
WHEN CONSTITUTIONS FAIL: WHY SOME CONSTITUTIONAL SYSTEMS SURVIVE POLITICAL CRISES

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ABSTRACT

Constitutional crises test whether constitutional government can continue to restrain public power when ordinary political arrangements are placed under exceptional pressure. Such crises may arise from executive–legislative conflict, governmental instability, mass mobilisation, territorial conflict, war, terrorism or emergency measures. The central question is not simply whether a constitution survives in formal terms, but whether constitutional democracy continues to structure the exercise of public power. This paper examines constitutional resilience through a comparison of India, France and Germany, three systems that experienced serious constitutional stress but responded through different institutional paths.

The study treats constitutional resilience as the capacity of a constitutional order to resist the destruction of its core commitments, adapt lawfully to changing conditions, and recover after institutional failure. India's Emergency of 1975–1977 demonstrates the danger of concentrated emergency authority and weakened rights protection, but also the capacity for recovery through elections, constitutional amendment, judicial doctrine and federal institutions. France's transition from the Fourth to the Fifth Republic shows that resilience may require institutional redesign where governmental instability prevents effective constitutional government. Germany's experience from Weimar to the Basic Law demonstrates deliberate constitutional learning: emergency powers were retained but embedded within stronger parliamentary, federal and judicial safeguards.

The comparison indicates that resilience is systemic rather than dependent on a single constitutional provision. Bounded emergency powers, meaningful legislative oversight, independent courts, political competition, territorial dispersion of power, protected

constitutional identity, governmental capacity and post-crisis learning operate together. The paper concludes that India need not copy French or German institutions. Its more relevant task is to preserve and strengthen the mechanisms already developed through the experience of the Emergency, particularly the Forty-Fourth Amendment, judicial review, federalism, political competition and the basic structure doctrine.

KEYWORDS: Constitutional resilience; constitutional crisis; emergency powers; constitutional democracy; judicial review; basic structure; federalism; India; France; Germany; constitutional identity.

1. INTRODUCTION

The endurance of constitutional government cannot be assumed merely because a written constitution remains formally in force. A constitutional order may survive for decades yet become vulnerable when political power becomes highly concentrated, opposition is weakened, or emergency mechanisms are used beyond their exceptional purpose. Conversely, a system may experience severe political conflict and still preserve constitutional government when institutions possess sufficient independence, legitimacy and corrective capacity. The central problem is therefore to identify the conditions under which political crises remain governable within constitutional limits.

Modern constitutional failure is not confined to coups or formal suspension of constitutions. Democratic erosion may occur through measures that are legally authorised on their face: emergency proclamations, constitutional amendments, restrictions on political opposition, changes in electoral arrangements, expansion of executive discretion or repeated departures from constitutional conventions. The danger is cumulative. Institutions may continue to operate formally while their capacity to restrain public power is gradually reduced.

India's Emergency illustrates this problem particularly clearly. Between 25 June 1975 and 21 March 1977, Parliament and the courts continued to exist, yet preventive detention, restrictions on civil liberties and limits on judicial remedies substantially altered the constitutional balance. The decision in *ADM Jabalpur v Shivkant Shukla* became a defining example of the consequences of judicial deference during an emergency. The later repudiation of that reasoning, together with the Forty-Fourth Amendment and the electoral change of government in 1977, demonstrates that constitutional failure can be followed by

institutional recovery. 1 France presents a different problem. The Fourth Republic was marked by governmental instability and fragmented parliamentary politics, culminating in the crisis of 1958 associated with Algeria.

The response was not the abandonment of republican government but the creation of the Fifth Republic, which strengthened executive capacity while retaining elections, parliamentary responsibility and constitutional review. 2 Germany presents the most explicit example of constitutional learning from systemic collapse.

