



ILS LAW COLLEGE, PUNE

under the auspices of  
The Centre for Public Law

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## SEMINAR ON

- Constitutional Fraud, Constitutional Silences & Basic Structure Constitutionalism

### Speakers

***Mr. Mihir Naniwadekar***

Advocate, High Court of Bombay & Supreme Court of India; Editor & Contributor (Indian Constitutional Law & Philosophy Blog)

***Nivedhitha K.***

Research Assistant, Prof. Sital Kalantry (Clinical Professor of Law, Cornell Law School); Writing Intern, Indian Constitutional Law and Philosophy Blog

***Dr. Sanjay Jain***

Associate Professor, ILS Law College, Pune

Day and Date: **Saturday, 12<sup>th</sup> October, 2019, 1.30PM to 5.00PM**

Venue: **Hall- 18, Laxmi building, ILS Law College, Pune**

Registration Fee: **Rs. 118/- (inclusive of GST)**

To register, visit [www.ilslaw.edu](http://www.ilslaw.edu) and refer the 'events' tab.

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**For any queries/clarifications:**

Varad S. Kolhe: +91 95034 53510 | Nihar Chitre: +91 97571 35410

## CONCEPT NOTE

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The predominant aim and objective of this seminar is to simulate intellectual discussion and engagement on three very alluring and fascinating concepts in Constitutional Law worldwide i.e. Constitutional Silences, Constitutional Fraud and basic structure constitutionalism.

### Constitutional Silences & Constitutional Fraud

To begin with, silences of the Constitution are not, by the literal meaning of the term, mere gaps or omissions. As Professor Laurence Tribe describes: “*What may be more commonplace is the proposition that constitutional silences, like silences of other kinds, aren't just occasional gaps or omissions in an otherwise-seamless design. They're everywhere and come in as many flavors and varieties as sounds. Ambiguity and multiplicity of meanings are in a sense manifestations of silence. There are as many reasons to be silent as there are to speak, and as many ways to hear meaning in the sounds of silence.*”<sup>1</sup> Every sentence, every phrase, is in part silent with respect to how a reader or listener is to go about attributing meaning to it-how narrowly or literally it is to be taken; what significance is to be attributed to what it excludes along with what it includes; how its context, both elsewhere in the same text and in preceding and comparable texts, ought to figure in what it conveys.<sup>2</sup>

With the recent decision of the government to modify Art. 370 of the Constitution, ‘constitutional fraud’ is a term which has surfaced ubiquitously across newspapers; blogs and scholarly articles. However, ‘fraud on the constitution’ is not an infant conception, but one that has prevailed in constitutional law since ages. To put it very simply, doing indirectly what one cannot do directly underlines the premise of a constitutional fraud.

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<sup>1</sup> Laurence H. Tribe, *Soundings and Silences*, 115 Mich. L. Rev. First Impressions 26 (2016).

<sup>2</sup> See 2 THE COLLECTED PAPERS OF CHARLES SANDERS PEIRCE 135 (Charles Hartshorne & Paul Weiss eds., 4th prtg. 1978) (“A sign, or *representamen*, is something which stands to somebody for something in some respect or capacity”).

## Basic Structure Constitutionalism

The power to amend the Constitution is not unbridled. The basic structure doctrine was evolved in the Kesavananda Bharathi case,<sup>3</sup> which is now used to place a check on the exercise of constituent power by the Parliament. However, the doctrine is surrounded by lack of clarity as to its application. A perusal of case laws pertaining to the basic structure doctrine elucidates that basic features operate in 3 levels of abstraction - concept, facet, and conception. An 'alteration' of any of the three levels of abstraction would violate the basic structure of the Indian Constitution.



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<sup>3</sup> AIR 1973 SC 1461.

## ADV. MIHIR NANIWADEKAR

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*Mr. Mihir Naniwadekar graduated from the National Law School of India University with a Gold Medal (University Prize) in Law & Economics. He practices at the Bombay High Court and the Supreme Court of India. His areas of expertise include taxation, commercial law and constitutional law. He also acts as an arbitrator in commercial disputes. He is widely published in several domestic and international peer-reviewed journals and has delivered lectures at various law schools and professional bodies as a guest lecturer. He is also on the board of advisors of the NLS Business Law Review.*

## NIVEDHITHA K.

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*Nivedhitha K is a graduate of B.A. LL.B. (Hons.), specialised in Constitutional Law from School of Law, Alliance University, Bangalore. She is presently working as a research assistant to Ms. Sital Kalantry (Clinical Professor of Law, Cornell Law School) on a project on Surrogacy in India. She is also a writing intern under Adv. Gautam Bhatia, for the Indian Constitutional Law and Philosophy Blog.*

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