



Strengthening accountability or undermining due process? an analysis of the Constitution (130th Amendment) Bill, 2025

Dr. Sree Krishna Bharadwaj H

Assistant Professor, Department of Law, VSK University, Ballari, India

Abstract

The Constitution (130th Amendment) Bill, 2025, provides for the removal of the Minister which shall be applicable in the following scenarios. Firstly, if the Minister is charged with any offence that punishes anyone with five or more years of imprisonment, and secondly, if the Minister is arrested and kept in detention for 30 consecutive days. The removal can be effected either by the President or the Governor, as advised by the Prime Minister or the Chief Minister, respectively, or be done automatically after the 31st day of detention. The Prime Minister or the Chief Minister has to resign on being detained for 30 days continuously, failing which, he shall cease to hold the office from the day following. This paper analyses the key issues of the Bill and makes suggestions to overcome the issues.

Keywords: Constitution (130th Amendment) Bill 2025, removal of ministers, criminal charges and detention

Introduction

As per Article 84 and Article 173 of the Constitution, the Members of Parliament, Members of the State Legislative Assembly/Member of the State Legislative Council, must be a citizen of India, and they should be at least 25 years of age for the Lok Sabha or the State Legislative Assembly or at least 30 years of age for the Rajya Sabha or the State Legislative Council. The Parliament may make laws regarding additional qualifications of the above-mentioned members. As per the Representation of the People Act, 1951, for being an MP or an MLA, the candidate must be an elector of the parliamentary constituency or any assembly constituency within the state, respectively^[1].

Under Article 102, Article 191, and the Tenth Schedule of the Indian Constitution, the conditions for disqualification have been specified. They are as follows: (i) holding any office of profit, (ii) being of unsound mind, (iii) being an undischarged insolvent, (iv) ceasing to be an Indian citizen, and (v) defection. Disqualification is determined either by the President or the Governor on the opinion of the Election Commission of India (ECI), or the Chairman or the Speaker of the House. Additional conditions for disqualification have been provided in the RP Act, 1951. They include the following: (i) Conviction for certain offenses, (ii) Corrupt practices, and (iii) Failure to submit election expense accounts. Disqualification in the case of these is determined by the judiciary, the President, or the ECI, depending on the condition^[2].

The Constitution does not prescribe any provision with regard to the qualification or disqualification of a Minister, different from that of the legislators. But under Article 75(1B) or Article 164(1B), the MP/MLA/MLC, who is already disqualified for the act of defection, shall also be disqualified from the office of the Minister for the remainder of the term or re-election.

A number of High-Level Commissions have also identified that sustaining conviction as reasoning for disqualification is not sufficient to resist criminalization of politics in view of the lack of conviction against politically potent legislators. Rather, they have advised disqualification based on charging framed, where it is to be decided by the court as to whether there is sufficient cause to initiate proceedings for trial.

Key Features of The Bill

The Constitution (130th Amendment) Bill, 2025 was introduced to Lok Sabha in the month of August 2025. The Bill proposes the automatic disqualification of Ministers who are arrested and incarcerated for 30 days for grave offenses. Two other Bills were proposed for UTs of Puducherry and J&K. The Bills have been referred to a Joint Parliamentary Committee with Ms. Aparajita Sarangi as the chairperson^[3].

The Constitution (130th Amendment) Bill, 2025 aims at making provision regarding the dismissal of the Prime Minister, a Chief Minister, or any other Minister in the Central or a State Government, where the person is arrested and detained as a prisoner because of serious criminal offenses. These provisions extend to the UT of Delhi as well. Two other Bills have been proposed to extend these provisions to the UTs of Puducherry and J&K.

The Minister shall be removed from his position in the following circumstances

1. If he is charged with an offence which carries an imprisonment term of five years or more.
2. If he has been arrested and is in judicial custody for thirty consecutive days.

