

Legislative Brief

The Constitution (130th Amendment) Bill, 2025, The Jammu and Kashmir and Union Territories (Amendment) Bills, 2025 (Removal of Ministers upon Detention)

The Constitution (130th Amendment) Bill, 2025, The Jammu and Kashmir Reorganisation (Amendment) Bill, 2025 and The Government of Union Territories (Amendment) Bill, 2025 were introduced in Lok Sabha on August 20, 2025.

The Bills have been referred to a Joint Parliamentary Committee (Chair: Ms Aparajita Sarangi).

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Highlights of the Bills

- ◆ The Constitution (130th Amendment) Bill, 2025 seeks to provide for the removal of a Minister if: (i) he is accused of an offence punishable with five or more years of imprisonment, and (ii) he has been arrested and detained for 30 consecutive days.
- ◆ Removal can be done by the President or Governor upon the advice of the Prime Minister or Chief Minister respectively, or automatically on the 31st consecutive day of detention.
- ◆ The Prime Minister or a Chief Minister must resign after 30 consecutive days of detention, failing which, he shall cease to hold office from the day thereafter.
- ◆ Two similar Bills have been introduced for the Union Territories (UTs) of Puducherry, and Jammu and Kashmir (J&K).

Key Issues and Analysis

- ◆ By mandating automatic removal of the Prime Minister or a Chief Minister on the 31st day of arrest and detention, the Bills may violate four features of the basic structure of the Constitution. Parliament cannot make any amendments that violate the basic structure of the Constitution.
- ◆ Parliamentary form: Lok Sabha and State Legislative Assemblies have the sole authority to elect and remove the Prime Minister and Chief Minister respectively. The Prime Minister and Chief Minister have full discretion in appointing Ministers who are qualified to be legislators. The Bills infringes on their authority.
- ◆ Separation of powers: Investigative agencies, which are part of the permanent executive, will have the power to unseat a government by removing the Prime Minister or Chief Minister. This treads upon the powers of the legislature.
- ◆ Federalism: The Constitution earmarks powers for the Union and each state, with each government elected by their respective legislature. Under the Bills, the Prime Minister may be removed by arrest and detention by investigative agencies of a state government. Similarly, a Chief Minister may be removed by such agencies under the Union or other state governments.
- ◆ Rule of Law: Removing a Minister solely based on 30 days of arrest and detention may be judged as arbitrary. At this stage, there is usually no judicial assessment of likelihood of guilt. Default bail applies only if the chargesheet is not filed within 60 or 90 days (based on the offence). After the chargesheet is filed, the judge determines whether there is sufficient evidence to proceed to trial.

PART A: HIGHLIGHTS OF THE BILLS

Context

Article 84 and Article 173 of the Constitution require Members of Parliament (MPs), Members of a State Legislative Assembly (MLAs) / Members of a State Legislative Council (MLCs), to be a citizen of India, and at least 25 years old (for Lok Sabha or State Legislative Assembly) or at least 30 years old (for Rajya Sabha or State Legislative Council). The Parliament may also prescribe additional qualifications through law. Under the Representation of the People Act, 1951 (RP Act, 1951), to be an MP or MLA, a person must be an elector of a parliamentary constituency or any Assembly constituency in that state respectively.¹

Article 102, Article 191 and the Tenth Schedule of the Constitution lay down the grounds for disqualification of legislators. These include: (i) holding an office of profit under government, (ii) being of unsound mind, (iii) being an undischarged insolvent, (iv) ceasing to be an Indian citizen, and (v) defection. Disqualification is decided by the President or Governor on opinion of the Election Commission of India (ECI), or the Chairman or Speaker of the House. The RP Act, 1951 specifies additional grounds for disqualification such as: (i) conviction under certain offences, (ii) corrupt practices, and (iii) failure to submit accounts of election expenses.² Disqualification is decided by the judiciary, President or ECI depending on the ground for disqualification.

The Constitution does not lay down separate provisions for qualification or disqualification of a Minister apart from those that apply to legislators. However, under Article 75(1B) and Article 164(1B), an MP/MLA/MLC who is disqualified for defection is also disqualified to be a Minister until the end of the term or his re-election.

