

Governing From Behind Bars: Ministerial Accountability, Political Convention and the 130th Constitutional Amendment Bill in Comparative Perspective

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Abstract

India and the United States are both large federal constitutional democracies that face a common and acute structural issue: what to do when an executive office holder; a minister, a Chief Minister or a President is criminally indicted with a grave crime and declines to step down? This paper will do a comparative constitutional perspective of how the two systems have addressed this challenge and whether the response of either is satisfactory. The United States system is rooted in political custom and impeachment system, a mixture that was not only proven structurally inadequate as the criminal charges against Donald Trump in 2023-24, but also by the ruling of the Supreme Court in *Trump v. United States* (2024) when political actors choose to go against accepted norms. Other failures of the doctrine of pleasure and collective ministerial responsibility were seen in India in the cases of *V. Senthil Balaji* and *Arvind Kejriwal*, which led to the introduction of a Bill, the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, to establish an automatic process of removing a minister who has been in judicial custody of at least thirty days in a row. The argument of this article is that the two systems have failed in fundamentally different ways; the American system by being excessively reliant on convention, the Indian proposal by the danger of automaticity in the absence of sufficient procedural checks and balances, and that the lessons learned out of each of those failures can be directly applied to the design of the other. The article suggests a reformed constitutional structure that would deal with these risks without losing the aim of accountability of the reform.

Keywords: Ministerial Accountability, Criminalisation of Politics, 130th Constitutional Amendment Bill, Trump Indictments, Doctrine of Pleasure, Custody Paradox, Comparative Constitutional Law, Impeachment, Basic Structure Doctrine, Executive Accountability, India, United States

1. INTRODUCTION

India and the United States are more closely related in constitutional DNA than is generally accepted. Both are massive, federal, written-constitution democracies whose judicial system is independent, in which the rule of law is upheld, and whose elections are at least formally free. The question to which both have been forced, in the last decade, to answer uneasily is: what does a constitutional democracy do when

an executive office holder, a sitting minister, a Chief Minister, or even a President himself, is accused of serious criminal offences and refuses to resign?

It is the fact that the two systems agree on their answers which makes them instructive, as they are at the opposite ends of a spectrum. The United States has laid nearly exclusive dependence on political convention and the formal procedure of impeachment, hoping that the political price of continuing to be in office as criminally indicted would have been prohibitive. The Trump indictment of 2023-24 and the historic case, *Trump v. United States* have demonstrated that assumption to be false.¹ India, which has also followed its own ministers ruling behind bars, Senthil Balaji as Electricity Minister of Tamil Nadu and Arvind Kejriwal as Chief Minister of Delhi, has decided that convention is not sufficient and proposed a mandatory constitutional remedy in the Constitution (One Hundred and Thirtieth Amendment) Bill, 2025.²

2. THE CRIMINALISATION OF POLITICS: A SHARED STRUCTURAL ISSUE

A. India: Entry-stage Institutionalised Criminality

Criminalisation of politics in India is neither an isolated nor a marginal phenomenon. It is a systemic feature of the electoral system, which is present even at the level of selecting candidates. The information that has been collected by the Association of Democratic Reforms is clear. These numbers were also generally similar in the 2024 general elections, with 46 percent of elected Members of Parliament declaring criminal cases against them and 31 percent declaring serious criminal cases, including murder, attempted murder, kidnapping, rape, and corruption, increasing by 55 percent since 2009.³

The empirical studies of Milan Vaishnav prove that criminalisation is the result of rational institutional incentive and not screening failure. The parties with criminal records have access to financial resources, coercive organisational networks, and patronage capacity, which are most in demand in the electoral process.⁴ Although, after Association for Democratic Reforms and Public Interest Foundation, there exist mandatory disclosure requirements of the Election Commission, the institutional jurisdiction ends with election, just at the time when the accountability issue is most acute.⁵

¹ *Trump v. United States*, 603 U.S. 593 (2024). (The Supreme Court held that former Presidents enjoy absolute immunity from criminal prosecution for core constitutional powers and presumptive immunity for all official acts, with the line between official and unofficial conduct to be determined by lower courts.)

² The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, Bill No. 111 of 2025, introduced in Lok Sabha on 20 August 2025. See PRS Legislative Research, "The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025", available at: <https://prsindia.org/billtrack/the-constitution-one-hundred-and-thirtieth-amendment-bill-2025> (last visited 28 March 2026).

