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## Constitution (130th Amendment) Bill 2025: Legal and Democratic Implications of Removing Ministers on Arrest

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*The Constitution (One Hundred and Thirtieth Amendment), 2025, introduces a paradigm shift in Indian constitutional law by mandating the automatic removal from office of the Prime Minister, Chief Ministers and Union/ State Ministers if they remain in detention for thirty consecutive days in connection with an offence punishable with five years or more. The proposal, while framed as a reform to ensure ethical governance and prevent governance from prison, has far-reaching implications for the principles of presumption of innocence, separation of powers and federal balance. This article examines the legal and democratic consequences of the Act through a multidimensional lens. It examines the constitutional framework under Articles 75, 164 and 239AA, pits the Act against statutory provisions such as the Representation of the People Act, 1951, and evaluates its compatibility with fundamental rights under Articles 14 and 21. Democratic and political implications are examined, particularly the risks of political weaponisation of arrests, destabilisation of elected governments and implications for Central-State federalism.*

*Drawing on comparative constitutional practices in the United Kingdom, the United States, and other parliamentary democracies, the article emphasises that automatic removal upon arrest is largely inconsistent with liberal democratic norms, which traditionally reserve disqualification for conviction or removal. Ethical concerns about punishment without guilt are also addressed, emphasising the need to balance accountability with due process. The article concludes with policy recommendations, including judicial oversight mechanisms, distinctions between types of detention, expedited trials for ministers, and the creation of independent review bodies to combat abuse. Ultimately, while the 130th Amendment Bill seeks*

*to improve public trust in government, its current form risks undermining constitutional morality unless it is recalibrated with robust safeguards.*

**Keywords:** *separation of powers, federalism, ministerial accountability, constitutional morality, due process.*

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## INTRODUCTION

The criminalisation of politics has long been recognised as one of the greatest threats to Indian democracy. Successive reports by the Election Commission of India, the Law Commission and civil society groups have highlighted the deep entrenchment of criminal charges among legislators and ministers at both the Union and State levels. Against this backdrop, the Constitution (130th Amendment) Bill 2025<sup>1</sup> was introduced in the Lok Sabha with the stated objective of preventing individuals under detention from continuing to govern as ministers.

The Bill seeks to amend Articles 75, 164 and 239AA of the Constitution<sup>2</sup> to provide that the Prime Minister, Chief Ministers and other Ministers shall automatically cease to hold office if they are detained for thirty consecutive days for an offence punishable with imprisonment for five years or more. The government has justified the Bill on grounds of morality, accountability and the need to maintain public confidence in executive institutions. Supporters argue that no democracy should tolerate ministers who perform functions from behind bars.

Yet the proposal has sparked intense controversy. Critics argue that the amendment undermines the presumption of innocence, opens the door to political abuse of investigative agencies, and risks destabilising elected governments, especially at the state level. Arrest and prolonged detention, often used as political weapons, could become sufficient to topple governments or disqualify opposition leaders from executive roles.

This research article attempts to comprehensively analyse these issues. It analyses the bill's legal and constitutional implications, its impact on democratic processes, its consistency with global practices, and its ethical foundations. Through this structured examination, the article

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<sup>1</sup> Constitution (One Hundred and Thirtieth Amendment) Bill 2025

<sup>2</sup> Constitution of India 1950, arts 75, 164 and 239AA

argues that while the bill addresses a real problem, the maintenance of ethical governance, it requires careful recalibration to prevent it from becoming an instrument of political destabilisation.

## CONSTITUTIONAL AND LEGAL ANALYSIS

**Constitutional Framework: Articles 75, 164, and 239AA:** The Constitution of India lays down the framework for executive power at the Union and State levels. Article 75<sup>3</sup> regulates the appointment and tenure of the Prime Minister and other Union Ministers, and provides that they ‘shall hold office during the pleasure of the President’. Similarly, Article 164<sup>4</sup> contains parallel provisions for Chief Ministers and Ministers of State, with tenure subject to the pleasure of the Governor. Article 239AA,<sup>5</sup> specifically for the National Capital Territory of Delhi, provides comparable provisions for the Council of Ministers headed by the Chief Minister.

The 130th Amendment Bill 2025<sup>6</sup> proposes to insert additional clauses in these provisions. It provides that if any Minister, including the Prime Minister or Chief Minister, remains in detention for thirty consecutive days in connection with an offence punishable with imprisonment for a term not less than five years, they shall cease to hold office. This introduces a constitutional disqualification separate from legislative membership, making ministerial tenure dependent not only on political majority and executive approval, but also on detention status.

