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DATA PRIVACY AND DIGITAL SURVEILLANCE IN INDIA

-PRUTHVIRAJ VITTHAL VALEKAR

INTRODUCTION

The twenty-first century has witnessed an unprecedented digital revolution that has fundamentally altered governance, commerce, communication, and everyday life. India, now one of the world's largest digital democracies, has embraced technology through ambitious initiatives such as the Digital India Programme, Aadhaar, Unified Payments Interface (UPI), DigiLocker, and numerous e-governance platforms. These initiatives have undoubtedly improved administrative efficiency, expanded financial inclusion, and simplified access to public services. Simultaneously, however, they have resulted in the large-scale collection, storage, processing, and sharing of personal information.

The increasing dependence on digital technologies has transformed personal data into one of the most valuable resources of the modern economy. Information relating to an individual's identity, finances, health, location, online behaviour, and biometric characteristics is routinely processed by both governmental and private entities. While this data enables innovation and improved governance, it also creates substantial risks relating to privacy, unauthorized surveillance, identity theft, and misuse of personal information. The constitutional debate surrounding privacy in India reached its defining moment with the Supreme Court's historic judgement in ***Justice K.S. Puttaswamy v. Union of India (2017)***. The Court unanimously recognized privacy as a fundamental right under Article 21 of the Constitution, affirming that informational privacy forms an integral part of human dignity, autonomy, and personal liberty. This landmark judgement fundamentally reshaped India's constitutional understanding of digital rights and imposed limitations on state intrusion into private life.

Despite this constitutional recognition, India's expanding surveillance infrastructure—including Aadhaar authentication, facial recognition technologies, internet interception mechanisms, metadata analysis, and AI-assisted monitoring—continues to generate concerns regarding proportionality, accountability, and transparency. The challenge before modern India is therefore

not whether surveillance should exist, but how it should be regulated to preserve both national security and constitutional freedoms.

The Constitutional Right to Privacy

Privacy was not originally enumerated as a fundamental right in the Constitution of India. Early judicial decisions adopted a restrictive interpretation, denying the existence of an independent constitutional right to privacy. Over time, however, judicial interpretation gradually expanded the meaning of personal liberty under Article 21. The watershed moment arrived in ***Justice K.S. Puttaswamy v. Union of India***, where a nine-judge bench unanimously held that privacy is intrinsic to life, liberty, dignity, and individual autonomy. The Court emphasized that privacy extends beyond physical spaces and includes informational privacy, decisional autonomy, bodily integrity, and the freedom to control personal information.

Importantly, the judgement introduced the **principle of proportionality**, requiring every state action infringing privacy to satisfy four essential conditions:

- existence of a valid legal basis;
- pursuit of a legitimate state objective;
- necessity of the measure adopted; and
- proportionality between the objective sought and the extent of intrusion.

These constitutional principles now serve as the benchmark against which surveillance laws and executive actions must be evaluated.

Digital Surveillance in Contemporary India

Digital surveillance refers to the monitoring, interception, collection, and analysis of information generated through digital technologies. Surveillance may involve interception of telephone communications, internet activity, emails, social media interactions, biometric identification, financial transactions, or location tracking. India's surveillance architecture has expanded considerably during the last decade. Major surveillance infrastructures include Aadhaar, NATGRID, NETRA, facial recognition systems, CCTV networks, and internet monitoring

mechanisms. These technologies undoubtedly strengthen law enforcement, national security, disaster management, and public administration. However, their increasing integration into governance has also generated legitimate concerns regarding excessive executive power and inadequate safeguards. One of the most debated examples is Aadhaar—the world's largest biometric identification programme. Although the Supreme Court upheld Aadhaar's constitutional validity, it simultaneously imposed significant restrictions on its mandatory use and emphasized that biometric databases require strong legal protection to prevent misuse and unauthorized access.

Similarly, controversies surrounding the alleged use of Pegasus spyware demonstrated how sophisticated surveillance technologies may potentially be deployed without sufficient transparency or independent oversight. These incidents have intensified demands for greater judicial supervision and institutional accountability.