The Minister can be removed in two ways

1. The President or Governor, as the case may be, shall be advised by his Minister in this regard. In absence of such advice, he will be removed as per the provision on the thirty-first day of judicial custody.
2. Removal of Prime Minister or Chief Minister: In the case of the Prime Minister or the Chief Minister, he is required to resign on the 31st day of continuous detention, failing which he will cease to hold the office^[4].

Key Issues of The Bill

The Bills can violate the basic structure of the Indian Constitution. The Bills recommend that the Prime Minister, Chief Minister, or Minister must be removed from office as soon as they are arrested and detained for 30 days

consecutively. The bill recommends this for the offense that carries an imprisonment sentence of five years or more. This could lead to the removal of an elected government or Minister on charges and even prior to a conclusive verdict of guilt. This procedure might only require the involvement of investigative agencies, and the courts must only check for the legitimacy of arrest and bail, irrespective of the plausibility of guilt^[5].

Therefore, there are four possible grounds on which the Bills may be unconstitutional. The grounds are: (i) the parliamentary form of democracy, (ii) separation of power, (iii) federalism, and (iv) the rule of law. The basic structure doctrine has been enunciated by the Supreme Court in the case of *Kesavananda Bharati v. State of Kerala*. The court has stated that the Parliament may amend the Constitution, but it cannot change the basic structure of the Constitution, that is, the “basic structure.”

In the case of *P.V. Narasimha Rao vs State* (1998), the Supreme Court has held that the principle of parliamentary democracy is a part of the basic structure of the Constitution. The above-mentioned Bills are violative of this aspect on the following grounds. In a Parliamentary form of government, the election of the Prime Minister rests solely with the Lok Sabha. The Prime Minister is appointed by the President, and it is a person who enjoys the support of the majority in the Lok Sabha. The removal of the Prime Minister rests solely with the Lok Sabha if the Prime Minister loses the confidence of the majority of the Members of Parliament. The provision for the automatic removal of the Prime Minister within the 31st day of his arrest and imprisonment gives the investigative agencies the powers to retain or remove the Prime Minister.

The discretion of the Prime Minister to appoint and remove his Council of Ministers stands tested. The automatic removal of the Ministers after the 31st day of the time of their arrest and detention might undermine the discretion of the Prime Minister to appoint his Council of Ministers. In the case of *Manoj Narula v Union of India* (2014), the Supreme Court stated that the appointment of the ministers was the “constitutional prerogative of the Prime Minister or the Chief Minister. This applies to the Chief Ministers and Ministers in states likewise. The Bill affects Chief Minister and Ministers in states in the same way^[6].”

In the case of *Kesavananda Bharati vs. The State of Kerala* (1973), the Supreme Court asserted that the separation of powers between the legislature, the executive, and the judiciary is part and parcel of the “basic structure” of the Constitution. The legislative power has the exclusive right to elect and remove the government in the case of a parliamentary form of democracy. It was further reaffirmed in the case of the *Government of NCT of Delhi vs. Union of India* (2023), and the Supreme Court defined the “triple chain of accountability” as follows:

1. The permanent executive is accountable to the government.
2. The government is accountable to the legislatures.
3. The legislatures are accountable to the people.

What the Bills propose is that the Prime Minister or the Chief Minister should be automatically removed from office if they have been arrested, detained, and held for 30 consecutive days. Through this, the Bills empower the removal of the Prime Minister or the Chief Minister through the process of arrest and detention alone, giving the

authority to remove the Prime Minister or Chief Minister to the permanent executive.

In the case of *Kesavananda Bharati v. State of Kerala*, the Supreme Court of India also asserted that federalism is a part of the Basic Structure of the Indian Constitution. This assertion was reaffirmed in *S.R. Bommai v. Union of India* in 1994. It was asserted that the Union as well as the state possesses separate powers that can act independently in its own sphere.

