# Enforcing Political Accountability: A Critical Analysis of the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025


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## Abstract

*The enduring challenge of criminalization in politics has cast a long shadow over India's democratic landscape, eroding public trust and undermining the constitutional ethos. The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, emerges as a legislative attempt to address this malaise by introducing a novel mechanism for the removal of ministers. This paper critically analyzes the Bill, which proposes to remove a minister from office upon being detained in custody for 30 consecutive days for an offence punishable with five or more years of imprisonment. It argues that while the Bill's objective of enhancing probity is laudable, its chosen instrument is constitutionally perilous. The paper posits that the Bill's reliance on an executive-driven, arrest-based trigger is a disproportionate and dangerous remedy that subverts fundamental constitutional principles, including the presumption of innocence, the separation of powers, and the delicate balance of federalism. By granting the executive a potent tool for political weaponization, the Bill threatens to inflict a wound deeper than the disease it seeks to cure. This analysis concludes by advocating for a constitutionally sound and jurisprudentially balanced alternative: the adoption of the Law Commission of India's long-standing recommendation to trigger disqualification at the stage of the judicial framing of charges for heinous offences. This approach, it is argued, reinforces accountability without sacrificing the foundational pillars of justice and due process that sustain the Indian constitutional order.*

**Key Words:** *Accountability, Political Weaponization, Offences, Constitutionality, Charges.*

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# I. Introduction: The Unresolved Tension Between Probity and Power

## A. The Constitution as a Social Revolution

The Indian Constitution is not merely a legal document; it is, as the eminent historian Granville Austin described it, "first and foremost a social document" designed to bring about a "social revolution".[1] This transformative vision imbues the principles of governance with a profound moral and social purpose. Within this framework, political accountability transcends procedural formality; it is the essential mechanism through which the exercise of state power is tethered to the constitutional promise of securing justice, liberty, and equality for all citizens.[2] The legitimacy of the democratic state rests on the faith of the people that their representatives will govern with integrity, making the enforcement of accountability a cornerstone of the nation's constitutional project.[3]

## B. The Endemic Challenge of Criminalisation

Despite this constitutional aspiration, Indian politics has been afflicted by the endemic challenge of criminalization. The presence of individuals with serious criminal charges in legislative bodies and executive positions is not an anomaly but a deeply entrenched systemic failure. Data reveals a startling reality: nearly half of the members of the Lok Sabha face pending criminal charges, with a significant portion accused of heinous offences such as murder, rape, and corruption.[4] This trend strikes at the very root of democratic governance, corroding public trust and disrupting the constitutional ethos.[5] When lawmakers are themselves alleged lawbreakers, the moral authority of the state is diminished, and the rule of law becomes a casualty. This is not merely a crisis of individual ethics but a structural pathology that threatens the integrity of India's democratic experiment.

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[1]Website Bureau, The Spirit of the Indian Constitution: A Reflection from Granville Austin's Work, Arup K. Chatterjee (July 23, 2025), https://arupkchatterjee.com/2025/07/23/the-spirit-of-the-indian-constitution-a-reflection-from-granville-austins-work/.

[2]India 1949 (Rev. 2016) Constitution - Constitute, https://www.constituteproject.org/constitution/India_2016 (last visited Oct. 4, 2025).

[3]A Deep-Dive into India's Legal Regime on Political Accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, https://adrindia.org/content/a-deep-dive-into-indias-legal-regime-on-political-accountability-and-the-130th-constitution-amendment-bill (last visited Oct. 4, 2025).

[4]*Id.*

[5]Criminalization of Politics in India — Undermining the Spirit of Democracy | Association for Democratic Reforms, https://adrindia.org/content/criminalization-of-politics-in-india-undermining-spirit-of-democracy (last visited Oct. 4, 2025).

