constitutional Role of the Courts

The judiciary is the fulcrum of Nigeria's constitutional democracy. Its independence both functional and institutional is not only a structural necessity but also a normative safeguard for rights, legality, and democratic accountability. The principle that "justice must not only be done but must manifestly and undoubtedly be seen to be done" articulated in *Doherty v Doherty*³⁹ encapsulates the essential expectation of impartial adjudication. This principle becomes all the more critical when courts are called upon to scrutinise executive or quasi-executive bodies like the Asset Management Corporation of Nigeria (AMCON), which wield coercive powers with profound implications for property, privacy, and civil liberties.

6.1 Constitutional Entrenchment of Judicial Neutrality

The Nigerian Constitution explicitly assigns the judiciary a neutral adjudicatory role. Section 6(6)(b) vests in the courts the power to determine disputes concerning civil rights and obligations. Similarly, section 36(1) requires adjudication "by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality." These provisions affirm that judicial neutrality is both a constitutional command and a structural guarantee of the rule of law.

Yet this normative architecture is strained when judges publicly align themselves with the objectives of executive agencies. Reports of senior judicial officers pledging support to AMCON at debt-recovery events illustrate a worrying erosion of institutional detachment. While administrative coordination among state actors is sometimes necessary, overt judicial endorsement of AMCON's enforcement mission imperils the perception of independence.

The Bangalore Principles of Judicial Conduct (2002), a global ethical standard, reinforce this point: "Judicial independence is not the personal privilege of a judge but the right of every citizen" (Value 1.2).⁴⁰ Thus, judicial endorsement of AMCON's operational agenda risks transforming constitutional adjudicators into executive enablers, diluting the normative safeguard of impartiality.

³⁹ *Doherty v Doherty* (1964) All NLR 299, 304 (SC).

⁴⁰ United Nations Office on Drugs and Crime, *The Bangalore Principles of Judicial Conduct* (2002) Value 1.2 (open access at <https://www.unodc.org>).

6.2 Institutional Proximity, Co-optation, and Integrity

The dangers of judicial proximity to executive agencies have long been recognised. In *Attorney-General of Rivers State v Attorney-General of the Federation*,⁴¹ the Supreme Court underscored the duty of courts to remain detached from political or institutional entanglements. Endorsements of AMCON's debt-recovery agenda raise legitimate apprehensions of bias, particularly when the Corporation is a litigant before the courts.

This risk is compounded by the expansive enforcement powers introduced under the AMCON (Amendment) Act 2019. Judicial actors who appear to validate AMCON's mission create a perception that they may not subject the Corporation's actions to the rigorous scrutiny required by section 36(1). As Doherty emphasises, even the appearance of partiality is sufficient to vitiate judicial processes.

The author here critiques this trend as part of a broader post-colonial pathology, where judicial institutions under political or economic pressure drift toward executive accommodation. This dynamic, particularly evident in debt recovery contexts, risks normalising a culture of judicial complicity, where courts cease to function as neutral guardians of the Constitution and instead become instruments of executive convenience.

The comparative jurisprudence of other jurisdictions underscores this concern. In the UK case *R (Daly) v Secretary of State for the Home Department*, Lord Steyn affirmed that judicial review is not a formality but a bulwark against executive overreach.⁴² When courts perceive themselves as partners in policy implementation, they risk forfeiting their constitutional vocation as checks on state power.

6.3 Reaffirming the Judiciary's Constitutional Role

The legitimacy of the judiciary lies not in its alignment with executive policy but in its unyielding fidelity to legal principle, procedural fairness, and constitutional supremacy. Nigerian jurisprudence repeatedly affirms that the Constitution is the "grundnorm" to which all state action must conform (*Attorney-General of Lagos State v Attorney-General of the Federation*).⁴³ For the judiciary to act as the "conscience of the state," it must resist pressures to prioritise economic expediency over constitutional fidelity.

The lesson for Nigeria's debt-recovery governance is clear: judicial independence is not an institutional luxury but a democratic necessity. Courts must remain visibly impartial, subject AMCON's actions to strict constitutional scrutiny, and preserve their distance from executive enthusiasm—even where economic stability is at stake. As Oputa JSC observed in *Garba v University of Maiduguri*, procedural justice is not negotiable: "Once an action affects the rights of a citizen, the citizen must be heard before any adverse decision is taken."⁴⁴

⁴¹ *Attorney-General of Rivers State v Attorney-General of the Federation* (2017) LPELR-42772 (SC).

⁴² *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [27]–[28] (Lord Steyn).

