Report on
The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025:
History, Constitutionality, and Suggestions

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VIDHI Centre for Legal Policy

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EXECUTIVE SUMMARY

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 ('**Bill**') was introduced in the Lok Sabha by the Hon'ble Home Minister on 20th August 2025. The stated intention behind the Bill is to ensure that Ministers in power i.e., the Prime Minister, Chief Minister, or their Cabinets, cannot thwart or hinder the canons of constitutional morality and principles of good governance which diminish the constitutional trust reposed by the people in them. In light of this, the Bill introduces a mechanism of cessation of office of a minister who faces allegations of a serious criminal offence and is accordingly arrested and detained for a period of thirty consecutive days.

This Report is confined to a detailed and comprehensive legal analysis of the Bill and does not seek to examine or comment on its political motivations or justifications. The purported intent behind the Bill is laudable and largely complies with constitutional doctrine and provisions. However, certain provisions may invite constitutional challenge, particularly on the ground of violating the basic structure doctrine. The Bill also raises textual and definitional concerns that could have constitutional implications. This Report identifies areas where the provisions may be susceptible to misuse and, where necessary, offers corresponding recommendations for reform.

The Report proceeds in the following manner: First, starting with the constitution making process, we trace the early drafting stages, and the Constituent Assembly debates, to point out how under the Constitution, cessation of offices for Ministers was limited to failure to get elected to either House within six months. Disqualification on the other hand was conceived only in relation to members of legislatures and not cabinet appointments; and was applicable only on conviction. The members of the Constituent Assembly had accepted the proposal that a decision on qualification and disqualifications should be left to the Prime Minister or the future legislature.

Second, we explain the constitutional provisions concerning qualifications and disqualifications for membership of Parliament and State Legislature, including those for Cabinet Members. We highlight that the constitutional scheme is unequivocal that the Parliament is empowered to make further laws adding qualifications or disqualifications for legislative members and Cabinet Ministers in response to developments over time.

Third, we examine the reports of Law Commission and other noteworthy commissions, and judicial pronouncements, which have highlighted the growing need to curb the criminalisation of politics and simultaneously strengthen the existing legal framework. The Commissions and the Courts have repeatedly urged the legislature to introduce/amend laws, so as to deter individuals with ongoing criminal cases from occupying elected constitutional offices. They have also highlighted the gaps prevailing within the existing law. For instance, disqualification solely upon conviction is insufficient to address the problem of criminalisation of politics, and hence, the alternative threshold of framing of charges which involves judicial scrutiny of *prima facie* material, has been recommended. We mention these underpinning principles as they provide the framework within which the proposed Bill is assessed.

Fourth, before undertaking a constitutional analysis, we explain the contents of the Bill in order to clearly spell out its intent, provisions, effects, and novelty. A key distinction introduced by the Bill is the creation of a new ground for cessation of ministerial offices – arrest and detention for thirty days consecutively – which is distinct from the disqualification criteria as a member of the legislature. This can be proven through first, by placement and form of the amendment within the constitutional scheme; second, by the trigger which is based on arrest/custody unlike conviction; and lastly, by consequence which results in temporary constitutional disability and not vacation of a seat and loss of membership of the House. The proposed amendment only creates a temporary constitutional disability

attached to the ministerial office since it expressly permits re-appointment upon release.

Fifth, we undertake a comparative analysis of the practices in other jurisdictions namely, United Kingdom (UK), the United States (USA), Germany, France, Australia, Canada, and South Korea. The unifying trend across these diverse jurisdictions is that most of them combine flexible political discretion with rigid statutory or constitutional backstops, political dynamics dominate accountability in practice, and conviction is a universal threshold. Certain systems even incorporate a judicial check in order to provide an independent evaluation of the matter. We highlight that the Bill creates a unique model in this regard. By tying the cessation of ministerial office to arrest and thirty days of consecutive detention—rather than conviction—it moves away from the global consensus where mere incarceration, sans judicial determination of guilt, is insufficient to trigger loss of office.

The above chapters not only decipher the true nature of the Bill but also contextualise it within previous precedents, historical debates, and contemporary needs.

Sixth, we examine the competence of Parliament to introduce the Bill by studying Article 368 of the Constitution and the required procedure to be followed therein. We are of the opinion that based on the constituent power conferred by Article 368; and the judicial recognition which urged the Parliament to legislate on stricter standards for appointment to ministerial office, the Bill falls within the scope of Parliament's amending power.

Seventh, we examine the provisions of the Bill. The condition of cessation due to detention under an offence punishable with imprisonment of five years or more, faces a risk of over-breadth, as it would include offences that cannot reasonably be characterised as 'serious criminal offences' as contemplated by the Statement of Objects and Reasons **('SoR')** of the Bill. We suggest that 'serious criminal offences'

should be defined through an enumerated list, or a schedule must be attached identifying offences that directly implicate constitutional morality and integrity in public office.

Further, we examine whether the Bill violates the principle of 'presumption of innocence'. The Bill is directed at preserving institutional integrity, rather than adjudicating the culpability of members of the Cabinet. Statutory law and judicial precedent recognise that administrative consequences, including temporary suspension, may follow an arrest in the interest of propriety. For instance, under service law, central government employees, members of public service commissions, vigilance authorities, and other public servants are deemed suspended if they remain in custody beyond forty-eight hours—a position that has been upheld by the Courts. Article 21 is therefore not infringed, as the Bill falls within the category of permissible regulatory measures.

Public debate has largely focused on the fact that cessation of ministerial office follows upon thirty consecutive days of arrest and detention. However, an overlooked concern is the incongruity between the thirty-day cessation period prescribed by the Bill and the timelines envisaged under the Bharatiya Nagarik Suraksha Sanhita, 2023 (the governing legislation on criminal procedure). An evaluation of its criminal provisions indicates that custody extending beyond thirty days is routine, and hence, the Bill's threshold will almost inevitably result in cessation of office before any meaningful evaluation of the accusations. The checks and balances integrated within criminal law have also been questioned through judicial pronouncements. These issues become more critical under certain special laws, where the chances for securing bail are more stringent. We recommend that the more appropriate threshold for cessation is the stage of framing of charges. The framing of charges requires adequate judicial scrutiny which would act as an effective check on the investigative process. Apart from this, we suggest and re-iterate several systemic measures such as the constitution of special benches,

designated courts prioritising trials involving elected representatives, and oversight of the High Courts to ensure speedy adjudication.

Eighth, we examine the Bill's compliance with the basic structure doctrine particularly the features of parliamentary form of government, rule of law, federalism, and the equality code. We are of the opinion that the Bill contains certain infirmities which potentially violate the basic structure of the Constitution, specifically the features of rule of law and equality code.

For rule of law, we point towards an absence of adequate checks and balances to prevent the concentration of power by the non-traditional executive i.e., executive agencies, over the traditional executive i.e., ministers. For equality code we find the Bill under-inclusive and lacking a rational nexus with the object sought to be achieved — evident from the incongruence between the SoR and the provisions, thereby inviting possible challenges under Article 14. The Bill also raises concerns relating to potential misuse thereby undermining federal principles, which, though not amounting to a basic structure violation, could nonetheless enable the destabilisation of coalition governments or those with slender legislative majorities.

However, on parliamentary form of government, we opine that the Bill does not abrogate this feature, it merely modifies it. The prevalence of existing restrictions on the Prime Minister/Chief Minister's discretion makes their discretion to appoint Ministers, not absolute.

The report ends with seven key recommendations to ensure that the bill constitutionally serves the objective of ensuring that elected representatives, particularly Cabinet Ministers, do not violate constitutional morality and principles of good governance, and diminish the trust reposed by people in them.

CHAPTER ONE: CONSTITUENT ASSEMBLY DEBATES ON DISQUALIFICATION

1. The question of qualifications and disqualification of elected representatives – Members of Parliament and State legislature – was a key point of discussion in the Constituent Assembly. However, the early drafts, debates, and the text of the Constitution highlight that the focus of the Assembly was on disqualification of members as such, not Cabinet Ministers, and second, disqualification was to follow conviction, and not mere accusation or arrest. This is discussed in detail below.

2. The Constitution making process largely followed a chronological approach consisting of:
   - Draft Memorandum along with clauses prepared by the Constitutional Advisor Sir Benegal Narsing Rau (30 May 1947) .
   - Consideration of the Memorandum by different Committees constituted by the Constituent Assembly, namely, Union Constitution Committee and Provincial Constitution Committee who would submit their recommendations to Rau.
   - First Draft of the Constitution prepared by Rau incorporating the recommendations (October 1947).
   - Consideration and improvement of Rau's draft by the Drafting Committee.
   - Draft Constitution prepared by the Drafting Committee.
   - Debate in the Assembly and passing of the Final Draft.

   The question of qualification and disqualification of members progressed and evolved through these different stages.

3. First, the Draft Memorandum prepared by Rau, provided that a person shall be disqualified from being chosen as a member of Parliament on the following grounds: (a) holding an office of profit, (b) unsoundness of mind, (c) status as an undischarged insolvent, (d) conviction for any offence or corrupt or illegal

practice relating to elections, (e) conviction for any other offence resulting in a sentence of transportation or imprisonment of not less than two years, or (f) failure to file election expenses.[1] The Memorandum laid the foundation by recognising that the grounds of disqualification should form part of the constitutional framework and was incorporated in the Draft Constitution prepared by Rau.[2]

4. Second, while considering the Memorandum, in December 1947, the Drafting Committee decided to retain certain provisions concerning disqualification i.e., office of profit, unsound mind, and undischarged insolvent, choosing to omit the remaining.[3] Hence, the grounds of disqualification due to conviction were removed. However, the Committee made additions to the existing grounds – (d) acknowledgment of allegiance to a foreign power including citizenship or entitlement of rights or privileges; and (e) disqualification under any law made by Parliament.[4]

5. Third, this Draft Constitution was circulated amongst members and other stakeholders for their inputs, and on the provisions of disqualification, while responding to the Editor of the Indian Law Review, Ambedkar justified the decision to delete sub-clauses (d) to (f) in Rau's draft, on the ground that such detailed disqualifications would 'burden the Constitution' and decisions on these, should be taken by subsequent legislation.[5]

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[1] Memorandum of the Union Constitution and Draft Clauses prepared by the Constitutional Adviser dated 30 May 1947; See, B. Siva Rao, *The Framing of India's Constitution: Select Documents* (Law and Justice Publishing Co. 2022) vol.2, 470

[2] Draft Constitution by the Constitutional Adviser 1947, Article 68 (1); See, Siva Rao, *The Framing of India's Constitution: Select Documents*, (Law and Justice Publishing Co. 2022) vol.3, 27.

[3] 'Minutes of the Drafting Committee' dated 6 December 1947. See, Siva Rao, *The Framing of India's Constitution: Select Documents*, vol.3, 356-366 (Law and Justice Publishing Co. 2022).

[4] Article 83, Draft Constitution prepared by the Drafting Committee (February 21, 1948). See, Siva Rao, *The Framing of India's Constitution: Select Documents*, vol.3, 510, 545 (Law and Justice Publishing Co. 2022).

[5] 'Comments and Suggestions on the Draft Constitution'. See, Siva Rao, *The Framing of India's Constitution: Select Documents*, vol.4, 3, 107 (Law and Justice Publishing Co. 2022).

6. During the Debates in the Assembly, member Shibban Lal Saxena, opposed the provision giving Parliament the power to prescribe disqualifications, arguing that "*qualifications of candidates will be made a plaything of party politics. For instance, a die-hard Government might come into power and lay it down that only zamindars, or persons paying income-tax of a particular amount would be eligible to seek election. The result will be that ordinary people will go to the wall. I, therefore, think, Sir, that clause (c) should be deleted.*"[6] Instead, he argued for exhaustive qualifications being incorporated in the text of the Constitution itself.[7]

7. Prof. K.T. Shah moved an important amendment, to introduce special qualifications for Ministers in the Union or Provincial Governments. The amendment sought the introduction of a disqualification of a convicted person from becoming a Minister.[8]

8. Responding to the amendments, Ambedkar reiterated the Drafting Committee's stance that these qualifications and disqualifications should not be introduced in the Constitution, and instead, the Assembly must trust the wisdom of the Prime Minister, Legislature, and the public, to ensure that such persons are not appointed to office.

   He remarked,
   "*Well, so far as his intention is concerned, it is no doubt very laudable, and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may*

[6] Speech of Shibban Lal Saxena on 2 June 1949 (Constituent Assembly Debates) vol. VIII [8.97.181].
[7] Ibid.
[8] (*Constituent Assembly Debates*) vol. VII, 30 December 1948.

eminently be left to the good sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary."[9]

9. Ultimately, these clauses were largely retained and passed by the Constituent Assembly, with minor changes.[10]

10. However, while the Assembly stopped short of prescribing detailed qualifications, several noteworthy members highlighted and emphasised on the qualities they expected of those who would occupy constitutional offices. For instance, in his concluding address on 26 November 1949, Dr. Rajendra Prasad observed:

"*If the people who are elected are capable and men of character and integrity, then they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them… It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas… We can only hope that the country will throw up such men in abundance."*[11]

11. He went further in admitting a regret that the Constitution did not prescribe explicit qualifications for legislators beyond citizenship, age, and election. He observed,

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[9] Speech of B.R. Ambedkar on 30 December 1948 (*Constituent Assembly Debates*) vol. VII, [7.76.200].
[10] Clause (d) earlier read, "*if he is under any acknowledgement of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power". It was changed to "if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign state*."
[11] Speech of Dr. Rajendra Prasad, (*Constituent Assembly Debates*: 26 November 1949), vol. XI, [11.166.48].

> *"A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things to act independently and above all to be true to those fundamental things of life – in one word – to have character… It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective."*[12]

Summary:

These debates and historical context highlight three features of the Constitution's design during enactment:

i. Disqualification was conceived in relation to members of legislatures, not cabinet appointment.
ii. The operative trigger was conviction, and not mere allegation or arrest.
iii. The law on disqualification is not static and can be developed by Parliament.

The next section explains the constitutional provisions concerning qualifications and disqualifications for membership of Parliament and State Legislature, including those for Cabinet Members.

[12] Ibid [11.166.46].

CHAPTER TWO: CONSTITUTIONAL PROVISIONS ON QUALIFICATIONS AND DISQUALIFICATIONS

12. The Constitution of India creates a Westminster Style democracy which consists of three pillars comprising the Executive, Parliament, and Judiciary. However, unlike the American Presidential system, the Executive and Parliament are not completely separate and witness a considerable degree of overlap in terms of membership. The Executive consists of the President who is advised by the Council of Ministers, headed by the Prime Minister. The Council of Ministers are chosen from Parliament and in fact, Article 75(5) stipulates that if a Minister is not elected to either House of Parliament within a period of six months, they shall cease to be a Minister.[13] Similar provisions exist for the State Legislature as well.[14]

13. The Constitution provides a structured framework for qualifications and disqualifications of members of Parliament and State Legislature. It also includes additional qualifications for Members of the Cabinet, including the Prime Minister and the Chief Minister. They are discussed below:

14. **Qualification for Membership:**

Article 84 lays down the qualifications for an individual to be chosen as a Member of Parliament. These include:

a) Citizenship: Must be a citizen of India and undertake an oath of affirmation set out in the Third Schedule.
b) Age: Must be thirty years of age (for appointment to Rajya Sabha) and twenty-five years of age (for appointment to Lok Sabha).
c) Must possess such other qualifications as prescribed by Parliament through law.

[13] The Constitution of India 1950, Article 75.
[14] The Constitution of India 1950, Article 164.

It should be noted that the Parliament has not passed any law prescribing additional qualifications in furtherance of clause (c).

Similar qualifications as mentioned above, are stipulated in Article 173, applicable to the State Legislature.[15]

15. **Disqualification of Membership:**

Article 102 lays down the grounds on which a member stands disqualified from Parliament. These include:

a) Holding an Office of Profit under the Government of India or the Government of any State, other than those exempted by Parliament through law.
b) Unsound mind.
c) Undischarged insolvent.
d) Citizenship and Allegiance – not a citizen of India or acquiring citizenship of a foreign State, or under acknowledgement of allegiance to a foreign State.
e) Disqualified under any made by Parliament.

The Parliament enacted the Constitution (Fifty-Second Amendment) Act, 1985, which added an additional ground for disqualification under the Tenth Schedule.[16]

16. The Parliament enacted the Representation of The People Act, 1951 **('RP Act')**, in furtherance of its powers under sub-clause (e). The Act acts as an elaborate statutory code of disqualifications, stipulating disqualification on broadly the following grounds:

a) Criminal Convictions for certain offences[17]
b) Corrupt Practices[18]

[15] The Constitution of India 1950, Article 173.
[16] Constitution (Fifty-Second Amendment) Act, 1985.
[17] Representation of People Act 1951, Section 8.
[18] Representation of People Act 1951, Section 8-A.

c) Corruption or Disloyalty[19]

d) Government Contracts[20]

e) Failure to Lodge Accounts of Election Expenses[21]

The Parliament's legislative reforms have largely been restricted to two planks – introducing legislation to define and expand the meaning of 'office of profit'[22] and amendments to the RP Act.

17. **Qualification of the Council of Ministers:** Articles 74-75 and 163-164 concern Council of Ministers in Parliament and State Legislature respectively. The provisions do not provide independent qualifications or disqualifications for the Council. However, since a Minister must be an elected member of Parliament/State Legislature, the qualifications and disqualifications discussed above are applicable to them as well.

18. It should be noted that Article 75(5) stipulates that a Minister who does not get elected to either House of Parliament within six consecutive months of being appointed, shall cease to be a Minister.[23] As will be explained in the subsequent sections, this cannot be categorised as a disqualification but as cessation of office.

[19] Representation of People Act 1951, Section 9.
[20] Representation of People Act 1951, Section 9-A.
[21] Representation of People Act 1951, Section 10.
[22] See, The Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill, 1953; The Prevention of Disqualification (Parliament and Part C States Legislatures) Second Amendment Bill, 1954 (Office of Profit Disqualification); The Prevention of Disqualification (Parliament and Part C States Legislatures) Amendment Bill, 1955; The Parliament (Prevention of Disqualification) Bill, 1957; The Prevention of Disqualification (Amendment) Bill, 1958; The Parliament (Prevention of Disqualification) Amendment Bill, 1992; The Parliament (Prevention of Disqualification) Amendment Bill, 2006; The Parliament (Prevention of Disqualification) Amendment Bill, 2013.
[23] The Constitution of India 1950, Article 75(5).

Summary:

i. Article 84/173 lays down the qualifications of Members of Parliament and State Legislature, respectively. These include – citizenship and age. The Parliament is empowered to make law adding new qualifications, however, no such law has been made.

ii. Article 102/191 lays down the grounds for disqualification of Members, including office of profit, unsound mind, undischarged insolvent, citizenship and allegiance, and any other law made by Parliament. In furtherance, RP Act, stipulates additional grounds of disqualification.

iii. There are no separate qualification or disqualification requirements for Council of Ministers, except that they must be elected to Parliament within six months of entering office.

CHAPTER THREE: PREVIOUS CALLS FOR REFORM AND STRICTER LAWS

19. As highlighted in Chapter One, the framers of the Constitution were conscious of the need to ensure that constitutional offices were occupied by individuals of high moral character. In furtherance of this vision, laws were enacted to give effect to minimum standards of probity. Over time, however, several commissions and judicial pronouncements have highlighted the growing phenomenon of criminalisation of politics and the inadequacy of the existing legal framework to deter it. This Chapter surveys these calls for reform. It is organised in three parts: *Law Commission Reports*, *Other Commissions/Committees*, and *Judgments*.

