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THE CONSTITUTION (130TH AMENDMENT) BILL, 2025: REMOVAL OF MINISTERS UPON DETENTION

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I. ABSTRACT

The Constitution (130th Amendment) Bill, 2025 proposes a far-reaching constitutional intervention by mandating the removal of the Prime Minister, Chief Ministers, and other Ministers upon arrest and detention for thirty consecutive days in cases involving serious criminal offences. While the stated objective of the Bill is to address the long-standing concern of criminalisation of politics and to uphold probity in public life, the method adopted raises profound constitutional, democratic, and institutional concerns. This article undertakes a detailed doctrinal and constitutional analysis of the Bill by situating it within the existing framework of disqualification of legislators and Ministers, examining its compatibility with the basic structure doctrine, and drawing from scholarly commentary and comparative constitutional practices. The article argues that although the intent of cleansing politics is legitimate, automatic removal based on detention alone risks abuse of criminal process, undermines parliamentary democracy, and destabilises federal balance. The article concludes with recommendations for constitutionally sustainable alternatives.

II. KEYWORDS

Constitutional Amendment, Criminalisation of Politics, Basic Structure Doctrine, Parliamentary Democracy, Ministerial Accountability.

III. INTRODUCTION

The issue of criminalisation of politics has persistently troubled Indian democracy. "Empirical data indicate that a significant number of elected representatives face pending criminal cases, including serious offences. According to reports published by the Association for Democratic Reforms (ADR), a substantial proportion of sitting Members of Parliament and State Legislatures have declared criminal cases in their

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election affidavits.[2] The Supreme Court has repeatedly expressed concern over this phenomenon and has urged Parliament to take appropriate legislative measures [3].

Several expert bodies, including the Law Commission of India, the Election Commission of India, and the Second Administrative Reforms Commission, have acknowledged that reliance solely on conviction as a ground for disqualification is inadequate, given systemic delays in criminal trials and the influence wielded by political actors[4]. It is in this broader context that the Constitution (130th Amendment) Bill, 2025 was introduced.

However, constitutional reform aimed at addressing the criminalisation of politics must operate within the limits imposed by the Constitution itself. This article proceeds as follows. Part II outlines the existing constitutional and statutory framework governing qualifications and disqualifications of legislators and Ministers. Part III provides an overview of the Constitution (130th Amendment) Bill, 2025 and identifies its key structural features. Part IV undertakes a doctrinal analysis of the principal constitutional concerns arising from the Bill, including its implications for parliamentary democracy, separation of powers, federalism, and the rule of law. Part V situates the discussion within comparative constitutional practice. The article concludes by assessing the constitutional sustainability of the proposed amendment and offering reform-oriented recommendations.

[2] Association for Democratic Reforms, Analysis of Criminal Background of Sitting MPs (Latest Report, ADR); see also Association for Democratic Reforms and Another v Union of India and Others (2002) 5 SCC 294.
[3] Public Interest Foundation v Union of India, (2018) 11 SCC 395
[4]170th Report: Reform of the Electoral Laws, 15th Law Commission of India, 1999, https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082424.pdf. , Part V, Report Number 244: Electoral Disqualifications, 20th Law Commission of India, 2014, https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081612.pdf., Proposal for Electoral Reforms, Election Commission of India, August 2, 2004, https://hindi.eci.gov.in/files/file/3106-electoral-reforms/?do=download&r=7150&confirm=1&t=1&csrfKey=4892be0a82973e1f1807b7bc69e794c0., National Commission to Review the Working of the Constitution Report, Ministry of Law, Justice and Company Affairs, April 2, 2002, https://legalaffairs.gov.in/sites/default/files/chapter%204.pdf., Fourth Report: Ethics in Governance, Second Administrative Reforms Committee, January 2007, https://darpg.gov.in/sites/default/files/ethics4.pdf.

A. Research Objectives

1. To examine the constitutional and statutory framework governing the qualifications, disqualifications, and removal of Ministers under the Constitution of India.
2. To critically analyse the structural features of the Constitution (130th Amendment) Bill, 2025, particularly its proposal mandating removal upon prolonged detention.
3. To assess the compatibility of the proposed amendment with the basic structure doctrine, including its implications for parliamentary democracy, separation of powers, federalism, and rule of law.
4. To situate the proposed reform within comparative constitutional practice in other parliamentary democracies.
5. To propose constitutionally sustainable alternatives that address concerns relating to criminalisation of politics without undermining foundational constitutional principles.

