CURRENT AFFAIRS – DISCUSSION NOTES (POLITY)

1. **What is Article 370?**

Article 370 of the Indian Constitution is a 'temporary provision' which grants special autonomous status to Jammu & Kashmir. Under Part XXI of the Constitution of India, which deals with "Temporary, Transitional and Special provisions", the state of Jammu & Kashmir has been accorded special status under Article 370. All the provisions of the Constitution which are applicable to other states are not applicable to J&K. For example, till 1965, J&K had a Sadr-e-Riyasat for governor and prime minister in place of chief minister.

The provision was drafted in 1947 by Sheikh Abdullah, who had by then been appointed prime minister of Jammu & Kashmir by Maharaja Hari Singh and Jawahar Lal Nehru. Sheikh Abdullah had argued that Article 370 should not be placed under temporary provisions of the Constitution. He wanted 'iron clad autonomy' for the state, which Centre didn't comply with.

Provisions of this article:

According to this article, except for defence, foreign affairs, finance and communications, Parliament needs the state government's concurrence for applying all other laws. Thus the state's residents live under a separate set of laws, including those related to citizenship, ownership of property, and fundamental rights, as compared to other Indians. As a result of this provision, Indian citizens from other states cannot purchase land or property in Jammu & Kashmir. Under Article 370, the Centre has no power to declare financial emergency under Article 360 in the state. It can declare emergency in the state only in case of war or external aggression. The Union government can therefore not declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the state government.

Question: Analytically elaborate your views on Artcle 370 and its relevance to the Unity and integrity of India. (150 Words) – GS II (Polity)

2. **What is Article 35A?**

It is a constitutional provision that allows the Jammu-Kashmir assembly to define permanent residents of the state. According to the Jammu-Kashmir constitution, a Permanent Resident is defined as a person who was a state subject on May 14, 1954, or who has been residing in the state for a period of 10 years, and has “lawfully acquired immovable property in the state”.

When was Article 35A introduced?

It was brought in by a presidential order in 1954 in order to safeguard the rights and guarantee the unique identity of the people of Jammu-Kashmir. Only the Jammu-Kashmir assembly can change the definition of PR through a law ratified by a two-thirds majority.

What is the challenge before the Supreme Court?

A batch of petitions challenged the constitutional validity of the Article 35A. A Supreme Court bench headed by the then Chief Justice J S Khehar referred the matter to a three-judge bench which will take up the petitions today.

Delhi-based NGO We the Citizens, in its petition, argued that Article 35A goes against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens".

Another petition, filed by lawyer Charu Wali Khanna, claims Article 35A discriminates against a woman's right to property.

View and counter-view:

The view from the Right is that by striking down Article 35A, it would allow people from outside Jammu-Kashmir to settle in the state and acquire land and property, and the right to vote, thus altering the demography of the Muslim-majority state.

The state's two main political parties, PDP and NC, contend that there would be no J&K left if this provision is tampered with, and have vowed to fight the battle together.

Former Chief Minister Mehbooba Mufti had warned that if Article 35A is removed, there won't be anyone left to carry the Tricolour in Kashmir; Omar Abdullah has called it the death knell for pro-India politics in the Valley.

The Centre had, however, refused to take a stand on the issue, with Attorney General K K Venugopal informing the court that it was "very sensitive" and required a "larger debate".

Question: The Supreme court is facing a relatively tougher time in interpreting the constitution. In this context comment on the recent judgements made by supreme court about the constitutional validity of certain laws and their implications in future. (150 words - GS II)

3. The 15th Finance Commission

The Finance Commission, set up in 1951 under Article 280 of the Constitution, basically decides how revenue has to be distributed between the Centre and the States. In addition, the Commission also decides the principles on which grants-in-aid will be given to the States.

The 15th Finance Commission was constituted on November 27, 2017 and is headed by former Revenue Secretary and former Rajya Sabha MP N.K. Singh. The panel also includes Shaktikanta Das, former Economic Affairs Secretary and Anoop Singh, adjunct professor at Georgetown University. This Commission is slated to submit its recommendations by October 31, 2019. The recommendations, to be observed for a period of five years, will kick in from April 1, 2020.

The constitution of each Finance Commission is announced by a gazette notification. The notification comprises terms that list out the Commission's work and considerations, called the Terms of Reference.

In the notification issued on November 27, the ToR recommended, "the Commission shall use the population data of 2011 while making its recommendations."

Why is the Census important?

