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From Common-Law Inheritance to Constitutional Supremacy: India's Post-Independence Legal Transformation

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ABSTRACT

At the time of independence in 1947, India had not only statutes, but a legal system: a common law way of thinking, a doctrine of parliamentary sovereignty, a judiciary accustomed to deferring to the legislature, and a case law system built on English precedent. The India of today, however, has a written, fixed Constitution, a robust Bill of Rights, a judiciary which can invalidate constitutional changes, and a jurisprudence of "basic structure" that bears no direct parallels to the United Kingdom. This review attempts to summarize the available scholarship on the Indian post-Independence legal transformation and suggest that this transformation must be understood as a selective constitutional rupture, rather than a complete “legal” shift, as constitutional supremacy, constitutional review of constitutional amendments, entrenched fundamental rights, and a unique federalism were far more shaken than the common law reasoning, private law, procedure, and legal professionalism were. The review focuses on four aspects of constitutional change in the literature, before addressing the continuities that qualify any rupture narrative, and suggests that the order that emerges can be characterized as a hybrid, neither British nor American, constitutional common law system. It also brings to light the under-theorization of the relationship between the Constitutional writers' constitutional decisions and the colonial legal culture. While the review is not exhaustive, it provides an extensive overview of the central scholarship in the field, not built on primary empirical studies, but rather on constitutional law scholarship, legal history and case law analysis.

INTRODUCTION

The Indian legal system is frequently referred to as “common law.” It employs precedent, adversarial procedure and a vocabulary that is taken from English law boldly. But this label doesn't tell the entire story. India has constructed a constitutional order, in several structurally important ways, a rejection of the very tradition it inherited, and yet, from a legal method perspective and in much of private law, it has remained closely bound to the tradition. This doctrine of parliamentary sovereignty, which Britain still holds as a basic constitutional principle (Dicey, 1885; UK Parliament, n.d.), was rejected by the Indian Supreme Court and, in its place, a constitutional supremacy which was judicially enforced was introduced. What is novel about the basic structure doctrine is that it enables the Indian courts to strike down constitutional amendments made by Parliament itself, which is in theory, sovereign and

unconstrained in Westminster systems. Khosla (2020) portrays the drafting of the Indian Constitution as a uniquely ambitious founding project, a project that consciously and explicitly sought to change Indian society through constitutional text, for which there is no real parallel in British history. There are at least three reasons why it is important to understand this trajectory. It is first and foremost a case study of how post-colonial states modify inherited legal institutions to new political projects (Jacobsohn, 2010). Secondly, it directly concerns current issues in India concerning the scope of the amending power, the role of the judiciary, and the stability of constitutional protection (Krishnaswamy, 2009; Sathe, 2002). Third, it helps to raise a wider theoretical issue in comparative constitutional law: the inevitability of localization of the law and its direction and rate (Choudhry et al., 2016).

Aims, guiding question, and thesis

The review asks: How, and in what specific legal-institutional ways, did the Indian post-independence constitutional order depart from the British common law and constitutional heritage it inherited at Partition, and what are any elements of continuity with it? The central thesis of this work is that this change was neither a complete abandonment of India's British common law heritage nor a radical break from it; it was, instead, a "selective" constitutional rupture, leaving the basic elements of British common law behind but absorbing into the constitution such things as judicially enforceable fundamental rights, the doctrine of constitutional supremacy, judicial review of constitutional amendments, and a federal structure without a British equivalent. The review does not rely on new primary data, but rather draws on the available constitutional scholarship, legal history and case law to establish this claim and is targeted at those interested in comparative constitutionalism, Indian legal history, or post-colonial legal theory.

Structure

The rest of the review is as follows. The search and selection approach is explained in section 2. Section 3 outlines the common law inheritance India received at independence. The analytical core of the book is in sections 4-7: constitutional supremacy over parliamentary sovereignty, the basic structure doctrine and judicial review, fundamental rights and directive principles, and federalism. Section 8 focuses on areas of continuity. The strands are brought together in Section 9, which describes the hybrid constitutional common law system that arises from them. Section 10 discusses contested and unresolved zones. Section 11 points out the gaps found in the literature. Section 12 concludes.