## C. The Bill as a Contentious Panacea

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, has been tabled in Parliament as a direct legislative response to this crisis. Its genesis can be traced to judicial pronouncements urging the political executive to uphold a higher standard of "constitutional morality".[6] The Bill seeks to amend Articles 75, 164, and 239AA of the Constitution to create a new mechanism for removing Union and State ministers, including the Prime Minister and Chief Ministers, who are detained for a prolonged period on serious criminal charges.[7] It represents a significant legislative intervention, reflecting a growing institutional impatience with the slow pace of the judicial process in addressing the nexus between crime and politics. In essence, the Bill signals a paradigm shift from a justice-oriented approach, which awaits a final judicial conviction, to a purity-oriented one, which seeks to cleanse the executive based on accusation and detention.

## D. Thesis Statement

This paper argues that the Constitution (130th Amendment) Bill, 2025, while ostensibly aimed at enhancing political accountability, proposes a remedy that is constitutionally suspect, politically hazardous, and jurisprudentially unsound. By tethering the removal of a minister to the executive act of detention, it bypasses essential judicial scrutiny, violates the sacrosanct presumption of innocence, and creates a potent tool for political weaponization that threatens India's federal structure. The existing legal framework for disqualification, which is contingent on conviction, has proven insufficient to tackle the immediate problem of tainted ministers holding office for years during protracted trials.[8] The Supreme Court, in its landmark *Manoj Narula* judgment[9], articulated a constitutional expectation of probity but, respecting the separation of powers, refrained from creating a new disqualification, thereby placing the onus on the legislature.[10] The legislature's response, however, has been to opt for a purely executive trigger (arrest and detention) rather than a judicially-vetted one. This choice reveals a deeper tension between the public demand for swift accountability and the constitutional safeguards of due process. This paper will demonstrate that a more prudent and constitutionally coherent path

[6]A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.
[7]*Id.*
[8]*Id.*
[9]Manoj Narula v. Union of India, (2014) 9 SCC 1.
[10]Manupatra Academy, https://www.manupatracademy.com/ (last visited Oct. 4, 2025).

lies in embracing judicially-mediated mechanisms, specifically the disqualification of ministers upon the framing of charges by a court for heinous offences, a solution consistently recommended by the Law Commission of India.[11]

## II. The Constitutional Architecture of Ministerial Accountability

### A. Collective Responsibility: The Bedrock of Parliamentary Democracy

The Indian Constitution, in its adoption of a parliamentary system, establishes a clear and robust framework for executive accountability. The cornerstone of this framework is the principle of collective responsibility, enshrined in Article 75(3), which states that "The Council of Ministers shall be collectively responsible to the House of the People".[12] This provision ensures that the government, as a unified entity, remains in power only so long as it commands the confidence of the Lok Sabha, the directly elected house representing the will of the people.[13] This is the primary channel of political accountability, where parliamentary instruments such as questions, debates, and no-confidence motions serve as constant checks on executive action.[14] A minister may be individually unimpeachable, but if the government as a whole loses the confidence of the House, the entire Council of Ministers must resign.[15]

### B. The 'Pleasure Doctrine': A Misunderstood Relic?

Juxtaposed with collective responsibility is the "pleasure doctrine," found in Articles 75(2) and 164(1), which stipulates that ministers "shall hold office during the pleasure of the President" or the Governor, respectively.[16] A superficial reading of this clause might suggest an arbitrary, monarchical power vested in the head of state to dismiss ministers at will. However, such an interpretation is fundamentally at odds with the democratic principles that

[11]A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.

[12]Article 75: Other Provisions as to Ministers, Constitution of India, https://www.constitutionofindia.net/articles/article-75-other-provisions-as-to-ministers/ (last visited Oct. 4, 2025).

[13]*EXECUTIVE–ITS ACCOUNTABILITY TO PARLIAMENT*, https://cms.rajyasabha.nic.in/UploadedFiles/Procedure/PracticeAndProcedure/English/26/EXECUTIVE.pdf (last visited Sept. 15, 2025).

[14]Accountability and Control, https://www.iipa.org.in/GyanKOSH/posts/accountability-and-control (last visited Oct. 4, 2025).

[15]The Concept of Collective Ministerial Responsibility in India- Theory and Practice | RostrumLegal, (Apr. 8, 2023), https://www.rostrumlegal.com/the-concept-of-collective-ministerial-responsibility-in-india-theory-and-practice/.

