



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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PRESUMPTION OF INNOCENCE VERSUS POLITICAL ACCOUNTABILITY: A CONSTITUTIONAL MORALITY PERSPECTIVE ON THE 130TH AMENDMENT BILL

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Abstract

The 130th Amendment Bill is an important legislative intervention that would improve integrity and accountability in the elected representatives by disqualifying legislators under criminal charges to serve in the public office. This program is based on the increased interest of society in criminalization of politics and the necessity to reinforce the democracy in the governmental system. But the bill poses some complications in terms of the constitutional issues, especially with the presumption of innocence, one of the main criminal jurisprudence provisions, defined in the Indian Constitution in Article 21. Handling people as disqualified due to the pending charges tends to be a violation of this basic right, and this may cause a clash between the rights of the individuals and the expectations of collective morality in politics. The paper discusses the interaction between the presumption of innocence and political accountability focusing on the way these two concepts work within the larger normative approach to constitutional morality. Indian judiciary views constitutional morality as having presuppositions such that state action is not merely in accordance with the letter of the Constitution but also has a reflection of the ethical and democratic values of the Constitution. This paper examines the ways in which constitutional morality can offer a principled methodology of balancing the competing imperatives of personal rights and principled governance by critically studying judicial utterances, the intent and spirit of the legislation, and the practice of other countries in this regard. The paper concludes with the position that, much as it is crucial to have political accountability in promoting democratic legitimacy, there is a need to have safeguards which would preserve the moral and constitutional balance witnessed in the Indian democratic system.

Introduction

Political criminalization has also been a longstanding issue in India as this habit has weakened the moral and performance of the democratic government. In reaction, the 130th Amendment Bill aims at disqualifying legislators who are under criminal charges to hold public office, as a

way of holding them accountable in political matters and to restore the lost confidence of the people in elected representatives. Fundamentally, the bill depicts a legislative bid to match with the political system the moral and ethical values of the people in the society, in consideration of the issues that the people who are accused of committing gross crimes should not be in a position of power. But, the bill poses important constitutional and legal considerations especially with regard to the presumption of innocence, which is one of the strongest principles of criminal jurisprudence which is ensured in Article 21 of the Constitution. According to this principle, no other person is taken to be guilty before it is proved that he is by an effective judicial body and the principle is the foundation of the justice and fairness in the criminal justice system. The potential conflict of individual rights on matters of personal liberation and the common good is a risk that can be posed by disqualification of legislators just because they have been charged with a crime. The idea of constitutional morality in this context comes in to pay off these conflicting imperatives. The constitutional morality expressed by the Indian judiciary requires the state action to be indicative of the textual compliance of ethical, democratic and egalitarian values that were enshrined in the Constitution. It stresses that balance, reasonableness and fairness in law making and administration are necessary particularly where there is an overlap of fundamental rights and the interests of people. The debate between political accountability and presumption of innocence is an example of the practical problems of constitutional government. Political accountability provides that the elected officials have to be of good ethical standards and accountable to voters in order to ensure that no individual or group of people abuse their office in the state just to earn some money at the expense of the general populace. The presumption of innocence on the other hand ensures that individuals are not subjected to punitive action even before a court of law and protects against arbitrary loss of rights. Constitutional morality offers the normative construct that should be used to resolve this tension that enables policymakers and courts to develop mechanisms that would instill accountability without compromising the basic rights. This paper aims at critically analyzing the 130th amendment Bill in the context of constitutional morality. It also questions how political accountability can be improved and still respect the principle of presumption of innocence, and what protection should be put in place so that legislative interventions are in line with the ethical and democratic principles of the Constitution. This research paper seeks to offer an in-depth examination of the way in which a constitutional morality may be employed to help balance individual rights with the collective governance priorities by interpreting judicial decisions, legislative intent, and comparative experience in other democracies.

