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THE PERILOUS PRECEDENT: WHY THE 130TH AMENDMENT BILL THREATENS THE HEART OF INDIAN DEMOCRACY

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A democracy is a delicate balance between the will of the people and the principles of its Constitution. The proposed Constitution (130th Amendment) Bill, 2025², threatens to upend this balance. While its proponents frame it as an instrument to ensure "constitutional morality" and cleanse politics, a closer look reveals a dangerous paradox. The Bill, which proposes the automatic removal of a Prime Minister, Chief Minister, or minister if detained for 30 consecutive days, poses a direct threat to the very essence of India's democratic and constitutional framework. It seeks to achieve what was never constitutionally imagined, subverting the established principles of parliamentary democracy and due process.

THE SUBVERSION OF PARLIAMENTARY SOVEREIGNTY

The Bill fundamentally alters the established relationship between the executive and the legislature. Under India's parliamentary system, enshrined in Articles 75(3) and 164(2), the executive is collectively responsible to the legislature. A vote of no confidence is the established mechanism for removing a government that has lost the confidence of the House. However, the 130th Amendment Bill creates an unprecedented "political kill-switch" that bypasses this democratic process entirely.

The Bill grants the President or Governor the power to remove a minister if they remain in custody for 30 days. In the case of a Chief Minister's arrest, the Governor or Lieutenant Governor can act. Given that these offices are appointees of the Union government, the Bill introduces a mechanism for the central executive to destabilize state governments through a process that has no legislative sanction. This could be seen as an indirect way to impose a form of President's Rule without the judicial checks on the misuse of Article 356, which were established in cases like *S.R. Bommai v. Union of India*³. It is a dangerous tool that could lead to "political paralysis in states" and erode the trust in institutions.

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² The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025," PRS Legislative Research, 2025

³ *SR Bommai v. Union of India*, 1994 INSC 111

IMAGINARY CONSTITUTIONAL CRISIS: ADMINISTRATIVE AND LEGAL FALLOUT

Suppose a Union Minister is detained for 30 consecutive days after a major industrial accident under investigation for environmental violations. No conviction has occurred, and the government continues to function with the Minister still holding majority support in Parliament. On the 31st day, under the provisions of the 130th Amendment, the President is legally compelled to remove the Minister from office even though the trial is ongoing and investigative delays are the reason for prolonged detention.

This removal creates immediate challenges: government work streams are disrupted, important legislative initiatives led by the Minister stall, and constituents lose representation. The Parliament must urgently find a replacement, but the abrupt vacancy, forced by an administrative timeline and not parliamentary will or judicial finding, sets off procedural confusion over continuity in government.

The judiciary, now asked to review the legality, finds its review powers limited as the new constitutional rule overrides ordinary due process. The legislative will and judicial safeguards take a backseat to the strict threshold of “days in custody,” highlighting the deep risks in bypassing established constitutional procedures. This impacts governance, stability, and the faith of citizens in constitutional protections, with no political parties or motivations involved, demonstrating systemic risks for any situation of delayed investigation.

PRECEDENTS AND PRACTICAL EFFECTS

Recent history highlights similar tensions such as when Indian public officials continued holding office during protracted judicial custody, sparking debates on legal adequacy rather than political rivalry. Also, compare with past constitutional amendments (like the 42nd) that centralized authority in the executive: initial passage and later partial reversal show the risks of not giving proper weight to due process and legislative checks. These cases reinforce why the automatic removal based on “custody” is dangerously untested, regardless of political affiliation.

THE EVISCERATION OF DUE PROCESS AND THE "DISQUALIFICATION BY SUSPICION" FALLACY

The Bill's most glaring legal flaw is its attack on the foundational principle of the 'presumption of innocence'. The presumption of innocence is a cardinal principle of criminal law. Article 21 of the Constitution, construed liberally in *Maneka Gandhi v. Union of India*⁴, guarantees that no person shall be deprived of life or liberty except according to fair, just, and reasonable procedure. In *State of Rajasthan v. Balchand*⁵, the Apex Court memorably affirmed that "bail is the rule, jail the exception." The Bill, however, conflates custody with culpability, introducing a "disqualification by suspicion".

