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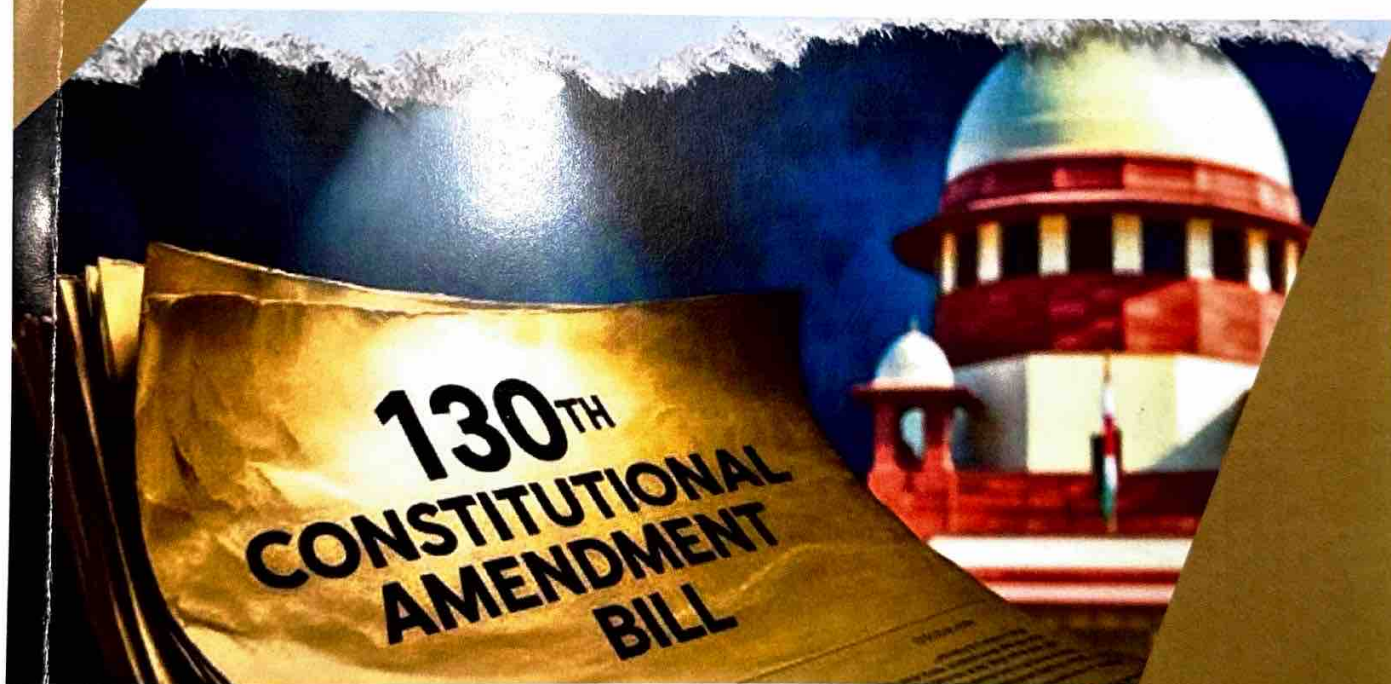
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**The Constitution 130th Amendment Bill 2025
and the Future of Indian Democracy:
Ethics, Law, and Politics**

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CONTENT

1) A Critical Appraisal of Measures to Curbmenace of Criminalisation of Politics in India	Dr. Mayura Borde	4
2) Constitutional Reform in the Age of Digital Disruption: Personal Reflections on the 130th Amendment	Dr. Prashant Amin, Dr. Archana Gadekar	15
3) Reforming Democratic Governance: The 130th Constitutional Amendment Bill, 2025	Ashwini Biradar Rucha Kulkarni	23
4) Administrative Transparency and Constitutional Reform: Policy Implications of the 130th Amendment Bill, 2025.....	Dr. Madhuri Sarwade Dr. Ketki Dalvi	33
5) Media Trial In Criminal Justice System vis-À-Vis The Constitution 130th Amendment Bill, 2025	Dr. Mukta Verma Saurabh Rathore	52
6) The Anti-Defection Law and Parliamentary Democracy in India: An Analysis in the Context of the 130th Constitutional Amendment	Dr. Shubhangi Bhaid Siddha Kulkarni-Deshmukh	63
7) Governance Beyond Custody: Structural Reforms and Democratic Integrity After the 130th Constitutional Amendment Bill, 2025.....	Vidhya Shetty Siddha Kulkarni Deshmukh	76
8) Constitutional Ethics and Ministerial Accountability in India: Re-examining Democratic Responsibility in the Context of the Constitution (130th Amendment) Bill, 2025	Radhika Hastak Seema A. Patil	87