Legal Framework Governing Surveillance

India's surveillance regime primarily operates through the **Indian Telegraph Act, 1885**, the **Information Technology Act, 2000**, and the recently enacted **Digital Personal Data Protection Act, 2023**.

Section 5(2) of the Telegraph Act authorizes interception of communications during situations involving public emergency or public safety. However, the broad and undefined nature of these expressions has attracted criticism for granting excessive executive discretion without adequate judicial review. The Information Technology Act extends similar surveillance powers into cyberspace. Sections 69 and 69A authorize interception of electronic communications and blocking of online content under specified circumstances. Although these provisions are intended to protect national security and public order, concerns persist regarding procedural transparency and limited external oversight. The enactment of the **Digital Personal Data Protection Act, 2023 (DPDP Act)** represents a landmark development in India's privacy jurisprudence. The legislation establishes principles of consent-based data processing, defines obligations of data fiduciaries, and grants rights to data principals. Nevertheless, critics argue that extensive governmental exemptions under the Act may dilute the practical effectiveness of these

protections by permitting broad state access to personal information without equivalent accountability mechanisms.

State Interests versus Individual Rights

The central constitutional challenge lies in balancing legitimate state interests with individual freedoms. Governments worldwide increasingly rely upon digital surveillance for combating terrorism, cybercrime, organized crime, financial fraud, and threats to national security. Such objectives are undeniably legitimate. However, surveillance also possesses the capacity to undermine democratic values when exercised without meaningful safeguards. Constant monitoring may produce a "chilling effect" whereby citizens hesitate to express political opinions, participate in public discourse, or criticize governmental policies for fear of observation. The principle of proportionality articulated in *Puttaswamy* therefore assumes critical importance. Surveillance measures must always remain necessary, narrowly tailored, and subject to effective review. Blanket or indiscriminate surveillance cannot be reconciled with constitutional guarantees of liberty and dignity.

Data Privacy Challenges in the Digital Age

The digital economy has introduced entirely new categories of privacy concerns. Personal information now extends far beyond names and addresses to include biometric identifiers, location histories, browsing behaviour, purchasing habits, social media interactions, and artificial intelligence profiles.

Large-scale data breaches affecting both governmental databases and private corporations have demonstrated the vulnerability of personal information. Simultaneously, private technology companies increasingly engage in behavioural profiling, targeted advertising, and predictive analytics—phenomena often described as **surveillance capitalism**.

Emerging technologies such as facial recognition, machine learning, big data analytics, and artificial intelligence further complicate privacy protection. These technologies enable continuous monitoring and automated decision-making while often lacking transparency regarding how personal information is processed or utilized.

Cross-border data transfers, cloud computing, cryptocurrency transactions, and digital payment ecosystems introduce additional regulatory challenges requiring international cooperation and harmonized legal standards.

Comparative Perspectives

International experience provides valuable guidance for India's evolving regulatory framework.

The **European Union's General Data Protection Regulation (GDPR)** is widely regarded as the global benchmark for data protection. It grants individuals extensive rights, including access, correction, deletion, portability, and informed consent. Importantly, the GDPR establishes independent supervisory authorities with significant enforcement powers and imposes substantial financial penalties for violations.

The **United States**, by contrast, adopts a security-oriented approach. Legislation such as the USA PATRIOT Act expands surveillance capabilities while subjecting intelligence activities to judicial authorization through the Foreign Intelligence Surveillance Court (FISC), congressional oversight, and internal review mechanisms.

Compared with these jurisdictions, India possesses relatively extensive surveillance powers but comparatively weaker institutional safeguards and independent oversight mechanisms. Strengthening transparency and regulatory independence therefore remains essential.

Judicial Oversight and Constitutional Safeguards

The judiciary occupies a central position in protecting privacy and constitutional governance. Through judicial review, courts ensure that executive action remains consistent with constitutional limitations and fundamental rights. Judicial oversight serves several essential functions. Courts examine the legality of surveillance measures, assess proportionality, provide remedies against unlawful intrusion, interpret privacy legislation, and maintain equilibrium between national security and civil liberties. The continued development of privacy jurisprudence through constitutional adjudication remains indispensable for preserving democratic accountability in an increasingly digital society.

