

The 130th Amendment Bill, 2025: A Progressive Step Or A Constitutional Incongruence?

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ABSTRACT

This paper intends to analyse The Constitution (130th Amendment) Bill, 2025 [Removal of Ministers upon Detention], hereafter referred to as “the Bill”. The paper first, will introduce the bill, including the provision it intends to amend and its current status. Second, the paper will delve into the historical analysis surrounding the bill, including any previous attempts made towards such developments and their respective status, and comparison to that of the incumbent introduction and the purpose of the proposed bill. Third, the paper will provide detailed analysis of the implications of the bill on current legal and constitutional framework.

KEYWORDS

Detention, Cessation, Irony, Morality, Federal.

INTRODUCTION

The Bill² was introduced on August 20, 2025, in the Upper House by Shri Amit Shah (Hon’ble Home Minister), seeks to amend Articles 75, 164 and 239 AA³ of the Constitution of India and has currently been to the Joint Parliamentary Committee. The bill is aimed at providing for the removal of a minister who has been accused of an offence which is punishable by imprisonment of five or more years, and has been arrested and detained for 30 days consecutively.

The removal can be done by the President of India or the Governor of that respective state, which will be subject to aid and advise of that of the Prime Minister and the Chief Minister, respectively, however, if not through that procedure then the office of the respective minister will be automatically ceased from his warrant thereafter upon the completion of the thirty days, i.e. on the 31st day. This bill also extends to both the Prime Minister and the Chief Ministers, who, if accused, and detained for the period of thirty days, must resign within the stipulated time period, failure of which will automatically result in their office being ceased, since both

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² The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, Bill No. 141 of 2025 (India).

³ INDIA CONST. arts. 75, 164, 239AA.

are the Head of Government in their respective positions, their cessation of office will result in dissolution of the entire Council of Ministers.

There is enforcement of doctrine of presumed incapacity in the provisions of the bill in the sense that the Bill operates on a legal assumption that Physical Detention alone is enough to strip an executive of their constitutional duties. It seeks to ensure that governance is not being administered from judicial custody.

The bill intends to prevent jail governance. In India, an accused can remain in power while also remaining in jail, which hampers public trust. Such prevention is deemed necessary to ensure fairness and uphold the essence of democracy. However, the Reappointment Clause under Section 2, 3 and 4 of the Bill⁴ states that both the Union and the State Ministers are eligible for reappointment immediately after their release, even if the release is secured on bail, provided there is a new, fresh administration of Oath of Office and Secrecy by the President or Governor, which essentially is ironic on both the intent of the legislature towards clean governance as well as constitutional morality. Apart from this particular provision, there are more loopholes within the bill that have sparked controversy, which the paper intends to discuss in detail further.

HISTORICAL BACKGROUND AND PURPOSE OF THE BILL:

Historically, in Indian legal and political framework existed an overreliance on the mere unwritten convention of constitutional morality, undertrial executives were entrusted with the very morality blindly, it was thought that they would voluntarily resign from their office upon facing such serious accusations, which was the primary reason for the existence of a legal vacuum within the arena of public trust in its law and lawmakers, this became the pivotal reason for statutory conflict and eroding public trust thereby necessitating reforms in law. The currently proposed bill is a culmination of decades of administrative rules, Election Commission proposals, and reports that attempted to fill the legislative gap between disqualification from post-conviction to the pre-trial phase.

1. The Representation of People Act, 1951 (RPA):

Under Section 8(4) of RPA⁵, sitting lawmakers were given a protective statutory shield, which allowed them to delay disqualification for three months upon conviction, and indefinitely

⁴ INDIA CONST. sch. 7, Union List, entry 8.

⁵ Representation of the People Act, No. 43 of 1951, § 8(4) (India).

thereafter if they filed an appeal within the three months; however, the landmark judgement of *Lily Thomas v. Union of India*, (2013)⁶ Section 8(4) was completely struck down, mandating that an executive be deemed disqualified immediately after their conviction. The current bill forces removal from the post upon procedural Judicial Remand, creating an asymmetry with the standard procedure of disqualification under RPA, 1951.

2. Law Commission's 244th report (2014):

The Law Commission's 244 report (2014)⁷, formally titled as 'Electoral Disqualifications', was commissioned to address growing criminalization of politics. The commission recommended that disqualification should not wait for a final conviction; instead, the moment a competent Court decides to frame charges against an executive for any offence carrying a punishment of five or more years, the person shall cease to be in the office. The proposal was recommended to be incorporated through a new Section 8B⁸ of RPA, 1951.