**Interaction with Statutory Disqualification Regime:** Ministerial eligibility is inherently linked to legislative membership. The Representation of the People Act, 1951 (RPA),<sup>7</sup> only provides for the disqualification of legislators upon conviction for certain offences, typically those involving imprisonment for two years or more (RPA Sec. 8).<sup>8</sup> Until conviction, even legislators with pending criminal trials remain eligible to contest and hold office.

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<sup>3</sup> Constitution of India 1950, art 75

<sup>4</sup> Constitution of India 1950, art 164

<sup>5</sup> Constitution of India 1950, art 239AA

<sup>6</sup> The Constitution (One Hundred and Thirtieth Amendment) Bill 2025

<sup>7</sup> Representation of the People Act 1951

<sup>8</sup> Representation of the People Act 1951, s 8

The 130th Amendment<sup>9</sup> disrupts this scheme by imposing ministerial removal before conviction based solely on the length of detention. This creates a double standard: a legislator can legally retain membership of Parliament/Assembly while at the same time being disqualified from ministerial office due to detention. While such differentiation is constitutionally permissible (since ministerial office is not a fundamental right but a constitutional trust), it raises concerns about consistency and fairness.

**Presumption of Innocence and Article 21:** Article 21 guarantees the right to life and personal liberty except in accordance with the procedure established by law. Judicial interpretation has extended this to include the presumption of innocence as a fundamental facet of a fair trial. By mandating automatic removal of ministers after prolonged detention without conviction, the Bill risks undermining this principle.

In *Maneka Gandhi v Union of India*, the Supreme Court ruled that any law restricting liberty must be 'just, equitable and reasonable'.<sup>10</sup> Applying this standard, critics argue that disqualification resulting from mere detention is disproportionate, as it penalises an individual before guilt is judicially determined. Proponents, however, argue that the measure is administrative, not punitive, and focuses on managerial incompetence rather than presumption of guilt.

**Equality before Law and Article 14:** Article 14 prohibits arbitrary state action. The thirty-day threshold set by the Bill may be challenged as arbitrary. Why thirty and not fifteen, sixty or ninety? The absence of a rational basis for this temporal cut-off invites judicial review. In *E.P. Royappa v State of Tamil Nadu*,<sup>11</sup> the Court equated arbitrariness with inequality and held that state action without reasoned justification violated Article 14(2).

In addition, selective application to ministers (excluding other constitutional offices such as Governors, Judges, or even legislatures themselves) may be challenged as discriminatory. Unless the State demonstrates comprehensible differentiation and a rational connection with governmental objectives, the provision risks being struck down.

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<sup>9</sup> The Constitution (One Hundred and Thirtieth Amendment) Act 2025

<sup>10</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597

<sup>11</sup> *E.P. Royappa v State of Tamil Nadu* AIR 1974 SC 555

**Judicial Precedents on Ministerial Eligibility:** In *Manoj Narula v Union of India*<sup>12</sup>, the Supreme Court ruled on whether individuals facing criminal charges could be appointed as ministers. The Court refrained from imposing judicially created disqualifications, holding that the matter fell within the discretion of the Prime Minister and parliamentary accountability. The judgment emphasised constitutional morality but avoided judicial overreach.

The 130th Amendment Bill legislatively<sup>13</sup> addresses the same concern and effectively overrides judicial limitations by enshrining disqualification in the constitutional text itself. While Parliament has the power to amend the Constitution, the amendment must still be consistent with the basic structural doctrine established in *Kesavananda Bharati v State of Kerala*.<sup>14</sup> If removal after detention is found to undermine democracy, the rule of law or the separation of powers, it can be declared invalid by judicial review.

**Federalism and Centre-State Tensions:** By extending it to Chief Ministers and Ministers of State, the Bill infringes on state autonomy. Arrests made by central investigative agencies (CBI, ED, NIA) often involve political sensitivities. If such arrests automatically lead to the termination of ministerial office at the state level, the central government can indirectly destabilise opposition-led states. The Supreme Court has consistently protected the federal balance, notably in *S.R. Bommai v Union of India*,<sup>15</sup> where the arbitrary dismissal of state governments was restricted.

## DEMOCRATIC AND POLITICAL IMPLICATIONS

**Accountability versus Political Weaponisation:** The 130th Amendment Bill, 2025,<sup>16</sup> is based on the principle that ministers should be held to the highest standards of accountability. In a democracy plagued by the criminalisation of politics, the measure seeks to reassure voters that individuals in judicial custody will not govern from prison. This is in line with the ethical expectation that ministers, as constitutional trustees, must maintain public confidence in the executive.