Governance Beyond Custody: Structural Reforms and Democratic Integrity After the 130th Constitutional Amendment Bill, 2025

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Abstract

The enactment of the Constitution (130th Amendment) Bill, 2025, signifies a critical juncture in India's constitutional and legislative development, introducing a mandatory disqualification mechanism for senior executive officials subjected to custodial detention for a continuous period of 30 days. While the stated objective is to curtail the phenomenon of "governance from jail" and reinforce constitutional morality, the Bill simultaneously invites scrutiny for potentially undermining the principle of presumption of innocence and enabling the politicization of federal investigative agencies. This article undertakes a critical examination of the Bill's broader implications for democratic legitimacy and the federal balance of power. It contends that disqualification, isolation, is an inadequate instrument for achieving meaningful political reform. Instead, it advocates for a holistic framework of structural reforms encompassing the statutory insulation of investigative bodies from political influence, the establishment of expedited judicial processes for lawmakers, and the promotion of internal transparency within political parties. Such a framework, grounded in procedural fairness and institutional accountability, offers a more sustainable pathway toward reinforcing democratic governance and systemic integrity.

Keywords:

Introduction:

The year 2025 marked a pivotal moment in the trajectory of Indian constitutional development with the enactment of the Constitution (130th Amendment) Bill. This legislative measure emerged against a backdrop of growing public frustration with the persistent "criminalization of politics," wherein the demarcation between legislators and lawbreakers became increasingly indistinct. However, the immediate impetus for the amendment was not merely the presence of elected representatives with criminal charges, but the unprecedented scenario of executive governance being carried out from within judicial custody.

The phenomenon of senior ministers and Chief Ministers continuing to wield administrative authority while incarcerated enabled by the absence of explicit disqualification provisions prior to conviction resulted in both functional governance paralysis and a significant ethical crisis. The 130th Amendment was introduced as a legislative response to this constitutional dilemma: instituting a "cleanse-on-custody" provision mandating the removal or resignation of any Minister, Chief Minister, or Prime Minister held in custody for more than 30 consecutive days.

This development has ignited a fundamental constitutional debate between two interpretive camps. The first, rooted in the principle of constitutional morality, maintains that the constitutional doctrines of executive pleasure such as the "Pleasure of the President" or "Governor" cannot reasonably extend to individuals incapacitated by incarceration. For these scholars, the symbolic and functional sanctity of high public office necessitates the disqualification of those whose detention compromises institutional legitimacy. The amendment, in this view, represents a necessary corrective, a targeted intervention to restore ethical standards within public institutions.

Conversely, critics grounded in procedural due process and federalist values caution against the broad implications of equating custodial detention with automatic disqualification. They underscore the concerning pattern wherein investigative agencies, particularly in high-profile political cases, are often used for partisan ends, with actual conviction rates remaining conspicuously low. In such a context, empowering law enforcement agencies to indirectly unseat democratically elected leaders by triggering their removal through arrest

risks upsetting the federal balance and undermining electoral mandates. By making detention rather than conviction the threshold for disqualification, the amendment may unintentionally grant the central government a *de facto* mechanism of control over state-level leadership.

Democratic trust rests upon two foundational pillars: integrity which implies the confidence of the public in the honesty of its leaders and fairness which implies the belief that democratic institutions function impartially and are free from manipulation. While the 130th Constitutional Amendment seeks to uphold integrity by disqualifying incarcerated leaders, it inadvertently risks undermining fairness. The potential for politically motivated arrests, later proven unfounded, threatens to erode public confidence in the legitimacy of the democratic process. In some cases, this erosion of systemic trust may cause more lasting harm than the spectacle of governance from custody.

This article argues that the 130th Amendment, while addressing a visible symptom of political dysfunction, falls short of remedying its structural causes. To genuinely restore faith in democratic governance, the disqualification mechanism must be embedded within a broader institutional framework. Clean politics cannot be sustained without ensuring clean investigations and timely judicial outcomes. Only through comprehensive structural reform can India reconcile the goals of accountability, fairness, and public trust in its democratic institutions.