20. **Law Commission Reports:** Since the 1990s, the Law Commission of India **('LCI')** has repeatedly highlighted the dangers posed by criminalisation of politics and urged legislative reforms to strengthen the regime of disqualification.

21. The 170th Report on 'Reform of the Electoral Law' undertook a comprehensive review of the RP Act, with the aim of making the electoral process more fair, transparent, and equitable.[24] Its recommendations addressed four broad themes: adoption of the list system of elections, amendment to the Tenth Schedule, regulation of election expenditure, and amendment to Section 8 of the RP Act (disqualification on conviction). In discussing the last of these, the Commission made strong observations on the difficulty of securing convictions against politically influential persons and the consequent rise of criminalisation of politics:

"*The reason for this proposal was that most of the offences mentioned in sub-section (1) are either election offences or serious offences affecting the society and that the persons committing these offences are mostly persons having political clout*

[24] Law Commission of India, *Reform of the Electoral Laws* (Law Commission No. 170, 1999) [8].

and influence. Very often these elements are supported by unsocial persons or groups of persons, with the result that no independent witness is prepared to come forward to depose against such persons. In such a situation, it is providing extremely difficult to obtain conviction of these persons. It was suggested that inasmuch as charge were framed by a court on the basis of the material placed before it by the prosecution including the material disclosed by the charge-sheet, providing for disqualification on the ground of framing of the charge-sheet would be neither unjust nor unreasonable or arbitrary."[25]

22. The Commission accordingly recommended that Section 8 of the RP Act be amended to provide that in the case of electoral and other serious offences, the framing of charges by a court should itself be a ground of disqualification, in addition to conviction. Its draft provision read as follows:

"Accordingly, we recommend that section 8B (as proposed by us and as set out hereinbelow) be enacted.

"8-B. Disqualification on framing of charge for certain offences.-

A person against whom charge has been framed under:- (a) section 153A, section 171E, section 171F, section 171G, section 171H, section 171I, sub-section (1) or sub-section (2) of section 376, sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860); or

(b) sections 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(c) the penal provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) except section 27 thereof; or

(d) section 125, section 135, section 135A or sub-section (2) of section 136 of this Act; or

(e) any other offence punishable with imprisonment for life or death under any law,

[25] Ibid, [5.1].

shall be disqualified for a period of five years from the date of framing the charge, provided he is not acquitted of the said charge before the date of scrutiny notified under section 36 of this Act."[26]

23. In 2014, the Supreme Court in *Public Interest Foundation v Union of India*,[27] directed the LCI to prepare a comprehensive report on electoral reforms. The Court observed, "*the issues with regard to de-criminalization of politics and disqualification for filing false affidavits deserve priority and immediate consideration*".[28] Pursuant to this direction, the LCI produced its 244th Report on 'Electoral Disqualification', which reiterated the central recommendation of the 170th Report: that the framing of charges should trigger disqualification.

24. The Commission also reiterated its concerns with the rise of criminalisation in politics and observed:

"It is a truism that criminal elements of society, i.e. those accused of breaking the laws that their predecessors have given the force of law, and which they are themselves entrusted with enforcing being MPs and MLAs, would be antithetical to the vision of the framers, the nature of Indian democracy and the rule of law."[29]

25. Read together, the 170th and 244th Reports reflect a consistent position of the LCI: urging stringent measures to curb the rise of criminalisation of politics and emphasising that the prevailing standard of disqualification upon conviction is inadequate to meet the challenge of criminalisation of politics. Each Report underscored that the stage of framing of charges provides a more appropriate threshold, as it introduces judicial scrutiny while ensuring that individuals facing serious allegations do not continue to occupy positions of legislative authority. In light of these findings, the Commission repeatedly recommended that

[26] Ibid, [5.4].
[27] *Public Interest Foundation v. Union of India*, 4604/2011/SC/PIL(W) dated 21st December, 2013.
[28] Ibid.
[29] Law Commission of India, *Electoral Disqualification* (Law Commission No. 244, 2014) [13].

Parliament amend the RP Act to incorporate this standard. The following section examines the observations of other expert bodies which have engaged with the same issue.

26. **Other Commissions/Committees:** The Election Commission of India (**'ECI'**) has, on multiple occasions, recommended reforms to the electoral law to address criminalisation of politics. In August 1997, it introduced a requirement that candidates file affidavits disclosing convictions in cases covered under Section 8 of the RP Act.[30] The following month, in a communication to the Prime Minister, the Commission proposed an amendment to Section 8 to provide that any person convicted and sentenced to imprisonment for six months or more should be disqualified from contesting elections for the duration of the sentence and for an additional period of six years thereafter.[31]

27. In 1998, the Commission reiterated this proposal and went further, recommending that disqualification should also extend to any person against whom charges had been framed for an offence punishable with imprisonment of five years or more.[32] While acknowledging the principle of presumption of innocence, the Commission stressed that Parliament and State Legislatures, as the apex law-making bodies, must be composed of persons of integrity and probity who command public confidence – qualities that, in its view, could not be ascribed to individuals formally accused of serious offences. In 2004, it reiterated that persons should be disqualified upon the framing of charges in respect of offences punishable with imprisonment of five years or more, provided that the charges were framed at least six months before the election.[33]

28. The National Commission to Review the Working of the Constitution (2002) also endorsed the principle that disqualification should be triggered upon the framing

[30] Order dated 28th August 1997 (Election Commission of India).
[31] Law Commission of India, *Electoral Disqualification* (Law Commission No. 244, 2014) [24].
[32] Ibid.
[33] *Proposal on Electoral Reforms*, (Election Commission of India: 2 August 2004).

of charges for offences punishable with a maximum term of five years or more. It introduced, however, certain modifications.[34] First, it recommended that disqualification should apply one year after the date of framing of charges and, if not cleared within that period, continue until the conclusion of the trial.[35] Second, it proposed that in the event of conviction for an offence carrying a sentence of six months or more, disqualification should operate during the period of sentence and for six years thereafter.[36] Third, for heinous offences, the Commission recommended a permanent bar on contesting political office.[37] Fourth, it called for the establishment of Special Courts at the level of the High Courts, with direct appeal to the Supreme Court, to assess the legality of charges framed against candidates and to dispose of such cases within a strict time-frame.[38] Finally, it recommended the de-registration and de-recognition of political parties that knowingly field candidates with criminal antecedents.[39]

29. The Second Administrative Reforms Commission, in its Fourth Report on *Ethics in Governance* (2007), considered the implications of disqualifying candidates on various grounds.[40] It recommended amendments to Section 8 of the RP Act to disqualify all persons facing charges in respect of grave and heinous offences—such as murder, abduction, rape, dacoity, waging war against India, organised crime, narcotics offences—and corruption, where charges had been framed at least six months prior to the election. The Commission also endorsed the ECI's earlier proposal to classify the filing of false affidavits as an electoral offence under Section 31 of the *Representation of the People Act, 1950*.

30. The Justice J.S. Verma Committee on Amendments to Criminal Law (2013), while primarily tasked with reviewing laws relating to sexual offences, also made

[34] Report of the National Commission to Review the Working of the Constitution (2002), 128 [4.12.2].
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Second Administrative Reforms Commission: Fourth Report 'Ethics in Governance' (*Government of India*: 2007), 14, [2.1.3.3.2]

recommendations on electoral disqualification. It proposed the insertion of Schedule I into the RP Act, enumerating offences under the Indian Penal Code that could be categorised as "heinous offences."[41] It further recommended that Section 8(1) of the RP Act be amended to include these offences, providing that a person against whom a court of competent jurisdiction had either taken cognizance under Section 190(1)(a), (b), or (c) of the Code of Criminal Procedure, or had recorded a conviction in respect of the specified offences, should be disqualified from that date.[42] The Committee proposed that, in cases of conviction, disqualification should continue for a further period of six years from the date of release; and in cases of acquittal, disqualification should operate from the date of cognizance until the date of acquittal.

31. **Judgments:** The Supreme Court has also on several occasions acknowledged the phenomenon of criminalisation of politics and its impact on the functioning of representative institutions. These pronouncements record concerns with the entry of individuals facing serious criminal charges into public life, while emphasising that the authority to prescribe disqualifications lies with Parliament.

32. In *Dinesh Trivedi v Union of India* (1997), referring to the Vohra Committee Report, the Court noted the "alarming and deeply disturbing trends" arising from the nexus between politicians, bureaucrats, and criminal elements.[43] In *Anukul Chandra Pradhan v Union of India* (1997), the constitutional validity of provisions excluding persons with criminal backgrounds from contesting elections were upheld on the ground that they served the constitutional purpose of maintaining propriety in elections.[44] Similarly, in *K. Prabhakaran v P. Jayarajan* (2005), the Court observed that criminalisation of politics was a serious issue that affected

[41] Report of the Committee on Amendments to Criminal Law (2013), 459.
[42] Ibid, 343.
[43] *Dinesh Trivedi v Union of India* AIR 1997 SC 304, [27].
[44] *Anukul Chandra Pradhan v Union of India* (1997) 6 SCC 1.

"the very foundation of our democratic institutions."[45] Subsequent decisions have reiterated this position as well.[46]

33. The judgment in *Manoj Narula v Union of India* (2014)[47] is of particular relevance, especially in context of the present Bill. In *Manoj Narula*, the petitioners challenged the appointment of individuals as Ministers on the grounds of their involvement in serious crimes. According to the Court, this was a "point of great public importance" as it questioned the legality of persons charged with criminal offences involving moral turpitude being appointed in the Council of Ministers.[48] The petitioners also sought framing of guidelines to curb such appointments. In light of the importance of the issue raised, it was referred to a Constitution Bench of five judges.

34. Before moving to substantive adjudication of the issues, the Court remarked that for a democracy to survive, it is imperative that individuals with high moral and ethical values are chosen.[49] Further, it remarked that a democratic polity aspires to be governed by elected representatives who are not involved in serious criminal offences.[50]

35. A key prayer of the petitioners was that the Court must incorporate through interpretation a prohibition in Articles 75(1) and 164(1)[51] from appointing individuals who are facing criminal trial for heinous and serious offences, to the Council of Ministers. The Court, however, declined to read these additional disqualifications into Articles 75(1) or 164(1), holding that in the absence of a constitutional or statutory prohibition, it was not open to the judiciary to impose

[45] *K. Prabhakaran v P. Jayarajan* AIR 2005 SC 688 [Balakrishnan J., 8].
[46] *Dr. Subramanian Swamy v Director, Central Bureau of Investigation* Writ Petition (Civil) No. 38 of 1997; *Patangrao Kadam v Prithviraj Sayajirao Yadav Deshmukh* (2001) 3 SCC 594.
[47] *Manoj Narula v Union of India* W.P. (C) 289 of 2005 (judgment dated 27 August 2014).
[48] Ibid, Order dated 24.3.2006.
[49] *Manoj Narula v Union of India* (n 47).
[50] Ibid.
[51] Provisions concerning appointment of Council of Ministers by the Prime Minister/Chief Minister. They are discussed in detail later.

such restrictions. It held, "*In the absence of any constitutional prohibition or statutory embargo, such disqualification, in our considered opinion, cannot be read into Article 75(1) or Article 164(1) of the Constitution.*"[52] Similarly, Justice Lokur, in a separate opinion, stated that it was for the legislature to determine whether further restrictions ought to be enacted.[53]

36. The Court however, observed, that it was legitimate to expect that the Prime Minister would consider the antecedents of individuals before advising their appointment as Ministers. It observed, "*However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers.*"[54]

37. A similar issue was raised once again in *Public Interest Foundation v Union of India* (2018)[55] i.e., whether additional disqualification for membership to the Parliament/State Legislature beyond those listed in the Constitution or under law enacted by Parliament can be laid down by the Court.[56] The Court reached the same conclusion as *Manoj Narula*, holding that "*It is well settled in law that the Court cannot legislate*."[57] However, it emphasised that Parliament must enact a legislation to deter people with criminal cases from entering into politics. It held, "*A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused, but it is equally imperative*

[52] *Manoj Narula v Union of India* (n 47), [53].
[53] Ibid, [6].
[54] Ibid, [86].
[55] *Public Interest Foundation* (n 27).
[56] Ibid.
[57] Ibid, [22].

that persons who enter public life and participate in law making should be above any kind of serious criminal allegation."[58]

38. Subsequently, in *Krishnamoorthy v Sivakumar* (2015), the Court reiterated that criminalisation of politics and corruption in public life were incompatible with the values of a constitutional democracy.[59] In *Lok Prahari v Union of India* (2018), a Constitution Bench held that Parliament had the exclusive legislative power to prescribe disqualifications, but observed that it was open to the legislature to declare that any member was unfit to continue as such.[60]

39. In *Brajesh Singh v Sunil Arora* (2021), the Court again noted the persistence of criminalisation of politics. Referring to the recommendations of the LCI, the Court observed that a legislative amendment to Section 8 of the RP Act, to introduce disqualification at an earlier stage of the criminal process, would reduce the extent of criminalisation. The Court recorded its repeated appeals to the legislature to consider such reforms, while emphasising that it lacked the competence to mandate them.[61]

40. Across these decisions, two themes emerge. First, the Court has consistently described the criminalisation of politics as a matter of serious concern for the integrity of democratic governance. Secondly, the Court has underlined that the competence to address this issue by altering the grounds of disqualification rests exclusively with Parliament.

[58] Ibid, [118].
[59] *Krishnamoorthy v Sivakumar* C.A. 1478 of 2015.
[60] *Lok Prahari v Union of India* AIR 2018 SC 4675, [43].
[61] *Brajesh Singh v Sunil Arora* AIR 2021 SC 4069.

Summary:

From the foregoing reports and judicial pronouncements, certain principles emerge:

i. Disqualification solely upon conviction is insufficient to address the problem of criminalisation of politics.

ii. The stage of framing of charges, involving judicial scrutiny of *prima facie* material, has been consistently identified as a more appropriate threshold.

iii. The authority to prescribe additional disqualifications rests with Parliament, and legislative intervention is therefore the constitutionally mandated route.

iv. The Courts have repeatedly urged the Parliament to introduce/amend the law, to deter individuals with ongoing criminal cases from occupying elected offices.

These principles provide the framework within which the proposed Bill must be assessed, as it represents an attempt to move the law in this direction.

Timeline of Recommendations on Criminalisation of Politics

Year	Name of the Committee/Judgment	Recommendation
1997	Election Commission of India	Candidates to disclose convictions by affidavit; proposed disqualification for conviction of six months or more, extending to sentence period awarded and an additional six years.
1997	Dinesh Trivedi v Union of India, AIR 1997 SC 304	Highlighted the "alarming and deeply disturbing trends" of nexus between politicians, bureaucrats, and criminal elements.

1997	Anukul Chandra Pradhan v Union of India, (1997) 6 SCC 1	Upheld provisions excluding persons with criminal background from elections, noting they maintain propriety and prevent criminalisation of politics.
1998	Election Commission of India	Recommended disqualification on framing of charges for offences punishable with imprisonment of five years or more. This was reiterated in 2004 with a safeguard that charges be framed six months prior to the elections.
2002	National Commission to Review the Working of the Constitution (NCRWC)	Proposed disqualification one year after charges are framed for offences punishable with five years of more; permanent bar for heinous offences; creation of Special Courts; de-recognition of parties fielding tainted candidates.
2005	K. Prabhakaran v P. Jayarajan, AIR 2005 SC 688	Observed that criminalisation of politics "affects the very foundation of our democratic institutions."
2007	Second Administrative Reforms Commission (4th Report)	Recommended amendments to the RP Act to disqualify persons facing charges in grave/heinous offences (murder, rape, dacoity, terrorism, narcotics, corruption) if framed six months prior to elections; and making false affidavits an electoral offence.
2013	Justice J.S. Verma Committee (Criminal Law Amendments)	Proposed a Schedule I to RP Act enumerating "heinous offences" for disqualification; suggested disqualification from date of cognizance or conviction, lasting till acquittal or for six years post-release.

2014	Public Interest Foundation v Union of India, 4604/2011/SC/PIL(W) dated 21 December 2013	Directed Law Commission to prepare a report on electoral disqualification, prioritising de-criminalisation of politics and false affidavit disclosures.
2014	Law Commission of India (244th Report)	Reiterated that disqualification should be triggered at the framing of charges, not merely at conviction.
2014	Manoj Narula v Union of India, W.P. (C) 289 of 2005 (judgment dated 27 August 2014)	Held criminalisation "corrodes constitutional trust" but refused to introduce additional grounds of disqualification of Cabinet Members emphasising that it was Parliament's responsibility.
2015	Krishnamoorthy v Sivakumar, C.A. 1478 of 2015	Declared that criminalisation of politics and corruption are "absolutely unacceptable" in a constitutional democracy.
2015	Law Commission of India (255th Report)	Recommended disqualification on framing of charges for offences with maximum punishment of five years or more; emphasised that incompatibility of criminal elements with democracy.
2018	Lok Prahari v Union of India, AIR 2018 SC 4675	Reaffirmed that Parliament alone has competence to prescribe disqualifications for elected representatives and the Court cannot declare any member unfit.
2021	Brajesh Singh v Sunil Arora, AIR 2021 SC 4069	Urged lawmakers to enact legislation and noted the Law Commission's recommendations to amend Section 8 of the RP Act and introduce disqualification at the

		stage of framing charges. Also recorded frustration that repeated judicial appeals had “fallen on deaf ears.”

CHAPTER FOUR: CONTENT OF THE BILL

This Chapter explains the contents of the Bill including its legislative intent, key provisions amended, and the resultant substantive changes made.

41. **Summary of the Bill**: It makes amendments to various constitutional provisions to provide for the removal of the Prime Minister, a Chief Minister of a State, or any other Minister in the central or a state government, if arrested and detained in custody on account of serious criminal offences.

42. **Legislative Intent:** According to the SoR, the key reasons for moving this Bill are:

- To ensure elected representatives, particularly, those holding ministerial office, inspire public confidence and remain above suspicion.

  To that effect, the SoR reads, "*It is expected that the character and conduct of Ministers holding the office should be beyond any ray of suspicion.*"[62]

- To safeguard constitutional morality, good governance, and constitutional trust of the people.

  The SoR reads, "*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*."[63]

- To address the present constitutional gap arising from the absence of any provision for the removal of a Minister who is arrested and detained on account of serious criminal charges.

[62] The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025.
[63] Ibid.

The SoR reads, "*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.*"[64]

43. **Key Amendments and Changes:** The Bill seeks to amend three provisions, namely, articles 75, 164, and 239AA. These provisions concern the Council of Ministers at the Union, State, and the National Capital Territory of Delhi, respectively.

44. As discussed in Chapter Two, prior to this Bill the Constitution did not prescribe any separate qualifications or disqualifications for holding ministerial office. Ministers were subjected to the same disqualifications applicable to members of Parliament or State Legislatures under Articles 102 and 191, and were additionally required by Articles 75(5) and 164(4) to secure election to the legislature within six months of appointment. Beyond these provisions, there was no constitutional ground for the removal of a Prime Minister, Chief Minister, or Minister solely on account of arrest and detention in a criminal case. The disqualification framework, as developed in the Constitution and the RP Act, was confined to membership of the legislature and did not extend to cessation of ministerial office by reason of custody.