According to the Constitution, there are four areas in which population is used as a factor - Manner of Election of President (Article 55), Composition of the House of the People (Article 81), Composition of the Legislative Assemblies (Article 170) and Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States (Article 330).

Articles 55 and 170 are especially important as they deal with the delimitation of constituencies for both Lok Sabha and Rajya Sabha. The population figure is also used for the devolution of taxes.

This does not, however, mean that the entire amount to be disbursed is based on the population - only a certain percentage of the funds. In the case of the 14th Finance Commission, that was 25%. Some of the other factors that the Commission takes into account are per capita income, area, and fiscal discipline.

What is the significance of the 1971 Census?

Before the 42nd Constitutional Amendment of 1976, the calculations behind the number of Lok Sabha seats was based on "population as ascertained at the last preceding Census of which the relevant figures have been published."

But the 1971 Census figures showed a dramatic increase in population, after which the concept of family planning was introduced at the policy level, according to research. This meant

that States that complied with policy would lose out on all the areas where population was taken into account. Hence, the 42nd Amendment picked the 1971 Census as the base for all calculations and froze it till the 2001 Census. The 84th Amendment further extended that to the first Census after 2026, which will be the Census of 2031.

So where does the Finance Commission come into all this?

According to the Constitution, aside from what is written down, the Union government can "refer any other matter to the Finance Commission in the interest of sound finance", R. Srinivasan, former member of the Tamil Nadu State Planning Commission, writes in The Hindu. "Using this provision in the Constitution, the Union government has been including in the terms of reference to successive Finance Commissions, provisions that reflect the Union government's view of the States' fiscal situation."

The decision to adopt the 1971 Census first appeared in ToR of the Seventh Finance Commission, in 1976.

Why are some states opposed to the use of 2011 figures for the devolution of taxes?

The usage of the 2011 Census is being opposed for the same reason the usage of 1971 Census was made mandatory - to make sure States that have worked on population control do not lose out on benefits.

While States like Uttar Pradesh, Maharashtra and Bihar have more than doubled their numbers in the intervening years, southern states like Tamil Nadu, Karnataka and Kerala have relatively slower growths. The exception to this is Andhra Pradesh — the State went from around four-and-a-half crore people to more than eight-and-a-half crores.

Uttar Pradesh's population grew at a steady rate of just above 25% in the decades succeeding the 1971 census, whereas the growth rate of that of Kerala dropped from 19.24% in 70s to 14.32% and 9.43% in the next two decades. UP's growth rate for the 2000s is 20.09%. Kerala's is just 4.86%

"The concerns expressed by the States in 1976 which necessitated the freezing of seat allocation on the basis of 1971 population figures would appear to hold good even today and have to be addressed to the satisfaction of all stakeholders," T.K. Viswanathan, former Law Secretary and former Secretary General of the Lok Sabha, writes in The Hindu.

That argument will hold water in the matter of tax distribution as well.

Refer : https://www.thehindu.com/news/national/the-hindu-explains-why-the-15th-finance-commission-has-some-states-riled/article23384141.ece for facts & figures.

4. INTER STATE WATER DISPUTES:

BACKGROUND:

The water dispute arises among two or more State Governments when the Central Government receives request under Section 3 of the Act from any of the basin States with regard to existence of water dispute as per the Inter-State River Water Disputes (ISRWD) Act, 1956. The details of the present inter-State water disputes under ISRWD Act, 1956 are as follows:

S.No.	River/Rivers	States concerned	Date of Reference to the Central Government	Date of Reference to the Tribunal
1.	Ravi & Beas	Punjab, Haryana and Rajasthan	____	April, 1986
2.	Cauvery	Kerala, Karnataka, Tamil Nadu and Union Territoryof Pondicherry	July, 1986	June, 1990
3.	Krishna	Karnataka, Andhra Pradesh and Maharashtra	September, 2002 - January, 2003	April, 2004
4.	Madei/Mondovi/Mahadayi	Goa, Karnataka and Maharashtra	July, 2002	-
5.	Vansadhara	Andhra Pradesh & Orissa	Februar	-

In accordance with the said Act, the Central Government is required to refer a dispute to a Tribunal after it is satisfied that the dispute cannot be settled by negotiations. Accordingly, the water disputes related to Cauvery and Krishna were referred to the Tribunals for adjudication in 1990 and 2004 respectively. TheCauvery Water Disputes Tribunal (CWDT) submitted report and decision under section 5(2) of the ISRWD Act, 1956 on 5.2.2007. Party States and Central Government have sought guidance/ clarification from the tribunal under section 5(3) of the Act. Further, party State have also filed Special Leave Petition (SLP) in the Supreme Court against the report and decision of the tribunal as mentioned above. The Krishna Water Disputes Tribunal passed orders on Interim Relief Applications of the States on 9.6.2006.

