



The 130th Constitutional Amendment Bill, 2025: Presumption of innocence versus Constitutional Morality in ministerial tenure

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Abstract

In India's system of democracy, the penalization of politics has long been an important concern, raising questions regarding the morality of elected officials who are charged with grave offenses. The 130th Constitutional Amendment Bill, 2025, aims to address this problem by requiring the removal of the Prime Minister, Chief Minister, or any other Minister being held for a "serious offense," regardless of their conviction, establishing a substantial break from the current constitutional framework. This amendment presents important constitutional concerns that need serious thought, even though its goal is to preserve constitutional morality and restore trust in government.

This paper explores the proposed legislation in light of the Indian Constitution's Articles 75, 164, 102, and 191, which control ministerial functions and qualifications. According to *Lily Thomas v. Union of India* (2013), disqualification now only occurs after conviction. The Bill appears to promote integrity in public life by moving the bar from conviction to incarceration, but it also runs the risk of weakening the democratic premise of voters' right to representation and the presumption of innocence guaranteed by Article 21. Using significant decisions from the courts like *Manoj Narula v. Union of India* (2014) and *Public Interest Foundation v. Union of India* (2018), the study discusses these constitutional concerns.

By exploring how other nations with democratic systems, like the United States, the United Kingdom, and Canada, behave under comparable circumstances, the article also places the Indian discussion in a comparative context, pointing out that most of them adhere to political customs rather than rigid constitutional requirements. Through a fair analysis, this paper argues that although the amendment addresses the legitimate issue of decriminalizing politics, its execution necessitates explicit protections to prevent abuse, including independent supervision systems and specific definitions of "serious crime." The conclusion highlights that maintaining democratic rights and constitutional ideals while maintaining integrity in government requires a sophisticated approach.

Keywords: 130th Constitutional Amendment Bill, 2025, Presumption of Innocence, Constitutional Morality, Rule of Law, decriminalization of politics

Introduction

The Indian system of democracy has continuously been troubled by the problem of political criminality. The Association for Democratic Reforms (ADR) often reports that a substantial number of elected officials are charged with serious offenses^[1]. Major concerns have been voiced about the ethical standards of authority and the decline in public trust in democratic institutions as a result. Parliament responded by introducing the Constitution 130th (One Hundred and Thirtieth Amendment) Bill, 2025, which states that Prime Minister, Chief Minister, or Minister whoever is detained for thirty days in a row for a major offense will be ousted from holding office^[2]. The idea of constitutional morality, which Dr. B. R. Ambedkar, advocated during the discussions in the Constituent Assembly and which calls for public officials to uphold higher standards of integrity, is the foundation of this Amendment's objective^[3]. Bill supporters argue that detainees jeopardize the public's trust in the government as well as its ability to function. They believe the Amendment reflects the necessity to legalize politics and stop the increasing connection between political power and criminality.

But there are considerable constitutional concerns with the proposed clause. According to the Supreme Court's verdict in *Lily Thomas v. Union of India*^[4], which invalidated Section 8(4) of the Representation of the People Act, 1951^[5], which permitted convicted lawmakers to remain in office until appeals were decided, the Indian Constitution currently

permits disqualification primarily upon conviction. The Bill appears to go against the presumption of innocence hypothesis, which is a fundamental right under Article 21 and a pillar of criminal jurisprudence, by moving the barrier from conviction to imprisonment. The Amendment must also be tested against the basic structure doctrine. While the Bill enhances the rule of law by demanding probity, it may undermine the democratic principle of voter representation by prematurely disqualifying elected leaders without judicial determination of guilt^[6]. Furthermore, there is a risk of political abuse through fabricated accusations or motivated arrests in the lack of protections. According to a comparative analysis, political convention, not constitutional mandate, governs the dismissal of ministers under criminal investigation in the majority of democracies. When accused of major crimes, ministers in the United Kingdom often step down, while lawmakers in the United States and Canada stay in office until they are found guilty^[7].

Constitutional Framework

The Indian Constitution establishes the general parameters for the qualifications, disqualifications, and duties of members of the executive and legislative branches. Therefore, this constitutional framework must be used to analyze any change, including the 130th Constitutional change Bill, 2025.

