

The Role of the British Crown

by..... AniruddhaSaha

The Crown is the state in all its aspects within the jurisprudence of the Commonwealth realms and their sub-divisions (such as Crown dependencies, provinces, or states). Legally ill-defined, the term has different meanings depending on context. It is used to designate the monarch in either a personal capacity, as Head of the Commonwealth, or as the king or queen of his or her realms. It can also refer to the rule of law; however, in common parlance 'The Crown' refers to the functions of government and the civil service.

A corporation sole, the Crown is the legal embodiment of executive, legislative, and judicial governance in the monarchy of each country. These monarchies are united by the personal union of their monarch, but they are independent states. The concept of the Crown developed first in England as a separation of the literal crown and property of the kingdom from the person and personal property of the monarch. It spread through English and later British colonisation and is now rooted in the legal lexicon of the United Kingdom, its Crown dependencies, and the other 15 independent realms. It is not to be confused with any physical crown, such as those of the British regalia.

Concept

Parliament:

The highest legislative authority in the United Kingdom. Made up of the House of Commons, House of Lords and the Monarch.

Crown:

This is another way of referring to the monarchy - which is the oldest part of the system of government in this country. Time has reduced the power of the monarchy, and today it is broadly ceremonial. The current UK monarch is Queen Elizabeth II.

Appointing a government:

The day after a general election the Queen invites the leader of the party that won the most seats in the House of Commons to become Prime Minister and to form a government.

Opening and dissolving Parliament:

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Queen's Speech:

The Monarch informs Parliament of the government's policy ideas and plans for new legislation in a speech delivered from the throne in the House of Lords. Although the Queen makes the speech the government draws up the content.

Royal Assent:

When a bill has been approved by a majority in the House of Commons and the House of Lords it is formally agreed to by the Crown. This is known as the Royal Assent. This turns a Bill into an Act of Parliament, allowing it to become law in the UK.

The Crown:

The Crown is the symbol of the executive power represents both the Sovereign and the Government. The Crown is identified in the person of the Sovereign, but its functions are exercised by Ministers who respond to Parliament. Thus Britain is a parliamentary democracy, "governed by Her Majesty's Government in the name of the Queen". The present sovereign, Queen Elizabeth II, is one of the longest reigning British monarchs; in fact she ascended the throne in 1952.

Besides being a symbol of national unity, the Queen is Britain's Head of State, Head of the Commonwealth and of the Church of England. She opens and closes Parliament and, in case of government crisis, she dissolves it. She gives her Royal Assent to transform a Bill into law. The Queen has also the power to confer peerages and other titles and can, on ministerial advice, grant pardon to people convicted of crime. However, the power to conclude treaties, to declare war and to make peace rests with the Government, under the Royal Prerogative.

Parliament and Government:

Parliament consists of three elements: the Queen (who summons, prorogues and sometimes dissolves Parliament), the House of Lords (who are not elected by the people) and the House of Commons, chosen general elections. The House of Commons with its 659 representatives is the supreme legislative authority in the UK: it makes laws by passing Acts of Parliament and discusses important political issues. The 688 non-elected members of the House of Lords (hereditary and life peers, two archbishops and 24 bishops of the Church of England) are partially involved in the legislative process: they examine and revise Bills from the House of Commons.

General elections are held every five years: the people elect Members of Parliament (MPs) to the House of Commons in Westminster Palace in London. Each MP represents one of 59 constituencies, or "seats", in the UK and is also normally a member of one of the major political parties. The leader of the party that wins most seats at a general election is invited by the Queen to form the Government Executive which determines the country's policy. The Executive includes the Prime Minister (or Premier) and the Cabinet Ministers. The remaining MPs are grouped into opposition and other parties. The result is an assembly that reflects a broad range of political opinions all of which have a voice in the debates about key Government issues and policies.

What is the Queen's role?

Elizabeth II is a constitutional monarch: that is, she is Britain's head of state, but her executive powers are limited by constitutional rules. Her role is mostly symbolic: she represents Britain on state visits and on ceremonial occasions. According to the royal website, her primary role is as a "focus of national unity".

She is queen of 16 former British colonies, including Australia, Canada and New Zealand; and head of the Commonwealth, a multinational body created after the dissolution of the British empire.

What powers does the Queen have?

The Queen has the right to rule: the people of Britain are not citizens, but subjects of the monarch. Most public servants must swear an oath of loyalty, or make an affirmation of their loyalty, to the crown.

Although the Queen is politically neutral, she has the right to be consulted and to "advise and warn" ministers. Otherwise her residual powers - the "royal prerogative" - are mostly exercised through the government of the day. These include the power to enact legislation, to award honours (on the advice of the prime minister), to sign treaties and to declare war.

But royal prerogative is the subject of controversy, because it confers on governments the power to make major decisions without recourse to parliament. When Edward Heath brought Britain into the EEC in 1972, parliament was not consulted until afterwards. Similarly, Margaret Thatcher used royal prerogative to go to war in the Falklands in 1982.