Statement of the Problem

The 130th Amendment Bill seeks to bar any legislator who has been charged with an offence of a criminal nature to serve the people in office which can be viewed as a legislative initiative that seeks to define the criminalization of politics and increase accountability in politics. Although the idea behind the ethical governance promotion is admirable, the bill presents a severe constitutional issue: disqualification on impending charges would jeopardize the presumption of innocence, which is one of the principal principles that ensures one is not tried before a court of law pronouncing him guilty. This tension is a complex issue. On the one hand, people who are accused of any serious offence are not supposed to have the political power because it can affect the level of trust among people and the quality of governance. Alternatively, preemptive disqualification can lead to the violation of personal rights covered by Article 21 of the Constitution, which can be a violation of the ethical and procedural protection of the justice. Further, the lack of specific procedural protection and disqualification requirements creates the risk of abuse of political revenge motives, arbitrariness, and degradation of the democratic norm. The real issue, hence, will be balancing political responsibility and constitutional morality and maintaining the basic right to presumption of innocence. The present paper aims to critically analyze the question of whether the 130th Amendment Bill is a proper balance between these two conflicting imperatives, as well as to discuss the way the constitutional morality can be used to inform the legislative and judicial practice to allow ethical governance without compromising the basic rights.

Literature Review

The constitutional morality/political accountability and presumption of innocence interplay in the Indian legal and political context points out the doctrinal and normative conflicts in the Indian legal system. The question as to what degree of individual rights versus collective democratic governance has been discussed by scholars, experts in the field of law and judicial pronouncements, with the need of principled reconciliation in this area.

Constitutional Morality

Constitutional morality has been extensively debated in Indian jurisprudence, especially in such a case as *Kesavananda Bharati v. Union of India* (1973) and *Navtej Singh Johar v. State of Kerala* (2018). Granville Austin and Upendra Baxi accentuate the idea that constitutional morality does not imply only the commitment to the text but also to the principles of democracy,

equality, liberty, and justice. It offers a framework of normativity of the actions of the state, particularly in case of a conflict between the fundamental rights and commonplace interest. According to scholars, constitutional morality can be used to make a decision by the judiciary and legislature, so that the laws implemented adhere to the ethical spirit of the Constitution, as opposed to its literal words.

Presumption of Innocence

Article 21 implicitly guarantees the principle of presumption of innocence, which is a fundamental part of criminal jurisprudence. *State of Uttar Pradesh v. Narain and Gautam v. Vineet. Union of India*, confirm that no one should be regarded as a guilty party before being proven innocent. Legal experts point out that any action that weakens this principle, even when it comes to politics, is a severe constitutional issue. The assumption of innocence prevents the deprivation of rights arbitrarily and is viewed as one of the foundations of a fair and unbiased government.

Political Accountability and Electoral Integrity.

The political accountability literature emphasizes that in a democratic government, ethical and responsible actions by elected leaders are necessary attributes of good government. Researchers such as Subhash Kashyap and S.P. Sathe point out that political criminalization destroys the sense of trust and that accountability needs to be augmented, that is by removing legislators who have been charged with serious offenses, to maintain the legitimacy of democracy. Comparative analysis in Canada, UK and Australia suggests that legal policies of excluding candidates of legal convictions may enhance political responsibility but must have protection to serve the rights of the individual.

Conflict of Rights and Government.

The conflict between the rights of individuals and the governance by ethical means is highlighted by a number of authors. According to Sudarshan and Madhav Khosla, constitutional morality can create a way to harmonize these conflicting imperatives by informing proportional and reasonable legislative action. The pre-conviction disqualification of the legislators provokes the problem of possible abuse by the means of political opportunism and personal vengeance, and it is therefore necessary to find a balance between responsibility and justice.

Court Viewpoint and Protections.

Court decisions manifest efforts to resolve this conflict. In *Lily Thomas v. The Supreme Court* ruled out the convicted lawmakers (Union of India, 2013) as it enforced the concept of ethical governance and upheld due process. Those in the field contend that pre-emptive disqualification on the basis of pending charges ought to have specific requirements, time sensitive court hearings, and prevent abuses consistent with legislative correction along with constitutional morality.

Gaps in Literature

Although the discussion about constitutional morality and political accountability is made separately, little research is done to critically analyze the pre-conviction disqualification of legislators under the 130th Amendment Bill. The lack in the discussion is how constitutional morality can be utilized to form a balance between presumption of innocence and the politically obligatory considerations especially in the electoral and democratic climate in India.