The Bills provide a system whereby the arrest by a law enforcement agency falling under the Union government’s jurisdiction would lead to the removal of the Chief Minister of a state on the 31st day of his arrest and detention. This would lead to the removal of the state government. In similar fashion, a law enforcement agency falling under the jurisdiction of a state government would remove the Prime Minister or the Chief Minister of another state through the process of arrest and detention based on a state law. This would lead to the removal of the Union government or the government of the state^[7].

The Bills provide a system limiting the discretion of the Prime Minister or the Chief Minister in choosing his Council of Ministers. The process begun by the investigation agencies of the other level of government, as required under the Constitution upon the 31st day of the arrest and detention of the Ministers, may curtail the discretion of the head of the other level of government in selecting his Ministers.

Article 21 of the Constitution states that “no person shall be denied his life or personal liberty except according to procedure established by law.” The article 14 states that “equality before the law and equality of treatment under law.” The Court has construed “equality before the law” as disallowing arbitrariness. The rule of law incorporates judicial review to avoid arbitrariness. In *Indira Gandhi v Raj Narain*, the Supreme Court of India laid down that ‘rule of law’ forms a part of basic structure of the Constitution.

As per the criminal procedure law, the police record the FIR, conduct an investigation, and file the charge sheet if enough evidence emerges. The court then scrutinizes the evidence and if it feels that enough evidence exists to assume that the accused committed an offense, it frames charges. This marks the beginning of the trial. The Bills provide for the removal of a Minister or dismissal of the government (in the case of removal of Prime Minister or Chief Minister) solely on the basis of an accusation and detention for 30 days. Even at this juncture, there is no evaluation of the probable guilt. Moreover, arrest does not mean that there is guilt or sufficient cause for trial. This measure seems to be arbitrary. It might not conform to the inherent structure of the Constitution^[8].

Under the *Bhartiya Nagarik Suraksha Sanhita* (BNSS), 2023, arrest is possible on reasonable suspicion or for investigation purposes. The person arrested will have to produce himself before a magistrate within 24 hours. At this juncture, there is limited scrutiny by the judiciary to check reasons for arrest and other legal formalities. He may also authorize judicial detention for as long as 60 days. The accused will get default bail in this case (90 days in case of serious offenses). This will also permit custody for as much as 15 days (consecutive or fragmented) within the first 40 days (60 days in case of default bail of 90 days). The judiciary does not evaluate merits at this juncture. The evaluation is limited to scrutinizing charges framed. Even in this case, there is no suggestion of guilt.

Under Special Acts like the Unlawful Activities (Prevention) Act, 1967, and The Prevention of Money Laundering Act, 2002, bail is not possible unless there is an evaluation of no prima facie case. It inevitably happens after detention for considerable periods of time. Even then, there is no suggestion of guilt. A period of 30 days may lead to removal of the Minister even without any evaluation whatsoever; thus, possibly arbitrary. However, at present, without a distinct provision for the disqualification of the Ministers themselves, they shall be implicitly disqualified if there is disqualification for being an MP. According to the Constitution and the RP Act, 1951, the disqualification of MPs and MLAs/MLCs shall be determined by: (i) the President and the Governor, on the binding opinion of the Election Commission of India, on account of office of profit or insolvency, or (ii) the Speaker/Chairman, in cases involving defection, or (iii) the judiciary on the account of conviction for certain offenses. In these three cases, disqualification arises as a consequence of the decision of a judicial or high constitutional functionary.

There are other reasons why the Bill became necessary in the recent years. They are^[9]:

1. **Public Interest Foundation PIL (2018):** The Supreme Court stated that it cannot enact laws or provide new reasons for disqualification other than that of Parliament. Only Parliament possesses the power of law-making regarding disqualification. SC advised that a robust law should be enacted, stripping parties of membership and denying tickets to candidates who commit egregious crimes.
2. **Manoj Narula v. Union of India (2014):** The Supreme Court of India clarified that there was no law that prohibited the selection of Ministers with criminal backgrounds, but advised the Prime Minister against selecting Ministers with charges of heinous crimes.
3. **V. Senthil Balaji Case:** The then Tamil Nadu Minister V. Senthil Balaji was ordered by the Supreme Court in 2025 to make a choice between Freedom or Office because the Supreme Court realized it had been misled by his reappointment even though he had been granted bail in the alleged 'cash for jobs scam'. He later resigned from his post, but his case in regards to his bail is still ongoing.
4. **Arvind Kejriwal Case (2024):** The SC granted bail to Arvind Kejriwal in the money laundering case related to the liquor policy scandal, restrained him from holding official work, could not compel his resignation, but he later resigned.

