# New Bill to remove PM, CM and Ministers

**Mains: GS II** - *Salient Features of the Representation of People's Act*

## Why in News?

*Recently, The Union government has introduced the 130th Constitutional Amendment Bill, to tackle the increasing criminalization of politics in India.*

## What does the Bill say?

- **Amendment to constitution** – The Bill seeks to *amend Articles 75 and 164* of the Constitution that deal with the Council of Ministers at the Union and State level.
- **Removal of minister** – It provides that a Minister, who has been *arrested and detained for 30 consecutive days* in relation to an allegation of committing an offence, which is punishable with imprisonment of at least five years, shall be removed from his/her office.
- **Advice from the PM/CM** – They would be removed on the advice tendered by the Prime Minister/Chief Minister (PM/CM).
- If the PM/CM does not tender such advice, the Minister concerned shall *automatically cease to hold office from the 31st day*.
- **Resignation of PM/CM** – If the PM/CM is arrested and taken into custody for *30 consecutive days, he/she shall tender his/her resignation on the 31st day*.
- However, the PM, CM, or Minister can be subsequently appointed on being released from custody.
- **Applicable for union territories** – It also seeks to amend Article 239AA with similar provisions for the National Capital Territory of Delhi.
- These amendments to the Constitution would require a two-thirds majority in both houses of Parliament for its passage.
- Similar amendments have been proposed to parliamentary laws that govern the Union Territories of Jammu & Kashmir and Puducherry.
- These Bills have been referred to a Joint Parliamentary Committee (JPC) for scrutiny.

## What are the existing laws?

- **The Representation of the People Act, 1951 (RP Act)** – It provides that any person who is convicted in a criminal case and *sentenced to not less than two years in jail, shall be disqualified from being a member of Parliament or State legislature for the period of their sentence and six years thereafter.*
- **Section 8(4) of the RP Act** – It provided that with respect to a sitting member of Parliament or State legislature, *such disqualification shall not take effect if an appeal*

*is filed against such conviction*.
    - **Lily Thomas case (2013)** – The Supreme court struck down this clause as unconstitutional.
- It must be noted that the existing law only provides for disqualification for being a Member of Parliament or State Legislature and not for being a minister.
- **Recommendation of election commission** – In 2016, the Election Commission had recommended that the RP Act be amended to provide that persons against whom charges are framed by a competent court for an offence that is *punishable with imprisonment of at least five years be barred from contesting elections.*

## What are the issues with the bill?

- **Losing of office** – It will result in elected representatives losing their position by mere police action even before the start of a trial.
- **Weakens fundamental principles** – It undermines the principles of parliamentary democracy where the elected PM, CM enjoys the power to choose their cabinet.
- **Power asymmetry** – It gives the Centre disproportionate power to initiate vindictive action against ministers in opposition-ruled States.

## Quick facts

| **Criminalisation of Politics** |
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| • **Definition** – It refers to the involvement of individuals with a criminal record in the political sphere.<br>• This can involve criminals running for and be elected to positions in Parliament and State Legislatures.<br>• It often occurs due to the close relationship between politicians and criminal elements.<br>• **Reports** – Association of Democratic Reforms states that 46% of MPs and 45% of MLAs have criminal cases against them.<br>• **Winnability** – It added that the chances of winning for a candidate with a criminal background was 15.4% as against just 4.4% for a candidate with a clean background.<br>• An appropriate step then would be to not field candidates who have criminal records.<br>• **Step to be taken** – Parties should cultivate self-discipline among candidates rather than provide tickets to tainted candidates on the ground of winnability. |

## Reference

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