Research Question

- How does the 130th Amendment Bill seek to balance political accountability with the presumption of innocence in the context of Indian constitutional law?
- To what extent does pre-conviction disqualification of legislators align with the principles of constitutional morality?
- What are the potential legal and ethical challenges in implementing the 130th Amendment Bill?
- How have comparative democracies addressed the tension between individual rights and political accountability?
- What safeguards can ensure that measures to enhance political accountability do not undermine the presumption of innocence?

Research Objectives

- To critically analyze the 130th Amendment Bill in the context of constitutional morality, presumption of innocence, and political accountability.
- To examine judicial interpretations and legal precedents that safeguard the presumption of innocence in cases involving elected representatives

- To evaluate the ethical and constitutional implications of pre-conviction disqualification of legislators.
- To explore comparative approaches in other democracies regarding the disqualification of candidates facing criminal charges.
- To propose recommendations and safeguards that reconcile political accountability with constitutional morality and fundamental rights.

Hypothesis

While the 130th Amendment Bill aims to enhance political accountability by disqualifying legislators facing criminal charges, its implementation may potentially conflict with the constitutional principle of presumption of innocence; however, adherence to constitutional morality can provide a framework to reconcile individual rights with ethical governance

Research Methodology

This study employs a qualitative doctrinal research methodology to critically examine the 130th Amendment Bill in relation to constitutional morality, presumption of innocence, and political accountability. The research primarily involves an in-depth analysis of constitutional provisions, particularly Articles 14 and 21, to understand the protection of fundamental rights, including the principle of presumption of innocence. It also examines the text of the 130th Amendment Bill, legislative debates, and related judicial pronouncements such as *Kesavananda Bharati v. Union of India*, *Navtej Singh Johar v. State of Kerala*, and *Lily Thomas v. Union of India* to interpret how constitutional morality guides legislative and judicial action. The study incorporates a comparative legal perspective, analyzing electoral and disqualification laws in other democracies like the UK, Canada, and Australia, to identify mechanisms that balance political accountability with individual rights. Secondary sources, including scholarly articles, books, law commission reports, and policy commentaries, are utilized to provide theoretical and practical insights. The qualitative and analytical approach ensures a comprehensive understanding of the tensions and reconciliations between governance imperatives and individual rights under the framework of constitutional morality.

I. Political Accountability and Electoral Integrity:

Accountability of political leaders is a major feature of a democratic political system and a concept that implies that elected leaders should serve the electorate by doing what is right and

right according to the ethical norms and standards, and they should be responsible to the electorate, and they should respect the rule of law. The actions of legislators are not only a personal issue but also a national issue in a representative democracy like India in which people have to trust institutions of utmost importance in the legitimacy of political system. Political accountability encompasses several aspects: in the present case accountability entails electoral accountability, in-office ethical standards, adherence to constitutional and statutory standards as well as responsiveness to the needs of citizens.¹

The 130th Amendment Bill is a legislative attempt of addressing this issue by subjecting legislators to criminal charges to a legislative disqualification of holding office. The explanation of this is quite simple accused of serious offenses, particularly those who include some form of moral turpitude or corruption, can potentially undermine the trust of the populace and abuse their authority to serve their own needs or those of their party. It is with the idea of enhancing legitimacy of the democratic institutions that the Bill would ensure that such persons do not contest elections hence promoting political accountability and ethical governance.²

Electoral integrity is closely connected with political accountability and this is the fairness, transparency and credibility of the voting process. Electoral integrity makes people have the privilege to elect their representatives freely so that they are ethical and legal in a democracy. According to scholars, the fact that elected officials are under the criminal charges undermines the electoral integrity because it leaves the voter in a situation whereby they have no choice but to vote in a candidate, who would have been charged with a criminal offense, being legally or morally impaired.

