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Constitution (130th Amendment) Bill, 2025 Sparks Debate on Executive Accountability, Due Process and Democratic Constitutional Governance

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Recent Developments:

- The **Joint Parliamentary Committee (JPC)** examining the **Constitution (One Hundred and Thirtieth Amendment) Bill, 2025** has deferred adoption of its draft report after completing voting on two of its five recommendations, indicating that wider political and constitutional consensus is still under discussion.
- The Committee has reportedly favoured replacing **automatic removal** with **temporary suspension**, introducing provisions for restoration upon acquittal or failure of prosecution, thereby attempting to balance **ethical governance** with **constitutional safeguards**.

Background and Rationale:

Need for the Proposed Amendment:

- India has witnessed persistent concerns regarding the **criminalisation of politics**, with several elected representatives facing serious criminal charges while continuing to hold executive offices. Although criminal charges do not establish guilt, prolonged detention of constitutional functionaries raises questions regarding **public confidence, administrative legitimacy** and **ethical governance**.
- At present, the Constitution does not provide for automatic cessation of office merely because a **Prime Minister, Chief Minister** or **Minister** is arrested or remains in judicial custody. Removal generally depends upon constitutional conventions, political accountability and the confidence of the legislature rather than criminal proceedings alone.
- The proposed amendment attempts to address this perceived constitutional gap by prescribing consequences for prolonged detention in cases involving serious criminal offences while ensuring greater accountability in public administration.

Objective of the Bill:

- The Bill seeks to prevent individuals facing prolonged judicial detention for serious criminal offences from continuing to occupy important executive offices, thereby strengthening **constitutional morality, public trust** and **clean governance**.
- The proposal aims to ensure that executive authority is exercised only by individuals capable of discharging constitutional responsibilities without the limitations imposed by extended custody.

Constitutional Framework:

Existing Constitutional Position:

- Under **Article 75**, Union Ministers hold office during the pleasure of the President, although the President ordinarily acts on the advice of the **Prime Minister** under the parliamentary system.

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- Similarly, **Article 164** provides that State Ministers hold office during the pleasure of the Governor, who normally acts on the advice of the **Chief Minister**.
- Both the Union and State Councils of Ministers remain **collectively responsible** to the elected legislature, making political accountability the primary mechanism for continuation in office.
- At present, the Constitution prescribes disqualification mainly upon **conviction** under statutory provisions such as the **Representation of the People Act, 1951**, rather than merely on arrest or detention.

Scope of the Bill:

- The proposed amendment applies to the **Union Government, State Governments** and the **National Capital Territory of Delhi**.
- Separate legislative proposals have also been introduced to extend similar provisions to **Puducherry** and **Jamm& Kashmir**, ensuring consistency across different constitutional arrangements.

Major Provisions of the Constitution (130th Amendment) Bill, 2025:

Grounds for Constitutional Action:

- A Minister becomes liable for constitutional action if charged with an offence punishable with **five years or more imprisonment** and remains under continuous judicial detention for **30 consecutive days**.
- The proposal focuses only on **serious criminal offences**, thereby excluding relatively minor offences from its scope.

Procedure for Ministers:

- In the case of Union Ministers, removal may be carried out by the **President** acting on the advice of the **Prime Minister**.
- In the case of State Ministers, removal may be carried out by the **Governor** acting on the advice of the **Chief Minister**.
- If no formal order is issued, the concerned Minister is deemed to have automatically vacated office on the **31st day** of detention.

Procedure for Prime Minister and Chief Ministers:

- The **Prime Minister** or **Chief Minister** must resign after completing **30 consecutive days** in judicial custody.
- Failure to resign results in automatic cessation from office from the following day under the proposed constitutional mechanism.

Significance of the Proposal:

Promoting Ethical Public Leadership:

- Constitutional offices demand standards of conduct higher than those applicable to ordinary public employment because executive decisions directly affect governance and public welfare.
- The proposal attempts to reinforce the principle that holders of constitutional offices should maintain the highest standards of **integrity, credibility** and **public confidence**.