Need for Legal and Institutional Reform

Rapid technological evolution demands corresponding legal reform. Many existing surveillance statutes were enacted long before the emergence of artificial intelligence, biometric databases, social media platforms, cloud computing, and algorithmic decision-making.

A comprehensive surveillance law should therefore establish:

- precise statutory definitions;
- independent judicial authorization;
- periodic legislative review;
- transparent reporting obligations;
- effective grievance mechanisms;
- strong institutional oversight; and
- meaningful remedies for violations.

Similarly, the Digital Personal Data Protection Act requires further strengthening through narrower governmental exemptions, greater regulatory independence, enhanced enforcement powers, stronger rights for individuals, and increased transparency regarding state access to personal information.

Independent oversight bodies equipped with technical expertise, financial autonomy, and investigative authority are equally necessary to ensure accountability in surveillance practices.

Technology, Cybersecurity, and Public Awareness

Technology simultaneously threatens and protects privacy. While artificial intelligence, predictive analytics, facial recognition, and behavioural profiling create new surveillance capabilities, technological solutions such as encryption, anonymization, secure authentication, and privacy-enhancing technologies also strengthen individual privacy.

Effective data protection therefore depends not only upon legislation but also upon robust cybersecurity infrastructure capable of preventing unauthorized access, cyberattacks, identity theft, and data breaches.

Equally important is public awareness. Citizens must understand their privacy rights, recognize digital risks, exercise informed consent, and hold both governments and private organizations accountable for the use of personal information.

Recommendations

To establish a balanced digital governance framework, the following reforms deserve serious consideration:

- Enact a comprehensive surveillance law governing all forms of digital monitoring.
- Narrow government exemptions under the Digital Personal Data Protection Act, 2023.
- Strengthen the independence and enforcement powers of the Data Protection Board.
- Introduce mandatory judicial authorization for intrusive surveillance measures.
- Establish an independent national surveillance oversight authority.
- Mandate greater transparency through periodic public reporting of surveillance activities.
- Strengthen cybersecurity standards across both public and private sectors.
- Enhance digital literacy and public awareness regarding privacy rights.
- Encourage privacy-by-design principles in technological innovation.
- Promote international cooperation concerning cross-border data protection and digital governance.

CONCLUSION

India's digital transformation represents one of the most ambitious technological developments in the world. Digital governance, biometric identification, artificial intelligence, and data-driven public administration have created unprecedented opportunities for economic development, administrative efficiency, and improved public service delivery. At the same time, these developments have fundamentally altered the relationship between citizens and the state. The constitutional recognition of privacy in *Justice K.S. Puttaswamy v. Union of India* provides a strong normative foundation for protecting individual autonomy in the digital age. Nevertheless, constitutional principles require continuous legislative implementation, effective institutional safeguards, and vigilant judicial oversight. The Digital Personal Data Protection Act, 2023 is an important beginning but not the final destination. Stronger accountability mechanisms,

independent oversight institutions, transparent surveillance procedures, and meaningful remedies remain essential.

A democratic society must ensure that surveillance is **lawful, necessary, proportionate, transparent, and accountable**. National security and public order undoubtedly constitute legitimate governmental objectives, but they cannot justify unrestricted state power. Protecting privacy ultimately safeguards not only individual dignity but also democratic governance itself. As India advances toward an increasingly digital future, constitutional values must remain the guiding framework within which technological innovation and state authority operate. Only by maintaining this delicate balance can India achieve digital progress without compromising the fundamental rights and freedoms that lie at the heart of its constitutional democracy.