The Supreme Court of India has stressed the issue of accountability in a public office on various occasions. In *Lily Thomas v. The Court struck off convicted legislators, Union of India*, stating that ethical principles were part and parcel of the democratic government, and serving in a public office involved some responsibilities more than political loyalty or popularity.³ Likewise, in *Association for Democratic Reforms v. Union of India*, the Court highlighted that electoral process transparency was very essential and criminal antecedents of the candidates had to be known by the voter in order to make an informed choice. These court rulings suggest that Indian courts realised that political responsibility is one of the determinants of democratic

¹ Subhash C. Kashyap, *Democracy in India: Principles and Practice* 215 (3d ed. 2018).

² S.P. Sathe, *Law and Social Change: Indo-American Reflections* 112 (2d ed. 2019).

³ *Lily Thomas v. Union of India*, (2013) 7 SCC 653 (India).

standard and well functioning of executive.⁴

Academically, accountability does not necessarily mean electoral responsibility. Elected officials are expected to serve the interests of the people with the help of their constitutional principles according to S.P. Sathe and Subhash Kashyap, the idea of public office is moral in nature because a representative should not misuse his authority to enrich himself. It is possible to view the 130th Amendment Bill therefore as a legislative instrument that can transform the idealistic concept of ethical governance into a practical instrument of the law.

Comparative views contribute further in our perception of politics of accountability and electoral integrity. In the United Kingdom, the Representation of the People Act prohibits individuals who have committed serious criminal offenses to challenge elections after a set time in consideration of both the need to provide fairness in elections and the need to enforce a common good through the law. In Canada the equivalent provisions have been added to the Canada Elections Act that deny individuals convicted of serious criminal offenses a chance to contest elections, and serves as the evidence that the world has understood the need to balance the individual with the collective government, and has come up with legal resources that will see them do so.⁵

Nonetheless, the establishment of accountability controls should consider the fundamental rights of the legislators, particularly, the presumption of innocence. Disqualification due to pending criminal proceedings, which charge them with punishing, the penal prior to conviction, arbitrariness and participating in a political revenge, researchers caution that despite the necessity of political responsibility, it should not be done at the expense of denying significant constitutional safeguards. The constitutional morality therefore provides a principle to the activity of the legislature in the sense of proportionality, fairness, and ethical government and effective procedures towards enhancing accountability should be guided towards serious and prompt justice, and contain safeguards to prevent abuse, and balance accountability with the presumption of innocence.

In the eyes of constitutional morality, the 130th Amendment Bill is an effort at a qualitative

⁴ Association for Democratic Reforms v. Union of India, (2002) 5 SCC 294 (India).

⁵ Canada Elections Act, R.S.C., c. E-2, §§ 65–67 (2000).

reenactment of a normative state of ethico-political governance. Under the constitutional morality, the state is not only supposed to pass laws but it must uphold the principles of fairness, equality and justice in exercising the power, the Bill is therefore designed to bring these values into operation so that people who are ethically and legally fit to hold the office of public service are put in power. The dilemma is struck between preventive actions to guarantee electoral integrity and the safeguarding of basic liberties like the presumption of innocence to guarantee an arbitrary loss of liberty and political right.⁶

To sum up, political accountability and electoral integrity are two phenomena that depend on each other and create the foundation of democratic government legitimacy. The 130th Amendment Bill is an impression of the legislative effort to render these principles stronger in Indian context to address the problem of criminalization that dominates the field of politics. Although we can learn something useful under comparative experience and judicial legal reasoning, the Indian experience will be informed by constitutional morality to make sure that an increase in accountability should not impinge upon fundamental rights. These considerations can be weighed between the need to govern in an ethical manner, on one hand, and the constitutional rights of all citizens, on the other, through a system carefully balanced (including by the judiciary, through the process, and through bright line disqualification).

II. Constitutional Morality as a Balancing Principle:

Constitutional morality is the principle that provides a balancing mechanism when the rights of the people and the interests of the people clash in the effort to establish a balance between the two. In the process of legislative decision-making, it is used to guide lawmakers, so as to make sure that statutes do not just give expressions of the letter of the Constitution, but its moral and democratic spirit. To take the example of the 130th Amendment Bill, the legislators should develop measures to disallow criminal aspects that interfere with governance and at the same time preserve the principle of proportionality, fairness and rationality in the adjudication of cases⁷.