METHODOLOGY AND SCOPE

It is not a systematic review, but a narrative, and does not pretend to cover a literature of seven decades of constitutional writing. The scope and selection of the review is summarized in Table 1. Structured searches were carried out in the databases and terms mentioned in the databases without any restriction on the time period as foundational scholarship like Austin's (1966, 1999) institutional histories and Seervai's (1991) constitutional commentary are still authoritative decades after their publication, but the literature after 2010 was also included in the search, such as the edited handbook treatment (Choudhry et al., 2016)

and more recent monographs (Khosla, 2020; De, 2018). Peer-reviewed law review articles, foremost constitutional law monographs and seminal cases were used but also comparative UK institutional resources such as the House of Commons Library's own understanding of parliamentary sovereignty (House of Commons Library, n.d.) and its briefings (House of Commons Library, 2023). Landmark judgments were selected not as the result of a systematic search in a case database, but rather as being the leading authorities on each of the doctrinal themes, and case citations have been presented in the standard parallel-reporter system used in Indian legal writing, which permits a Supreme Court case to have two citations: an All India Reporter (AIR) and a Supreme Court Cases (SCC) citation. The review is to be synthetic and conceptual rather than empirical or doctrinal because most of the individual propositions reviewed are well established in the literature on their own, and the contribution of the review is chiefly as an integration in one framework of divergence and continuity.

Table 1. Review Scope and Selection Approach

Element	Description
Review type	Narrative review (non-systematic)
Databases	SSRN, HeinOnline, Manupatra, SCC Online, Indian Kanoon, Google Scholar
Key search terms	Basic structure doctrine; parliamentary sovereignty India; Indian constitutionalism common law; colonial legal inheritance India; Article 372; Kesavananda Bharati
Period covered	No date restriction; emphasis added to post-2010 scholarship
Source types	Books, peer-reviewed articles, edited handbooks, landmark judgments, UK institutional materials
Case selection	Foundational or leading cases purposively selected per doctrinal theme, not a systematic case-database search
Exclusions	Non-scholarly commentary, duplicate treatments of the same doctrinal point, non-English-language sources

THE INHERITED FRAMEWORK: COMMON LAW FOUNDATIONS AT INDEPENDENCE

Any discussion of divergence begins with an understanding of the actual inheritance. British colonial administration in India was by no means straightforward; it did not introduce English law uniformly, but developed a hybrid form, with English common law principles applying to commercial law and most civil law, while other areas (family law, succession, religious endowments) continued to be governed by personal law systems implemented in common law procedural forms (Galanter, 1989). Substantive and procedural law was brought into a more statutory structure in the 19th century, for example, the Indian Evidence Act (1872) and the Indian Contract Act (1872), along with other laws, which were largely based on English doctrine and codified very closely into statutory law, and were administered by a judicial system in which the senior levels of judges and barristers were filled with English trained individuals (De, 2018).

This inheritance was not abandoned after independence, but it was deliberately retained. Article 372 of the Constitution of India, 1950, created an ad hoc mechanism that would prevent legislative disruption of the entire body of existing laws, statutory and common law, until they were altered, repealed or amended by a competent legislature, regardless of whether that body was empowered to alter the Constitution itself. According to Austin (1966), the framing of the Indian Constitution was a process of selective borrowing, namely from the Government of India Act, 1935 for administration and federation, from the Irish Constitution for directive principles, from the United States for the fundamental rights and judicial review and from Britain for parliamentary form and procedure. Rao (1968) has narrated the process of framing in his contemporary writing, in which he also underlines the extent of reliance upon the British administrative precedent even at a conscious deviation from British constitutional theory, and Elangovan (2019) has also pointed to the extent of British administrative and legal influence in the framers' assumptions even though the text they created diverged from that of the British constitution. On this view, it was not a revolution in legal form, as such, but a series of carefully selected and successive deviations from the British constitutional theory, within a basic legal structure that was still clearly in the common law tradition: a deviation from British legal form, rather than a rejection of the British inheritance.

POINTS OF RUPTURE I: FROM PARLIAMENTARY SOVEREIGNTY TO CONSTITUTIONAL SUPREMACY

The most basic disagreement in the literature is over the locus of final authority. British constitutionalism, according to the orthodox Diceyan view, is based on the sovereignty of Parliament: that no subsequent Parliament can be bound by any precedent of its own; that no court can strike down an Act of Parliament on a substantive basis (Dicey, 1885; UK Parliament, n.d.). But to be precise, about which Britain this comparison calls to mind. In fact, contemporary British constitutional practice has moved far beyond the Diceyan model, with the Human Rights Act 1998 enabling courts to issue declarations of incompatibility (allowing courts to strike down legislation, thus formally upholding orthodox sovereignty while limiting it in practice), devolution, the disruption and adjustment of EU membership and withdrawal, and a growing