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**LIVE-IN RELATIONSHIPS IN INDIA:
A CRITICAL LEGAL ANALYSIS WITH REFORM PERSPECTIVE**

- Monali Sharad Shelke

INTRODUCTION

Marriage has traditionally occupied a central place in Indian society, functioning not only as a legal institution but also as a deeply rooted social, cultural, and religious bond. For centuries, it has been regarded as the primary foundation of family life, inheritance, and social order. However, rapid socio-economic transformation over the past few decades has significantly altered the nature of interpersonal relationships. Urbanization, globalization, higher education, increasing financial independence, particularly among women, and exposure to liberal social values have collectively contributed to changing perceptions about relationships and personal autonomy. One of the most visible outcomes of this transformation is the emergence and gradual acceptance of live-in relationships. A live-in relationship refers to an arrangement where two consenting adults choose to cohabit without entering into a formal marriage. Although such relationships were once considered socially unacceptable, they have increasingly become part of contemporary Indian society, particularly among younger generations living in metropolitan cities.

The emergence of live-in relationships signifies a transition from traditional institution-centric family structures toward relationships based on individual choice and autonomy. This shift reflects changing societal values where companionship, personal freedom, and mutual consent are often considered more important than formal legal status.

Despite these evolving social realities, Indian law continues to function largely within a marriage-centric framework. There is no comprehensive legislation specifically governing live-in relationships. Consequently, a significant gap exists between changing social practices and legal recognition. In the absence of statutory regulation, the judiciary has assumed a proactive role by interpreting constitutional provisions and existing statutes to extend limited protection to individuals in such relationships. Judicial decisions have acknowledged that the choice of two consenting adults to live together falls within the ambit of personal liberty guaranteed under the

Constitution. Nevertheless, reliance upon judicial interpretation rather than legislative enactment has resulted in inconsistencies and legal uncertainty. Questions relating to maintenance, property rights, inheritance, domestic violence, legitimacy of children, and financial security continue to be addressed on a case-by-case basis. This fragmented legal approach highlights the urgent need for a comprehensive statutory framework capable of balancing individual autonomy with legal certainty.

Constitutional Foundation of Live-in Relationships

The constitutional validity of live-in relationships in India is primarily founded upon Article 21 of the Constitution, which guarantees the right to life and personal liberty. Over time, judicial interpretation has considerably expanded the scope of Article 21 to include privacy, dignity, decisional autonomy, and the freedom to make intimate personal choices.

The landmark decision in *Justice K.S. Puttaswamy v. Union of India (2017)* fundamentally transformed Indian constitutional jurisprudence by recognizing privacy as a fundamental right. The Supreme Court held that privacy encompasses personal relationships, decisional autonomy, and the freedom to determine one's own lifestyle. Consequently, the decision of two consenting adults to cohabit without marriage falls within the protected sphere of personal liberty. Similarly, in *Lata Singh v. State of Uttar Pradesh (2006)*, the Supreme Court reaffirmed that every adult possesses the constitutional freedom to choose a life partner without interference from the State or society. The Court emphasized that social disapproval cannot curtail constitutional freedoms. Further strengthening this jurisprudence, *S. Khushboo v. Kanniammal (2010)* recognized that live-in relationships are neither illegal nor criminal. The Court observed that while society may hold differing moral opinions, constitutional rights cannot be subordinated to prevailing social morality. These decisions collectively demonstrate the judiciary's increasing reliance upon the principle of constitutional morality rather than popular morality. Constitutional morality requires that individual dignity, liberty, and equality remain paramount even where social attitudes may be conservative or resistant to change.

Judicial Evolution: Filling the Legislative Vacuum

In the absence of dedicated legislation governing live-in relationships, the judiciary has gradually developed legal principles to address disputes arising from such arrangements.

One of the most significant decisions is ***Indra Sarma v. V.K.V. Sarma (2013)***. Recognizing that live-in relationships cannot be treated uniformly, the Supreme Court introduced the concept of a "relationship in the nature of marriage." It identified several indicative factors for determining whether a relationship deserves legal protection, including:

- Duration of cohabitation;
- Shared household;
- Financial interdependence;
- Domestic arrangements;
- Social recognition of the relationship;
- Mutual commitment similar to marriage.

This framework enabled women in qualifying relationships to seek protection under the Protection of Women from Domestic Violence Act, 2005.