45. The Bill introduces a new framework into Articles 75, 164, and 239AA to provide for 'temporary cessation' of ministerial office in such circumstances. Its principal features are:
    - If a Minister is arrested and remains in custody for a continuous period of thirty days in connection with an offence punishable with imprisonment of five years or more, the Prime Minister (in the case of Union Ministers), the Chief Minister (in the case of State Ministers), or the Chief Minister of Delhi (for Union Territory Ministers) is required to advise removal by the 31st day.

[64] Ibid.

- If such advice is not tendered by the 31st day, the Minister automatically ceases to hold office with effect from the following day.
- In the case of the Prime Minister or Chief Minister themselves, the Bill mandates resignation by the 31st day of arrest and detention; failing which, they automatically cease to hold office.
- The Bill further clarifies that such individuals may be reappointed as Prime Minister, Chief Minister, or Minister upon release from custody, subject to the ordinary requirements of the Constitution.

46. The effect of these provisions is to create a new ground for cessation of ministerial office – distinct from disqualification as a member of the legislature. This is evident on three counts.

47. **First, by placement and form**: The amendment inserts additional clauses after Articles 75(5), 164(4), and 239AA(5), namely clauses 75(5A), 164(4A), and 239AA(5A). The existing clauses in these provisions already stipulate that a Minister who is not elected to the legislature within six months "shall cease to be a Minister." By locating the new amendments alongside this cessation clause, the framers of the Bill clearly signal an intent to create another instance of cessation, rather than a new ground of disqualification. Disqualification, by contrast, is separately provided for in Articles 102 and 191 and elaborated through the RP Act. The decision to place the new rule within Articles 75, 164, and 239AA, rather than in Articles 102/191 or the RP Act, therefore indicates an intent to create a mechanism of cessation, not an additional ground of disqualification from membership.

48. **Second, by trigger:** The grounds of disqualification typically relate either to status-based bars (office of profit, unsound mind, insolvency, allegiance) or to conviction for specified offences. The Bill, however, uses a different trigger—arrest and detention for thirty consecutive days in connection with an offence

punishable with five years' imprisonment or more—which is not tied to a loss of legislative qualification under Articles 84/173 or conviction under the RP Act.

49. **Third, by consequence:** Disqualification affects membership of the legislature, leading to vacation of the seat and, in some cases, continuing ineligibility. By contrast, the Bill results only in cessation of ministerial office; it does not vacate the legislative seat, it does not impose any continuing bar, and it expressly permits re-appointment upon release. The provision therefore creates a temporary constitutional disability attached to ministerial office, distinct from disqualification as a member.

Aspect	Cessation	Disqualification
Constitutional Provisions	Articles 75(5), 164(4), 239AA(5) (now with 75(5A), 164(4A), 239AA(5A))	Articles 102 and 191 (elaborated by RP Act)
Trigger	Specific events affecting ministerial office (e.g., failure to get elected within six months, thirty days detention under the Bill).	Legal disabilities such as holding an office of profit, unsound mind, insolvency, or conviction under defined laws.
Consequences	Ministers ceases to hold office but may be reappointed once the condition is remedied.	Member loses eligibility to sit in the legislature; consequences extend beyond tenure, often including a bar on re-election.
Nature	Temporary constitutional disability.	Permanent or long-term statutory/constitutional disability.

(*Table explaining Cessation vs. Disqualification*)

Summary:

i. The Bill amends Articles 75, 164, and 239AA by way of adding new clauses [75(5A), 164(4A), and 239AA(5A)] to provide for cessation of ministerial office upon arrest and detention for a consecutive period of thirty days.
ii. It introduces a new ground of cessation that did not previously exist in the constitutional framework.
iii. The change creates a temporary constitutional disability attached to ministerial office, distinct from legislative disqualification.

The next chapter examines global practices on disqualification and cessation, in order to assess how the Bill compares with approaches adopted in other leading democracies.

CHAPTER FIVE: GLOBAL PRACTICES

50. This chapter provides a comparative analysis of global practices concerning the removal of ministers from office on grounds of criminal conduct. The discussion is organised along two primary axes: the triggers for removal and the processes through which removal is affected. The study covers seven jurisdictions: the United Kingdom **('UK')**, the United States **('USA')**, Germany, France, Australia, Canada, and South Korea.

51. **Choice of Jurisdictions:** These jurisdictions were selected because they represent a broad spectrum of constitutional systems— Westminster (UK, Canada, Australia), presidential (USA, South Korea), and civil law with hybrid mechanisms (France, Germany). Each system embodies a distinct model of ministerial accountability, shaped by its historical and institutional context. Examined together, they provide useful comparative insights: highlighting the range of triggers for removal (political, legal, or judicial), the role of conventions versus codified rules, and the balance struck between accountability and stability in governance.

52. **Explaining the Axes:** The two axes are triggers for removal and process for removal.
    - **Triggers for Removal**: This axis identifies the specific legal or political threshold that initiates or mandates a minister's removal. These triggers vary significantly, ranging from the mere initiation of a criminal investigation, the formal laying of charges, or a conviction for a particular category of offense, to the imposition of a specific sentence, such as imprisonment for a defined period.
    - **Processes of Removal**: This axis examines the procedural mechanisms by which the removal is executed. These processes include the discretionary act of an executive functionary, such as a President or Prime Minister; the minister's own decision to resign, often under pressure; a formal legislative

process like impeachment; a ruling by a specialised or ordinary court; or the automatic vacation of the office by direct operation of law.

53. **Grouping of Jurisdictions**: For analytical clarity the jurisdictions studied have been grouped into two categories based on their politico-legal systems.

54. Part I (Political discretion with legal backstops) comprises countries that rely primarily on executive discretion, complemented by statutory or constitutional backstops. This includes the Westminster systems of the UK, Canada, and Australia, alongside the German model, which—despite its civil law roots—functions in a comparable manner.

55. While differing in constitutional origins, these jurisdictions share a common functional approach. The principal mechanism is political: ministers may be dismissed at the discretion of the Prime Minister or Chancellor if they lose the confidence of the head of government. This flexible political process is reinforced by a legal backstop, under which conviction for a serious criminal offence attracting a substantial sentence results in automatic disqualification from holding ministerial office.

56. Part II (Formal Impeachment and Judicial Mechanisms) consists of countries that employ formal impeachment or specialised judicial adjudication mechanisms, including the USA, France, and South Korea. In these systems, codified procedures provide an institutional check on the executive, with removal of ministers or heads of government subject to legislative vote or judicial determination rather than resting solely on executive discretion.

57. In these jurisdictions, in addition to executive discretion, formal procedures—such as legislative impeachment or adjudication by specialised courts—operate as structured, quasi-judicial checks on the executive. These mechanisms are

designed to ensure accountability for serious misconduct, including criminal acts, through transparent and rule-bound processes.

I. Political Discretion with Legal Backstops

58. **United Kingdom:** The UK addresses ministerial criminal conduct through two distinct mechanisms: (a) a political track, governed by convention and Prime Minister's discretion; and (b) statutory track, which prescribes automatic legal consequences in cases of serious criminal convictions.

59. Triggers for Removal: The UK system of ministerial accountability rests on two distinct triggers: (a) political discretion and (b) a legal backstop.

    a. The primary trigger is political discretion. By constitutional convention, ministers serve at the pleasure of the Crown, a power exercised in practice by the Prime Minister. Ministers therefore remain in office only so long as they retain the Prime Minister's confidence. The Ministerial Code prescribes standards of conduct, including an "overarching duty" to comply with the law.[65]

       However, the Code is not a statute but a political document. Hence, breaches do not automatically require resignation, and sanctions range from apology to reprimand to dismissal. The Prime Minister alone judges whether the Code has been breached and what consequences should follow.[66] This gives the head of government wide discretion in choosing the sanction, with resignation generally reserved for the most serious cases.[67] Political judgment and public cost, rather than legal compulsion, often determines this process.

[65] UK Parliament, Ministerial Code (November 2024).
[66] UK Parliament, 'Ministerial Code: General Principle' (November 2024) [2.1].
[67] UK Parliament, 'Ministers: Codes of Practice, Question for Cabinet Office' (19 May 2022) <https://questions-statements.parliament.uk/written-questions/detail/2022-05-19/hl381> accessed 23 September 2025.

Illustration

The 2025 resignation of Treasury minister Tulip Siddiq was not triggered by a criminal proceeding in the UK but by political pressure arising from a criminal investigation launched in Bangladesh involving her family. She explained that the matter had become a "distraction from the work of the government".[68] This episode demonstrates that, in the UK, the operative trigger for removal is often not a legal development but the political calculus of when the costs of retaining a minister outweigh the benefits.

b. While the political track allows for flexibility, a clear and non-discretionary legal backstop applies to the most serious criminal offenses. Under the Representation of the People Act, 1981, a Member of the House of Commons is automatically disqualified if convicted of an offence and sentenced to imprisonment exceeding one year.[69] Similarly, the House of Lords Reform Act, 2014, provides a similar disqualification for the members of House of Lords.[70]

60. Process of Removal:

a. The political process is executive-led. The Prime Minister may dismiss a minister at will, or press for resignation where political pressure render their continuation untenable.
b. The legal process is automatic and statutory. Upon conviction and sentence of more than one year, the member's seat in Parliament is vacated by operation of law, without further executive or parliamentary action. Since ministers must be members of either House of Parliament, the loss of a seat due to disqualification under the Representation of the People

[68] Brian Wheeler, 'Tulip Siddiq Resigns as Treasury Minister' (*BBC*: 15 January 2025) <https://www.bbc.com/news/articles/clyk2e7x42zo> accessed 23 September 2025.
[69] Representation of the People Act 1981, Section 1.
[70] The House of Lords Reform Act 2014, Section 3. It should be noted that the Act provides an exception for Lord Members (26 bishops and archbishops of the Church of England). Their conviction must be certified by the Lord Speaker before their disqualification takes effect.

Act, 1981, simultaneously terminates ministerial office with immediate effect.

This legal process is fundamentally different from the discretionary system under the Ministerial Code. It is not concerned with political judgment but establishes an unambiguous red line. The rationale is that a person serving a significant custodial sentence is physically unable to perform their duties as a representative and has, through the commission of a serious crime, forfeited their moral authority to hold public office.[71]

61. This dual framework combines political flexibility with legal certainty. The discretionary track allows the government to manage political controversies and minor infractions without destabilising the executive. The statutory track provides a non-discretionary safeguard, ensuring that individuals convicted of serious crimes cannot remain in ministerial office. The arrangement balances political judgment with a clear legal threshold designed to protect the integrity of Parliament and the executive in most extreme cases.

62. **Canada:** The framework for ministerial removal closely mirrors that of the UK, combining political discretion exercised by the Prime Minister with a statutory backstop for convictions in serious crimes. However, it is distinguished by an exceptionally high statutory threshold for the automatic removal of a minister, which in practice ensures that nearly all instances of alleged or proven criminal conduct are managed through the political process rather than by operation of law.

[71] UK Parliament, Representation of The People Bill <https://hansard.parliament.uk/commons/1981-06-22/debates/8d3a3188-2ca7-458e-8a12-7194f336e82b/RepresentationOfThePeopleBill> accessed 23 September 2025.

63. Triggers for Removal:

a. Canadian ministers serve at the pleasure of the Prime Minister and hold office so long as they enjoy the Prime Minister's confidence. Parliamentary privilege provides no special immunity from criminal investigation or prosecution; a Member of Parliament, including a minister, is treated in the same manner as any other citizen when facing criminal charges.[72] The initiation of an investigation, laying of charges, or even a conviction for a minor offenses does not automatically affect a minister's tenure. However, these events may create sufficient political pressure to force a resignation or dismissal.[73] The principal trigger for removal is therefore political.

b. The statutory backstop is found in Section 750 of the Criminal Code of Canada. This provision provides that a public office, including that of a minister, "forthwith becomes vacant" only when the officeholder is convicted of an indictable offence (the more serious category of criminal offense in Canada) and sentenced to a term of imprisonment of two years or more.[74]

   This high threshold means that a minister could be convicted of a serious crime—such as fraud, assault, or corruption—but would not be automatically removed from office if the sentence imposed is less than two years' imprisonment. This places the Canadian system in contrast to that of the UK, where the sentencing threshold for automatic disqualification is one year.

[72] Robert Marleau and Camille Montpetit (eds.), *House of Commons Procedure and Practice*, 'Privileges and Immunities' (2000) <https://www.ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch03&Seq=9&Language=E> accessed 23 September 2025.
[73] James R. Robertson, 'Criminal Charges and Parliamentarians' (*Parliamentary Research Branch*: 21 July 1994) <https://publications.gc.ca/Collection-R/LoPBdP/MR/mr126-e.htm> accessed 23 September 2025.
[74] Criminal Code, Section 750.

64. Process of Removal:

a. In practice, most cases are resolved through political mechanisms. The Prime Minister may dismiss a minister at will, or a minister may resign in light of public pressure, parliamentary criticism, or reputational considerations.
b. Section 750 operates only in rare cases where both conviction and a two-year sentence are imposed.

   The effect is to reinforce the centrality of political accountability while preserving a legal safeguard for the most serious cases.

Illustration

The SNC-Lavalin affair of 2019 provides an illustration of this model.[75] It did not involve criminal charges against any minister. Instead, it revolved around allegations that the Prime Minister's Office had improperly pressured the Attorney General and Minister of Justice, Jody Wilson-Raybould, to intervene in the criminal prosecution of the Quebec-based engineering firm SNC-Lavalin and offer it a deferred prosecution agreement. Wilson-Raybould's subsequent resignation, followed by that of Treasury Board President Jane Philpott, was prompted by a perceived breach of the constitutional principle of prosecutorial independence. The resignations reflected political fallout and loss of confidence, rather than any formal legal disqualification.

65. **Australia:** Like other Westminster systems, day-to-day ministerial accountability in Australia is primarily political and enforced by the Prime Minister. The distinctive feature is constitutional: Section 44(ii) of the Constitution directly disqualifies members of Parliament (and, by extension, ministers) on specified criminal grounds. Disputes regarding disqualification are determined by the High

[75] Center for the Advancement of Public Integrity, 'Canadian Corruption and the SNC-Lavalin Affair' (*Columbia Law Schoo*l: 2019) <https://scholarship.law.columbia.edu/public_integrity/13> accessed 23 September 2025.

Court sitting as the Court of Disputed Returns, giving the rule a judicially enforceable, constitutional footing.

66. Triggers for Removal:

a. Ministers are bound by a Code of Conduct for Ministers, which demands the highest standards of integrity, fairness, and accountability.[76] The Prime Minister is responsible for enforcing this code, and a breach can serve as a political trigger for a minister's resignation or dismissal. Political judgment therefore remains the dominant trigger for ministerial removal.

b. The more rigid and distinctive trigger is found not in a statute but under Section 44(ii) of the Australian Constitution, which renders a person "incapable of being chosen or of sitting" as a senator or member of the House of Representatives if he or she "*...is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer...*".[77]

   Since ministers must be members of Parliament, this provision applies to them directly. The wording of this clause is critical. The disqualification applies not only to a person who is "under sentence" but also to one who has been convicted and is "subject to be sentenced." Further, the test is not the sentence actually received, but whether the offense itself is *punishable* by a term of one year or more. Hence, the focus is on the maximum penalty prescribed for the offence, not the actual sentence imposed. How the provision plays out in practice is explained with an illustration in the next paragraphs.

[76] Australian Government, Code of Conduct for Ministers.
[77] Australian Constitution, Section 44(ii).

67. Process of Removal:

a. The process of removal of a minister under the Code of Conduct is entirely political and discretionary. Enforcement depends on the Prime Minister's discretion.

b. Questions about qualification/disqualification under Section 44 of the Constitution are determined by the High Court as the Court of Disputed Returns.[78] If a member becomes disqualified, the seat vacates through the operation of law under Section 45, with the Court's determination supplying the authoritative ruling. The jurisdiction of the Court is activated through a resolution of the Senate or the House of Representatives (in which the dispute over disqualification has arisen),[79] or through an election petition filed by a voter, a candidate, or the Australian Electoral Commission.[80] Disqualification operates automatically under the Constitution, but it requires judicial confirmation by the High Court to be effective in practice. In the UK and Canada, comparable statutory disqualifications operate automatically without the involvement of a dedicated Court of Disputed Returns.

Illustration

The 2017 High Court decision in *Re Culleton (No 2)*[81] is illustrative. Rod Culleton had been convicted in his absence of a larceny offence punishable by more than one year's imprisonment prior to the 2016 federal election. Although the conviction was later annulled, the Senate referred the question of his eligibility to the High Court under Section 376 of the Commonwealth Electoral Act. The Court, sitting as the Court of Disputed Returns, held that Culleton was disqualified at the moment of his election because, at that time, he was a person "convicted and subject to be sentenced" for a qualifying offence. The later annulment of his conviction did not retrospectively cure the disqualification. The

[78] Commonwealth Electoral Act 1918.
[79] Commonwealth Electoral Act 1918, Section 376.
[80] Commonwealth Electoral Act 1918, Section 353.
[81] *Re Culleton (No 2)* [2017] HCA 4.

decision underscores that under the Australian Constitution, disqualification operates automatically at the relevant constitutional moment, with the High Court's role being to authoritatively declare that fact.

68. **Germany:** It combines decisive executive control over cabinet composition with a statutory bar tied to serious criminal convictions. Article 64(1) of the Basic Law for the Federal Republic of Germany **('Basic Law')** provides that Federal Ministers are appointed and dismissed by the Federal President on the proposal of the Federal Chancellor. In practice, the President's role is formal and the effective control lies with the Chancellor. There is no mechanism for parliamentary impeachment for individual ministers — only the Federal President may be impeached, under Article 61 of the Basic Law. The parliamentary check on a Chancellor who refuses to dismiss a compromised minister is the constructive vote of no confidence,[82] and when a Chancellor ceases to hold office, the tenure of the ministers automatically comes to an end.[83]

69. Triggers for Removal

a. In practice, political triggers such as investigation, indictment, or even a lesser conviction often prompt dismissals under Article 64(1) of the Basic Law. The ultimate decision lies with the Chancellor, who may advise the President to remove a minister when political pressure or loss of confidence makes their continuation untenable.
b. German law also provides a statutory backstop. Under the Criminal Code, any individual convicted of an offence carrying a statutory minimum sentence of more than one year automatically forfeits "the ability to hold public office and to obtain rights from public elections" for a period of five years.[84] For

[82] Basic Law for the Federal Republic of Germany, Article 67.
[83] Basic Law for the Federal Republic of Germany, Article 69(2).
[84] Criminal Code, Section 45(1).

ministers, whose eligibility depends on membership in the Bundestag or Bundesrat,[85] this operates as an automatic disqualification, ensuring that the most serious criminal convictions carry direct legal consequences for holding office.

70. Process for Removal:

a. Political removal: The Chancellor proposes dismissal, which is then formally executed by the President.[86]

b. The Criminal Code provides for automatic disqualification upon conviction for an offence carrying a statutory minimum sentence of more than one year. This operates by law, is non-discretionary, and takes effect regardless of the Chancellor's or the President's will.

II. Systems of Legislative Impeachment and Specialised Adjudication

71. **The United States of America:** The framework for ministerial removal in the USA combines two distinct mechanisms: the President's routine and absolute power to dismiss cabinet secretaries at will,[87] and the constitutionally prescribed, but rarely invoked, process of legislative impeachment.

