The troika Legislature, Judiciary and Executive, are the three different but important limbs of the Constitution which are complementary and supplementary to each other. The Constitution provides constraints on state's action since a sound government is the one which is based on checks and balances. This is the ethos of India's Constitution. Though, under the Constitution the powers of the two institutions, legislature and judiciary are separate yet they are marked by some sort of interrelationship in which the role of the judiciary is much more predominant. Its role in relation to Parliament assumes importance because of three factors:

a) The power of the judiciary to interpret parliamentary legislation and to give meaning to the words used in a statute, and to fill up the gaps.

b) The judicial power to declare a statute unconstitutional, and

c) The power to invalidate even a constitutional amendment. It
provides remedies to the petitioner under Article 32 and 226 of the Constitution in the form of writs.

The greatest reservoir for supplying power to the judiciary to invalidate a statute is provided by the fundamental rights mainly by Article 14 and 19, but almost since the inception of the constitution, an attempt has been made by the Parliament to weaken this reservoir, further it is thought that the Acts passed by the legislature are supposed to be superior as compared to the judges because the former are the representatives of the peoples and thus, there is the necessity of the judicial self restraint. Court too proceeds with the assumption that the legislature is the best judge of what is good for the community by whose suffrage it has come into existence, but the ultimate responsibility of determining the reasonableness of the restraints from the point of view of public interest rests with the court and the court can not shirk this solemn duty casted on it by the Constitution. In practice it is very difficult to draw a boundary between the competence of the court and the exclusive jurisdiction of each House, and thus provided many puzzling cases. Conflicts between the two is not a new phenomena to be settled. No doubt much have been focused to understand the
relationship between the judiciary and the legislature but still questions cloud their relationships.

It was common ground between the Houses and the courts that privileges depend on the known laws and customs of Parliament, and not on the *ipse dixit* of either House. The question whether a matter of privilege should be judged solely by the House to which it is concerned even when the rights of the third party were involved or whether it might in certain cases be decided in the courts and if so, in what sort of cases. Granted that it could be decided in courts, were the judges are bound to act 'Ministerially', i.e. accept and apply the parliamentary interpretation of the law, or were they free to form their own view of the law of Parliament?

Both the constitutional authorities were supreme in their own fields neither of which could compel the submission of the other. The House of commons and the House of Lords in England claimed to be the sole judges of there own privilege while on the other side the court maintained that privileges were the part of the law of the land and thus, the court is bound to decide questions coming before it in any case within their jurisdiction even when privileges were involved.
**Version of the Legislature:**

The Houses claimed to be the exclusive judge of their own privileges especially the House of Commons, as actually it was the House of Commons that entered into dispute with courts. They were that time, engaged in establishing and maintaining their privileges therefore, could not admit the authority of any other body to decide what its privilege should be.

**Version of the Judiciary:**

At the end of 17th century almost after the establishment of superiority of Parliament and rights of the House of Commons the court started to draw a distinction between the constitutional position of the High Court of Parliament and of each House of Parliament alone, claiming that Parliamentary privileges were but a branch of the law of the land which they were bound to administer. The phrase that 'neither House could create a new privilege' proved the limits of the privileges and immunities. The court further argued that their refusal to adjudicate whether parliamentary privileges were involved would in many cases result in a failure of justice since the House of Commons could not give remedies or award damages or decides litigation between
Reconciling the Two Views:

The conflict was ultimately resolved by conceding to the courts the right in principle, to decide all questions of privileges arising in litigation before them with few large exceptions in favour of parliamentary jurisdiction, which include exclusive jurisdiction of each House over its internal proceedings and right of both Houses to commit/punish for contempts. C.J. Fortescue in Thropes Case in 1452, bobserved that "they ought not to answer to that question, for it hath not been used afortyme, that justices should in any way determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of Parliament, and not to the justices." Generally the court agrees with the decision of the House as judge of its own privileges," but despite that conflicts still prevail.

