
CONSTITUTIONALITY AND POLICY IMPLICATIONS OF 130TH CONSTITUTIONAL AMENDMENT BILL, 2025: A CRITICAL ANALYSIS OF ARREST-BASED DISQUALIFICATION OF MINISTERS

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ABSTRACT

This research paper focuses on the 130th Constitutional Amendment, which has been the most debated and discussed topic currently. The 130th Constitutional Amendment, 2025, proposes the disqualification of the Prime Minister, Chief Minister, and other ministers of the central and state governments if they are arrested and detained in custody for thirty consecutive days or more for any offence punishable with imprisonment for five years or more. This bill has emerged from the ongoing concerns over the increasing criminalisation of politics and the leaders, which led to erosion of trust of public from democratic institutions. However, the bill has raised a question on the constitutionality of Articles 14 and 21, and challenges the principles of equality, due process of law and presumption of innocence.

This paper analyses the compatibility of the bill with the basic structure doctrine by focusing on principles like the rule of law, the separation of powers and the accountability of this bill. By analysing the provisions of the bill under various cases that lay down landmark Supreme Court judgments. Furthermore, this paper comparatively analyses different democracies across the world, highlighting how nations like the United States of America and, United Kingdom handle the disqualification of ministers in cases of criminal charges.

Keywords: 130th Constitutional Amendment, 2025, Disqualification of Ministers, Criminalisation of Politics Articles 14 & 21, Basic Structure Doctrine, Rule of Law, Separation of Powers

INTRODUCTION

In a democratic country like India, the integrity and accountability of the individuals holding public office are considered fundamental to the preservation of the rule of law. Over the years, this country has seen a worrying surge in increasing crimes in politics, where people are facing heinous criminal charges and are sitting and enjoying the power of the position they hold. Many reports have analysed the political leaders, and many electoral analyses have been done, according to which a substantial number of legislators, both in Parliament and State legislatures or Assemblies, have pending criminal cases against them. Due to such actions of political leaders, people have lost their faith in the democratic institutions, which is a major challenge for governance in India.

The government introduced the 130th Constitutional Amendment Bill, 2025, which disqualifies or seeks to disqualify or remove the Prime Minister, Chief Minister and other ministers who are arrested or detained for any offence punishable with imprisonment of 5 or more years, and additionally, they are in police custody for a period exceeding 30 consecutive days. The main objective of this Bill is to ensure and provide ethical governance, to prevent misuse of power by people with criminal records. However, this bill has triggered a debate amongst constitutional and legal experts.

The Bill has both supporters and critics. Supporters say it is a progressive and great step to cleanse the political system, and on the other hand, critics have raised their concerns that this bill may undercut or erode the “*presumption of innocence*,” which is a fundamental aspect of Article 21 of the Constitution. Furthermore, the bill raised some significant questions on the doctrines of “separation of powers” and the “Basic structure doctrine.”

Since this Bill allows removal from the office based on mere arrest may blur the thin line of separation between legislative, executive and judiciary, which can disturb the balance between these three organs of government.

This paper examines these issues through both a doctrinal and comparative approach. The three crucial issues of this Bill are:

1. Whether the disqualification based on arrest and custody violates Articles 14 and 21 of the Constitution?

2. Whether this bill is affecting the Basic structure of the Constitution by altering the Ministerial tenure and system.
3. How do other democracies deal with matters of criminalisation in politics, or address the issue of ministers facing criminal proceedings?

This paper is divided into four sections. Section I is about the legislative background of the bill; Section II is an analysis of the Constitutional Implications; Section III gives a comparative perspective, and Section IV provides a critical evaluation and recommendations. The main objective of this paper is to determine whether the amendment is a genuine reform promoting integrity in governance or legislative overreach that creates a challenge for democratic principles.

SECTION I: BACKGROUND AND LEGISLATIVE CONTEXT

Background and Legislative Context

The 130th Constitutional Amendment Bill, 2025, represents one of the most important reforms that have been introduced in recent years. This Bill raised public concern over the criminalisation of politics and repeated actions where individuals holding public office facing serious and heinous criminal charges against them, are sitting in high executive offices. These instances have weakened the public trust in government institutions and the morality of governance.

