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The Application of Legal Maxim *"King Can Do No Wrong"* In the Constitutional Law of UK & USA: An Analytical Study

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Abstract: *The legal maxim "King can do no wrong" was in full force in the English constitutional law ever since the emergence of British Empire. The doctrine provided absolute immunity to the Crown. The king started losing his absolute prerogatives, in centuries long battle for power among the Crown and lord businessmen, which eventually resulted in the concept of liable government in the UK in the shape of the crown proceedings act 1947. On the contrary the US constitutional law is silent about the presidential immunity, following the maxim "no one, even the government is above the law". However, the US Supreme Court is expanding the application of this doctrine by granting the immunity to the president in cases where his act falls within the constitutionally assigned duties along with negating it in cases where the act of president falls outside the outer perimeters of his constitutionally assigned duties.*

Key Words: Immunity, Sovereign Immunity, Presidential Immunity, King can do no Wrong, Rex Non Potest Peccare

Introduction

The doctrine of Sovereign's Immunity provides immunity to the sovereign (President, Prime Minister or King) from civil as well as criminal prosecution. This doctrine has emerged from the Legal maxim "Rex non potest peccare", which is translated into English as "the king can do no wrong." This maxim serves as the foundation of the doctrine of sovereign's immunity. The sovereign (King or ruler) was declared immune from the application of law which provided to the sovereign, King or the government officials like president in contemporary world, safety from the operation of law by protecting them and their acts to be called into the court of law.

This legal shape of this maxim emerged and developed in England though it was in practice around the globe in ancient dynasties and empires. The crown was considered the fountain of law as whatever the crown used to utter, became the law. The people were loyal to their kings as the kings were considered superior to the public and the public believed that the King even cannot think of wrong.

With the passage of time the crown's absolute powers were reduced by the businessmen who were becoming the members of parliament which after centuries ended into the concept of liable government by crown proceeding act 1947. The crown proceedings act, for the first time in the history of UK has granted the right to public to sue the government and crown in some cases.

The US, on his independence, drafted a constitution which was completely silent on the issue of presidential immunity. Later on, the United States' Supreme Court adopted the view and granted immunity to the president on several occasions, in acts related to his official capacity. Some of the jurists of the United States are against this opinion and they consider it against the maxim of US constitutional law that *"no one, even the government is above the law".*

This article analyzes the application of doctrine of sovereign's immunity in the UK and the US, that whether their constitutional law grants this immunity to the Head of the State or not? And if it grants, up to which extent? and in which case? This research tries to cover all these aspects.

Research Method

The research was conducted following the Qualitative method. Several books written on this issue were consulted. Number of research articles were read and utilized. In this article the historical development

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of the crown's immunity in England was discussed. Then the US constitutional law is discussed and the opinion of US Supreme Court regarding the immunity of US president. The books of several jurists and research articles of experts were consulted regarding the issue.

The Application of Immunity Doctrine in UK

The *sovereign* is the supreme lawmaker or ruler, especially on some land. In the Magna Carta, 1215, especially in its article 61(Magna Carta, Article 61), the concept had been developed which distinguished between the person of the crown, i.e. an office, and the individual who fills that office. Sovereign immunity dates back to feudal Europe. It has it roots in the feudal fiction that "the King can do no wrong." Present day's sovereign's immunity is a recognized principal of constitutional law in almost all modern nations.

The common rule in the UK throughout the history is that the Crown has never been able to be prosecuted either in criminal or civil cases (Lord, 1984). The only means to bring a civil suit against the crown were:

- Petition of right, the royal permission was required for this.
- suits for a declaration against the Attorney-general; or
- Against ministers or the departments of government where an Act of Parliament had provided specifically to waive the immunity.

In Ancient England

In ancient England the notion of sovereign's immunity was derivative concept from the maxim "Rex non potest peccare" which means "the king can do no wrong." This concept provided absolute immunity to monarch.

The king in ancient England enjoyed absolute powers and immunities. He could not be sued in court and whatever he commits no one had the authority to ask him. Until the time of Edward I the crown of England wan not sue-able without his prior consent (Chemerinsky, 2001). The immunity of Crown in England was not because of feeling that the king is above the law, but because that there was no court above the court of the king so if King be sued in the most above court means logically that he should not be sued in any other court.