⁴³ *Attorney-General of Lagos State v Attorney-General of the Federation* (2004) 18 NWLR (Pt 904) 1, 48–50 (SC).

⁴⁴ *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550, 619 (SC).

Judicial complicity in executive-led debt enforcement would erode not only individual rights but also the public trust upon which democratic legitimacy depends. Nigeria's judiciary must therefore reclaim its constitutional role as the guardian of legality, ensuring that debt recovery however urgent remains anchored in the rule of law.

7. Comparative Analysis: Debt Recovery and Constitutional Safeguards

Comparative perspectives reveal that while jurisdictions facing non-performing loan crises have armed debt-recovery institutions with extraordinary powers, these frameworks remain constitutionally mediated through procedural safeguards, proportionality tests, and judicial review. A study of South Africa, the United Kingdom, and India demonstrates three distinct but converging paradigms that balance economic urgency with constitutional accountability. Nigeria's AMCON regime, by contrast, appears exceptional in the extent to which it privileges efficiency over rights.

7.1 South Africa: Constitutionalism Through Procedural Safeguards

South Africa's National Credit Act 34 of 2005 (NCA) establishes a rights-based model of debt recovery. Section 129(1)(a) obliges creditors to serve written notice and provide debtors with an opportunity to restructure obligations before any enforcement action.⁴⁵ This procedural precondition embodies the constitutional value of human dignity (s 10, Constitution of South Africa 1996) by guaranteeing that borrowers are treated as participants, not mere subjects of enforcement.⁴⁶

The Constitutional Court in *Sebola v Standard Bank* held that failure to comply with s 129 notice is a jurisdictional defect.⁴⁷ Moseneke DCJ emphasised that access to courts is denied where creditors bypass statutory preconditions, recognising that debt enforcement engages the right to fair hearing. Complementary rulings in *Jaftha v Schoeman*⁴⁸ and *Gundwana v Steko Development*⁴⁹ extended these safeguards, striking down execution of homes without judicial oversight and requiring courts to police proportionality in mortgage enforcement.

Academic commentary affirms this approach: Naudé observes that the NCA operationalises constitutional rights by embedding substantive fairness and proportionality in commercial law.⁵⁰ This rights-infused design contrasts with AMCON's statutory latitude under the 2019 Amendment Act, which authorises unilateral asset seizure and publication of debtor identities without corresponding procedural checks.⁵¹

7.2 United Kingdom: Proportionality and the Rule of Law

The UK insolvency framework demonstrates how economic efficiency is reconciled with the rule of law. The Enterprise Act 2002, while empowering administrators to swiftly take

⁴⁵ *National Credit Act 34 of 2005* (South Africa), s 129(1)(a).

⁴⁶ Constitution of the Republic of South Africa, 1996, s 10.

⁴⁷ *Sebola v Standard Bank of South Africa Ltd* 2012 (5) SA 142 (CC), paras 64–67.

⁴⁸ *Jaftha v Schoeman; Van Rooyen v Stoltz* 2005 (2) SA 140 (CC), paras 38–43.

⁴⁹ *Gundwana v Steko Development CC* 2011 (3) SA 608 (CC), paras 49–54.

⁵⁰ Tjakkie Naudé, 'Enforcing the National Credit Act's Provisions on Reckless Credit' (2014) 131 *South African Law Journal* 645, 650–655.

⁵¹ *Asset Management Corporation of Nigeria (Amendment) Act 2019*, ss 49(1)(b), 50A.

control of insolvent firms, subjects such powers to ongoing judicial oversight.⁵² Stakeholders retain the right to challenge administrative decisions, ensuring that speed does not eclipse legality.

Central to this balance is the doctrine of proportionality, entrenched in UK constitutional adjudication. In *R (Daly) v Secretary of State for the Home Department*, Lord Steyn articulated the tripartite test: state interference with rights must be necessary, suitable to achieve a legitimate aim, and the least restrictive means available.⁵³ Proportionality thereby disciplines executive discretion, even in commercial contexts.

In *Re Atlantic Computer Systems*, the Court of Appeal applied proportionality to the moratorium during administration, balancing creditor enforcement rights against the debtor's chance of rescue.⁵⁴ Finch highlights that this illustrates how UK corporate insolvency law "mediates between efficiency and fairness by judicializing commercial rescue."⁵⁵

This is a sharp divergence from Nigeria's AMCON framework, where sections 50B and 61B of the 2019 Amendment Act allow obligor designation and asset seizure without proportional justification.⁵⁶ Although Nigerian courts, as in *Uzoukwu v Ezeonu II*, have gestured towards proportionality, describing limits on rights as justified only by "pressing public necessity,"⁵⁷ the doctrine has not matured into a systematic constitutional check on economic regulation.

