Another Tool in Modi’s Playbook

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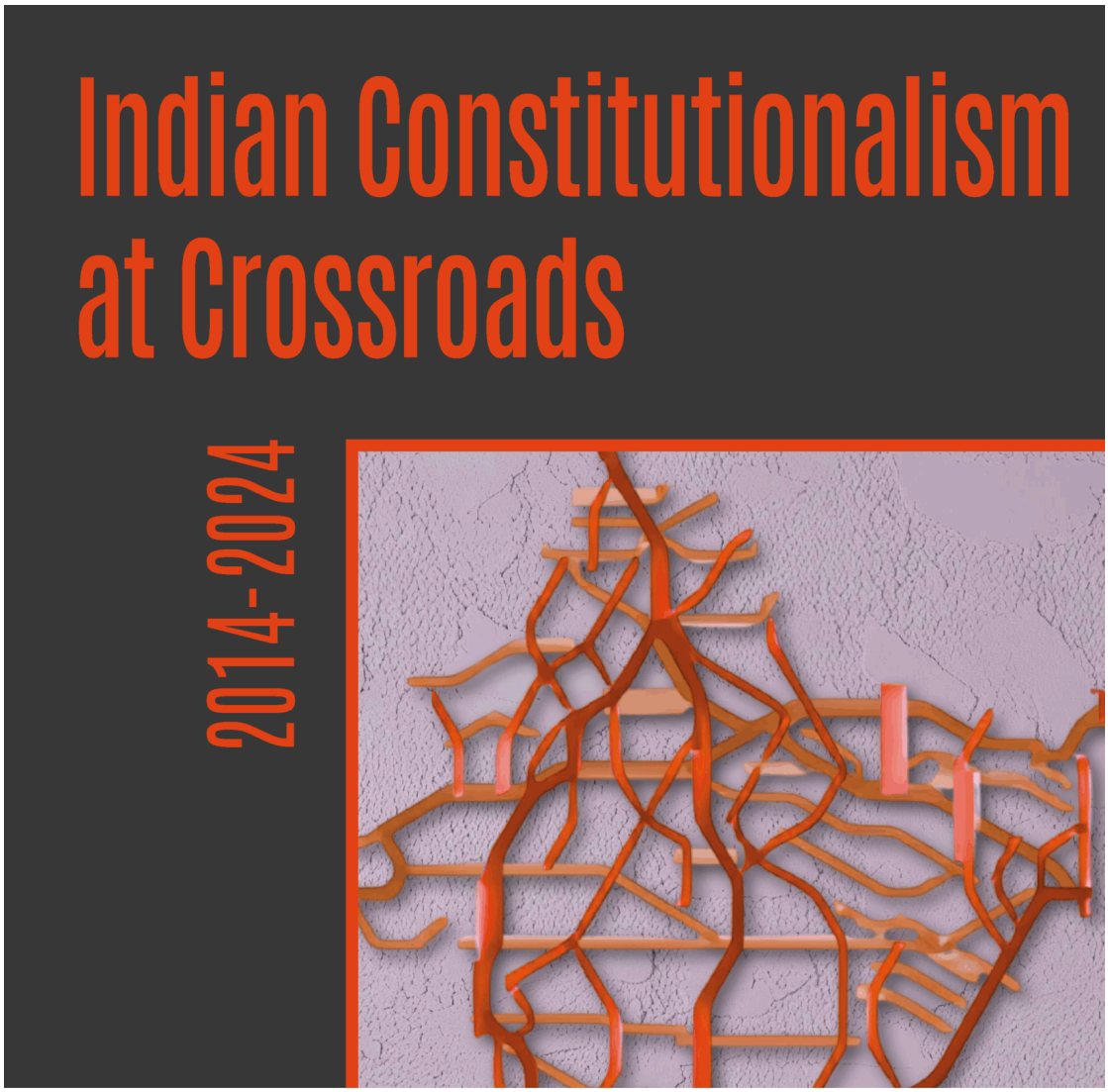

