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THE 130th CONSTITUTION (AMENDMENT) BILL, 2025

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The Centre for Parliamentary Studies is pleased to announce the commencement of the *Drafts & Debates Series*, to bring together thoughtful discussion and analysis of bills, draft legislations, and parliamentary debates in India. This series endeavours to provide a nuanced analysis of legislative proposals and the deliberative processes that accompany them, with a view to enhancing scholarly and public understanding of the lawmaking framework.

By situating legislative drafts within the broader context of parliamentary discourse, the series seeks to discuss both the substantive legal implications of proposed enactments and the democratic values that inform their discussion. It aspires to serve as a platform for students, researchers, and practitioners to engage with contemporary developments in legislative practice, thereby fostering a culture of informed dialogue and critical reflection. Along with analysing draft legislations, the series will regularly present the latest debates on constitutional and policy questions as they happen. Through this initiative, the Centre aims to contribute meaningfully to the study of parliamentary procedure, legislative reform, and democratic governance.

We want readers, whether they are students, researchers, or anyone interested in law and policy, to feel free to ask questions, share opinions, and join the conversations. You may reach out to us at cps@nliu.ac.in.



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I. INTRODUCTION

The recent case of former Delhi Chief Minister, Shri Arvind Kejriwal has brought to the limelight a significant constitutional gap in India's governance framework when he was running the government from jail and did not resign from the post even after being arrested in connection with the liquor policy case.¹ This incident, along with similar concerns regarding other elected leaders facing serious criminal charges while continuing to hold public office, highlighted the urgent need for constitutional provisions to address such situations. The absence of specific constitutional mechanisms to remove ministers who are detained on serious criminal charges has created a vacuum in the governance structure, allowing the elected officials to continue to wield executive power despite being in judicial custody.

In light of these developments, the 130th Constitution (Amendment) Bill, 2025 ("**Amendment Bill**") has been referred to a Joint Parliamentary Committee ("**JPC**") for detailed scrutiny. The Amendment Bill, recently introduced in the Lok Sabha proposes to remove a Central or State Minister (including the Prime Minister and Chief Minister) from office if they are arrested and detained for 30 days in relation to an offence punishable with 5 or more years of imprisonment. It aims at ensuring that those who govern the nation maintain the highest standards of integrity and are beyond any shadow of suspicion.

In the Statement of Objects and Reasons for the Amendment Bill, it is stated that a Minister holding office should be beyond "*any ray of suspicion*" and act only for welfare of the people.² It is further stated that a Minister who is detained over allegations of serious criminal offences thwarts constitutional morality and erodes public faith in governance thereby eroding public trust. Thus, it seeks to institutionalise accountability at the highest levels of government and restore public confidence in democratic institutions.

¹Advay vora, 'Arvind Kejriwal's arrest: Story so far' *SCC Observer* <<https://www.scobserver.in/journal/arvind-kejriwals-arrest-story-so-far/>> accessed 25 August, 2025.

² Statement of Objects and Reasons, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025.



II. PROPOSED AMENDMENTS TO THE CONSTITUTION

The Amendment Bill seeks to amend Articles 75, 164, and 239AA of the Indian Constitution to create a framework for the removal of high-ranking government officials who find themselves in extended judicial custody on serious criminal charges. Article 75 relates to the appointment and tenure of Union Ministers, Article 164 deals with State Ministers and Article 239AA covers Union Territory Ministers, particularly in the context of Delhi and Puducherry.

The scope of this amendment is unprecedented in its reach, covering the highest offices in the land including the Prime Minister, Chief Ministers and all categories of Ministers at both Union and State levels. The Amendment Bill makes it mandatory for the aforementioned to step down from their posts if they remain in custody for more than 30 days on serious criminal charges.

The amendment also extends to Union Territories through separate but complementary legislative measures. The government has introduced this as part of a broader legislative package that addresses governance concerns across different administrative structures. The Amendment Bill mandates that any minister arrested and detained for 30 continuous days on charges of an offence punishable with imprisonment of five years or more shall be removed from their office. Thereby, removing any ambiguity around the removal mechanism, by creating an objective standard that applies uniformly across all levels of government.