This stands in stark contrast to the Representation of the People Act, 1951, which disqualifies a legislator only upon conviction, following a judicial determination of guilt. The Supreme Court has consistently upheld this principle. For instance, the Court in *Manoj Narula v. Union of India*⁶, left the appointment of ministers to the discretion of the Prime Minister and did not read a disqualification based on chargesheets. In the case of *Lily Thomas v. Union of India and others*⁷, the Supreme Court held that a lawmaker, only upon conviction, stands immediately disqualified. The three-month window to file an appeal and continue as a legislator was also struck down, thus providing jurisprudential support for stringent accountability even before the existence of the Bill. Here, it is important to note that disqualification begins only when someone is convicted, and not when someone is arrested or detained. The 130th Amendment attempts to circumvent this judicial precedent and the very process of law.

Furthermore, the Bill disregards the systemic inefficiencies of India's criminal justice system. As per NCRB data⁸, more than 75% of prisoners are undertrials, and their prolonged detention often reflects systemic backlog rather than proven guilt. The bail regime under special laws like the PMLA and UAPA makes it extraordinarily difficult to secure bail, leading to what some have called "process as punishment". The Bill thus risks penalizing leaders not for their guilt, but for the slow pace of the legal process, which is a clear affront to constitutional liberty.

The inconsistency in treatment between Ministers and legislators further complicates the matter. While a legislator faces disqualification only upon conviction, a Minister under this Bill would be forced to resign

⁴ *Maneka Gandhi v. Union of India*, 1978 INSC 16

⁵ *State of Rajasthan v. Balchand*, 1977 INSC 180

⁶ *Manoj Narula v. Union of India*, (2014) 9 SCC 1

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

⁸ NCRB, Prison Statistics India, 2022

on mere detention. This asymmetry undermines consistency in the constitutional treatment of public officials and risks deterring capable individuals from accepting ministerial responsibility.

A DANGEROUS FORM OF CONSTITUTIONAL ENGINEERING

The Bill is not a simple amendment; it is a form of "constitutional engineering" that seeks to test the limits of the Basic Structure Doctrine. By undermining parliamentary democracy and federalism, the Bill directly infringes upon what the Supreme Court has held to be the unamendable basic features of the Constitution.

COMPARATIVE INTERNATIONAL PERSPECTIVE

Unlike the rigid mechanism proposed by the 130th Amendment, most established democracies (including the US, UK, and Germany) require conviction or a legislative vote for removal of top officials. Detention, investigation, or mere suspicion are insufficient to trigger automatic loss of office. Introducing "automatic removal on detention" would make India an outlier and could undermine international perceptions of the strength and fairness of its constitutional safeguards.

The Bill's proponents argue it is a necessary measure to deal with politicians who govern from jail. However, this argument ignores the constitutional safeguards that are already in place. The Bill effectively gives a Union-controlled executive the power to bypass the democratic process and the judiciary, a power that could lead to a situation reminiscent of the 42nd Amendment, which similarly centralized power and was later partially struck down for similar reasons. This Bill seeks to replace the will of the people and the authority of the legislature with the discretionary power of a central agency.

CONCLUSION: A CHOICE BETWEEN PRUDENCE AND PERIL

The 130th Amendment Bill is framed as an attempt to strengthen morality in public life. However, it poses a fundamental choice before Parliament: to either uphold the foundational principles of the Constitution or to create a perilous precedent that could lead to political instability and the erosion of democratic norms.

The solution to the criminalization of politics is not to circumvent the judiciary but to strengthen it. Rather

than relying on a legislative shortcut, a more principled approach would be to fortify the judicial process itself. The establishment of Fast Track Courts and a commitment to expedited trials could ensure that justice is delivered swiftly, and that guilt or innocence is proven in a timely and fair manner. This approach would honor both the demand for public accountability and the constitutional right to due process.

Ultimately, the Bill's focus on a 30-day detention period, a political fix, distracts from the core issue: the lack of integrity in candidate selection. The judiciary has the inherent power and willingness to reform from within, provided it is supported and not undermined by measures that bypass its authority. A democracy must be capable of punishing the guilty and protecting the innocent with equal vigor. The Bill, by allowing detention to displace conviction, introduces a form of "disqualification by suspicion" that is philosophically and legally unsound. If enacted, it would mark a shift from a democracy governed by the ballot to one vulnerable to the contingencies of the lock-up. In seeking to purify politics, it risks polluting the very constitutional principles it claims to uphold.