Similarly, ***D. Velusamy v. D. Patchaiammal (2010)*** clarified that not every live-in arrangement attracts legal protection. The Court distinguished stable, long-term relationships resembling marriage from casual or transient relationships, holding that only the former qualify for statutory benefits. While these judgements have undoubtedly filled important legal gaps, they also introduce a significant degree of subjectivity. Courts must determine each case on its own facts without the benefit of clear legislative standards. Consequently, similar factual situations may produce different judicial outcomes, thereby undermining legal certainty.

Furthermore, proving the existence of a marriage-like relationship often places a substantial evidentiary burden upon women seeking maintenance or protection from abuse. Demonstrating long-term cohabitation, financial dependency, or social recognition may be difficult, particularly where relationships have remained private due to prevailing social stigma.

Although judicial activism has undoubtedly expanded legal protection, it remains an imperfect substitute for comprehensive legislative reform.

Existing Statutory Framework

India presently lacks a dedicated statute regulating live-in relationships. Nevertheless, several existing laws provide indirect recognition.

The **Protection of Women from Domestic Violence Act, 2005** represents the most significant legislative development in this regard. Section 2(f) extends protection to women living in relationships "in the nature of marriage," thereby recognizing that domestic violence is not confined solely to legally married couples.

Additionally, courts have interpreted **Section 125 of the Code of Criminal Procedure** liberally to award maintenance in appropriate cases involving long-term live-in relationships. The objective has been to prevent destitution and provide social justice to economically vulnerable women.

The **Indian Evidence Act** also permits courts to presume marriage where prolonged cohabitation is established; thereby conferring limited legal legitimacy upon stable live-in relationships. However, these provisions remain scattered across different statutes and fail to constitute a coherent legal framework. There is no statutory definition of a live-in relationship, no uniform criteria governing legal recognition, and no comprehensive regulation concerning property, succession, financial obligations, or dissolution of such relationships. The resulting fragmentation leaves individuals uncertain regarding their legal rights and responsibilities.

Rights of Women and Children

Women constitute the most vulnerable stakeholders within live-in relationships owing to the absence of comprehensive legal safeguards. Unlike marriage, which automatically creates enforceable legal rights relating to maintenance, inheritance, matrimonial property, and financial support, live-in relationships remain largely dependent upon judicial interpretation. Although the Domestic Violence Act provides important remedies against abuse, it does not comprehensively address broader issues such as succession, matrimonial property, long-term maintenance, or financial security following separation.

Judicial decisions have attempted to bridge this gap. Nevertheless, access to these remedies frequently depends upon establishing that the relationship closely resembled marriage, creating additional evidentiary hurdles. Children born from live-in relationships have received greater judicial protection. In *Tulsa v. Durghatiya (2008)*, the Supreme Court held that children born from prolonged cohabitation should not suffer social or legal disadvantages because of the relationship between their parents. Such children have been recognized as legitimate and entitled to various legal protections. However, ambiguity continues regarding inheritance in ancestral or coparcenary property. While children generally possess rights over the self-acquired property of their parents, judicial opinions concerning ancestral property remain less settled.

This continuing uncertainty demonstrates that although the judiciary has substantially advanced the protection of vulnerable individuals, comprehensive statutory reform remains indispensable.

CONCLUSION

Live-in relationships have become an undeniable social reality in contemporary India. They represent changing notions of family, companionship, and individual autonomy. Yet, the legal system continues to operate predominantly within a marriage-centred framework, creating a disconnect between evolving social practices and legal recognition.

The judiciary has commendably expanded constitutional protections by interpreting Articles 14, 19, and 21 in a progressive manner. Landmark decisions have affirmed that consensual cohabitation between adults forms part of personal liberty, dignity, and privacy. However, judicial intervention alone cannot substitute comprehensive legislation.

Important questions concerning maintenance, succession, property rights, financial obligations, and dissolution continue to remain uncertain. Women often face economic vulnerability, while children continue to encounter ambiguities regarding inheritance. These inconsistencies undermine legal certainty and increase litigation.