The judiciary-parliament acrimony is not new. It has been in vogue since last many centuries when the members of the

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House of common started to claim certain privileges and powers and struggled for their rights and immunities to be recognized against the King and his Lords. Since then the judges who used to give their judgement were not accepted by the House of Commons simply because they were the Members of the King and his Council and not willing to delegate much power to the House of Commons, but later the supremacy of Parliament was established and the British constitution al law recognized the supremacy of Parliament which can do almost every thing which is not naturally impossible and its Acts can not be nullified by courts on any grounds. Its errors are corrected only by itself that is why the English Judges do not sit as a court of appeal against Parliament. The position is different in U.S.A. where the constitutional frame work is quite and its Constitution is what the supreme court say it is.

In India though the Constitution is based on the Westminster model but yet not a true replica of it, rather it has adopted a via media between the American system of judicial paramountcy and the English principle of parliamentary supremacy. Here the judiciary is vested with the power to declare a law unconstitutional in case if it is beyond the purview of
legislature or contradictory to the Fundamental Rights or violates the Constitutional provision.

In 1704 in England, it was said by Holts in Paty's case as "I will suppose that the bringing of such actions was declared by the House of Commons to be a breach of their privileges but that declaration will not make that a breach of privileges that was not before. But if they have any such privilege they ought to show precedent of it. The privileges of the House of Commons are well known and are founded upon the law of the land and are nothing but the law. As we all know they have no privileges in cases of breach of the peace. And if they declare themselves to have privilege which they have no legal claim to, the people of England will not be stopped by that declaration. This privilege of theirs concerns the liberty of the people in a high degree, by subjecting them to imprisonment for the infringement of them which is what the people can not be subjected to without an Act of Parliament". But a contradictory view was shown in Stockdale v Hansard where a report was printed with the permission of the House of Commons, of the inspectors of prisons in one of which a book published by Stockdale, was described in a libelous manner. He brought an action against M/S Hansard who pleaded the general issue, and proved that the report had
been printed with the permission of the House of Commons, since the order held no sufficient defence to the action therefore, C.J. Denman pronounced the judgement adverse to the privileges of the House, directing that "the fact of the House of Commons having directed M/S Hansard to publish all their parliamentary reports is no justification for them, or for any book seller who publishes parliamentary report containing a libel against any man." A committee was appointed to ascertain the law and practice of Parliament regarding the publication by orders of the House. On its recommendation the House passed a resolution declaring the publication of parliamentary reports, votes and proceeding an essential incident to the constitutional functions of Parliament; that the House had a sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceeding was a breach of privilege; and that the court can not adjudicate on matters of privileges of Parliament. The House directed M/S Hansard to plead when Stockdale commenced another action, and the Attorney General to defend them rather than to act upon its resolution. Denman, C. J., and other judges after hearing the case decided against the claim of privilege. A claim was also

2. Ibid., p. 144.
made by the Attorney General that courts had no jurisdiction in matters pertaining to privilege as the High Court of Parliament was a superior court and the law of parliament is 'a separate law'. It was argued that the declaration by either House on Parliamentary privileges was the judgement of a court with exclusive jurisdiction, therefore binding on other courts as they are supposed to be inferior to the House of Commons. But Denman in his judgement insisted that it is the court which is vested with the power to decide whether a particular claim of privilege fall within the jurisdiction of the House of Common and denied the law of Parliament as a separate law but he did not deny that both the Houses possessed certain privileges which are essential to the discharge of their functions. He held the House of Commons as court superior to any court of law, and none of whose proceedings are to be questioned in any way. Further it was observed that ... It is a claim for an arbitrary power... The supremacy of Parliament, the foundation of which the claim is made to rest, appear to me to completely over turn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of parliament. The sovereign power can make or unmake the law, but the concurrence of the three legislative estates is necessary. The
resolution of any one of them can not alter the law or place any one beyond its control". Another judge Coleridge observed that "this and all other courts of law are inferior in dignity to the House of Commons, and therefore it is impossible for us to review its decision. As a court of law we know no superior but those courts which may revise our judgement for errors, and in this respect there is no common terms of comparison between this court and the House... the House is not a court of law at all. neither originally, nor by appeal, can it decide a matter in litigation between two parties, It has no means of doing so, it claims no such powers, power of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party in the case of contempts. The third judge Patteson said, "in making this resolution, the House of Commons was not acting as a court either legislature, judicial or inquisitorial, or any other description. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question."