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<sup>12</sup> *Manoj Narula v Union of India & Ors* W P (C) No 271/2004

<sup>13</sup> The Constitution (One Hundred and Thirtieth Amendment) Bill 2025

<sup>14</sup> *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala & Anr* (1973) 4 SCC 225

<sup>15</sup> *S.R. Bommai v Union of India* (1994) 3 SCC 1

<sup>16</sup> The Constitution (One Hundred and Thirtieth Amendment) Bill 2025

India's political context, however, complicates this narrative. Investigative agencies such as the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) have been regularly accused of selective prosecution and political targeting.<sup>17</sup> When arrest becomes the trigger for automatic removal, opposition leaders fear that pre-trial detention can be used as a weapon to destabilise governments without electoral or judicial sanction.

The political incentive structure compounds these concerns. In coalition governments, where ministerial portfolios are often delicately balanced, even the removal of a single minister can break alliances. So, what appears to be an accountability measure can in practice become a tool for political manipulation.

**Governance Disruption and Administrative Continuity:** The government requires stability. The sudden removal of ministers, especially the Chief Ministers or the Prime Minister, after thirty days of detention can create leadership vacuums. While the Bill allows for reappointment after release, the intervening disruption can paralyse decision-making.

Consider scenarios where a Chief Minister is detained in a politically sensitive state: policy paralysis can ensue, bureaucratic uncertainty increases, and coalition partners can realign. In the Union context, the sudden termination of the Prime Minister's office can trigger constitutional crises, especially if no immediate successor enjoys majority support.

The Constitution currently does not provide a clear framework for interim arrangements in such cases. While cabinet principles assume collective responsibility, the removal of the head of government can destabilise the entire executive.<sup>18</sup>

**Centre-State Federalism and Political Autonomy:** A significant democratic concern arises from the Bill's extension to state governments. Federalism is part of the basic structure of the Constitution, as found in *S.R. Bommai v Union of India*.<sup>19</sup> If state chief ministers and ministers can be forced from office due to detention orders in cases initiated or investigated by central agencies, state autonomy becomes vulnerable.

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<sup>17</sup> *Vineet Narain & Ors v Union of India & Anr* (1998) 1 SCC 226

<sup>18</sup> *Shamsher Singh & Anr v State of Punjab* (1974) 2 SCC 831

<sup>19</sup> *S.R. Bommai v Union of India* (1994) 3 SCC 1

Historically, Article 356<sup>20</sup> (President's Rule) has been criticised for being misused to dismiss opposition-led state governments. The Supreme Court limited such misuse in *Bommai*. Yet the 130th Amendment may indirectly reintroduce central leverage. Arrest and detention – ostensibly legal processes – can replace constitutional dismissal and achieve the same destabilising effect under the guise of accountability.

**Electoral and Party System Dynamics:** The Bill will inevitably reshape electoral and party strategies. Political parties can avoid nominating individuals with pending criminal investigations for ministerial positions, leading to cleaner candidate pools. On the other hand, parties in power can strategically retain vulnerable leaders in legislative roles, while reserving ministerial positions for individuals who are less susceptible to investigation.

The risk of 'temporary disqualification' could also lead to frequent cabinet reshuffles, reducing ministerial stability and weakening policy implementation. Over time, this could undermine public trust in the executive as an institution, as citizens see repeated cycles of arrest, removal, and reappointment.

From an electoral perspective, ruling parties can use the Bill as evidence of their commitment to 'clean government,' while opposition parties can portray it as a constitutional weapon of political vendetta. The polarising narratives risk deepening democratic distrust.

**Public Morality and Democratic Trust:** Despite the risks of abuse, the Bill also responds to a real democratic demand: that public office must be morally credible. Cases of ministers still exercising power from prison have provoked widespread criticism. Democratic legitimacy rests not only on legal fitness but also on the perception of ethical governance.

The 130th Amendment<sup>21</sup> can thus be seen as a symbolic assertion of constitutional morality – drawing a line that ministers cannot cross. As B.R. Ambedkar emphasised in the Constituent Assembly, 'constitutional morality is not a natural sentiment; it has to be cultivated.'<sup>22</sup> The Bill arguably seeks to cultivate such morality by legally enforcing ethical standards for the executive office.