The Weimar Constitution combined parliamentary government with substantial presidential emergency authority under Article 48. During the political crises of the early 1930s, repeated reliance on presidential government weakened ordinary parliamentary processes. The Basic Law 1. ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. 2. Constitution of the French Republic 1958, arts. 5, 16, 20 and 49; Robert Elgie, Political Institutions in the Fifth French Republic (Palgrave Macmillan, 2003).

of 1949 responded by strengthening Parliament, federalism, constitutional adjudication and protected constitutional principles, while regulating emergency government rather than pretending emergencies could be eliminated. 3 This paper therefore advances a functional thesis: constitutional resilience depends on the interaction of legal design, institutional independence, political competition, constitutional norms and the capacity for post-crisis correction. Neither strong government nor extensive checks are sufficient by themselves. A resilient system must be able to govern during crisis without allowing crisis to become a permanent justification for concentrating power.

1.1 Research Questions

The paper asks: Why do some constitutional systems survive severe political crises while others undergo constitutional or regime transformation? What features of constitutional design make emergency powers compatible with democratic constitutionalism? How did India, France and Germany respond to their respective crises? What roles do courts,

1ADM Jabalpur v Shivkant Shukla, (1976) 2 SCC 521; Justice K.S. Puttaswamy (Retd.) v Union of India, (2017) 10 SCC 1.

2Constitution of the French Republic 1958, arts. 5, 16, 20 and 49; Robert Elgie, Political Institutions in the Fifth French Republic (Palgrave Macmillan, 2003).

3Basic Law for the Federal Republic of Germany, arts. 20, 67, 79(3), 92–94 and 115a–115g; German Bundestag, historical materials on the Weimar Republic.

legislatures, federalism, political competition and amendment limits play in resilience? Finally, what lessons can India draw from France and Germany without mechanically transplanting foreign institutions?

1.2 Methodology and Scope

The study is doctrinal, historical and comparative. Its primary materials are the Constitution of India, the French Constitution of 1958, the German Basic Law and the Weimar Constitution, together with leading constitutional decisions. Secondary scholarship is used selectively to explain theories of emergency power, constitutional resilience and democratic erosion. The comparison is functional rather than hierarchical: it does not attempt to identify a constitutionally superior country, but examines how different institutional arrangements respond to comparable pressures.

2. CONCEPTUAL FRAMEWORK: FAILURE, CRISIS AND RESILIENCE

Constitutionalism is broader than the existence of a written constitutional document. It means that public authority is constituted by law, divided among institutions and substantively constrained by rights and higher-order rules. A constitution therefore performs three connected functions: it establishes institutions, limits their powers, and provides procedures through which government 3. Basic Law for the Federal Republic of Germany, arts. 20, 67, 79(3), 92-94 and 115a-115g; German Bundestag, historical materials on the Weimar Republic.

can act. Resilience requires all three. Excessive limitation can produce paralysis, while excessive emphasis on governmental capacity can facilitate concentration of power. Constitutional failure may occur at different levels. Textual failure occurs when the constitution is suspended, abolished or replaced. Institutional failure occurs when formal institutions remain but cease to perform their constitutional functions independently. Normative failure occurs when political actors systematically disregard constitutional restraints while continuing to invoke legality. Gradual erosion occurs where individual measures appear lawful but, taken together, weaken rights, political competition or institutional accountability.

A constitutional crisis should also be distinguished from ordinary political disagreement. A serious constitutional crisis arises when the normal allocation or exercise of constitutional authority is substantially disrupted and the institutions responsible for resolving the dispute are themselves placed under pressure. The deeper problem is a crisis of authority: competing actors claim legitimate authority over the same constitutional question, while ordinary

mechanisms of settlement lose effectiveness. 4 Constitutional resilience is best understood as a capacity for resistance, adaptation and recovery.

Resistance prevents a crisis from destroying fundamental constitutional commitments. Adaptation allows institutions to respond to new conditions without abandoning constitutional identity. Recovery restores ordinary constitutional government after the crisis and incorporates lessons into law or institutional practice. Resilience therefore does not mean rigidity. A constitution may change significantly and still remain resilient if its core commitments remain protected.