[16]Article 75, *supra* note 12.

permeate the Constitution. The framers of the Constitution did not intend to create a parallel or discretionary center of power in the office of the President or Governor that could override the mandate of the elected legislature.

## C. Judicial Interpretation in *Shamsher Singh v. State of Punjab*

The true constitutional position of the pleasure doctrine was authoritatively settled by a seven-judge bench of the Supreme Court in the landmark case of *Shamsher Singh v. State of Punjab* (1974).[17] The Court definitively ruled that the President and Governors are formal constitutional heads who, save for a few exceptional and specified situations, must exercise their powers and functions only on the "aid and advice" of their respective Council of Ministers.[18] The judgment clarified that the "satisfaction" of the President or Governor required by the Constitution is not their personal satisfaction but the satisfaction of the cabinet. This ruling effectively harmonized the pleasure doctrine with the principle of collective responsibility. It established that the "pleasure" of the President is constitutionally contingent on the advice of the Prime Minister, whose own position is contingent on commanding the confidence of the Lok Sabha.[19] The doctrine is thus a constitutional formality for giving effect to the decisions of the political executive, not an independent source of discretionary power.

The existing constitutional architecture, therefore, prioritizes *political* accountability to the legislature over other forms of accountability. The 130th Amendment Bill seeks to fundamentally reorder this hierarchy. It introduces a new, non-political trigger for removal—detention following an executive act of arrest—that operates independently of, and can even override, the confidence of the Prime Minister and the legislature. This is not merely an addition to the existing framework; it is a structural alteration that elevates a specific legal status above the established and foundational principle of political answerability to the people's elected representatives.

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[17]Shamsher Singh & Anr. v. State of Punjab, AIR 1974 SC 2192.

[18]Shamsher Singh v. State of Punjab, Explained | Dhyeya Law, https://www.dhyeyalaw.in/shamsher-singh-v-state-of-punjab-1975-1-scr-814 (last visited Oct. 4, 2025).

[19]A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.

## III. The Legal Void: Criminality, Disqualification, and Judicial Impetus

### A. The Representation of the People Act, 1951: The Conviction Threshold

While the Constitution lays down the broad principles of ministerial accountability, the statutory framework for disqualifying elected representatives is primarily contained in the Representation of the People Act (RP Act), 1951. Section 8 of this Act is the key provision, which mandates the disqualification of a person from being a member of Parliament or a state legislature upon *conviction* for a range of specified offences. For most serious crimes, disqualification is triggered if the conviction carries a sentence of two years or more.[20] For decades, however, this provision was rendered largely ineffective for sitting legislators by Section 8(4), a protective clause that allowed a convicted member a three-month window to file an appeal. If an appeal was filed, the disqualification would not take effect until the appeal was finally disposed of by the courts, a process that could take years, if not decades.[21]

### B. *Lily Thomas v. Union of India* (2013): Sealing the Post-Conviction Loophole

The legal landscape was dramatically altered by the Supreme Court's landmark judgment in *Lily Thomas v. Union of India*[22]. The Court struck down Section 8(4) of the RP Act, declaring it *ultra vires* the Constitution. The bench held that Parliament lacked the legislative competence to create a distinction between candidates and sitting members, effectively creating a privileged class of convicted lawmakers who could continue in office while their appeals were pending.[23] The judgment established the principle of immediate disqualification upon conviction, a decisive step towards enforcing probity in public life and cleansing the political system of criminal elements.[24] This ruling reinforced the primacy of judicial determination (conviction) as the trigger for a severe consequence, strengthening the post-conviction accountability regime.

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[20]The Representation of Peoples Act of 1951, 43, 8.

[21]Explained: The Lily Thomas Case That Changed the Disqualification Law for Convicted MPs or MLAs, Deccan Herald, https://www.deccanherald.com/india/explained-the-lily-thomas-case-that-changed-the-disqualification-law-for-convicted-mps-or-mlas-1203102.html (last visited Oct. 4, 2025).