³ Association for Democratic Reforms (ADR) and National Election Watch, *Analysis of Criminal Background, Financial, Education, Gender and other details of Winners in Lok Sabha 2019 Elections* (ADR, New Delhi, 2019); *Analysis of Criminal Background, Financial, Education, Gender and other details of Winning Candidates: Lok Sabha Elections 2024* (ADR, New Delhi, June 2024), available at: <https://adrindia.org/content/analysis-criminal-background-financial-education-gender-and-other-details-winning-31> (last visited 28 March 2026). (Of 543 winners analysed in 2024, 251 (46%) declared criminal cases and 170 (31%) declared serious criminal cases, representing a 55% increase in MPs with declared criminal cases since 2009.)

⁴ Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* 89–134 (Yale University Press, New Haven, 2017).

⁵ *Association for Democratic Reforms v. Union of India*, (2002) 5 SCC 294; *Public Interest Foundation v. Union of India*, (2019) 3 SCC 488.

3. ACCOUNTABILITY MECHANISMS AND THEIR FAILURE: THE CUSTODY PARADOX IN PRACTICE

A. India: Doctrine of Pleasure and Responsibility

Articles 75(2) and 164(2), respectively, confer the formal power of ministerial removal on the President at the Union level and the Governor at the State level through the doctrine of pleasure. The power of pleasure is thus not really a presidential or gubernatorial power of removal; it is an exercisable power on the recommendation of the head of government, that is to say, on the recommendation of the very man who has the greatest political interest in the retention of a controversial minister.

In theory, the principle of collective ministerial responsibility under Articles 75(3) and 164(2), which holds the Council of Ministers jointly responsible to the lower house, offers an alternative. Practically, a no-confidence motion is impossible to succeed in a majority government, and no Prime Minister or Chief Minister has a constitutional duty to recommend the dismissal of a minister who is under judicial custody. Constitutional morality, as pointed out by the Supreme Court in *Manoj Narula v. Union of India*, required that the holder of executive power should uphold institutional integrity, but the Court did not go any further to give any binding requirement to the head of government to exclude or dismiss criminally charged ministers. The 130th Amendment Bill is Parliament's response.⁶

B. United States: Theory and Convention of Impeachment

The process is strenuous under the Constitution, requiring a two-thirds majority of the Senate to convict the President, Vice President, and all civil officers of the United States on charges of treason, bribery, or other high crimes and misdemeanours, and it has never been successful when dealing with the President.⁷ The Senate vote to convict has been made virtually impossible by partisan polarisation, in all but the most radical bipartisan agreement, the very circumstances least likely to occur; these were the cases that were acquitted in 1868, Bill Clinton, and Donald Trump, both on both counts.

In the case of executive officers other than the President, the Constitution does not automatically have any mechanism of removal. The secretaries of the Cabinet are at the behest of the President, and there is no constitutional requirement for the President to remove a member of the Cabinet when he or she is charged with a crime. It is a system that is based on political convention: the belief that, once indicted, officials resign, and that Presidents will dismiss ministers who are publicly charged with serious criminal offenses. The convention has been widely observed at sub-presidential levels but never applied at the presidential level until Donald Trump and when it was applied, it was unsuccessful.

C. United States: The Trump Indictments and Convention Unenforced

Indictment in four criminal cases in two federal courts and two state courts was brought against Donald J. Trump in August-September 2023. The federal indictments were conspiracy to defraud the United States and obstruction of an official proceeding to certify the 2020 presidential election, and the unlawful retention of classified national defence documents at Mar-a-Lago. Racketeering as specified in Georgia RICO law and falsifying business records in New York were included in the state indictments and Trump

⁶ *Manoj Narula v. Union of India*, (2014) 9 SCC 1. (A Constitution Bench observed that constitutional morality demands that those entrusted with executive power maintain institutional integrity, and that the Prime Minister bears a duty not to appoint persons with serious criminal antecedents to the Council of Ministers, though no binding direction was issued to that effect.)

⁷ U.S. Const. art. II, § 4; art. I, § 3, cl. 6. Andrew Johnson was impeached in 1868 and acquitted by one vote; Bill Clinton was impeached in December 1998 and acquitted in February 1999; Donald Trump was impeached in December 2019 and again in January 2021 and acquitted on both occasions. (No President has ever been convicted by the Senate.)

did not step down. There was no constitutional mechanism that was precipitated.⁸ He remained a presidential candidate and was found guilty on all 34 counts of the New York case on 30 May 2024 but was nonetheless re-elected President in November 2024.