Constitutional survival is also different from regime survival. France demonstrates that a political regime may be replaced while republican constitutional government continues. India demonstrates the opposite danger: a constitutional document may remain formally operative while constitutional democracy is temporarily weakened. The proper measure of resilience is consequently whether accountable government, meaningful political competition, rights protection, judicial independence and lawful transfer of power continue to structure public authority.

4. Mila Versteeg and Emily Zackin, ‘Crises of Authority’ (2026) 22(2) Global Constitutionalism 234. 3. THEORETICAL EXPLANATIONS FOR CONSTITUTIONAL SURVIVAL

3.1 Concentration of Power

Constitutional systems become particularly vulnerable when one political force controls the executive, legislature, administrative machinery and mechanisms of accountability. Strong government is not itself unconstitutional; emergencies may require rapid action. The danger arises when there are insufficient countervailing institutions capable of imposing legal or political costs on excesses of executive authority. India in 1975 and Weimar Germany in the early 1930s illustrate different forms of this vulnerability.

3.2 Emergency Powers

Emergency powers create a constitutional paradox. Extraordinary threats may require extraordinary action, but emergency government concentrates power at precisely the moment when ordinary safeguards are under pressure. The central questions are therefore not whether emergency powers exist, but who controls them, what triggers them, how long they may

4 Mila Versteeg and Emily Zackin, “Crises of Authority” (2026) 22(2) Global Constitutionalism 234.

continue, whether legislative approval is meaningful, whether rights remain judicially enforceable, and whether the institutions of accountability remain capable of functioning. 5

3.3 Legislative Oversight

Parliamentary oversight is important because executives commonly exercise emergency powers. Approval, review and access to information allow legislatures to test necessity and duration. Yet formal parliamentary approval is not enough. Effective oversight depends on opposition rights, party competition, committee capacity and the practical ability of legislators to resist executive pressure.

3.4 Judicial Independence

Judicial review can keep constitutional limits enforceable against political majorities, but the existence of judicial power does not guarantee rights protection. ADM Jabalpur demonstrates that a formally powerful court may nevertheless adopt a highly deferential approach during crisis.

Germany's Basic Law goes further by protecting the constitutional status and functions of the Federal Constitutional Court even during a state of defence. 6 5. Bruce Ackerman, 'The Emergency Constitution' (2004) 113 Yale Law Journal 1029. 6. Basic Law for the Federal Republic of Germany, art. 115g.

3.5 Federalism and Territorial Dispersion

Federalism creates multiple centres of legitimate authority. Subnational governments can provide institutional alternatives when national institutions are under pressure. India's federalism is not protected by an express eternity clause, but the Supreme Court has treated it as a basic feature and has used judicial review to constrain misuse of Article 356. Germany protects federalism expressly through Article 79(3) of the Basic Law. Federalism can create friction, but that friction may also make unilateral national capture more difficult.

3.6 Political Competition and Constitutional Norms

Elections are mechanisms not only for selecting governments but for replacing them. The 1977 Indian election is significant because it provided a peaceful constitutional route for replacing the government responsible for the Emergency. Written rules also depend on conventions: accepting electoral defeat, respecting judicial decisions, preserving lawful opposition and exercising procedural powers with restraint. Formal legality cannot fully substitute for a political culture in which constitutional rules are accepted as binding.

5Bruce Ackerman, "The Emergency Constitution" (2004) 113 Yale Law Journal 1029.

6Basic Law for the Federal Republic of Germany, art. 115g.

3.7 Amendment and Self-Destruction

Constitutions must permit lawful change, but amendment can itself become a route to constitutional destruction. India's basic structure doctrine and Germany's Article 79(3) address this danger through different legal techniques. In *Kesavananda Bharati*, the Supreme Court distinguished constitutional amendment from destruction of the Constitution's essential identity; *Minerva Mills* reinforced the limitation on constituent power. Germany expresses certain limits directly in the constitutional text. ⁷

3.8 Institutional Redundancy and Post-Crisis Learning

Resilient systems do not depend on a single guardian. If courts are pressured, legislatures, federal units or elections may provide alternative routes of correction. This institutional redundancy is particularly visible in Germany and, after 1977, in India. Resilience also requires learning. The Forty-Fourth Amendment was a direct response to weaknesses exposed by the Emergency; the Basic Law was deliberately shaped by the collapse of Weimar; and the Fifth Republic was designed in response to the instability of the Fourth.

7. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625; Basic Law, art. 79(3).

4. INDIA: THE EMERGENCY, BREAKDOWN AND RECOVERY

4.1 Emergency Design and the 1975 Crisis

Part XVIII of the Constitution establishes national Emergency under Article 352, President's Rule under Article 356 and financial Emergency under Article 360. The original Article 352 permitted a proclamation on the ground of 'internal disturbance', a broader formulation than the present requirement of 'armed rebellion'. The 1975 proclamation was therefore made under a framework that provided greater constitutional room for exceptional intervention. ⁸ The political background included economic difficulties, opposition mobilisation and increasing challenges to the Union government. The Allahabad High Court judgment concerning the election of Prime Minister Indira Gandhi became an immediate political and constitutional catalyst. The Emergency was proclaimed on 25 June 1975 and continued until 21 March 1977.

⁷*Kesavananda Bharati v State of Kerala*, (1973) 4 SCC 225; *Minerva Mills Ltd. v Union of India*, (1980) 3 SCC 625; Basic Law, art. 79(3).

⁸Constitution of India 1950, art. 352; Constitution (Forty-Fourth Amendment) Act 1978.

Preventive detention was extensively used, opposition leaders were detained, press freedoms were restricted, and constitutional amendments altered aspects of the institutional balance.

4.2 ADM Jabalpur and Judicial Review

ADM Jabalpur v Shivkant Shukla concerned the availability of judicial relief against detention during the Emergency. The majority adopted a restrictive approach to habeas corpus, while Justice H R Khanna dissented. The significance of the case extends beyond its immediate holding: habeas corpus is a basic mechanism for testing whether the executive has lawful authority to deprive a person of liberty. If that mechanism becomes unavailable, executive detention is placed outside effective judicial supervision.

The later decision in Justice K S Puttaswamy (Retd) v Union of India expressly recognised the serious error in ADM Jabalpur and reaffirmed liberty as a central constitutional value. The later correction is important to the theory of resilience because it demonstrates that constitutional systems may recover from judicial failure through subsequent doctrine. ⁹

4.3 The Forty-Second Amendment and the Basic Structure

The Forty-Second Amendment, enacted during the Emergency, sought among other things to enlarge Parliament's amending power and restrict judicial review. In Minerva Mills, the Supreme Court invalidated key provisions and held that limited amending power forms part of the Constitution's basic structure. The episode shows that constitutional crisis can occur through 8. Constitution of India 1950, art. 352; Constitution (Forty-Fourth Amendment) Act 1978. 9. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

formally valid amendment procedures. A political majority may use constitutional power to weaken the institutional conditions that make constitutional democracy possible. Indira Nehru Gandhi v Raj Narain provides a related example. The Supreme Court invalidated an attempt to place the Prime Minister's election beyond ordinary legal scrutiny. The decision connected free and fair elections, democracy, judicial review and the rule of law with the constitutional structure. Together, these cases demonstrate the role of judicial review in preventing constitutional amendment from becoming a tool of political self-protection. ¹⁰

4.4 The Forty-Fourth Amendment and Constitutional Repair

The Constitution (Forty-Fourth Amendment) Act 1978 responded directly to the experience of the Emergency. It replaced 'internal disturbance' with 'armed rebellion' as the ground for

⁹Justice K.S. Puttaswamy (Retd.) v Union of India, (2017) 10 SCC 1.

¹⁰Indira Nehru Gandhi v Raj Narain, 1975 Supp (SCC) 1; Minerva Mills Ltd. v Union of India, (1980) 3 SCC 625.

a national Emergency, introduced additional procedural safeguards concerning Cabinet advice and strengthened parliamentary control. It also altered the operation of rights during emergencies. The amendment did not eliminate exceptional government; instead, it made exceptional government harder to invoke and harder to sustain without institutional scrutiny.