B. Research Questions

1. Whether automatic removal of Ministers, Prime Ministers, or Chief Ministers upon detention for thirty consecutive days is consistent with the constitutional framework governing executive tenure.
2. Whether such automatic removal violates the basic structure of the Constitution, particularly the principles of parliamentary democracy, separation of powers, federalism, and rule of law.
3. Whether detention, as a pre-adjudicatory stage of criminal process, can constitutionally serve as a valid trigger for executive disqualification.
4. What constitutionally permissible alternatives may be adopted to address the problem of criminalisation of politics?

C. Research Hypothesis

The Constitution (130th Amendment) Bill, 2025, in its present form, is constitutionally unsustainable as it violates the basic structure doctrine by mandating automatic removal of elected executive functionaries at a pre-adjudicatory stage of criminal

process, thereby undermining parliamentary democracy, separation of powers, federal equilibrium, and the rule of law.

D. Research Methodology

This study adopts a doctrinal research methodology. The analysis is based primarily on:

1. Constitutional provisions governing qualifications, disqualifications, and executive tenure.
2. Judicial precedents of the Supreme Court of India interpreting the basic structure doctrine and principles of parliamentary governance.
3. Statutory frameworks regulating criminal procedure and electoral disqualification.
4. Reports of expert bodies such as the Law Commission of India and the Election Commission of India; and
5. Comparative constitutional practices in selected democratic jurisdictions.

The research relies on authoritative primary sources (constitutional text, statutes, case law) and secondary sources (scholarly commentary, policy reports, and legislative briefs). The approach is analytical and interpretative, focusing on constitutional structure, institutional design, and normative coherence.

E. Literature Review

The issue of criminalisation of politics has received sustained scholarly and institutional attention. Reports of the Law Commission of India have repeatedly examined the inadequacy of conviction-based disqualification regimes in light of systemic delays in criminal trials. The Election Commission of India has likewise recommended reforms to strengthen disclosure norms and expedite adjudication of cases involving legislators.

Judicial engagement with the problem is reflected in decisions addressing electoral transparency and disqualification, where the Supreme Court has emphasised the need for legislative intervention while simultaneously reaffirming constitutional

limitations. Academic commentary has further explored the tension between democratic choice and institutional integrity, particularly in the context of the basic structure doctrine.

Recent legislative analyses, including parliamentary briefs and policy commentaries, have examined the Constitution (130th Amendment) Bill, 2025, noting both its stated objective of curbing criminalisation and the constitutional concerns it raises. However, existing scholarship has not comprehensively analysed the Bill through the lens of the basic structure doctrine and comparative constitutional practice in an integrated manner. The present article seeks to fill that gap by offering a structured doctrinal evaluation of the Bill's constitutional sustainability.

IV. EXISTING CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. Qualifications and disqualifications of legislators

The Indian constitutional framework governing the qualifications and disqualifications of legislators reflects a deliberate balance between democratic inclusiveness and institutional integrity. Articles 84 and 173 of the Constitution prescribe the basic qualifications for Members of Parliament and Members of State Legislatures respectively, including Indian citizenship, minimum age requirements, and other criteria as may be prescribed by Parliament. These provisions underscore the principle that eligibility to contest elections is primarily a matter of constitutional entitlement, subject to narrowly tailored statutory regulation.

Parliament has exercised its enabling power through the Representation of the People Act, 1951, which supplements constitutional qualifications by requiring that a candidate be an elector in the relevant constituency[5]. Importantly, this statutory framework does not impose moral or criminal disqualifications at the pre-trial stage. Instead, it preserves electoral choice unless and until legally determinative events occur.

[5] Chapter I and Chapter II, Part II (Qualifications and Disqualifications), Representation of the People Act, 1951, https://www.indiacode.nic.in/bitstream/123456789/2096/9/A1951-43.pdf.