The constitutional structure did not give an automatic answer to any of these occurrences. The decision of the Supreme Court in *Trump v. United States* (2024), strengthening the immunity of the executive against criminal charges, further protected the executive by determining that former Presidents are largely immune to criminal charges on official conduct, and that the line between what acts are official and what are unofficial is to be determined by lower courts.⁹ The constitutional lesson is clear: once a political actor having enough partisan backup chooses to break the rules of accountability, the written Constitution of the United States does not provide any effective check mechanism.

D. The Indian Cases: The Custody Paradox in Practice

The cases of the Indians are all of the same type in magnitude, though they are not alike in every particular. In June 2023, V. Senthil Balaji, the Electricity Minister of Tamil Nadu, was arrested by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002, in a money-laundering cash-for-jobs scheme, but remained in ministerial office months later.¹⁰ In September 2024, he was put on bail and was immediately returned to the Cabinet, proving that even judicial custody was not a constitutional impediment to executive office. The action of the Supreme Court in April 2025, when they gave Balaji an ultimatum to either his ministerial office or his freedom, led him to resign, although such a decision was made by judicial improvisation as opposed to a written constitutional clause.¹¹

The custody paradox appeared in the most acute form in the case of Arvind Kejriwal, the current Chief Minister of Delhi, who was arrested in March 2024 by the Enforcement Directorate in connection with the Delhi Excise Policy case, but, as the sitting Chief Minister, continued to serve in judicial custody, having spent about six months in judicial custody.¹² The same structural vacuum could be seen in the two cases: the current constitutional system had no ready response to the issue of what happens in the situation when a minister or Chief Minister had been put into judicial custody and refused to resign.

4. THE CONSTITUTION (130TH AMENDMENT) BILL, 2025: SOLUTION AND CONSTITUTIONAL RISK

A. The Mechanism Proposed

Proposed in the Lok Sabha on 20 August 2025, the Constitution (One Hundred and Thirtieth Amendment)

⁸ *United States v. Trump*, Case No. 1:23-cr-00257 (D.D.C. 2023); *United States v. Trump*, Case No. 9:23-cr-80101 (S.D. Fla. 2023); *People of the State of New York v. Trump*, Indictment No. 71543/2023 (N.Y. Sup. Ct. 2023); *State of Georgia v. Trump*, Case No. 23SC188947 (Fulton Cty. Super. Ct. 2023).

⁹ *Trump v. United States*, 603 U.S. 593 (2024), per Roberts CJ. (*The ruling created a distinction between official and unofficial presidential acts, leaving the precise boundary to be determined by lower courts, with the practical effect of restricting or delaying prosecution of a substantial portion of the federal charges against Trump.*)

¹⁰ Prevention of Money Laundering Act, 2002, ss. 3 and 4; *V. Senthil Balaji v. State rep. by Deputy Director & Ors.*, Criminal Appeal Nos. 2284–85 of 2023 (Supreme Court, decided on 7 August 2023). (*The Supreme Court upheld the validity of Balaji's arrest by the Enforcement Directorate on 14 June 2023 in connection with a cash-for-jobs scam arising from his tenure as Transport Minister in the AIADMK government.*)

¹¹ *In re Cancellation of Bail of V. Senthil Balaji*, Supreme Court of India (23 April 2025). (*The Court gave Balaji an ultimatum to choose between his ministerial office and his liberty; he resigned on 27 April 2025.*)

¹² *Arvind Kejriwal v. Directorate of Enforcement*, Criminal Appeal No. 2493 of 2024, 2024 INSC 400 (Supreme Court, 12 July 2024). (*Kejriwal was arrested on 21 March 2024, the first sitting Chief Minister in Indian history to be arrested while in office under s. 19 of the Prevention of Money Laundering Act, 2002, in connection with the Delhi Excise Policy case of 2021-22.*)

Bill, 2025, will propose to add Articles 75(5A), 164(4A), and amendments to Article 239AA, stating that a Prime Minister, Chief Minister, or minister who is in judicial custody on a charge punishable by imprisonment of five years or more for thirty or more consecutive days shall cease to hold office.¹³ The provision is a temporary disqualification rather than permanent, as reappointment is expressly allowed upon release from custody.