Anmol Jain
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Weaponising Disqualification

On August 20, 2025, the Indian Government introduced three constitutional amendment bills of massive implications in the Parliament (read Bill 1, Bill 2, and Bill 3 here). Together, the bills aim to replace the parliamentary tradition that the executive ministers are accountable solely to the House and establish a mandatory legal sanction providing that any minister – including the Prime Minister at the Union level and Chief Ministers at the State Governments – can be removed from their ministerial office if arrested or detained for thirty consecutive days on charges carrying a potential sentence of five years or more, regardless of whether they retain the House's confidence. At first glance, the bills may seem laudatory, founded on the expectation of ethical standards for high constitutional office. Yet, one can clearly anticipate the gross impending misuse of this law towards establishing a hegemonic BJP rule in India, with the opposition governments regularly destabilized and targeted. These bills represent another instance of the Modi government's use of perfectly legal and constitutional actions to advance authoritarian governance.

Events leading up to the 2024 general elections

Earlier in 2024, right on the eve of the general parliamentary elections that were due to be held in April-May of that year, two sitting Chief Ministers (and also the leaders of their respective political parties) belonging to the opposition parties were arrested by the federal investigative agencies. The charges against them were never proved in a court of law. Both were arrested by the Enforcement Directorate on allegations of money laundering under the Prevention of Money Laundering Act, a law that envisages extraordinary conditions for the judicial grant of bail. Both the Chief Ministers spent around five months in jail, and thus, remained behind bars during the general elections. The charges against them haven't yet been proved. These arrests echoed earlier episodes in Delhi, where several state government ministers were jailed in a similar fashion, some for nearly two years before cases were dropped due to lack of evidence.

These episodes are a statement of the Modi government's Machiavellian approach, which does not shy away from misusing the federal investigation agencies to wrongly – although legally – hound the leading politicians from the opposition parties for short-term political gains. Such arrests help the BJP portray opposition parties as corrupt, while its strict control over media and other independent central institutions sustains its own image of probity – a contrast that has benefited the BJP since it won the parliamentary election in 2014.

It is against this backdrop that one should read the three constitutional amendment bills. What was interesting in the case of the Chief Minister of Delhi, one of the two Chief Ministers who were jailed, is that he did not resign despite his arrest and continued his duties from prison. The three bills close the route for any such shows of political persistence in the future: a mere 30-day continued detention, even without proven charges, would now suffice for the *automatic* removal of the concerned minister, Chief Minister, or the Prime Minister.

Beyond automatic dismissal, the amendments may also intensify existing anti-democratic practices. Of particular importance here is the practice of money, power, or fear-induced defections. Defections are a reality of the Indian political space. Since the late 1960s, several elected governments have been constituted and broken by using the route of unethical defection. Despite the introduction of a law to penalize such actions in 1985, defections continue to mar the Indian political space. As the 1985 law only disqualifies elected members from their existing membership of the legislature if they choose to change their political affiliation upon being elected, politicians continue to defect or resign when they sense prospects of re-election with the new political party that they join. In recent years, the BJP has systematically exploited this loophole by convincing, cajoling, and coercing elected opposition members in several states to jump ship. This has toppled opposition-ruled state governments, with BJP governments replacing them after defectors re-won elections on BJP tickets – or were otherwise rewarded with political patronage.

Anmol Jain & Tanja Herklotz (eds.)

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These constitutional amendments are designed to further contribute to such unethical political maneuvering. A sitting minister can now be easily coerced to defect, and perhaps to defect along with a few other members, on account of a threat of losing the ministry and the attached political capital. There have already been multiple cases where the central government initiated investigations and publicly alleged corruption charges against leaders of the opposition parties, only to have them suddenly shift sides (and, at times, break their parent political parties) and join the BJP. Once they switch sides, legal action vanishes. One such politician currently functions as the Deputy Chief Minister of the BJP-led Maharashtra government. These practices have been aptly termed as the BJP's "washing machine" politics, where all stains disappear upon joining the BJP's side.

