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DIPLOMACY BEYOND BARRIERS

BACKGROUND GUIDE

AGENDA

Deliberating on the Provisions and Ramifications of “THE CONSTITUTION (ONE HUNDRED AND THIRTIETH AMENDMENT) BILL, 2025” concerning Constitutional Morality and Political Integrity in the Nation.

LETTER FROM THE EXECUTIVE BOARD

Guru Nanak Institutions Model United Nations

Respected Members,

We, as the chair for the Lok Sabha simulation at **GNIMUN 2025** whole-heartedly welcome each and every single one of you, to this unconventional, yet, the most important Committee.

With the help of this Background Guide, towards the Agenda, we as the Executive Board, aim to give you a starting point, a base, for your research and most importantly, a base for the AIPPM(All India Political Parties Meet), to forbade clarifications.

Delegates, although the Committee might be unconventional, it is still one of the most relevant and the most important committee in the Modern Era.

This is where, your research comes in and we would like to reiterate here, that this Background Guide is **only to be used for reference.** Please don't limit or consider your research done after going through the Background Guides contents. The executive board has tried their level best to inculcate everything here, if something left or any questions unanswered it is the delegates' responsibility to research and understand it.

This is - simply a starting point. Looking forward to hosting the best committee at **GNI MUN**, The one, the only, The AIPPM.

Regards
Giriyam Charan Krishna Tejh (Co-Chairperson)
M. Aashrith Sharma (Co-Chairperson)

Introduction to the Committee

B.R. Ambedkar used the term “constitutional morality” to mean more than just obeying the letter of the law. It is a commitment to the Constitution of India’s core principles justice, liberty, equality, and accountability. In the Constituent Assembly, Ambedkar warned that “constitutional morality is not a natural sentiment. It has to be cultivated”. In other words, having good laws on paper is not enough. Society must cultivate a political culture that respects these ideals.

Now, a new constitutional amendment is testing those ideals. The Constitution (130th Amendment) Bill, 2025, introduced in Parliament in August 2025, proposes a dramatic rule if a prime minister, chief minister, or any minister is arrested and kept in custody for 30 consecutive days on a serious criminal charge (one punishable by five or more years in prison), she or he would automatically lose their office. The intent, according to the government, is to cleanse politics of corruption and ensure that no leader can govern from behind bars.

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 was introduced in Lok Sabha on August 20, 2025. It seeks to provide for removal of the Prime Minister, a Chief Minister of a state, or any other Minister in the central or a state government, if he is arrested and detained in custody on account of serious criminal offences. It also applies these provisions to the Union Territory (UT) of Delhi. Two other Bills have also been introduced to apply these provisions to the UTs of Puducherry, and Jammu and Kashmir. Grounds for removal: A Minister will be removed from office if: (i) he is accused of an offence punishable with imprisonment for a term which may extend to five years or more, and (ii) he has been arrested and detained in custody for 30 consecutive days. Procedure for removal: A Minister in the central government will be removed by the President on the advice of the Prime Minister. This advice is to be given by the 31st consecutive day that the Minister is in custody. If the Prime Minister does not advise the President by this time, the Minister will cease to hold office from the day thereafter. The same provisions will also apply at the state level, with

the Governor of the state acting on the advice of the Chief Minister. In case of Delhi, the acting authority will be the President on the advice of the Chief Minister. In the case of the Prime Minister, or a Chief Minister of a state or Delhi, he must resign by the 31st consecutive day of custody. If he does not resign by this time, he will cease to hold office from the day thereafter. No bar on re-appointments: A Minister who is removed from office under these provisions, may be re-appointed after being released from custody.

The bill is a response to instances of politicians continuing in power even while in jail. But the proposal raises a fundamental question—can mere suspicion and detention replace democratic legitimacy? Should elected leaders lose office not because they are proven guilty, but simply because they spent a month in jail? These questions force us to examine the amendment through the lens of constitutional morality, the spirit of the Constitution's safeguards and values.