Disqualifications are exhaustively enumerated under Articles 102 and 191 of the Constitution and the Tenth Schedule. These include holding an office of profit, unsoundness of mind as declared by a competent court, insolvency, loss of citizenship, and defection. Statutory disqualifications under the Representation of the People Act, 1951 are triggered primarily by conviction for specified offences, proven corrupt practices, or failure to comply with election expense requirements. The centrality of conviction as the operative trigger was reaffirmed by the Supreme Court in *Lily Thomas v Union of India* (2013) 7 SCC 653, wherein Section 8(4) of the Act — which had permitted sitting Members of Parliament and State Legislatures to continue in office for three months after conviction while filing an appeal — was struck down as unconstitutional. The Court held that disqualification under Articles 102 and 191 takes effect immediately upon conviction, underscoring that the constitutional scheme attaches consequences to judicial determination of guilt rather than mere accusation.

A salient feature of this framework is that disqualification is ordinarily a post-adjudicatory consequence. It follows either a judicial determination (such as conviction) or the decision of a high constitutional authority, namely the President or Governor acting on the opinion of the Election Commission, or the Speaker in defection cases. This design reflects constitutional distrust of premature deprivation of representative office and reinforces the presumption of innocence as a foundational principle of electoral democracy.

B. Constitutional Position of Ministers

The Constitution does not establish a separate or independent regime governing the qualifications or disqualifications of Ministers distinct from that applicable to legislators. Ministers are drawn from the legislature and remain politically accountable to it. Under Articles 75 and 164, Ministers hold office during the pleasure of the President or Governor, which is exercised in accordance with the aid and advice of the Prime Minister or Chief Minister. The only explicit constitutional departure

from this general principle is found in Articles 75(1B)[6] and 164(1B)[7], which disqualify defectors from being appointed as Ministers. This narrowly carved exception is itself rooted in preserving the integrity of parliamentary democracy and preventing subversion of electoral mandate. Beyond this, the Constitution deliberately refrains from prescribing criminal-law-based disqualifications for ministerial office.

Historically and doctrinally, removal of Ministers has been treated as a political and constitutional matter, grounded in collective responsibility, legislative confidence, and executive discretion not as an automatic consequence of criminal investigation or arrest. This approach aligns with the broader constitutional scheme that distinguishes between political accountability and criminal culpability, assigning each to distinct institutional processes.

The contemporary relevance of this distinction was illustrated during the 2024 proceedings concerning the arrest and subsequent bail of the sitting Chief Minister of Delhi, *Arvind Kejriwal v Directorate of Enforcement* (2024). Despite being in custody for a period in connection with allegations under the Prevention of Money Laundering Act, 2002, the Chief Minister continued to hold office, as neither the Constitution nor statutory law mandates automatic removal upon arrest or detention. The episode underscored the constitutional position that executive tenure remains linked to legislative confidence and constitutional procedure rather than the mere fact of incarceration.

[6] Article 75(1B) of Indian Constitution states that "A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier."

[7] Article 164 (1B) of Indian Constitution states that "A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier".

V. OVERVIEW OF THE CONSTITUTION (130TH AMENDMENT) BILL, 2025

The Constitution (130th Amendment) Bill, 2025 proposes a significant departure from this settled framework by introducing amendments to Articles 75, 164, and 239AA of the Constitution. These amendments seek to mandate the removal of a Minister if two conditions are satisfied: first, that the individual is accused of an offence punishable with imprisonment of five years or more; and secondly, that the individual has been arrested and detained in custody for a continuous period of thirty days.[8]

Removal may occur either upon the advice of the Prime Minister or Chief Minister to the President or Governor, or automatically upon completion of thirty-one days of detention, irrespective of executive discretion. In the case of the Prime Minister or Chief Minister, the Bill mandates resignation upon completion of thirty days of detention, failing which the individual is deemed to have ceased to hold office by operation of law.

Notably, the Bill also incorporates a reappointment clause, permitting a Minister removed under these provisions to be reappointed upon release from custody, subject to constitutional procedure. This feature introduces a degree of reversibility into the scheme, although the interim removal operates automatically and without legislative intervention.