body of scholarship in judicial-review and common law constitutionalism that considers the limits that a court might place on Parliament's power in the event of an extreme exercise of its powers (House of Commons Library, 2023). Before these developments, India's constitution makers, who were drafting the constitution, rejected the traditional model that they had available at that time. The Constitution of India is a written supreme law; Article 13 stipulates that any law that offends fundamental rights is of no force; Article 245 gives Parliament's regular legislative power constitutional restrictions. The constitutional role of Parliament as a creature of the Constitution has been taken from the British to the American tradition, and this is one aspect of India's constitutional practice where the constitutional literature of the country has converged strongly (Seervai, 1991; Austin, 1999; Rajamani & Sengupta, 2017).

The literature demonstrates a greater divergence around the scope of this supremacy, with respect to the amending power itself. Article 368 gives special majority powers to Parliament for the amendment of the Constitution, including the fundamental rights. The Supreme Court in Shankari Prasad v. Union of India (1951) and Sajjan Singh v. State of Rajasthan (1965) concluded that constitutional amendments were not "law" as understood under Article 13, and hence did not have to abide by the constraints of fundamental rights, thereby aligning itself more closely with British-style respect for the legislature's constituent power. However, in Golaknath v. State of Punjab (1967), the Court ruled that amendments were "law" for the purpose of Article 13 and Parliament had no power to amend fundamental rights, thus responding to this judgment with the 24th and 25th Amendments that sought to reassert Parliament's amending power. But, as Krishnaswamy (2009) argues, this “cancellation and restoration” raises a more fundamental yet unanswered question from the very act of drafting: whether or not the supremacy of the Constitution should extend to the constituent power as well as the ordinary legislative power, one not faced by British constitutional theory, which has no written constitution.

POINTS OF RUPTURE II: THE BASIC STRUCTURE DOCTRINE AND JUDICIAL REVIEW

The single most-discussed innovation in the literature searched for in this review is the basic structure doctrine, which is the most consequential jurisprudential expression of the structural premise of divergence, namely the principle of constitutional supremacy (Krishnaswamy, 2009). In Kesavananda Bharati v. State of Kerala (1973), the Supreme Court of India, by a narrow majority, ruled that Parliament's power to amend the Constitution under Article 368 was extensive but not unlimited and did not extend to changing the fundamental structure or the basic framework of the Constitution, as it was later elaborated, including judicial review, the rule of law, separation of powers, secularism, and free and fair elections (Supreme Court of India, n.d.). The doctrine, however, has no equivalent in orthodox British constitutional law because the notion that a constitution could limit the law-making power of Parliament, let alone a list of features that are ‘unamendable', would carry constitutional incoherence under Diceyan sovereignty, even with the more qualified versions of legislative constraint that have subsequently emerged in UK practice (Dicey, 1885; House of Commons Library, 2023).

Kesavananda is a question that orthodox British constitutionalism never had to consider, and one that it never gave courts the authority to pose: who is the authority that decides what the Constitution is really about, and what constitutes a change in its meaning, rather than its amendment, which goes beyond the point of recognition? It was Parliament's own answer that its amending power under Article 368 is a plenary constituent power that was rejected in favour of the answer that came from the judiciary itself. It is not that case that is the watershed, it is the change in the attitude of the judges: willingness and capacity to review not only ordinary legislation but also constitutional amendments, and the more adventurous method of judicial review adopted by the judges from their colonial predecessors, which Krishnaswamy (2009), Bhatia (2019) and Kirpal et al. (2000) identify in the years that followed the decision. This was tested practically right away. In Indira Nehru Gandhi v. Raj Narain (1975), the Court declared an amendment to the Constitution (the 39th Amendment) as unconstitutional because it had taken away the right of the court to examine the conduct of the Prime Minister's election. In Minerva Mills v Union of India (1980), the Court went even further, eliminating from the basic structure provisions of the 42nd Amendment, which had tried to give the directive principles absolute priority over the fundamental rights and to make amendments themselves unassailable before a court.

