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The Big Picture: UK's Constitutional Crisis

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- A defiant **Boris Johnson (United Kingdom's Prime Minister)** has vowed to take the country out of the **European Union** next month, despite suffering an unprecedented legal defeat over his **Brexit** strategy in the Supreme Court.
- In a sweeping rebuke to the Prime Minister, Britain's Supreme Court ruled that Johnson broke the law when he decided to suspend Parliament for five weeks in the run-up to the **October 31st deadline for leaving the EU**.
- He **gave Queen Elizabeth II "unlawful" advice** to pause the legislature and his decision wrecked the ability of Britain's elected politicians to fulfill their crucial democratic role overseeing his government's actions, the court found.

Why the UK Prime Minister's actions have been termed unlawful instead of unconstitutional by the Supreme Court?

- UK does **not have a written constitution** like India and most of the work is done on the basis of the conventions so there is no violation of the Constitution.
- In terms of written or unwritten law, such decisions are considered as **transgression of Parliament's powers and functions** and hence, **unlawful**.

Major Highlights

- Referendum held in 2016 started a **tussle** between the **direct democracy** and **representative democracy** where both have different opinions on Brexit.
- In the **absence of the constitution and the limits** set by it, the UK PM suspended the Parliament for 5 weeks to suppress all the debates against his idea of exiting European Union by 31st October 2019, which started a **tussle between the executive and the legislature**.
- If the UK remains a part of the Custom Union nothing changes. So the battle is now between the leavers and the remainers where the PM seems stuck between multiple different ways leading to confusion.
- All problems which exist in a **no deal situation** tend to remain the same. Nothing has happened on the contentious issues like **Irish backstop** and **Immigrant issues** which the UK has to overcome.

Key Terms

Referendum:

- A **public vote (referendum) was held in 2016**, to decide whether the UK should leave or remain in the European Union.
- **Leave won by 52% to 48%**. The referendum turnout was very high at 72%, with more than 30 million people voting.

No Deal Brexit:

- In a no deal situation, UK would immediately leave the EU **with no agreement about the divorce process**.
- UK will leave the single market and customs union arrangements overnight.
- UK will have to immediately leave EU institutes and other bodies like **European Court of Justice and Europol**, its law enforcement body.
- UK will no longer contribute to the EU budget.

Divorce Bill:

The **Brexit Financial Settlement (Divorce Bill)** is a sum of money UK needs to pay to the EU for settling all shares of the financial obligations undertaken while being a member of the EU.

Irish Backstop:

- The **draft agreement** between the UK and the EU that aims to prevent a **hard border** (limited number of authorised crossing points staffed by customs officers and police) in Ireland after the UK leaves the EU.
- It was earlier known as **Northern Ireland Protocol**.

Boris Johnson at the Centre of the Chaos

- Boris Johnson expects that **if he will take the No Deal position**, it is more likely that the **“leavers” will** gravitate towards the Conservative Party and will **bring him back to power**.
- For that, he needs a majority in the Parliament but people need more time to negotiate deals with the EU during the transition period which they are not getting in the October 31st deadline.
- **Calling for a No Confidence Motion is also a problematic** option because it will give a two week gap to other political parties allowing them to join in and maybe form government or make other proposals to the Queen.

What makes the process so complicated?

- The main issue is the **ambiguity of the term ‘leave’** in the referendum without any clarifications or guidelines for the aftermath of Brexit.
- Many people from the leave side have **threatened for direct action** and there are threats, in general, to the people involved in the litigation as well.
- In theory, there is **no clear cut delegation of duties, responsibilities and limitations** which leads to chaotic situations like British Parliament’s.
- The confusion has further increased with the **courts jumping in and absence of a written constitution** makes it far more difficult.
- Since Boris Johnson is trying to **garner his vote on the basis of the emotional sentiments** of the people, it further complicates the situation.
- It is not only the question of brexit in its own rights but **how it is going to play out within the unfolding electoral politics** expected in the near future.