4.5 Article 356 and Federal Resilience

Article 356 raises a different issue: the relationship between Union authority and State democratic government. In *S R Bommai v Union of India*, the Supreme Court held that the President's satisfaction was not immune from judicial review and emphasised the importance of floor tests in determining legislative majority. The judgment strengthened federalism as a constitutional check on central power. Rameshwar Prasad later reinforced the principle that dissolution of a State Legislative Assembly following Article 356 remains subject to constitutional review.¹¹

4.6 Elections and the Capacity for Recovery

The 1977 general election demonstrated that electoral competition could operate as a constitutional corrective. The electorate replaced the incumbent government, after which the Emergency ended and institutional reforms followed. The importance of the episode lies in the existence of a peaceful mechanism for political replacement even after serious restrictions on ordinary democratic practice.

10. *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp (SCC) 1; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625. 11. *S.R. Bommai v. Union of India*, (1994) 3 SCC 1; *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1. India therefore reveals both vulnerability and resilience. The vulnerability arose from broad emergency powers, concentration of authority and weakened rights protection. Resilience emerged through elections, constitutional amendment, judicial review, federal institutions and later constitutional doctrine. The lesson is not that the Constitution either wholly failed or wholly succeeded. Rather, some safeguards proved inadequate under pressure while others remained available for restoration and repair.

5. FRANCE: THE FOURTH REPUBLIC AND THE FIFTH REPUBLIC

5.1 Institutional Instability

The French Fourth Republic, established by the Constitution of 27 October 1946, placed substantial political weight on the National Assembly and experienced repeated governmental

¹¹*S.R. Bommai v Union of India*, (1994) 3 SCC 1; *Rameshwar Prasad v Union of India*, (2006) 2 SCC 1.

instability. The Algerian crisis of 1958 exposed the limits of that institutional arrangement. The crisis was therefore different from India's 1975 Emergency: the central problem was not excessive executive concentration but the capacity of the constitutional system to produce stable and effective government.

5.2 The May 1958 Crisis and Constitutional Redesign

In May 1958, the Algerian crisis produced a confrontation involving civilian institutions, military actors and competing political demands. Charles de Gaulle returned to political leadership, and Parliament authorised the preparation of a new constitutional settlement. The Constitution of 1958 was approved by referendum on 28 September 1958. The Fourth Republic ended, but republican constitutional government continued in a redesigned form. 12

5.3 Executive Capacity and Article 16

The Fifth Republic created a semi-presidential structure in which the President possesses substantial constitutional responsibilities while the Government remains responsible to Parliament. The design sought to address governmental instability without abandoning electoral and parliamentary legitimacy.

12. Élysée, official historical materials concerning the 1958 constitutional transition and Charles de Gaulle. Article 16 provides exceptional presidential powers where the institutions of the Republic, national independence, territorial integrity or international commitments are under a serious and immediate threat and the regular functioning of constitutional authorities is interrupted. It requires consultation with senior constitutional actors, keeps Parliament sitting as of right and prevents dissolution of the National Assembly during the exercise of exceptional powers. The 2008 amendment introduced additional review by the Constitutional Council after specified periods.

13 The French model demonstrates that resilience does not necessarily mean maximising institutional vetoes. A government must possess sufficient capacity to act. At the same time, strong executive authority creates its own risks. The French constitutional settlement therefore illustrates a balancing strategy: executive capacity is increased, but it operates within elections, parliamentary responsibility and constitutional review.

12 Élysée, official historical materials concerning the 1958 constitutional transition and Charles de Gaulle.

13 Constitution of the French Republic 1958, art. 16, as amended by Constitutional Law No. 2008-724 of 23 July 2008.

5.4 Comparative Significance

For India, the French experience offers a limited but important lesson about governability. Constitutional systems can become vulnerable not only because executives become too powerful, but also because governments cannot respond effectively when authority is fragmented. The French solution cannot simply be transplanted into India because India's major constitutional crisis exposed a different problem. Comparative borrowing should therefore focus on function rather than institutional imitation.