72. Triggers for Removal:

a. The primary trigger for the removal is presidential discretion. Cabinet secretaries serve entirely at the pleasure of the President, and the Supreme Court has consistently affirmed the President's "illimitable power to remove"[88] functionaries who are purely executive in nature, such as members of the

[85] Germany has a bicameral legislature. The Bundestag is the directly elected lower house, exercising primary legislative authority. The Bundesrat is the upper house, composed of delegates from the governments of the federal states (*Länder*), and serves to represent state interests in the federal law-making process.
[86] Basic Law, Article 64(1).
[87] In the United States, 'cabinet secretaries' are the functional equivalent of Cabinet Ministers in Westminster systems. They head executive departments (e.g., State, Treasury, Defense) and are appointed by the President with Senate confirmation.
[88] *Myers v United States* 272 U.S. 52 (1926).

cabinet.[89] This power is unconstrained by statute, enabling dismissal for any reason—policy disagreement, personal conflict, political expediency, or suspected criminal conduct—or for no stated reason at all.

b. The alternative trigger is constitutional. Article II, Section 4 of the U.S. Constitution provides that "all civil Officers of the United States," which includes cabinet secretaries, may be removed from office on "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanours".[90] This standard is not limited to indictable criminal offences but extends to serious abuses of power or breaches of public trust, as determined by the House of Representatives when framing articles of impeachment.

73. Process of Removal:

a. The most common process is direct dismissal by the President, effective immediately upon communication.
b. A more formal process involves an impeachment trial, involving three stages:
   - Impeachment by the House: The House of Representatives, by simple majority, adopts articles of impeachment which function as formal charges.
   - Trial by the Senate: The Senate conducts a trial, with house members serving as managers (prosecutors). If the President is on trial, the Chief Justice presides; for all other officials, the Senate's presiding officer presides.
   - Conviction and Removal: A two-thirds vote of the senators present is required for conviction, which results in automatic removal.
   - Optional Disqualification: By a separate simple majority, the Senate may also bar the individual from holding future federal office.

Until conviction, an impeached cabinet secretary continues to hold office and exercise all official powers.

[89] *Humphrey's Executor v United States* 295 U.S. 602 (1935).
[90] The Constitution of the United States, Article II, Section 4.

Illustration

In 1876, Secretary of War William Belknap resigned shortly before the House impeached him on charges of corruption in the War Department. The House proceeded with impeachment anyway, and the Senate held a trial and Belknap was acquitted.[91] This remains the only instance of the impeachment of a cabinet secretary. The episode demonstrates that while presidential dismissal is the usual mechanism for removal, the Constitution permits impeachment of cabinet officers as an exceptional, though rarely used, process.

74. **France:** It has developed a hybrid judicial-political model for addressing ministerial criminal liability. To avoid reliance on purely political judgment, while also ensuring that ministers are not subjected to the ordinary criminal courts, a specialised tribunal—the Cour de Justice de la République or the Court of Justice of the Republic **('CJR')**—was established. This system exists alongside the standard executive power of dismissal.

75. Triggers for Removal:

a. Ministerial tenure in the first instance, is subject to political discretion. The President of the Republic, acting on the proposal of the Prime Minister, appoints and dismisses ministers.[92] A criminal investigation may serve as a political trigger for such a dismissal.

b. A legal trigger for removal is "*acts performed in the exercise of their duties and classified as serious crimes or other major offences at the time they were committed*".[93] Allegations of such offences are not handled by the regular criminal courts but exclusively by the CJR. This is a crucial distinction as acts

[91] 'Impeachment Trial of Secretary of War William Belknap, 1876', (United States Senate) <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-belknap.htm> accessed 23 September 2025.
[92] Constitution of the Fifth Republic, Article 8(2).
[93] Constitution of the Fifth Republic, Article 68-1(1).

committed by a minister that are unrelated to their official duties are tried in the ordinary courts.

Illustration

A clear illustration of this distinction is the case of Interior Minister Brice Hortefeux, who in 2010 was convicted by an ordinary criminal court and fined €750 for making a racial insult at a political gathering.[94] Since the offence was personal and unrelated to his ministerial functions, it did not fall within the jurisdiction of the CJR.

76. Process of Removal:

a. A political removal is straightforward and ministers can be dismissed by the President on the proposal of the Prime Minister.
b. The CJR process, on the other hand, unfolds over three stages:

- Filtering: A *Commission des requêtes* examines complaints and dismisses those without merit.
- Investigation: a *Commission d'instruction* comprising three judges of the *Cour de cassation* conducts a formal inquiry.
- Trial: the CJR hears the case before a panel of fifteen judges, comprising three senior judges of the *Cour de cassation* and twelve parliamentarians (six from each chamber of Parliament).

A conviction before the CJR does not automatically remove a minister. Consequences depend on the penalty imposed under the Penal Code, which may include fines, suspended sentences, or the ancillary penalty of ineligibility

[94] 'Interior minister fined for racial remark amid calls for resignation' (*France 24*: 4 June 2010), <https://www.france24.com/en/20100604-interior-minister-found-guilty-racism-fined-750-euros-hortefeux-france> accessed 23 September 2025.

for public office,[95] which in effect forces resignation. The CJR therefore represents a hybrid model for removing ministers— it is judicial in its process but political in its composition.

77. **South Korea:** The constitutional framework provides a robust legislative check on the executive through impeachment, uniquely coupled with a final and binding judicial review. Its most distinctive feature is the immediate suspension that follows an impeachment vote, ensuring that an official does not continue in office while the charges are adjudicated.

78. Triggers for Removal:
    a. The President exercises the ordinary executive power to appoint and dismiss the Prime Minister and Cabinet Ministers.
    b. The separate constitutional trigger for removal is impeachment. Article 65 of the Constitution authorises the National Assembly to impeach the President, Prime Minister, Cabinet Ministers, and other senior officials for "*violating the Constitution or other Acts in the performance of official duties*.".[96]

       This is a broad standard that clearly encompasses criminal conduct but is not confined to it. It allows the legislature to initiate removal proceedings for serious abuses of power that may not constitute an indictable offense under criminal law.

79. Process of Removal:
    a. Under the Constitution, the President holds the executive power to appoint and dismiss members of the State Council (Cabinet Ministers). In practice, this means that Cabinet Ministers serve at the President's pleasure. The National Assembly can pass non-binding motions urging dismissal, but it cannot itself remove a minister.

[95] Penal Code, Article 131-26.
[96] Constitution of the Republic of Korea, Article 65(1).

b. The impeachment process unfolds in two stages:

- Impeachment by the National Assembly**:** A motion to impeach a minister requires the support of one-third of the members of the National Assembly, and is passed with a simple majority vote. For the President, the threshold is higher: a two-thirds supermajority.
- Immediate Suspension: Upon the passage of the motion, the targeted official is immediately suspended from exercising their powers.[48] This feature distinguishes South Korea from the USA, where impeachment does not interrupt an official's tenure pending trial, and from Westminster systems, where ministers generally remain in office until resignation or dismissal.
- Adjudication by the Constitutional Court: The case is referred to the nine-member Constitutional Court, which must issue a decision within 180 days. Removal becomes permanent if at least six justices uphold the impeachment. If the court dismisses the case, the official is reinstated immediately—as occurred with Prime Minister Han Duck-soo in 2025.[97] A confirmed impeachment results in permanent removal and a five-year ban from holding public office.[98]

Illustration

Minister of the Interior and Safety Lee Sang-min, faced widespread criticism and calls for impeachment following the crowd crush incident in Itaewon in 2022. In 2023, the National Assembly passed an impeachment motion against him for failing in his constitutional duty to protect citizens.[99] The Constitutional Court later ruled unanimously against removal, finding that while the government's

[97] Tessa Wong, 'South Korea court reinstates PM as acting leader' (*BBC*: 24 March 2025) <https://www.bbc.com/news/articles/c625jkyrx6do> accessed 23 September 2025.
[98] Constitutional Court Act, Section 54(2).
[99] 'South Korean lawmakers impeach Minister over crowd crush' (*The Hindu*: 8 February 2023) < <https://www.thehindu.com/news/international/south-korean-lawmakers-impeach-minister-over-crowd-crush/article66485311.ece> accessed 23 September 2025.

response was inadequate, it did not amount to a constitutional or legal violation justifying impeachment.[100]

80. The South Korean model balances political and judicial authority. The legislature's vote reflects an immediate determination of gravity, ensuring that a potentially compromised official cannot continue to exercise power. Finality, however, rests with the judiciary: the Constitutional Court provides a deliberative, independent review of the impeachment's merits. This dual safeguard distinguishes South Korea's model from both the purely political impeachment system of the USA and the discretionary resignation/dismissal practices of Westminster systems.

81. **Summary:** From a study of the seven jurisdictions, the following key takeaways emerge –

i. **Dual-track systems are the norm.** Most jurisdictions combine flexible political discretion with rigid statutory or constitutional backstops. This balance allows governments to manage day-to-day controversies flexibly while ensuring that serious criminality is met with a clear legal consequence.

ii. **Law alone is insufficient.** Even where statutes mandate automatic disqualification, political dynamics dominate accountability in practice. Political actors – Prime Ministers, Presidents, or legislatures – usually act before a conviction is reached, demonstrating that the law provides the outer boundary while politics drives real-time accountability.

iii. **Judicial involvement ensures scrutiny.** Systems such as Australia, France, and South Korea incorporate courts or special tribunals to determine disqualification or removal. This provides an independent check and mitigates risks of arbitrary or purely political action.

[100] 'Constitutional Court unanimously rejects impeachment of interior minister' (*The Korea Times*: 25 July 2023) <https://www.koreatimes.co.kr/southkorea/politics/20230725/court-set-to-rule-on-interior-ministers-impeachment> accessed 23 September 2025.

iv. **Conviction is the universal threshold.** No jurisdiction treats mere arrest or incarceration as a sufficient precondition for removal of a minister. When removal is linked to criminal proceedings in the courts, a conviction is always a necessary precondition, reflecting a global consensus that ministerial tenure should turn on an authoritative judicial finding of guilt.

82. Against this backdrop, the proposed amendment represents a sharp departure. By tying cessation of ministerial office to arrest and thirty days of detention—rather than conviction—it moves away from the global consensus and creates a unique model where mere incarceration, absent judicial determination of guilt, is sufficient to trigger loss of office.

CHAPTER SIX: CONSTITUTIONAL ANALYSIS

83. The constitutional analysis of the Bill is split in two parts – competence and constitutionality. The competence analysis scrutinises the procedural requirements for the Bill and whether Parliament has the power to enact the Bill under the Constitution. The constitutionality analysis looks at whether the content of the Bill violates constitutional provisions and doctrine.

I. Competence Analysis

84. **Procedural Threshold:** The Bill has been introduced under Article 368 of the Constitution, which contains the power of Parliament to amend the Constitution.[101] The Article stipulates two kinds of amending procedures – simple special majority amendments (clause 2) and special majority with ratification amendments (proviso to clause 2).

85. A simple special majority amendment is the default form of amendment under Article 368, applicable where any provision of the Constitution is altered. It requires the support of a majority of the total membership of each House and a two-thirds majority of those present and voting. By contrast, a special majority with ratification amendment requires not only this numerical threshold but also ratification by at least half of the States. The latter procedure applies to amendments affecting specified provisions, namely: the election of the President (Articles 54 and 55), the executive power of the Union or the States, the distribution of legislative powers between the Union and the States, the representation of States in Parliament, and Article 368 itself. [102]

The present Bill does not engage any of the facets listed in the proviso to Article 368(2), and therefore does not require ratification by the States. It may be validly enacted if it secures a majority of the total membership of both Houses and a two-thirds majority of those present and voting.

[101] The Constitution of India 1950, Article 368.
[102] The Constitution of India 1950, Proviso to Article 368(2).

86. **Competence Threshold:** In addition to procedural voting requirements, the Parliament also has the competence to introduce the Bill and prescribe an additional ground for cessation of ministerial office. The Bill has been introduced as a Constitutional Amendment under Article 368 of the Constitution. Article 368(2) empowers Parliament to amend "*by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down therein*." Except in cases expressly requiring ratification by the States, this constituent power of Parliament extends to all provisions of the Constitution. Since Articles 75, 164, and 239AA do not fall within the proviso to Article 368(2), no ratification by the States is required.

87. The first basis of competence is therefore straightforward: in exercising its constituent power under Article 368, Parliament is competent to insert new clauses into Articles 75, 164, and 239AA creating additional grounds for cessation of ministerial office. Such an amendment is *intra vires* the amending power and does not fall within the category of matters excluded from Parliament's unilateral amendment authority.

88. Secondly, judicial precedent confirms Parliament's competence to strengthen the standards of probity in public life through constitutional amendments. In *Manoj Narula v Union of India* (2014), the Supreme Court was asked to interpret constitutional provisions to introduce an additional disqualification barring individuals facing criminal charges from being appointed to the Council of Ministers.[103] The Court noted the growing concern over criminalisation of politics, but held that in the absence of any constitutional or statutory prohibition, it could not judicially impose such a restriction under Articles 75(1) or 164(1). However, the Court underlined and also urged that Parliament was fully competent to enact stricter requirements, whether for elected representatives or for those appointed to ministerial office.[104] The present Bill

[103] *Manoj Narula v Union of India* (n 47).
[104] These observations were also made in other cases. See Chapter Three.

responds directly to this observation by providing a constitutional framework for cessation of ministerial office in cases of prolonged custody.

89. **Findings:** The competence of Parliament to introduce the present Bill rests on two pillars: the constituent power conferred by Article 368; and judicial recognition, particularly in *Manoj Narula*, that Parliament may legislate stricter standards for appointment to ministerial office.

II. Constitutionality Analysis (Part One)

The constitutionality analysis examines whether the content of the Bill violates constitutional provisions and doctrine, in particular, the basic structure doctrine. The analysis is split into two parts: Part I analyses the text and content of the Bill and Part II tests the Bill on the anvil of the basic structure doctrine. This separation has been made to keep the discussion clear, coherent, and easy to follow.

a. Textual and Definitional Concerns:

90. The SoR frames the objective of the Bill as addressing the situation of Ministers *"facing allegation of serious criminal offences"*[105] while under detention. The text of the Bill, however, applies to *"any offence … punishable with imprisonment for a term which may extend to five years or more."*[106] The two formulations are not co-extensive. "Serious criminal offences" suggests a qualitative standard directed at grave crimes undermining public trust, whereas the punishment threshold casts a much wider net.

91. This breadth is borne out by empirical assessment. Research by the Crime and Punishment team at the Vidhi Centre for Legal Policy identifies approximately 108 offences across central statutes that carry a maximum punishment of five years or more.[107] These range from serious offences under the Criminal Codes and special laws to regulatory and technical infractions under both. Illustratively, offences such as: re-occupying airport premises after eviction without authority;[108] possession of a counterfeit seal;[109] failure by an enlisted individual to render service when called upon under the relevant statute;[110] or using coin for purposes other than as legal tender[111]—all carry a maximum sentence of five years.

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[105] Statement of Objects and Reasons, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 [3].
[106] The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025.
[107] Vidhi Centre for Legal Policy, 'The State of the System' (*Vidhi Centre for Legal Policy*: 25 April 2025), <https://vidhilegalpolicy.in/research/the-state-of-the-system/> accessed 23 September 2025.
[108] Airports Authority Act 1994, Section 28N(3).
[109] The Legal Metrology Act 2009, Section 44(1)(iii).
[110] The National Service Act 1972, Section 25(1)(a).
[111] The Coinage Act 2011, Section 13 read with 12(1)(iii).

Yet, such infractions cannot reasonably be categorised as “serious offences” within the meaning intended by the Bill, nor do they raise questions of constitutional morality or personal integrity.

Reliance on the punishment ceiling alone therefore risks bringing within the ambit of the provision numerous offences that cannot reasonably be characterised as “serious” in the sense contemplated by the SoR. It may be argued that such anomalies could be addressed through reform of the underlying criminal statutes, by recalibrating sentencing provisions so that offences carry proportionate penalties. While that is a valid and important reform measure, it falls outside the scope of this Report, which is confined to assessing the constitutional validity of the proposed Bill and its alignment with established constitutional principles. The need for rationalising the sentencing framework and broader criminal law reform has, however, been examined in detail by Vidhi’s Crime and Punishment team, whose research is cited above.

92. From a constitutional drafting standpoint, however, the difficulty lies not in the design of the penal law but in the drafting of the Bill which creates two additional concerns. First, there is an **inconsistency of intent**: the operative provision does not precisely reflect the narrower policy rationale expressed in the SoR. Secondly, there is a **risk of over-breadth**: by tying cessation to arrest and custody in respect of a wide range of offences, the Bill may open grounds for cessation more numerous than those available even for disqualification of legislators under the RP Act.

93. The problem is compounded by the fact that the phrase *“any offence … punishable with imprisonment for a term of five years or more”* covers not only offences under central statutes but also those created by State legislatures. Since policing and investigation fall primarily within the domain of State governments, this formulation makes it possible for arrests under State laws to

trigger cessation of office for Union or State Ministers belonging to rival political parties. The combination of an expansive offence universe and the absence of a seriousness filter thus increase the risk of partisan use of criminal process across federal lines.

94. A more precise approach is reflected in existing legislative practice. Section 8 of the RP Act identifies specific clusters of offences – such as electoral offences, corruption, terrorism-related crimes, and grave offences under the Penal Code – for which conviction results in disqualification.[112] It is true that sub-section (3) of Section 8 contains a residual clause, providing for disqualification upon conviction and a sentence of imprisonment of two years or more, irrespective of the offence. However, that provision functions as a broad safety net within the electoral framework, ensuring that those convicted of serious crimes do not continue as legislators. The stakes under the present Bill are significantly higher: cessation of ministerial office affects the composition and stability of the Cabinet—the operational core of the executive and a central pillar of parliamentary democracy, features discussed in detail in the next part of this Chapter. Consequently, a more tailored and specific categorisation of 'serious offences', akin to that found in Section 8(1), would better serve the Bill's stated objective of preserving constitutional trust and institutional integrity, while avoiding the risk of overbreadth in application.

95. In the same vein, successive Law Commission Reports have recommended the adoption of defined categories of "serious offences" for which disqualification should operate, rather than reliance on a criteria based on sentence alone.[113] The underlying rationale is to ensure that only those offences which, by their nature, undermine public integrity or democratic values, attract such consequential disabilities.

[112] Representation of People's Act 1951, Section 8.
[113] See, Chapter Three.

96. To bring the Bill into closer alignment with its stated object, a comparable model could be adopted. The term "serious criminal offences" should be defined through an enumerated list or schedule identifying offences that directly implicate constitutional morality, and integrity in public office. Such a formulation would better reflect the intent of the SoR, ensure proportionality in application, and reduce the risk of overreach or misuse.

b. Presumption of Innocence:

97. A possible objection to the framework introduced by the Bill is that it undermines the principle of presumption of innocence, a cornerstone of criminal jurisprudence. It may be argued that requiring a Minister to vacate office upon arrest and detention – even prior to conviction – amounts to treating the individual as guilty before trial.[114]

98. However, two features of constitutional doctrine and comparative practice suggest otherwise. First, the presumption of innocence is primarily a rule governing criminal trials, ensuring that no person is punished or stigmatized as guilty without due process of law. Its location within Article 21 as a general constitutional guarantee remains unsettled.[115] Even if accepted, courts have clarified that the principle does not bar regulatory or administrative consequences that flow from arrest, provided such measures are directed at preserving institutional integrity rather than adjudicating culpability.