India can draw valuable lessons from jurisdictions such as the United Kingdom and Australia, where structured legal frameworks recognize long-term cohabitation while preserving individual autonomy. Similar reforms, adapted to India's constitutional and social context, could establish

objective criteria for recognizing live-in relationships and provide appropriate legal safeguards without undermining the institution of marriage. The need of the hour is a balanced legislative framework that acknowledges changing social realities while protecting constitutional values of liberty, equality, dignity, and justice. Such a framework should define live-in relationships, provide optional registration mechanisms, recognize cohabitation agreements, strengthen women's rights, clarify inheritance and maintenance provisions, and establish uniform judicial guidelines.

Ultimately, the law must evolve alongside society. A progressive legal framework governing live-in relationships would not diminish the institution of marriage; rather, it would ensure that all individuals, irrespective of the nature of their personal relationships, receive equal protection of the law. In a constitutional democracy committed to human dignity and individual freedom, legal recognition should reflect social realities while safeguarding the rights of the most vulnerable.

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THE CONSTITUTION (ONE HUNDRED & THIRTIETH AMENDMENT) BILL, 2025

-RAYKAR VIVEK VIJAYKUMAR

ABSTRACT

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, introduced in the Lok Sabha on 20 August 2025 by the Union Home Minister, represents one of the most constitutionally ambitious legislative proposals in recent Indian parliamentary history. The Bill proposes an automatic or quasi-automatic mechanism for the removal of Ministers—including the Prime Minister and Chief Ministers—upon detention in custody for a continuous period of thirty days in connection with an offence punishable with imprisonment of five years or more. At first glance, the proposal appears to promote clean governance and constitutional morality. However, a deeper constitutional examination reveals serious concerns regarding the presumption of innocence, separation of powers, federalism, democratic accountability, and the basic structure of the Constitution of India. This article examines the proposed amendment through the prism of constitutional principles, landmark Supreme Court decisions, and comparative constitutional practices. It argues that although the legislative objective is commendable, the mechanism adopted by the Bill raises substantial constitutional questions that may not withstand scrutiny under the basic structure doctrine.

Keywords: Constitutional Amendment, Criminalisation of Politics, Basic Structure Doctrine, Presumption of Innocence, Separation of Powers, Federalism, Article 75, Article 164, Constitutional Morality.

Thirty Days to Removal? A Constitutional Debate

The Constitution of India has always been regarded as a living document—one that evolves with changing social, political, and constitutional realities. Since its commencement on 26 January 1950, Parliament has amended the Constitution more than one hundred times to address emerging governance challenges. Yet, every constitutional amendment must remain within the limits imposed by the Constitution itself. The landmark judgement in *His Holiness Kesavananda*

Bharati v. State of Kerala firmly established that while Parliament possesses extensive powers under Article 368, it cannot alter or destroy the Constitution's basic structure.

Against this constitutional backdrop, the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 deserves careful scholarly attention. The Bill proposes amendments to Articles 75, 164, and 239AA to provide for the removal of a Minister—including the Prime Minister and Chief Ministers—if the Minister is accused of an offence punishable with imprisonment of five years or more and remains in custody continuously for thirty days.

Unlike the present constitutional scheme, the proposed amendment does not require conviction by a competent court. Detention alone becomes sufficient to trigger removal from constitutional office. Although the Bill permits reappointment upon release from custody, the temporary nature of removal does little to mitigate the serious constitutional implications associated with such a mechanism.

While the objective of preventing criminalisation of politics is unquestionably legitimate, the constitutional validity of the proposed mechanism remains deeply contested. The proposal compels us to ask a fundamental question: **Can constitutional morality be promoted by compromising constitutional guarantees?**

Criminalisation of Politics: The Context Behind the Bill

The criminalisation of politics has remained one of the most persistent challenges confronting Indian democracy. Reports published by the Association for Democratic Reforms (ADR) indicate that a significant percentage of elected Members of Parliament and State Legislators face pending criminal cases, many involving serious offences.

The Representation of the People Act, 1951 presently addresses this concern through conviction-based disqualification. Sections 8(1), 8(2), and 8(3) provide that legislators stand disqualified only after conviction for specified offences.