6. GERMANY: WEIMAR AND THE BASIC LAW

6.1 Weimar and Article 48

The Weimar Constitution of 1919 established parliamentary government while granting the Reich President substantial emergency authority under Article 48. The provision was intended to permit rapid action to restore public security and order. The difficulty arose from its interaction with political fragmentation, economic crisis and declining parliamentary support. During the early 1930s, governments increasingly relied on presidential authority and emergency decrees rather than stable parliamentary majorities.

13. Constitution of the French Republic 1958, art. 16, as amended by Constitutional Law No. 2008-724 of 23 July 2008. The German experience demonstrates that constitutional collapse may be gradual. Repeated reliance on exceptional authority can normalise government outside ordinary parliamentary processes. The Nazi seizure of power cannot be attributed to Article 48 alone: political extremism, economic crisis, institutional weakness, elite decisions and failures of democratic coalition-building were also important. Nevertheless, emergency authority contributed to the weakening of parliamentary government and rights protection. 14

6.2 The Basic Law as Constitutional Learning

The Basic Law of 1949 was designed against this historical background. The Federal President's political role was reduced, parliamentary government was strengthened, federalism was entrenched, and the Federal Constitutional Court was given extensive authority. The constitutional order also recognised the possibility of anti-democratic political movements and placed substantive limits on amendment.

14Constitution of the German Reich (Weimar Constitution) 1919, art. 48; Richard J. Evans, *The Coming of the Third Reich* (Penguin, 2004).

6.3 Constructive Vote of No Confidence

Article 67 provides that the Bundestag may replace the Federal Chancellor only by electing a successor. The mechanism combines accountability with governability: Parliament can remove a government, but only when it can create an alternative executive. It directly addresses the instability that can arise when a parliamentary majority is able to destroy a government without possessing a workable replacement.

6.4 The Eternity Clause

Article 79(3) prohibits amendments affecting the federal structure, the participation of the Länder in federal legislation and the principles contained in Articles 1 and 20. The provision creates a constitutional core beyond ordinary amendment power. Its underlying premise is that a temporary political majority should not be able to use lawful amendment to abolish the conditions that make constitutional democracy possible. ¹⁵

6.5 Constitutional Court and Emergency Government

The Federal Constitutional Court is central to the German model. It reviews legislation, resolves disputes among constitutional organs and federal units, and protects fundamental rights. Article 115g additionally protects the constitutional status and functions of the Court during a state of defence. The Basic Law also distributes defence-emergency powers among the Federal 14. Constitution of the German Reich 1919, art. 48; Richard J. Evans, *The Coming of the Third Reich* (Penguin, 2004). 15. Basic Law for the Federal Republic of Germany, art. 79(3).

Government, Bundestag, Bundesrat and, in specified circumstances, the Joint Committee. The German approach therefore does not attempt to abolish emergency government; it constitutionalises the emergency by defining authority, procedure and institutional continuity. Germany's experience supports the proposition that constitutional resilience is systemic. The Court depends on institutional compliance, federalism depends on functioning Länder, Parliament depends on political competition, and constitutional limits depend on political acceptance. Strong institutions reinforce one another; none is sufficient in isolation.

7. COMPARATIVE ANALYSIS

7.1 Different Crises, Different Responses

India, France and Germany did not confront identical constitutional problems. India's Emergency exposed the risks of concentrated executive and parliamentary power and

¹⁵Basic Law for the Federal Republic of Germany, art. 79(3).

weakened rights protection. France's Fourth Republic faced governmental instability and insufficient executive capacity. Weimar Germany combined emergency authority with political fragmentation and declining parliamentary government. Their responses consequently moved in different directions: France strengthened executive authority, Germany dispersed and constrained power, and India retained a strong Union executive while tightening emergency safeguards after 1977.