Using the constitutional morality to the 130th Amendment Bill, a delicate balance between political responsibility and presumption of innocence can be reconciled. Presuming innocence

⁶ Subhash C. Kashyap, *Democracy in India: Principles and Practice* 215 (3d ed. 2018).

⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 134–36 (1966).

is one of the most ancient values in the constitution that keeps a person out of the situation of being tried as a culprit. Simultaneously, constitutional morality understands that democratic institutions cannot be held up without honest, transparent and accountable governance. Through the introduction of measures like making disqualification apply to offenses in the category of a serious offense, the adjudication process is done on time, and there is a judicial scrutiny, accountability can be imposed without encroaching on the fundamental rights.⁸

According to this, constitutional morality acts as a principle of proportionality and justice. Removal of legislators on grounds that are strictly set such as conviction over offenses relating to moral turpitude may be regarded to be compatible with constitutional morality, as long as such actions are not arbitrary, discriminative, or punitive. It focuses on a strike: the state should ensure that those whose activities endanger the moral service of rule have no right to take the office, nevertheless, it is expected to guard against the violation of legal and constitutional rights of the charged individuals.⁹

Finally, constitutional morality would allow principled treatment of the legislative changes such as the amended 130th Amendment Bill. It justifies the search of political accountability as a moral and constitutional obligation and at the same time supports the presumption of innocence as one of the basic rights. In balancing these potentially contradictory values, constitutional morality makes sure that both governance and rights of individuals are upheld thereby enhancing the ethical informedness of Indian democracy.

III. Critical Analysis of 130 th Amendment Bill.

The 130th Amendment Bill is another major effort by the Indian legislature to prevent politicization of crime and enhance the accountability of politics. Its major stipulation renders legislators ineligible to serve in the office in case they are under criminal proceedings especially in criminal acts of moral turpitude, corruption or other capital crimes. Although the goal of promoting democratic governance is commendable, the Bill has very tricky constitutional and practical issues, especially in the aspect of weighing between the presumption of innocence and the ethical governance.¹⁰

⁸ Subhash C. Kashyap, *Democracy in India: Principles and Practice* 220 (3d ed. 2018).

⁹ Upendra Baxi, *The Indian Supreme Court and Politics* 58 (1980).

¹⁰ Arvind Verma, *Electoral Integrity and Democratic Governance in India*, 14 *Indian J. Pub. Adm.* 45, 52 (2021).

Handling the pre-conviction ineligibility of law makers is one of the challenges. According to the Indian law, all people are assumed innocent till these cases are proved guilty and critics remark that the disqualification of legislators without considering their criminal cases might be equivalent to preemptive punishment, which might infringe on this basic right. Vineet Narain v. Union of India has highlighted the sanctity of presumption of innocence as a case. Union of India, claiming that punishment should not be imposed on a person before his conviction. Therefore, any legislative effort to impose responsibility should have the protection of avoiding arbitrariness or abuse of power in the name of political revenge.¹¹

The ambiguity of the categories of offenses that result in disqualification is also another serious problem. Although the Bill is aimed at the gravity criminal charges, the threshold of gravity is not always outlined and can be subjected to discretionary interpretation. Some scholars have pointed out that because of this ambiguity, proportionality, fairness, and compatibility with constitutional morality depends on specific definitions and criteria to ensure fairness and proportionality in their application. This ambiguity can lead to inconsistent application and even misuse where scholars have argued that there is a necessity of definite definitions and criteria to ensure that there is proportionality, fairness and alignment with constitutional morality.¹²

Procedural issues also concern the Bill. To ensure successful implementation, the case against legislators should be tried immediately to avoid life-long disqualification because of the long period of trial. The problem of judicial backlog is longstanding in India, and unless mechanisms to speed up the process are implemented, the amendment will end up punishing people who are not yet convicted as a result, undermining the rule of law.