The Queen has two individual powers that could cause a political crisis if they were ever exercised. She may refuse a government's request to dissolve parliament and call an election, if she believes a government can legitimately be formed. She also has the right to choose the prime minister: a formality in the case of a clear majority, but potentially controversial after an inconclusive general election. This almost happened in February 1974, when Labour failed to win an overall majority but the Conservatives considered power-sharing with the Liberals.

Commonwealth Realms:

The Crown in each of the Commonwealth realms is a similar, but separate, legal concept. To distinguish the institution's role in one jurisdiction from its place in another, Commonwealth law employs the expression the Crown in right of [place]; for example, the Crown in right of the United Kingdom, the Crown in right of Canada, the Crown in right of the Commonwealth of Australia, etc. Because both Canada and Australia are federations, there are also crowns in right of each Canadian province and each Australian state.

The Crown's powers are exercised either by the monarch personally or by his or her representative in each jurisdiction, on the advice of the appropriate local ministers, legislature, or judges, none of which may advise the Crown on any matter pertinent to another of the Crown's jurisdictions.

Crown Dependencies:

In Jersey, statements by the Law Officers of the Crown define the Crown's operation in that jurisdiction as the Crown in right of Jersey, with all Crown land in the Bailiwick of Jersey belonging to the Crown in right of Jersey and not to the Crown Estate of the United Kingdom. The Succession to the Crown (Jersey) Law 2013 defined the Crown, for the purposes of implementing the Perth Agreement in Jersey law, as the Crown in right of the Bailiwick of Jersey.

Legislation in the Isle of Man also defines the Crown in right of the Isle of Man as being separate from the Crown in right of the United Kingdom.

In Guernsey, legislation refers to the Crown in right of the Bailiwick, and the Law Officers of the Crown of Guernsey submitted that "[t]he Crown in this context ordinarily means the Crown in right of the republic of the Bailiwick of Guernsey" and that this comprises "the collective governmental and civic institutions, established by and under the authority of the Monarch, for the governance of these Islands, including the States of Guernsey and legislatures in the other Islands, the Royal Court and other courts, the Lieutenant Governor, Parish authorities, and the Crown acting in and through the Privy Council". This constitutional concept is also worded as the Crown in right of the Bailiwick of Guernsey.

British Overseas Territories:

Following the Lords' decision in *Ex parte Quark*, 2005, it is held that the Queen in exercising her authority over British Overseas Territories does not act on the advice of the government of the UK, but in her role as Queen of each territory, with the exception of fulfilling the UK's international responsibilities for its territories. The reserve powers of the Crown for each territory are no longer considered to be exercisable on the advice of the UK government. To comply with the court's decision, the territorial governors now act on the advice of each territory's executive and the UK government can no longer disallow legislation passed by territorial legislatures.

In The Court:

In criminal proceedings, the state is the prosecuting party and is usually designated on the title or name of a case as "R v" – where R can stand for either Rex (if the current monarch is male) or Regina (if the monarch is female) against the defendant; for example, a criminal case against Smith might be referred to as R v Smith, and verbally read as "the Crown against Smith". On the indictment notice, it may state "The Queen - v - Defendant" as well as "R v Defendant".

Often cases are brought by the Crown according to the complaint of a claimant. The titles of these case now follow the pattern of "R (on the application of X) v Y", notated as "R (X) v Y" for short. Thus R (Miller) v Secretary of State for Exiting the European Union is R (on the application of Miller and other) v Secretary of State for Exiting the European Union, where "Miller" is Gina Miller, a citizen. Until the end of the twentieth century, such case titles used the pattern R v Secretary of State for Exiting the European Union, *ex parte* Miller.

In Scotland, criminal prosecutions are undertaken by the Lord Advocate (or the relevant Procurator Fiscal) in the name of the Crown. Accordingly, the abbreviation HMA is used in the High Court of Justiciary for "His/Her Majesty's Advocate" in place of Rex or Regina, as in *HMA v Al Megrahi and Fahima*.

In Australia, each state uses R in the title of criminal cases and The Queen (or The King) in criminal appeal cases (i.e., the case name at trial would be R v Smith; if appealed, the case name would be Smith v The Queen). Judges usually refer to the prosecuting party as simply "the prosecution" in the text of judgments (only rarely is The Crown used in the text, and never R). In civil cases where the Crown is a party, it is a customary to list the appropriate government Minister as the party instead. When a case is announced in court, the Clerk or Bailiff refers to the crown orally as "Our Sovereign Lady the Queen" (or "Our Sovereign Lord the King").

In New Zealand court reporting, news reports will refer to the prosecuting lawyer (often called a Crown prosecutor, as in Canada and the United Kingdom) as representing the Crown, usages such as "For the Crown, Joe Bloggs argued..." being common.