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<sup>20</sup> Constitution of India 1950, art 356

<sup>21</sup> The Constitution (One Hundred and Thirtieth Amendment) Bill 2025

<sup>22</sup> Dr. B.R. Ambedkar, *Constituent Assembly Debates* (vol VII, 1948)

## COMPARATIVE PERSPECTIVES

**United Kingdom: The Role of Political Convention:** In the Westminster system, ministerial accountability is shaped less by codified legislation and more by political convention. Under the principle of collective responsibility, ministers are expected to resign not only for proven misconduct but also for loss of political credibility.<sup>23</sup>

If a minister is charged with a criminal offence, it is customary, although not legally mandatory, for resignation to follow. For example, British ministers such as Peter Mandelson and Priti Patel have resigned after controversies that, while not involving conviction, have undermined political confidence. The Ministerial Code sets ethical standards but does not impose automatic disqualification upon arrest or detention. Thus, the UK relies on political morality and parliamentary pressure rather than constitutional coercion. This approach preserves the presumption of innocence while ensuring accountability through political culture.

**United States: Separation of Powers and Impeachment:** In the United States, executive accountability follows a markedly different trajectory. The President and Governors cannot be removed by arrest or detention alone. Instead, the Constitution provides impeachment as the only mechanism for removal before the end of the term.

An arrest or indictment does not automatically disqualify an executive. For example, several American mayors and governors have remained in office during criminal investigations until either conviction or political resignation. At the federal level, Presidents Richard Nixon (Watergate) and Bill Clinton (Monica Lewinsky scandal) faced impeachment proceedings, but not automatic removal due to criminal allegations.<sup>24</sup> The emphasis here is on institutional separation: criminal process and political office remain distinct. Removal requires political consensus (Congress impeachment), not mere custodial status.

### Other Parliamentary Democracies –

**Several parliamentary democracies also avoid automatic disqualification based on arrest:**

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<sup>23</sup> Rodney Brazier, *Constitutional Practice: The Foundations of British Government* (3d edn, OUP 1999)

<sup>24</sup> Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* (3rd edn, 2019)

**Canada:** Ministers facing criminal charges typically resign voluntarily or at the request of the Prime Minister, but no constitutional provision requires automatic dismissal.<sup>25</sup>

**Australia:** Similar to Canada, political convention requires ministers to resign when formally charged, although they can be reinstated if acquitted.<sup>26</sup>

**South Africa:** The Constitution requires the removal of ministers by the President, but does not make tenure conditional on arrest. However, public pressure and judicial rulings (e.g. *Economic Freedom Fighters v Speaker of the National Assembly*) have forced resignations for misconduct.<sup>27</sup>

Across jurisdictions, the unifying theme is that disqualification generally follows conviction, not arrest. An arrest may trigger political pressure, but not constitutional removal.

**Comparative Ethical Standards:** The comparative evidence suggests that India's 130th Amendment Bill is exceptional in its constitutional obligation to remove on arrest. While democracies expect high ethical standards from ministers, most retain the presumption of innocence until proven guilty. The balance is usually maintained by political conventions, party discipline and parliamentary accountability.

In contrast, the Indian proposal risks politicising, where pre-trial detention, even before trial, automatically dictates political outcomes. This is not a feature of the Westminster model or of presidential systems such as the United States.

## ETHICAL AND RULE-OF-LAW CONCERNS

**Presumption of Innocence as a Democratic Ethic:** The presumption of innocence is not only a procedural right but also a democratic ethic. It reflects the principle that punishment should follow proof, not presumption. The Supreme Court has repeatedly emphasised that the presumption of innocence is a human right enshrined in Article 21.<sup>28</sup>

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<sup>25</sup> Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (3rd edn, University of Toronto Press 2004)

<sup>26</sup> John M. Williams, *The Australian Constitution: A Documentary History* (Melbourne University Press 2005)

<sup>27</sup> *Economic Freedom Fighters v Speaker of the National Assembly and Ors* [2016] (5) BCLR 618 (CC)

<sup>28</sup> *State of Rajasthan v Balchand* (1977) 4 SCC 308

By mandating the termination of ministerial office upon arrest, the 130th Amendment<sup>29</sup> Bill blurs the line between accusation and conviction. A minister can lose office even when an investigation is weak, politically motivated or ultimately dismissed. Critics argue that this amounts to punishment without trial, a violation of both legal and ethical standards of fairness.

**Rule of Law and Arbitrariness:** The rule of law, a fundamental feature of the Indian Constitution, requires that power be exercised in a non-arbitrary and predictable manner.<sup>30</sup> The thirty-day threshold in the Bill, chosen without transparent justification, risks violating this standard. Why thirty days and not fifteen or sixty? The absence of empirical grounds makes the provision vulnerable to arbitrary challenges.

Moreover, investigative agencies can manipulate the length of detention to exceed the thirty-day threshold. Pre-trial detention in India is notoriously prolonged due to systemic delays, meaning that many sub-trials languish for months or years without a conviction.<sup>31</sup> If applied to ministers, such delays could be used as a weapon to ensure automatic disqualification, even in frivolous cases.