The water dispute related to Ravi & Beas was referred to the Ravi & Beas Waters Tribunal (RBWT) in 1986 under Section 14 of the said Act. RBWT submitted its report on 30.1.1987 under section 5(2) of the Act. Party States and Central Government have sought explanation/guidance under section 5(3) of the Act from the Tribunal. The Tribunal has not submitted its further report to the Government.

In respect of Mahadayi/Mandovi River Water Disputes raised by Government of Goa, the Ministry of Water Resources is of the opinion that water dispute contained in the request of Government of Goa cannot be settled by negotiation. Meanwhile, the Government of Goa filed a suit in the Supreme Court for setting up of Water Dispute Tribunal for adjudication of above River Water Dispute and an Interlocutory Application (IA) for stay in construction activity in September 2006.

In respect of Vansadhara Water Dispute, the Central Government has not concluded so far that the dispute cannot be settled by negotiations. Meanwhile, the Government of Orissa has filed a Writ Petition in this regard in September, 2006 in the Supreme Court.

Government has already enacted Inter-State Water Disputes Act in 1956 for adjudication of water disputes and amended the same in 2002 for time-bound adjudication of the disputes and the Act is now called as Inter-State River Water Disputes Act, 1956.

CONSTITUTIONAL PROVISIONS:

Water is a State subject as per entry 17 of State List and thus states are empowered to enact legislation on water.

Entry 17 of State List deals with water i.e. water supply, irrigation, canal, drainage, embankments, water storage and water power.

Entry 56 of Union List gives power to the Union Government for the regulation and development of interstate rivers and river valleys to the extent declared by Parliament to be expedient in the public interest.

Article 262 of Indian constitution:

Constituent Assembly anticipated the emergence of water disputes in future. A specific provision of Article 262 is mentioned in the constitution itself due to the sensitivity of such disputes.

In the case of disputes relating to waters, Article 262 provides:

Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Notwithstanding anything in this Constitution, Parliament may, by law providethat neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint.

Parlament has enacted two laws according to Article 262:

1) River Board Act, 1956

The purpose of this Act was to enable the Union Government to create Boards for Interstate Rivers and river valleys in consultation with State Governments. The objective of Boards is to advise on the inter-state basin to prepare development scheme and to prevent the emergence of conflicts.

Note: Till date, no river board as per above Act has been created.

2) Inter-State Water Dispute Act, 1956

Provisions of the Act: In case, if a particular state or states approach to Union Government for the constitution of the tribunal:

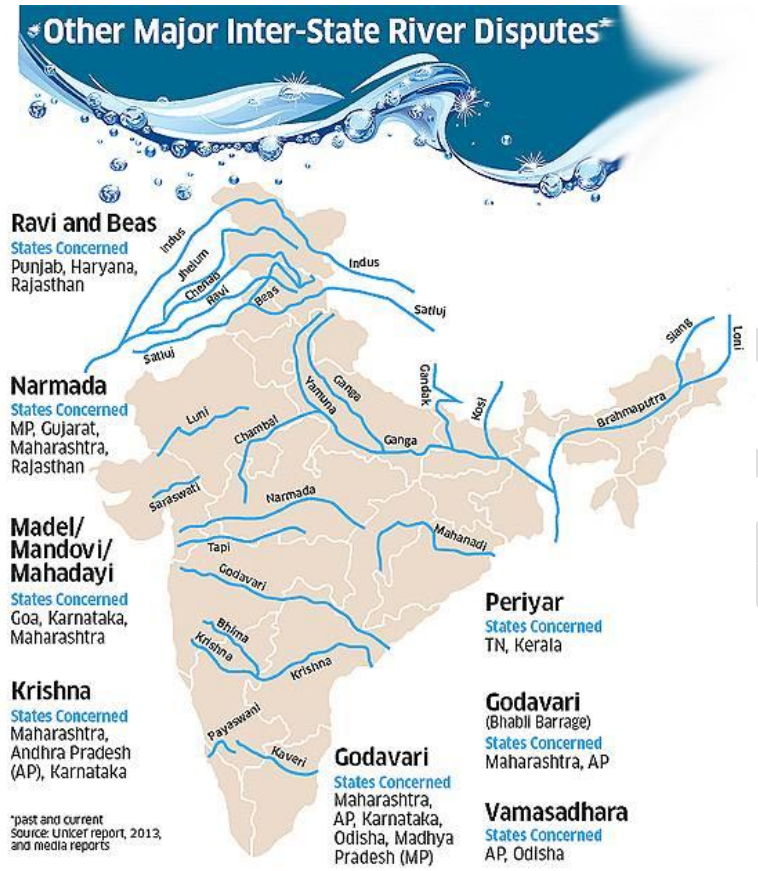
Central Government should try to resolve the matter by consultation among the aggrieved states. In case, if it does not work, then it may constitute the tribunal.