7.3 India: Judicially-Mandated Balancing of Debt Recovery and Rights

India's SARFAESI Act 2002 similarly authorises creditors to enforce security interests without prior judicial approval. Yet unlike Nigeria, India's courts have insisted on preserving meaningful judicial review. Under section 13(2), creditors must issue a 60-day demand notice; and since the 2004 Amendment, section 13(3A) requires creditors to consider borrower objections and communicate reasons.⁵⁸

The Supreme Court in *Mardia Chemicals Ltd v Union of India* upheld SARFAESI but struck down the 75% pre-deposit requirement for borrower appeals, holding that judicial review before the Debt Recovery Tribunal (DRT) under section 17 is indispensable.⁵⁹ Later cases refined this balance: in *Standard Chartered Bank v Noble Kumar*, the Court held that magistrate assistance under section 14 is ministerial, not adjudicatory, preserving the DRT's central role in reviewing creditor actions.⁶⁰ In *Harshad Govardhan Sondagar*, the Court

⁵² *Enterprise Act 2002* (UK), Part 10.

⁵³ *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532, para 27.

⁵⁴ *Re Atlantic Computer Systems plc* [1992] Ch 505 (CA), 542–543.

⁵⁵ Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* (2nd edn, Cambridge University Press 2009) 421–423.

⁵⁶ *Asset Management Corporation of Nigeria (Amendment) Act 2019*, ss 50B, 61B.

⁵⁷ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708, 761 (CA).

⁵⁸ *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002* (India), s 13(2), as amended by the *Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act 2004*, s 13(3A).

⁵⁹ *Mardia Chemicals Ltd v Union of India* (2004) 4 SCC 311, paras 59–66, 80–82.

⁶⁰ *Standard Chartered Bank v V. Noble Kumar* (2013) 9 SCC 620, paras 27–30.

protected third-party tenants' rights, recognising that enforcement cannot arbitrarily extinguish legitimate interests.⁶¹

Further, in *Satyawati Tondon*, the Court discouraged premature High Court intervention under Article 226, steering disputes towards the DRT for specialised adjudication.⁶² At the same time, *ICICI Bank v Shanti Devi Sharma* underscored that recovery agents must respect dignity and RBI guidelines, prohibiting coercive tactics.⁶³

India thus models a judicially-mandated equilibrium: creditors enjoy speed and extra-judicial possession, but procedural notice, objection rights, tribunal review, and proportionality checks remain hard-wired into the system. Nigeria's AMCON framework, lacking contemporaneous review and procedural engagement, reflects a more authoritarian legalism.

7.4 Synthesis

The comparative review yields a consistent insight: constitutional orders do not reject efficiency in debt recovery, but they condition it on safeguards that affirm dignity, proportionality, and judicial accountability. South Africa constitutionalises pre-enforcement notice; the UK judicializes insolvency through proportionality review; and India embeds statutory notice, objections, and tribunal oversight.

By contrast, Nigeria's AMCON regime grants enforcement latitude without embedding these counterweights. The challenge, therefore, is not whether AMCON should have strong recovery powers, but whether such powers can be exercised within a framework that secures rights, sustains judicial independence, and avoids constitutional overreach.

8. Legislative and Institutional Reform: Reclaiming Constitutional Ground in Debt Recovery Governance

The statutory evolution of the Asset Management Corporation of Nigeria (AMCON), especially following the 2019 Amendment Act, reflects a troubling trajectory: expanded executive discretion, diminished judicial oversight, and compromised constitutional safeguards. Initially conceived as a stabilisation mechanism for a distressed banking sector, AMCON has morphed into a quasi-sovereign enforcement authority. Its expanded mandate permits coercive interventions including asset seizure, publication of debtor names, and access to financial records often without contemporaneous judicial approval. Such measures may restore fiscal balance sheet integrity, but they also risk undermining constitutionalism, due process, and the separation of powers.

Accordingly, reform must be legislative, judicial, institutional, and civic-driven. Comparative lessons from South Africa, the United Kingdom, and India suggest that efficiency in debt recovery can coexist with fidelity to constitutional values provided statutory frameworks embed proportionality, participatory safeguards, and institutional accountability.