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[114] See, Arguments of Amicus Curiae T.R. Andhyarujina in *Manoj Narula v Union of India* (n 47), [34]. Also see, Abhijay A, 'As the 130th Amendment Bill Centralises Power, the Deeper Casualty is Indian Federalism' (*The Wire*: 3 September 2025) <https://thewire.in/politics/as-the-130th-amendment-bill-centralises-power-the-deeper-casualty-is-indian-federalism> accessed 23 September 2025; Manish Tewari and Shrijan Thakur, 'Custody is Not Conviction: The Threat to Rule of Law', (*ORF*: 10 September 2025) <https://www.orfonline.org/expert-speak/custody-is-not-conviction-the-threat-to-rule-of-law> accessed 23 September 2025; Shubham Kumar, 'Constitutional morality and 130th Amendment', (*Live Law*: 30 August 2025) available at https://www.livelaw.in/articles/constitutional-morality-and-constitution-130th-amendment-bill-2025-and-302452> accessed 23 September 2025; Shubham Kumar, '130th Amendment Bill: Constitutional Morality on Trial', (*The India Forum*: 1 September 2025) <https://www.theindiaforum.in/law/constitutional-morality-trial> accessed 23 September 2025; It should be noted that none of these articles elaborate on the precise application of the principle of presumption of innocence to specific cases. A broader argument is made without highlighting the instances where the Court has carved out exceptions.

[115] Shrutanjaya Bhardwaj, 'A fundamental right to be presumed innocent' (*Project 39A Blog*: 5 April 2022) <https://p39ablog.com/2022/04/a-fundamental-right-to-be-presumed-innocent/> accessed 23 September 2025.

99. The LCI, in its 244th Report, addressed this argument directly, noting: "*Such a provision has no bearing on whether indeed the person concerned is guilty of the alleged offence or not. On the contrary, it represents a distinct legal determination of the types of persons who are suitable for holding representative public office in India. Given the proliferation of criminal elements in Parliament and State Assemblies, it is indicative of a public resolve to correct this situation."*[116]

100. A similar observation was made by the Supreme Court in *Public Interest Foundation*, where it stated: "*It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation*."[117]

101. In *Manoj Narula v Union of India* (2014),[118] the Court addressed the relevance of the presumption of innocence to the appointment of Minister. The majority observed that while the presumption of innocence is a settled principle of criminal jurisprudence, it should not be determinative in the context of selecting members of the Council of Ministers. The Court observed, "*There can be no dispute over the proposition that unless a person is convicted, he is presumed to be innocent but the presumption of innocence in criminal jurisprudence is something altogether different, and not to be considered for being chosen as a Minister to the Council of Ministers because framing of charge in a criminal case is totally another thing. Framing of charge in a trial has its own significance and consequence. Setting the criminal law into motion by lodging of an FIR or charge sheet being filed by the investigating agency is in the sphere of investigation. Framing of charge is a judicial act by an experienced judicial mind*."[119]

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[116] Law Commission of India (n 29), 36.
[117] *Public Interest Foundation* (n 27), [118].
[118] *Manoj Narula v Union of India* (n 47).
[119] Ibid, [81].

A separate concurring opinion by Justice Lokur, however, struck a discordant note. He emphasised that the presumption of innocence remains a core principle of criminal law and should not be lightly displaced. He observed,

"*The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence – be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked – a person is innocent until proven guilty*."[120]

102. Second, Indian jurisprudence recognises that arrest and detention may legitimately trigger temporary disabilities in the interest of propriety, without offending the presumption of innocence. For example, under service law, Central Government employees are deemed to be suspended if they remain in custody beyond forty-eight hours.[121] Similar provisions apply to members of public service commissions,[122] vigilance authorities,[123] municipalities,[124] and other public servants.[125] In upholding and applying such rules, Courts have consistently distinguished between punitive measures, which require proof of guilt, and interim regulatory measures designed to maintain confidence in public administration.

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[120] Ibid, [24]; Notably, Justice Kurian Joseph, in his separate concurring opinion, appeared closer to the majority view than to Justice Lokur's. He suggested that the presumption of innocence stands diluted once charges are framed, and that entrusting executive authority in such circumstances may compromise constitutional trust. While not expressed in identical terms, this reasoning indicates a general concurrence with the majority position that the presumption of innocence does not apply in full force to questions of ministerial eligibility. See, [8].

[121] CCS (CCA) Rules 1965, Rule 10.

[122] Ibid.

[123] Central Vigilance Commission, 'Vigilance Manual', (*Central Vigilance Commission*: 15 October 2021) <https://www.cvc.gov.in/files/vigilance-manual-pdf/VM-E%2000005.pdf> accessed 23 September 2025.

[124] *Bipinchandra Parshottamdas Patel v State of Gujarat* (2003) 4 SCC 642.

[125] *Sundar Gopal Singha v West Bengal Board of Secondary Education* 2003 SCC Online Cal 440.

103. For instance, the Supreme Court in *State of Orissa v Bimal Kumar Mohanty* (1994) observed, "*Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc.*"[126]

104. Similarly, in *Durga Ram Paliwal v State of Rajasthan* (2025), the Rajasthan High Court observed, "*Suspension of a government servant alleged to be involved in criminal offences is legally viewed and meant as a preventive measure and not punitive. It serves the dual purpose of safeguarding public interest and preventing undue influence on the course of prosecution.*"[127]

105. The Bill follows the same logic. It does not declare a Minister guilty or permanently disqualified. Rather, it creates a temporary constitutional disability, requiring cessation of office during prolonged custody in serious cases, while preserving the right of reappointment upon release. In doing so, it mirrors the long-accepted principle that individuals entrusted with high public office may be temporarily disabled from continuing in that role when circumstances compromise institutional propriety, without thereby violating the presumption of innocence.

106. It is also important to note that the presumption of innocence argument has historically been invoked in challenges to disqualification provisions, where an

[126] *State of Orissa v Bimal Kumar Mohanty* (1994) 4 SCC 126 [13].
[127] *Durga Ram Paliwal v State of Rajasthan* Civil Writ Petition No.14863/2016 [1].

elected representative permanently loses legislative office.[128] In those contexts, courts have occasionally been cautious, emphasising that disqualification prior to conviction should not be imposed too widely, as it risks equating mere accusation with guilt.

107. The present Bill, however, does not create a disqualification. Instead, it provides for temporary cessation of ministerial office, akin to suspension. The individual remains a member of the legislature, does not forfeit their electoral mandate, and retains the possibility of immediate reappointment upon release. This distinction between disqualification and suspension is doctrinally significant: while the former engages the presumption of innocence in a more direct sense, the latter operates on a different rationale — preserving institutional propriety and public confidence during periods when an officeholder is unable to function effectively.

108. Accordingly, the presumption of innocence under criminal law cannot be mechanically transposed to suspension-type disabilities. In public employment and analogous contexts, courts have consistently upheld rules mandating suspension upon arrest or detention, recognising that such measures are regulatory, not punitive. The Bill must therefore be understood as falling within this category of permissible regulatory measures, rather than as an infringement of the fundamental presumption of innocence.

c. **Cessation on Detention and Alternative Framework**:

109. The most significant constitutional concern with the Bill lies in the stipulation that cessation of ministerial office shall follow upon thirty consecutive days of arrest and detention. This framework raises serious difficulties, both in principle and in practice.

[128] See, *Pradeep Kumar Santhalia v Dhiraj Prasad Sahu* C.A. 611 of 2020 [33]-[37]; *Afjal Ansari v State of U.P.* (2024) 2 SCC 187; *Jeet Mohinder Singh v Harminder Singh Jassi* (1999) 9 SCC 386 [40]; *Ajmera Shyam v Kova Laxmi* 2025 SCC Online SC 1723 [9.11.2].

110. The thirty-day cessation period prescribed by the Bill is not congruent with the timelines envisaged under the Bharatiya Nagarik Suraksha Sanhita, 2023 **('BNSS')**. Section 187 permits custody far beyond thirty days: initially, the accused must be produced before a Magistrate within twenty-four hours, who may authorise detention in police or judicial custody for up to fifteen days in total.[129] Thereafter, detention in judicial custody may be authorised for a period extending up to ninety days where the offence is punishable with death, life imprisonment,[130] or imprisonment of not less than ten years, and up to sixty days for other serious offences.[131] Only upon the expiry of these periods does the right to "default bail" arise if the charge-sheet has not been filed.[132] In practice, therefore, custody extending beyond thirty days is routine, and the Bill's threshold would almost inevitably result in cessation of ministerial office long before any meaningful evaluation of the accusations.

111. Notably, Section 187 does incorporate checks and balances. The accused must be produced before a Magistrate within twenty-four hours of arrest,[133] and thereafter at each stage when police custody is sought.[134] Magistrates are empowered to refuse further detention if adequate grounds are not shown, and are required to record reasons when authorising police custody.[135] These safeguards, on paper, indicate a supervisory judicial role. Yet, as the Supreme Court itself cautioned in *Arnesh Kumar v State of Bihar (2014)*,[136] "*The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases*,

[129] Bharatiya Nagarik Suraksha Sanhita 2023, Section 187.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Bharatiya Nagarik Suraksha Sanhita 2023, Section 58.
[134] Ibid.
[135] Ibid.
[136] *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756.

detention is authorised in a routine, casual and cavalier manner."[137] The Court's own assessment underscores that while the law vests Magistrates with discretion, in practice detention is frequently extended as a matter of course. Although in *Arnesh Kumar* the Court laid down guidelines for the proper exercise of powers by Magistrates, subsequent benches have had to call for their strict implementation, indicating that the law has not been enforced in spirit.[138]

112. Against this reality, the Bill's reliance on a thirty-day custody threshold exposes Ministers to cessation of office on the strength of routine remand orders, rather than any substantive judicial finding.

113. The difficulties are even greater under the Prevention of Money Laundering Act, 2002 **('PMLA')**, where the legislative framework significantly curtails the ability of an accused to secure bail. Section 45 of the PMLA imposes "twin conditions,"[139] requiring that before granting bail the court must be satisfied that there are reasonable grounds to believe the accused is not guilty of the offence and that he is unlikely to commit any offence while on bail. In *Vijay Madanlal Choudhary v Union of India* (2022),[140] the Supreme Court upheld the constitutionality of this provision, reinforcing the restrictive approach to bail under the PMLA. The result is that detention of an accused for extended periods is highly likely.

114. This is compounded by Section 24 of the PMLA, which shifts the burden of proof onto the accused. It stipulates that where a person is charged with the offence of money laundering under Section 3, the court must presume that the proceeds of crime are involved in money laundering unless the contrary is

[137] Ibid, [8.1]. It should be noted that although these observations were made in context of the corresponding provisions in the erstwhile Code of Criminal Procedure, 1973, which has been replaced by the BNSS. However, the new provisions under the BNSS reflect no substantial changes and hence, the concerns remain.
[138] *Md. Asfak Alam v State of Jharkhand* 2023 INSC 660.
[139] *Vijay Madanlal Choudhary v Union of India* S.L.P. (c) 4634 of 2014.
[140] Ibid.

proved.[141] This reverse burden, combined with the stringent twin conditions for bail, makes it exceptionally difficult for an accused to be released in the initial stages of investigation.

115. The structural severity of bail under the PMLA must also be considered against the empirical record of enforcement. Data tabled in Parliament reveals that between January 2015 and June 2025, the Enforcement Directorate **('ED')** initiated investigations in 5,892 cases under the PMLA.[142] Of these, prosecution complaints (equivalent to charge-sheets) were filed in only 1,398 cases, including 353 supplementary complaints.[143] Closure reports were filed in 49 cases, signalling that in a large number of matters the ED itself ultimately considered prosecution unsustainable.[144] Most strikingly, during this period, the agency secured only eight conviction orders involving 15 individuals from special PMLA courts.[145]

116. Further, in the subset of cases involving politicians, over the past ten years, the ED has registered 193 cases against political figures, of which 138 cases (71%) were initiated in the last five years.[146] Yet, across this entire period, there have been only two convictions, yielding a conviction rate of approximately one per cent.[147] These figures highlight that while arrest and prolonged detention under PMLA are frequent and facilitated by stringent bail provisions, the ultimate rate of conviction is significantly low.

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[141] Prevention of Money Laundering Act 2002, Section 24.
[142] Press Trust of India, 'ED filed closure reports in 49 PMLA cases over last 10 years: Govt in Parliament' (*Economic Times*: 29 July 2025) <https://economictimes.indiatimes.com/news/india/ed-filed-closure-reports-in-49-pmla-cases-over-last-10-years-govt-in-parliament/articleshow/122975853.cms?> accessed 23 September 2025.
[143] Ibid.
[144] Ibid.
[145] Ibid.
[146] Neeta Sharma, '1% Conviction Rate Against Politicians Leaves Probe Agency ED Red-Faced' (*NDTV*: 20 March 2025) <https://www.ndtv.com/india-news/enforcement-directorate-finance-ministry-centre-parliament-1-conviction-rate-against-politicians-leaves-probe-agency-ed-red-faced-7968266?> accessed 23 September 2025.
[147] Ibid.

117. When placed alongside the Bill's thirty-day cessation rule, this data takes on constitutional significance. It demonstrates that Ministers may be compelled to vacate office not on the basis of a judicial finding of guilt, but on the mere fact of arrest in cases where the likelihood of eventual conviction is statistically negligible. In effect, investigative agencies acquire the ability to disable elected officeholders by deploying arrests in complex economic offences. The Bill, as drafted, therefore risks producing constitutional consequences grossly disproportionate to the underlying prosecutorial outcomes.

118. The thirty-day cessation rule is further concerning because it vests a decisive constitutional consequence in the preliminary judgment of the police and other investigative agencies. Under Section 35 of the BNSS, a police officer may arrest an individual without warrant in a wide range of circumstances.[148] These include when an offence is committed in the officer's presence, when there is a reasonable complaint or credible information, or even when there exists reasonable suspicion of involvement in a cognizable offence. Arrest may also follow requisition from another police officer, suspicion of possession of stolen property, desertion from the armed forces, or acts committed outside India but punishable within India. In short, the statute creates a broad matrix of situations where arrest may be ordered, leaving wide discretion in the hands of the investigating agency.[149]

119. Notably, the BNSS incorporates safeguards: for instance, arrest for offences punishable with less than three years requires prior permission of a Deputy Superintendent of Police where the accused is infirm or above sixty years of age;[150] reasons must be recorded for making or declining to make an arrest;[151] and in appropriate cases, a notice of appearance must precede arrest.[152] These

[148] Bharatiya Nagarik Suraksha Sanhita 2023, Section 35.
[149] Ibid.
[150] Ibid.
[151] Ibid.
[152] Ibid.

provisions, on paper, limit arbitrary action. Yet, experience has shown that such safeguards often fail in practice. On this practice, the Supreme Court in *Arnesh Kumar v State of Bihar* (2014) observed: *"The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."*[153]

120. When placed against this background, the Bill's reliance on thirty days of detention as the operative threshold for cessation of ministerial office becomes even more tenuous. It effectively elevates the discretion of the police officer—exercised at the stage of arrest, often on complaint, suspicion, or requisition—into the trigger for a constitutional disability. While checks by Magistrates exist, the routine extension of remand, coupled with the wide statutory grounds for arrest, mean that cessation may follow not from a judicial finding, but from the unilateral decision of the investigative agency.

d. Constitutional and Political Repercussions:

121. The Bill also carries potential constitutional and institutional repercussions, including the scope for political misuse, governance concerns, and electoral or reputational consequences. These implications warrant careful examination to ensure that the constitutional scheme remains balanced and resistant to potential abuse. It is clarified at the outset that it is well established that the mere possibility of misuse is not a ground for invalidating a constitutional amendment or statutory provision.[154] The judiciary has consistently held that constitutional validity must be assessed on the basis of legislative competence and conformity with constitutional provisions, not on speculative abuse in

[153] *Arnesh Kumar* (n 136) [5].
[154] *Janshruti v. Union of India* 2025 INSC 536 [6}; *Arup Bhuyan v. State of Assam* (2023) 8 SCC 745 [95].

implementation. The present analysis, therefore, does not treat potential misuse as a ground of invalidity, but highlights these risks to identify areas where reform may be necessary to minimise such possibilities and strengthen safeguards within the constitutional framework.

122. First, the scope for political misuse. Section 35 of the BNSS sets out broad grounds for arrest, while Section 187 permits extended custody during investigation. In this framework, the act of arrest followed by remand can, in effect, operate as the trigger for cessation of office. In politically contested environments, this creates a potential for arrests to be initiated or timed in a manner that results in the removal of Ministers or Chief Ministers, raising concerns of selective or partisan application.

123. Second, governance concerns. Automatic cessation of office after thirty days of detention may disrupt the continuity of ministerial leadership, impair Cabinet functioning, and unsettle coalition arrangements. The risk of such disruptions is especially pronounced in contexts where legislative majorities are narrow.

124. Third, electoral and reputational consequences. Removal from ministerial office, even temporarily, creates an impression of unfitness, which may diminish public trust irrespective of the eventual judicial outcome. Conversely, in some instances it may generate public sympathy, reinforcing perceptions of political partisanship in the use of investigative processes. Either way, the result is an erosion of the neutrality and credibility of constitutional governance. Finally, delays in securing release from custody can compound these effects. Although the Bill permits reappointment after release, bail is often difficult to obtain in serious offences and may be further delayed by appellate proceedings. This may leave ministerial offices unfilled for prolonged periods, creating avoidable gaps in governance.

125. The consequences discussed above can ensue even where remand orders are formally authorised by a Magistrate, because the threshold remains tied primarily to the investigative agency's decision to arrest. As noted, the wide grounds of arrest under Section 35 of the BNSS and the routine confirmation of detention orders mean that constitutional disabilities would often be triggered on the basis of executive opinion rather than judicial determination. This reinforces the need to recalibrate the operative stage for cessation of office to one where the court itself applies its mind to the substance of the accusation.

d. Framing of Charges:

126. A more appropriate threshold for cessation is the stage of framing of charges. Unlike arrest, which is an executive act, the framing of charges requires judicial scrutiny. Once a charge-sheet is filed under Section 193 of the BNSS, the court must examine the materials placed on record, hear arguments, and determine whether there is sufficient ground to proceed. Under Sections 250-251 of the BNSS, charges may be framed only if the evidence discloses a *prima facie* case, raising "grave suspicion" against the accused.[155] If no such suspicion is established, the accused must be discharged. This is therefore the first stage at which judicial application of mind effectively operates as a check on the investigative process.

127. The jurisprudence of the Supreme Court underscores the importance of this stage. In *Union of India v Prafulla Kumar Samal* (1979), the Court held that charges cannot be framed on conjecture and must rest on material that, if unrebutted, would warrant a trial.[156] Similarly, in *State of Bihar v Ramesh Singh* and *Debendra Nath Padhi* (2005), the Court emphasised that framing of charges is a judicial act requiring the prosecution to demonstrate a *prima facie* case.[157] The "grave suspicion" test recognised in these judgments functions as a safeguard against

[155] This test was formulated by the Courts through judicial interpretation. See, *Union of India v Prafulla Kumar Samal* 1979 SCC (Cri) 609.
[156] Ibid.
[157] *State of Bihar v Ramesh Singh and Debendra Nath Padhi* (2005) 1 SCC 568.

arbitrary prosecution and provides a constitutionally appropriate point at which temporary cessation from office may be justified.