Note: Supreme Court shall not question the Award or formula given by tribunal but it can question the working of the tribunal.

The composition of the River Water Tribunal: Tribunal is constituted by the Chief Justice of India and it consists of the sitting judge of Supreme Court and the other two judges who can be from Supreme Court or High Court.

The Present Mechanism to resolve the inter-state river water disputes in India

Thus it can be seen that – the resolution of water dispute is governed by the Inter-State Water Disputes Act, 1956. According to its provisions, a state government can approach the Centre to refer the dispute to a tribunal, whose decision is considered final.



5. EVOLUTION OF LOCAL SELF GOVERNANCE:

We know there is a government in India at the Center and State levels. But there is another important system for local governance. The foundation of the present local self-government in India was laid by the Panchayati Raj System (1992).

But the history of Panchayati Raj starts from the self-sufficient and self-governing village communities. In the time of the Rig-Veda (1700 BC), evidence suggests that self-governing village bodies called 'sabhas' existed. With the passage of time, these bodies became panchayats (council of five persons).

Panchayats were functional institutions of grassroots governance in almost every village. They endured the rise and fall of empires in the past, to the current highly structured system.

What is Local self-government?

Local self-government implies the transference of the power to rule to the lowest rungs of the political order. It is a form of democratic decentralization where the participation of even the grass root level of the society is ensured in the process of administration.

History of local administration

The village panchayat, as a system of administration, began in the British days, as their offer to satisfy the demands for local autonomy. They opened up the governance of the lowest levels to the citizens. The GoI act, 1935 also authorizes the provinces to enact legislations.

How did the concept of local self-government evolve in India?

Even though such minor forms of local governance was evident in India, the framers of the constitutions, unsatisfied with the existing provisions, included Article 40 among the Directive Principles, whereby:

"The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

Later, the conceptualisation of the system of local self-government in India took place through the formation and effort of four important committees from the year 1957 to 1986. It will be helpful if we take a look at the committee and the important recommendations put forward by them.

1. Balwant Rai Mehta Committee (1957)

Originally appointed by the Government of India to examine the working of two of its earlier programs, the committee submitted its report in November 1957, in which the term 'democratic decentralization' first appears.

The important recommendations are:

- Establishment of a three-tier Panchayati Raj system – gram panchayat at village level (direct election), panchayat Samiti at the block level and Zila Parishad at the district level (indirect election).
- District Collector to be the chairman of Zila Parishad.
- Transfer of resources and power to these bodies to be ensured.

The existent National Development Council accepted the recommendations. However, it did not insist on a single, definite pattern to be followed in the establishment of these institutions. Rather, it allowed the states to devise their own patterns, while the broad fundamentals were to be the same throughout the country.

Rajasthan (1959) adopted the system first, followed by Andhra Pradesh in the same year. Some states even went ahead to create four-tier systems and Nyaya panchayats, which served as judicial bodies.

2. Ashok Mehta Committee (1977-1978)

The committee was constituted by the Janata government of the time to study Panchayati Raj institutions. Out of a total of 132 recommendations made by it, the most important ones are:

- Three-tier system to be replaced by a two-tier system.
- Political parties should participate at all levels in the elections.
- Compulsory powers of taxation to be given to these institutions.
- Zila Parishad to be made responsible for planning at the state level.
- A minister for Panchayati Raj to be appointed by the state council of ministers.
- Constitutional recognition to be given to Panchayati Raj institutions.

Unfortunately, the Janata government collapsed before action could be taken on these recommendations.

3. G V K Rao Commitee (1985)

Appointed by the Planning Commission, the committee concluded that the developmental procedures were gradually being taken away from the local self-government institutions, resulting in a system comparable to 'grass without roots'.

