THE 130TH CONSTITUTIONAL AMENDMENT BILL: RETHINKING DISQUALIFICATION OF MINISTERS

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ABSTRACT

Criminalisation of politics has been a persistent problem in India and has raised serious concerns to constitutional governance, democratic legitimacy and public trust in institutions. To address this problem, the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 was introduced in the Lok Sabha by Home Minister Amit Shah on August 20, 2025 which seeks to automatically remove the Prime Minister, Chief Minister or any Ministers who are arrested and detained in custody for thirty consecutive days in charge for serious criminal offences punishable more than five years. While the objective of the bill is to gain public trust and promote good governance, the mechanism proposed marks a significant departure from the existing conviction-based disqualification by introducing pre-trial detention as a constitutional trigger for removal. This paper undertakes a doctrinal and comparative constitutional analysis of the bill to examine whether ethical governance can be enforced constitutionally through arrest-based disqualification without undermining the fundamental aspects of constitutional principles. It critically evaluates the bill in light of the touchstones of Articles 14, 21, the presumption of innocence, parliamentary democracy, federalism and separation of powers which form a part of the basic structure of the Indian Constitution. The paper further situates the Indian proposal from a comparative framework by examining the approaches adopted in the United States, the United Kingdom and the Canada, where dominant model is political accountability and not legal disqualification. It argues that, despite the commendable intent of the bill. It seriously risks enabling political misuse of criminal process, weakening democratic accountability and disturbing the constitutional balance between the institutions. The paper concludes by proposing a more proportionate and constitutionally sustainable framework that balances the objective of clean governance with the fundamental aspects of due process and representative democracy.

Key Words: *- 130th Constitutional Amendment Bill, 2025, Criminalisation of politics, Ministerial disqualification, Basic structure doctrine, Constitutional morality.*

INTRODUCTION

The 130th constitutional amendment bill introduced in the Lok Sabha on august 2025 by home minister Amit shah is one of the controversial bills in the recent years. The bill seeks to disqualify Prime minister, chief ministers and ministers who are arrested and held in custody for thirty consecutive days for serious criminal offenses punishable with more than five years of imprisonment.

While the bill is seen as a measure to combat corruption and criminalisation of politics, it is criticized for interrupting various constitutional principles such as rule of law, due process, presumption of innocence, parliamentary democracy, separation of powers and basic structure doctrine. The issue of this bill is whether ethical governance be constitutionally enforced through arrest based detention.

PROPOSALS OF THE 130TH CONSTITUTIONAL AMENDMENT BILL

The bill inserts new provisions to Articles 75, 164 and 239AA into the Indian Constitution. These provisionsmandate that, if a minister is detained incustodyfor 30 consecutive days, he/she must be removed upon an advice tendered by prime minister or chief minister to the President or Governor respectively and if not they will be automatically stand disqualified on the 31st day. The bill also mentions that there won't be a bar upon reappointment upon release.

This marks as a conventional step from the conviction-based disqualification and introduces detention as a trigger for removal.

OBJECTIVE OF THE BILL

The Bill's Statement of Objects and Reasonsstate that the elected representatives are chosen by the people in order to work in public interest and not for personal gain as they represent the hopes and trust of the citizens. The character and conduct of the ministers should be beyond any ray of suspicion as they hold very important offices. A Minister who is arrested and detained in custody for serious criminal offences may effectively harm the principle of constitutional morality, good governance and dilute the public trust in him. Also, in the existing legal framework disqualification happens only after conviction and there is no provision which deals

with minsters held in custody in charge of serious criminal offences and the bill seeks to effectively fill this gap.

EXISTING CONSTITUTIONAL FRAMEWORK

At present a minister can be removed from his office by voluntary resignation or upon conviction for certain offences as mention under Chapter III of the Representation of the People Act, 1951[1]or under no-confidence motion held by the legislators when the minister no longer enjoys the majority votes or under Articles 102 and 191 when a minister holds an "office of profit" under the government, is of unsound mind, insolvent or foreign citizens which intends to prevent conflict of interest and maintain integrity in legislatures. Articles 75 and 164which regulates ministerial appointments works on political accountability and ministerial confidence and not on criminal procedures.

The judiciary has consistently upheld this principle through various precedents such as lily Thomas vs union of India where it was held that disqualification happens only on conviction where the guiltiness is proved and not on accusation or arrest and where the Court invoked constitutional morality but refrained from judicially enforced ministerial disqualification in Manoj Narula vs Union of India[2].