128. It must be noted that recommendations to employ the stage of framing of charges have generally arisen in the context of disqualification from legislative membership under the RP Act. The LCI, the ECI, and other expert bodies have emphasised that conviction alone is an inadequate safeguard, and that disqualification should instead attach at the stage of framing of charges for specified serious offences.[158] The present proposal draws on the same reasoning but situates it within the narrower context of ministerial office. By anchoring cessation at the framing of charges, the framework avoids the vulnerabilities of an arrest-based trigger while stopping short of the permanent consequences of legislative disqualification. Importantly, this middle path is more consistent with the presumption of innocence: it does not deprive an individual of legislative membership, but recognises that holding high executive office requires heightened standards of constitutional trust. The recommendation therefore seeks to balance two imperatives—preserving the integrity of governance and safeguarding the rights of the accused.

129. Further, by tying cessation of office to the stage of framing of charges, the law would ensure that constitutional disabilities arise not from executive discretion but from judicial evaluation of evidence. Such an approach would reinforce the principle of checks and balances while advancing the objective of preserving constitutional trust and probity in governance. It may be suggested that the period of custody before cessation could be lengthened—for example, from thirty to sixty or ninety days. However, this would not resolve the underlying concern of reliance on executive discretion. Delays in investigation and bail proceedings often extend well beyond such periods. More

[158] See Chapter Three.

fundamentally, the infirmity lies not in the length of time but in the absence of judicial application of mind at the stage of arrest.

130. Accordingly, while the objective of the Bill—to ensure that individuals facing serious criminal charges do not continue in high constitutional office—is legitimate, the mechanism presently adopted is constitutionally unsound. A framework that conditions cessation of office on the judicial stage of framing of charges, rather than on the duration of detention following arrest, would more appropriately reconcile the imperatives of propriety in governance with constitutional principles.

e. Structural Challenges and Systemic Reforms:

131. This Report acknowledges that the criminal justice system suffers from structural and systemic issues that cannot be attributed solely to the conduct of investigative agencies. For instance, low conviction rates are not only the result of institutional shortcomings in investigation but also reflect broader structural factors, including delays in trial, political influence, and other external pressures. Law Commission reports and judicial observations have consistently highlighted these systemic weaknesses, which compromise both the integrity and the efficiency of the criminal justice process.

132. The 170th Report of the LCI noted the "corrupt practices at certain levels" of the system, remarking that offences were sometimes registered merely to extract bribes, while "*the real offenders are quite often left untouched either because they are capable of bribing the investigating agencies or able to pressurise them in various well-known ways*."[159] It also underscored the politicisation of prosecutorial appointments, observing that "appointments are no longer made on the basis of merit but almost exclusively on the basis of political affiliations."[160]

[159] Law Commission of India (n 24) [5.3].
[160] Ibid.

133. The 244th Report of the LCI further underlined the structural nature of the problem. It documented that while nearly 30% of legislators face criminal proceedings, less than 0.5% have ever been convicted. The Report argued that the gap between pending cases and actual convictions illustrates the inadequacy of the present framework. The Commission also observed that delays in the trials of politically influential persons present "a different set of challenges," including the tendency of such accused to compromise trial processes, distort evidence, or exploit procedural devices to protract proceedings.[161] The Supreme Court itself, in *Ganesh Narayan v Bangarappa* (1995), acknowledged this malaise, noting that "*the slow motion becomes much slower motion when politically powerful or high and influential persons figure as accused*."[162]

134. Recognising these challenges, the LCI in its 244th Report (2014) recommended structural reforms to mitigate delay.[163] Two aspects of those recommendations are especially pertinent.

First, that trials involving sitting Member of Parliament **('MP')**s or Members of Legislative Assembly **('MLA')**s with charges framed against them should be conducted on a day-to-day basis, with an outer limit of one year for completion. The Commission noted that such a framework would expedite the trial to the extent possible and thereby ensure that the MP/MLA concerned is either convicted, and disqualified, or acquitted in a reasonable period.

Second, where the one-year limit is not met, the trial judge should provide written reasons to the relevant High Court, following the principles articulated in *R.S. Nayak v A.R. Antulay* (1984*)*.

[161] Law Commission of India (n 29), 27.
[162] *Ganesh Narayan v Bangarappa* (1995) 4 SCC 41 [18].
[163] *Public Interest Foundation* (n 27)*; R.S. Nayak v A.R. Antulay*, 1984 SCC (2) 183.

135. These directions were subsequently reinforced and institutionalised in *Ashwini Kumar Upadhyay v Union of India* (2023).[164] In that case, the Supreme Court directed every High Court to register a *suo motu* proceeding titled '*In Re: designated courts for MPs/MLAs*' to monitor the early disposal of criminal cases against legislators.

The Court mandated that:

- Special Benches, presided over by Chief Justices, periodically review the progress of such cases.
- Designated courts prioritise offences in the order of (i) those punishable with death or life imprisonment, (ii) those punishable with five years or more, and (iii) all other cases.
- Adjournments must be granted only for rare and compelling reasons; and
- High Courts maintain district-wise data on pendency and stages of trial through dedicated public portals.

136. These reports and judgments collectively provide a framework for tackling criminalisation of politics not by lowering the threshold of disqualification to the stage of arrest, but by expediting proceedings against legislators once charges are framed. Implemented in spirit, they would both preserve the presumption of innocence and address the concern that criminal cases against sitting representatives are indefinitely delayed.

Findings and Recommendations:

i. The Bill, introduced under Article 368, falls within Parliament's constituent power and does not attract the requirement of state ratification under the proviso to Article 368(2).

[164] *Ashwini Kumar Upadhyay v Union of India*, 2023 INSC 991.

ii. The Bill and its SoR employ inconsistent terminology with respect to "serious crimes." To ensure clarity and conformity, a Schedule specifying the relevant offences should be annexed.

iii. The Bill does not infringe the principle of presumption of innocence under Article 21. Comparable frameworks of suspension or cessation operate in respect of public servants and have not been found constitutionally infirm.

iv. The thirty-day cessation period is not congruent with criminal procedure, which permits detention for up to ninety days during investigation. In practice, this may enable cessation of office without meaningful judicial scrutiny.

v. The framework creates scope for political misuse. Arrests may be timed or selectively pursued to trigger cessation, with consequent risks of destabilisation of governments and disruption of governance.

vi. A more balanced approach would link cessation to the stage of framing of charges. This stage requires judicial application of mind and satisfaction that a *prima facie* case exists, thereby providing an appropriate safeguard.

vii. Structural reforms are necessary to complement legislative change. Recommendations of the LCI and directions issued by the Supreme Court in *Ashwini Kumar Upadhyay*—including day-to-day trials, completion within one year, and High Court monitoring—should be implemented in full.

III. Constitutionality Analysis (Part Two – Basic Structure Doctrine)

137. This Part assesses the constitutional validity of the Bill by reviewing it against the features recognised as part of the basic structure doctrine. It focuses on four features: parliamentary democracy, the rule of law (including separation of powers and checks and balances), federalism, and the equality code. It examines whether the Bill may infringe these features and, where relevant, suggests reforms.

Meaning of the basic structure:

138. As discussed above, Article 368 vests Parliament with the competence to enact constitutional amendments, including the present Bill. However, in the seminal case of *Kesavananda Bharati Sripadagalvaru v State of Kerala* (1973), the Supreme Court held that this power is subject to an inherent limitation: a constitutional amendment may be invalidated if it abrogates essential features or violates the basic structure of the Constitution.[165]

139. In *Minerva Mills Ltd. v Union of India* (1980), the Court elaborated that the basic features for the purposes of the doctrine are those which, if damaged or destroyed, would so alter the identity of the Constitution that it would cease to be the same instrument. The Court emphasised that the determination requires examining the feature's place in the constitutional scheme, its object and purpose, and the effect of its abrogation on the Constitution's integrity as the fundamental framework of governance.

It observed: "*The features or elements which constitute the basic structure or framework of the Constitution or which, if damaged or destroyed, would rob the Constitution of its identity so that it would cease to be the existing Constitution but would become a different Constitution…. Therefore, in every case where the question arises as to whether a particular feature of the Constitution is a part of its basic structure, it would have to be determined on consideration of various factors such as*

[165] *Kesavananda Bharati Sripadagalvaru v State of Kerala* (1973) 4 SCC 225.

the place of the particular feature in the scheme of the Constitution, its object and purpose and the consequence of its denial on the integrity of the Constitution as a fundamental instrument of country's governance."[166]

140. Accordingly, the identification of the basic structure features is guided by three interrelated factors: (i) their presence within the constitutional scheme, (ii) the objectives they serve, and (iii) the extent to which their abrogation would damage or destroy the Constitution's integrity and identity.

141. However, the list of features comprising the basic structure is not exhaustive.[167] Their identification has been undertaken incrementally by the judiciary, on a case-by-case basis, with additional features being recognised over time at the Court's discretion.[168] Moreover, while declaring a feature to be part of the basic structure, the Court has seldom elaborated its precise content. For instance, while the parliamentary form of government has been recognised as part of the basic structure,[169] subsequent cases have interpreted this to also encompass party discipline.[170] The doctrine also leaves unresolved whether

[166] *Minerva Mills Ltd. v Union of India* (1980) 3 SCC 625 [88]; This test has been held in several cases such as *Janhit Abhyan v Union of India* Writ Petition (Civil) No. 55 of 2019; *Jaishri Laxmanrao Patil v Chief Minister, Maharashtra* SLP (C) 15737/2019; *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.
[167] *Supreme Court Advocates-on-Record Association* (n 166) (per Chelameswar J); *Minerva Mills Ltd.* (n 166) (per Chandrachud CJ); *Kesavananda Bharati Sripadagalvaru* (n 165) (per Sikri CJ)
[168] *Janhit Abhyan* (n 166) (per Maheshwari J); *J&K National Panthers Party v Union of India* Special Leave Petition (C) No.22224/09; *Glanrock Estate (P) Ltd. v State of T.N. (2010) 10 SCC 96*; *Raghunathrao Ganpatrao v Union of India* 1994 Supp (1) SCC 191.
[169] *Kesavananda Bharati Sripadagalvaru* (n 165).
[170] *Kihoto Hollohan v Zachillhu* 1992 Supp (2) SCC 651; *Kuldip Nayar v Union of India* AIR 2006 SC 3127; See also Christopher J. Beshara, 'Basic Structure Doctrines and the Problem of Democratic Subversion: Notes from India' (2015), Vol. 48(2), Verfassung Und Recht In Übersee / Law And Politics In Africa, Asia And Latin America, 115; Sudhir Krishnaswamy, *Democracy And Constitutionalism In India: A Study Of The Basic Structure Doctrine*, 44 (Oxford University Press, 2009); Setu Gupta, 'Vicissitudes and Limitations of the Doctrine of Basic Structure' (2016) ILI Law Rev., 110; Shivprasad Swaminathan, 'The philosophical foundations of the basic structure doctrine: Entrenchment or Defeasibility?' in Sanjay Jain and Sathya Narayan (eds.) *Basic Structure Constitutionalism- Revisiting Kesavananda Bharati* 257, 257-272 (EBC 2011).

conflicts between two recognised basic features can be adjudicated and, if so, the standard to be applied.[171]

Features comprising the basic structure:

142. The basic structure doctrine has been developed judicially without a definitive or exhaustive catalogue of its essential elements. Its contours remain open-ended. However, three broad features of this design may be noted:

a. Source: not only express constitutional provisions, but also broad systemic principles may be recognised as part of the basic structure.
b. Criteria: any constitutional principle may qualify, depending on factors such as its object, purpose, and overall significance within the constitutional scheme.
c. Assessment: whether a principle forms part of the basic structure often turns on whether its abrogation would damage or destroy the identity of the Constitution, an inquiry that is sensitive to surrounding circumstances.

143. However, despite the inherent vagueness, judicial pronouncements over the years have identified and affirmed several features as part of the basic structure. These are set out below.

Constitutional Provision, Value or Principle	**Case which granted recognition as part of the basic structure**
Democratic Form of Government (or democracy)	Kesavananda Bharati Sripadagalvaru v State of Kerala[172]
Federalism	SR Bommai v Union of India[173]

[171] Raju Ramachandran, 'The Supreme Court and the Basic Structure Doctrine' in Kirpal and Desai (ed) *Supreme but Not Infallible* (OUP 2004); Swapnil Tripathi, 'Justice Pardiwala's Opinion in Janhit Abhiyan v UoI: Time to revisit the basic structure doctrine' (2023) XIII.1 NLIU L.R. 1, 24.
[172] *Kesavananda Bharati Sripadagalvaru* (n 165).
[173] *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

Free and Fair Elections	Indira Nehru Gandhi v Raj Narain[174]
Independence of Judiciary	Supreme Court Advocates-on-Record Association and Anr. v Union of India[175]
Judicial Review	L. Chandra Kumar v Union of India[176]
Election of Constitutional Functionaries (Prime Minister, Speaker of the Lok Sabha, Vice-President)	Indira Nehru Gandhi v Raj Narain[177]
Secularism	SR Bommai v Union of India[178]
Equality Code	Indra Sawhney v Union of India,[179] Ashoka Kumar Thakur v Union of India,[180] Pramati Trust v Union of India[181]
Directive Principles of State Policy	Minerva Mills v Union of India[182]
Fundamental Rights	Waman Rao v Union of India,[183] Indra Sawhney v Union of India[184]
Economic, Social or Political Justice	P. Sambhamurthy v State of Andhra Pradesh[185]; Raghunathrao v Union of India[186]

[174] *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1.
[175] *Supreme Court Advocates-on-Record Association* (n 166).
[176] *L. Chandra Kumar v Union of India* (1997) 3 SCC 261.
[177] *Indira Nehru Gandhi v Raj Narain* (n 174).
[178] *S.R. Bommai* (n 173).
[179] *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217.
[180] *Ashoka Kumar Thakur v Union of India* (2008) 6 SCC 1.
[181] *Pramati Educational and Cultural Trust (Registered) v Union of India* (2014) 8 SCC 1.
[182] *Minerva Mills Ltd* (n 166).
[183] *Waman Rao v Union of Indi*a (1981) 2 SCC 362.
[184] *Indra Sawhney v Union of India* (n 179).
[185] *P. Sambhamurthy v State of Andhra Pradesh* (1987) 1 SCC 362.
[186] *Raghunathrao Ganpatrao* (n 168).

Political Parties, Multi-Party System, Party Discipline, Disqualification	Kihoto Hollohan v Zachillhu[187]
Rule of Law	P. Sambhamurthy and Ors. v State of Andhra Pradesh[188]
Separation of Powers	Kesavananda Bharati Sripadagalvaru v State of Kerala[189]
Supremacy of the Constitution	Kesavananda Bharati Sripadagalvaru v State of Kerala[190]
Article 14 and the principles underpinning it	I.R. Coelho v State of Tamil Nadu[191]
Parliamentary System	Kuldip Nayar v Union of India[192]

Table containing constitutional provisions, values, and principles conclusively accepted to be a part of the basic structure

Tests to determine a basic structure violation:

144. The standard of judicial review in a basic structure challenge was clarified by the Court in *M Nagaraj v Union of India* (2006). The Court laid down two important tests of judicial review:

a. Width test: whether the amendment seeks to negate or eliminate any constitutional limitation already imposed.

b. Identity test: whether the amendment alters the fundamental identity of the Constitution.

The Court explained: "*In the matter of application of the principle of basic structure, twin tests have to be satisfied, namely, the "width test" and the test*

[187] *Kihoto Hollohan* (n 170).
[188] *P. Sambhamurthy* (n 185).
[189] *Kesavananda Bharati Sripadagalvaru* (n 165)
[190] Ibid.
[191] *I.R. Coelho v State of Tamil Nadu* (2007) 2 SCC 1.
[192] *Kuldip Nayar* (n 170).

of "identity" [...] In applying "the width test" we have to see whether the impugned amendments obliterate the constitutional limitations [...]"[193]

c. Impact test: Subsequently, in *I.R. Coelho v State of Tamil Nadu* (2007), the Court developed a third test that focuses on the effect of the amendment on constitutional rights.

The Court explained, "*The result of aforesaid discussion is that the constitutional validity [...] on the touchstone of basic structure doctrine can be adjudged by applying the direct impact and effect test, i.e., rights test, which means the form of an amendment is not the relevant factor, but the consequence thereof would be determinative factor.*"[194]

145. Accordingly, three judicial tests must be satisfied for assessing violations of the basic structure: (i) width test; (ii) identity test; and (iii) impact test. However, it remains unsettled whether all three must be cumulatively satisfied, or whether the fulfilment of any one test suffices to establish a violation.[195] Further, it should be noted that the precise relationship between these three tests remains unsettled. A study of judgments highlights that the impact test introduced in *I.R. Coelho*, is not a distinct or autonomous standard but rather an analytical device to assess whether the *effect* of an amendment damages constitutional identity or obliterates constitutional limitations. It therefore operates within — and not outside — the framework of the width and identity tests. The overlap between these standards underscores the conceptual fluidity of the doctrine and the continuing uncertainty surrounding its precise limits. However, in more recent decisions, courts have tended to rely primarily on the terminology of the *identity test*; [196] accordingly, this Report adopts the same approach.

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[193] *M. Nagaraj and Ors. v Union of India* (2006) 8 SCC 212, [102], [117].
[194] *I.R. Coelho v State of Tamil Nadu* (n 191) [150].
[195] Karishma Dodeja, Belling the Cat: The Curious Case of the Ninth Schedule in the Indian Constitution, (2016) 28(1) National Law School of India Review 3; *Ashoka Kumar* (n 180) (per Bhandari J).
[196] *Janhit Abhyan* (n 166); *Glanrock Estate (P) Ltd. v State of T.N.* (2010) 10 SCC 96; *K.T. Plantation (P) Ltd. v State of Karnataka* (2011) 9 SCC 1; *Indian Medical Assn. v Union of India* (2011) 7 SCC 179.

146. **Validity of the 130th Amendment Bill**: For the purposes of assessing the validity of the 130th Constitution Amendment Bill, this Report evaluates its provisions against four features of the basic structure: (a) parliamentary democracy; (b) rule of law including separation of powers and checks and balances; (c) federalism; and (d) the equality code.

a. Parliamentary Democracy:

147. A parliamentary democracy functions through the operation of an efficient party system and the institution of Cabinet Government.[197] While the President is the formal head of the executive branch, real power of governance vests in the Prime Minister and the Council of Ministers (interchangeably, also referred to as the 'Cabinet Ministers', 'Council', 'Ministers' or 'Cabinet').[198]

148. Discretion of the Prime Minister to appoint Cabinet: Article 75(1) stipulates that ministers are appointed by the President on the advice of the Prime Minister.[199] Thus, the appointment of the Council of Ministers while done in the name of the President is carried out according to the discretion of the Prime Minister. However, such discretion is not absolute and carries constitutional limitations. First, the Constitution strictly prescribes a numerical strength of the Cabinet i.e., the total number of ministers (including the Prime Minister and the Cabinet) cannot exceed fifteen per cent of the total number of Lok Sabha members.[200] Second, Articles 102[201] and 191[202] provide certain criteria which would warrant disqualification of Ministers. Third, Articles 75(5) and 164(4) provide that Ministers must be elected to either House within six months of appointment.[203]

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[197] *Kihoto Hollohan* (n 170); *B. R. Kapur v State of Tamil Nadu* (2001) 7 SCC 231; *Supreme Court Advocates on Record Association v The Union of India* AIR 1994 SC 268.
[198] The Constitution of India, Article 74(1); *Rai Sahib Ram Jawaya Kapur and others v State of Punjab* AIR 1955 SC 549; *Shamsher Singh v State of Punjab* AIR 1974 SC 2192.
[199] The Constitution of India 1950, Article 75(1).
[200] The Constitution of India 1950, Article 75(1-A).
[201] The Constitution of India 1950, Article 102.
[202] The Constitution of India 1950, Article 191.
[203] The Constitution of India 1950, Article 75(4) and 164(4).