The path has engendered split opinions among constitutional scholars concerning its nature. Some see the doctrine as a protective measure for the judiciary against the abuse of the majority (Bhatia, 2019; Sathe, 2002) created in the direct memory of the Emergency period (1975-1977) when the right to approach courts was suspended and the Court itself, in ADM Jabalpur v. Shivkant Shukla (1976), controversially upheld the suspension of the right to approach courts for habeas corpus, a decision widely seen as the Court's nadir and is often cited as the counter-example that supports the robustness of the doctrine (Bhatia, 2019; Chandrachud, 2015). Others are more sceptical, suggesting that the power of an unelected judiciary to strike down duly enacted amendments based on a judicially established standard is at odds with democratic legitimacy (Baxi, 1985), and that at times the doctrine has been used broadly to taint ordinary disagreement between the political branches and the judiciary (Sathe, 2002). On this normative continuum, what the literature shows is the structural importance of the doctrine: It subverts the traditional British arrangement of the relationship between the legislature and the judiciary, elevating the courts to the ultimate judges of constitutional identity in India instead of Parliament (Jacobsohn, 2010; Kirpal et al., 2000).

POINTS OF RUPTURE III: FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES, AND THE REWORKING OF RIGHTS DISCOURSE

A third axis of divergence is with regard to rights. British constitutionalism, historically, safeguarded liberty by the residual principle, that is, by leaving people free to do anything that was not specifically forbidden by law: rights are common law freedoms, not a codified bill of rights which can be used to challenge primary legislation (a lacuna partially filled by the Human Rights Act 1998, which does not have the power to invalidate primary legislation). Unlike the Indian Constitution, the Chapter on Fundamental Rights (Part III) is justiciable and can be enforced by the Supreme Court under Article 32 of the Constitution, and the Supreme Court has termed it to be part of the basic structure so it cannot be

taken out even by a constitutional amendment. In parallel to this, Part IV introduces the Directive Principles of State Policy (borrowed structurally from the Irish Constitution), which are non-justiciable but not the less declared as "fundamental in the governance of the country. Tripathi (1972) was one of the first to say that to treat these principles as mere aspirational statements and not as tools for interpretation of the "justiciable" rights together with them would substantially underestimate the intended constitutional significance of these principles, which the Court's subsequent law-making lawfully confirmed.

It is essentially a dual structure of rights: enforceable rights and social and economic rights that are constitutionally significant but not enforceable, with a significant body of discourse about it that developed in its own right (Bhatia, 2019). Much of this scholarship dates back to the understanding of how the Supreme Court over time extended the meaning of the fundamental rights, especially the right to life and personal liberty in Article 21 of the Indian Constitution. The landmark case is Maneka Gandhi v. Union of India (1978), in which the Court observed that the words "procedure established by law" in Article 21 have to be fair, just and reasonable. That has been a quote from this, in particular, by Austin (1999), who has interpreted Article 21 jurisprudence into something akin to American-style substantive due process, but an interpretation, not the Court's own words, and something that was deliberately drafted with the British-influenced language to avoid that eventuality. Article 21 was later extended to include rights to livelihood, a clean environment, privacy (in K.S. Puttaswamy v. Union of India, 2017) as well as to shelter, which Bhatia (2019) and Khosla (2020) consider some of the strongest evidence of India's drift away from a more literal, texts-centred approach to interpretation from its British legacy. While this is not to denigrate the nature of British common law constitutionalism, which has developed a strong rights-protective interpretive tradition, even in absence of a constitutional rights instrument that is firmly entrenched (House of Commons Library, 2023) – what is special about the Indian case is not that judicial rights-expansion occurred, but that it occurred through an entrenched, textually superior rights chapter immune even from constitutional amendment.

POINTS OF RUPTURE IV: FEDERALISM AND THE REJECTION OF UNITARY ASSUMPTIONS

Federal design is a fourth, less widely studied dimension of difference, besides doctrinal. By following this axis, layer by layer it explains the reason why it can be considered as divergence at all. Historically, the British model was unitary because there was no constitutional division of legislative competence and sovereignty was centralised in a single Parliament, whereas devolution to Scotland, Wales and Northern Ireland is a comparatively new, statutorily granted, and in principle revocable devolution. The colonial government in India still developed a centralized administration, based on this unitary concept, with a focus on taxation and legislation in Delhi and the provincial governors it appointed. India's constitutional framers then made a real revolution: they inserted a formal constitutional division of legislative powers between the Union and the States into the Seventh Schedule, via the Union List, State List, and Concurrent List, which, except for the British tradition which preceded it, was not found in either the colonial administrative state of India or the Indian Constitution itself. Part of this centralizing tendency

that India adopted, however, remained from the earlier days. Austin's 1966 and 1999 essays develop a notion of Indian federalism as having a strong central bias, as seen in the residuary powers of the Union in the Indian legislative branch, the Governor, and the emergency powers enabling the central government to supplant state powers. This results in a constitutionally non-unitary British government-type state, but with an unusual mixture of central government control and strong federal influence, as within the colonies in the British Isles. The movement is a multi-layered one from a unitary premise, to a centralized colonial administration, to a formally federal, but centrally weighted design, but it is also evidence of being different from Britain: the constitutional distribution of competence is not found in the British tradition at all. In the literature, this theme is not as well developed as the above axes of rights and judicial review, although it is dealt with in some respects in the discussion of gaps below.