CONSTITUTIONAL CONCERNS RAISED BY THE BILL

1. Article 21 – Presumption of innocence

Arrest and detention do not determine guilt and happens before trial when the prosecution hasn't even begun and a person is legally proven and held to be guilty only upon conviction for the accused crime. The bill holding a mere detention as equivalent to disqualification, effectively violates article 21 which protects personal liberty and due process of law[3]. This scenario is specifically vulnerable to India where preventive detention and investigative agencies are vulnerable to misuse.

2. Article 14 – Arbitrariness

[1]The Representation of the People Act, 1951 (Act 43 of 1951).
[2]Manoj Narula v. Union of India (2014) 9 SCC 1
[3]The Constitution of India, art. 21.

While holding a public office justifies higher level of ethical standards and contrarily holding detention as a criterion for removal from such an office effectively fails the arbitrariness

doctrine under Article 14[4]. It was held in the case of E.P. Royappa v. State of Tamil Nadu[5], 1974 that arbitrariness is antithetical to equality.

The bill doesn't provide independent review before some higher authorities or judicial safeguards before removal raises equality concerns, where the government officials are removed under Article 311 only after due process and procedural steps with an option to appeal.

3. Disruption of Parliamentary Accountability

Lok Sabha and State legislative assemblies have the sole authority and power vested in them to elect and remove a Prime Minister upon their discretion when he loses majority support of MPs and who is appointed by the President. By transferring this power to investigative agencies to determine the continuance of Prime Minister's officeis violative of the Parliamentary form of democracy which was held to be a part of Basic Structure of the Constitution in P.V. Narasimha Rao v. State[6].

4. Federalism

Federalism means the divide of powers and authorities between Union and State governments with each level of its respective legislature. The bill intrudes upon this principle by allowing the law enforcement agencies of the Union government to unseat the Chief Minters of the States and vice- versa, as this federal structure is deemed to be a part of Basic Structure as held in Kesavananda Bharati vs Union of India[7] and reiterated in S.R. Bommai vs Union of India[8]. This structure entails the two levels of government to effectively govern and administer within their jurisdictional levels.

5. Separation of Powers

[4]The Constitution of India, art. 14.
[5]E.P. Royappa v. State of Tamil Nadu AIR 1974 SC 555
[6]P.V. Narasimha Rao v. State (1998) 4 SCC 626
[7]Kesavananda Bharati v. Union of India AIR 1973 SC 1461
[8]S.R. Bommai vs Union of IndiaAIR 1994 SC 1918

The principle of separation of powers between the legislature, executive and judiciary essentially forms a part of the basic structure of the Indian Constitution as held in KesavanandaBharati vs State of Kerala. The power to elect and dismiss a government is aexclusively the power of the legislature. The Bill by transferring this power in the hands of the permanent executive essentially has disrupted the principle of "triple chain of accountability" where the permanent executive is accountable to the legislature who is ultimately accountable to the people as held in Government of NCT of Delhi v Union of India[9]. This may create loopholes in the system and provide a chance for the investigative agencies to influence the tenure of the elected government officials including the Prime Minister and Chief Minister.

STRENGTHS OF THE BILL

- Government employees are suspended if they are detained in custody for more than 48 hours, so similar process should be applicable to Ministers as well to maintain fairness.
- This Bill will effectively curb the criminalisation of politics and corruption and as a result enhance public trust in institutions.
- As there has been many instances where politicians have run the ministries and election campaigns from jail and therefore the sensibilities of public were offended, this bill closes those loopholes and thus restores integrity.
- This Bill has proposed the same that the Law Commission of India and the Election Commission of India have recommended in their official reports to stop criminalisation of politics by proposing disqualification at the stage of framing of criminal charges.

COMPARATIVE ANALYSIS

United Kingdom: There is no legal provision requiring a minister to resign uponbeing arrested or charged for serious offences. Instead the ministers step down from their office voluntarily by following the Ministerial Code and upholding the public trust. Such resignation is due to ethical and political pressure and not legal. The prime minister can also request for resignation to ensure due process and moral responsibility.