From the views of the three judges, it is no doubt clear that they did not submit the superiority of the High Court of House of Parliament over the other law court as the judicial matter can not be decided inside the House. It was admitted that

only the matter which is coming out of its internal proceedings is the only jurisdiction of the House but this jurisdiction is exclusive and sole. Almost a century before i.e. in early 18th century the position was quite in favour of the court. It is clear from the Holts decision in paty’s case who observed that “I will suppose, that the bringing of such actions declared by the Houses of Commons to be a breach of their privileges but that declaration will not make that breach of privilege that was not before. But if they have any such privilege, they ought to show precedent of it. The privileges of the House of Commons are well known, and are founded upon the law of the land, and are nothing but the law. As we all know they declare themselves to have privileges for which they have no legal claim to, the people of England will not be estopped by that declaration. This privilege of theirs concern the liberty of the people in a high degree, by subjecting them to imprisonment for the infringement of them, which is what the people can not be subjected to without an act of Parliament.” Later in many cases contradictory views were expressed accepting the Members of each House of Parliament as the sole judges whether their privileges have been violated and whether thereby any person has been guilty of contempt of their authority, and that they must adjudicate on the extent of their

privileges. This was established in case of Sheriff of Middlex.

Regarding the contempt of the House and breach of privilege, if the House mentions specific grounds for holding a person guilty of its contempt or breach of privilege, and the warrant ordering imprisonment is a speaking warrant then only the court can go into the question of validity of the committal and can scrutinise the grounds to ascertain whether these are sufficient or adequate to constitute contempts or breach of privilege of the House. But if the warrant mentions contempts in general terms and not mentioning the grounds which the House held to be its contempt, in such cases the courts have nothing to do and its validity too can not be questioned. In sheriffs case since the warrant did not mention the facts constituting the contempt of the House, the court refused to issue the writ, because of the absence of such specific nature, of habeas corpus to discharge the sheriff from imprisonment saying that “if the warrant merely stated a contempt in general terms the court is bound by it”. This shows that the House may reprimand or suspend a Member from the House and use force as may be absolutely necessary for the purpose. The jurisdiction of the House in matters of discipline maintaining within the four walls and over its Members is absolute and exclusive. The court is not

5. Brad Lough V. Gossette, 12 Q.B.O. 27 (1884).
supposed to interfere with a resolution of the House during expulsion or suspension of a Member.\(^5\)

This is because the courts regarded the House of Commons and treated the House as a court and its warrants as that of a Superior Court. On the other hand the House too, accepted the summons from the courts and is represented if a person imprisoned under order of the House moved petition for habeas corpus. Only in case of general warrant the decision of the superior court i.e. the House of Commons is not and can not be reexamined. In the medieval times the power used by the British Parliament was in a manner which would shock every body. In the last 100 yrs. Or so it has used to exercise its power with commendable restraints. The House of Commons not only tolerated public criticism but recognised them as absolute necessity. Gladstone observed in the House of Commons in 1888 that "Indeed, it is absolutely necessary that there should be freedom of comment, that freedom of comment may of course be occasionally abused, but I do not think that it is becoming the dignity of the House to notice that abuse of it."\(^6\)

Recognising the importance of comment and freedom of expression, Patanjali Sastri, J., observed that "Freedom of speech and of press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."^7

On the other hand if a prisoner is committed by the House for contempts and he obtained a writ of habeas corpus a return of which was that he had been committed for a contempt of the House, the court would inquire no further but would remand the prisoner to gaol. After prolonged conflicts and controversies in a number of cases between Judiciary and the House of Commons an understanding has been emerged between the two on the following accounts:

1) Neither House of Parliament has the right to do any thing in contravention of the law, in the assertion of its privileges, so as to affect the rights of persons exercisable outside the four walls of each House.