[22]Lily Thomas v. Union of India, AIR 2013 SC 2662.

[23]*Id.*

[24]Explained, *supra* note 21.

## C. *Manoj Narula v. Union of India* (2014): The Moral Exhortation

While *Lily Thomas* addressed the post-conviction scenario, the more pervasive issue of ministers with serious *pending* criminal cases remained unresolved. This was the central question before a five-judge Constitution Bench in *Manoj Narula v. Union of India* (2014).[25] The petitioners argued that individuals against whom charges had been framed for heinous crimes should be barred from being appointed as ministers. The Court, while expressing deep concern over the criminalization of politics, ultimately concluded that it could not read a new disqualification into Article 75(1) of the Constitution that was not explicitly provided for by statute.[26]

However, the Court did not remain silent. It invoked the powerful, if amorphous, doctrine of "constitutional morality," stating that the Prime Minister, in advising the President on ministerial appointments, is expected to act in a manner that upholds the trust reposed in the office.[27] The Court issued a strong moral exhortation, expressing a "legitimate expectation" that the Prime Minister would not appoint individuals facing charges for serious or corrupt offences. This judgment is pivotal because, by deferring to legislative wisdom while simultaneously highlighting a constitutional vacuum, it created the moral and philosophical predicate for the 130th Amendment Bill.[28] The Court's deference, however, may have inadvertently paved the way for a legislative solution that deviates sharply from the principles of judicial oversight. The *Manoj Narula* judgment, in essence, identified a problem but, constrained by the separation of powers, passed the baton to Parliament to devise a legal remedy. The 130th Amendment Bill is Parliament's answer, but it is an answer that chooses an executive-mediated trigger (arrest) over a judicially-mediated one, creating a profound constitutional irony.

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[25]Manoj Narula v. Union of India, (2014) 9 SCC 1, *see also* Public Interest Foundation & Ors. vs. Union of India & Anr. AIR 2018 SC 4550.

[26]Criminalization of Politics in India — Undermining the Spirit of Democracy | Association for Democratic Reforms, *supra* note 5.

[27]IACL-AIDC Blog, On Constitutional Morality and the Ethics of Political Silence, IACL-IADC Blog (June 10, 2025), https://blog-iacl-aidc.org/2025-posts/2025/6/10/on-constitutional-morality-and-the-ethics-of-political-silence.

[28]A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.

## IV. The 130th Amendment Bill: A Cure More Dangerous Than the Disease?

### A. Anatomy of the Bill

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, proposes a direct and potent mechanism to enforce accountability. Its core provisions are clear and unsparing:[29]

- **The Trigger:** A Union Minister, Prime Minister, Chief Minister, or State Minister shall be removed from office if they are arrested and remain in police or judicial custody for 30 consecutive days for an offence punishable with five or more years of imprisonment.
- **The Mechanism:** For a minister (other than a PM or CM), the Prime Minister or Chief Minister is obligated to advise their removal by the 31st day. If such advice is not tendered, the minister automatically ceases to hold office. For a Prime Minister or Chief Minister, they are required to tender their resignation by the 31st day, failing which they automatically vacate their office.
- **The Scope:** The Bill is comprehensive, applying to the entire political executive at the Union, State, and Union Territory levels by proposing amendments to Articles 75, 164, and 239AA of the Constitution.

### B. The Stated Rationale: Upholding Probity and Public Trust

The proponents of the Bill argue that it is a necessary measure to uphold probity in public life and restore citizen trust in democratic institutions.[30] The stated aim is to eliminate the constitutional anomaly of "governance from jail," where a minister could potentially continue to hold a high constitutional office while incarcerated. This measure is presented as a strong stance against corruption and the criminalization of politics, aligning the law with the spirit of "constitutional morality" that the Supreme Court championed in the *Manoj Narula* case.[31] By creating a swift and automatic consequence for prolonged detention, the Bill seeks to bridge a legal gap left open by the RP Act, which only triggers disqualification after a final conviction.

