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# The German Influence on India's Basic Structure Doctrine: A Study of Constitutional Guardianship

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TANISHQ JUGAL<sup>1</sup>

## ABSTRACT

*The article examines how the evolution of India's basic structure doctrine was influenced by German constitutional philosophy in the early 20th century, specifically the discussions around constitutional guardianship. It looks at the conceptual frameworks developed by German jurists such as Hermann Heller and Carl Schmitt, which subsequently influenced Indian constitutional discourse. The paper examines how the judiciary accepted and modified these concepts to protect the fundamental principles of the Constitution by examining significant rulings from the Indian Supreme Court, particularly the Kesavananda Bharati case. The analysis emphasizes how crucial the fundamental structure doctrine is in order to uphold India's constitutional framework's democratic legitimacy and balance of power.*

## I. INTRODUCTION

The onset of twentieth century saw global changes and constitutional reforms in various countries to keep pace with the changing social and political scenarios. In Germany, legal scholars debated constitutional guardianship, which had a significant influence on independent India. India's basic structure doctrine emerged because of this influence, stating that certain fundamental principles of the Constitution were inviolable and could not be amended without violating the Constitution itself. The said debate had a profound influence on many other countries, including independent India. Germany is widely regarded as the birthplace of the concept of constitutional guardianship in the early decades of the twentieth century.<sup>2</sup> In the early 1900s, after the formation of the Weimar Republic in Germany, there was a debate on who should protect the newly established constitution from potential dangers. Legal scholars were divided, with some believing that the constitution had enough protection mechanisms, while others suggested the need for a dedicated group of guardians to safeguard

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<sup>1</sup> Author is an Advocate in India.

<sup>2</sup> Mr Prasidh Raj Singh, 'The Basic-Structure Doctrine and Its German and French Origins: Response by Prasidh Raj Singh' (Law and Other Things, 7 March 2022) <<https://lawandotherthings.com/the-basic-structure-doctrine-and-its-german-and-french-origins-response-by-prasidh-raj-singh/>> accessed 2 May 2023.

the constitution. Throughout the ascent to power of the Nazi government in Germany, this notion was the subject of considerable debate and dispute, and it remained a divisive and passionate problem all through that period. The Nazi government's ascension to power in Germany, it was an issue of much debate and contention.<sup>3</sup> Tracking India's independence from the colonial rule in the year 1947, the leaders faced challenges In regard to constructing a constitution that would uphold India's democratic and secular values. The task was difficult since the Constitution had to be created from scratch. The German debate on constitutional guardianship influenced the ideas included in the Indian Constitution when it was initially drafted in 1950. One of the major concerns for the Constitution drafters was the possibility that a large majority might use their power to modify the Constitution's fundamental principles. This possibility caused anxiety for the drafters, particularly the fear that it could be done by an overwhelming majority.

## **II. GERMAN THINKERS AND THE EVOLUTION OF INDIA'S BASIC STRUCTURE DOCTRINE**

Hermann Heller was a pivotal actor in the German debate over constitutional guardianship, and his theories had far-reaching consequences outside of Germany, particularly in India. Heller contended that a constitution was a political document as well as a legal one, and that the duty for interpreting and executing it could not be assigned simply to the court. Instead, he argued for the creation of a constitutional court whose major function would be to guarantee that the government followed the constitution. His arguments struck a chord with Indian law academics who were wrestling with similar problems about how to ensure that the administration followed constitutional values. Certain scholars such as German historians Carl Schmitt, Dietrich Conrad and Dr. Polzin helps us in understanding the background and modalities of how the “basic structure doctrine” has been understood by multiple judiciary across the countries.

Carl Schmitt's ideas on implicit constraints on constitutional amendments and his notion of constituent power are examined in this article. Schmitt felt that the component power was a legal body that existed outside of, or in addition to, a constitution, and he defined the constituent power. The paper does, however, point out that some of Schmitt's opinions on the issue were harmful and unjustified. Nonetheless, it emphasises that these features of Schmitt's theory had no impact on the Indian Supreme Court's basic-structure doctrine. The article's

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<sup>3</sup> Torsten Stein, “Germany’s Constitution and participation in international peacekeeping operations”, *Asia-Pacific Review*, Vol-7, No-2,2020.

author, Dr. Polzin, contends that the Indian Supreme Court has been able to rely on the positive features of Schmitt's work on implied limitations while evading the drawbacks of his theory. Whereas Amendments to a constitution, according to Dietrich Conrad, should not be abrogated or result in real abrogation or entire change. Even minor modifications are beyond the purview of amendment if they have such far-reaching repercussions on the organic framework of the constitution that its core identity is lost. In other words, any change that undermines the essential ideas and ideals of the constitution, even if brought about through an amendment process, is illegitimate.

The Indian Supreme Court's adoption of the basic structure doctrine was a significant development in this context. According to this doctrine, some fundamental features of the Indian Constitution are sacrosanct and cannot be changed even by the constituent assembly. The doctrine was first expressed in the famous 1973 case of *Kesavananda Bharati v. State of Kerala*.<sup>4</sup> The Supreme Court declared that Indian Parliament's power to improve the Constitution wasn't absolute and therefore some basic features of the Constitution were beyond the reach of constitutional amendments. The origins of the *fundamental structure theory* may be attributed back to talks held throughout the creation of the Indian Constitution. Even as far back as 1947, the Constituent Assembly saw the significance of safeguarding the Constitution against possible perils. The German discussion on constitutional guardianship had a great influence on the Assembly's deliberations on this issue, and numerous of the views advanced by Indian legal experts paralleled those advanced by their German counterparts.