AREAS OF CONTINUITY: WHERE COMMON LAW PERSISTS

However, a narrative review that is purely around rupture risks exaggerating the discontinuity, and a lot of literature qualifies the divergence narrative (Austin, 1999). Certain elements of continuity are worth foregrounding, and perhaps the most original observations in the review are the points emphasized in the transformation traced in Sections 4–7, namely that it was not total. First, Indian constitutional and legal logic is still distinctly common law, in that judges reason from precedent, apply stare decisis and incrementally fashion the law case by case, despite the considerable codified statutory foundation that lies below much of Indian private law. Second, large areas of private law (contract, tort, and much of commercial and company law) survive in the same form they did in the English common law, and have been modified in small steps, not overhauled wholesale; the Indian Contract Act, 1872 is in force with few significant changes. Third, procedural law remained in its colonial forms, statute books from 1908 (Civil Procedure Code) and 1973 (Criminal Procedure Code), and still adhered to the same structure for many decades, until the Indian Penal Code, the Indian Evidence Act, and the Criminal Procedure Code were replaced by new codes in 2023, which began to be in force on 1 July 2024. Fourth, the colonial legacy of the judiciary's institutional culture (the curriculum of law schools, the structure of the legal profession, court hierarchy, and courtroom conventions) remains strong, as Galanter (1989) demonstrates in his socio-legal analysis of the Indian judiciary and bar. Overall, this scholarship indicates that India's distinctness from Britain has focused on constitutional theory and public law doctrine, and not on the method and substance of the common law generally, and that this continuity is not a minor but rather a major component of the larger thesis of the paper.

THE INDIAN MODEL AS A HYBRID: NEITHER BRITISH NOR AMERICAN

The next four chapters, 4–8, present a clear synthesizing question: What legal system did India produce? The diagnosis deduced from this review seems to be that India did not create an order based on British laws, nor did it create an American order, but an order that was common law in nature, with no direct British or American model. Article 372 took over from Britain the common law approach, the principle of

precedent, an adversarial system and much of the content of the private law. It took the concept of a written supreme constitution, with a strong bill of rights that can be judicially interpreted from time to time to extend fundamental rights, from India and adopted an amendment process similar to Article V, from the United States; and, from Ireland, it borrowed the concept of non-justiciable directive principles, which the Indian courts have used as interpretative tools to expand enforceable fundamental rights, and which generally do not have a strong interpretive role in Ireland (Tripathi, 1972). The judiciary invented a concept of features of the Constitution which are not amendable, in fact, not even mentioned anywhere in the Constitution, and which is provided for by the basic structure doctrine, which would be valid against Parliament, who would otherwise have the constituent power to amend the Constitution. What is unique here is the concept of 'constitutional identity' developed by Jacobsohn (2010): constitutions that adopt institutional elements from a variety of traditions are not simply a copy of any one of them, but instead have an identity that emerges from the tensions between the different elements they have borrowed. This view of Indian constitutional identity suggests that it is not a single tradition it has inherited, but it is a continuous and unclosed debate between these traditions: common law method and constitutional supremacy, judicial restraint and judicial supremacy, parliamentary democracy and basic structure review. It is that argument, not an actual change from one legal family to another, that is ultimately what the evidence of this review depicts.