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[29]The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, PRS Legislative Research, https://prsindia.org/billtrack/the-constitution-one-hundred-and-thirtieth-amendment-bill-2025 (last visited Oct. 2, 2025).

[30]Criminalization of Politics in India — Undermining the Spirit of Democracy | Association for Democratic Reforms, *supra* note 5.

[31]*Supra note 25.*

## C. A Multi-Pronged Constitutional Critique

Despite its laudable intentions, the Bill's mechanism is fraught with constitutional infirmities that render it a remedy far more dangerous than the disease it purports to cure.

### i. Jurisprudential Conflict with the Presumption of Innocence

At its very core, the Bill is in direct conflict with a foundational principle of criminal jurisprudence: the presumption of innocence until proven guilty. An arrest is an executive act of investigation, not a judicial determination of guilt. Detention, even for a prolonged period, does not alter this fundamental status. By linking the severe penalty of removal from constitutional office to the act of detention, the Bill effectively converts a procedural step in the criminal process into a punitive consequence. This approach pre-judges the individual and imposes a penalty based on accusation, not adjudication, thereby undermining the due process of law.

### ii. Threat to Federalism and the *S.R. Bommai* Doctrine

The Bill poses a grave and direct threat to India's federal structure. In a politically polarized environment, central investigative agencies such as the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) could be deployed to target and destabilize opposition-led state governments.[11] The arrest and detention of a Chief Minister or key state ministers for 30 days on flimsy or politically motivated charges could provide a "legal shortcut" to dismiss a legitimately elected government, bypassing the stringent constitutional safeguards established by the Supreme Court in *S.R. Bommai v. Union of India*.[32] That landmark judgment severely curtailed the arbitrary use of Article 356 (President's Rule) and fortified the autonomy of state governments. The Bill, by creating a new avenue for central interference through the instrumentality of its agencies, threatens to undo the constitutional balance that *Bommai* so carefully constructed.[33]

### iii. Violation of the Separation of Powers

The doctrine of separation of powers, with its intricate system of checks and balances, is a cornerstone of the Indian Constitution.[34] The Bill damages

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[32]Manupatra Academy, https://www.manupatracademy.com/ (last visited Oct. 29, 2025).
[33]S. R. Bommai v. Union of India, AIR 1994 SC 1918.
[34]*Supreme Court Review 2024:* Balancing the Interests of States in a Federal Structure, Supreme Court Observer, https://www.scobserver.in/journal/supreme-court-review-2024-balancing-the-interests-of-states-in-a-federal-structure/ (last visited Oct. 4, 2025).

this structure by transferring a quasi-judicial determination—the fitness of an individual to hold ministerial office—to the exclusive domain of the executive.[35] The decision to arrest, and the subsequent opposition to bail which leads to prolonged detention, are actions controlled by the executive branch (police and prosecution). By making this the sole trigger for removal, the Bill sidelines both the legislature, which is the traditional forum for political accountability, and the judiciary, which is the arbiter of guilt or innocence.[36] This creates a scenario where one part of the executive (law enforcement) can effectively remove another part of the executive (a minister) from office, a clear violation of the checks and balances essential for preventing the concentration of power.

## iv. The Legislative Paradox

The Bill introduces a glaring and irrational anomaly into the legal framework. Under the current RP Act, a Member of Parliament or a State Legislature is disqualified only after a full judicial trial results in a conviction and a sentence of two years or more.[37] The Bill, however, proposes that a minister—who is also a legislator—can be removed from office merely after 30 days of detention, without any trial or conviction. This creates a paradoxical situation where a minister faces a far harsher and more summary standard of accountability than an ordinary legislator.[38] There is no rational constitutional basis for this distinction, which makes the provision vulnerable to a challenge on grounds of arbitrariness under Article 14 of the Constitution.

The Bill's design ultimately reveals a fundamental confusion between "accountability" and "control." True accountability mechanisms are procedural, institutional, and subject to oversight.[39] The Bill, in contrast, institutes a mechanism of direct executive *control* that operates outside these established channels, masquerading as a tool for accountability while in reality functioning as a potential instrument of executive consolidation and political dominance.