2) Each House of Parliament is the sole judge of the question


whether any of its privilege has been infringed; but whether the House does in fact possess a particular privilege is a question for the courts to decide.

3) Neither House alone is competent to declare the extent of its privilege and this is subject to judicial determination. However, it does not affect the power of Parliament to legislate on the subject of Parliamentary privileges.

4) If the House commits for contempts of privilege which is not specified in the warrant the courts are powerless, they cannot examine it, this is denied by the courts in India.

5) The courts deny the right of the House to define its own privileges but given an undoubted privilege it is for the House to judge on the occasion and of the manner of its exercise.

6) The courts will not interfere with interpretation of a statute so far as the regulation of internal proceedings are concerned. Each House has unquestionable authority as regards the regulation of internal procedure if any proceeding in the House affects the rights of other person arising out of the ordinary law of the land and exercisable outside the walls of the House. The ordinary courts of land shall at once have the jurisdiction to determine whether the privilege
claimed by the House exists and if so whether it would go so far as they justify the breach of the ordinary law of the land.

A balance has been established between the judiciary and legislature that the courts will recognise those privileges which have the sanction of common law, a new privilege can be created for the House only by a law passed by the Parliament and not merely by a resolution of one House; and whether a particular privilege claimed by the House 'exists or not' is a question for the courts to decide. The courts have the right to determine the nature and limits of parliamentary privileges.

**Position in India:**

In India the position is different. Here the Parliament and state legislature's claim is limited by the presence fundamental Rights and the doctrine of judicial review. The court, in the ordinary circumstances have accorded the speaker of the House as the judge to decide the privileges of the House. For instance, the common practice in India to arrest a Member is through a warrant but the case of *R.S. Patel, M.L.A.*, who was arrested in December, 1953, without warrant during the session, deviated
from the normal practice, but agreeing with the committing authority the committee found no difficulty in saying that the membership of the House conferred no immunity, since the arrest was made under the ordinary law on charges involving offences for which, under the Indian Penal code, a person is liable to be arrested without warrant. Further on one occasion the speaker of Uttar Pradesh Assembly instructed the leader of opposition to out from the day's sitting.\textsuperscript{9} The committee of privileges also agreed with the behaviour of the House as a result of which a resolution was passed to suspend him for the rest of the session. But the Member pleaded against the action of the speaker on the ground that double punishment had been awarded in contravention of Article 21 of the Constitution. The court rejected by holding that "disciplinary action for breach of parliamentary rules was not punishment as intended by the chapter on fundamental rights, therefore the question of double punishment did not arise and what is more, the resolution passed by the House was an internal matter which the courts have no power to scrutinise which is quite clear from the Article 122(1) which says that the validity of any proceeding in Parliament shall not be called in question on the ground of any

alleged irregularity of procedure. The C1(2) of the same Article
says that "no Officer or Member of Parliament in whom power is
vested by or under this constitution or regulating procedure or
the conduct of business or for maintaining order in Parliament
shall be subject to the jurisdiction of any court in respect of the
exercise by him of those power." The same view is applied to the
states under art 212 C1(1&2). But it is also noticed that there
was no agreement among the judges on general position thus,
emerging two contradictory views, one was that in reconciling the
privileges of Parliament as set out in Article 105 and 194 with
the rest of the Constitution it had to be taken that the framers
had not intended the privileges to be over ruled by the
fundamental rights." While others were of the opinion that
fundamental rights were more fundamental Article 14 & 18 of
the Indian Constitution guarantee the right to equality to every
citizen of India embodies the general principle of equality before
law and prohibits unreasonable discrimination among citizens.
Article 18 abolishes title and Article 14 declares that the state
shall not deny to any person 'equality before the law' and
provides equal protection of the laws within the territory of India.
This provision expresses equality before the law and equal
protection of the law.
However, on the other hand it is also argued that equality does not mean absolute equality among citizens which is physically not possible to achieve. Jenings strengthened this view by saying that equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. Where as Dicey calls quality before the law as the rule of law in England which means that no man is above the law and every person, whosoever be his rank or condition, is subject to the jurisdiction of ordinary courts.