At present, the Indian Constitution and the Representation of the People Act, 1951, provide for the disqualification of ministers only after conviction for some specific offences. Under Article 75(1) and 164(2), the Prime Minister and Chief Minister enjoy or hold the office “during the pleasure” of the President, which means that they can be removed through a Constitutional mechanism, but not based on mere arrest. Similarly, Sections 8 and 9 of the Representation of the People Act, 1951, a minister or legislator can be disqualified only after being convicted or punished for imprisonment for two or more years.

However, the 130th Constitutional Amendment provides a more rigid and strict framework that disqualifies the Prime Minister, Chief Minister, or any other ministers if they are arrested or detained in custody for an offence punishable with imprisonment of five years or more and are held in custody for thirty consecutive days. The motive is to ensure that individuals facing

serious criminal charges against them shall not sit or enjoy the powers at a public office. The supporters of the Bill argue that it promotes clean and ethical politics, which brings accountability to public life, which is much needed now. They often claim that this Bill or this measure will bring back the public's trust and confidence in democratic institutions by ensuring that those who are facing criminal charges shall not exploit the position and ensure that the office is held by a better person.

However, the critics on the other side argue that this provision violates the principles of natural justice and presumption of innocence, which are an integral part of Article 21 of the Constitution. They also point out that the arrests can occur even before the trial begins, which can be politically motivated. The party in power may control the executives, which can lead to the unlawful arrest of individuals. Hence, automatic disqualification without judicial proceedings and findings will lead to injustice and destabilise the system.

The legislative background reflects a long-standing tension between the need for clean and ethical politics and an individual's rights. Various committees have highlighted the need for clean politics and to prevent criminal elements from entering politics. Still, the means to achieve this goal should remain consistent with the constitutional fairness, rule of law and due process of law.

Another important Constitutional concern arises under the provisions of Articles 102 and 191, which provide the procedures for the disqualification of members of the Parliament and State Legislative. The Supreme Court in the Lily Thomas case passed the judgment that legislators shall be disqualified only upon conviction, not merely on arrest or criminal charges framed against them. This bill seeks to automatically disqualify legislators on arrest or detention without trial.

SECTION II: CONSTITUTIONAL ANALYSIS OF THE 130TH AMENDMENT BILL, 2025

The 130th Constitutional Amendment Bill, 2025, has raised some major questions on the constitutionality of fundamental rights and raised concerns over the separation of powers, rule of law, and basic structure doctrine. Though the objective of the bill is to ensure integrity in public offices and clean politics is commendable, it must be evaluated against the constitutional standards and ensure that it does not violate the basic structure doctrine.

1. Article 14: Equality before the law

Article 14 guarantees equality before the law and equal protection of laws. The 130th amendment provides a classification between ordinary people and individuals holding public offices, which include executives like the prime minister, chief minister, and other ministers. This classification is logical since public offices hold high moral expectations, but the disqualification based on detention without trial or conviction raises questions about its reasonableness.

In some of the cases, like *State of West Bengal vs Anwar Ali Sarkar* (1952 AIR 75) and *EP Royappa vs State of Tamil Nadu* (1974 AIR 555), the Supreme Court held that arbitrariness is incompatible with equality. It further said that if any provision is there that disqualifies an individual merely upon arrest without conviction or judicial proceedings, then such a provision may lead to arbitrariness. Hence, there must be proper safeguards against the misuse and arbitrariness of the executives. Thus, the amendment may fail the arbitrariness test under Article 14.

2. Article 21: Right to Life and Personal Liberty

Article 21 defines the right to life and personal liberty; it also includes the right to reputation and due process of law. In the case *Maneka Gandhi vs. Union of India* (1978 AIR 597), the Supreme Court held that Article 21 also ensures that no person is deprived of liberty, unless done by fair and reasonable procedures. This judgment clarified the scope of Article 21.

Now, as per the Bill, disqualification can be done merely on detention, which may violate Article 21. Just an arrest or detention does not imply guilt, because preventive custody may result from political vengeance. If a minister is removed from the office automatically based on an arrest exceeding thirty days, then it could violate or infringe the right to a fair trial and the presumption of innocence, which are considered an integral part of Article 21.

Furthermore, this amendment risks making the boundary between the judiciary and executive less clear. The political opponents may misuse their powers against each other through malicious arrests.