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[35]ADRN | Asia Democracy Research Network, http://www.adrnresearch.org/publications/list.php?idx=317&ckattempt=1 (last visited Oct. 29, 2025).

[36]Isha Tirkey, JUDICIAL ACCOUNTABILITY IN INDIA UNDERSTANDING AND EXPLORING THE FAILURES AND SOLUTIONS TO ACCOUNTABILITY, https://ccs.in/sites/default/files/2022-10/Judicial%20Accountability%20in%20India.pdf.

[37]A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.

[38]The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, *supra* note 29.

[39]Criminalization of Politics in India — Undermining the Spirit of Democracy | Association for Democratic Reforms, *supra* note 5.

## V. Jurisprudential Perspectives on Constitutional Limits and Political Morality

### A. The Basic Structure Doctrine and Parliamentary Sovereignty

The Constitution (130th Amendment) Bill, being a constitutional amendment, must be scrutinized through the lens of the 'basic structure' doctrine, famously articulated in the *Kesavananda Bharati* case[40]. The doctrine's chief architect, Nani Palkhivala, argued that Parliament, while possessing wide amending powers under Article 368, is a creature of the Constitution and cannot become its master.[41] It cannot, therefore, alter or destroy the Constitution's essential features, which include the supremacy of the Constitution, the rule of law, the separation of powers, and the federal character of the polity.[42] The 130th Amendment Bill arguably assails several of these basic features. By empowering the executive to remove ministers based on detention, it undermines the rule of law and the separation of powers. By creating a tool for central agencies to destabilize state governments, it strikes at the heart of federalism.[43] An amendment that grants such unchecked power to the executive could be seen as violating the fundamental constitutional balance that the basic structure doctrine was conceived to protect.

### B. Jurists on Power, Probity, and Judicial Oversight

The proposed amendment must also be weighed against the collective wisdom of India's most distinguished jurists, whose work has consistently cautioned against the dangers of concentrated state power.

**Fali S. Nariman:** A steadfast critic of unchecked political power, Fali Nariman has often expressed deep skepticism about the dedication of those in high office to constitutional principles.[44] His principled resignation as

[40]His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., AIR 1973 SC 1461.

[41]Dr. ANANT KALSE, JUDICIAL ACTIVISM AND BASIC STRUCTURE THEORY BRIEF OVERVIEW (2016).

[42] Manoj Mate, Priests in the Temple of Justice: The Indian Legal Complex and the Basic Structure Doctrine, in Fates of Political Liberalism in the British Post-Colony 112 (Terence C. Halliday, Lucien Karpik, & Malcolm M. Feeley eds., 1 ed. 2012), https://www.cambridge.org/core/product/identifier/9781139002981%23c01278-3-1/type/book_part.

[43]Shree Agnihotri, Interpreting without Bannisters? The Abstraction Problem Afflicting the Basic Structure Doctrine, 8 Indian Law Review 231 (2024), https://www.tandfonline.com/doi/full/10.1080/24730580.2024.2376474.

[44]The Unstoppable Indians: Fali Sam Nariman, Noted Jurist (Aired: April 2009), (2014), https://www.youtube.com/watch?v=XXi-czdHz2o.

Additional Solicitor General during the Emergency of 1975 stands as a powerful testament to his commitment to resisting executive overreach.[51] His jurisprudence consistently warns that "power should always be distrusted, in whatever hands it is placed".[45] From this perspective, a bill that significantly enhances the executive's power to act against political opponents, under the guise of fighting corruption, would be viewed not as a tool for accountability but as a potential instrument of authoritarianism.[46]

- **Soli J. Sorabjee:** As a formidable champion of fundamental rights and judicial review, Soli Sorabjee's work emphasizes that the judiciary's role as a check on the executive and legislature is not an option but a necessity.[47] He argued that judicial activism often becomes essential to fill the vacuum created by the failure of other branches of government to perform their duties.[48] The 130th Amendment Bill represents the antithesis of this philosophy. Instead of strengthening institutional checks, it seeks to bypass them entirely, creating a summary process devoid of judicial oversight.[49]
- **Upendra Baxi:** Professor Upendra Baxi's scholarship on constitutionalism posits it as a crucial shield against state "absolutism".[50] His concept of "demosprudence" calls for a constitutional interpretation that empowers the people and holds the state accountable.[51] The

[45]Business Standard, The Villain of the Piece Is the Politics of Power: Fali Nariman, (Dec. 5, 2015), https://www.business-standard.com/article/opinion/the-villain-of-the-piece-is-the-politics-of-power-fali-nariman-115120500859_1.html.