The Bill further extends this framework to the National Capital Territory of Delhi and is accompanied by parallel legislative proposals for Union Territories such as Puducherry and Jammu and Kashmir. Collectively, these measures aim to create a uniform constitutional rule linking prolonged detention with executive removal. The Statement of Objects and Reasons accompanying the Bill emphasises the need to curb the criminalisation of politics, restore public confidence in democratic institutions, and ensure that persons facing serious criminal accusations do not continue to exercise executive authority during extended periods of incarceration. The legislative intent,

[8]The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 a bill further to amend the Constitution of India. https://images.assettype.com/barandbench/2025-08-20/3f1rq37u/Constitution_Amendment_Bill.pdf

as articulated, is thus anchored in strengthening probity and public trust in governance.

Scholarly commentary has noted that the Bill effectively treats detention as a proxy for guilt, marking a sharp departure from established constitutional practice. Unlike existing disqualification regimes that hinge upon conviction or adjudicatory satisfaction, the Bill attaches decisive political consequences to an early and discretionary stage of criminal process.

VI. KEY CONSTITUTIONAL ISSUES AND DOCTRINAL ANALYSIS

A. Parliamentary Form of Democracy

Parliamentary democracy has been consistently recognised as a basic feature of the Constitution, most authoritatively in *Kesavananda Bharati v State of Kerala*, AIR 1973 SC 1461, wherein the Supreme Court articulated the basic structure doctrine and identified the parliamentary form of government as integral to the constitutional identity. Under this system, the Prime Minister and Chief Ministers derive authority from the confidence of the legislature and may be removed only through constitutionally recognised legislative mechanisms, most notably a vote of no-confidence.

By mandating automatic removal of the Prime Minister or Chief Minister upon completion of thirty days of detention, the Bill effectively sidesteps the legislature. The confidence of the House becomes irrelevant once the statutory condition is satisfied. This represents a profound constitutional shift, enabling investigative agencies to indirectly determine the survival of elected governments without legislative participation.

Further, the automatic removal of Ministers constrains the discretion of the Prime Minister or Chief Minister in constituting and maintaining the Council of Ministers. In Manoj Narula v. Union of India[9], the Supreme Court acknowledged this discretion as a constitutional prerogative integral to parliamentary governance, subject only to constitutional morality and political accountability. The Bill replaces this discretion

[9] (2014) 9 SCC 1

with a mechanical trigger, thereby undermining a core feature of responsible government.

B. Separation of Powers and Democratic Accountability

Separation of powers forms an essential component of the basic structure [10]. In *Government of National Capital Territory of Delhi v Union of India* 2023,[11] the Supreme Court articulated a 'triple chain of accountability' the permanent executive is accountable to the political executive, which is accountable to the legislature, and ultimately to the electorate.

The Bill disrupts this chain by enabling the permanent executive through arrest and detention to initiate a process culminating in automatic removal of the political executive. Arrest, which is primarily an investigative tool based on suspicion and necessity, is elevated to a constitutionally decisive act. Academic critiques have warned that this inversion of accountability risks incentivising overuse or strategic use of arrest powers, thereby weakening democratic control over the executive.

C. Federalism and Inter-Governmental Balance

Federalism has been affirmed as a core constitutional value in Kesavananda Bharati[12] and S.R. Bommai[13]. The Union and the States are sovereign within their respective spheres and accountable to their own legislatures and electorates.

The Bill enables scenarios where arrest by a Union-controlled investigative agency could automatically remove a State Chief Minister, or conversely, where state-level action could destabilise Union governance. In practical terms, agencies such as the Central Bureau of Investigation (CBI) and the Directorate of Enforcement (ED), which function under Union executive control, may initiate investigations and effect arrests in respect of state-level political executives. If prolonged detention under such investigation were to automatically trigger constitutional removal, the Union

[10] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
[11] SCC OnLine SC 606
[12] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
[13] S. R. Bommai v. Union of India, (1994) 3 SCC 1

executive would acquire an indirect but constitutionally decisive influence over the political stability of State governments.

This asymmetry is constitutionally significant. While the Constitution distributes legislative and executive competence between the Union and the States, the proposed mechanism would allow investigative action taken within the Union's administrative domain to produce automatic consequences in the political domain of the States. The result is not merely individual disqualification, but potential alteration of government formation and legislative majority at the state level without recourse to the floor of the House. Such a framework risks creating what may be described as an 'investigative federal override,' where criminal process becomes a structural lever capable of reconfiguring federal political power.