On this occasion a question very often comes into mind that is there any longer the same need for parliamentary privileges? At whose expense are parliamentary privileges asserted in the modern democratic states? Also in the context of the Indian Constitution, are parliamentary privileges more fundamental than Fundamental Rights. If the privileges get defined by the law then they will become unambiguously subject to the Constitution and it will become the duty of the Supreme Court to determine cases where the privileges and fundamental rights are contravened with one another. But if privileges remain so long as those of the House of Common in India, the Supreme Court would probably uphold this power and protect it against restrictions even by the
fundamental rights. In case of codification the court is entitled to enquire into the constitutionality of such privileges. It is suggested that the area of privileges be determined by the courts in the context of citizen's right than by the legislature in its description as most modern privileges seems to consist conflicts between the legislature and the public and not between the legislature and executive.

Since the powers are not defined clearly, conflicts appears between the two bodies as it has happened in West Bengal. The Speaker of the Assembly granted temporary permission to two communist M.L.As to remain on the Assembly premises in order to avoid arrest under the Preventive Detention Act. The court observed that general immunity can not be conferred upon Members from arrest. The only immunity permitted by established practice in Britain is that the arrest can not be effected within the precincts of the chamber when the House is actually sitting.

In practice the legislature claims an absolute power to commit a person for its contempts and a general warrant, if issued by it, has a nature of conclusive and free from judicial scrutiny. The question however raised whether such a claim can be accepted in India where there is unlike England, written
Constitution with fundamental rights and doctrine of judicial review of legislative action.

Regarding its own proceedings the Houses of Parliament have an inherent right to conduct its affairs without any interference from an outside body. Constitution restricts the jurisdiction of court in this regard, the validity of its proceedings can not be questioned in any court. By Article 122, no Officer and Members in whom powers are vested for maintaining order and regulating procedure can be called in court for their acts. This was clear from the case of *Raj Narayan* in which Allahabad High Court observed that:

> this court is not, in any sense whatever, a court of appeal on revision against the legislature or against the ruling of the speaker who, as the holder of any office of the highest distinction, has the dignity of the House. This court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House.*

In a number of cases the courts have decided the question whether a particular privilege claimed by a House exists or not and when once it is decided that a particular privilege exists it is for the House then to judge the occasion and the manner of

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its exercise and the court would not sit in judgement." The Court was of the opinion that provisions contained under Article 105(3) and 194(3) are constitutional laws, therefore, are as supreme as Fundamental Rights. Freedom of speech in the legislature in Part III including Article 208 and 211, rights under Article 19(1) (a) can be restricted by law for breach of such law if they affect the:

1) Sovereignty and integrity of India.
2) Security of the State.
3) Friendly relations with foreign states.
4) Public orders
5) Decency or morality
6) Contempt of court
7) Defamation, and
8) Incitement to an offence

Whereas cl (2) of Article 194 clearly says that Member of Legislature is not liable to any proceedings in any court in respect of any thing said or done on the floor or during the proceedings of the House. Provision contained under Article 194(2) is different from that of 19(1) (a) and therefore can not be cut down in any way by law contemplated by 19(2), on this ground

the court dismissed the petition. Article 105 (2) vests exclusive control in the House of legislature. Supreme Court ruled in case of *Kameshwar Rao* that "It can not call the question of validity of its proceeding on the grounds of alleged irregularity of the procedure. In case of *Surender Mohanty vs Nabha Krishna* the Orissa High Court observed that:

> no law court can take action against a Member of the Legislature for any speech made by him there even when a Member in a speech casts reflection on High Court in the House."\(^2\)