Bracton explains the maxim "the king can do no wrong" by saying that the Crown was not privileged to do wrong however the Blackstone refused to consider the maxim in such narrow sense, so he writes in his commentaries:

> *"Besides the attribute of sovereignty, the law also ascribes to the king in his political capacity absolute perfection. The king can do no wrong."*
>
> *"The king, moreover, is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness* (Pugh, 1953)*."*

Origin of the Concept of Liable Government

The idea of sovereign's immunity is very old and dates back to pre-history era and there is difference of opinion upon the fact of exact origin of this doctrine but it is said that before the era of Edward-I, in whose era the petition of rights was developed, the sovereign had been enjoying absolute immunity (Pugh, 1953).

Sovereign immunity commenced in ancient feudal England, where it was believed that the monarch can do no wrong. But with the passage of time this practice started changing as we see that the king was forced by the nobles of England to sign a pact with them called Magna Carta which was sealed under oath by King John on 15 June 1215 which resulted in giving some rights to people of England and depriving king from those rights which he had. Magna Carta is considered the initial document, forced onto a King of England by a group of feudal lords, in an effort to limit his authorities and powers by law and protect or defend their rights. In Chapter twelve of the Magna Carta, it states "no scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom" (McKechnie, 1914).

In present democracies the President is not the sovereign. Sovereignty vests in people but this does not mean that the president has no immunity. In a democracy run by the 'rule of law', no one is considered above the law. The president has a unique status in this regard because of the nature of his responsibilities that all Executive powers are vested in him alone which necessitates the protective layer of immunity in order to make it easy for the president to perform his duties without extra sensitivity (Chang, 2007).

Sovereign Immunity from 13th Century Onwards

In the early days before 11th century the Monarch was the sacred body and was immune from any penalties for his actions. Later on, from thirteenth century onwards, it became possible to file a legal suit against the Crown.

Before centuries, bringing a suit against a private individual was by obtaining a writ from chancery and it was not a matter of royal grace (Tidmarsh, 2009). Bringing suit against the Crown required a request or application for royal assistance because it was the king who had to establish the King's courts which made it quite hard to sue the king in routine matters. The people of the England had to have the King's consent for their claims to be heard against the King (Ehlrich, 1921).

> *"Soon differences among petitions occurred. On one side were the petitions issued as a matter of royal grace or discretion and on the other side were petitions of right" (Ehlrich, 1921). 'Petition of right' said that if the defendant was a common man, the petitioner had a legal claim; the monarch will be treated as a common man and a party in the case. The King usually permitted such petitions. The phrase*
>
> *"The King can do no wrong" lost it affect which it had in the previous days.*

The petition of right was an effective way for holding the Monarch accountable. The Crown had procedural advantages which the private litigants did not have. The courts developed an alternate process because of the complexions in the petition of rights in the shape of *monstrans dedroit*, (showing of right, in the English law, is a process by which a person claims from the monarch a restitution of a right) the traverse of office along with the writ of *liberate*.

Since Magna Carta, slowly and gradually the king loses his powers and prerogatives continuously as number of bills and documents were given constitutional status like Bill of rights (1689) petition of rights (1628) etc. With the passage of time the king had been considered liable and his immunity was restricted as we see that Charles 1 (1625-1649) was judged and even then, executed which shows the increased powers of parliament at that time. This also shows that till mid of seventeenth century the parliament had got much control over kingdom's politics. At the beginning of the eighteenth century when the two powers in the shape of the Crown and the Parliament were combined into a legislative supremacy principle, called constitutional Monarchy.

Till the eighteenth century, the King had two main sources of Income. The hereditary revenue, comprising land rents etc. This source was used to meet the expenses of palace and the government. Taxes being the second main source, required the Parliament's approval under the Magna Carta (Alsop, 1982). This source had been used to meet the extraordinary expenditures like war etc. with the passage of time, the Crown's traditional revenue becomes less for the costs of government and the increasing inflation, due to which the crown had no other option but to apply for more money to the parliament frequently (Tidmarsh, 2009).Taxes were then imposed to meet the ordinary as well as extra ordinary expenses of the state. In the time of Henry VII (1485-1509), the people of England complained against the exploitation of government, thinking that the state has dishonestly raised the threats of war, just to obtain the parliamentary grants. The only purpose of the parliament was to grant funds and if it had lost this function it might have ceased to exist. The king whenever needed money called the session of parliament. In beginning of the thirteenth century, Parliament used this power and negotiated it with the King and eventually won the right of discussing its complaints against the Crown before approving any financial resolution or levy. Within a century or more, the Crown agreed to remedy their grievances (Hansen, 1994) which increased the Parliament's check over unusual grants which became the only and vital source of its power over Crown's action. In reality, even this excessive bargaining position was largely depended on the charisma, personality and other skills of the King.