GROUND OF REMOVAL FROM OFFICE

The Amendment Bill introduces a uniform ground for the removal of the Prime Minister, Chief Ministers, and Ministers at the Union and State levels, including the Government of the National Capital Territory of Delhi. The operative ground is the **arrest and detention in custody for a continuous period of thirty days** on allegations of having committed an offence under any law in force, provided such offence is **punishable with imprisonment for a term of five years or more**. This stipulation reflects the principle that persons holding high constitutional offices, while entitled to the presumption of innocence in criminal law, must adhere to enhanced standards of probity and accountability in public life.



The provision is designed to ensure that the continued discharge of constitutional functions is not compromised by prolonged custodial absence or the perception of moral unfitness arising from serious criminal allegations. The thirty-day threshold balances the rights of the officeholder with the imperative of uninterrupted governance.

PROCEDURE OF REMOVAL

In the case of a Union Minister, upon the occurrence of the specified ground, the **President shall remove the Minister from office** on the **advice of the Prime Minister**, which must be tendered by the thirty-first day following the commencement of custody. Should the Prime Minister fail to tender such advice, the Minister shall *ipso facto* cease to hold office with effect from the succeeding day.

Where the Prime Minister himself is in custody for thirty consecutive days under similar circumstances, he is constitutionally obligated to **tender his resignation by the thirty-first day**. Failure to do so shall result in the automatic cessation of his office with effect from the day immediately following the expiry of such period.

For the States, the procedure mirrors that at the Union level. A State Minister, if arrested and detained in custody for thirty consecutive days for an offence carrying potential imprisonment of five years or more, shall be **removed by the Governor** on the **advice of the Chief Minister**, which must be given by the thirty-first day of such custody. If such advice is not tendered within the stipulated time, the Minister shall automatically cease to hold office from the day immediately succeeding the deadline.

If the Chief Minister is subjected to such custodial circumstances, he must **tender his resignation by the thirty-first day**; failure to do so shall result in his automatic removal from office on the following day.

In respect of the Government of the National Capital Territory of Delhi, a similar regime is prescribed. A Minister in custody for thirty consecutive days shall be removed from office by the **President on the advice of the Chief Minister**, which must be tendered within thirty-one days of the



commencement of custody. In the absence of such advice, the Minister shall automatically cease to hold office on the next day.

Where the Chief Minister of Delhi himself is so detained, he is required to resign by the thirty-first day. Failing such resignation, he shall **stand removed automatically** with effect from the day thereafter.

REAPPOINTMENT CLAUSE

Notwithstanding the removal or cessation of office in the above circumstances, the amendment expressly preserves the right of the Prime Minister, Chief Minister, or Minister to be reappointed to office upon release from custody, subject to the constitutional provisions governing such appointments. This ensures that removal on account of custodial disability does not operate as a disqualification per se, but only as a temporary measure to safeguard the integrity and functioning of governance during the period of detention.

III. CONSTITUENT ASSEMBLY DEBATES ON ARTICLE 102 AND 191

The underlying intention of Article 102 and 191 of the Constitution that provides for the disqualification of Members of Parliament was to preserve the purity of democratic institutions and to protect the rights of the elected members. At the same time, the framers were keenly aware of the excesses of arbitrary authority under colonial occupation, under which political figures had frequently been jailed and held in prison to keep them from engaging in political life.

With this background, they declined to have arrest, pending charges, or imprisonment as a basis for disqualification. Rather, they required that only a judicial conviction could be the basis for exclusion. Framers were of the view that disqualification solely on the grounds of arrest would give too much power to the executive, allowing it to muzzle political opponents. Further, *Naziruddin Ahmad*, the member of Constituent Assembly representing West Bengal, believed that disqualifications should be explicitly mentioned in the constitution to avoid potential misuse by the ruling political parties. His concern was that it could give too much power to the future parliaments.³ To arrive at a balanced

³ Constituent Assembly Debates, 29 December 1948 (India).



solution between constitutional rigidity and legislative flexibility, the assembly provided that Parliament and State legislatures could impose additional disqualifications by law. So, the original purpose was to institute a system that maintained integrity, equity, and insulation from executive abuse.

The Amendment Bill brings a change of vital essence of the constituent assembly by linking the removal to custody and not conviction. In 1949, the framers held that disqualification had to be determined judicially to avoid the abuse of powers at the hands of ruling governments. Furthermore, the 244th Report of the Law Commission had also rejected the proposal that disqualification could at the stage of filing of charge sheet by the police when the guilty of accused has not been proved.⁴ Thus, this change opens up the very danger that the Constituent Assembly consciously eschewed.