CONTESTED AND UNSETTLED ZONES

In between there are contested areas of rupture and contested areas of continuity, where the literature is not in agreement, or where the doctrine is still unclear. One such zone is the content of the basic structure doctrine itself: although this doctrine has now been established as law, its scope is still subject to litigation, and there is debate on whether it is an over-extended judicial veto or a narrow tool of protection (Baxi, 1985; Krishnaswamy, 2009). The second is the issue of judicial independence and the appointment process prevalent during British rule, which is now being replaced by the collegium system, a judicial creation with no colonial or British precedent, that has been the subject of controversy ever since the Supreme Court struck down the National Judicial Appointments Commission in 2015 (Chandrachud, 2015; Mehta, 2007). Mehta (2007) believes this uncertainty regarding appointments is indicative of a judiciary that has gained a lot of power without ever reaching full maturity in its theory of how it will be held accountable as an institution. A third is related to Parliamentary privilege and legislative procedure, where the practice of the House of Commons in the UK continues to be relevant for the Indian House of Commons, although the theory of the former has become very different from the latter. The literature surrounding these disputed areas is less developed and more fragmented than that on basic structure and fundamental rights, thus indicating that the "divergence" story is least developed in those areas.

GAPS IN THE LITERATURE AND DIRECTIONS FOR FUTURE RESEARCH

This synthesis makes several gaps apparent. First, the literature is very doctrinal and institutional in its focus on the Supreme Court, and there is comparatively little sustained empirical or historical work on the attitudes of individual drafters of the Constitution, such as B.R. Ambedkar (though see Rao, 1968;

Elangovan, 2019, for Sir Benegal Narsing Rau). Second, the federalism axis is under theorized compared to the rights and judicial review axis, and when compared to other post-colonial federations. Third, the literature on India's path and/or the other common law post-colonial states (eg Pakistan, Sri Lanka or the common law jurisdictions in Africa) is not extensive enough to aid in distinguishing the features drawn from specifically Indian political conditions from the features drawn from the general dynamics of decolonising common law systems (Jacobsohn, 2010). Fourth, the new criminal codes that were enacted in 2023 and began to apply from 1 July 2024, which were explicitly formulated as a decolonization of Indian criminal law, have been too new to have produced a full range of scholarly literature, and this is an important area for research on whether substantive, and not merely constitutional, divergence is now rapidly increasing. The closest existing model that this emerging area will probably require is edited volumes like those of Choudhry et al. (2016) and Kirpal et al. (2000). The latter gaps indicate that though Indian constitutional differences with Britain have been well charted, the more general question of a legal-cultural difference and its comparative post-colonial aspect has been comparatively under-researched. It is also important to be explicit on what it is a review like this can do: it can only do something synthetic and conceptual, it can only put together what it is that is divergent and what it is that is continuous, and not something that is either empirically novel or doctrinally novel in any one of the individual propositions that are synthesized here, such as the ones that are found in the sub-categories.

CONCLUSION

Indian literature broadly indicates that the seemingly universal statement, "India is a common law country," is accurate but only in a certain and meaningful sense. India's transformation was not a rejection of all aspects of British common law, but a constitutional break: judicial interpretation of common law methods, institutions and most of private law and procedural law remained, constitutional supremacy was introduced (rather than parliamentary sovereignty), fundamental rights were made judicially enforceable, constitutional amendments were subject to judicial review, and the federal structure (no British equivalent) was created. From a legal method, private law substance, procedure, and professional culture perspective, India's system is still very much rooted in its British past, intentionally maintained by Article 372 and further entrenched over 70 years by institutional continuity (Austin, 1999; Galanter, 1989). But in terms of approach to constitutional theory, India made a bold start almost immediately (Khosla, 2020). The importance of the correct chronology cannot be overemphasized, and the doctrinal development was crucial to understanding why: the doctrinal foundation was established first in Kesavananda Bharati v. State of Kerala (1973), which established that Parliament's amending power did not extend to the basic structure of the Constitution; the Emergency was declared in June 1975, and the Court, deciding Indira Nehru Gandhi v. Raj Narain (1975) during the Emergency, invoked the doctrine of basic structure to strike an amendment shielding the Prime Minister's own election from scrutiny; the same period also saw the judiciary's nadir in ADM Jabalpur v. Shivkant Shukla (1976); and the doctrine's post-Emergency consolidation in Minerva Mills v. Union of India (1980) confirmed that the basic structure limitation would survive the political crisis that had tested the judiciary's resolve to enforce it (Bhatia, 2019; Sathe, 2002). The sequence runs from constitutional conflict over the amending power, through *Kesavananda*, into the Emergency and its judicial failures, and out the other side into a strengthened rather than

weakened doctrine, rather than treating the Emergency itself as what generated it. Less settled is the extent to which this constitutional divergence has, or will, migrate into the private law and procedural core that has so far remained comparatively untouched, a question the recent recodification of India's criminal statutes makes newly urgent, and one that future research is well positioned to address.

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