In Stuarts Era

When Stuarts succeeded to thrown, a tussle started between the parliament and the crown on numerous issues, above all was the issue of money. The parliament's eagerness to control crown's actions by controlling his funding gave it a dominant position. The Stuarts faced the misuse of power of parliament on approval of financial bills. For instance, the Commons of 1621 and 1624 dictated the king on key issues of foreign policy and forced the then King, James to give his royal consent to the Subsidy Act of 1624, which included the law that the money paid for war, should be given to the treasurer who was under the control of parliament and who spent money as per parliament orders. When Charles I (1625-1649) succeeded to the throne, he had continuous clashes with the Parliament on the financial issues. The Parliament of 1625 exercised its power by limiting the period of Charles's grant of customs

duties to one year. Most significantly, the Parliament of 1628 forced Charles to accept the Petition of Right, by which he acknowledged that no person could be compelled to make a Gift, Loan, Benevolence, Tax and other likely Charges, without common consent by Act of Parliament (The Petition of Right, 1628)." Charles went for different options to generate some healthy revenue to minimize its dependency upon the parliamentary grants. Charles was lacking funds, he fought wars with Scottish people without taking help from the parliament, but he failed to continue that because he was in need of money and parliament refused to give him the money until he resolves their grievances. Charles at last called the parliament in 1640 which lasted till 1660 and this parliament further restricted the crowns powers by using its powers. The sovereignty of crown was restricted more, and parliament gained more power and authority. This battle between Stuarts and parliament made the privileges of crown limited and increased the parliament's powers. When James II (1685- 88) became King, he had the sufficient amount to meet his expenses independently from Parliament, so he started working independently, on which the parliament conspired with the Dutch emperor to attack England which made James II to run from the country. But after that the parliament never committed the same mistake again because adequate revenue was, "the sinews of the monarchy"; as said by the Lord Treasurer for Charles II, or, as Sir Joseph Williamson stated in 1690, "When Princes have not needed Money, they have not needed us (Tidmarsh, 2009)." The Parliament has found a very fruitful way and a useful tool to control the powers of crown by having control over his financial needs whereas crown considers it very necessary that it should have financial independence to perform his constitutional duties. After that the parliament succeeded to even control the civil list in 1782, which was considered the principle sign of crown's independence (Tidmarsh, 2009).

Sovereign Immunity from 18th Century Onwards

In the beginning of eighteenth century, the House of Lords developed a new process in the *Bankers' Case,* which was to issue a writ against the barons of the Exchequer, in cases where neither the *monstrans de droit* nor the traverse of office was obtainable and the option of petition of right was not asked for (Tidmarsh, 2009).

Nearly in all of the cases where Crown was sue-able, the willingness of Crown to be a defendant in that case was required. In medieval England, land and property was considered a symbol of power and wealth (Holdsworth, 1909) and the original owner of the land (fountain of wealth, power and status) was crown so he should have special privileges and immunities.

The banker's case further decreased the powers of crown and increased that of parliament. After that case even the personal money of crown became subject to the consent of parliament. As the idea of governmental function extended, English courts allowed suit against the government official who actually were involved in the complained illegal act. So theoretically the king could do no wrong, but it became impossible for him to allow a wrongful act, and therefore any unlawful order issued by him was provided no defense.

Sovereign Immunity from 20th Century Onwards

In England, the picture has completely altered, as by the Crown Proceedings Act of 1947, the victim is given the right to file civil case against the King in torts as well as in contracts (Pugh, 1953).The position (that crown can do no wrong or even can think of wrong) was changed by the Crown proceeding Act 1947, which declared the Crown (when acting as government) liable of his civil acts. Section 2 of Crown Proceeding Act reads as:

Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject

(a) "in respect of torts committed by its servants or agents";
(b) "in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer"; and
(c) "in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property" (Crown Proceedings Act, 1947).