IV. IMPLICATIONS OF THE PROPOSED AMENDMENT

The Amendment Bill aims to ensure that individuals holding high public office, such as the Prime Minister, Chief Ministers, and other ministers do not continue in the government while detained on serious criminal allegations. The intention is to uphold constitutional morality, good governance, and public trust. The provision mirrors rules for civil servants, who are suspended upon arrest. Leaders removed under this law, can however be re-appointed by the President or Governor once released.

However, a central concern is that the Amendment Bill removes ministers from office solely based on arrest, and not conviction. The principles of fair trial in Indian criminal jurisprudence provide that an accused is presumed innocent until proven guilty. It is argued that penalising individuals before judicial adjudication would overturn this foundational principle of jurisprudence. Opposition voices, including, *VD Satheesan*, have criticised the move as against *the Principle of Natural Justice* as it leads to punishment without conviction.⁵

⁴ 244th Report on Electoral Disqualifications, Government of India, Law Commission of India, Report No. 244, February 2014.

⁵ PTI, 'Proposed Constitutional Amendment Bill is against principles of natural justice says Satheesan' (*The Week*, 20 August 2025) <<https://www.theweek.in/wire-updates/national/2025/08/20/mds8-kl-bill-satheesan.html>> accessed 28 August, 2025.



Moreover, the Amendment Bill provides enormous authority to executive and investigative bodies (such as the police or ED) to initiate the removal of a minister outside of the judicial process. This is viewed as making the executive to act as the judge, jury, and executioner, thus diminishing the judiciary's role and breaking the essence of the principle of separation of powers. The Amendment Bill violates the principles of federalism, double jeopardy, separation of powers, due process and undermines the right of the people to an elected government.⁶

All of the aforementioned concerns substantiate the gravest criticism of the 130th Constitutional Amendment Bill that it could be politically abused and it is argued that it can be used by the governing party to undermine democratic institutions. It is argued that by allowing central agencies to detain and arrest ministers, the Amendment Bill empowers the Centre to arrest opposition leaders and destabilize the state governments without the oversight of the judiciary. Kerala Chief Minister *Pinarayi Vijayan* termed it a “*neo-fascist strategy*” to debar the leaders in non-BJP states, whereas Congress leader *Priyanka Gandhi* described it as “*draconian*,” warning that even a staged arrest would depose a Chief Minister without trial or conviction.⁷ These apprehensions refer to the possibilities of weakening democratic conventions, disrupting federal equilibrium, and circumventing judicial protection.

Thus, the Amendment Bill has the potential to erode federalism, democratic stability, and institutional balance by exposing elected executives to administrative vendetta. Constitutional lawyer *PDT Acharya* cautioned that the amendment might collapse state governments, particularly when used by opposition.⁸

⁶ Asaduddin Owaisi, ‘Owaisi critiques Constitution’s 130th Amendment Bill, says it will “violate principle of separation of powers”’ (*Economic Times*, 20 August 2025) <<https://economictimes.indiatimes.com/news/politics-and-nation/owaisi-critiques-constitution-amd-bill-says-it-will-violate-principle-of-separation-of-powers/articleshow/123401112.cms>> accessed 25 August 2025.

⁷ Pinarayi Vijayan, ‘Amendment New Strategy by Neo-Fascist Politics: CM’ (*Times of India*, 21 August 2025) <<https://timesofindia.indiatimes.com/city/thiruvananthapuram/amendment-new-strategy-by-neo-fascist-politics-cm/articleshow/123417428.cms>> accessed 25 August 2025.

⁸ Neelu Vyas, ‘130th Constitution Amendment Bill: “Passage impossible without Opposition consensus”’ (*The Federal*, 21 August 2025) <<https://thefederal.com/category/states/north/delhi/130th-constitutional-amendment-bill-debate-202893>> accessed 25 August 2025.



If enacted, this could set a troubling precedent where constitutional norms are subverted for political benefit, compromising democracy's integrity. The Amendment Bill also threatens representative governance and dilutes voter's mandates, by enabling administrative removal.