This framework received judicial affirmation in *Lily Thomas v. Union of India* (2013), where the Supreme Court struck down Section 8(4) of the Representation of the People Act. The Court held

that Parliament could not permit convicted legislators to continue merely because an appeal had been filed. Importantly, however, the Court drew a clear constitutional distinction between **conviction** and **accusation**. Disqualification followed only after a judicial determination of guilt.

The 130th Amendment Bill attempts to bridge what some perceive as a legislative gap by extending constitutional consequences to prolonged detention even before conviction. This marks a significant departure from India's existing constitutional philosophy.

What Exactly Does the Bill Propose?

The proposed amendment introduces a common mechanism into Articles 75, 164, and 239AA of the Constitution.

A Minister would cease to hold office if two conditions are satisfied:

- the Minister is accused of an offence punishable with imprisonment of five years or more; and
- the Minister remains in judicial custody continuously for thirty days.

The proposal applies uniformly to:

- the Prime Minister;
- Union Cabinet Ministers;
- Ministers of State;
- Deputy Ministers;
- Chief Ministers;
- State Ministers; and
- Ministers of the National Capital Territory of Delhi.

The Bill also permits reappointment after release from custody. Nevertheless, removal—even temporarily—can produce irreversible political, constitutional, and administrative consequences.

Unlike impeachment or conviction-based disqualification, the proposed mechanism attaches constitutional consequences to detention, a procedural stage of criminal law where guilt has not yet been determined.

Constitutional Questions Raised by the Bill

The most significant constitutional issue concerns the **presumption of innocence**, which forms an indispensable part of Indian criminal jurisprudence.

Articles 20 and 21 of the Constitution guarantee procedural fairness and personal liberty. Over the years, the Supreme Court has interpreted Article 21 to encompass fairness, dignity, privacy, and due process. These constitutional guarantees recognise that every accused person remains innocent until proven guilty through a fair judicial process.

The proposed amendment appears to invert this constitutional philosophy.

Detention merely enables investigation or trial; it does not establish guilt. By making detention the trigger for removal from executive office, the amendment risks equating accusation with culpability.

This concern becomes particularly serious considering the possibility of politically motivated arrests. Indian constitutional history contains numerous examples where criminal law has allegedly been employed against political opponents. If detention itself results in removal from constitutional office, investigative agencies may indirectly acquire the ability to influence the composition of democratically elected governments.

Consequently, the Bill raises an uncomfortable constitutional paradox: **Can executive power be altered through criminal procedure without judicial determination of guilt?**

Separation of Powers and Constitutional Governance

The Constitution carefully distributes governmental authority among the Legislature, Executive, and Judiciary.

Although India does not follow a rigid separation of powers, constitutional governance depends upon maintaining institutional balance.

Under the proposed amendment, removal from ministerial office follows automatically upon continued detention. Judicial scrutiny of the merits of removal becomes largely unnecessary because the constitutional consequence flows from detention itself.

This indirectly shifts substantial constitutional influence toward investigative agencies responsible for arrests.

If an investigating agency arrests a Minister and bail is denied, the constitutional clock begins ticking. Thirty days later, removal follows—not because a court has found the Minister guilty, but because criminal procedure has remained pending.

Such a mechanism potentially allows investigative agencies to affect executive composition without judicial adjudication, thereby disturbing the constitutional equilibrium between investigation, adjudication, and governance.

Federalism Under Strain

The Bill also raises important questions concerning Indian federalism. Federalism has repeatedly been recognised by the Supreme Court as part of the Constitution's basic structure. If a Chief Minister of an opposition-ruled State remains in custody for thirty days, removal would automatically follow. Such a provision could significantly alter political stability within States. The decision in *S.R. Bommai v. Union of India* established that elected State governments cannot be displaced through indirect constitutional manipulation. Any mechanism capable of altering the political composition of State governments through executive-controlled investigative agencies inevitably attracts scrutiny under the federalism doctrine. Therefore, although the amendment applies equally across the Union and States, its practical implications for Centre-State relations cannot be ignored.