Criminal proceedings against the crown or UK government are still barred unless expressly allowed by Crown Proceedings Act (Halsbury's Laws of England, 2014).

This act affected the laws related to the acts done by UK government or its agents and still crown was immune from the legal consequences of his criminal and civil actions. Crown is immune from arrest and even arrest cannot be made in monarch's presence (Halsbury's Laws of England, 2014).The Crown

Proceedings Act 1947 was passed by parliament which for the first time, legally give the right to common people to bring civil actions against the king in the same way as to be brought against any other party.

This all above discussion shows that the immunities, privileges and powers of crown were snatched from him slowly and gradually that at the end of 18th century he lost all his special powers and instead of Crown, parliament gained all powers and authorities. This clearly shows that the doctrine of sovereign's immunity and the maxim of "King can do no wrong" has finished. Now the parliament is sovereign in UK and it is said that parliament is so sovereign that it can do anything except making a male female and a female, a male. Presently the crown is mere a symbolic institution in UK.

The Application of Immunity Doctrine in USA

The immunity doctrine in the US constitutional law started developing in the mid of twentieth century in order to protect government and its officials to do their duties freely [Jackson, 2003). This doctrine, as originated in England, was mostly for judges to protect them from suits based on acts committed in their official duties in the best interest of public but this immunity was not for the malicious or corrupt judge (Motos, 1998). American jurisprudence, in its early stages expanded immunity doctrine to protect public officials. In Spalding v. Vilas, immunity was granted in a civil suit to a Postmaster General arising from an official act [Spalding v. Vilas, 1896). This concept was adopted in American jurisprudence and implemented in its constitutional history though the constitution is silent on this issue but in the opinion of some jurists, the literal interpretation of the related article seems to allow suits against the sovereign (Pugh, 1953).

Textual Understanding of US Constitution

The fifth amendment of the US constitution which is also known as 'Takings Clause', states;

> *"No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" (US Constitution Fifth Amendment).*

This clause or amendment of the constitution does not prevent the government from taking the people's property but it just puts a condition on that [Theodore, 2006).In the opinion of some of the commentators of the constitution the above mentioned 'taking clause' gives right to the people and makes them able to overcome the immunity doctrine.

The US Supreme Court's View

The Constitution of USA seems unclear on the matter of suits against the government however a literal interpretation of the Article III seems to permit such petitions.
Madison said while interpreting Article III.

> *"It is not in the power of individuals to call any state into court."*

In 1821 the court once again considered the doctrine of sovereign immunity. In *Cohens v. Virginia* Chief Justice Marshall said:

> *"The universally received opinion is, that no suit can be commenced or prosecuted against the United States; that the judiciary act does not authorize such suits" (Pugh, 1953).*

In 1834 Marshall continues to deny the possibility of suing federal government:

> *"The United States are not suing able of common right" (United States v. Clarke, 1834).*

In 1850 the court again confidently gives its opinion in favor of sovereign immunity.

No case except *Chisholm v. Georgia* (which denied to award immunity to Georgian State), had defended the immunity doctrine. In 1868 and 1869 after about 75 years of *Chisholm v. Georgia* judgment, the Supreme Court tried to justify the doctrine on the basis of "policy imposed by necessity (Pugh, 1953). The court tried to provide legal base to the concept of sovereign's immunity, which it has so long ago accepted, on the basis of "the doctrine of necessity". The court's argument is not sound. Several states and countries around the world have accepted various responsibilities yet they have not lost their control over government (Pugh, 1953). Even in USA, congress is restricting the government's immunity but one cannot say that effective government's control has diminished [Block, 1946).

In 1879, it was clearly urged upon the court that the sovereign immunity doctrine is applicable in country, the court denied and said that this doctrine could possibly be applied to the president where the

Constitution accepted the possibility of a wrong act by the president and hence provided the option of impeachment.

The Federal Tort Claims Act (FTCA)

There are number of Acts passed by the congress to provide relief in specific areas of litigation among which the Federal Tort Claims Act of 1946 is a landmark which established the principle of liable government, just like a private entity in torts. The Congress has extended the field of government responsibility for tort (as in contracts and takings), but the Court narrowed that concept and continuously provided immunity to government and its employees (Jackson, 2003).