3. Public Interest Foundations v. Union of India (2018):

In *Public Interest Foundations v. Union of India* (2018)⁹, writ petitions were filed in the Supreme Court to expand the scope of disqualifications, effectively asking the Court to judicially implement the Law Commission's 244 Report. However, a five- Judge Constitutional Bench unanimously ruled against the petitioners, citing judicial overreach and strict separation of powers.

Following these previous attempts at expanding the scope of disqualification of the executive, the 130 Amendment Bill ignores the Law Commission's recommendation to wait for a Judge to officially accept and frame the charges, in lieu it replaces this crucial legal safeguard with the mere act of being kept in jail.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

Even though the Bill envisions a political landscape free from corruption and crime, it still carries serious constitutional as well as legal implications. The structural nature of the Bill is such that it stands violative of several laws, even though the legislative intent suggests otherwise.

⁶ *Lily Thomas v. Union of India*, (2013) 7 SCC 653.

⁷ Law Comm'n of India, Report No. 244, Electoral Disqualifications (2014).

⁸ Representation of the People Act, No. 43 of 1951, § 8B (India).

⁹ *Public Interest Foundations v. Union of India*, (2019) 3 SCC 224.

1. Violation of constitutional machinery:

The Bill enforces strict and automatic cessation of office after 30 days of detention; even though it applies equally to both the Central and State Governments, it creates a constitutional vulnerability for both Union and State by allowing the Union to bypass the provisions of Article 356¹⁰ (Provisions in case of failure of constitutional machinery in State)¹¹ and the State Governments to target Union Ministers using local police. This creates an unwanted vacuum between the bill's intent and the already existing provisions.

2. Contravention with the due process of law:

Indian Jurisprudence works on the principle 'innocent until proven guilty' and that 'no innocent shall be punished until the guilt is proved'; however, this bill directly contradicts both principles, without guilt being proven, ceasing any Minister's office based purely on a continuous 30-day judicial or police remand, without guilt being proven. Furthermore, even after acquittal, there is no automatic reinstatement, converting a pre-trial process into a punishment and permanently altering the composition without finding guilt.

3. Subverting the Seventh Schedule:

Currently, the arrest of executives for offences punishable by five or more years is executed by the central investigative agencies like the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED), and the local police, under Section 35 of Bharatiya Nagarik Suraksha Sanhita¹², however the jurisdiction is strictly divided between the Central Agencies and the Local Police by the virtue of entries in Union List (Entry-8) and The State List (Entry-2) under the Seventh Schedule¹³. However, the bill fundamentally disrupts this balance by employing an agency-neutral language, because the text not specifying the arresting agency essentially, equates the Local Police with that of the Central Agencies, granting both an overarching and cross-jurisdictional power to arrest and force the removal of executives.

CONCLUSION

While the Constitution (130th Amendment Bill), 2025, is prima facie a progressive legislation, its potential enactment sets a stage for several legal and constitutional loopholes. The bill seeks to amend Articles 75, 164, and 239AA; it seems to create a constitutional asymmetry when

¹⁰ INDIA CONST. art. 356.

¹¹ INDIA CONST. sch. 7, State List, entry 2.

¹² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 35 (India).

¹³ INDIA CONST. sch. 7, Union List, entry 8; State List, entry 2.

contrasted with the disqualification framework under the Representation of the People Act, 1951. The intent of proposing the Bill is to prevent corruption and jail governance which is a pressing issue in India but, ironically it seems to subvert the constitutional and electoral morality, as well as the Doctrine of Presumption of Innocence which forms the heart of Indian Jurisprudence, it institutionalizes the process as punishment through its strict provisions by ceasing the office of an accused executive on the 31st day based entirely on a continuous judicial or police remand.

The serious implications overpower the original intent, leaving State Governments, especially in states with non-ruling parties, with little to no safeguard against arbitrariness. One major problem with this bill is that it fails to draw a line between the powers of the Central Agencies and the Local Police for arrest of the executives. The Bill proposes a Re-Appointment Clause but does not provide for a Reinstatement Clause; in case of the acquittal of the executive, there cannot be an automatic reinstatement to the office.

However, a Minister on bail remains fully eligible for participating in elections. This means the Law presumes such an individual to be unfit to hold a Ministry portfolio, yet finds the same executive fit to sit in the Legislature. These major contradictions make the bill not a very competent piece of legislation to be passed; it needs to work on major loopholes and also preserve the original purpose without any inherent contradictions. Ultimately, the Bill must strictly abide by the constitutional morality and the electoral morality, as envisioned by the drafters of the Constitution of India.