United States :

[9]Government of NCT of Delhi vs. Union of India (2023) 8 SCC 501

In America, the President, Vice President and civil officers are impeached for offences like treason, bribery and other high crimes and misdemeanours by the Constitution. However, the process of impeachment is political and not done judicially or automatically. The Members could continue in their position even after indicted unless convicted and sentenced for felony. In the case of Powell v. McCormack (1969)[10], the U.S. Supreme Court, held that a member of Congress could be excluded only through constitutional process.For example, After Watergate, Richard Nixon resigned himself due to political pressure and not by automatic removal. The American model therefore prohibits the political abuse of arrests and safeguards democratic representation.

Canada : Canada's legal system doesn't mandate disqualification upon mere suspicion or detention. This ensures that elected ministers are not deprives from their offices. Under the Parliament of Canada Act, disqualification is required only upon conviction for certain heinous offences or violations. The Canadian Court has held that according to the rule of law, punishment cannot precede adjudication and requires both fairness and accountability. This closely aligns with Article 21 of the Indian Constitution which requires the justice to be seen as delivered according to the current legal system.

SUGGESTIONS

Instead of constitutionalising detention, the severity of the bill can be reduced with increased safeguards and alterations such as :

- Instead of outrightly removing the ministers out of their offices, they could suspend their functions till they are in custody acting as a temporary measure and combatting the variations in tenure with disqualifications and re-appointments.
- To reduce the number of cases, the political parties must uphold strict disciplines and principles in selecting and appointing their party members with clean records and backgrounds as ministers as it is a more sustainable and long-term solution.
- Accountability of the ministers must be held through routine disclosures of criminal records and maintaining binding codes of conduct to deter wrongdoing. Parties should screen the candidates effectively and disfavour those under serious investigation.

[10]Powell v. McCormack395 U.S. 486 (1969)

- The Law Commission's recommendations in 170th law commission report and The Election Commission 244th report suggested "framing of charges" as a criterion for disqualification rather than detention, this could filter out and reduce the politically motivated arrests.
- In order to reduce the severity of the provisions, bail can be made as a rule rather than an option with serious criminal offences.
- The core issue stems from lengthy pre-trial detention which needs to be reduced in order to ensure speedier trials as suggested by the Malimath Committee. The need for removal wouldn't be there if the trials are completed in a time bound manner.

CONCLUSION

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 represents one of the most ambitious attempts made by the legislature in the recent years to address the issue of criminalisation of Indian politics. Its intendedobjective of ensuring public life probity and restoring public confidence in constitutional offices is both legitimate and necessary. However, the process adopted by the bill raises serious constitutional concerns by introducing pre-trial detention and arrest as a trigger for removal. By departing from the current scenario of conviction-based disqualification in India, the bill undermines the rule of law, presumption of innocence and due process effectively.

More significantly, the proposed amendment violates the core features of the constitutional order. It weakens parliamentary democracy by shifting the power to determine the continuance of the elected government from the legislature to investigative agencies, disrupts the federal balance by enabling the indirect central interference with the state governments and violates the principle of separation of powers by allowing the permanent executive to determine the tenure of the political executive. In this manner, the bill not only regulates the exercise of power but potentially alters the basic structure of the Constitution.

While the frustration with the slow pace of criminal trials and tainted public officials is justified, but effective constitutional solutions cannot be built on procedurally fragile foundations. In a constitutional democracy, ethical governance cannot be enforced with bypassing the safeguards of fair trial and judicial determination of guilt. A more proportionate and sustainable option

would lie in strengthening mechanisms such as time-bound trials, stricter scrutiny at the time of framing of chargers, enhanced transparency and robust political accountability rather than constitutionalising pre-trial detention. Ultimately, unlesssubstantially altered with adequate safeguards and judicial oversight, the 130th Constitutional Amendment risks becoming a cure that is more damaging than the disease it seeks to remedy.

REFERENCES

1. Representation of the People Act, 1951(Act 43 of 1951), s. 8,9
2. The Constitution of India, arts. 14, 21, 75, 102, 164, 191, 239AA
3. MP Jain, Indian Constitutional Law 508 (LexisNexis, Gurgaon, 2018)
4. Law Commission of India, "170th Report on Reform of Electoral Laws"(1999)
5. Law Commission of India, "244th Report on Electoral Disqualifications (2014)
6. Election Commission of India, "Proposal for Electoral Reforms" (August, 2004)
7. PRS Legislative Research, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 : Summary and Analysis,available at: https://prsindia.org (Visited January 09, 2026).
8. The Hindu, "Presumption of Innocence and the Basic Structure: Legal Experts on the NewAmendment" (2025), available at :https://www.thehindu.com (Visited January 09, 2026).