**Ethical Risks of Political Misuse:** Indian democracy has repeatedly seen allegations of abuse of central investigative agencies against opposition leaders. The Supreme Court itself has acknowledged that agencies like the CBI were once considered a ‘caged parrot.’

If ministerial tenure is directly linked to detention, political actors may have incentives to orchestrate arrests of rivals through compliant agencies. This creates a moral hazard: actors in power may use the state machinery not for justice but for political gain. Such abuse corrodes public trust in institutions, deepens partisan distrust, and undermines the ethical legitimacy of government.

**Constitutional Morality and Governance Ethics:** Dr. B.R. Ambedkar’s concept of constitutional morality emphasised that constitutional provisions should be interpreted and applied in a spirit that upholds democracy. The Bill, on the one hand, seeks to foster

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<sup>29</sup> The Constitution (One Hundred and Thirtieth Amendment) Bill 2025

<sup>30</sup> *Indira Nehru Gandhi v Raj Narain & Anr* AIR 1975 SC 2299

<sup>31</sup> Law Commission, *Amendments To Criminal Procedure Code, 1973-Provisions Relating to Bail* (Law Com No 268, 2017)

constitutional morality by ensuring that ministers maintain integrity. On the other hand, it risks violating that morality by prioritising political expediency over due process.

Governance ethics require balancing institutional trust with individual justice. Ethical governance cannot rely solely on strict legal mechanisms; it must also foster a culture of voluntary resignation, party discipline and accountability to Parliament. Where such conventions are absent, constitutional amendments such as the 130th risk filling a moral vacuum, but in ways that may weaken democratic legitimacy.

**International Human Rights Standards:** Internationally, the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, enshrines the presumption of innocence under Article 14(2). The UN Human Rights Committee has cautioned that pre-trial detention should not be considered as an indication of guilt.

The 130th Amendment, by attaching adverse political consequences to detention, arguably contradicts India's international obligations. While the ICCPR allows restrictions on political rights in limited circumstances, they must be necessary, proportionate and non-discriminatory. Automatic removal for thirty days of detention may fail this test.

### **Balancing Competing Values -**

Ultimately, the ethical debate comes down to balancing two competing values:

**Institutional Integrity:** Citizens should not be governed by individuals who are physically incompetent or ethically compromised by serious criminal charges.

**Individual Rights:** Citizens, including ministers, should not be punished without conviction, for democracy would lapse into arbitrary circumstances.

An ethically sustainable approach would reconcile both by ensuring that temporary incompetence due to custody is addressed through judicial oversight or political conventions, not automatic constitutional removal.

### **POLICY RECOMMENDATIONS**

**Judicial Oversight of Ministerial Removal:** One of the most serious constitutional objections to the proposed 130th Amendment lies in its automatic and mechanical operation. By making

the mere fact of thirty consecutive days of detention the trigger for removal from ministerial office, the amendment risks converting pre-trial detention into a form of indirect punishment. This approach overlooks the foundational constitutional principles of presumption of innocence and procedural fairness embedded within Articles 14 and 21. In a constitutional democracy governed by the rule of law, consequences of such magnitude, particularly the removal of an elected executive authority, ought not to flow automatically from executive action without independent scrutiny. The absence of safeguards makes the provision vulnerable to misuse, particularly in politically charged environments where arrest and detention may be strategically employed.

To address this constitutional vulnerability, the amendment could incorporate a structured system of judicial oversight before the termination of office becomes effective. Under such a framework, once a minister has remained in detention for thirty consecutive days in connection with an offence punishable with five years or more, the matter would be automatically referred to a designated constitutional bench of the Supreme Court (in the case of Union Ministers and Chief Ministers) or the relevant High Court (in the case of State Ministers). This referral should be mandatory and time-bound to ensure that executive or political actors cannot manipulate the process through delay.

The designated bench would then conduct a limited but meaningful summary review. The scope of review need not extend to a full examination of the criminal case; rather, it would focus on whether the detention arises from a bona fide prosecution supported by prima facie material, or whether it appears manifestly arbitrary, mala fide, or politically motivated. The court could examine the legality of the arrest, compliance with procedural safeguards, the nature of the allegations, and whether continued detention is judicially justified. This limited scrutiny would preserve judicial efficiency while ensuring constitutional safeguards.

Removal from office would take effect only if the court confirms that the continued detention is legally justified and not tainted by abuse of process. Conversely, if the court finds indications of political vendetta, procedural impropriety, or lack of prima facie substance, the automatic removal provision would be suspended pending further judicial determination. Such a calibrated mechanism would harmonise the objectives of ethical governance and accountability with the imperatives of due process and constitutional morality.