7.2 Emergency Powers

India's emergency architecture permits substantial central intervention, including effects on the federal distribution of authority and the operation of rights. The Forty-Fourth Amendment introduced stronger procedural barriers. France permits substantial presidential concentration under Article 16 but surrounds it with consultation, parliamentary continuity and later review. Germany distributes emergency functions among several institutions and specifically protects the Constitutional Court. The comparative point is not that one model eliminates risk. It is that emergency concentration must remain reversible and reviewable.

7.3 Courts and Constitutional Identity

India and Germany both protect constitutional identity through substantive limits on constitutional change. India's basic structure doctrine is judicially developed; Germany's Article 79(3) is textual. France relies more heavily on constitutional architecture, political responsibility and the institutional role of the Fifth Republic. The mechanisms differ, but the underlying concern is similar: a temporary political majority should not be able to use constitutional procedures to remove the conditions necessary for democratic competition.

7.4 Federalism and Governmental Stability

Germany provides the strongest formal protection for federalism among the three systems. India's federalism is less rigidly entrenched but has received strong judicial protection, particularly through S R Bommai. France is not a federation and therefore does not provide equivalent federal veto points. At the same time, Germany and France illustrate the importance of governmental stability. The constructive vote of no confidence in Germany and the stronger executive structure of the Fifth Republic both seek to ensure that accountability does not become permanent governmental paralysis.

7.5 The Central Comparative Lesson

The comparison does not support a simple formula in which more checks automatically produce more resilience. Excessive fragmentation can impair governability, while excessive executive capacity can facilitate authoritarian concentration. Resilience lies in institutional balance: enough capacity to act, enough independence to scrutinise, enough political

competition to replace governments, and enough constitutional protection to prevent temporary majorities from destroying the system itself.

8. WHY SOME CONSTITUTIONAL SYSTEMS SURVIVE

The comparative evidence supports eight connected conditions. First, emergency powers must be legally bounded by defined triggers, procedures and time limits. Extraordinary government should remain connected to extraordinary circumstances and should be directed toward restoring ordinary constitutional government.

Second, institutions must be able to say no. Courts must be capable of reviewing unconstitutional measures; legislatures must be capable of scrutinising executives; federal units must retain meaningful authority; and electoral institutions must permit genuine political replacement.

Independence matters only when it is practically usable. Third, constitutional systems need multiple routes of correction. Reliance on a single institution creates systemic vulnerability if that institution is captured or disabled. India's post-Emergency recovery involved elections, courts, constitutional amendment and federal institutions. Germany similarly distributes constitutional responsibility among courts, Parliament, Länder and political parties.

Fourth, amendment must permit adaptation without becoming a mechanism of constitutional suicide. The basic structure doctrine and Article 79(3) provide different legal answers to the same structural problem: constituent power exercised through ordinary procedures cannot be treated as an unlimited power to abolish constitutional democracy.

Fifth, political competition must remain real. Elections provide the most direct mechanism through which citizens can correct governmental abuse. Sixth, emergency institutions must not destroy constitutional guardians. Courts, legislatures and lawful opposition must continue to function even when exceptional powers are exercised. Germany's protection of the Constitutional Court during a state of defence is an especially clear example.

Seventh, constitutions must learn from crisis. India's Forty-Fourth Amendment and Germany's Basic Law demonstrate that institutional memory can be converted into legal safeguards. France's Fifth Republic similarly reflected lessons about governmental instability. Eighth, constitutional legitimacy must survive the crisis. Rules are effective only when political actors and citizens continue to regard constitutional procedures as binding even when those procedures produce inconvenient outcomes.

Taken together, these conditions suggest an analytical formula: constitutional resilience is strongest where emergency powers are bounded, institutions are plural and independent,

courts can enforce constitutional limits, political competition remains meaningful, power is dispersed, constitutional identity is protected, political norms resist permanent exceptional government, and post-crisis correction remains possible. This is an analytical framework rather than a prediction of constitutional survival.

9. LESSONS FOR INDIAN CONSTITUTIONALISM

9.1 Preserve Emergency Safeguards

The Forty-Fourth Amendment should remain central to India's constitutional memory. Narrower grounds for a national Emergency and additional procedural safeguards respond directly to the experience of 1975–1977. The anti-abuse purpose of these provisions should remain part of constitutional interpretation.