Impeachment

As we mentioned above that there is no provision in the constitution of USA which explicitly shields the President from judicial process. But the more we get closer to the text of Constitution, the clear it seems that the incumbent President is subject to the impeachment alone and not to the compulsory judicial process (Isenbergh, 1998). The President holds the executive power and if he is forced to appear in court, the entire executive and its system may weaken or become slow at some degree. The silence of US Constitution on Presidential immunity means that impeachment is the only option against a sitting President.

In 1838 in Kendall v. United States, Justice Story commented as;

> *"The executive power is vested in a President; and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power" (Isenbergh, 1998).*

There, impeachment was considered on as the *only* way to treat the illegal acts of the President. Several supporters of the impeachment say that, in absence of it, the President would be above the law but president is held subject to compulsory criminal proceedings in United States v. Nixon while Clinton v. Jones holds the president subject to private civil lawsuits, for nonofficial acts.

In Clinton v. Jonesit was stated by court that *"with respect to acts taken in his 'public character'*— that is official acts— the President may be disciplined principally by impeachment, not by private lawsuits for damages but he is otherwise subject to the laws for his purely private acts" (Clinton v. Jones, 1997).

The provision in the Constitution on impeachment is;
Article II, section 4, which reads:

> *"The President, Vice President, and all civil officers of the United States shall be removed from Office on Impeachment for and conviction of Treason, Bribery, or other High Crimes and Misdemeanors."*

The above quoted words do not mention the impeachable offenses. It only require that if a President and other mentioned officials, are convicted upon impeachment, they must be removed from their offices. "Shall be removed" is not a definition but it is a command and this clause orders that if above mentioned officials are convicted of certain illegal acts, Congress must remove them from their offices. This clause counts some impeachable offenses, nothing in Article II; section 4 shows that it is a complete list (Isenbergh, 1998).

Both in America and England the impeachable offenses had included a wide range of wrongdoing other than "high crimes and misdemeanors." So if we take Article II, section 4,as a complete list of impeachable offenses, it will go against the earlier practice.

Impeachment is done for crimes. It is a form of criminal process done in Congress. Throughout the history in America and England impeachment was not confined to few offences but extended to several other offences as well. In England if some were impeached for treason and corruption. There were others who were impeached for other misconducts both inside and outside of office (Isenbergh, 1998).

In 1681, the House of Commons resolved:

It is the absolute prerogative of the Commons, to impeach in front of the Lords in the Parliament, anyone whether he is a peer or a Common man, for any crime or misdemeanor, including treason (Isenbergh, 1998) because they knew that the circle of impeachable offences is large and impeachment is enough to shield the people from any misconduct by the President.

To What Immunity Is the President Entitled

The two Supreme Court cases addressed two different types of immunities. In the case of president Nixon, the question was of permanent immunity, whereas in the case of Clinton, the questions were whether the sitting president justifies delay of the civil trial against him until his term finishes.

Nixon vs. Fitzgerald

Nixon v. Fitzgerald presented for the first time that President has absolute immunity from the civil damage's liability. Respondent argued that the President is protected for his constitutional or official acts alone. The Court by rejecting the argument, said, that constitution distinguishes the president from other officials and rejected the other argument by saying that reorganization in Air force is the part of official duties of president, so dismissal of an employee of the department was inside the "outer perimeter of his duties (Motos, 1998)." Chief Justice Burger said that the president has absolute immunity but not for unofficial acts.

The Court in Nixon stated that its basic concern was to make the President free from becoming overly cautious in his official duties (Motos, 1998). This concern does not provide immunity for his unofficial acts.

In Nixon vs. Fitzgerald, the Supreme Court said that it is within the President's authority to enforce reorganization. Fitzgerald's allegations that such reorganization was inspired by personal reasons were dismissed.

Clinton vs. Jones

In Clinton's case the district Court held that Constitution provides temporary immunity from civil suits to the president regarding events which occurred before his entering into his office (Clinton v. Jones, 1997). The basic principle behind the immunity concept as identified by the court is to allow officials to serve public interest without fear of personal liability but the US Supreme Court held that the temporary immunity to president from civil damages suits regarding events which occurred before his entering into his office is not given by the Constitution.