Strengthening Accountability:

- Continued exercise of executive authority during prolonged judicial detention may weaken citizens' confidence in democratic institutions.
- The proposed amendment seeks to enhance accountability by introducing objective constitutional standards applicable to all governments irrespective of political affiliation.

Reducing Criminalisation of Politics:

- The proposal complements broader efforts aimed at reducing the influence of criminal elements in electoral politics.
- It seeks to strengthen democratic legitimacy without waiting for criminal trials that often continue for several years.

Improving Administrative Efficiency:

- Ministers or heads of government remaining in prolonged custody may face practical limitations in discharging constitutional responsibilities.
- Temporary separation from executive office may facilitate smoother functioning of government and uninterrupted administrative decision-making.

Major Constitutional and Legal Concerns:

Presumption of Innocence:

- One of the strongest objections is that **arrest does not establish guilt**.
- Criminal law follows the principle that every accused person remains innocent until proven guilty by a competent court after a fair trial.
- Automatic constitutional consequences based solely on detention may undermine this well-established principle of criminal jurisprudence.

Article 21 and Due Process:

- **Article 21** guarantees that no person shall be deprived of life or personal liberty except according to **procedure established by law**.
- Judicial interpretation has expanded this protection to include **fairness, reasonableness** and **due process**.
- Critics argue that compulsory removal before judicial determination of guilt may violate procedural fairness because detention itself is only an intermediate stage of criminal investigation.

Collective Responsibility under the Parliamentary System:

- India follows the **parliamentary form of government**, where the Council of Ministers remains collectively responsible to the elected legislature.
- Continuation in office ordinarily depends upon legislative confidence rather than criminal proceedings.
- Automatic removal triggered by detention may weaken the constitutional relationship between the Executive and the Legislature by allowing external events to determine political leadership.

Potential Misuse of Investigative Powers:

- Arrest powers exercised by investigative agencies may indirectly influence the continuation of elected governments.
- Even if eventual acquittal takes place, temporary removal may produce irreversible political consequences.
- Such possibilities have generated concerns regarding politically motivated investigations and selective use of criminal law.

Impact on Separation of Powers:

- The proposal may indirectly expand the influence of executive investigative agencies over constitutionally elected governments.

- Investigative decisions could effectively alter political leadership before any judicial finding regarding guilt is delivered.
- This may disturb the constitutional balance among the **Executive, Legislature and Judiciary**.

Federal and Democratic Concerns:

Impact on Federalism:

- India's federal structure requires the **Union** and the **States** to function within their respective constitutional spheres while respecting each other's autonomy.
- If an investigating agency functioning under one level of government arrests the head of another government, the proposed automatic constitutional consequences may disturb the balance of **cooperative federalism**.
- Such situations could generate constitutional disputes regarding the neutrality of investigative agencies and the independence of elected State governments.

Rule of Law and Judicial Determination:

- Arrest is intended to facilitate **investigation**, prevent interference with evidence or secure the presence of the accused during legal proceedings; it is not a declaration of guilt.
- At the stage of arrest or remand, courts ordinarily examine only the legality and necessity of detention rather than the merits of the criminal allegations.
- Consequently, removal before judicial determination of guilt may appear inconsistent with the principles of **rule of law, natural justice and fair procedure**.

Constitutional Morality versus Democratic Mandate:

- The proposal reflects the constitutional expectation that holders of public office should maintain high ethical standards.
- At the same time, elected governments derive democratic legitimacy from the electorate and remain politically accountable to legislatures.
- Any constitutional reform must therefore balance **constitutional morality, electoral mandate, institutional accountability and individual rights** without allowing one principle to disproportionately override the others.

Joint Parliamentary Committee (JPC) Recommendations:

Replace Removal with Suspension:

- The Committee has recommended replacing the concept of **automatic removal** with **temporary suspension**, thereby avoiding irreversible constitutional consequences before completion of legal proceedings.
- Suspension would preserve administrative neutrality while respecting the principle that guilt can only be determined by a competent court.