B. The Constitutional Risks

The mechanism created by the Bill, though, poses constitutional dangers of equal gravity. The most basic is the tension with the presumption of innocence which is implicit in Article 21, as interpreted by the Supreme Court in *Maneka Gandhi v. Union of India*, and subsequently explained by a succession of generations of criminal procedural jurisprudence.¹⁴ In addition to Article 21, the Bill also has to withstand the test of the basic structure doctrine: an amendment that structurally empowers the ousting of elected State executives by centrally controlled investigative agencies risks violating federalism and the separation of powers, both of which have been identified as unamendable provisions of the Constitution.¹⁵ Thirty days of custody is not a conviction. The form of the bail terms is highly unkind under provisions such as the Prevention of Money Laundering Act, 2002, and the Unlawful Activities (Prevention) Act, 1967, and the detained individuals are often detained for many months without trial and without court determining the merits of the charges pressed against them.¹⁶ The case of *Manish Sisodia v. Central Bureau of Investigation* reflects this concern.¹⁷

It is also worrying that the disqualification triggers are also inclusive of UAPA-type charges. The history of the Unlawful Activities (Prevention) Act, so often invoked against journalists, scholars, and political activists, and case law on the application of anti-terror laws, such as the prosecutions of Bhima Koregaon, confirmed by the Supreme Court in *Union of India v. K.A. Najeeb*, that the executive has in the past invoked anti-terror laws to prosecute those who challenge it.¹⁸

The federalism aspect of this danger should be highlighted. Under the American Constitution, the federal government is not allowed to oust a State Governor, and federal investigative agencies are not involved in State executive accountability. The organization of the Indian Constitution is more combined, as Governors are nominated by the Union and central investigative bodies like the Enforcement Directorate and the Central Bureau of Investigation are located beyond the borders of the States. The fact that automatic removal of the State ministers, including Chief Ministers, is conditioned upon arrests by these agencies, and that the vacancy is formally recognised by a Governor appointed by the Union, is what can

¹³ The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, cls. 2-4, proposing arts. 75(5A), 164(4A), and amendments to art. 239AA. See PRS Legislative Research, *supra* note 2.

¹⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. (The Supreme Court held that the procedure established by law under Article 21 must be fair, just, and reasonable, and that personal liberty cannot be curtailed except through a procedure that meets this standard, a principle subsequently extended to include the presumption of innocence as a constitutional requirement.)

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

¹⁶ Prevention of Money Laundering Act, 2002, s. 45(1); Unlawful Activities (Prevention) Act, 1967, s. 43D(5). (Both provisions impose reverse bail conditions requiring the accused to demonstrate that the charges are *prima facie* false and that they are not guilty of the offence, a standard courts have found very difficult to satisfy in practice, resulting in extended pre-trial custodial detention.)

¹⁷ *Manish Sisodia v. Central Bureau of Investigation*, (2024) 9 SCC 597. (A three-judge bench granted bail after 17 months of pre-trial custody, observing that bail is the rule and jail is the exception, and that continued incarceration without trial contravenes the right to personal liberty guaranteed under Article 21 of the Constitution.)

¹⁸ *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713. (The Supreme Court acknowledged that prolonged detention under the Unlawful Activities (Prevention) Act, 1967 without trial may itself constitute grounds for bail notwithstanding the statutory bar under s. 43D(5), indicating judicial discomfort with indefinite pre-trial custody under anti-terror legislation.)

well be termed as a structural tool of political destabilisation of elected State governments. This issue is not a hypothetical one. The history of the misuse of Article 356, which was discussed by the Supreme Court in *S.R. Bommai v. Union of India*, demonstrates the reality of this risk.¹⁹

5. COMPARATIVE LESSONS AND A REDESIGNED FRAMEWORK

A. What the American Experience Establishes

The American experience infers two propositions directly applicable to the Indian debate, one, that the accountability of convention cannot succeed structurally when there is a shift in political incentives to a degree that the Trump indictments empirically validated, and one, that, in the lack of automatic constitutional measures, there is no effective response to the worst failures of accountability. Both propositions support the essence of the Indian reform, the superiority of explicit constitutional rules to political discretion, without determining how those rules are to be made.

B. What the Indian Proposal wants

The constitutionality of the 130th Amendment Bill relies on how its safeguards have been designed, and not on the validity of the intentions. In this article, it is suggested that a new structure based on the following principles can be designed.