The amendments also contain a clause allowing ministers to be reappointed once released from detention. Such promised re-appointments can become the carrots for inducing defections.

Beyond such political possibilities, the amendments are illogical on their own terms.

First, it is interesting to note that the amendments only aim to remove the concerned member from their ministerial office, but do not affect, in any manner, their position in the legislative assembly. In other words, the concerned member, despite their continued detention, can remain a member of the parliament or state legislative assembly, as the case may be. If the admitted objective underlying this bill is that "[t]he elected representatives represent the hopes and aspirations of the people of India. It is expected that they rise above political interest and act only in the public interest and for the welfare of people," then, distinguishing between ministers and legislators makes little sense. If the intention underlying the law is that ministerial work

must not be hampered due to the unavailability of the minister, then similar considerations also remain at play in the case of other elected members. The respective constituencies will have no legislative representative during the duration of their detention.

Second, if unavailability due to detention is the sole reason for the introduction of these amendments, it is illogical to confine their application only to detentions arising from serious charges, i.e., for crimes punishable with an imprisonment of five years or more. In practice, detention for *any* alleged offence would prevent a person from discharging official duties. This distinction between serious and "non-serious" offences thus seems arbitrary.

Third, these amendments also change the existing disqualification doctrine in India, wherein one can be removed from the membership of the House, and as a corollary, from their ministerial position, only once the charges against them have been proven in a court of law. These amendments, therefore, turn the idea of innocent until proven guilty on its head and penalize an individual merely on the grounds of their detention, which, given how political games are played, could be a result of fake charges.

Fourth, if the intentions were genuine, the government would have rather invested in establishing systems for a speedy and independent assessment of charges against those holding high constitutional offices. That would both prevent the undue removal of innocent ministers and ensure that those who have actually broken the law are excluded from governance. Alas, speedy and independent judicial resolution of disputes remains a distant dream, and with such amendments in place, it is also not wrong to assume that such aspirations are not politically prominent.

Can the amendment be passed in the current political environment?

The three bills pursue the same objective but operate in different territorial jurisdictions. Bill 1 is a constitutional amendment, and once passed, it will govern the entirety of India except the union territories of Jammu and Kashmir and Puducherry, whose governance structures are provided for in the Jammu and Kashmir Reorganization Act 2019 and the Government of Union Territories Act 1963, respectively. Bills 2 and 3 amend these two laws. Therefore, while Bills 2 and 3, being amendments to a statutory law, can be easily passed by a simple majority in Parliament, Bill 1, being a constitutional amendment, must meet the special majority requirement as envisaged in Article 368 of the Constitution. For passing a constitutional amendment bill of this nature, Article 368 requires that a *simple majority* of the entire strength of the House, along with *two-thirds* of those present and voting, vote in favor of the bill.

While the Modi government holds a simple majority in both Houses, securing the two-thirds majority of those present and voting will be difficult with the opposition present in the House. However, as we have witnessed in the past, the government has not shied away from enacting some highly consequential bills while the entire opposition was either suspended or absent. For instance, the entire criminal laws regime was overhauled while more than 100 members belonging to the opposition parties were suspended from Parliament in 2023. Even recently, earlier this month, a new tax law was introduced and passed in Parliament, without any deliberation, while the entire opposition was absent from Parliament. Therefore, the enactment of these amendments remains possible. Engineering a pretext for suspending or sidelining the opposition may be precisely what the government seeks.

References

↑**1** While the Jammu and Kashmir Reorganization (Amendment) Bill 2025 and the Government of Union Territories (Amendment) Bill, 2025 are statutory amendment bills, they have a constitutional nature as their parent laws establishes and details the structure of the legislative assemblies of the union territories of Jammu and Kashmir and Puducherry, respectively.

References

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