By embedding judicial oversight within the amendment's architecture, Parliament would mitigate the risks of political weaponisation of arrests and protect the stability of elected governments. At the same time, the accountability rationale of preventing governance from prison would remain intact in cases of genuine and serious prosecution. This balanced approach would strengthen, rather than undermine, the constitutional framework by ensuring that removal from high public office occurs not through mechanical operation, but through constitutionally supervised legitimacy.

**Differentiating Types of Custody:** A major constitutional concern with the 130th Amendment<sup>32</sup> proposal lies in its failure to clearly distinguish between different forms of custody. The Bill broadly refers to 'detention' without clarifying whether it includes police custody, judicial custody, or preventive detention. This ambiguity is constitutionally significant because each form of custody operates under distinct legal standards, procedural safeguards, and degrees of judicial oversight. Treating all forms of detention as equivalent for automatic removal from high constitutional office risks serious injustice and opens the door to executive abuse.

Police detention, for instance, is typically short-term and occurs at the initial stage of investigation. Under the Code of Criminal Procedure, an arrested person may be kept in police custody for a limited period, subject to production before a magistrate within twenty-four hours. Although judicial authorisation is required for continued custody, police detention remains particularly vulnerable to misuse, especially in politically sensitive cases. Arrests can be strategically timed, and charges carrying a punishment of five years or more can be invoked at the preliminary stage without substantial evidentiary scrutiny. If automatic removal were triggered merely by prolonged police detention, it could incentivise politically motivated arrests aimed at destabilising governments rather than securing justice.

Judicial detention, by contrast, involves remand to custody pursuant to an order of a magistrate or court. This form of detention is subject to periodic judicial review, and the court must be satisfied that custody is necessary for investigation or trial. Judicial oversight provides a comparatively higher degree of procedural protection and reduces the likelihood of arbitrary action. However, even judicial detention does not amount to a finding of guilt.

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<sup>32</sup> The Constitution (One Hundred and Thirtieth Amendment) Act 2025

Pre-trial incarceration may occur due to denial of bail for reasons such as flight risk or tampering with evidence, not because the accused has been convicted. Therefore, while judicial detention carries greater legitimacy than police custody, it still engages the constitutional principle of presumption of innocence.

Preventive detention presents an even more complex challenge. Unlike punitive detention, preventive detention is not based on a proven criminal offence but on an executive assessment that a person may act in a manner prejudicial to public order, national security, or similar concerns. Although constitutionally recognised under Article 22, preventive detention laws such as the National Security Act provide comparatively weaker procedural safeguards and are often criticised for their susceptibility to political misuse. If preventive detention were included within the scope of automatic removal, it could become a powerful instrument to disqualify ministers without the safeguards of a criminal trial. This would fundamentally alter the balance between the executive and the legislature, enabling removal through executive action rather than judicial determination.

In light of these distinctions, sound constitutional policy requires that removal provisions, if retained at all, be narrowly tailored. At a minimum, automatic removal should be limited to cases of judicial detention arising from a criminal investigation into serious offences, and even then, subject to stringent safeguards. Preventive detention must be explicitly excluded from triggering disqualification, as its inclusion would undermine due process and invite strategic misuse. Clear statutory definitions and procedural thresholds are essential to prevent detention laws from becoming tools of political elimination rather than instruments of justice. Without such differentiation, the Amendment risks conflating fundamentally different legal processes and eroding core constitutional principles.

**Independent Review Body:** An important institutional safeguard that could significantly strengthen the legitimacy of the proposed amendment is the creation of an Independent Review Body. Rather than allowing automatic removal to operate mechanically upon the completion of thirty days of detention, the Constitution could mandate that such detention be reviewed by an impartial, constitutionally recognised panel. This body should ideally consist of retired judges of the Supreme Court or High Courts, along with eminent constitutional scholars and former public law experts of impeccable integrity. The

composition must ensure independence from the executive branch, thereby reinforcing public confidence in the neutrality of the review process.

The primary function of this Independent Review Body would be to conduct a limited but meaningful inquiry into the circumstances surrounding the detention of the concerned Prime Minister, Chief Minister, or Minister. First, it would examine the factual matrix of the detention, including the nature of the allegations, the procedural regularity of the arrest, and whether due process requirements under Articles 21 and 22 have been strictly complied with. Second, it would determine whether the charges genuinely meet the constitutionally prescribed threshold of a ‘serious offence,’ particularly where the amendment applies to offences punishable with imprisonment of five years or more. This scrutiny is essential because the mere statutory classification of an offence should not automatically translate into constitutional disqualification without contextual assessment.