The Bill seeks to amend three key articles of the Constitution of India:

- **Article 75 (Union Council of Ministers):** The amendment introduces a new clause, Article 75 (5A). It states that a Minister who is arrested and detained in custody for a period of thirty consecutive days for an offense punishable with imprisonment of five years or more shall be removed from office. The President is to remove the minister on the Prime Minister's advice by the thirty-first day, or the minister will automatically cease to be in office thereafter. The same provision applies to the Prime Minister, who must tender their resignation under the same circumstances or else cease to be the Prime Minister. The Bill specifies that such a removed Minister or Prime Minister can be re-appointed upon their release from custody.

- **Article 164 (State Councils of Ministers):** This amendment mirrors the changes to Article 75, applying the same provisions to state-level Ministers and Chief Ministers. If a Minister or Chief Minister is detained for 30 consecutive days for a serious offense, they must be removed by the Governor (on the Chief Minister's advice) or must resign, respectively.

- **Article 239AA (Special Provisions for Delhi):** The Bill extends the same provisions to the Council of Ministers in the National Capital Territory of Delhi. A Minister or the Chief Minister who is detained for 30 consecutive days must be removed by the President or resign, respectively.

The primary law governing the disqualification of legislators is the Representation of the People Act, 1951 (RPA).
Existing Framework and Its Limitations

– **Section 8 of RPA, 1951:** Legislators are disqualified only upon conviction and sentence of at least two years.
– **Law Commission's 170th Report:** Recommended disqualification from the stage of framing of charges for offences with punishment of five years or more.
– **Limitation:** Neither provision addresses the period of pre-conviction custody, enabling ministers to remain in office despite being in jail.

- **Section 8 of the RPA, 1951:** This key provision stipulates that a legislator is disqualified from holding office only after they have been convicted of a criminal offense and sentenced to a minimum of two years' imprisonment. This means that the entire period of investigation, trial, and any pre-conviction custody does not trigger disqualification. A legislator can be in jail, yet as they have not been formally convicted and sentenced, they are not legally compelled to resign their seat.

Recognizing the potential for individuals with serious criminal charges to occupy legislative positions, the Law Commission of India made a crucial recommendation in its 170th Report.

- **Law Commission's 170th Report:** The commission proposed a significant change: disqualification should be triggered at the stage of the framing of charges by a court, provided the alleged offense carries a punishment of five years or more. This recommendation aimed to clean up politics by preventing individuals facing trial for serious crimes from continuing as lawmakers. However, this recommendation has not been implemented into law.

1. The elected representatives represent hopes and aspirations of the people of India. It is expected that they rise above political interests and act only in the public interest and for the welfare of people.
2. It is expected that the character and conduct of Ministers holding the office should be beyond any ray of suspicion.
3. A Minister, who is facing allegation of serious criminal offences, arrested and detained in custody, may thwart or hinder the canons of constitutional morality and principles of good governance and eventually diminish the constitutional trust reposed by people in him.
4. There is however, no provision under the Constitution for removal of a Minister who is arrested and detained in custody on account of serious criminal charges.
5. In view of the above, there is a need to amend articles 75, 164 and 239AA of the Constitution, for providing legal framework for removal of the Prime Minister or a Minister in the Union Council of Ministers and the Chief Minister or a Minister in the Council of Ministers of States and the National Capital Territory of Delhi in such cases.
6. The Bill seeks to achieve the above objectives.

Although what constitutes basic structure of the constitution is not clearly laid down, and Basic Structure itself has evolving contours, but some principles have been identified through successive case laws by the Indian Supreme Court. Inter alia, the following facets of the constitution's basic structure come into play in context of this Bill: rule of law, separation of powers, federalism, parliamentary democracy.