Though the tendency of the court is to uphold the legislation rather than to quash it but however, when the power of the executive (legislature) interfere or contravenes with the rights of an individual without providing procedural safeguards the court then acts sensitively and its action is justified on the grounds that it is necessary to check administrative arbitrariness in a society governed by the rule of law and which has vast powers to affects the life, liberty and property of the people. The Supreme Court ruled that if a citizen moves this court and complains that his fundamental rights under Article 21 had been contravened, it would plainly be the duty of this court to examine the merits of the said contention. The impact of the fundamental constitutional right conferred on Indian citizens by
Article 32 (to move the Supreme Court is decisively against the view that a power or privilege can be claimed by the House though it may be in consistent with Article 211. Thus, in courts too wide and unfettered powers are vested under Article 32 and 226 of the constitution and fundamental rights guaranteed to citizen. Secondly, it ought to be pointed out that the powers enjoyed by the House of Commons were incidental to its legislative function and an integral part of its privilege. Under these two considerations it was held that legislature in India are not the superior court of records as in England, only such powers can be exercised by the legislature of the House of Commons which are integral parts of its privileges and are incidental to legislative function, but not those which are used by the House of Commons as superior court of record or as a result of convention the Supreme Court gave its opinion that "Courts in India can not only examine the validity of an order of commitment made by the legislature, whether the issued warrant is speaking warrant or a general one but It was also held that courts have jurisdiction to issue interim order in the proceedings before it and grant of bail to a person who stands committed for contempt. This is because these function were under the exclusive jurisdiction of the courts and legislature did not
exercise any of them in part. This is clear from the Keshav Sing's case who while reprimanded by the speaker of U.P. Legislative Assembly for his objectionable behaviour, asked for the writ of habeas corpus under Article 226 in the Allahabad High Court, alleging his detention as illegal as he was not given an opportunity to defend himself therefore his detention was mala fide and violative of natural justice. As a result of which an interim bail was awarded by the court to him. But the House, keeping in view its powers, again passed a resolution alleging that his advocate (Soloman) and the two judges who passed interim bail had committee contempt of the House therefore be brought before it in custody. This resolution was challenged by the judges under Article 226 in the High Court on which a full bench of 28 judges of the court ordered stay on the implementation of the resolution. The House then passed a clarificatory resolution saying that the question of contempt would be decided only after giving opportunity to judges to explain why the House should not proceed against them for contempt. On referring the matter to Supreme Court, the court by 6 to 1 majority held that the two judges of High Court had not committed any contempt by issuing bail order rather Article 211 restricts the state legislature and Article 121 restricts Parliament...
to discuss the conduct of judges of the court, therefore, no action can be taken against them for the discharge of their duty and fearless and independent judiciary is the foundation of the constitutional structure in India and is uncontrollable by Article 105(3). The court further declared that in presence of fundamental rights the order of the House can be challenged under Article 21.

The Supreme Court’s verdict thus, achieved two objectives -

1) To maintain judicial integrity and independence, for if a House were to claim a right to question the conduct of judge then judicial independence would be seriously compromised and the constitutional provisions safeguarding judicial independence largely diluted.

2) To concede to the House quite a large power to commit for its contempt on breach of its privilege for even though the judiciary can scrutinise legislature’s committal for its contempt.