After completing its evaluation, the body would issue a reasoned recommendation to the President (in the case of Union Ministers) or the Governor (in the case of State Ministers). While the final formal act of removal may remain constitutionally vested in these authorities under Articles 75 and 164, their decision would be guided by the independent body’s findings. Such a structured mechanism would introduce transparency, accountability, and deliberative scrutiny into what would otherwise be a rigid and potentially harsh constitutional consequence.

Most importantly, this review mechanism would act as a constitutional buffer between investigative agencies and political officeholders. In a system where arrest powers are exercised by executive-controlled agencies, the risk of politically motivated detention cannot be entirely discounted. An Independent Review Body would therefore mitigate the possibility of arbitrary or mala fide use of arrest powers to destabilise elected governments. By interposing judicially experienced oversight before automatic removal takes effect, the amendment would better balance the objectives of ethical governance with the foundational democratic principles of fairness, due process, and constitutional morality.

**Fast-Track Trials for Ministers Facing Serious Charges:** One of the most persistent structural challenges in India’s criminal justice system is the extraordinary delay in the disposal of cases, particularly those involving elected representatives. Data published by the

Association for Democratic Reforms has consistently shown that a significant percentage of sitting Members of Parliament and Members of Legislative Assemblies face pending criminal cases, including serious offences. Many of these cases remain unresolved for years, sometimes decades, due to systemic delays, adjournments, procedural complexities, and overburdened courts. This prolonged pendency creates a dual problem: on the one hand, it erodes public confidence in democratic institutions by allowing individuals with serious allegations to continue in public office; on the other, it undermines the presumption of innocence by subjecting accused representatives to extended periods of reputational and political uncertainty without a final judicial determination of guilt.

In the context of the proposed automatic removal of ministers upon prolonged detention, the issue of delay becomes even more critical. If criminal proceedings are not resolved swiftly, detention, whether justified or politically motivated, could effectively determine the fate of an elected government without a conviction. These risks are transforming pre-trial incarceration into a de facto mechanism of political disqualification. To safeguard both democratic stability and constitutional fairness, ministers facing charges for serious offences punishable with substantial imprisonment should be subjected to fast-track judicial proceedings. Such an approach would ensure that accountability is grounded in adjudicated findings rather than mere accusations or interim detention.

The Supreme Court of India has already acknowledged the urgency of addressing criminal cases against legislators. In several directions issued to expedite trials of sitting MPs and MLAs, the Court has emphasised that such cases should ordinarily be concluded within one year, subject to exceptional circumstances. Institutionalising this principle through legislation specifically tailored to ministers holding executive office would strike a more balanced approach. Rather than relying solely on automatic removal triggered by detention, the law could mandate time-bound investigation and trial, coupled with periodic judicial monitoring. This would reduce the risk of political misuse of arrest powers while simultaneously reinforcing the principle that those entrusted with executive authority must clear serious allegations promptly.

Ultimately, fast-track trials for ministers would harmonise the competing demands of ethical governance and constitutional due process. By ensuring swift judicial scrutiny, the system would prevent prolonged detention from becoming a tool of political destabilisation, while

also reinforcing public trust that serious criminal allegations against high officeholders are neither ignored nor indefinitely delayed.

**Temporary Suspension Instead of Automatic Removal:** A more constitutionally balanced alternative to automatic removal would be the introduction of a regime of temporary suspension of ministerial powers during the period of detention. Instead of treating detention as an event that immediately vacates office, the Constitution could provide that the concerned Prime Minister, Chief Minister, or Minister shall stand temporarily suspended from exercising executive functions for the duration of such detention. This approach would preserve institutional continuity while ensuring that executive authority is not exercised from custody.

Under such a model, ministerial functions and administrative responsibilities could be formally delegated to another member of the Council of Ministers. In the case of the Prime Minister or Chief Minister, the senior-most minister or a constitutionally designated colleague could discharge the functions of the office on an interim basis. This delegation would ensure that governance does not suffer paralysis, that cabinet decision-making continues seamlessly, and that the principle of collective responsibility under Articles 75 and 164 remains intact. By contrast, automatic removal may trigger political instability, leadership contests, or even the collapse of the government, particularly in coalition arrangements.

Importantly, temporary suspension would preserve the detained individual's formal status as a member of the Council of Ministers, albeit without operational authority. In this sense, the officeholder would remain a symbolic constitutional functionary, maintaining democratic legitimacy until guilt is established through due process. This structure respects the presumption of innocence under Article 21 and avoids converting mere detention, often a pre-trial procedural measure, into a form of punitive disqualification. It also reduces the risk of political misuse of arrest powers as a tool to unseat elected governments.