149. Ministers answerable to the electorate: The Prime Minister and the Cabinet are in power as long as they enjoy a majority in the legislature and are members of either the Lok Sabha or Rajya Sabha.[204] The importance of being an elected member can be seen in Article 75(5) which mandates a Minister to mandatorily seek membership of any House of Parliament within six months, failing which they will cease to be Ministers.[205]

150. Term of the Cabinet Ministers: Article 75(2) states that the Minister will hold office during the 'pleasure' of the President.[206] The President will act on the advice of the Prime Minister in this regard.[207] Since the Cabinet is collectively responsible to the Lok Sabha[208] they continue in office until they enjoy the confidence of the Lok Sabha with the maximum time-limit being five years.[209] Even when the Lok Sabha is dissolved prematurely, the Cabinet Ministers remain in office until alternative arrangements are made.[210]

151. It has been argued that the provisions of the Bill substantially affect the functioning of the parliamentary system by diluting the three features mentioned.[211] First, the Bill provides new restrictions by introducing an additional condition on the Prime Minister/Chief Minister's discretion to appoint

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[204] Shubhankar Dam, 'Executive' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds.) *Oxford Handbook of The Indian Constitution* (OUP 2016) 314.
[205] The Constitution of India 1950, Article 75(5); *SP Anand v HD Deve Gowda* AIR 1997 SC 272.
[206] The Constitution of India 1950, Article 75(2).
[207] *BP Singhal v Union of India* (2010) 6 SCC 331.
[208] The Constitution of India 1950, Article 75(3).
[209] The Constitution of India 1950, Article 83.
[210] *UNR Rao v Indira Gandhi* AIR 1971 SC 1002.
[211] Alok Prasanna Kumar, 'Why Constitution Amendment Bill is a Direct Assault on Parliamentary Democracy' (*The Quint*: 21 August 2025) <https://www.thequint.com/opinion/constitution-amendment-bill-assault-parliamentary-democracy> accessed 23 September 2025; Justice Chandru, '"History will absolve me": What the 130th Constitution Amendment Bill truly purports to achieve' (*The Leaflet*: 27 August 2025) <https://theleaflet.in/criminal-justice/history-will-absolve-me-what-the-130th-constitution-amendment-bill-truly-purports-to-achieve#:~:text=The%20130th%20Constitution%20Amendment%20Bill%20seeks%20to%20achieve%20what%20was,Chandru%20(Retd.)> accessed 23 September 2025; Sarthak Gupta,' The Wolf in Morality's Clothing: Indian 130th Constitution Bill on Disqualification & Abusive Constitutionalism' (*Vidhi Centre for Legal Policy*: 2 September 2025) <https://vidhilegalpolicy.in/blog/the-wolf-in-moralitys-clothing/> accessed 23 September 2025

Ministers. Second, since the Ministers are legislatively backed, they should only be asked to vacate their positions only when they are disqualified or they lose the vote of confidence. Lastly, the Bill arguably dilutes the Prime Minister's right to determine the term of a Minister since it triggers an automatic cessation mechanism.

152. Courts when assessing the impact of an amendment on a basic feature, often do so by considering both potential and real consequences.[212] Following this approach, it is appropriate to contextualise the above arguments.

153. First, the right of a Prime/Chief Minister to appoint Ministers to the Cabinet is not absolute. The current constitutional scheme already provides for several restrictions on this right. Article 75(1A) provides a numerical restriction on the number of ministers which can be chosen to the Cabinet. Moreover, Article 75(5) states that if Ministers are not elected to either House within six months, they cease to hold office. Additionally, the discretion to select Ministers is circumscribed by the disqualification criteria. Thus, it is constitutionally incorrect to argue that the discretion to appoint ministers to the Cabinet is unconditional.

154. Second, it has been clarified by Courts that only the abrogation of the basic features is unconstitutional,[213] whereas modifications to the features are constitutionally permissible.[214] For instance, in *Ashoka Kumar Thakur v Union of*

[212] *I.R. Coelho v State of Tamil Nadu* (n 191).
[213] In *Jaishri Patil* (n 166), the legality of the Constitution (One Hundred and Second Amendment) Act, 2018, was challenged. The amendment vested the President with the exclusive power to identify socially and educationally backward classes and include them in the central list. It was contended that this violated the principle of federalism, which forms part of the basic structure. The Court held that: "*the alteration of the content of the State legislative power in an oblique and peripheral manner would not constitute a violation of the concept of federalism. It is only if the amendment takes away the very essence of federalism or effectively divests the federal content of the Constitution, and denudes the States of their effective power to legislate or frame executive policies (co-extensive with legislative power) that the amendment would take away an essential feature or violate the basic structure of the Constitution*." This establishes that while the abrogation of a basic feature is impermissible, modifications or alterations that do not destroy its essence are constitutionally valid.
[214] *Jaishri Laxmanrao Patil* (n 166); *Pramati Educational and Cultural Trust (Registered)* (n 181); *Ashoka Kumar Thakur* (n 180).

India (2008), the provisions of Constitution (Ninety-third Amendment) Act, 2005 were under challenge and the Court held that:

> *"If any constitutional amendment is made which moderately abridges or alters the equality principle or the principles under Article 19(1)(g), it cannot be said that it violates the basic structure of the Constitution. If such a principle is (sic not) accepted, our Constitution would not be able to adapt itself to the changing conditions of a dynamic human society. Therefore, the plea raised by the petitioners' counsel that the present Constitution (Ninety-third Amendment) Act, 2005 alters the basic structure of the Constitution is of no force."*[215]

155. Similarly, the arguments made regarding the dilution of discretion of the Prime/Chief Minister or the validity of the automatic cessation process are mere modifications. Any deviation from these features does not affect or change the form of Indian parliamentary governance. Hence, it is highly unlikely that this would be considered as an abrogation of the basic structure. Notably, the restriction on discretion is minimal as well, as the Minister ceases to hold office only for the limited period of detention (which comes into operation only after thirty days of consecutive detention) and can be re-appointed after release.

156. Third, such modifications within the current context have been judicially affirmed. The Court in *Manoj Narula v Union of India* (2014)[216] was petitioned to read an implied limitation to the Prime Minister's discretion over appointing Ministers. While the court refused to do so, it urged the Parliament to enact a law and legislate on stricter standards for appointments to ministerial office. In several cases leading to the issue of criminalisation of politics, the Courts have

[215] *Ashoka Kumar Thakur* (n 180) [120].
[216] *Manoj Narula* (n 47).

repeatedly urged the Parliament to intervene through laws and amendments.[217] Hence, in the light of such an express approval and push by our Courts, the consideration of a basic structure violation within this context seems improbable.

157. Moreover, practically in order to achieve the objectives of the Bill i.e., no representative in an executive position thwarts or hinders the canons of constitutional morality and good governance,[218] the term of the Ministers cannot be decided solely by the Prime Minister. If the Prime Minister's advice is binding on the cessation of ministerial offices, it is highly unlikely that they would do so for their own Cabinet Ministers[219]—defeating the objective of the Bill in its entirety.

158. **Summary:** The potential to hold the Bill unconstitutional on the ground of abrogating the basic feature of parliamentary form of democracy is unlikely.

b. Rule of Law:

159. **Meaning of Rule of law**: The rule of law requires that the exercise of powers by the State – including the legislature, executive, and the judiciary – must be subject to the Constitution and the law.[220] In order to ensure that each branch does not exceed its prescribed authority, a system of checks and balances and judicial review is mandated.[221] The Court in the case of *Dr. Ashwani Kumar v Union of India* (2020) held that:

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[217] *Public Interest Foundation* (n 27); *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294, *PUCL v Union of India* (2003) 4 SCC 399; *Rambabu Singh Thakur v Sunil Arora* (2020) 3 SCC 733; *Lily Thomas v Union of India* AIR 2013 SC 2662.

[218] Statement of Objects and Reasons, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025.

[219] This unlikelihood has been highlighted by several reports (see Chapter Three) which highlight that despite intention of the framers to avoid criminalisation of politics, high constitutional offices are helmed by individuals with criminal charges pending.

[220] *Minerva Mills Ltd.* (n 166) (per Chandrachud CJ).

[221] *Dr. Ashwani Kumar v Union of India* Writ Petition (Civil) No. 738 of 2016; *National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742; *Justice K.S. Puttaswamy (Retd.) & Anr. v Union of India* [2018] 8 S.C.R. 1; *Rojer Mathew v South Indian Bank Ltd* [2019] 16 S.C.R. 1; *Bilkis Yakub Rasool v Union of India* [2024] 1 S.C.R. 743.

"The three branches have to respect the constitutional division and not disturb the allocation of roles and functions between the triad. Adherence to the constitutional scheme dividing the powers and functions is a guard and check against potential abuse of power and the rule of law is secured when each branch observes the constitutional limitations to their powers, functions and roles. [...] somewhat paradoxically, it creates a system of checks and balances as the Constitution provides a degree of latitude for interference by each branch into the functions and tasks performed by the other branch. It checks concentration of power in a particular branch or an institution."[222]

160. From the above observations, it is clear that the rule of law is secured when: (i) there is a system of checks and balances against potential abuse of power; (ii) no branch interferes into the working and functioning of any other branch indicating a separation of powers; and (iii) a degree of interference is constitutionally permissible solely to check against the concentration of power in a particular branch.

161. **Division between traditional and non-traditional executive**: Albert and Pal[223] argue that in contemporary times considering the level of democratic decline, a new branch of governance has been identified.[224] This branch is called the 'fourth-branch' since it acts independently as compared to the other three

[222] *Dr. Ashwani Kumar* (n 221) at [9][10]; It is imperative to note that this case did not deal specifically with a basic structure challenge. It is being employed here to understand the meaning of 'rule of law'.
[223] Richard Albert & Michael Pal, 'The Democratic Resilience of the Canadian Constitution' in Mark A. Graber, Sanford Levinson, & Mark Tushnet (eds), *Constitutional Democracy in Crisis?*, (OUP 2018); Michael Pal, 'The South Asian Fourth Branch: Designing Election Commissions for Constitutional Resilience' in Swati Jhaveri, Tarunabh Khaitan, and Dinesha Samararatne (eds.) *Constitutional Resilience in South Asia* (Hart Publishing 2023) 283.
[224] Bruce Ackerman, 'The New Separation of Powers' (2000) 113 Harvard Law Review 633, 694; Mark Tushnet, 'Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries' (2020) 70 UTLJ 95; Tarunabh Khaitan, 'Guarantor (or the so-called 'Fourth Branch') Institutions' in Jeff King and Richard Bellamy (eds), *Cambridge Handbook of Constitutional Theory* (CUP 2023) 7.

branches of a democracy.[225] This expansion has also led to the re-imagination of the traditional forms of the branches. Barber argues that within the executive branch also lies several other institutions which are characterised by the level of autonomy they have with the political executive.[226] Thus, the executive is not only just the political executive but even includes the non-political executive.

162. The political executive in this context comprises the executive members (i.e., the Ministers), and non-political executive includes bureaucrats and executive agencies including the police.[227] In India, these institutions could be identified as the police and other executive agencies (such as the ED and the Central Bureau of Investigation).

163. The Indian executive has been formed with the same members as the legislature. For instance, the Council of Ministers which are members of the political executive are first and foremost, members of the representative bodies.[228] Thus, there is interdependence, interaction and even commonality of personnel/members between the Indian legislature and the executive.[229] However, the constitutional scheme currently does not have a mechanism to check interference between the political executive and the non-political executive branch, since the meaning of 'executive' has changed over time.

164. **Potential violation of rule of law:** It may be argued that the Bill, in its present form, raises concerns of compatibility with the rule of law owing to the absence

[225] Tarunabh Khaitan, 'Guarantor Institutions' (2021) 16 Asian Journal of Comparative Law 40, 41; AJ Brown, 'The Fourth, Integrity Branch of Government: Resolving a Contested Idea' (2018) Paper Delivered at World Congress of Political Science in Brisbane, Australia, 19; Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (CUP 2021) 8;
[226] Nick Barber, 'Separation of Powers' 52, 67 in *The Principles of Constitutionalism*, (OUP 2018); Nick Barber, *The United Kingdom Constitution: An Introduction*, 184-205 (2021).
[227] Nick Barber, 'Separation of Powers' 52, 67, 68 in *The Principles of Constitutionalism*, (OUP 2018).
[228] The Constitution of India 1950, Article 75(5); See also, Walter Bagehot, *The English Constitution* (1873) 50; Bagehot who describes the Cabinet of Ministers to be 'a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state'. However, it is imperative to note that such a statement was made wherein the distinction between political and non-political executive was not foreseen.
[229] *Dr. Ashwani Kumar* (n 221).

of institutional checks and procedural safeguards. The rule of law, as interpreted by the Supreme Court, mandates that the exercise of State power must be conditioned by law, subject to oversight, and structured through a system of checks and balances that prevent arbitrary interference by one branch with another.

165. First, under the proposed framework, the cessation of ministerial office is triggered by an event—the arrest and detention of a Minister for thirty consecutive days—that originates entirely within the domain of the 'non-political executive'. This event operates automatically and conclusively, with no interposition of judicial or legislative scrutiny. Unlike existing constitutional mechanisms such as Article 103,[230] which require the President to act on the binding opinion of an independent authority, the ECI,[231] the Bill contains no analogous safeguard. The advice of the Prime Minister in such cases is rendered ineffective by the automatic operation of law, leaving no procedural avenue for review or reconsideration.

166. Second, the process leading to detention is itself marked by minimal judicial oversight. Magistrates authorise custody largely on the basis of investigative representations, a stage at which courts have repeatedly noted that the power is exercised routinely and without the "seriousness it deserves".[232] This has been explained in greater detail in Part One of the Constitutionality Analysis/This Chapter. The cumulative effect is that a significant constitutional consequence—the cessation of a Minister—may occur without meaningful judicial or legislative scrutiny.

167. The absence of such safeguards does not merely create a risk of misuse; it constitutes a structural infirmity in the design of the provision. By enabling one

[230] The Constitution of India 1950, Article 103(2); *Election Commission of India v NG Ranga* (1978) 4 SCC 181.
[231] *Brunbandan Nayak v Election Commission of India* AIR 1965 SC 1892.
[232] *Arnesh Kumar* (n 136).

arm of the executive to effectuate the removal of another without corresponding procedural oversight, the Bill undermines the system of checks and balances that is integral to the rule of law and the separation of powers.

168. **Summary**: The Bill in its current form may potentially violate the basic structure doctrine for violating the rule of law. Part One of the Constitutionality Analysis/this Chapter provides suggestions to make it congruent with the doctrine.

c. Federalism:

169. **Test for Federalism**: Although federalism has been held to be a part of the basic structure of the Constitution unequivocally,[233] the precise meaning and character of India's federal model is still debated. In the case of *SR Bommai v Union of India* (1994), a nine-judge bench of the Court held that the test to determine a violation of the principle of federalism would be: if any provision is unmindful of its consequences to the governance in the State concerned.[234] In *Bommai*, it was observed that the Union was relying on Article 356(1) in a manner which severely affected governance of individual states i.e., opposition-led State assemblies were being dissolved by the Governor on suspect grounds, in accordance with the directions of the Union. This practice was held violative of the principle of federalism.[235] The Court forewarned that merely because the Union might wield significant powers, neither the pluralist form of democracy nor federal principles must be hampered.[236]

170. However, there exists both potential and incentive for the Union to destabilise State governments. This is not a theoretical argument, and the Courts

[233] *S.R. Bommai* (n 173).
[234] *S.R. Bommai* (n 173); See also *State of Rajasthan v Union of India* (1977) 3 SCC 592; *State of West Bengal v Union of India* AIR 1963 SC 1241; *Union of India v M/s Mohit Minerals Pvt. Ltd, Civil Appeal No. 1390 of 2022*; *State (NCT of Delhi) v Union of India* (2018) 8 SCC 501.
[235] *S.R. Bommai* (n 173); *Rameshwar Prasad v Union of India* (2006) 2 SCC 1 223.
[236] *S.R. Bommai* (n 173).

have held that such tendencies are common especially when different political parties are in power at the State and the Union. The Court highlighted that:

> *"The temptation of the political party or parties in power (in a coalition Government) to destabilise or sack the Government in the State not run by the same political party or parties is not rare and in fact the experience of the working of Article 356(1) since the inception of the Constitution, shows that the State Governments have been sacked and the Legislative Assemblies dissolved on irrelevant, objectionable and unsound grounds. So far, the power under the provision has been used on more than 90 occasions and in almost all cases against Governments run by political parties in opposition. If the fabric of pluralism and pluralist democracy and the unity and integrity of the country are to be preserved, judiciary in the circumstances is the only institution which can act as the saviour of the system and of the nation."*[237]

In this backdrop, it is imperative to check such potential actions on the anvil of federalism.

171. **Potential violation of Federalism**: There exists a high potential of the dilution of the principles of federalism due to the operation of the Bill. It arguably allows for an easy destabilisation of opposition-led State governments. Technically, the State governments could also detain Ministers of the Union, for a period of thirty days and more, for violating State laws, triggering the cessation process. However, the likelihood of this happening is very low—due to the role of the Union within our federal model.[238] This is explained in detail below.

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[237] *S.R. Bommai* (n 173) [104]. See also, other cases have reiterated this principle in the context of co-operative federalism, *Union of India v M/s Mohit Minerals Pvt. Ltd* (n 234); *State (NCT of Delhi)* (n 234).

[238] On the imbalance in the relationship between the Union and the States, see, Aditya Prasanna Bhattacharya and Swapnil Tripathi, 'India's queasy federalism', (*Times of India*: 23 August 2025), <https://timesofindia.indiatimes.com/blogs/toi-edit-page/indias-queasy-federalism/> accessed 23 September 2025.

172. First, the Union has been constitutionally vested with significant powers. List I of the Seventh Schedule numerically provides more grounds to the Union to legislate on as compared to the State List.[239] Moreover, the residuary clause allows the Union to make laws on matters that are not enumerated in any list.[240] Additionally, with respect to matters on which both the Union and the State are competent to enact laws—the Union law prevails if there is a conflict.[241]

173. Second, the administrative control of the States is also provided to the Union. Article 2 empowers the Union to establish new States on terms and conditions it deems fit.[242] Moreover, under Article 3, the Parliament has the power to form a new State.[243] This power can only be exercised through a Parliamentary Bill on the recommendation of the President after allowing the State an opportunity to 'express its views'.[244] On a conjoint reading of these provisions, it is clear that the Union has large administrative control over the territorial limits of the States. Moreover, during this process, there exists no binding obligation to obtain concurrence of the State whose area, boundary or name is likely to be affected by the proposal.

174. Third, a significant section of the non-traditional executive branch institutionally and functionally works under the supervision of the Union. Appointments of personnel to these Central agencies are done by the Union indicating institutional control.[245] Moreover, they largely function based on the instructions by the traditional executive.[246]

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[239] The Constitution of India 1950, Seventh Schedule.
[240] The Constitution of India 1950, Article 254(2).
[241] The Constitution of India 1950, Article 254(1).
[242] The Constitution of India 1950, Article 2.
[243] The Constitution of India 1950, Article 3.
[244] The Constitution of India 1950, Proviso to Article 3.
[245] *CBI v Jaya Thakur* Writ Petition (Civil) 456/2022; *Common Cause (A Registered Society) v Union of India* 2021 SCC OnLine SC 687.
[246] *Vineet Narain v Union of India* (1998) 1 SCC 226; *Prakash Singh v Union of India* (2006) 8 SCC 1; *Dr. Subramanian Swamy v Director* AIR 2014 SC 2140.