The Supreme Court's Constitutional Approach

Indian constitutional jurisprudence provides important guidance for evaluating the proposed amendment. In *Kesavananda Bharati v. State of Kerala (1973)*, the Supreme Court introduced the Basic Structure Doctrine, holding that Parliament cannot amend the Constitution in a manner that destroys its essential features. Subsequently, in *Indira Nehru Gandhi v. Raj Narain (1975)*, the Court reaffirmed that democracy, judicial review, rule of law, and free and fair elections form part of the Constitution's basic structure. In *Lily Thomas v. Union of India (2013)*, the Court upheld immediate disqualification only after conviction—not accusation. Similarly, *Manoj Narula v. Union of India (2014)* recognised constitutional morality as an important guiding principle while simultaneously declining to judicially control ministerial appointments, leaving such decisions to constitutional conventions and democratic accountability. Collectively, these judgements suggest that constitutional morality cannot be pursued by compromising equally fundamental constitutional guarantees such as due process, rule of law, and judicial determination of guilt.

How Other Democracies Approach the Issue

Comparative constitutional experience reveals a significantly different approach. In the **United Kingdom**, Ministers ordinarily resign based on constitutional conventions or political accountability rather than statutory compulsion. Allegations alone do not automatically terminate ministerial office. In the **United States**, even the President cannot be removed merely because criminal allegations exist. Removal requires impeachment by the House of Representatives followed by conviction in the Senate. Similarly, countries such as Canada and Australia rely predominantly upon political responsibility and judicial determination rather than automatic constitutional consequences arising from detention. India's proposed amendment therefore represents a substantial departure from prevailing constitutional practice among mature parliamentary democracies.

Balancing Accountability and Constitutional Liberty

The Bill undoubtedly addresses a genuine democratic concern. Criminalisation of politics undermines public confidence in governance, weakens constitutional institutions, and affects democratic legitimacy. Supporters argue that Ministers detained for prolonged periods cannot

effectively discharge constitutional responsibilities and should therefore vacate office temporarily.

However, the proposed solution raises equally compelling constitutional concerns. Removal before conviction risks violating the presumption of innocence. Political misuse of investigative agencies remains a realistic possibility. Automatic removal bypasses meaningful judicial oversight. Moreover, an unusual constitutional inconsistency emerges: legislators continue as Members until conviction under existing law, whereas Ministers could lose executive office merely because they remain detained. Such asymmetry lacks convincing constitutional justification.

Towards Constitutionally Sound Reform

The objective of clean governance need not be abandoned merely because the proposed mechanism raises constitutional difficulties. Several alternatives deserve serious consideration. First, any proposal for removal should involve **mandatory judicial oversight**. A constitutional court should determine whether continued ministerial office would genuinely obstruct justice before removal takes effect. Secondly, India should establish **time-bound special courts** for criminal trials involving elected representatives. Expeditious adjudication would reduce prolonged uncertainty while preserving constitutional guarantees. Thirdly, temporary **suspension from ministerial functions**, rather than automatic removal, may represent a more balanced constitutional solution. Finally, greater institutional independence for investigative agencies would reduce concerns regarding politically motivated arrests. Such reforms would promote constitutional morality without undermining constitutional liberty.

CONCLUSION

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 represents one of the most ambitious constitutional reform proposals in contemporary India. Its objective—to reduce criminalisation of politics and strengthen ethical governance—is both legitimate and necessary. Yet constitutional governance demands that worthy objectives be pursued through constitutionally permissible means. By attaching removal from constitutional office to thirty days of detention rather than judicial conviction, the proposed amendment raises profound concerns

relating to the presumption of innocence, due process, separation of powers, federalism, democratic legitimacy, and the basic structure of the Constitution.

The Constitution of India has consistently sought to balance governmental accountability with individual liberty. Any constitutional amendment that disturbs this balance must withstand the most rigorous judicial scrutiny. A more constitutionally sustainable approach would combine speedy criminal trials, judicial supervision, stronger ethical standards, and independent investigative institutions. Such reforms would address the criminalisation of politics while preserving the constitutional values of liberty, equality, democracy, and the rule of law that form the enduring identity of the Indian Constitution.

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