The Evolutionary Roadmap of Disqualification Laws:

The legal framework governing disqualification in India has evolved gradually, reflecting the changing priorities of democratic accountability and public trust. The journey began with Section 8 of the Representation of the People Act, 1951, which established that disqualification of legislators would occur only upon formal conviction, and only when the sentence was two years or more. This approach, grounded in the presumption of innocence, aligned with a period when public confidence in the judicial process remained strong and largely unchallenged.

A significant tightening of this framework occurred in 2013 through the landmark *Lily Thomas v. Union of India* case. The Supreme Court's decision removed the three-month buffer period that had allowed convicted Members of Parliament and State Legislatures to retain their positions. This ruling marked a shift toward greater institutional accountability by eliminating protective leg-

islative loopholes and reinforcing the principle that elected office must meet higher ethical standards.

The next phase in this evolution focused on transparency rather than punitive measures. In 2018, the Supreme Court in *Public Interest Foundation v. Union of India* mandated that electoral candidates publicly disclose their pending criminal cases. While this did not bar individuals with ongoing cases from contesting elections, it introduced a framework of informed electoral choice, enabling voters to make decisions based on the legal backgrounds of candidates. This development signaled a transition from punitive disqualification to information based trust building between citizens and the political system.

However, the 130th Constitutional Amendment Bill (2025) marks a distinct and radical departure from prior reforms. By mandating the removal of executive officials including Ministers, Chief Ministers, and the Prime Minister who remain in judicial custody for more than 30 consecutive days, even in the absence of a conviction, the amendment introduces a pre-emptive disqualification standard. This move, while intended to uphold institutional dignity and prevent "governance from jail," has contributed to a polarized climate of democratic trust. Critics express growing concern over the potential misuse of this provision, particularly given the perceived politicization of investigative agencies. The fear that detention without judicial determination of guilt can now trigger removal from office represents a profound shift in the balance between executive accountability and procedural justice.

Research Objectives and Methodology:

This study undertakes a critical examination of the 130th Constitutional Amendment by analysing its implications through three key dimensions

Legal Validity:

It investigates whether the amendment withstands constitutional scrutiny, particularly in relation to the Basic Structure Doctrine, with an emphasis on the separation of powers and due process.

Administrative Efficacy:

It assesses whether the mandated removal of executive leaders after 30 days of judicial custody contributes to improved governance or, conversely,

fosters political instability and facilitates proxy leadership lacking electoral legitimacy.

Reformist Alternatives:

It explores the feasibility of constitutionally insulating investigative agencies such as the CBI and Enforcement Directorate (ED), to ensure that the amendment does not devolve into a mechanism for political retaliation.

Legal and Constitutional Framework: The Anatomy of the 130th Amendment:

The Constitution (130th Amendment) Bill, 2025 does not emerge in constitutional isolation. Instead, it introduces a significant transformation to the conditions of office for members of the executive branch in India. To fully grasp its constitutional implications, it is essential to examine the specific alterations it introduces to key provisions governing the appointment and tenure of ministers at both the Union and State levels. Under the pre-existing framework, Article 75 of the Constitution governed the appointment of the Prime Minister and other Union Ministers. Clause (2) of Article 75 affirms that "Ministers shall hold office during the pleasure of the President," a formulation rooted in parliamentary convention and executive discretion. However, the 130th Amendment introduces a novel Clause (2A), which limits the scope of this "pleasure" doctrine by imposing a statutory trigger for disqualification. According to this clause, if the Prime Minister or any Union Minister is remanded to judicial or police custody for a "serious offense" defined as an offense carrying a punishment of five years or more and such detention continues for 30 consecutive days, the "pleasure of the President" is deemed to be automatically revoked by operation of law.

This marks a constitutional departure from the earlier position, where removal from office required either the Prime Minister's advice or disqualification following conviction under the Representation of the People Act, 1951. The critical constitutional question this raises is whether Parliament possesses the authority to automate the exercise of presidential discretion, thereby replacing individual judgment with an objective temporal criterion.