In a federal structure recognised in *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461 and reaffirmed in *S.R. Bommai v Union of India* (1994) 3 SCC 1, the autonomy of States and the primacy of legislative confidence are integral features. Any constitutional amendment that enables one level of government, through control over investigative machinery, to precipitate automatic removal of the executive at another level raises serious concerns regarding federal balance and political neutrality.

D. Rule of Law, Due Process, and Presumption of Innocence

Rule of law, encompassing non-arbitrariness, due process, and judicial review, is a basic feature of the Constitution. Articles 14 and 21 mandate that deprivation of rights and public office must follow fair, just, and reasonable procedure. In *Public Interest Foundation v Union of India* (2018) 11 SCC 395, the Supreme Court explicitly declined to judicially introduce disqualification at the stage of framing of charges, holding that such a measure would amount to impermissible judicial legislation and would be inconsistent with the presumption of innocence. The Court reaffirmed that disqualification under the existing constitutional scheme is conviction-based and that any departure from this principle must conform strictly to constitutional limitations.

Under the Bharatiya Nagarik Suraksha Sanhita, 2023, arrest may be effected on reasonable suspicion, and judicial scrutiny at the remand stage is necessarily limited. Substantive judicial evaluation of evidence occurs only at the stage of framing of

charges. By attaching removal to thirty days of detention often before filing of a chargesheet the Bill imposes severe political consequences at a pre-adjudicatory stage of criminal process. This stands in tension with the reasoning in *Public Interest Foundation*, which underscores that suspicion or accusation cannot constitutionally substitute for adjudicated guilt in determining electoral or representative disqualification.

This concern is exacerbated under special statutes such as the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Money Laundering Act, 2002, where detention may be prolonged and bail conditions are exceptionally stringent. In such cases, a Minister may be removed long before any meaningful judicial assessment of culpability, effectively converting preventive detention into political disqualification. This raises serious concerns of arbitrariness and erosion of the presumption of innocence, a cornerstone of constitutional criminal jurisprudence**.**

VII. COMPARATIVE CONSTITUTIONAL PRACTICES

Comparative constitutional practice across mature democracies reflects a cautious and restrained approach towards linking criminal process with removal of political executives. While ethical governance and public accountability are universally emphasised, these systems consciously avoid automatic legal consequences flowing from arrest or pre-trial detention, recognising the dangers such mechanisms pose to democratic stability and constitutional balance.

A. United Kingdom

In the United Kingdom, the continuance of Ministers in office is governed by the well-established convention of individual ministerial responsibility, as reflected in the *Ministerial Code* (Cabinet Office, 2022).[14] The Code emphasises standards of conduct, accountability to Parliament, and the duty to maintain public confidence. Ministers facing serious allegations often resign to uphold constitutional propriety; however, such resignations are guided by political convention and executive discretion rather than statutory compulsion. Arrest or investigation does not automatically result in

[14] Cabinet Office, Ministerial Code (UK Government, 2022).

removal from office. Arrest or investigation does not automatically result in removal. The Prime Minister retains discretion to dismiss a Minister, and Parliament exercises oversight through debates, questions, and motions. Crucially, criminal procedure does not directly determine executive tenure, thereby preserving parliamentary supremacy and preventing prosecutorial agencies from influencing political outcomes.[15]

B. Canada

A similar convention-based model operates in Canada. Ministers are bound by ethical frameworks such as the *Conflict-of-Interest Act* and ministerial codes of conduct. While political responsibility may necessitate resignation in appropriate cases, arrest alone does not trigger automatic removal from office. While political responsibility may necessitate resignation in appropriate cases, arrest alone does not trigger automatic removal from office. Accountability remains political and parliamentary, resting with the Prime Minister and the legislature. Canadian constitutional scholarship consistently warns against premature legal disqualification, noting that such measures erode the presumption of innocence and risk allowing criminal process to override the democratic mandate of the electorate.