Judiciary’s Role

- Judiciary is expected to deliver justice when there is a tussle between the executive and the legislative in a parliamentary democracies like the UK and India.
- Prime Minister and the other ministers (**executive**) are also members of Parliament only, but problem arises when they **stress their executive authority over the legislature and judiciary has to mediate**.
- In Britain’s case, **judiciary only pointed out** the question whether the advice by the PM was reasonable or not and based on some logical justification and the Supreme Court ruled out that it was unjustified.

- Supreme Court stated that **the Act of Suspension** was not actually a part of the proceedings of the Parliament therefore Supreme Court has all the rights (given **the English Bill of Rights**) to come out on a ruling on that.
- Supreme Court has made it clear now that it has **powers to rule over the fringe areas of doubt** whether it was an act of proceeding of parliament or basically a very executive proceeding.
- It is exemplary that the **judiciary has taken a very legalistic and a strongly apolitical stand** which can be compared to ours and many other nations.

The English Bill of Rights, 1689

- It **outlined specific constitutional civil rights, limited the power of the monarchy, elevated the status of Parliament** and ultimately gave Parliament power over the monarchy.
- Many experts regard the English Bill of Rights as the primary law that set the stage for a constitutional monarchy in England.
- It is also credited as being an **inspiration for the U.S. Bill of Rights**.

Impact of the Crisis

- **EU representatives** have seen **little or no movement from the UK's side**. There are some intractable issues, like the Irish Backstop and also the idea that the UK can retain some benefits of EU while not taking the responsibility for free movement of labour, which need to be addressed.
- It takes a toll on various political parties in terms of the fact that **no parties**, except for the liberal democrats, **are united** behind either a leave option or a remain option.
- **Conservative Party has split** in itself with Boris Johnson for a No Deal Policy and others against it. **Labour Party** says it will try to work for a deal and then again take it to the referendum. **Liberal Democrats** have taken a strong position and they look for revoking the referendum altogether.
- Brexit itself has brought out a **massive demand in the population for the constitution to have a written form** to tackle the confusion which prevails right now.
- A mood is building among the **extreme leavers** who would like to leave on **World Trade Organisation's rules** in order to get done with brexit by the end of October.

What is the best way forward?

- A **clearer view and explanation is needed on the yes or no referendum** and to enable the elected representatives to form a workable treaty.
- Now when the parliament is in session and No Deal has been taken off the table, one option is to **ask the EU for a further extension**. One way to do that is **look for a workable deal or at least work towards a deal** in order to convince the EU's 27 members that the UK deserves to have some aid and extension.

- Only real solution for parties is **to offer new choices to the electorate** either via another referendum or in an election to be held in the coming months keeping in mind that now the people know what brexit involves and its negative impacts and the different political stands on the issue.
- There is a soft brexit and there is a hard brexit but UK needs to **find a way for a semi-soft Brexit** so that people do not bear the sudden shock of leaving the EU at once.

Relevance of the case for Judicial Review in India

- Two notable executive actions have undermined parliamentary processes in india this year.
 - **Reservation for Economically Weaker Sections- The Constitutional (One Hundred and Third) Amendment Act 2019** which provides reservation for the Economically Weaker Sections was brought for consideration of Parliament in less than 48 hours from the time the decision was taken by the Centre.
 - **The Bills passed around Jammu and Kashmir (J&K)** The Monsoon Session of Parliament was originally scheduled to end on July 26 but was extended to August 7 and on August 5, **the Jammu and Kashmir Reservation (Second Amendment) Bill, 2019** was suddenly introduced and the copies of the Bill and the Resolution were provided after the Statutory Resolution was moved in the Upper House.
- In the whole process, Parliament got insufficient time for scrutiny. The **conventional practice** is that legislative documents are provided few days before so that the **MPs can understand the legislation, seek views and formulate their positions better.**
- Both Bills were in direct violation of **the Rules of Procedure and Conduct of Business**. In **Rajya Sabha, Rule 69** talks about **'Motions after Introduction of Bills' and 'Scope of Debate'**. The Chairman is given discretion in exceptional situations but there is no cogent explanation provided by those presiding the Houses of Parliament.
- Such actions of government **reveal a complete disregard for established Parliamentary processes** and weaken the democratic institutions.
- While the UK's Supreme Court has played its role in determining the issue, **Supreme Court of India** has sufficient materials to assess the executive's role in undermining the parliamentary processes.