175. Lastly, the States are largely dependent on the Union for financial assistance. Under Articles 268 to 273: States are allowed to collect and retain duties imposed by the Union.[247] However, in other cases taxes levied and collected by the Union are either assigned to the States or shared with States.[248] Article 275 also provides for providing grants to certain States by the Union, since the power of the States to raise resources is limited.[249] Moreover, 'economic and social planning' is provided as Entry 20 of List III leading to the Union's influence over major economic projects.[250] Thus, the provision of administrative, financial, and executive power accord significant powers to the Union, thereby reducing the likelihood of the States using the Bill to destabilise the Union.

176. **Destabilisation of coalition governments** : As highlighted above, it is possible that on *prima facie* allegations against the Chief Minister or other Ministers, they could be detained and kept in custody, which after thirty days would trigger the process of cessation. This could lead to an absence of active leadership at the helm of a political party. In such situations, the Governor will have the duty to check if the party continues to have a majority in the legislative assembly. Such a situation might not be the case for governments which have a comfortable/absolute majority[251] but might hold true for coalition governments or where political parties have a slight majority. For the latter, there is a possibility of horse-trading, defections, and resultant destabilisation of coalitions.[252] At this point of time, the Governor could have 'reasons to

[247] The Constitution of India 1950, Articles 268-273.
[248] The Constitution of India 1950, Article 269.
[249] The Constitution of India 1950, Article 275.
[250] The Constitution of India 1950, Entry 20, List III, Seventh Schedule.
[251] The recent cases of Arvind Kejriwal (Former Chief Minister of the Government of Delhi) and Hemant Soren (Chief Minister of the Government of Jharkhand) are to be noted here. In these cases, the governments had an absolute majority in their respective states and hence, the possibilities of destabilizing governments are relatively low here.
[252] Ritwika Sharma & Mayuri Gupta, 'Anatomy of India's Anti-Defection Law: Identifying Problems, Suggesting Solutions' (November 2023); Subhash C. Kashyap, 'The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India' (1970) 10 Asian Surv., 195; Adam Ziegfeld, 'Coalition Government and Party System Change: Explaining the Rise of Regional Political Parties in India', (2012) 45 Comp. Pol, 69.

believe'[253] that the party-in-power does not command the majority on the floor of the Legislative Assembly, leading to the conduct of a trust vote.

177. In the event that the government is unable to prove its majority due to widespread defection, the Governor could make any of the following choices: they can either invite another party or alliance to form the government or conclude that no stable arrangement is possible. The latter course of action frequently culminates in the invocation of Article 356(1), thus initiating President's rule. Here, the President, on the basis of the Governor's report may assume the administration of the State due to a "breakdown of constitutional machinery."[254] Thus, what begins as an allegation against the executive leadership of the State could potentially culminate in either the dismissal of an elected government or the imposition of President's Rule.

178. Additionally, all of these processes could be triggered with minimal judicial application of mind. This is not to suggest that the Courts are prevented from reviewing the imposition of President's Rule; or questioning the dismissal of the government by the Governor; or protecting Ministers from unlawful custody by granting bail. However, in such instances, time is of the essence.[255] In situations where the Governor has reasons to believe that the incumbent government does not possess the support of the majority in the legislative assembly, the appropriate course of action is for the Governor to call upon the Chief Minister to face the assembly and to establish the majority of the incumbent government

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[253] In Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly, Writ Petition (Civil) No. 439 of 2020, the Supreme Court reaffirmed the principle laid down in *S.R. Bommai* (n 173) and *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1. The Court held that where the Governor has reason to believe that the incumbent government may have lost the confidence of the legislative assembly, the proper course of action is to require the Chief Minister to prove the majority of the government on the floor of the House within the shortest possible time. This power is discretionary and may be exercised when, on the basis of material available, the Governor determines that the question of majority support must be tested through a floor test.

[254] The Constitution of India 1950, Article 356(1).

[255] *Nebam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1; *Jagdambika Pal v Union of India* (1999) 9 SCC 95; *Anil Kumar Jha v Union of India* (2005) 3 SCC 150; *Chandrakant Kavlekar v Union of India* (2017) 3 SCC 758; *G Parmeshwara v Union of India* (2018) 16 SCC 46; *Shiv Sena v Union of India* (2019) 10 SCC 809.

'within the shortest possible time'.[256] In such situations, it is likely that state governments would have to face immediate floor tests when a few of their party members, Ministers or the Chief are detained or in police custody. This would even lead to a delay in approaching the Courts—making the consequence both imminent and disastrous.

179. Thus, the Bill creates a structural vulnerability within the federal scheme. If executive powers are exercised without adequate safeguards, the provisions could be used to destabilise State governments with relative ease, while simultaneously limiting the effectiveness of judicial remedies.

180. **Summary**: While mere potential for misuse cannot, by itself, constitute a violation of the basic feature of federalism, the structural design of the Bill raises concerns of compatibility with that principle. By largely enabling centrally controlled investigative agencies to trigger cessation of office of Ministers and Chief Ministers in the States without adequate procedural safeguards, the Bill creates an institutional asymmetry that may disrupt the federal balance envisioned by the Constitution. This concern may be mitigated by incorporating the recommendations outlined in Part One of this Chapter—most notably, by revising the threshold for cessation from detention to the stage of framing of charges. Embedding judicial scrutiny at that stage would provide an effective procedural safeguard, thereby reducing the scope for arbitrary or politically motivated action and preserving the spirit of federalism.

d. Equality Code:

181. **Tests for Article 14**: The Courts have tested constitutional amendments, executive orders, and legislation on the anvil of Article 14 using the separate tests of unreasonable classification[257] and manifest arbitrariness.[258] The Courts

[256] *Shivraj Singh Chouhan* (n 253).
[257] *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCC 1.
[258] *Shayara Bano v Union of India* (2017) 9 SCC 1; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

recently held that these tests have been subsumed under a three-prong framework[259] which includes:

- **Reasonable Classification**: A classification is constitutionally permissible if there is an intelligible differentia between those forming a group and those left out.[260]
- **Rational Nexus**: The classification must bear a rational nexus to the object sought to be achieved.[261] The Court examines whether a valid yardstick has been applied to differentiate between the included and excluded groups, whether that yardstick accords with constitutional provisions and values, [262] and whether all those similarly situated by that standard have been grouped together. [263]
- **Objective**: The Courts tests the genuineness of the legislative objective by distinguishing between the ostensible objective asserted by the State[264] and the real objective discernible from the surrounding circumstances.[265]

182. **Potential violation of Article 14**: The Bill is arguably violative of the principle of equality espoused under Article 14 since it proposes differential treatment for Prime Ministers, Chief Ministers, and Council of Ministers (cessation) as compared to other elected representatives such as the Members of Parliament/Legislative Assembly (disqualification). In order to assess the violation of Article 14, we seek to deploy the above-mentioned tests.

183. **First, the classification is reasonable**. This classification between Ministers and Members is reasonable since it is based on an intelligible difference. The

[259] *In Re: Section 6A of the Citizenship Act 1955* 2024 INSC 789; *Association for Democratic Reforms v Union of India* 2024 INSC 113.
[260] *Shri Ram Krishna Dalmia v Shri SR Tendolkar* 1958 SCC OnLine SC 6; *Moorthy Match Works v CCE* (1974) 4 SCC 428.
[261] *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCC 1.
[262] *State of Punjab v Davinder Singh* 2024 INSC 562.
[263] *Arun Kumar v Union of India* (2007) 1 SCC 732; *G Sadasivan Nair v Cochin University of Science and Technology* (2022) 4 SCC 404.
[264] *Joseph Shine v Union of India*, (2019) 3 SCC 39.
[265] *Association for Democratic Reforms* (n 259) [194]; *In Re: Section 6A of the Citizenship Act 1955* (n 259).

former have been constitutionally vested with executive power,[266] whereas the latter only perform a legislative function.

184. In *Ram Jawaya Kapur v The State of Punjab* (1955), the Supreme Court clearly explained how the Cabinet, or the Council of Ministers, perform an executive function in addition to their legislative function:

> *"16. In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid advise the President in the exercise of his functions. The president has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part." The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them."*[267]

185. Similarly, the Supreme Court has time and again stressed that in India, the President is the notional head of the Executive and actual powers are exercised

[266] The Constitution of India 1950, Article 74.
[267] *Rai Sahib Ram Jawaya Kapur* (n 198) [16].

by the Council of Ministers headed by the Prime Minister. This yet again creates a distinction between members who do not exercise executive powers versus Ministers who can.

In *Supreme Court Advocates on Record Association v Union of India* (1994), the Court had observed:

"66. A fortiori the advice given by the Council of Ministers according to the Constitution binds the President and, therefore, the advice must accord with the principles indicated herein."[268]

186. This creates an intelligible differentia between legislators who are elected to represent the concerns of their electorate versus the Ministers who also take key policy decisions. On this point, the Court in *Shamsher Singh v State of Punjab* (1974) observed:

> *"The executive has the Primary responsibility for the formulation of governmental policy and its transmission into law. The condition precedent to the exercise of this responsibility is that the executive retains the confidence of the legislative branch of the State. The initiation of legislation, the maintenance of order, the promotion of Social and economic welfare, the direction of foreign policy, the, carrying on the general administration of the State are all executive functions. The executive is to act subject to the control of the legislature. Ile executive power of the Union is vested in the President. The President is the formal or constitutional head of the executive. The real executive powers are vested in the Ministers of the Cabinet. There is a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions.*[269]

187. **Second, the classification does not appear to have a rational nexus with the object sought to be achieved**. Under the Bill, cessation of office applies only to

[268] *Supreme Court Advocates on Record Association v Union of India* AIR 1994 SC 268 [476].
[269] *Shamsher Singh* (n 198) [33].

Ministers who are arrested and remain in consecutive custody for thirty days in relation to offences punishable with imprisonment of five years or more. By contrast, MPs/MLAs continue in office unless disqualified under Articles 102 or 191. For a classification to be constitutionally valid, all persons similarly situated according to the legislative yardstick must be treated alike. If the law regulates only a subset of those who contribute to the identified problem, it risks being under-inclusive; if it extends to those not implicated in the mischief, it risks being over-inclusive. On this reasoning, subjecting only Ministers—but not MPs/MLAs more generally—to the cessation process may be regarded as under-inclusive. However, it should be noted that the courts have consistently held that legislation will not ordinarily be invalidated on the ground of under-inclusion,[270] provided the classification adopted bears a rational nexus to the object sought to be achieved.

188. The SoR, which highlights the objective of the Bill, states that 'elected representatives' must act beyond their private interests and for the public welfare.[271] Moreover, the Bill seeks to prevent the thwarting or hindering of the canons of constitutional morality and principles of good governance by someone who faces allegations of serious criminal offences and is arrested and detained in custody.[272] If these are the identified objectives, the exclusion of MPs and MLAs from the cessation mechanism becomes difficult to justify.[273]

189. Both Ministers and MLAs/MPs are directly elected representatives of the people and carry the responsibility of representing their interests in legislative bodies. The phenomenon of criminalisation of politics extends across all elected

[270] *State of Gujarat v. Shri Ambica Mills* (1974) 4 SCC 656 [56-58, 76]; *Parivar Seva Sanstha v. Ahmedabad Municipal Corporation* (2023) 18 SCC 606 [20-21].
[271] Statement of Objects and Reasons, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, [1].
[272] Statement of Objects and Reasons, The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, [2].
[273] This reliance on the SoR is limited to clarifying the legislative objective and ensuring consistency with it, a use expressly permitted by judicial precedent where questions of purpose or competing interpretations arise; *State of West Bengal v Union of India* AIR 1963 SC 1241; *Principal Chief Conservator of Forest v JK Johnson* (2011) 10 SCC 794; *Waman Rao* (n 183).

representatives, not merely those holding ministerial office. For instance, a study by Association for Democratic Reforms illustrates that 46% of sitting MPs currently face serious criminal charges. Among State assemblies, 45% of the 4092 sitting MLAs have declared criminal charges,[274] and of these, 92% face serious criminal charges punishable with five years or more of punishment.[275]

190. Additionally, MPs and MLAs hold positions of authority that can be used to obstruct constitutional morality and good governance.[276] The continued presence of members with serious criminal charges in legislative bodies risks undermining public trust in equal measure. The judiciary[277] and expert bodies[278] have repeatedly highlighted this problem and recommended reforms directed at the broader political class. Limiting the cessation mechanism only to Ministers leaves intact the ability of MPs/MLAs with pending serious criminal cases to shape governance and influence executive agencies. The distinction drawn between Ministers and other legislators therefore raises doubts as to whether the classification bears a real nexus with the Bill's stated objectives.

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[274] Dhananjay Mahapatra, '251 out of 543 Lok Sabha MPs face criminal cases, including 19 of 20 Kerala MPs' (*The Times of India*, 10 February 2025) <https://timesofindia.indiatimes.com/india/251-out-of-543-lok-sabha-mps-face-criminal-cases-including-19-of-20-kerala-mps/articleshow/118127132.cms> accessed 11 September 2025.

[275] Association for Democratic Reforms, '45 MLAs Have Declared Criminal Cases Against Themselves' (*ADR India*, 21 March 2025) <https://adrindia.org/content/45-mlas-have-declared-criminal-cases-against-themselves-adr> accessed 23 September 2025; The LCI has repeatedly highlighted similar data as well. See, Chapter Three.

[276] *Manoj Narula v Union of India* (n 47); *A. Abdul Farook v Municipal Council, Perambalur* (2009) 15 SCC 351; *Patangrao Kadam v Prithviraj Sayajirao Yadav Deshmukh* (2001) 3 SCC 594; *State of Maharasthra v Jalgoan Municipal Corporation* (2003) 9 SCC 731; *Re: Art. 143, Constitution of India and Delhi Laws Act* AIR 1951 SC 332.

[277] *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294, *PUCL v Union of India* (2003) 4 SCC 399; *Public Interest Foundation* (n 27); *Rambabu Singh Thakur v Sunil Arora* (2020) 3 SCC 733; *Lily Thomas* (n 217).

[278] The following committees were set-up by various governments: (i) Goswami Committee on Electoral Reforms (1990), (ii) Vohra Committee Report (1993), (iii) Indrajit Gupta Committee on State Funding of Elections (1998), (iv) Law Commission Report on Reforms of the Electoral Laws (1999), (v) National Commission to Review the Working of the Constitution (2001), (vi) Election Commission of India – Proposed Electoral Reforms (2004), (vii) The Second Administrative Reforms Commission (2008), (vii) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

191. While the SoR articulates the broad reasons for the Bill, contemporaneous material suggests a more specific concern behind the Bill i.e., to prevent "leaders who would run the government while staying in jail".[279] According to the Hon'ble Home Minister: "*It is an insult to the country's democracy that a Prime Minister, Minister and Chief Minister run the government from jail. It does not suit our democracy that the Secretary and Chief Secretary of the Government go to jail for orders from the Prime Minister, Chief Minister and Minister*."[280] The Bill's SoR in its current form does not reflect this intention.

192. The generalised drafting of the SoR, which refers to "elected representatives" as a whole, may therefore be incongruent with the actual legislative intent. To avoid constitutional concerns under Article 14, the SoR could be revised to more clearly reflect this specific objective.

193. **Findings and Recommendations**:

i. The Bill, in its present form, may raise concerns regarding a potential violation of the equality code, insofar as it distinguishes Ministers from other elected representatives without adequate justification, thereby lacking a rational nexus with the object sought to be achieved.

ii. To ensure that the classification aligns with the stated legislative objectives, the SoR may be amended by inserting an additional objective (Objective No. 3A), framed as follows:

"*3A. In order to preserve public trust and confidence in governance, it is essential that holders of public office, particularly in the executive branch, maintain high standards of conduct. Over time, certain Ministers (including Chief Ministers and the Prime Minister), while facing serious criminal charges, have been detained in custody for prolonged periods yet continued to remain in office. Such situations undermine constitutional*

[279] Press India Bureau, 'Union Home Minister and Minister of Cooperation Shri Amit Shah, in an interview to a news agency, shared his views on several important issues including the Constitution (130th Amendment) Bill 2025' (*Press India Bureau*, 25 August 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2160539> accessed 23 September 2025.
[280] Ibid.

values, good governance, and the public's faith in democratic institutions. They also hamper effective administration and the smooth operation of executive responsibilities. There is a need to strengthen public trust in Ministers and deter misuse of executive power, especially in cases where serious criminal allegations lead to detention."

This recommendation is not pedantic. Courts routinely rely on the SoR when interpreting legislation, particularly to identify the mischief sought to be remedied and the underlying object of the enactment.[281] Where two constructions are possible, the Court prefers the one that advances the object of the Act, often ascertained with reference to the SoR. Hence, ensuring that the SoR is congruent with the substantive provisions of the Bill shields the legislation from potential constitutional infirmities.

[281] See, *Central Bank of India v Their Workmen*, AIR 1960 12; *Waman Rao* (n 183).

SUMMARY OF RECOMMENDATIONS

The recommendations made in the Report are summarised hereunder for the benefit of the readers:

i. The Bill and its SoR employ inconsistent terminology with respect to "serious crimes." To ensure clarity and conformity, a Schedule specifying the relevant offences should be annexed.

ii. The thirty-day cessation period is not congruent with criminal procedure, which permits detention for up to ninety days during investigation. In practice, this may enable cessation of office without meaningful judicial scrutiny.

iii. The framework creates scope for political misuse. Arrests may be timed or selectively pursued to trigger cessation, with consequent risks of destabilisation of governments and disruption of governance.

iv. A more balanced approach would link cessation to the stage of framing of charges. This stage requires judicial application of mind and satisfaction that a *prima facie* case exists, thereby providing an appropriate safeguard.

v. Structural reforms are necessary to complement legislative change. Recommendations issued by the LCI and directions issued by the Supreme Court in *Ashwini Kumar Upadhyay*—including day-to-day trials, completion within one year, and monitoring by the High Court—should be implemented in spirit and practice.

vi. The Bill potentially undermines the principle of federalism through its potential misuse in particular circumstances. This concern may be mitigated by revising the threshold for cessation from detention to the stage of framing

of charges. Such a reform would embed judicial scrutiny into the process, thereby reducing the scope for arbitrary or political motivated use.

vii. This Bill is under-inclusive as it lacks a rational nexus with the object sought to be achieved and hence, may potentially abrogate the basic structure of the Constitution on the ground of violating equality code. In order to align the classification with the objective, we recommend amending the SoR and adding Objective No. 3A as follows:

"3A. In order to preserve public trust and confidence in governance, it is essential that holders of public office, especially in the executive branch, maintain high standards of conduct. Over time, certain Ministers (including Chief Ministers and the Prime Minister), while facing serious criminal charges, have been detained in custody for prolonged periods yet continued to remain in office. Such situations undermine constitutional values, good governance, and the public's faith in democratic institutions. They also hamper effective administration and the smooth operation of executive responsibilities. There is a need to strengthen public trust in Ministers and deter misuse of executive power, especially in cases where serious criminal allegations lead to detention."