



# **DAILY EDITORIAL ANALYSIS**

**TOPIC**

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**AN AMENDED CONSTITUTION  
BILL: ITS CONTENTIOUS ISSUES**

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## AN AMENDED CONSTITUTION BILL: ITS CONTENTIOUS ISSUES

### Context

- The introduction of the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 aiming to enhance governance and accountability, along with serious risks to democratic principles and civil liberties.

### About the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025

- It proposes amendments to **Articles 75, 164, and 239AA** — governing the Union Council of Ministers, State Council of Ministers, and the administrative provisions for Delhi, respectively.
- It aims to ensure accountability within the executive by mandating the **removal of Ministers detained for 30 consecutive days** for offences punishable with imprisonment of five years or more.

#### What Is a Constitution Amendment Bill?

- It is a legislative proposal, introduced under **Article 368**, to modify provisions of the Indian Constitution, like changes in the structure of government, electoral processes, or fundamental rights.
- It requires a **special majority**: two-thirds of members present and voting in each House of Parliament.
- Some amendments require ratification by half of the state legislatures if they affect federal provisions (e.g., distribution of powers between Centre and States).

### Key Provisions of the Bill

- **Automatic Removal of Ministers Upon Arrest:** The bill proposes that any Minister, including the Prime Minister or Chief Minister, will be automatically removed from office if they are **arrested and detained for 30 consecutive days** in connection with a **criminal offense**.
  - ♦ It applies regardless of conviction, aiming to uphold ethical standards in governance.
- **Amendment to Articles 75 and 164:** The bill seeks to amend **Article 75 (Union Council of Ministers)** and **Article 164 (State Council of Ministers)** of the Constitution.
  - ♦ These amendments would institutionalize the removal mechanism for elected representatives facing serious criminal charges.
- **Response to Political Corruption:** The government positions the bill as a corrective measure to prevent individuals from running governments from jail, a concern raised in recent political controversies.
- **Ethical Governance Standard:** Inspired by the 'deemed suspension' rule for civil servants detained for over 48 hours, the bill sets a 30-day threshold for elected officials.
  - ♦ It introduces a five-year minimum sentence threshold for offenses that trigger removal, reinforcing accountability.

### Related Concerns & Issues

- **Discretionary Power of Arrest:** The **broad discretionary powers** given to police and enforcement agencies regarding arrests, that could potentially lead to **political misuse**, as 'arrest' itself becomes a trigger for ministerial disqualification.
  - ♦ Arrests continue to be used **disproportionately**, as noted by the **National Police Commission (1977)**, which found that nearly **60% of arrests were unnecessary or unjustified**.
  - ♦ The **Bharatiya Nagarik Suraksha Sanhita (BNSS)** — replacing the CrPC — retains the discretionary language of 'may arrest' leaving significant room for **subjective application**.
- **Risk of Political Misuse:** The proposed amendment could be exploited as a **political weapon**. Given the **perceived influence of the executive over investigative agencies**, Opposition leaders could be targeted through **strategic arrests** under the pretext of criminal allegations.
  - ♦ High Courts have repeatedly cited non-compliance with **Arnesh Kumar vs State of Bihar (2014)**, where the Supreme Court directed police to record reasons for arrest.

- **Judicial Authorisation of Detention:** The provision allowing removal after 30 days of judicial custody assumes **detention equates to guilt**, contradicting the **presumption of innocence**.
  - ♦ Courts may remand individuals even in weak cases, extending custody without conviction.

### 30-Day Custody Clause and Bail Challenges

- **Bail as a Deciding Factor:** The 30-day threshold effectively makes **bail decisions crucial**. A Minister obtaining bail before the 31st day avoids disqualification.
  - ♦ However, bail is often denied due to **subjective considerations** like the gravity of offence or political stature.
- **Default Bail Overlooked:** The Bill does not account for **default bail provisions** under **Section 167(2) CrPC / Section 187 BNSS**, which allow release if the investigation is not completed within 60–90 days.
  - ♦ Thus, the 30-day rule appears **arbitrary and inconsistent** with procedural timelines.
- **Impact of Special Statutes:** Including offences under **PMLA, NDPS, and UAPA** heightens the risk of prolonged incarceration, as these laws impose **twin bail conditions** that effectively reverse the burden of proof.
  - ♦ The **Manish Sisodia case** exemplifies this — bail was granted only after **17 months** in custody under the PMLA.
- **Power, Influence, and the Bail Dilemma:** Courts may view Ministers as capable of **influencing witnesses or tampering with evidence**, making bail less likely.
  - ♦ It creates a **paradox** — continuing as a Minister may hinder bail, while resigning could end one's political career prematurely.

### Judicial Perspectives on Arrest and Detention

- **Deenan vs Jayalalithaa (1989):** The Madras High Court clarified that arrest powers under Section 41 CrPC are **discretionary**, not mandatory.
- **Joginder Kumar vs State of UP (1994):** The Supreme Court held that **no arrest should be made merely because it is lawful to do so**.
- **Amarawati vs State of UP (2004):** The Allahabad High Court reiterated that **police are not bound to arrest** in every cognisable offence.
- **Satender Kumar Antil vs CBI (2022):** The Court reaffirmed compliance with **Sections 41 and 41A CrPC**, stressing minimal interference with liberty.

### Way Forward: Balancing Reform With Constitutional Safeguards

- **Judicial Oversight and Safeguards:** The Supreme Court has emphasized that mere legality of arrest is not enough — there need to be justifiable grounds for detention.
  - ♦ Incorporating judicial review mechanisms to prevent misuse and ensure due process.
- **Parliamentary Scrutiny:** The bill has been referred to a Joint Parliamentary Committee, which is expected **to examine its constitutional validity**, scope, and potential for misuse.
  - ♦ It is crucial to refine the bill and address concerns raised by opposition leaders and civil society.
- **Political Consensus and Debate:** Opposition leaders have called it a **'super emergency'** and a threat to democracy.
  - ♦ Building cross-party consensus will be essential to ensure the bill is not perceived as partisan or authoritarian.
  - ♦ Engaging with civil society, legal scholars, and constitutional experts can help shape a more balanced version of the bill.

**Conclusion**

- While the **One Hundred and Thirtieth Amendment Bill** seeks to uphold **constitutional morality** and **ministerial accountability**, it raises critical concerns about **due process**, **misuse of power**, and **politicisation of law enforcement**.
  - ♦ Without robust safeguards against **arbitrary arrest** and **prolonged detention**, the proposed amendments may erode the very democratic principles they intend to strengthen.

Source: TH

**Daily Mains Practice Question**

[Q] Critically examine the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025. Does the provision for automatic removal of Ministers upon arrest strengthen democratic accountability or pose risks to due process and federalism?