3. Articles 75 and 164: Tenure and Pleasure of the President/Governor

Articles 75(2) and 164(1) state that ministers would hold the office and enjoy the power only

“during the pleasure of the President and Governor.” This provides a political and constitutional mechanism of accountability instead of a pure legal system. The prime minister and the chief minister are responsible to the legislature and depend on majority support in the House.

By establishing automatic disqualification, this bill overrides the constitutional balance, allowing legal custody to replace legislative confidence. In *Shamsher Singh vs. State of Punjab* (1974 AIR 2192), the Supreme Court held that the President and the Governor would act on the advice of the Council of Ministers, which demonstrates a parliamentary system of accountability. Automatic disqualification may disrupt the system and structure outlined in Articles 75 and 164.

The 130th Constitutional Amendment, 2025, proposed two clauses in Articles 75 and 164, that is, 75(5A) and 164(4A), which say that the Prime Minister, the Chief Minister, or any other minister who is arrested or detained in custody for thirty consecutive days under serious criminal charges punishable with imprisonment for five years or more shall be disqualified from the public office. Article 75(5A) also provides that if, on advice of the Prime Minister, the removal is not tendered to the President by the thirty-first day, he shall cease to be a Minister from the day falling thereafter.

Similarly, Article 164(4A) also provides that if, on advice of the Chief Minister, the removal is not tendered to the Governor by the thirty-first day, he shall cease to be a Minister from the day falling thereafter.

4. Article 239AA: Special provisions with respect to Delhi

Additionally, one more provision under 239AA has also been amended, in which section 5A was inserted, subject to which if any minister while holding the office is arrested or detained in custody for 30 consecutive days for an offence punishable with imprisonment for five years or more, they shall be removed from the office on the advice of the President or Chief Minister.

5. The Basic Structure Doctrine:

The Basic Structure doctrine was established in *Kesavananda Bharati vs. State of Kerala* (1973 AIR 1461). The Supreme Court gave judgment that restricted Parliament from amending the core of the Constitution. It further stated that no law or provision shall change the basic structure of the Constitution, which includes judicial review, separation of powers, and the rule

of law.

Now, as per the 130th Constitutional amendment, removal of ministers without judicial proceedings or conviction violates judicial independence and the presumption of innocence, which is considered an integral part of the basic structure doctrine and even hampers the doctrine of separation of powers. Similarly, in *Indira Nehru Gandhi vs Raj Narain* (1975 AIR 2299), the Supreme Court said that the Constitutional Amendment was violating and disturbing the basic structure of the Constitution, since it ruled out judicial review of electoral disputes.

Additionally, in the purview of Articles 102 and 191, legislators can be disqualified only through law and after conviction. In *Lily Thomas vs Union of India* (2013), the Supreme Court clarified that the disqualification of legislators shall be done only after they are convicted. Therefore, considering detention itself a ground for disqualification would go beyond the framers' intent.

SECTION III: JUDICIAL AND COMPARATIVE PERSPECTIVE:

The question, whether an elected official should stay in office following an arrest, incarceration, or while facing criminal charges, is still up for debate. Democracies around the world have grappled with this issue of maintaining public trust and upholding due process rights.

1. Judicial Approach in India:

The Indian judiciary has consistently emphasised that mere arrest or detention does not automatically imply removal or disqualification from public office. The Supreme Court has consistently demonstrated a cautious approach in safeguarding the presumption of innocence and the separation of powers. In the landmark case of *Lily Thomas v. Union of India* (2013 7 SCC 653), the Supreme Court of India established a clear distinction between the disqualification of legislators and cases involving arrest or detention without trial. The Court ruled that a legislator is immediately disqualified upon conviction for specific offences under the Representation of the People Act, 1951.

2. United Kingdom: Ethical Standards and Political Accountability

In the United Kingdom, there is no legal or constitutional requirement for any minister to resign

upon being arrested or even upon being charged. However, through the ministerial code, it is expected that any minister with serious charges or allegations steps aside voluntarily and resigns from their position to ensure public trust. Such resignation is ethical and political, not legal. To guarantee that the executive is answerable to the parliament and the people, the prime minister has the authority to request a resignation. This ensures that due process and moral responsibility must coexist with each other.