1. Ministerial Tenure and Collective Responsibility

Article 75 (Union) and Article 164 (States) of Indian Constitution provides that Prime of India and Chief Ministers of States shall be appointed by the President and Governor respectively, and the other minister shall hold office during the pleasure of the President or Governor. These provisions also enshrine the principle of collective responsibility to the House of the People or State Legislature, which forms a cornerstone of parliamentary democracy^[8]. Although ministers serve "during the pleasure of the President/Governor," as stated in Articles 75(2) and 164(2), this "pleasure" is not absolute. It must have the legislature's strong support and adhere to the collective responsibility concept^[9]. In *U.N. Rao v. Indira Gandhi* (1971), the Supreme Court made it clear that the President or Governor could not fire a minister at random; instead, the removal had to be justified by the minister's loss of majority support. This strikes a balance between democratic accountability and executive discretion^[10].

Thus, the tenure of ministers is not indefinite but linked to their accountability to the legislature. However, the Constitution itself does not explicitly provide for disqualification of a minister upon arrest or custody making the 130th Amendment a novel insertion into the constitutional text.

2. Disqualification of Legislators

Article 102 of Indian Constitution lays down the grounds for disqualification of member of parliament of both the houses whereas Article 191 lays down the grounds of disqualification of members of states legislative. These include

- Holding an office of profit under the Government,
- Unsoundness of mind,
- Insolvency,
- Foreign citizenship,
- Disqualification under law made by Parliament (e.g., Representation of the People Act, 1951)^[11]

Section 8 of the Representation of the People Act, 1951 (RPA) stipulates that conviction for specific offenses would result in disqualification^[12]. In *Lily Thomas v. Union of India* (2013), the Supreme Court confirmed this by invalidating Section 8(4) RPA, which had previously permitted incumbent lawmakers to remain in office despite conviction until the outcome of an appeal^[13].

Hence, as of now, custody or pending trial does not disqualify a legislator or minister. The shift proposed by the 130th Amendment Bill from conviction-based disqualification to custody-based removal is therefore a significant departure from established constitutional and statutory practice.

3. Judicial Interpretation and the Gap

Despite its frequent emphasis on the necessity to stop the criminalization of politics, the Supreme Court has left the issue up to the legislature. In the 2018 case of *Public Interest Foundation v. Union of India*^[14], the court directed political parties to make public the identities of candidates who had been convicted, but refused to deem them ineligible, stating that Parliament should make the final decision. In another similar case, *Manoj Narula v. Union of India* (2014)^[15], the Court cautioned the Prime Minister and Chief Ministers against appointing individuals with

significant criminal offenses as ministers although it refrained from giving legally enforceable orders.

These decisions indicate a constitutional gap because, although acknowledging the risks of criminalization, the judiciary has held off on enforcing more disqualifications, allowing Parliament to take action. One such parliamentary intervention is the 130th Amendment Bill.

Position of the 130th Amendment Bill

A significant attempt by Parliament to tackle the long-standing issue of political criminality is the Constitution 130th (One Hundred and Thirtieth Amendment) Bill, 2025. The Bill, which is a proposed amendment introduced in the Lok Sabha on 20 August 2025, addresses the issue of whether or not those who have been imprisoned for major crimes should be allowed to remain in top executive positions. If the prime minister of India, a state chief minister, or any other minister in the federal or state government is arrested and held in detention for committing significant crimes, it aims to provide for their dismissal. These clauses also apply to Delhi's Union Territory (UT). In order to extend these laws to the UTs of Jammu and Kashmir and Puducherry, two further bills have been introduced^[16].

Objective of the Bill

The Statement of Objects and Reasons of the Bill underline the pressing need to free the political sphere from the influence of individuals facing grave criminal allegations. It stresses that the legitimacy of democratic governance rests on constitutional morality and the trust of the people, both of which are undermined when such persons continue to hold high office. At present, disqualification operates only after a conviction, which leaves a significant gap in safeguarding ethical standards in public life. To address this deficiency, the Bill proposes that ministers who remain in custody for a prolonged period should vacate their office during the pendency of proceedings, thereby raising the threshold of accountability expected from holders of constitutional positions.