In Clinton v. Jones, Clinton's attorneys filed a motion to close the case on the basis of Presidential immunity and to postpone this until after the presidential term finishes. The district court allowed to start the discovery procedure but dismissed the motion of Clinton's attorneys to dismiss the case. The court also ordered to postpone the trial until Clinton is in his office. The appellate court on appeal affirmed the dismissal of district court, but reversed postponement of the trail on base of temporary immunity believing that president is not entitled to it. In Fitzgerald the Supreme Court held that the absolute presidential immunity does not extend to the unofficial acts of a president (Chang, 2007).The immunity granted to Nixon in *Fitzgerald* was for his official act. His act was considered official. The decision of *Fitzgerald* does not provide ground to the Clinton to claim immunity for his unofficial acts.

The Supreme Court also rejected the argument of Clinton's attorney that suits against president would impose burden upon the president which reduces his effective performance of his official duties, by saying that if court may review the legality of official conduct of president then it may also review his unofficial conduct (Chang, 2007).At the end, the Supreme Court rejected the claim of President Clinton of temporary immunity from civil suits.

Justice Beyer argues that immunity doctrine would apply in situation where President shows that a private civil lawsuit interferes with the duties assigned by constitution to the president.

With *Fitzgerald* and *Clinton*, both cases show that the President enjoys absolute immunity from civil lawsuits for official acts and no immunity for him for his unofficial conducts.

Opponent's View

Opponents of this doctrine argue that this concept is inappropriate in a democracy. They also argue that sovereignty is unacceptable in a society where people are considered the actual sovereign.

The immunity doctrine derived from English jurisprudence is inconsistent with the American jurisprudence and constitution because American constitution recognizes that government and its officials can commit wrong. Sovereign immunity doctrine is against with the maxim of US constitution that "no one, not even the government is above the law (Chemerinsky, 2001)." Sovereign immunity negates the basic principle which was announced in *Marbury vs Madison* that "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he

receives an injury" Even after this the Supreme Court is continuously expanding its application as in *Alden v. maine* the supreme court held that sovereign immunity doctrine protect government from being sued without their consent in state court.

Sovereign immunity cannot be found in the US constitution by the orignalism theory of interpretation. Originalists say that a right should be found in constitution if it is clearly written in text or intended by its framers. Yet this cannot be found either in the text or framers' intent. One can say that 11th amendment gives this right but in Alden v Marine Justice Kennedy's writing for the majority states, Sovereign's immunity is derived not from the eleventh amendment but from the body of the original constitution itself. Moreover 11th amendment restricts suits from the citizens of foreign states against a state and it does not bar any suit against a state by its own citizen. The framers' intent is also unclear in sovereign immunity and an unclear intent does not protect a right constitutionally (Chemerinsky, 2001).

Conclusion

The doctrine of sovereign immunity dates back to the ancient England. It evolved in England. This concept provides immunity and protection to the king or the ruler. The very well-known and familiar maxim "rex non potest peccare" which means that "King can do no wrong" was in practice in England as it was in full force in Roman Empire. The England got freedom from Roman Empire in fifth century and maintained their kingdom and monarchy. The monarch was considered a sacred institution and was immune from any legal action. This was believed that he even is unable to think of wrong. King was considered the fountain of law and justice.

The crown in England lost this unique status with the passage of time. The feudal of England started gaining power by taking part in the political system of the empire. The English empire had been facing financial crises when it was expanding. The feudal were rich enough to help the crown out of the financial crises. The feudal used their money to control the crown. They became the members of the parliament where they got an upper hand on king. With the passage of time the financial problems of the empire increased. The king required more money to run the affairs of state. The feudal used to provide these funds with their assent. The king cannot get money only after the approval of these feudal who were the parliament members. They used there this power to control king and his authorities. They forced king step by step to withdraw from his powers and to give those powers to parliament. The king lost its power continuously because numbers of bills were passed which restricted king's powers and empowered the public. The Magna Carta (1215) was the first document signed between king and his public, then the "petition of rights" (1628) and "bill of rights" (1689). The king gradually lost his immunity and considered liable for his actions. The incident of King Charles-I (1625-1649) shows that the crown was not immune from legal prosecution as he was before 11th century. He was judged and even executed which shows that the continuous effort of feudal reduced king powers. But even then the crown had some privileges like he could not be sued but only after getting his assent.