3. United States of America: Legal Accountability through Conviction

In the United States, the Constitution allows impeachment of the President, Vice President, and civil officers for “treason, bribery, or other high crimes and misdemeanours”. However, impeachment is not a judicial or automatic process; rather, it is a political one. Members of Congress can continue in office even if indicted, unless convicted and sentenced for a felony. The U.S. Supreme Court, in cases such as *Powell v. McCormack* (1969), stated that Congress cannot exclude a member except through constitutionally defined processes. This guarantees that disqualification rather than pre-trial detention must occur by a court decision or constitutional process. Therefore, by prohibiting the political abuse of arrests or accusations, the American model safeguards democratic representation.

4. Canada: Emphasis on Rule of Law and Due Process

Canada’s legal system ensures that mere suspicion or detention does not deprive the elected minister of their office. Under the Parliament of Canada Act, disqualification arises only upon conviction for specific offences or violation of ethical codes. The Canadian Supreme Court has repeatedly held that the rule of law is based upon both accountability and fairness, meaning that punishment cannot precede adjudication. This approach is consistent with Article 21 of the Indian Constitution, which highlights the need for justice to be viewed as being administered via the current legal system.

Comparative Insights:

This comparative analysis shows that no democracy automatically excludes people because of their arrest, incarceration, or accusations. They decide whether ministers should stay in their positions based on political traditions, moral obligations, court rulings or not. While acknowledging the moral duty of ministers to resign freely when facing serious charges,

international norms also protect the presumption of innocence until proven guilty. Together, international experiences and court decisions show that constitutional values cannot be sacrificed for clean politics. The government must implement due process-based policies to deter criminalisation. Instead of prompt disqualification, Parliamentary ethics committees for political accountability, mandatory disclosure of criminal charges, and accelerated trials for parliamentary members should be created. These preserve the principles of constitutional democracy and the integrity of the government.

SECTION IV: CRITICAL EVALUATION AND SUGGESTIONS

The 130th Constitutional Amendment Bill, 2025, is a historic legislative effort to tackle one of the greatest obstacles in Indian Democracy — politicisation of crime. For many years, different governments, judicial pronouncements, and committees have expressed critical concern over the alarming increase in criminalisation among legislators. This amendment seems like a moral and political answer to all the appeals for it. But well-meaning as it may be, its approach raises questions about its constitutional and practical legality.

1. Strengths of the bill:

The most admirable quality of the amendment is that it makes morality as its utmost priority. It understands that those who occupy high constitutional offices must satisfy not only the criterion of legal purity but moral credibility. The ministers who are under investigation weakens citizens' confidence in the functioning of governance.

The Bill seeks to ensure that the power of the executive is not used to interfere in investigations by investigative agencies or impede the dispensation of justice. It symbolically confirms that political morality cannot await judicial decisions. In a trial system where cases drag on for years, such pre-emptive disqualification can revive the sanctity of public office and bring India in keeping with the principle of constitutional morality, a notion restated by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) and *Government of NCT Delhi v. Union of India* (2018).

2. Constitutional and practical concerns:

Despite its good intentions, the Bill has some serious constitutional issues. The most serious of these is that it disregards the presumption of innocence, a fundamental cornerstone of criminal

jurisprudence and a necessary component of Article 21. Mere arrest doesn't prove a person guilty; it just provides a start to the investigation. Showing detention as a ground for automatic disqualification would be equivalent to punishing in advance, and this would be fine for neither legal sense nor the principle of natural justice.

Moreover, the provision gives a margin of political misuse. In Indian politics, there has been an incredibly competitive environment, which often leads to rivalries between parties and politicians, motivating them to misuse their powers. If disqualification on arrest is continued, then it can be used as a tool for rivalries; the ruling parties can easily misuse their powers by controlling the executives and bureaucrats. This will lead to violating the basic structure doctrine and the rule of law.

This bill also risks the balance between the three organs of government, which are the legislative, Executive, and Judiciary. The bill may disturb the balance, as it may bypass the judicial review and the scope of parliament by allowing automatic disqualification on detention, which may lead to undermining the principle of collective responsibility under Articles 74 and 75. This proposed amendment can take away the autonomous powers of the executives and the Parliament, and thus may not be completely suitable.