### III. POST-KESAVANANDA CASES STRENGTHENING THE DOCTRINE

Indian legal scholars were particularly influenced by the work of Carl Schmitt, a prominent German jurist who had argued for the creation of a guardianship council to protect the Weimar Constitution. Schmitt's ideas were highly controversial, and many scholars disagreed with his proposals. However, his work had a significant impact on Indian legal thought, and his ideas about the need for constitutional guardianship were echoed by many Indian legal scholars in the years following independence. Since the *Kesavananda Bharati* case, the basic structure doctrine has been invoked in numerous cases before the Indian Supreme Court. It has been used to strike down constitutional amendments that were deemed to disrupt the Constitution's basic structure which has helped to establish the Supreme Court as a powerful

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<sup>4</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

Note: The inclusion of Carl Schmitt's theories in this paper is purely for academic and comparative constitutional analysis. While Schmitt's political affiliations during the Nazi era are widely condemned, this paper focuses solely on the legal and theoretical aspects of his work that have been referenced in global constitutional discourse, including in India.

check on the powers of the executive and legislative branches. A few to be looked upon are as followed-

In the *Golaknath v. State Of Punjab*<sup>5</sup> (1967) which was a watershed moment in Indian constitutional history, establishing the notion of parliamentary authority in constitutional modifications. However, the Supreme Court reversed it in the *Kesavananda Bharati* decision in 1973, which created the fundamental structure theory. Certain essential characteristics of the Indian Constitution, according to the concept, are inviolable and cannot be modified even by the constituent assembly. This idea has been critical in preserving the Constitution's legitimacy and guaranteeing that it remains a pillar of Indian democracy.

In *Minerva Mill vs. Union of India*<sup>6</sup>, the Indian Supreme Court rejected provisions in Article 368 of the Indian Constitution<sup>7</sup> that allow the Parliament to authorise and amend any portion of the Constitution. This judgement was made because the alterations made by the 42nd constitutional amendment went above and beyond what was required, undermining the Constitution's integrity and uniqueness. The Court's decision made it abundantly obvious that the Constitution could not be altered in a way that jeopardised its essential principles and ideals.

In the *Indira Nehru Gandhi v. Raj Narain*<sup>8</sup> (1975), Supreme Court of India used the basic structure doctrine to strike down “Clause (4) of Article 329-A”, which had been incorporated by the “39th Amendment” in 1975. The Court held that this particular clause was outside the Parliament's revising power as it demolished the Constitution's basic features. The ‘39th Amendment Act’ was passed during “the Emergency Period”, and it placed the election of the President, Vice President, Prime Minister, and Speaker of the Lok Sabha beyond the scrutiny of the judiciary.

In one of the latest judgements related to this, *S.R. Bommai vs Union Of India*<sup>9</sup> 1994, the Indian Supreme Court aimed to prevent the misuse of Article 356<sup>10</sup> that dealt with the obligation of President's Rule on states. Although it did not involve any constitutional amendment, the basic structure doctrine was operated. The court held that state government's guiding principle that went hostile to the basic structure of the Constitution could be a binding ground for the central government's exercise of power under Article 356.

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<sup>5</sup> *Golaknath v State of Punjab* [1967] 2 SCR 762

<sup>6</sup> *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* [1980] INSC 177; AIR 1980 SC 1789.

<sup>7</sup> Constitution of India art 368.

<sup>8</sup> *Indira Gandhi v. Raj Narain and Anr*, 1975 SCR (3) 333.

<sup>9</sup> *S.R. Bommai v. Union of India*, AIR 1994 SC 1918 (India).

<sup>10</sup> *Ibid* at art 356.

Although the fundamental structure theory has been criticised for providing the judges undue power and for being imprecise, it remains an important feature of the Indian constitutional framework. Some scholars contend that it limits elected leaders' ability to make significant changes to the Constitution. However, the concept has been critical in ensuring that the Indian Constitution maintains a fluid instrument capable of adapting to changing social and political situations while retaining its basic ideas and ideals. These disputes culminated in the fundamental structure doctrine. It reflected an acknowledgement that the Indian Constitution was more than just a legal instrument, but also a political one. As a result, procedures to defend it from potential dangers were necessary. The establishment of the fundamental structural concept by the Supreme Court was a crucial step towards reaching this aim. It established the Indian judiciary as a crucial component in the constitutional system by providing a mechanism for preserving the Constitution against potential abuses of power.

#### **IV. CONCLUSION**

Finally, the German debate on constitutional guardianship in the 20th century had a significant impact on the constitutional formation of a sovereign India. Indian legal experts were strongly affected by German professors such as Hermann Heller and Carl Schmitt's notions, which contributed to the formation of the Indian Constitution.

The adoption of such basic structure doctrine by the Indian Supreme Court was a key part of this process and represented a recognition that the Constitution was not simply a legal text, but also a political one. The basic structure doctrine has helped to establish the Indian judiciary as a powerful check on the powers of the executive and legislative branches, and has helped to ensure that the Indian Constitution remains a vibrant and living document, capable of adapting to changing social and political realities.

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