Furthermore, if the detained minister is subsequently released or acquitted, the restoration of full ministerial powers could occur automatically, without the need for reappointment or political renegotiation. Such a safeguard would prevent irreversible political consequences arising from what may later prove to be unfounded or weak charges. In cases where

conviction follows, existing constitutional and statutory disqualification mechanisms, such as those under the Representation of the People Act 1951, would then operate in the ordinary course.

This hybrid model thus strikes a principled balance between accountability and due process. It ensures that executive power is not exercised from detention, thereby protecting public confidence in governance, while simultaneously upholding constitutional morality, the presumption of innocence, and the stability of parliamentary democracy.

**Strengthening Political Conventions:** Ultimately, no constitutional amendment, however well-intentioned, can substitute for the force of political morality and mature democratic conventions. The proposed reform underscores a deeper structural concern in Indian constitutional practice: the relative weakness of resignation conventions when compared to jurisdictions such as the United Kingdom, where ministers routinely step down upon the initiation of serious investigations or upon the framing of charges, even in the absence of a legal mandate. In India, resignation often depends on political expediency rather than established ethical norms, leading to inconsistent standards of accountability. This gap cannot be effectively remedied solely through rigid constitutional mechanisms such as automatic removal upon detention. Instead, it calls for the development and institutionalisation of stronger political conventions grounded in responsibility, transparency, and public trust.

Parliament and political parties must therefore take proactive steps to cultivate internal accountability frameworks. One significant reform would be the adoption of formal codes of conduct requiring ministers to resign upon the framing of charges for serious criminal offences, particularly those involving corruption, abuse of office, or moral turpitude. Such codes would preserve the presumption of innocence while acknowledging that the integrity of public office demands higher ethical standards than those applicable to ordinary citizens. Additionally, political parties should institutionalise independent internal ethics committees tasked with vetting potential ministerial candidates and reviewing allegations of misconduct in a structured and transparent manner. These bodies could function as preliminary review mechanisms, ensuring that decisions are not driven solely by partisan considerations.

Embedding accountability within political culture would reduce excessive reliance on coercive constitutional compulsion and judicial intervention. A system sustained by strong conventions fosters stability, respects democratic mandates, and reinforces constitutional morality without undermining due process. In the long term, strengthening political ethics through convention and institutional reform offers a more balanced and sustainable pathway to ensuring clean governance than rigid automatic disqualification provisions.

## CONCLUSION

The Constitution (130th Amendment) Bill 2025 represents one of the most ambitious recent attempts to address the persistent problem of criminalisation in Indian politics. By mandating the termination of ministerial office after prolonged detention, it seeks to maintain institutional integrity, prevent government from prison and restore public confidence in the executive.

Yet, as this paper has shown, the proposal also poses profound constitutional and democratic risks. It directly challenges the presumption of innocence under Article 21, raises concerns about arbitrary action under Article 14, and could destabilise the delicate balance of federalism by enabling indirect central influence over state governments. Most importantly, by equating detention with incompetence, the Bill risks turning the criminal process into a political weapon, undermining both the rule of law and the ethical legitimacy of government.

Comparative experience reinforces these concerns. In mature democracies such as the United Kingdom, Canada and Australia, ministerial resignation is enforced by political conventions rather than rigid constitutional disqualification. In the United States, impeachment remains the only mechanism for executive removal before conviction. No liberal democracy equates pre-trial detention with automatic constitutional disqualification. India, therefore, risks departing from global norms and democratic best practices.

Ethically, the Bill reflects an understandable desire to cultivate constitutional morality, as envisioned by Ambedkar. But constitutional morality cannot be maintained by coercion alone; it must be cultivated through political culture, party discipline and public accountability. Over-reliance on constitutional coercion risks eroding these cultural foundations.

This paper, therefore, proposed reforms that balance accountability with fairness: the introduction of judicial oversight, the differentiation between types of detention, the establishment of independent review mechanisms, the obligation of expedited trials, and the consideration of temporary suspension rather than outright removal. Most importantly, India needs to invest in strengthening political conventions and party ethics, without which any amendment will remain vulnerable to abuse.

Ultimately, the 130th Amendment Bill forces India to confront a central democratic paradox: How should a democracy reconcile the demand for clean governance with the imperative of protecting fundamental rights? The answer, this paper argues, lies not in sacrificing one for the other, but in designing institutions and practices that harmonise both. Only then can India uphold the dual pillars of its constitutional identity, democracy and the rule of law.