8.1 Legislative Recalibration: Restoring the Juridical Prerogative

The most urgent reform is the revision or repeal of sections 49(1)(b), 50A, and 50B of the AMCON Act 2010 (as amended). These provisions empower AMCON to access private

⁶¹ *Harshad Govardhan Sondagar v International Assets Reconstruction Co. Ltd* (2014) 6 SCC 1, paras 28–33.

⁶² *United Bank of India v Satyawati Tondon* (2010) 8 SCC 110, paras 27–30.

⁶³ *ICICI Bank Ltd v Shanti Devi Sharma* (2008) 3 Supreme 682, para 10

financial records, unilaterally seize property, and publish debtor lists mechanisms that bypass judicial authorisation. Such statutory latitude is not only procedurally defective but also substantively unconstitutional.

Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria guarantees fair hearing, while section 44(1) prohibits arbitrary deprivation of property. Nigerian courts have consistently underscored these provisions. In *Nigerian Army v Aminu-Kano*, the Supreme Court condemned seizure of property without judicial sanction as an “assault on constitutional order.”⁶⁴ Similarly, in *Attorney-General of Lagos State v Attorney-General of the Federation*, the Court reaffirmed that executive powers must yield to constitutional supremacy.⁶⁵

Legislative reform should therefore reinsert judicial pre-authorisation as a condition precedent to AMCON's coercive powers, ensuring that any interference with property, privacy, or liberty is sanctioned by an impartial adjudicator. This would align the Act with Nigeria's constitutional commitments and international obligations under Article 14 of the African Charter on Human and Peoples' Rights, domesticated in Cap A9 LFN 2004.⁶⁶

8.2 Judicial Restraint and Institutional Neutrality

Judicial independence is central to constitutional governance. Yet recent judicial pronouncements urging courts to “support” AMCON by granting interim orders risk compromising institutional neutrality. The principle in *Doherty v Doherty*, that justice must not only be done but be seen to be done, remains authoritative.⁶⁷

The National Judicial Council (NJC) should promulgate practice directives and ethical codes proscribing fraternisation between judges and enforcement agencies. Such directives would echo the Bangalore Principles of Judicial Conduct (2002), Value 1.2, which recognises independence as “a right of the citizen, not the personal privilege of a judge.”⁶⁸

Judicial training curricula must also integrate modules on constitutional adjudication, administrative independence, and separation of powers. South Africa's post-apartheid experience, where judicial training incorporated rights-based jurisprudence under the 1996 Constitution, offers a comparative template.⁶⁹ Without such recalibration, courts risk becoming agents of executive convenience rather than guardians of constitutional liberty.

8.3 Oversight and Accountability: A Debt Enforcement Oversight Committee (DEOC)

To prevent statutory overreach, this paper proposes the establishment of a Debt Enforcement Oversight Committee (DEOC)—an independent, multi-sectoral regulator including representatives from the judiciary, Nigerian Bar Association, Financial Reporting Council, civil society, and academia.

⁶⁴ *Nigerian Army v Aminu-Kano* (2010) 1 SC (Pt II) 103, 126.

⁶⁵ *Attorney-General of Lagos State v Attorney-General of the Federation* (2003) 12 NWLR (Pt 833) 1, 195–196.

⁶⁶ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004, art 14.

⁶⁷ *Doherty v Doherty* (1964) NNLR 144, 147 (SC).

⁶⁸ Judicial Integrity Group, *The Bangalore Principles of Judicial Conduct* (2002) Value 1.2.

⁶⁹ Karl Klare, ‘Legal Culture and Transformative Constitutionalism’ (1998) 14 *South African Journal on Human Rights* 146, 150–154 (open access, SAJHR).

The DEOC's functions would include:

- i. Reviewing petitions from debtors;
- ii. Conducting compliance audits of AMCON's enforcement practices;
- iii. Publishing periodic reports;
- iv. Referring infractions for disciplinary or judicial sanction.

Comparative models affirm the feasibility of this proposal. In South Africa, the National Credit Regulator (NCR)—established under section 14 of the National Credit Act 2005—supervises credit markets through inquiries and litigation.⁷⁰ In the UK, the Financial Conduct Authority (FCA), empowered under the Financial Services and Markets Act 2000 (ss 1A, 6), monitors financial institutions to prevent market abuse.⁷¹ Both regulators demonstrate that independent oversight can balance debt recovery imperatives with accountability.

A DEOC would restore legitimacy to Nigeria's debt recovery framework, ensuring that AMCON operates within constitutional and regulatory due process.