9.2 Maintain Judicial Review of Article 356

S R Bommai demonstrates that federalism can operate as a substantive constitutional safeguard. Union intervention in a State should remain subject to judicial review, while questions concerning legislative majority should ordinarily be resolved through constitutionally appropriate legislative tests rather than executive assumptions.

9.3 Protect Courts and Parliamentary Oversight

ADM Jabalpur demonstrates the danger of excessive judicial deference during emergencies. Courts require institutional conditions that permit independent adjudication of politically sensitive questions. Parliament must likewise do more than formally validate executive action. Meaningful debate, committee scrutiny and opposition participation are important elements of constitutional accountability.

9.4 Protect Electoral Competition

The 1977 election shows that electoral competition is itself a constitutional safeguard. Electoral administration, lawful political communication, peaceful transfer of power and meaningful opposition provide mechanisms through which citizens can correct serious governmental excesses.

9.5 Preserve Federalism and Constitutional Identity

Federalism should continue to be treated as an institutional means of preventing excessive centralisation. Germany's Article 79(3) offers a conceptual lesson about protecting constitutional identity, but India already possesses the basic structure doctrine. The relevant lesson is therefore protection of fundamental constitutional commitments rather than transplantation of German text.

9.6 Balance Governability with Accountability

France demonstrates that excessive fragmentation can undermine stable government. India should therefore preserve sufficient executive capacity to govern while maintaining meaningful institutional checks. The objective is neither maximum executive power nor maximum veto points, but a sustainable balance between effective administration and constitutional accountability.

9.7 Institutionalise Post-Crisis Review

India could strengthen resilience by developing systematic review of extraordinary legal measures. Parliamentary committees, independent commissions and sustained constitutional scholarship can examine whether emergency powers, preventive detention frameworks, delegated legislation and federal interventions remain necessary and proportionate. Constitutional education can complement this process by ensuring that lawyers, judges, officials, legislators and citizens understand why exceptional powers must remain exceptional.

10. CONCLUSION

The question of why some constitutional systems survive political crises while others collapse cannot be answered by reference to one constitutional clause. Constitutional resilience is systemic. It depends on the interaction among emergency law, legislative accountability, judicial independence, political competition, federalism, amendment rules, constitutional norms and public legitimacy.

India, France and Germany demonstrate three different patterns. India experienced a severe crisis within the existing constitutional framework. The Emergency exposed the vulnerability of rights and institutional checks when political authority became highly concentrated, but the 1977 election, the Forty-Fourth Amendment, the basic structure doctrine and later judicial developments provided routes of correction. France responded to governmental instability by redesigning the constitutional settlement and strengthening executive capacity while retaining republican institutions. Germany responded to the collapse of Weimar by constructing a denser network of parliamentary, federal and judicial safeguards.

The strongest common lesson is institutional balance. A constitutional system must be capable of acting in emergencies without allowing emergency government to become permanent. Courts must review public power without displacing democratic government; legislatures must scrutinise executives without making effective government impossible; federal institutions must retain meaningful authority without preventing national

coordination; and political actors must accept constitutional rules even when those rules impose short-term political costs.

Constitutional resilience should finally be understood as a capacity for learning. A constitution is not resilient because it never experiences failure. It is resilient when failure does not make correction impossible. India's post-Emergency reforms and Germany's post-Weimar settlement show how constitutional communities can convert institutional failure into legal learning. For India, the appropriate comparative lesson is therefore neither to reproduce the French executive model nor to copy Germany's eternity clause. The task is to ensure that India's existing safeguards—judicial review, federalism, fundamental rights, parliamentary government, electoral competition and the basic structure doctrine—remain independent, effective and usable during periods of crisis.

Ultimately, constitutional systems survive not because crises are absent, but because they retain lawful means of resolving them. Constitutional resilience is the ability to adapt without surrendering constitutional identity, to exercise exceptional power without normalising it, and to recover from institutional failure without abandoning the principle that public power remains subject to constitutional restraint.

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