At the state level, Article 164, which governs the appointment of the Chief Minister and State Ministers, mirrors the structure of Article 75. The 130th Amendment's application to Article 164 is particularly contentious, pri

marily due to existing tensions between State Governments and the centrally appointed Governors. Two core issues emerge:

Proviso to Article 164(1):

The amendment stipulates that a Chief Minister must vacate office once the 30-day custody threshold is reached, regardless of legislative confidence or political context.

Federal Concerns:

Given that "Law and Order" is a subject under the State List, but central investigative bodies such as the CBI and ED often probe "serious offenses," critics argue that the amendment permits indirect central interference in state governance. This opens the door to potential destabilization of elected state governments without recourse to a floor test or popular mandate.

A particularly complex application of the amendment arises in the National Capital Territory (NCT) of Delhi, governed under Article 239AA. Delhi's unique governance structure where the elected government operates under the administrative oversight of the Lieutenant Governor (LG) highlighted legal ambiguities in 2024, when executive authority was exercised by ministers detained in Tihar Jail. The 130th Amendment addresses this vacuum by asserting that, for the purposes of Article 239AA, the Lieutenant Governor shall act in his discretion to terminate the appointment of a minister held in custody beyond 30 days, regardless of the advice of the Council of Ministers. This directly challenges the principle of collective responsibility and the "aid and advice" doctrine affirmed by the Supreme Court in *S.G.R.C. v. NCT of Delhi* (2018).

Constitutional Morality vs. Presumption of Innocence:

At its core, the 130th Amendment draws legitimacy from the Supreme Court's evolving jurisprudence on constitutional morality, particularly as articulated in *Manoj Narula v. Union of India* (2014). In that case, the Court emphasized that those who hold high public office must adhere to the highest standards of probity, even in the absence of legal disqualification. However, critics contend that the amendment compromises the presumption of innocence, a foundational principle of criminal jurisprudence. By equating custodial detention with political disqualification, the amendment may risk undermining the

balance between moral expectations of public office and the procedural rights of individuals, especially in a politically charged environment where arrests can be misused for the gain of the political parties.

Historically, under the “pleasure doctrine,” the President or Governor possessed the authority to remove ministers, but this power was never regarded as arbitrary. Judicial interpretation ensured that such discretion was exercised in line with constitutional morality and democratic norms. The 130th Amendment departs from this tradition by codifying an “expectation of integrity,” presuming that a person in custody lacks the moral authority to govern. In effect, detention itself becomes a constitutional trigger for removal, transforming a convention based expectation into a binding legal mandate.

The most serious constitutional challenge to the amendment arises from its apparent conflict with Article 21 of the Constitution, which guarantees the right to life and personal liberty and embodies the presumption of innocence. Indian criminal jurisprudence has consistently upheld the principle that an individual is innocent until proven guilty. By enforcing what amounts to a “civil death” through the loss of executive office based solely on arrest and 30 days of detention, the amendment treats an accused person as though they were already convicted. This blurring of the line between accusation and guilt undermines the “golden thread” of criminal law, which requires proof beyond reasonable doubt before the imposition of substantive penalties.

The amendment also creates a structural inconsistency with the Representation of the People Act, 1951, which has historically governed disqualification from public office. Under Section 8(3) of the Act, disqualification is triggered only upon conviction resulting in a sentence of at least two years. The 130th Amendment bypasses this settled framework by introducing a pre-conviction disqualification applicable exclusively to executive heads. This leads to a constitutional paradox: an individual may be deemed unfit to serve as a minister due to detention, yet remain legally qualified to continue as a Member of Parliament or a Member of the Legislative Assembly because no conviction has occurred.

International comparisons:

In seeking justification, the government has drawn on comparative jurisprudence from other democracies. References are made to Australia’s constitutional provisions on incapacity and South Africa’s internal party “step

aside" rule. However, the Indian model remains unique in its rigidity. In most democracies, stepping aside during investigation is governed by political convention or party norms rather than enforceable constitutional commands. The 130th Amendment converts what is typically a moral or political expectation into an inflexible constitutional rule, leaving little room for contextual judgment.

Critics argue that this rigidity introduces grave risks of political weaponization. By lowering the threshold for removal from judicial conviction to executive detention, the amendment potentially shifts power from elected representatives to investigative agencies. Concerns are heightened by the widely acknowledged lack of institutional autonomy of central agencies such as the Enforcement Directorate and the Central Bureau of Investigation. Data from recent years suggests that a disproportionate number of cases initiated against politicians have targeted members of the opposition. Under the amendment, securing a remand of 31 days would be sufficient to unseat an elected leader, effectively granting the permanent bureaucracy a veto over democratic mandates.