C. Australia

In Australia, ministerial accountability is likewise enforced through parliamentary conventions and political responsibility. Ministers have resigned upon indictment or where allegations significantly impair public confidence, but these outcomes are not dictated by rigid legal mandates. The executive remains accountable to Parliament, and criminal proceedings are deliberately insulated from mechanisms determining parliamentary confidence. Australian constitutional practice underscores that criminal investigation is an evidentiary process, not a constitutional tool for executive displacement.[16]

[15] Scrutiny of ministerial ethics and standards of conduct in the UK: diluted accountability? https://www.tandfonline.com/doi/full/10.1080/09540962.2024.2350438
[16] Parliamentary principles and performances: https://www.aspg.org.au/wp-content/uploads/2017/08/14-Maddigan-Ministerial-Responsibility.pdf

D. United States

The United States, though structurally distinct, offers an equally instructive contrast. Executive officials, including the President, are removable only through constitutionally prescribed legislative procedures such as impeachment and conviction by Congress. Arrest or indictment does not automatically result in removal from office. Even criminal prosecution of a sitting executive officer does not dispense with the requirement of legislative action. This reflects a strong commitment to separation of powers and safeguards against concentration of authority in prosecutorial or executive agencies.[17]

E. South Africa

A further instructive comparison may be drawn from South Africa. Under Section 102 of the Constitution of the Republic of South Africa, 1996, the National Assembly may remove the President or the Cabinet through a vote of no confidence. Criminal allegations or arrest do not automatically terminate executive office; removal is structurally tied to legislative confidence. Even in cases involving serious allegations against sitting Presidents, constitutional practice has insisted upon parliamentary processes rather than automatic disqualification. This model reinforces the principle that executive tenure remains contingent upon legislative legitimacy, not prosecutorial action.

F. Sri Lanka

In Sri Lanka, executive accountability is governed by the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, which provides for removal of the President through impeachment procedures initiated and determined by Parliament. Arrest or criminal investigation does not automatically displace executive authority. Although the Sri Lankan constitutional structure differs in its presidential orientation, the centrality of legislative process in removal mechanisms remains a consistent democratic safeguard.

[17] Ministerial Responsibility Versus the Separation of Powers: https://www.jstor.org/stable/pdf/1943959.pdf

Across these jurisdictions, a common constitutional principle emerges: criminal law is not permitted to directly displace elected governments without legislative intervention. Arrest and detention are treated as preliminary investigative measures, not determinative indicators of culpability. These systems prioritise legislative judgment, political accountability, and post-adjudicatory consequences over mechanical triggers based on detention, thereby minimising the risk of misuse of criminal process for political ends.

VIII. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

The Constitution (130th Amendment) Bill, 2025 is motivated by a legitimate and pressing concern the need to address the criminalisation of politics and restore public confidence in democratic institutions. However, constitutional adjudication has consistently affirmed that even the most laudable objectives must be pursued within the framework of constitutional limitations. In its present form, the Bill raises serious constitutional concerns by mandating automatic removal of Ministers, Prime Ministers, and Chief Ministers solely on the basis of arrest and prolonged detention.

On a doctrinal application of the basic structure framework articulated in *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461 and subsequently elaborated in *S.R. Bommai v Union of India* (1994) 3 SCC 1 and *Government of National Capital Territory of Delhi v Union of India* 2023 SCC OnLine SC 606, the Bill, in its current design, would face substantial difficulty in surviving judicial scrutiny. By permitting automatic executive displacement at a pre-adjudicatory stage of criminal process without legislative confidence procedures and without judicial determination of guilt the amendment risks impairing core structural principles of parliamentary democracy, federal balance, separation of powers, and rule of law.

While Parliament's amending power under Article 368 is wide, it is not unlimited. A constitutional amendment that effectively enables investigative detention to substitute for legislative confidence as the determinant of executive tenure would likely be regarded as altering the identity of the Constitution rather than merely reforming its operation.

Such a mechanism fundamentally alters the constitutional balance by bypassing legislative confidence mechanisms and empowering investigative agencies part of the permanent executive to indirectly determine the tenure of elected governments. This undermines the parliamentary form of democracy, dilutes the separation of powers, and destabilises federal equilibrium by enabling one level of government to affect the political existence of another through criminal process.