The conference of presiding officers in Bombay adopted a resolution saying that the advisory opinion of the Supreme Court had the effect of reducing legislature to the status of inferior courts of the Land which was against the underlying intentions
of the Constitution makers who had actually meant to oust the jurisdiction of the courts. On the occasion speaker Hukum Singh read out what Ambedkar once said “under the House of Commons powers and privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of court is ousted. That is an important privilege.. But there is not the slightest doubt in my mind and I am sure, also in my mind of the drafting committee, that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to letter contempt and may loose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.” Suggestions was also made in the conference to amend Articles 105, and 194 to clear beyond doubt the powers, privileges and immunities of legislature, their Members and Committees, not being subject or subordinate to any other provision of the Constitution. Later on after realising the importance of legislature, on March 10, 1965, the Allahabad High Court dismissed the petition, ordering him to surrender his bail and to be served with the remaining punishment imposed on him by the U.P. Assembly. It was also observed by the court that
"once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempts and to impose the sentence passed on the petitioner, we can not go into the question of the correctness, propriety or legality of the commitment. This court can not, in a petition under Article 226 of the Constitution, sits in an appeal over the decision of the Legislative Assembly committing the petition for its contempts." The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempts have been committed or not. As a result of which in various later cases the court has refused to entertain the writ petition against the legislature keeping in view the dignity of legislature, as in 1986 membership of tem DMK legislators were terminated by the Tamil Nadu Assembly for tearing and burning of few pages of the Constitution. The challenged the decision of the House but the Madras High Court dismissed their petition.

The legislature too for itself claims that it has the power to decide by it self, matters arising in connection with the proceedings of the House, the judiciary contends that it has power to interpret the Constitution. In 1970 when court summoned some members including a former speaker of the House to appear either in person or by advocate before the
Supreme Court in a case related to *Jagad Guru Shankarcharya*, the privilege issue was raised in the House. But the speaker directed them to ignore the notice, directing the Attorney General to bring to the notice of the court that what is contained in the case is something which is covered by Article 105 of the constitution. The speaker further ruled out that "whether the court issues a summons or notice does not make any difference to us. Ultimately, the privileges of the House are involved when Members are asked to defend themselves for what they said in the House" and when a member desired to defend himself in the Court the speaker ruled out that "If he appears before the court, fully knowing Article 105, I think we will have to bring a privilege motion against him", It was said that the only question before the House is that If once we accept that the courts have a right to call it whether it is an optional notice or judicial summons, our privileges are at an end. So, in the circumstances, it was my duty to request the Honourable. Members of Parliament to ignore the notice."^{13} It is clear that though both are the important organs of the Constitution but more emphasis is put on the Members of Legislature as the law makers who enjoy some what more privileges than a common man. The

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Supreme Court while upholding the powers and prestige of the Legislature, restricts itself from interfering with its internal proceedings. Only in cases when such things cause civil disputes, the court steps in.

Kaul says that "for his speech and action in Parliament, a Member is subject only to the discipline of the House itself and no proceeding, civil or criminal can be instituted against him in any court in respect of any thing said or any vote given in Parliament or a committee thereof so that Members may not be afraid to speak out their minds and can freely express their views. Members are therefore completely protected from any proceeding in any court even though the words uttered by them in the House may be false and malicious of their knowledge. Though a speech delivered in the House by a Member of the house may amount to contempt of court, no action can be taken against him in a court of law as speeches made in the House are privileged. To commence proceedings in a court of law against any person for his conduct in obedience to the orders of either House or in conformity with its practice, or to be concerned in commencing or conducting such proceedings is a breach of privilege. Both Houses treat the brining of legal proceedings

against any person on account of any evidence which he may have given in the course of any proceedings in the House or before one of its committees is a breach of privilege. The House of Commons resolved in 1818 "that witness, examined before this House, or any committee thereof, are entitled to the protection of this House in respect of any thing that may be said by them in their evidence."  

It is not the matter whether the power was available in the past or not, but whether they lie under the Indian constitution or not which is very much clear by the Article 105(3) whose language is so plain and unambiguous about which Sarkar J. Who while expressing minority opinion in Keshau Singh's case said that I can not imagine more plain language than this, the language can have only one meaning and that is that it was intended to confer on the State Legislature, privileges and immunities which the House of Commons in England had.  

Further it is also not correct to say that Parliament in India does not enjoy any such power, rather impeachment of president under Article 61 and removal of judges under Article 124 (4) or 218 of the Constitution are all judicial in nature.