This framework also erodes the presumption of innocence in practice. Although proponents argue that removal is reversible upon release or acquittal, political reality undermines this claim. In public life, reputational damage is often irreversible; removal on the ground of "serious criminal allegations" can permanently impair political legitimacy, regardless of eventual exoneration. Thus, the amendment risks turning legal procedure into punishment.

Federalism presents another critical fault line. Since central investigative agencies operate under Union control, the arrest of a State Chief Minister could automatically trigger removal, allowing the Union to destabilize state governments without invoking Article 356 and its attendant judicial scrutiny. Furthermore, the amendment empowers Governors to act in their discretion if a Chief Minister refuses to resign, intensifying existing tensions surrounding gubernatorial overreach and Centre-State relations.

The practical consequences of this framework are particularly severe in the context of laws such as the Prevention of Money Laundering Act, where trials often extend for years and bail is difficult to secure. A leader could remain out of office for an entire legislative term without a finding of guilt, transforming the justice process into a tool of political exhaustion rather than accountability. This phenomenon has been described as "process as punishment."

Recognizing these dangers, critics argue that clean politics cannot be achieved through a single punitive amendment. Instead, structural reforms are necessary. One proposal is to grant constitutional or high statutory status to investigative agencies, insulating them from executive interference in a manner similar to the Election Commission or the Comptroller and Auditor General. An independent oversight board comprising retired judges, opposition representatives, and civil society members could review prima facie evidence before the arrest of sitting ministers, acting as a safeguard against politically motivated prosecutions.

Judicial reform is equally essential. Rather than a rigid 31-day removal trigger, fast-track special benches could be established to ensure mandatory day-to-day trials for cases involving sitting ministers, with completion timelines of 90 to 180 days. Limiting adjournments and deploying specialized judicial infrastructure would prevent prolonged detention without adjudication.

Internal party democracy and electoral reforms also form a crucial part of the solution. The Law Commission's recommendation to disqualify candidates at the stage of framing of charges by a court offers a judicial filter that avoids reliance on mere arrest. Enhanced financial transparency within political parties would further rebuild public trust.

Technological solutions may address administrative paralysis, another justification cited for the amendment. Block chain-based file management systems and clearly codified caretaker protocols could ensure continuity of governance during periods of transition without necessitating immediate constitutional removal.

International comparisons underscore the amendment's exceptional nature. In the United Kingdom, accountability is governed by the Ministerial Code and political convention, encouraging voluntary resignation. In the United States, criminal liability and tenure are separated through impeachment and constitutional mechanisms addressing incapacity, with no automatic removal upon arrest. Nordic democracies rely on high institutional trust and voluntary resignation, rendering rigid legal mandates unnecessary.

Ultimately, the 130th Amendment reflects a deeper crisis of trust in India's political institutions. Where democratic conventions and ethical norms are weak, the state resorts to hard constitutional rules. However, without parallel reforms ensuring investigative independence, judicial speed, and political

transparency, such rigidity risks undermining constitutional liberties, federal balance, and democratic choice. The challenge lies not merely in punishing corruption, but in designing a system where accountability is swift, fair, and immune from misuse.

Conclusion:

The Constitution (130th Amendment) Bill, 2025 represents a well-intentioned yet structurally incomplete response to India's crisis of institutional integrity. While it decisively ends the problematic practice of governance from custody, it simultaneously raises serious concerns regarding the potential politicization of investigative processes. Sustainable democratic accountability cannot rest on punitive constitutional mandates alone. Instead, the Amendment must operate as an exceptional safeguard rather than a routine instrument of political displacement. Comparative constitutional experience demonstrates that durable accountability emerges from a synthesis of legal rigor and procedural fairness. India's choice of a "hard-coded" constitutional solution, unlike the convention-driven or legislative models seen internationally, necessitates robust supporting structures. These include expeditious judicial scrutiny, institutional autonomy of investigative agencies, and technologically secure mechanisms to ensure administrative continuity. Ultimately, democratic trust is not legislated into existence; it is cultivated through fairness, transparency, and judicial certainty. The 130th Amendment provides the framework for integrity, but only systemic reforms can animate it into a credible and just governance model.

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