Important Aspects and Key Provision of the Bill

Under Articles 75 (Union Council of Ministers) and 164 (State Council of Ministers), the Bill would add a new clause. Its key characteristics are

If the Prime Minister, Chief Minister, or any other Union/State Minister is arrested and held for 30 days or more in connection with a "serious crime," they will be automatically removed. According to a wide definition, "serious crime" includes offenses that carry a sentence of Five year or more in prison, as well as offenses including terrorism, corruption, and crimes involving women and children. Without awaiting a conviction or the conclusion of the trial, the disqualification or removal will take effect right away. Further Depending on political will, the individual may be eligible for reappointment after being found not guilty or freed^[17].

Grounds for removal

A Minister will be removed from office if

1. he is accused of an offence punishable with imprisonment for a term which may extend to five years or more, and
2. he has been arrested and detained in custody for 30 consecutive days^[18].

Procedure for removal

A Minister in the central government will be removed by the President on the advice of the Prime Minister. This advice is to be given by the 31st consecutive day that the Minister is in custody. If the Prime Minister does not advise the President by this time, the Minister will cease to hold office from the day thereafter. The same provisions will also apply at the state level, with the Governor of the state acting on the advice of the Chief Minister. In case of Delhi, the acting authority will be the President on the advice of the Chief Minister. In the case of the Prime Minister, or a Chief Minister of a state or Delhi, he must resign by the 31st consecutive day of custody. If he does not resign by this time, he will cease to hold office from the day thereafter ^[19].

No bar on re-appointments: A Minister who is removed from office under these provisions, may be re-appointed after being released from custody.

Rationale Behind Supporting the Amendment

Proponents of the Amendment assert that by barring those with serious charges of criminality from holding positions of authority, it will significantly support the restoration of public trust in democratic systems. The policy is anticipated to serve as a disincentive against the admission or continuance of contaminated persons in politics by raising the standard of responsibility.

Experts further note that the plan aligns with the Supreme Court's rulings in *Manoj Narula v. Union of India* (2014) ^[20], where the Court emphasized the necessity of stricter guidelines for ministerial appointments.

The amendment also aligns with the long-standing recommendations of reform-focused organizations like the Election Commission of India and the Law Commission of India, which have both emphasized the pressing need to stop the criminalization of politics ^[21].

Constitutional and Democratic Objections

Opponents of the proposed amendment have voiced several concerns, the most significant of which are:

Presumption of Innocence: An arrest or period of custody does not by itself establish guilt. Critics argue that forcing a minister to step down merely on the basis of being in custody may offend the principle that one is innocent until proven guilty.

Democratic Representation: Ministers are often directly elected by the people, and their premature removal could dilute the mandate of the electorate, thereby unsettling the democratic balance.

Risk of Misuse: There is apprehension that political rivals could engineer false FIRs or influence arrests to secure the disqualification of opponents. This could convert the amendment into a weapon of partisan politics rather than an instrument of integrity ^[22].

Vagueness of “Serious Crime”: The lack of a precise standard for what amounts to a “serious offence” raises fears of arbitrary or selective application, creating uncertainty in governance ^[23].

Comparative Analysis

The question of whether those who are being prosecuted should still be in prominent positions of public office is not

exclusive to India. This conflict between voter representation, political ethics, and the assumption of innocence has plagued democracies all over the world. A comparative viewpoint aids in placing the 130th Constitutional Amendment Bill, 2025, in context and determining if India's strategy is unique or in line with international norms.

The United Kingdom

In the UK, ministers who are being examined for crimes are not required by law or the constitution to step down. Rather, the issue is controlled by ministerial responsibility and political tradition. Ministers are expected to maintain the highest standards of integrity in accordance with the Ministerial Code. For example, when faced with criminal accusations, ministers have already resigned willingly. As a result, the UK system depends less on legal force and more on political morality ^[24].

The United State

The United States takes an even more liberal stance. Detentions or charges alone do not disqualify members of Congress. Removal only takes place after a conviction and punishment. There is no constitutional need that lawmakers retire after being charged, although in reality, political pressure often does. This displays a strong belief in the presumption of innocence and the idea that representatives should be chosen by the people, not the government ^[25].

