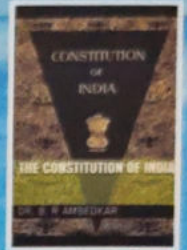




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Genesis To Terminus Of Article 370: Socio-legal Perspectives



DME Law School

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ABOUT THE BOOK

August 5, 2019 marked a historic day for Indian polity when the current government announced the abrogation of Article 370 of the Indian Constitution. Article 370, which accorded special status to the state of Jammu and Kashmir, right from its inception with the Instrument of Accession executed by Raja Hari Singh, has remained a controversial piece of legislation and has been the source of much political and academic comment. Similarly, Article 35A of the Constitution has always acquired a prominent focus in politico-legal discourse with there being repeated calls, time and again for its repeal. Now that the provision has been revoked, the discussions as to the ramifications of the move, have begun with renewed fervour and the entire country as also the international community has been closely monitoring the subsequent developments. This book is a compilation of the ideas presented in the one-day national conference. It aims at discussing the pre and post effects of scrapping this Special Status of the State of Jammu & Kashmir and the repercussions, if any on Indian politics, democracy, federalism and foreign relations. It also touches upon the various political, legal, socio-economic and constitutional aspects of this move to understand if it gives citizens of J&K, a ray of hope or pushes them into an impasse. Most importantly, it seeks to provide its reader a holistic and comprehensive idea about the issue by presenting a compilation of articles on the same.

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The conference, that resulted into this book, was organized by the DME Law School. The Law school offers 5-year integrated B.A., LL.B & B.B.A., LL.B programs and practices project-based pedagogy with a strong connect between the classroom teaching and evolving legal & corporate needs.



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ABROGATION OF ARTICLE 370: AN ANALYSIS

-Dr. Rajinder Kaur Randhawa¹ & Vinay Joshi²

INTRODUCTION

Prime Minister Modi's recent decision to scrap Articles 370 and 35A of the Indian Constitution, which gave Jammu and Kashmir special status, has stirred controversy across the political spectrum.

"Article-370 was created with a view that its existence would be temporary. The Ruler of Jammu and Kashmir signed the instrument of accession whereby only three subjects were surrendered i.e. External affairs, Defence and Communications, by the State to the Dominion of India. The relationship between the State of J&K and the Union of India is exceptional. The State enjoys a greater measure of autonomy and the power of the Union of India is restricted, as regards other States. Only emergency due to War or External Aggression can be declared as it is within the scope of Defence as surrendered to the Union of India."³

The Union Legislature couldn't administer on the issues given in the Union list and Concurrent list which are not as per the subjects given in the instrument of accession. The discussion of the State Government was required in any issue that influences the State. It very well may be said that the Union of India had the ability to follow up on an issue freely just on the off chance that it is some way or another identified with the three subjects given up or those explicitly referenced in the instrument of accession.

"This provision of the Constitution allowed the Jammu & Kashmir state Assembly to define who is and is not a "permanent resident" of the state. To further break it down, this provision of the Constitution gave the legislators from Jammu & Kashmir the exclusive power to determine

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³ K Venkatraman - Explained : How the State of Jammu and Kashmir is being changed – available at <https://www.thehindu.com/news/national/other-states/explained-how-the-status-of-jammu-and-kashmir-is-being-changed/article28822866.ece> - Last accessed on 18/10/2019.

ABROGATION OF ARTICLE 370: IS A STEP TOWARDS CONSTITUTIONAL IMMORALITY OR A GREAT MILESTONE TOWARDS THE STRENGTHNING OF INDIA'S UNITY

Ms.Navjot Suri¹ & Ms.Megha Chaturvedi²

ABSTRACT

This provision is a result of historical controversy which has been going for years, which provided autonomous status to the State of Jammu and Kashmir due to which it enjoys a position giving autonomous status empowering it to have its own Constitution, flag and other legal provisions unlike other States of the Indian Union. The insertion of Article 370 came out as a big controversy which started at the time of independence when Raja Hari Singh signed Instrument of Accession with the Government of India. Article 370 was only link between India and Jammu and Kashmir and this is why it was termed as the "umbilical cord" of the Indian Constitution and turned out to be the most sensitive provision of the Constitution.

Article 370 has remained an enigma which was originally intended to of temporary and transitional nature. The Constitutional validity of Article 370 has been challenged in Apex Court on several occasions, but its Constitutionality has been upheld by the Supreme Court of India. But finally in a turmoil situation where thousands of soldiers and army troops were deployed to the state of Jammu & Kashmir, all communications were cut off and suddenly parliament scrapped off article 370 and 35A of the Constitution via Presidential order invoking article 370 (3) of the Constitution, also establishing Jammu and Kashmir and Ladakh as two separate Union Territories by passing resolution with majority in parliament, former with a legislature and latter without one. Article 370³ granted an autonomous status to J&K, while Article 35A⁴, incorporated into the Constitution in 1954, provided special rights and privileges to the citizens of the state.

The Parliament of India has the power to amend the Constitution to alter this provision. However, this Constitutional Amendment shall follow a prescribed procedure as set up in article

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³ Article 370 of Constitution of India, 1950 (repealed)

⁴ Article 35A of Constitution of India, 1950 (repealed)

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DETENTION OF KASHMIRI POLITICIANS- LAWLESSNESS OR LAW ENFORCEMENT?

Upasana Singh¹

ABSTRACT

Tu Quoque fallacy, popularly referred to as whataboutism, is an appeal to hypocrisy, i.e. when a person answers criticism with criticism without actually answering the question. It is a popular tactic adopted by politicians worldwide to get rid of the burden of actually defending their acts and in turn make the person criticizing liable. Hon'ble home minister Amit Shah recently made the same argument at the ET awards 2019 when the reporters asked him about keeping opposition Kashmiri politicians and activists/youth in jail and he replied "Congress kept Sheikh Abdullah in jail for 11 years. This has just been four months." This paper will deal with the legality of these detentions on the issue of preventive detentions of minors, Magistrates illegally exceeding powers under section 107/117 CrPC, forced application of J&K Public Safety Act and continued detention of an unascertained number of Kashmiris.

INTRODUCTION

In the first week of August, 2019 the central government scrapped Article 35A of the Constitution of India which gave special privileges to the people of Kashmir and considerably amended Article 370, which grants special status to the State of Jammu and Kashmir. Thousands of people in Kashmir including political leaders, social activists, minors and women were arrested by the State authorities to prevent 'outbreak of law' and to 'prevent breach of peace and public tranquility' under section 107/117 of Criminal Procedure Code, 1973 and J &K Public Safety Act, 1978. These detainees were forced by the State administration to sign a bond that forbids them from making any comment, issue any statement, make any public speech or participate in public assembly related to recent events in the State of J&K, i.e. the abrogation of Article 370 and repealing of Article 35A.

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