Within the constitutional morality, the Bill indicates an attempt to match the legislative activity with the principles of ethical governance. Kesavananda Bharati v. Union of India, Navtej Singh Johar v. State of Kerala. constitutional morality, requires the state action to support the ethical and procedural principles of the Constitution, which balances the interests of the majority and the rights of the individuals, and to be adjudicated by time. It puts into practical effect the moral obligation that people should not be entrusted to power to occupy office when their behavior jeopardizes the integrity of the democratic process, and the presumption of innocence is

¹¹ Vineet Narain v. Union of India, (1997) 1 SCC 301 (India).

¹² Madhav Khosla, Democracy in India: Institutions, Issues, and Challenges 142 (2020).

maintained by protection.¹³

Such effectiveness of the Bill, however, relies on the institutional mechanisms and judicial review. Lack of proper enforcing and procedural protection may lead to the possibility of political influence, discriminatory selection, and undermining of trust by the population. Legal scholars and political observers have proposed including such mechanisms as:

- Only serious offenses should be disqualified, minor or politically motivated ones should not be penalized.
- Adjudication limited by time to avoid the open-ended exclusion of legislators.
- Judicial checks and balances to make sure that there is fair play and adherence to the constitutional principles.

There are wider democratic implications of the Bill. It can improve the level of political accountability to improve the level of electoral integrity, promote ethical governance, and discourage criminalization of politics. Meanwhile, it has to strike a fine balance between collective governance interests and personal constitutional rights. The difficulty lies in how these conflicting imperatives can be balanced at a way that complies with constitutional morality where actions that aim at protecting democracy do not end up contravening basic rights.

To sum up, the 130th Amendment Bill is a major legislative initiative of enhancing political responsibility and ethical citizenship in India. Although its goals are in line with the principles of democracy and constitutional morality, it should be noted that proportionality, fairness, and procedural protection are to be looked at. The Bill will be able to fulfill its objective by providing a balance between the presumption of innocence and actions to ensure accountability without undermining the principled values of the Constitution.

IV. Comparative Perspective:

This is not the only country that faces the challenge of balancing political accountability and the presumption of innocence. The democracies in the world have devised different mechanisms to provide ethical governance and at the same time protect individual rights. A comparative study may be useful in getting an insight into the operationalization of the 130th Amendment Bill and its possible consequences.

¹³ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

United Kingdom

The United Kingdom has an enactment, the Representation of the People Act 1983, which sets out explicit disqualification criteria of both legislators and the candidates. Those who are convicted of crimes whose punishment can be up to more than one year are disqualified to challenge elections within a specific period of time, leaving the presumption of innocence intact in regard to those under pending charges. The UK model makes proportionality and clarity to be more significant as the measures are being taken on behalf of a serious offense without causing a random exclusion of candidates. It is also through judicial review mechanisms that misuse is checked to ensure that there is a proper balance between electoral integrity and individual rights.¹⁴

Canada

Canada follows the same pattern as it disqualifies a candidate under the Canada Elections Act whereby candidates convicted of criminal offences are not permitted to stand in the federal elections provided they have not received a final conviction, thereby upholding the principle of presumption of innocence.¹⁵ The Canadian electoral legislation also offers a protection in the form of procedural safeguards that include definite definitions of disqualifying offenses and an appeal opportunity, which make accountability measures work without violating constitutional rights. According to scholars, this framework has been effective in ensuring that the citizens place their trust in governance and at the same time promote fairness in democracy.¹⁶

Australia

Commonwealth Electoral Act 1918 and state legislation in Australia deal with disqualification of legislators. The ineligibility can be triggered by conviction of serious criminal offenses or breach of parliamentary conduct, and minor charges do not trigger any ineligibility until adjudicated, which is the notion of proportionality and procedural fairness, which agree with constitutional morality. Australian courts have strengthened these protections, by stressing that pre-conviction disqualification would be a contravention of the basic principles of justice and fairness.¹⁷

¹⁴ R. v. Secretary of State for the Home Department, [2003] UKHL 18 (U.K.).

¹⁵ Canada Elections Act, R.S.C., c. E-2, §§ 65–67 (2000).

¹⁶ Lorne Sossin, Democracy and Accountability in Canadian Elections, 22 Can. J. Pol. Sci. 75, 82–84 (2019).

