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## The 130th Amendment and the Battle for Political Morality

This constitutional amendment promises to transform Indian governance by removing jailed ministers from office, but critics warn it could become a weapon of political vendetta.

The corridors of governance in New Delhi witnessed unprecedented chaos on August 20, 2025, when Union Home Minister Amit Shah introduced what may become one of India's most consequential amendments. The 130th Constitution Amendment Bill, 2025<sup>1</sup> (the bill), proposes a radical departure from existing practice. The bill aims to amend the constitution to the extent that any minister, chief minister, or even the Prime Minister who remains in custody for 30 consecutive days on charges carrying five or more years of imprisonment (serious charges) must vacate office. However, this seemingly straightforward provision has ignited a fierce political battle, with the ruling party framing it as essential for constitutional morality while opposition parties denounce it as an authoritarian overreach designed to destabilize non-BJP governments.

### The Amendment's Core Provisions

The proposed amendment seeks to insert new clauses into three critical articles of the Constitution. Under Article 75, after clause (5), a new clause shall be inserted (5A)<sup>2</sup> relating to Union Ministers, mandating that the President must remove any minister who has been arrested and detained for 30 consecutive days on serious charges. The removal occurs on the Prime Minister's advice by the 31st day, failing which the minister automatically ceases to hold office.

Similar provisions extend to state governments under Article 164, where governors would remove ministers on the chief minister's advice, and to the National Capital Territory of Delhi under Article 239AA<sup>3</sup>. Significantly, the bill includes a unique provision for prime ministers and chief ministers themselves, saying that they must resign by the 31st day of custody or face automatic removal<sup>4</sup>. Furthermore, the legislation contains a crucial rehabilitation clause that ministers removed under these provisions may be reappointed after their release from custody<sup>5</sup>.

### The Parliamentary Process Ahead

Constitutional amendments require approval by a two-third majority in both Houses with at least 50 percent of members present and voting. Pertinently, since the 130th Amendment touches upon the

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<sup>1</sup> [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2025/Constitution\\_\(130th\\_Amendment\)\\_Bill,2025.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2025/Constitution_(130th_Amendment)_Bill,2025.pdf)

<sup>2</sup> *Ibid*

<sup>3</sup> <https://byjus.com/ias-questions/which-article-provides-special-provisions-with-respect-to-delhi/>

<sup>4</sup> *Supra* 1; Clause 4(A) Article 164 & 5(A) Article 75

<sup>5</sup> <https://prsindia.org/billtrack/the-constitution-one-hundred-and-thirtieth-amendment-bill-2025>

federal structure by altering Articles 75 and 164, it also needs ratification by at least half of India's state legislatures<sup>6</sup>. Currently, the bill has been referred to a Joint Parliamentary Committee comprising 21 Lok Sabha members and 10 Rajya Sabha members<sup>7</sup>. The Joint Parliamentary Committee has been tasked with examining the proposals and presenting its report before the next parliamentary session.

In this regard, it is relevant to note that the NDA government faces a significant challenge as it lacks the two-thirds majority needed for passage without opposition support.

### **Government's Claims Constitutional Morality and Opposition's Resistance to the Bill**

Home Minister, Mr. Amit Shah has been vocal in defending the bill.; raising the question that whether a Chief Minister, Prime Minister, or any minister should be running the government from behind bars, and if that aligns with democratic principles.<sup>8</sup> In furtherance to the same, the government in the bill has stated that allowing ministers to continue in office while facing serious criminal charges may hinder good governance.<sup>9</sup>

Home Minister, Mr. Amit Shah has consistently argued that the bill applies universally, including to the Prime Minister's office; demonstrating the government's commitment to equal treatment regardless of party affiliation. It is further stated that regarding the relevance of the bill parallels can be drawn with existing civil service rules, where bureaucrats face automatic suspension upon arrest for more than 48 hours<sup>10</sup>; arguing that elected leaders should be held to at least the same standard.

In view of the aforesaid, it is also relevant to note that the opposition has termed the bill as a 'draconian act' and 'black day<sup>11</sup>'; contending that since investigative agencies operate under federal control, the government could easily arrest opposition figures on serious charges and detain them for 30 days without substantiation in court. Hence, critics argue this effectively transforms a procedural issue in the legal system into grounds for constitutional disqualification.