A willing court could turn the Rule of Law Argument upside down and go on to hold that the amendment in fact strengthens the rule of law by ensuring that those accused of serious criminal offences do not continue to exercise executive power as ministers. It is important to note that the judgement in Lily Thomas dealt with an ordinary statute, i.e. the Representation of People's Act, which is tested against violation of Fundamental Rights, whereas here the Court would be concerned with an amendment to the Constitution itself where violation of basic structure must be demonstrated clearly to successfully challenge the amendment.

even a challenge on the grounds of violation of the federal scheme (a basic structure according to the SC's judgement in S R Bommai v. Union of India), is likely to fail since the power to remove the chief minister ("CM") or the state ministers is vested in the Governor who, although appointed by the President, is part of the State's Executive (see Article 153 and 154 of the Indian Constitution). More particularly, Article 164(1) categorically states that the CM and other ministers are appointed by the Governor and "shall hold office during the pleasure of the Governor," a phrase that, according to the Calcutta High Court, vests discretion in the governor which is "absolute and unrestricted" and "cannot be called into question" before a constitutional court. Therefore, in light of this provision, adding another provision that allows the Governor to remove a minister who has been accused of a serious criminal offence may not be said to be violative of the basic structure, in particular the federal scheme. However it must be noted that it is a well-respected constitutional convention, albeit not an explicit rule, that the Governor does not remove a Chief Minister until he loses the confidence of the House (for example, even in the recent Maharashtra Legislative Assembly Case, Uddhav Thackeray was not removed but resigned himself before a floor test could be conducted). This Bill, in granting the Governor this power to remove, which could be justified on the basis of the "pleasure of the governor doctrine" is a terrific instance of constitutional hardballing.

Even though India has adopted the basic structure doctrine (or unconstitutional constitutional amendments doctrine), Indian courts have shown great reluctance in invalidating constitutional amendments. This is apparent from the fact that only seven amendments so far have been struck down (partly or wholly) by the court as unconstitutional on the grounds of the violation of Basic Structure, and incidentally all seven of the amendments in some way or the other infringed the judiciary's own institutional interests, either by way of prohibiting judicial review or interfering with the process appointment of judges (99th Amendment). Thus, in light of the experience of the Indian Supreme Court's treatment of challenges to constitutional amendments, it would not be wrong to expect the court to uphold this amendment.

Historical Lessons

Every constitutional amendment must be viewed against the backdrop of history. India's experience shows that amendments can be double-edged—some strengthened democracy, while others undermined it. Two notorious examples from India's Emergency era (1975–77) illustrate how constitutional change can be misused. The first was the 39th Amendment in 1975, which was rushed through during the Emergency to shield Prime Minister Indira Gandhi from an adverse court verdict. It placed the election of the prime minister (among other high offices) beyond judicial scrutiny, effectively overturning a court judgment that had voided Mrs. Gandhi's election for electoral malpractice.

Proposal and Rationale

What exactly does the 130th Amendment Bill propose? In simple terms, it adds a new eligibility condition to continue to be in high political office. If a union or state minister (the prime minister, a chief minister, or any minister at the central or state level) is arrested and detained for at least 30 consecutive days for an alleged offence punishable by five or more years in prison, they will cease to hold their position.

This rule will apply across India, affecting the union government, all state governments, and even union territories like Delhi, Puducherry, and Jammu and Kashmir. In effect, if a minister spends a month in jail as an undertrial (awaiting or undergoing trial) on a serious charge, her or his office would automatically fall vacant on the 31st day.

Why introduce such a measure? The government presents it as a step to enhance integrity in public life. The bill's Statement of Objects and Reasons argues that the "character and conduct of ministers should be beyond suspicion", suggesting that allowing someone to continue governing from behind bars would "thwart principles of good governance" and diminish public trust. In other words, the amendment is billed as a moral necessity to restore faith in government.

Supporters point out that a bureaucrat is automatically suspended if she or he spends more than 48 hours in custody, and an elected leader should at least be held to the same standard. They also note that India has seen instances of politicians effectively running ministries or election campaigns from jail, which offends public sensibilities about how governance ought to function. In their view, the 130th Amendment closes a loophole and aligns high public office with high personal integrity.