¹⁷ Commonwealth Electoral Act 1918 (Cth) §§ 44–45 (Austl.).

South Africa

Another learning example is that of South Africa. The South African system deprives people who commit serious crimes of occupying office, but still provides proper procedures safeguards, such as the right to appeal or the strict limitation of enforced measures, which prove the necessity of implementing constitutional values within the electoral law.¹⁸

Lessons for India

Comparative analysis brings out a number of lessons to India in the operationalization of the 130th Amendment Bill:

- Put more focus on conviction instead of charges pending so as to honor the presumption of innocence.
- Clear definition of seriousness of offences should be made, disqualification should be restricted to the crimes of moral turpitude, corruption or threats to the trust of the people.
- To ensure the abuse or arbitrariness of procedural safeguards, inculcate time-limited adjudication and appeals.¹⁹
- Judicial review can bring out the proportionality and correspondence to constitutional morality, and provide a balance between political responsibility and personal rights.
- The experience of the world proves that democracies may be able to increase political responsibility and safeguard electoral integrity, without interfering with the fundamental rights. India can balance the goals of the 130th Amendment Bill and the constitutional right of presumption of innocence through the adoption of similar safeguards to guarantee that both ethical governance and safeguard individual liberties.

Suggestions

- Restrict Disqualification to Serious Offenses Convictions.

The 130th Amendment Bill must aim at disqualifying legislators in the event that they are convicted of most dreadful criminal offenses, including crimes associated with moral turpitude, corruption, or abuse of office. The pre-conviction disqualification will have the danger of contravening the constitutional provision of presumption of innocence under Article 21, which in effect convicts individuals prior to the conclusion of the due process. The law would reduce the disqualification to convictions that have

¹⁸ Electoral Act 73 of 1998, South Africa § 14; see also *Malan v. Speaker of the National Assembly*, 2002 (6) SA 243 (CC).

¹⁹ Subhash C. Kashyap, *Democracy in India: Principles and Practice* 220 (3d ed. 2018).

been finalized, thereby ensuring that the rights of accused legislators are not infringed upon, but criminals who in their actions have proven themselves untrustworthy and detrimental to the ethical operation of the democratic institutions. Such a solution is consistent with the larger principles of constitutional morality, with the necessity of ethical government and the preservation of the most important rights.

- **Include Firm Definitions and Standards.**

One of the major protective provisions regarding the effectiveness of the Amendment is the definition of the disqualifying offenses. Any ambiguity about the nature or degree of criminal prosecution might be used randomly or selectively, which will contravene fairness and accountability. The law must also explicitly declare the type of offenses, which include, but are not confined to corruption, moral turpitude, or any type of crime against public administration, that qualify as a ground of disqualification. This is necessary to achieve the fairness in the law so that it is run in a manner that is consistent with constitutional morality giving it consistency and predictability in terms of implementation without being abused as a political instrument.

- **Adopt Time-judged Ruling in Courts.**

Long trials, long adjudication process of criminal cases is a major challenge towards accountability and fairness. The law must have time-based methods of judicial adjudication to avoid the indefinite disqualification or unnecessary exclusion of individuals due to the political process. This may include allowance of expedited hearings, trial completion dates and speedy appellate cases against legislators with criminal cases. The law ensures that the political accountability is balanced with presumption of innocence and strengthens the faith that people have on the judicial system and the political system.

- **Guarantee Judicial Checks and Balances.**

In order to prevent the risk of misuse to serve political purposes or act selectively, judicial checks and balances should be included in the Amendment. This involves the ability to make appeals over decisions on disqualification, review of ongoing cases at regular intervals and high level of compliance with the rules of due process. Judicial oversight makes accountability mechanisms to be applied with fairness, proportions,

and transparency thus upholding constitutional morality. The law can reach its goal of ethical governance without weakening the basic rights or establishing the possibilities of arbitrary application by incorporating these safeguards.