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<sup>6</sup> <https://byjus.com/free-ias-prep/types-of-amendment/>

<sup>7</sup> <https://www.livelaw.in/top-stories/130th-constitution-amendment-bill-removal-by-president-governor-of-minister-detained-for-30-days-lok-sabha-refers-to-joint-parliamentary-committee-301430>

<sup>8</sup> [https://www.business-standard.com/politics/shah-defends-bills-to-bar-jailed-leaders-from-office-2025-125082001450\\_1.html](https://www.business-standard.com/politics/shah-defends-bills-to-bar-jailed-leaders-from-office-2025-125082001450_1.html)

<sup>9</sup> *Supra* 1; *Statement of objectives, pt 3*

<sup>10</sup> *Central Civil Services (Classification, Control & Appeal) Rules, 1965*, <https://dopt.gov.in/ccs-cca-rules-1965>

<sup>11</sup> <https://www.ndtv.com/india-news/draconian-act-congress-slams-centre-over-constitution-amendment-bill-9127615>

## Constitutional and Legal Complexities

The bill raises profound constitutional questions about the balance between accountability and individual rights. Currently, the Representation of the People Act, 1951<sup>12</sup>, disqualifies legislators only upon conviction and sentencing for at least two years and not merely upon arrest or detention. Hence, the bill seeks to create a new standard based solely on the duration of custody, that may even conflict with established legal principles.

Notably, Supreme Court's ruling in Lily Thomas vs Union of India<sup>13</sup>, which struck down provisions allowing convicted lawmakers to continue in office while appealing, provides some precedent for maintaining integrity in public office. However, it dealt with post-conviction scenarios, whereas the current bill operates at the pre-conviction stage. Therefore, as of today, there is no clear precedent for imposing such restrictions at the pre-conviction stage.

Notably, most democratic systems, namely the United Kingdom<sup>14</sup>, Australia<sup>15</sup> and Brazil<sup>16</sup> focus on post-conviction disqualification rather than detention-based removal, making India's proposal relatively unique in its pre-conviction trigger mechanism.

Furthermore, the bill's interaction with India's often sluggish bail system raises concerns that if stringent bail conditions keep ministers in custody, their positions would be lost not due to proven misconduct but merely because procedural issues prevent their release.; effectively transforming bail denial into grounds for disqualification, raising serious due process concerns.

## The Path Forward

The Joint Parliamentary Committee's examination will prove crucial in determining the bill's fate. The Joint Parliamentary Committee's task is to reconcile the public demand for clean governance with protections against partisan misuse of detention. One approach is to tie any temporary removal or suspension to clear judicial milestones, such as a chargesheet being filed, a court framing charges, or denial of bail after a reasoned order rather than to mere arrest, which, at times, may be arbitrary. Complementing this, an independent review panel (for instance, comprising a retired judge, the Lokpal/State Lokayukta nominee, an eminent civil servant to name a few) could quickly assess whether continued tenure risks evidence tampering or conflicts of interest, with tightly enforced timelines and a right to appeal.

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<sup>12</sup> <https://www.indiacode.nic.in/bitstream/123456789/2096/9/A1951-43.pdf>

<sup>13</sup> [https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf\\_upload/pdf\\_upload-376358.pdf](https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf_upload/pdf_upload-376358.pdf)

<sup>14</sup> <https://www.legislation.gov.uk/ukpga/2015/25/enacted/data.xht?view=snippet&wrap=true>

<sup>15</sup> [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/Practice7/HTML/Chapter5/Qualifications\\_and\\_disqualifications](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter5/Qualifications_and_disqualifications)

<sup>16</sup> <https://www.as-coa.org/articles/explainer-brazils-clean-record-law>

Finally, narrowing the bill to defined categories like corruption, serious financial fraud, or offenses involving abuse of official position, reduces overbreadth; ensuring proportionality and focusing the law on conduct that directly undermines public trust in executive office.

### **Democratic Implications and Future Outlook**

The bill represents a critical test of India's democracy. If thoughtfully implemented with appropriate safeguards, it could indeed elevate standards of political conduct and restore public faith in governance. However, if perceived as a partisan weapon, it risks further polarizing an already tensed political landscape. As the Joint Parliamentary Committee has begun its deliberations, the nation watches to see whether India can craft a constitutional framework that effectively balances accountability with democratic principles.