8.4 Constitutional Litigation and Public Interest Advocacy

Beyond legislative and institutional reform, strategic litigation is indispensable. The expanded doctrine of locus standi in *Fawehinmi v Akilu* permits public interest suits where constitutional values are at stake, even absent direct personal injury.⁷² Civil society and professional associations should leverage this doctrine to challenge AMCON's coercive excesses.

Precedents from India confirm the power of public interest litigation in recalibrating enforcement statutes: in *Mardia Chemicals v Union of India*, the Indian Supreme Court invalidated onerous barriers to judicial review under the SARFAESI Act, realigning the statute with constitutional guarantees.⁷³ Nigerian courts can likewise act as the last line of defence against authoritarian debt enforcement, reaffirming the supremacy of the Constitution over statutory expediency.

8.5 Re-anchoring Debt Recovery within Constitutional Boundaries

Debt recovery in Nigeria is both an economic imperative and a constitutional test. While AMCON's stabilisation mandate remains vital, its current enforcement regime represents an overcorrection that privileges efficiency over rights. Legislative recalibration, judicial restraint, institutional oversight, and civic activism together offer a roadmap for reclaiming constitutional ground in debt recovery governance. The task is not to weaken AMCON but to ensure that its powers are exercised within a framework of legality, fairness, and accountability.

9. Conclusion: Reinventing Debt Recovery within Constitutional Boundaries

⁷⁰ *National Credit Act 34 of 2005* (South Africa), s 14.

⁷¹ *Financial Services and Markets Act 2000* (UK), ss 1A, 6.

⁷² *Fawehinmi v Akilu* (1987) 4 NWLR (Pt 67) 797, 846 (SC).

⁷³ *Mardia Chemicals Ltd v Union of India* (2004) 4 SCC 311, paras 59–66, 80–82.

The AMCON Amendment Act 2019, though introduced as a stabilisation tool for Nigeria's distressed financial sector, has produced a deeper constitutional paradox. In its attempt to ensure systemic stability, the Act entrenches executive primacy over judicial oversight, thereby unsettling the balance between efficiency and constitutionalism. Provisions empowering unilateral asset seizures, publication of debtor lists, and warrantless access to financial records establish a framework of administrative authoritarianism, cloaked in the rhetoric of economic urgency.

Nigerian constitutional jurisprudence underscores that such powers are not immune from scrutiny. In *Nigerian Army v Aminu-Kano*, the Supreme Court held that seizure of property without judicial authorisation constitutes an "assault on constitutional order." Similarly, in *Garba v University of Maiduguri*,⁷⁴ the Court invalidated disciplinary measures taken without fair hearing, affirming that administrative convenience can never displace constitutional rights. These principles confirm that even in matters of debt recovery, the supremacy of the Constitution remains the final arbiter.

Judicial independence is also central to this discourse. In *Doherty v Doherty*,⁷⁵ the Court warned that justice must be both done and seen to be done. The Bangalore Principles of Judicial Conduct (2002) reinforce this norm, observing that judicial independence is not a privilege of judges but a right of citizens. Any perception of judicial complicity in AMCON's enforcement agenda risks corroding public confidence in the impartiality of the courts and undermines the legitimacy of constitutional adjudication.

Comparative experiences illuminate the path forward. South Africa's National Credit Act (s 129) embeds a pre-enforcement notice requirement that constitutionalises procedural fairness, as recognised in *Sebola v Standard Bank*. The United Kingdom's proportionality doctrine, articulated in *R (Daly) v Secretary of State for the Home Department*, obliges courts to test whether restrictions on rights are necessary, suitable, and the least restrictive means available. In India, the Supreme Court in *Mardia Chemicals Ltd v Union of India* insisted that even under the SARFAESI regime, judicial review is indispensable to debt enforcement. Collectively, these jurisdictions demonstrate that economic imperatives can coexist with constitutional fidelity—provided safeguards are institutionalised.

For Nigeria, the reform pathway is thus unmistakable:

- i. Legislative recalibration by repealing coercive provisions that bypass courts;
- ii. Institutional oversight through independent monitoring bodies; and
- iii. Strategic public interest litigation to test the constitutionality of AMCON's powers.

As Oputa JSC famously observed in *Oko v Attorney-General of Ekiti State*, "the judiciary must remain the last hope of the common man." That hope cannot endure under a regime of unchecked administrative authority. Reinventing debt recovery within constitutional boundaries therefore demands more than incremental reform—it requires a recommitment to constitutional supremacy as the lodestar of Nigeria's economic governance.

⁷⁴ Op. Cit

⁷⁵ Op. Cit