- Zila Parishad to be given prime importance and all developmental programs at that level to be handed to it.
- Post of DDC (District Development Commissioner) to be created acting as the chief executive officer of the Zila Parishad.
- Regular elections to be held

4. L M Singhvi Commitee (1986)

Constituted by the Rajiv Gandhi government on 'Revitalisation of Panchayati Raj institutions for Democracy and Development', its important recommendations are:

- Constitutional recognition for PRI institutions.
- Nyaya Panchayats to be established for clusters of villages

Though the 64th Constitutional Amendment bill was introduced in the Lok Sabha in 1989 itself, Rajya Sabha opposed it. It was only during the Narasimha Rao government's term that the idea finally became a reality in the form of the 73rd and 74th Constitutional Amendment acts, 1992.

Panchayati Raj System under 73rd and 74th Constitutional Amendment acts, 1992

The acts of 1992 added two new parts IX and IX-A to the constitution. It also added two new schedules – 11 and 12 which contains the lists of functional items of Panchayats and Municipalities. It provides for a three-tier system of Panchayati Rajin every state – at the village, intermediate and district levels.

What are Panchayats and Municipalities?

Panchayat and Municipality are the generic terms for the governing body at the local level. Both exist as three tier systems – at the lower, intermediate and upper levels.

The 73rd Constitutional Amendment act provides for a Gram Sabha as the foundation of the Panchayati Raj system. It is essentially a village assembly consisting of all the registered voters in the area of the panchayat. The state has the power to determine what kind of powers it can exercise, and what functions it has to perform at the village level.

The 74th Constitutional Amendment act provides for three types of Municipalities:

- Nagar Panchayat for a transitional area between a rural and urban area.
- Municipal Council for a small urban area.
- Municipal Corporation for a large urban area.
- Municipalities represent urban local self-government.

Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.

Each Gram sabha is the meeting of a particular constituency called ward.

Each ward has a representative chosen from among the people themselves by direct election.

The chairperson of the Panchayat or Municipality at the intermediate and district level are elected from among these representatives at the immediately lower level by indirect election.

Types of Urban Local Government

There are eight types of urban local governments currently existing in India:

- Municipal Corporations.
- Municipality.
- Notified area committee.
- Town area committee.
- Cantonment board.
- Township.
- Port trust.
- Specialpurposeagency.

How are the elections held in the local government bodies?

All seats of representatives of local bodies are filled by people chosen through direct elections.

The conduct of elections is vested in the hands of the State election commission.

The chairpersons at the intermediate and district levels shall be elected indirectly from among the elected representatives at the immediately lower level.

At the lowest level, the chairperson shall be elected in a mode defined by the state legislature.

Seats are reserved for SC and ST proportional to their population.

Out of these reserved seats, not less than one-third shall be further reserved for women.

There should be a blanket reservation of one-third seats for women in all the constituencies taken together too (which can include the already reserved seats for SC and ST).

The acts bar the interference of courts in any issue relating to the election to local bodies.

What are the Qualifications needed to be a member of the Panchayat or Municipality?

Any person who is qualified to be a member of the state legislature is eligible to be a member of the Panchayat or Municipality.

“But he shall not be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years”

This means that unlike the state legislature, a person needs to attain only 21 years of age to be a member of panchayat/municipality.

What is the duration of the Local Government bodies?

The local governing bodies are elected for a term of five years.

Fresh elections should be conducted before the expiry of the five-year term.

If the panchayat/municipality is dissolved before the expiry of its term, elections shall be conducted within six months and the new panchayat/municipality will hold office for the remainder of the term if the term has more than six months duration.

And for another five years if the remaining term is less than six months.

What are the Powers invested on these Local Government bodies?

The powers of local bodies are not exclusively defined. They can be tailor-fitted by the state governments according to the environment of the states.In general, the State governments can assign powers to Panchayats and Municipalities that may enable them to prepare plans for economic development and social justice. They may also be authorized to levy, collect, or appropriate taxes.

Summary

To conclude, local self-government is one of the most innovative governance change processes our country has gone through. The noble idea of taking the government of a country into the hands of the grass root level is indeed praiseworthy.

However, like any system in the world, this system is also imperfect. Problems of maladministration and misappropriation of funds are recurring. But this shall not stand in the way of efficient governance; and if these ill practices are rooted out, there would be no comparisons around the world to our system of local self-government.