This ostensibly simple logic, however, raises complex constitutional questions. Does an accusation or ongoing investigation alone suffice to disqualify an elected leader? Can we allow police action and pre-trial custody (which often occurs before any finding of guilt) to trigger the removal of someone chosen by the people? These questions go to the heart of the Constitution's safeguards and the concept of constitutional morality that Ambedkar spoke of. With this in mind, we can examine the major concerns the 130th Amendment raises, from the presumption of innocence to the risks it poses to federalism.

Custody as Punishment

A fundamental concern with the 130th Amendment is that it conflates being in custody with being guilty. Under Indian law, as in any democracy, a person accused of a crime is presumed innocent until proven guilty by a court. This is not just a lofty ideal but a cornerstone of criminal justice, embedded in our Constitution. Article 21 of the Constitution guarantees that no person shall be deprived of life or liberty except through a fair, just, and reasonable legal procedure.

The Supreme Court has interpreted Article 21 to require due process at every step, and in the 1970s it famously said "bail is the rule, jail the exception". In plain terms, unless someone is convicted, they generally have the right to remain free and continue their normal life. For an elected official, that normal life includes serving in office on behalf of the voters who put them there.

The proposed amendment turns this principle on its head by making mere detention a ground for removal from office. Under this rule, simply being jailed for 30 days (without any conviction) would be enough to eject a chief minister or minister from their position. This is deeply troubling, because in India, being in custody often has little to do with actual guilt. Investigations and trials are slow, and the authorities sometimes arrest individuals on serious charges knowing that the long legal process itself can act as a form of punishment.

Official data bear this out—more than 75% of prisoners in India are "undertrials", people not yet convicted of any crime but languishing in jail awaiting trial (NCRB 2022). Many spend months or years behind bars not because they have been found guilty, but because their cases drag on in overburdened courts. Decades ago, in 1979, the Supreme Court ordered the release of thousands of undertrial prisoners, declaring that indefinite detention without trial violated fundamental rights.

Given this reality, removing someone from public office simply because they are incarcerated means punishing individuals not for proven wrongdoing, but because of flaws or delays in the justice system. The Constitution's framers never included such a provision—likely because doing so would undermine the presumption of innocence and the people's mandate. By allowing suspicion and detention to serve as a new, extra-legal "verdict", the 130th Amendment veers toward what critics call "disqualification by suspicion". It elevates the appearance of moral purity (no leaders in jail) over the substance of due process. This tension between integrity and liberty lies at the heart of the debate.

These concerns are sharpened by India's harsh bail laws. Obtaining bail can be extremely difficult under stringent statutes such as the Unlawful Activities (Prevention) Act (UAPA) and the Prevention of Money Laundering Act (PMLA). People often spend years in jail under these laws even if they are never convicted. Only around 3% of those arrested under the UAPA anti-terror law are eventually convicted, and the PMLA has yielded very few convictions out of thousands of cases

In other words, many people charged under these laws either end up being found not guilty or remain trapped in lengthy trials, but still spend years in jail while they wait. The very process of being accused and denied bail becomes a punishment in itself—a phenomenon often described as “process as punishment”.

By tying a constitutional office to mere custody, the 130th Amendment would effectively entrench this problem in our law. A minister could lose her or his position after 30 days in jail not because there is proof of misconduct, but simply because stringent bail rules keep them behind bars. In short, being denied bail would mean losing their post, turning a procedural issue in the legal system into a reason for disqualification under the Constitution.

EVERYONE IN THE COMMITTEE ARE REQUESTED TO A GET A PRINT OF THE BILL TEXT TO THE COMMITTEE ON THE DAY OF CONFERENCE, FROM THE PROVIDED LINK BELOW

- EVERYONE ARE REQUESTED TO READ THE BILL TEXT THOROUGHLY BEFORE THE CONFERENCE FOR A BETTER FLOW OF DEBATE.

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https://prsindia.org/files/bills_acts/bills_parliament/2025/Constitution_(130th_Amendment)_Bill,2025.pdf

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