3. Need for a Balanced Reform:

Though the bill has positive reforms, instead of automatic disqualification, there is a need for systematic disqualification, which can maintain fairness and ensure proper judicial hearing, so that unethical politics and misuse of powers can be avoided. Some alternatives to this bill can ensure justice and fairness. These are:

(i) Fast-track courts for Politicians:

There should be courts exclusively dedicated to hearing and dealing with criminal cases against politicians or legislators. The cases should be cleared within a specified time period, such as one year or within 450 days, which would ensure no delay in providing justice.

(ii) Mandatory disclosure of Criminal Backgrounds:

By imposing norms for mandatory disclosure at the nomination, it would help the voters to know their candidates, and they would be informed about the candidates' backgrounds. This

would ensure that the public chooses the right person as their representative.

(iii) Voluntary ethical codes:

India should idolise the United Kingdom's system, which establishes a rule that any minister facing heinous or serious criminal charges against him should voluntarily step down until all the allegations are cleared and the case is closed. Though this process is tough for our country, it really should be followed in India; this would ensure that no person with grave allegations is holding a public office.

(iv) Independent Oversight Committee:

For the investigations, a neutral committee or organisation should be appointed, similar to the Election Commission or Lokpal, which could deal with the cases of legislators holding office. This would ensure that the ruling party do not interfere in the due process and investigation is done with fairness.

(v) Strengthening Political Party Accountability:

Political parties should be legally bound to avoid admitting candidates with heinous criminal records against them, as mentioned in the 244th report of the Law Commission of India. Still, the parties do not follow such provisions; therefore, strict laws should be made that bind the parties to avoid the admission of members with serious charges against them until the case is cleared.

4. Ethical and Democratic Perspective:

If we look at a deeper level, the main issue is of conflict between morality and political advantages. On the one hand, morality says that ministers having grave criminal charges against them should resign for ethical reasons, while on the other hand, constitutionalism says that no one's right shall be limited without due process. So the real solution here is not rigid disqualification based merely on detention, but a mixture of political responsibility and voters' awareness. The reforms should bring a new culture of refusing corrupt legislators and choosing the right candidate and party.

Therefore, even if this amendment has good intentions, it aims for cleaner politics, but it still

needs to be reviewed to fit with the Constitutional values of this country. The final solution should be a blend of judicial efficiency, fair procedures, and ethical governance. This way, no one will be wrongly disqualified, and it will prevent misuse of powers.

CONCLUSION

The 130th Amendment Bill, 2025, demonstrates the effort of India to reconcile two significant concepts – ethical politics and constitutional fairness. Whereas, on the one hand, the Bill intends to drive out criminals from power, keeping public life honest and consolidating democracy, on the other, it does pose intricate legal issues, the core of India's laws — like fairness, due processes of law, and balance of powers.

By a thoroughgoing constitutional and comparative scrutiny, it is clear that the provision of automatic disqualification on detention in the Bill is contrary to the principles incorporated under Articles 14, 21, and 75 of the Constitution. Lack of judicial determination before disqualification not only assails the presumption of innocence but also tramples over the Doctrine of Basic Structure, guarding the rule of law and judiciary from legislative invasion.

Comparative lessons of the United Kingdom, the United States, and Canada also teach us that even an experienced democracy does not disqualify solely based on detention. They utilise mechanisms of ethical responsibility, political accountability, and judicial review so that there may be the co-existence of constitutional morality and due process. India, too, needs to adopt the same balance and not the type of clauses likely to become subject to politicisation and abuse.

The actual solution resides in structural reform, not constitutional urgency. Creating fast-track courts for elected officials, imposing public disclosure of criminal charges, equipping independent oversight commissions, and imposing voluntary codes of conduct individually and cumulatively can all have the same objective — a cleaner and transparent democracy — without violating basic rights.

Essentially, the new amendment proposed needs to be considered only as the beginning of the discourse and not the definitive resolution. Genuine reform can only be the result of an understanding of constitutional morality, judicial prudence, and citizen sensitisation. Once the legal mechanisms and ethical governance flow in tandem, only then will the governing, by

those who govern, be the embodiment of the values of the Constitution they are sworn to protect.

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