Most critically, the Bill departs from the rule of law by attaching irreversible political consequences at a stage where neither guilt nor even prima facie culpability has been judicially determined. Arrest and detention, which are investigative tools subject to procedural discretion, are elevated to decisive constitutional triggers. In doing so, the Bill risks transforming criminal process into an instrument of political control rather than a means of administering justice.

B. Recommendations

To reconcile the objective of political cleansing with constitutional fidelity, the following recommendations merit serious consideration:

1. The trigger point for adverse constitutional consequences should be recalibrated. Any removal or disqualification mechanism should arise only after the framing of charges by a competent court, where judicial satisfaction regarding the existence of prima facie evidence is formally recorded. This approach would align consequences with judicial assessment rather than executive suspicion and would be more consistent with the reasoning in *Public Interest Foundation v Union of India* (2018) 11 SCC 395, which emphasised the constitutional centrality of conviction-based disqualification and cautioned against premature deprivation of representative office. This would align consequences with judicial assessment rather than executive suspicion.
2. Legislative involvement must be preserved. Removal of the Prime Minister or Chief Minister, if contemplated, should necessarily involve the legislature through confidence motions or confirmatory resolutions, thereby respecting parliamentary supremacy and democratic mandate. Any

mechanism concerning removal of a Prime Minister or Chief Minister should mandatorily involve the legislature through a structured confidence procedure. Comparative constitutional practice including Section 102 of the Constitution of South Africa, 1996 demonstrates that executive removal is institutionally anchored in legislative processes rather than prosecutorial action.

3. Procedural safeguards against misuse of arrest powers should be strengthened. Mandatory and periodic judicial review of continued detention of elected representatives should be strengthened, particularly in cases under special statutes with stringent bail conditions. Enhanced judicial oversight would reinforce Article 21 guarantees and mitigate concerns regarding investigative overreach. Mandatory and periodic judicial review of continued detention of elected representatives would reduce the risk of arbitrary or politically motivated incarceration.
4. Time-bound adjudication of criminal cases involving legislators and Ministers should be institutionalised through designated fast-track courts. In *Ashwini Kumar Upadhyay v Union of India* (2021), the Supreme Court directed the establishment of special courts and emphasised expeditious disposal of cases involving legislators, recognising that prolonged pendency undermines democratic integrity. Strengthening and institutionalising such mechanisms would address concerns of delay without disturbing constitutional structure. This would address concerns of prolonged pendency while preserving due process and the presumption of innocence.
5. Non-constitutional mechanisms of accountability such as enhanced disclosure requirements, enforceable ethics codes, and empowered legislative ethics committees should be strengthened to achieve ethical governance without constitutional disruption. Enhanced disclosure norms, enforceable codes of conduct, and empowered legislative ethics committees comparable to the United Kingdom's Ministerial Code framework offer

constitutionally non-disruptive mechanisms to promote ethical governance while preserving structural safeguards.

The challenge of criminalisation of politics undoubtedly demands decisive reform, but constitutional democracy cannot afford solutions that weaken its own foundations. The Constitution is not merely a vehicle for governance; it is a safeguard against concentration, misuse, and arbitrariness of power. Any amendment that enables the removal of elected governments through executive action alone risks unsettling this delicate constitutional equilibrium.

The Constitution (130th Amendment) Bill, 2025 presents Parliament with an opportunity for meaningful constitutional introspection. A re-imagined framework rooted in judicial determination, legislative accountability, and respect for federal autonomy would better harmonise the objectives of ethical governance and constitutional integrity. Ultimately, the legitimacy of constitutional reform lies not only in its intent, but in its unwavering adherence to the democratic values and principles it seeks to protect.

The challenge of criminalisation of politics undoubtedly demands decisive reform, but constitutional democracy cannot afford solutions that weaken its own structural foundations. The Constitution operates not merely as an instrument of governance but as a safeguard against concentration and misuse of power. Reform must therefore proceed in a manner that strengthens institutional integrity without displacing core democratic safeguards.

The Constitution (130th Amendment) Bill, 2025 presents Parliament with an opportunity for careful constitutional recalibration. A framework rooted in judicial determination, legislative accountability, and respect for federal autonomy would better harmonise the objectives of ethical governance and constitutional fidelity. Ultimately, the legitimacy of constitutional reform lies not only in its intent, but in its adherence to the structural principles that define the Constitution's identity.

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