V. INTERNATIONAL PERSPECTIVE

In many other well-established democracies, the removal from executive office is generally a matter governed by political convention, ethical codes, or occasionally by post-conviction disqualification statutes. There has not been incorporation of any mechanism similar to that of the proposed Amendment Bill, *i.e.* an automatic cessation of office for ministers based solely on arrest and detention pending trial. Below are some of the mechanisms for removal of several prominent democracies:

In the United Kingdom, the principle of ministerial responsibility is largely enforced through political conventions rather than codified law. The process is called impeachment under which the Parliament of the UK may prosecute and try individuals, normally holders of public office, for severe crime and misdemeanors. The Prime Minister can request a resignation, or the party can exert pressure, but ultimately, removal prior to conviction remains discretionary.⁹ Ministers are held to ethical standards by the “*Seven Principles of Public Life*” (Nolan Principles), but legal pressure only comes after conviction and sentencing.

In the United States, Cabinet members and senior executive officials serve at the pleasure of the President and may be dismissed at any time, but there is no statutory provision for automatic removal based on being under investigation, arrest, or even charged with a crime.¹⁰ The U.S. Constitution only prescribes removal through impeachment (Article II, Section 4)¹¹ for “high crimes and misdemeanors,” which requires a political process and legislative votes. Usually, disqualification from holding office is not based on an accusation or an arrest but rather on conviction and, where

⁹ UK Parliament, ‘Impeachment’ (Parliament.uk) <<https://www.parliament.uk/site-information/glossary/impeachment/>> accessed 25 August 2025.

¹⁰ The Constitution of the United States: A Transcription, National Archives <<https://www.archives.gov/founding-docs/constitution-transcript#article-ii-section-4>> accessed 25 August 2025.

¹¹ The Constitution of the United States, 1789, Art II, S 4.



applicable, impeachment and Senate trial. Due process and the assumption of innocence are clearly emphasised.

Therefore, it is the overwhelming international norm to maintain the presumption of innocence, offer flexibility and due process, and guard against political abuse of criminal investigations.

The Indian plan, on the other hand, in addition to these would include an automatic removal clause even prior to conviction which raises concerns about equity and best practices in comparison. If these automatic removal clauses are not counterbalanced by provisions for appeal or investigation, they might allow for politically motivated arrests or retaliatory lawsuits, disrupting the government and stifling lawful political action. The lack of worldwide parallels suggests that such “automatic” processes may not be feasible, as procedural protections are still a feature of developed democracies.

VI. WAY FORWARD

The most glaring criticism of the Amendment Bill is that it punishes ministers upon arrest, rather than conviction, violating the principle of presumption of innocence. However, the Statement of Objects and Reasons in the Amendment Bill makes it clear that the greater purpose is to *safeguard constitutional morality, good governance, and public trust*. In this light, the amendment is justified as a measure where public interest and institutional integrity supersede the individual right to office, without foreclosing the leader’s ability to re-assume office upon acquittal or release. This balances the individual’s rights with the collective need to preserve the credibility of governance.

The risk of abuse through politically driven arrests is a valid concern. However, the Bill’s safeguard lies in the fact that removal only happens on the 31st day of consecutive detention. To get to that point, authorities must have *prima facie* evidence sufficient to warrant prolonged custody beyond initial remand periods. This provision imposes at least a rudimentary check on frivolous or weak cases. That being said, it is argued that abuse cannot be entirely eliminated, and politically motivated removals might still take place. Therefore, additional safeguards are required.



VII. CONCLUSION

The 130th Constitution (Amendment) Bill, 2025 proposes a significant change, with the goal of enhancing public trust in democratic institutions, ethical governance, and constitutional morality and accountability by ensuring that leaders under prolonged criminal custody cannot continue in public office. However, its most contentious aspect lies in the automatic cessation mechanism after 30 days of detention, without any scope for fair hearing or independent review.

The Amendment Bill attempts to uphold constitutional morality by preventing ministers in prolonged custody from governing under a criminal cloud. While its intent of fostering accountability is laudable, the provision of automatic removal raises grave concerns over the presumption of innocence, separation of powers, and scope for political misuse, potentially destabilising democracy and federalism. The safeguard of reappointment after release is notable, but insufficient.

Globally, democracies uphold a balance between accountability and due process. India's proposed approach, mandating automatic cessation of office after 30 days of custody, represents a far stricter model with no procedural parallel elsewhere. Thus, a middle ground that requires resignation or removal through a specified constitutional mechanism subject to limited judicial/independent monitoring should be explored, as no major democracy allows for such an immediate termination. This would ensure that the legislation is both principled in goal and feasible in implementation, protecting both the public's faith in government and individual justice.

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