Several High-Level Commissions have recognised that maintaining conviction as a ground for disqualification does not adequately prevent criminalisation of politics due to the difficulty in securing convictions against politically influential legislators. Instead, they have recommended triggering disqualification upon framing of charges, where the court decides whether there is sufficient ground to proceed with a trial.^{3,4,5,6,7}

The Constitution (130th Amendment) Bill, 2025 was introduced in Lok Sabha in August 2025. The Bill provides for the automatic removal of Ministers arrested and detained for 30 consecutive days for serious offences. Two other bills with similar provisions were introduced for the UTs of Puducherry and J&K. The Bills have been referred to a Joint Parliamentary Committee (Chair: Ms Aparajita Sarangi).

Key Features

The Constitution (130th Amendment) Bill, 2025 seeks to provide for the removal of the Prime Minister, a Chief Minister, or any other Minister in the central or a state government, if he is arrested and detained in custody on account of serious criminal offences. It also applies these provisions to the UT of Delhi. Two other Bills have been introduced to apply these provisions to the UTs of Puducherry, and J&K.

- **Removal of Ministers:** A Minister may be removed from office if: (i) he is accused of an offence punishable with imprisonment of five years or more, and (ii) he has been arrested and detained in custody for 30 consecutive days. Such removal can be done by the President, or Governor upon the advice of the Prime Minister or Chief Minister respectively, or automatically on the 31st consecutive day of detention.
- **Removal of Prime Minister or Chief Minister:** In case of the Prime Minister or a Chief Minister, he must resign by the 31st consecutive day of detention, failing which he shall automatically cease to hold office.

PART B: KEY ISSUES AND ANALYSIS

The Bills may violate the basic structure of the Constitution

The Bills propose that the Prime Minister, Chief Minister, or a Minister be removed from office automatically if they are arrested and detained for 30 consecutive days. This applies to detention for an offence punishable with imprisonment of five years or more. This may allow for removal of elected governments or Ministers only on accusations and before a substantial finding of guilt. This action may involve only the investigative agencies, with the court checking validity of arrest and eligibility of bail, without judging the likelihood of guilt.

Therefore, the Bills may violate four features of the basic structure of the Constitution of India. These are: (i) parliamentary form of democracy, (ii) separation of power (iii) federalism, and (iv) rule of law. The basic structure doctrine was laid down by the Supreme Court in *Kesavananda Bharati v State of Kerala* (1973).⁸ The Court held that while the Parliament may amend the Constitution, it could not alter the essential features of the Constitution, i.e., its “basic structure”. These issues are discussed in the following pages.

Parliamentary form of democracy

In *P.V. Narasimha Rao v State* (1998), the Supreme Court recognised that parliamentary democracy forms part of the basic structure of the Constitution.⁹ The Bills may violate this feature on following grounds:

Infringing upon Lok Sabha's powers to appoint or remove the Prime Minister: In a Parliamentary democracy, Lok Sabha has the sole authority to elect the Prime Minister. The Prime Minister is appointed by the President, and is an individual who commands the support of the majority of legislators in Lok Sabha.¹⁰ Lok Sabha has the sole authority to remove the Prime Minister if he loses the confidence of majority of MPs. By mandating automatic removal of the Prime Minister on the 31st day of arrest and detention, the Bills effectively empower investigative agencies to determine the Prime Minister's continuance in office.

Undermining the Prime Minister's discretion in selecting his Council of Ministers: The Prime Minister has the discretion to select and retain his Council of Ministers. Automatic removal of Ministers on the 31st day of arrest and detention may limit this discretion, as actions taken by investigative agencies could affect the composition of the Council of Ministers. In *Manoj Narula v Union of India* (2014), the Supreme Court noted that the selection of Ministers is the "constitutional prerogative" of the Prime Minister or the Chief Minister.¹¹

Chief Minister and Ministers in states: The same reasoning applies to Chief Ministers and Ministers in states.