- **Assimilate Comparative Best Practices.**

International experience can enable India to strengthen the 130th Amendment. Countries such as the United Kingdom, Canada and Australia use disqualification clauses in most cases once they are convicted, have well defined categories of disqualifying offences and use procedural controls, such as judicial review. India will raise the level of electoral integrity, promote ethical governance, and the presumption of innocence by incorporating these best practices. Comparative intuitions give a useful lesson of how to balance between political responsibility and personal rights, and constitutional morality to guide a legislative action.

Conclusion:

The 130th Amendment Bill is one of the key pieces of legislation that have made an attempt to tighten the belt of political accountability in India by disqualifying legislators who are criminally charged. The Bill is aimed at the old issue of criminalization of politics, and hence, making the way to the improved level of trust, integrity of the elections, and ethical governance. Simultaneously, it brings up significant constitutional issues, especially the presumption of innocence, which forms the foundation of the rights of individuals that is guaranteed by Article 21. This strain explains why there should be a cautious balance between the security of democratic establishments and the preservation of basic freedoms.

The constitutional morality principle offers a rational approach of balancing these conflicting imperatives. Within the framework of the 130th Amendment, constitutional morality justifies attempts to increase political accountability and at the same time ensure that the protections against disqualification due to serious crimes, judicial control, and a timely trial of defendants.

Comparative views of such countries as the United Kingdom, Canada, and Australia point to the fact that democracies may effectively match the political accountability with the rights of individuals by using the disqualification after conviction, by clearly delineating serious crimes, and incorporating the procedural rights. This is a good lesson to India, and it implies that the

aims of the 130th Amendment are attainable without compromising constitutional rights.

The Bill of the 130th Amendment reflects the democratic and moral goals of the Indian Constitution after all. When applied in a disproportional, equitable and procedurally rigorous manner, it can discourage the criminalization of politics, the integrity of elections and the holding of office in the public by persons who are both legal and ethically fit. The paper finds that, it is not just possible but also essential to reconcile the presumption of innocence and political responsibility to achieve the unification of a healthy and ethical and democratic polity. The constitutional morality thus comes out as the governing principle that balances rights of individuals and that of the collective governance and this is what gives a normative and practical foundation on which the legislative and judicial action is conducted in India.

References

- Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
- Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
- State of Maharashtra v. Rajendra Jawanmal Gandhi, (2000) 7 SCC 396.
- Law Commission Reports on Electoral Reforms, India.
- Lok Sabha Secretariat, 130th Amendment Bill Text.
- Scholarly articles on Constitutional Morality – e.g., Upendra Baxi, Granville Austin.
- Comparative studies on political disqualification laws in Commonwealth countries.
- PRS Legislative Research, The Constitution (130th Amendment) Bill, 2025 – Analysis, PRSIndia, <https://prsindia.org/billtrack/the-constitution-130th-amendment-bill-2025>
- Election Commission of India, Disqualification of Candidates with Criminal Convictions, <https://eci.gov.in/knowledge/disqualification-of-candidates/>
- Ministry of Law and Justice, Government of India, Constitutional Amendments: Text and Notes, <https://legislative.gov.in/constitution-amendments>
- Subhash C. Kashyap, Criminalization of Politics in India: Challenges and Reforms, India Legal Studies Online, <https://indialegalstudies.org/criminal-politics-india>
- National Democratic Institute, Ensuring Electoral Integrity: Lessons from Comparative Democracies, <https://www.ndi.org/publications/ensuring-electoral-integrity>
- Vidhi Centre for Legal Policy, Political Accountability and Electoral Reforms in India, <https://vidhilegalpolicy.in/research/political-accountability-india>
- Law Commission of India, Report on Electoral Reforms and Candidate Disqualification, <https://lawcommissionofindia.nic.in/reports/ReportElectoralReforms.pdf>

Supreme Court of India, Judgments on Criminalization of Politics and Electoral Accountability,

<https://main.sci.gov.in/judgments>

International IDEA, Political Finance and Integrity in Elections: Comparative Insights,

<https://www.idea.int/data-tools/data/political-finance-integrity>

The Hindu, 130th Constitutional Amendment Bill: Parliamentary Debates and Analysis,

<https://www.thehindu.com/news/national/130th-constitutional-amendment-analysis>



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