Automatic Restoration:

- The Committee has suggested that suspended office-bearers should automatically regain office if they are **acquitted, discharged** or if prosecution fails to proceed within a prescribed time.
- This recommendation seeks to reduce long-term political consequences arising from unsuccessful or delayed criminal proceedings.

Definition of Serious Criminal Offence:

- The Committee recommends clearly defining **serious criminal offences** as offences punishable with **five years or more imprisonment**.

- A precise statutory definition would reduce ambiguity, improve legal certainty and minimise arbitrary application.

Comparative Constitutional Perspective:

International Practice:

- Most parliamentary democracies do not prescribe automatic removal merely on the basis of arrest.
- Constitutional conventions generally require political resignation where public confidence is seriously affected, while legal disqualification usually follows **conviction** rather than detention.
- Many democracies rely upon **ethical standards, political accountability, judicial independence** and **transparent investigations** instead of automatic constitutional disqualification during investigation.

Way Forward:

Balanced Constitutional Reform:

- Any reform should strengthen **clean politics** while fully respecting **due process, presumption of innocence** and **judicial independence**.
- Constitutional accountability mechanisms should avoid creating opportunities for politically motivated misuse of criminal investigations.

Strengthening Institutional Safeguards:

- **Time-bound trials** involving elected representatives can reduce prolonged uncertainty and improve public confidence.
- Greater **independence, professionalism** and **accountability** of investigative agencies would minimise concerns regarding selective investigations.
- Stronger judicial oversight over prolonged detention involving constitutional office-bearers can provide additional procedural safeguards.

Alternative Measures:

- Political parties should adopt stricter internal standards while selecting candidates for constitutional offices.
- Faster disposal of criminal cases involving legislators, transparent disclosure of pending criminal cases and improved electoral reforms can achieve accountability without disturbing constitutional balance.
- Strengthening institutional ethics, public transparency and democratic accountability may provide more durable solutions than automatic constitutional disqualification based solely on detention.

Value Addition for UPSC:

Relevant Constitutional Provisions:

- **Article 74** – Council of Ministers to aid and advise the President.
- **Article 75** – Appointment, tenure and collective responsibility of the Union Council of Ministers.
- **Article 163** – Council of Ministers to aid and advise the Governor.
- **Article 164** – Appointment and tenure of the State Council of Ministers.
- **Article 239AA** – Special constitutional provisions relating to the National Capital Territory of Delhi.
- **Article 21** – Protection of life and personal liberty through fair, just and reasonable legal procedure.

Important Constitutional Principles:

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- Rule of Law
- Presumption of Innocence
- Natural Justice
- Due Process
- Collective Responsibility
- Parliamentary Executive
- Separation of Powers
- Federalism
- Constitutional Morality
- Basic Structure Doctrine

Important Supreme Court Judgments:

- **Manoj Narula v. Union of India (2014):** The Supreme Court held that although persons with criminal antecedents are not constitutionally barred from becoming Ministers, the **Prime Minister** and **Chief Ministers** should exercise constitutional morality and prudence while selecting members of the Council of Ministers.
- **Public Interest Foundation v. Union of India (2018):** The Supreme Court emphasised electoral transparency by directing disclosure of criminal antecedents but observed that creation of additional disqualifications for legislators lies primarily within Parliament's legislative domain.
- **K. Prabhakaran v. P. Jayarajan (2005):** The Court reaffirmed that statutory disqualifications affecting electoral rights must be interpreted strictly because they have significant democratic consequences.

Keywords for UPSC Preparation:

- Criminalisation of Politics
- Ethical Governance
- Constitutional Morality
- Due Process
- Collective Responsibility
- Democratic Accountability
- Rule of Law
- Judicial Independence
- Cooperative Federalism
- Institutional Integrity

UPSC Mains Value Addition:

- The **Constitution (130th Amendment) Bill, 2025** highlights the constitutional challenge of reconciling **ethical governance** with **individual liberty**. Sustainable reform should strengthen **political accountability**, **institutional integrity**, **judicial safeguards**, **constitutional morality** and **democratic legitimacy** simultaneously, ensuring that efforts to reduce the criminalisation of politics do not compromise the foundational principles of the Constitution or the independence of democratic institutions