[46]Criminalisation of Politics, Supreme Court Observer, https://www.scobserver.in/journal/criminalisation-of-politics/ (last visited Oct. 4, 2025).

[47] Reflecting on Sorabjee's Response to the Speaker's Public Lecture | Law and Other Things, https://lawandotherthings.com/reflecting-on-sorabjees-response-to/ (last visited Oct. 29, 2025).

[48]Bryan McAllister-Grande, Rule of Law A Moral Imperative for South Asia and the World.

[49]Soli J. Sorabjee, Judicial Activism Should Not Become Judicial Authoritarianism, The New Indian Express (Oct. 9, 2016), https://www.newindianexpress.com/opinions/columns/soli-j-sorabjee/2016/Oct/09/judicial-activism-should-not-become-judicial-authoritarianism-1526285.html.

[50]Upendra Baxi, Demosprudence Versus Jurisprudence: The Indian Judicial Experience In The Context Of Comparative Constitutional Studies.

[51]upendra Baxi, Demosprudence Versus Jurisprudence: The Indian Judicial Experience In The Context Of Comparative Constitutional Studies, 14 Macquarie Law Journal 3 (2014).

> Bill, however, reinforces an executive-heavy state apparatus. It centralizes power in investigative agencies and the political executive, rather than diffusing it through democratic and judicial institutions, running counter to the Baxian critique of unchecked state power.[52]

The collective perspective of these eminent jurists converges on a single, powerful theme: the greatest and most persistent threat to Indian democracy has been the abuse of power by the state itself. The 130th Amendment Bill, in its zealous attempt to solve the problem of criminality in politics, dangerously ignores this fundamental lesson. It proposes a solution that risks exacerbating the very ailment of arbitrary state action that India's constitutional jurisprudence has so painstakingly sought to restrain.

## VI. Charting a Prudent Path: Judicially-Grounded Alternatives

### A. The Law Commission's Consistent Counsel: Disqualification upon Framing of Charges

A more constitutionally sound and balanced approach to tackling the menace of criminalization in politics already exists, and has been consistently advocated by the Law Commission of India. In its 170th Report (1999) and more emphatically in its 244th Report (2014) on Electoral Disqualifications, the Commission recommended that disqualification from contesting elections or holding office should be triggered at the stage of the *framing of charges* by a court for offences punishable with imprisonment of five years or more.[53] This recommendation was made precisely because the existing standard of conviction was proving ineffective due to inordinate delays in the trial process.[54]

### B. Why 'Framing of Charges' is the Superior Standard

The "framing of charges" standard is jurisprudentially superior to the Bill's "arrest and detention" trigger for several critical reasons. Unlike an arrest, which is a purely executive act based on suspicion, the framing of a charge is a judicial act.[6] It occurs after the police have completed their investigation

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[52]Upendra Baxi, Understanding The Mystery and Miracle of The Basic Structure, NUJS LAW REVIEW 1 (2023), https://nujslawreview.org/wp-content/uploads/2024/02/16.4-Foreword-Prof.-Baxi.pdf.

[53]Committee Reports, PRS LEGISLATIVE RESEARCH, https://prsindia.org/policy/report-summaries/law-commission-report-summary-electoral-disqualifications (last visited Oct. 29, 2025).