Canada

In Canada, a hybrid approach is used. When under investigation or confronting grave charges, cabinet ministers are often expected to step down; however, this is again a political practice rather than a constitutional requirement. Ministers have, for instance, briefly resigned during investigations but have since returned to their positions after being cleared or acquitted. The focus is on upholding public confidence however the constitution does not explicitly mention such regulations ^[26].

South Africa

The 1996 Constitution of South Africa provides down more precise grounds for disqualification. Those convicted of a crime and given a sentence longer than 12 months in jail are ineligible under Section 47. Legislators are not disqualified by simple charges or incarceration; nevertheless, as was the case in India prior to the 130th Amendment. This demonstrates that South Africa upholds the fairness concept by differentiating between conviction and allegation ^[27].

Suggestions / Recommendations

The arguments around the 130th Constitutional Amendment Bill, 2025, demonstrate that, while the purpose is admirable, its development and implementation need rigorous oversight. The proposals mentioned below may be taken into consideration in light of comparative practice and constitutional principles

1. Clear Definition of “Serious Crime”

The definition of "serious crime" has to be clarified and limited. Heinous crimes, crimes involving corruption, crimes involving terrorism, and crimes carrying a sentence of seven years or more in jail ^[28] might all be included in a practical definition. This will avoid arbitrary application and

guarantee that removal is not triggered by insignificant or politically motivated allegations.

2. Independent Tribunal or Constitutional Body

Establishing a neutral tribunal or constitutional authority to investigate the cases of ministers in detention before disqualification would be a realistic safeguard. There is a genuine risk of abuse through politically driven arrests. To ensure impartiality and credibility, a tribunal modelled after the Election Commission of India can be composed of distinguished individuals or retired judges. This would avoid arbitrary application, uphold the idea of natural justice, and give ministers an opportunity to be heard fairly. Further enhancements to checks and balances might result from limited court review of its rulings. With such a system, the amendment would effectively purify politics while preventing it from becoming a political weapon^[29].

3. Judicial Safeguards against Misuse

The amendment must expressly provide for judicial review of removal decisions so that the courts can continue to perform their role as protectors of fundamental rights and constitutional values. Allowing ministers to challenge such decisions before a competent court would act as a safeguard against arbitrary or politically motivated disqualification. To prevent undue delays, these cases could be placed on a fast-track schedule, ensuring that the question of a minister's eligibility is resolved promptly and without prolonged uncertainty for both the individual and the government.

4. Political Party Reforms

Strengthening political ethical standards is just as crucial as constitutional amendments. Clear internal standards regarding conduct mandating the voluntary resignation of ministers accused of serious offenses should be adopted by political parties. Such voluntary resignations would uphold the integrity of public institutions and show accountability to the voters. By encouraging a culture of responsibility and self-regulation within the political system, these policies would strengthen constitutional protections even if they would not have legally enforceable effects^[30].

Conclusion

One of Parliament's most audacious attempts to address the ongoing issue of criminalization in Indian politics is the 130th Constitutional Amendment Bill, 2025. The idea seeks to uphold constitutional morality and rebuild trust in the integrity of government by mandating the departure of ministers detained for major offenses.

The Bill additionally draws spotlight to the fundamental conflict between moral leadership and constitutional rights. It could weaken the presumption of innocence, dilute the democratic mandate of voters, and provide room for political manipulation, despite its stated goal of detoxifying the political system. Therefore, the primary challenge is to make sure that initiatives to increase accountability don't compromise justice and constitutional protections.

Other democracies experiences point to an alternate approach that relies more on resignation by choice and political customs than on strict constitutional expulsion. India's unusual choice to make this a constitutional law demonstrates both danger and resolve. The institutional checks incorporated into the modification and the larger political environment in which it operates will ultimately determine how successful it is.

Therefore, opposing the Bill completely or adopting it without questioning are not the best ways to go ahead. A more sophisticated approach is required, one that provides independent monitoring, ensures legal remedies, defines "serious crime" clearly, and promotes accountability inside political groups. India can only really go toward decriminalizing politics while maintaining the core of its democratic system with such improvements.

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