Then the crown proceeding act 1947 explicitly finished this concept by giving empowering the public to sue the crown in civil, tort and content matters. The crown still enjoys some special privileges in criminal cases like he can neither be arrested nor arrest can be made in his presence but most of his powers are snatched from him by the parliament which is now the real sovereign institution of UK. The crown has only the apparent sovereignty and not the real. The maxim "the maxim king can do no wrong" is no more in we force in UK.

Magna caste in 1215 was the first document which paved the way towards the concept of liable government. This was the first step which after seven centuries ended with the crown proceeding out 1947. During these centuries the feudal lords gained power gradually and then used this power to weaken the king. They then became the members of the parliament and snatched the powers form king. Now the crown in the UK is a symbolic institution though it enjoys little immunity like protection from arrest etc. Crown is the head of state but the *defecto* head is the Prime Minister and the parliament. The government in UK is now liable and the crown is also answerable to his acts especially in civil cases, torts and contracts etc.

The criminal proceeding is allowed but subject to the provisions of crown proceeding act. If crown proceeding act does not allow that then in that case the criminal proceeding could not be brought against crown.

The long battle between the king and parliament which lasted for centuries ended transfer of power from crown to the people's representatives and practically with the end of the concept of sovereign immunity. The defeat of crown turned it into a symbolic institution. The parliament is now considered

sovereign. It can do whatever it wishes and is considered the most powerful parliament in the world. It is said that if the parliament passes the bill to hang the king, the king will have to sign that, though without his consent the bill will not have any legal force. They call it constitutional monarchy.

The concept of Sovereign immunity in USA was adopted from English jurisprudence. The US constitution is silent on this issue. The fifth amendment of the constitution grants right of protection to the US citizens due to which some people say that this bar the concept of sovereign immunity. The opponents of this concept argue that this concept has no place in United States jurisprudence. The constitution of United States bars it. The opponents of this doctrine say that it is in contradiction with the familiar maxim of American jurisprudence that "no one even the government is above the law". They argue that this concept must be eliminated from US constitution and the maxims" let right be done" must be followed.

But on the other side the US Supreme Court is expanding the scope of concept of sovereign immunity and according to Supreme Court the president of United States is entitled to the immunity for his official acts. If he does everything that comes within his duties assigned by the constitution, he is immune for that. The president Nixon had been awarded this immunity by US Supreme Court in Nixon vs. Fitzgerald. The Supreme Court was of the opinion that reorganization of a department is within the outer perimeters of the powers of US president. So, for that reason Nixon is protected and SC granted him the immunity. But the US president is not immune for illegal acts whether he commits that while he is in office or not. We see that in US vs. Nixon the Supreme Court denied granting immunity to President Nixon because in it declared that in Watergate incident the president's act was illegal and his act does not fall within the outer premiers of his constitutionally assigned duties. The SC did not grant him immunity and in its historic verdicts with the ratio of 8-0 it declared that president is not entitled to immunity in this case. Later on, Nixon resigned from his office after two weeks. Likewise, in Clinton vs. Jones the US Supreme Court denied providing immunity to President Clinton. The US Supreme Court held that his act was illegal and was before his entering into office so he is neither entitled to permanent nor to temporary immunity.

This shows that in US immunity is available for only official acts and not for illegal acts. Now if president is found guilty the only way available against him is the impeachment. He will be impeached and removed from office as mentioned in article 2 section 4 of the US constitution.

Art 2 section 4 deals with impeachable offences. Some scholars say that the only way to remove president from his office on a crime is impeachment as the crimes mentioned in art 2 sec 4 is not an exhaustive list but it just shows that few big crimes. If president commits crimes other than mentioned in article 2 section 4, can also result in the impeachment of president. The federal torts claim act 1946 was a good effort by congress to make US government a liable government in torts.

The US Supreme Court is of the opinion that immunity can only be granted for the acts done within the outer perimeters of constitutionally assigned duties. The constitution does not grant immunity where the act is done either before entering the office of presidency or after leaving the office. The constitution also does not provide immunity where the act done by sitting president does not falls within his official duties.

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