[54]Priyanka Rao, Law Commission Report Summary Electoral Disqualifications, (2014), https://prsindia.org/files/policy/policy_committee_reports/1396079862_Report%20Summary-%20Electoral%20Disqualfiications.pdf.

and filed a chargesheet. A judge then applies their judicial mind to the evidence on record and determines whether there is a *prima facie* case to proceed to trial.[55] This process introduces a crucial due-process filter, providing a safeguard against malicious or frivolous prosecutions that is entirely absent in the Bill's proposal. The Law Commission also wisely suggested accompanying safeguards, such as not applying this disqualification for charges framed within one year of an election to prevent last-minute political misuse, and mandating that trials against sitting legislators be expedited and completed within a year.[56] This approach strikes an intelligent balance: it acts decisively against individuals facing credible and judicially scrutinized accusations of serious crime, while protecting the political process from arbitrary executive interference.

## C. A Comparative Framework of Disqualification Triggers

The superiority of the Law Commission's recommendation becomes evident when contrasted with both the current law and the proposed 130th Amendment. The core challenge is to find an optimal balance between swift action against criminalization and the unwavering protection of constitutional principles. A structured comparison clarifies why the judicial framing of charges is the most viable path forward.

**Table 1: A Comparative Framework of Disqualification Triggers for Public Officeholders**

| Parameter |
|---|
| Trigger Point |
| Locus of Decision |
| Adherence to Presumption of Innocence |
| Risk of Political Misuse |
| Speed of Action |
| Constitutional Soundness |

Source [57]

## D. Supplementary Reforms

Beyond adopting the "framing of charges" standard, a holistic approach to reform should include other complementary measures that strengthen accountability without resorting to constitutionally dubious shortcuts. These include:

[55] *Id.*

[56] UNSTARRED QUESTION on ELECTORAL REFORMS, https://eparlib.sansad.in/bitstream/123456789/660466/1/15043.pdf.

[57] A deep-dive into India's legal regime on political accountability and the 130th Constitution Amendment Bill | Association for Democratic Reforms, *supra* note 3.

- **Interim Suspension:** As an alternative to outright removal, the law could provide for the interim suspension of a minister's functions, perks, and voting rights during the trial period. This would prevent "governance from jail" while still respecting the presumption of innocence.
- **Fast-tracking Trials:** The establishment of special courts or a strict legislative mandate for day-to-day trials of cases involving elected representatives is crucial.[11] Swift justice is the most effective and constitutionally sound deterrent.
- **Independent Review Mechanism:** If a pre-conviction removal mechanism is to be considered, it should be overseen by an independent judicial panel or tribunal to review the grounds for removal, thereby creating a check against executive overreach.

## VII. Conclusion: Reinforcing Accountability without Sacrificing Constitutionalism

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, is born of a legitimate and urgent concern: the deep-seated criminalization of politics that has eroded the foundations of democratic governance in India. However, in its pursuit of a swift and decisive solution, it proposes a constitutional shortcut that is fraught with peril. This paper has argued that the Bill's reliance on an executive-driven trigger of arrest and detention is jurisprudentially flawed, politically risky, and constitutionally suspect. It undermines the presumption of innocence, threatens the federal balance of power, and subverts the doctrine of separation of powers, which together form the bedrock of India's constitutional democracy.

The path to cleansing public life cannot lie in sacrificing the very principles of justice and due process that the Constitution seeks to protect. True constitutional morality does not demand punitive, executive-driven measures that trade liberty for a facade of purity. Instead, it calls for the strengthening of slow, deliberate, and robust institutional processes of accountability. The most principled and effective solution remains the one consistently counselled by the Law Commission of India: triggering disqualification at the stage of the judicial framing of charges for heinous offences. This standard introduces a vital due-process filter, ensuring that the decision is grounded in judicial scrutiny rather than executive discretion. It strikes the right balance, acting decisively against credible allegations of serious crime while safeguarding the political system from arbitrary interference.

Ultimately, the challenge is not merely to remove criminals from politics, but to do so in a manner that reinforces, rather than weakens, the constitutional edifice. The goal must be to ensure that justice and accountability are, and forever remain, two indivisible pillars of the Indian republic. Adopting a judicially-mediated framework is not a compromise; it is a reaffirmation of the core constitutional belief that the rule of law must prevail, even and especially when holding the powerful to account.