To begin with, judicial charge-framing, as opposed to executive arrest, should serve as the main disqualification trigger. The constitutionally different treatment of framing of charges, provided by a competent court, which is a judicial action that involves an independent evaluation that there is sufficient material to proceed with trial, is in contrast to executive arrest, which does not involve such evaluation. This difference is reflected in the constitutional jurisprudence of *Lily Thomas v. Union of India*, in that, though more limited, a judicial finding-based legislative disqualification in case of conviction is constitutionally permissible.²⁰ It is not the case to extend it to executive arrest.

Second, prosecutions related to the UAPA, the National Security Act, and similar statutes with executive designation authorities and structurally restrictive bail circumstances ought to be exempted from automatic disqualification or subject to an extra layer of judicial review. Any disqualification repercussion of the charges in such legislation must be preceded by a Division Bench of the appropriate High Court finding, expeditiously, that the charges are bona fide and not politically oriented. This safeguard fails to guard real threats to national security; it guards against the historical pattern of applying anti-terror legislation politically.

Third, there should be an anti-retrospectivity provision, which limits the application of the amendment to criminal prosecutions commenced prior to the most recent general election at which the minister is a candidate, or at which the minister was appointed to office, whichever is later. This is in direct response to the most apparent risk of abuse: the institution of criminal proceedings after appointment to plan removal.

¹⁹ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1; The Constitution of India, art. 356. (The Supreme Court held that the imposition of President's Rule under Article 356 is subject to judicial review on grounds of mala fides and that the floor test is the only constitutionally permissible means of testing a government's majority, establishing that central government interference in State executive governance is constitutionally bounded and reviewable.)

²⁰ *Lily Thomas v. Union of India*, (2013) 7 SCC 653. (The Supreme Court struck down s. 8(4) of the Representation of the People Act, 1951, which had permitted convicted legislators to remain in office pending appeal, holding that conviction automatically vacates the legislative seat, establishing that criminal conviction is constitutionally incompatible with the continued exercise of public office.)

Fourth, it should come with a constitutional guarantee of prosecutorial independence by establishing a Director of Public Prosecutions whose security of tenure is just like that of a Supreme Court judge and over whom all prosecutions against sitting and former ministers are supervised. Any disqualification mechanism relating to actions of the Enforcement Directorate and the Central Bureau of Investigation will remain open to weaponisation until such time that these agencies are insulated against executive direction in cases involving ministerial prosecution.

Fifth, there should be a time limit in the Constitution on the completion of trials: two years since the charges were framed; otherwise, the interim disqualification expires unless the constitutional bench decides otherwise based on unusual complexity. This helps to avoid the problem of interim disqualification becoming a systemic form of permanent bar through the pathology of indefinite trial delay.

6. CONCLUSION

The comparison of India and the United States would give a definite conclusion; no constitutional democracy can be fully dependent on political convention to hold the executive accountable. The Trump indictments made it clear that convention fails in cases where a political player has amassed enough partisan protection. The cases of Balaji and Kejriwal defined the same of the Indian doctrine of pleasure. The Bill of Parliament, the 130th Amendment, is an effort to seal that gap, by a constitutional rule which must be obeyed, and the constitutional gap it is intended to close is a minister in administrative power over the agencies he is inquired into, which is real, documented, and constitutionally unacceptable.

The attempt, as thus conceived, has its grave constitutional perils. The thirty-day custodial trigger, which has no previous judicial validation of the charges, has been accused of equating pre-trial detention with guilt, a label which even the Supreme Court has disapproved in *Manish Sisodia*. The presence of UAPA charges as automatic disqualification conditions, in the framework of a statute with reported political abuse, has a risk of turning an accountability tool into a tool of political persecution. And the federal consequences of centrally regulated agencies of investigation set on foot the ousting of elected State ministers, with interim vacancies recognized by centrally appointed Governors, also have a structural danger to the federal equilibrium which the Constitution must guard.

The proposed redrafted structure in this article, based on a disqualification position based on judicial charge-framing instead of executive arrest, omitting or enhancing scrutiny of UAPA charges, introducing anti-retrospectivity rights, creating prosecutorial autonomy, and constitutional time constraints on trials, aims to maintain the accountability goal of the Bill and to mitigate its constitutional weaknesses. The thesis of this paper is that this redesign is not only desirable but necessary under the Constitution, and that the Joint Parliamentary Committee which is now looking into the Bill has both the opportunity and the duty to do so.

It is not a sign of constitutional maturity that a constitutional democracy is unamenable to reform. It exhibits maturity in the sense that it demands that reform should be done right.

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