Conclusion

On 20 August 2025, the Indian Parliament was presented with the "Constitution (One Hundred and Thirtieth Amendment) Bill, 2025". The bill, upon acquiring the constitutionally mandated two-thirds majority to become a law, intends to make provisions to amend Articles 75, 164, and 239AA of the Constitution of India. The proposed legislation requires the automatic vacating of office of the Prime Minister, the Chief Minister (or Head of State) as the

Head of a State, and Ministers who are detained for thirty days on charges of offenses punishable with imprisonment of five years or more, regardless of whether they enjoy the confidence of their legislative house. On a prima facie analysis, the "Constitution (One Hundred and Thirtieth Amendment) Bill of 2025" appears to be a guardian of constitutional morality and integrity in public life. Leaders who are accused of serious criminal offenses cannot logically be expected to occupy high places in our polity. Such persons will inevitably thwart or hinder the canons of constitutional morality. However, there are many concerns on misuse of police powers which needs to be addressed by the joint parliamentary committee which is scrutinizing the bill currently.

References

1. Suraj, Shashwat. (2021). Corrupt Practices: A Critical Analysis of Representation of Peoples Act, 1951. 10.13140/RG.2.2.19446.37444.
2. GKToday, Members of parliament: Qualifications and disqualification, <https://www.gktoday.in/topic/members-of-parliament-qualifications-and-disqualification/> (last visited on: December 12, 2025)
3. Ashish Chandra Dewanshu, The 130th Constitutional Amendment Bill, 2025: Presumption of innocence versus Constitutional Morality in ministerial tenure, <https://www.lawjournals.org/assets/archives/2025/vol11issue10/11234.pdf> (last visited on: December 12, 2025)
4. Satarkar Nale, Ganesh. (2025). Constitutional Morality and the Crisis of Political Accountability: A Critical Study of the 130th Amendment Bill, 2025. In *Strengthening Indian Democracy*, 4(1) ILE Constitutional 2025.
5. PRS, The Constitution (130th Amendment) Bill, 2025. [Removal of Ministers upon Detention], <https://prsindia.org/billtrack/the-constitution-one-hundred-and-thirtieth-amendment-bill-2025> (last visited on: December 12, 2025)
6. Peeyush K. Mehta, Dr. Namita Jain, The Constitution (One Hundred And Thirtieth) Amendment Bill, 2025. A Critical Examination Of Accountability Of Ministers And Constitutional Safeguards In India, <https://lex-localis.org/index.php/LexLocalis/article/view/801217/1800> (last visited on: December 12, 2025)
7. Shivanshu K. Srivastava & Nitesh Kumar Dubey, Ministerial Accountability, Democratic Ethics And The Constitution (130th Amendment) Bill, 2025. A Critical Constitutional Study, <https://ijalr.in/wp-content/uploads/2025/12/Ministerial-Accountability-Democratic-Ethics-and-the-Constitution-130th-Amendment-Bill-2025-A-Critical-Constitutional-Study.pdf> (last visited on: December 12, 2025)
8. PRS, The Constitution (130th Amendment) Bill, 2025. [Removal of Ministers upon Detention], <https://prsindia.org/billtrack/the-constitution-one-hundred-and-thirtieth-amendment-bill-2025> (last visited on: December 12, 2025)
9. Sarthak Gupta, The Wolf in Morality's Clothing, <https://vidhilegalpolicy.in/blog/the-wolf-in-moralitys-clothing/> (last visited on: December 12, 2025)