Separation of Powers

In *Kesavananda Bharati v State of Kerala* (1973), the Supreme Court held that the separation of powers among the legislature, the executive, and the judiciary forms part of the Constitution's basic structure.¹² In a parliamentary democracy, the legislative branch has the exclusive power to elect and dismiss the government. This principle was reiterated in *Government of NCT of Delhi v Union of India* (2023), where the Supreme Court articulated a "triple chain of accountability", i.e., (i) permanent executive is accountable to the government (ii) the government is accountable to the legislatures, and (iii) the legislatures are accountable to the people.¹³

The Bills propose that the Prime Minister or a Chief Minister be removed from office automatically if they are arrested and detained for 30 consecutive days. By triggering removal solely based on arrest and detention, the Bills effectively grant the power to unseat the Prime Minister or a Chief Minister to the permanent executive. This may weaken separation of powers, disrupt the chain of democratic accountability, and enable the bureaucracy or investigative agencies to influence the tenure of elected governments.

Federalism

Federalism in India entails two levels of government – the Union and the states, with the government at each level elected by its respective legislature. In *Kesavananda Bharati v State of Kerala* (1973), the Supreme Court held that federalism forms part of the basic structure of the Constitution.¹⁴ This was reinforced in *S.R. Bommai v Union of India* (1994).¹⁵ The Court noted that the powers are divided between the Union and the states such that each can act independently within its own area of authority. The Bills may violate the principle of federalism on the following grounds:

Allowing one level of government to remove another level of government: The Bills create a mechanism whereby arrest by a law enforcement agency under the jurisdiction of the Union government would result in the removal of the Chief Minister of a state upon 31st day of his arrest and detention. This would result in the removal of the state government. Similarly, a law enforcement agency under the jurisdiction of a state government could remove the Prime Minister or the Chief Minister of another state through arrest and detention under a state law. This would result in the removal of the Union government or that state's government.

Undermining the Prime Minister's or Chief Minister's discretion in selecting his Council of Ministers: By mandating automatic removal of Ministers on the 31st day of arrest and detention, the criminal process initiated by the investigative agencies of one level of government may limit the discretion of the head of the other level of government to select and retain his Council of Ministers.

Rule of Law

Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 14 provides for equality before law and equal protection of laws, which the Court has interpreted as prohibiting arbitrariness. Rule of law includes judicial review as a safeguard against arbitrariness.¹⁶ In *Indira Gandhi v Raj Narain* (1975), the Supreme Court held that rule of law is an essential feature of the Constitution's basic structure.¹⁷

Under criminal procedure, the police register an FIR, investigate, and file a charge sheet if there is sufficient evidence. The Court then examines the material and if it is of the opinion that there is sufficient ground to presume that the accused has committed an offence, it frames charges. After this, the trial begins.¹⁸

The Bills lead to removal of a Minister or the dismissal of the government (in case of removal of the Prime Minister or Chief Minister) merely based on accusation and detention for 30 days. At this stage, there is usually no judicial determination of the likelihood of guilt. Further, arrest is not a finding of guilt or that sufficient

evidence exists for trial. This provision may be arbitrary, and not be in consonance with the basic structure of the Constitution. Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, arrest can be made on reasonable suspicion or for investigation.¹⁹ The arrested person must be produced before a magistrate within 24 hours, but judicial scrutiny is limited to verifying grounds for arrest and procedural compliance. He may further authorise judicial detention up to 60 days, after which default bail is given (90 days for severe offences). This may include up to 15 days (consecutive or in parts) of police custody in the first 40 days (first 60 days if the default bail after is 90 days).²⁰ Courts do not assess the merits of the case at this stage. Substantive evaluation occurs only at the framing of charges. Even at that stage, there is no finding of guilt. Under special laws like the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Money Laundering Act, 2002, bail is granted only after judicial determination of the absence of a prima facie case, often after extended detention.^{21,22} A 30-day threshold could remove a Minister before any judicial scrutiny, raising concerns of arbitrariness. Currently, while there is no separate provision for removal of Ministers, they would be implicitly disqualified if they face disqualification to be an MP. Under the Constitution and the RP Act, 1951, disqualification of MPs and MLAs/MLCs is decided by: (i) the President or Governor, acting on the binding opinion of the Election Commission of India, on grounds such as office of profit, or insolvency; (ii) the Speaker/Chairman, in cases of defection; or (iii) the judiciary, upon conviction for certain offences. In each case, disqualification follows from the determination by a judicial or a high constitutional authority.

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