Emphasizing the importance of freedom of expression
Hidayatullah, C.J., in *Tej Kiran vs Sanjeeva Reddy* case observed that:

"once it was proved that Parliament was sitting and its business was being transacted, any thing said during the course of that business was immune from any proceedings in any court. This immunity is not only complete but it has as it should be. It is the essence of Parliamentary system of Govt. that people’s representatives should be free to express themselves without fear of legal consequences what they say is only subject to the discipline of the rules of Parliament, the good sense of members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none."16

The speaker, apart from as a defender of privileges, adopts control measures too against M.Ps & M.L.As when they cross their limits. As on August, 1st, 1974, some 38 legislators of Maharashtra Legislative Assembly were suspended by the speaker for three days for persistently defying the chair and hindering the proceedings of the assembly.17 Similarly on March 16, under the cover of privileges the members of opposition (congress) rushed towards podium and started shouting slogans and interrupting the speech of Governor, within the 5 minutes of his address, against the govt. (TDP) inaction in the wake of suicides by cotton growers

in the state. They also tore the copies of the speech and flunging them in the air but exercising his power to maintain discipline and self restraints by the legislators, the speaker Y. Rama Nadu suspended 26 Members for the day from the A.P. legislative Assembly and described the episode as very "unfortunate development." He also said that "we should also exercise restraint and maintain self discipline." The full bench of Supreme Court in Tej Kiran's case held that cl. (1) of Article 105 confers freedom of speech on the legislators within the legislative chamber and cl(2) makes it plain that the freedom is literally absolute and unfettered. The protection given by above is to "any thing said" are of widest amplitude and it is not permissible to read any limitation there in. The object of the provision obviously was to secure absolute freedom of discussion in Parliament and to allay any apprehension of legal proceeding in a court of law in respect of any thing said in Parliament by a Member thereof. Article 26 restrict the High Court from issuing a writ to any House of Parliament or speaker or any of its officers to restrain the House from enacting any legislation even if it may be ultra vires. The court would interfere with the legislative process in a House either in the formative stage of law making, or with the presentation of the bill as passed by the House of Parliament to

the President for his assent. The related case was seen in the United Kingdom when a Member of the House of Commons, Tonny Benn raised a privilege issue on the grounds of the action taken by the court on Rees Mogg's application interfering with Bill while it was in discussion before the Parliament. The Speaker Rt. Hon Bitty Boothroyd observed that "I do take with great seriousness any potential question of our proceeding in the courts, ... There has of course been no amendment of the Bill of Rights, and that Act places a statutory prohibition on the question of our proceedings. Article 9 of the Act reads ....... that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

The power is not only awarded in terms of speech and expression on the floor of the House but it is also vested within the House to prohibit any stranger or outsider to report its proceedings, punish even expel from the House if breach of its privilege happens. This was agreed by the Supreme Court also in 1958 during Search light case in which majority of the Supreme Court led by Chief justice S.R. Das ruled that:

"the House of Commons had at the commencement of our constitution the power or privilege of prohibiting the publication of

even a true and faithful report of the proceedings. The effect in law of the order of the speaker to expunge a portion of the speech of a Member may be (Sic) as if that portion had not been spoken. No such statement occurs in such circumstances, though factually correct may in law, be regarded as perverted and unfaithful.”

Power to expel a member existed even in subordinate legislative bodies established under a statute of British Parliament though such a body had no power to regulate its own constitution therefore such inherent powers can not be denied to the State Legislative Assemblies in India.

Usually the courts themselves show great reluctance to interfere with the working of the legislature, only in case of mala fide or perversity they go into the matter otherwise the power of the House is so wide, enabling the House to enforce its own decision. That was the reason why the Allahabad High Court while considering the Keshav Singh’s petition on merit after Supreme Court’s opinion, refused to interfere with the judgement of the House. Article 122 and 212 of the Constitution of India, Section 37 of the Government of Union Territories Act, 1963 and Section 26 of the Delhi Administration Act, 1966 restrict the jurisdiction of the courts to enquire into the validity of the proceedings of Parliament, States and Union Territory’s
Legislatures on grounds of any irregularity of procedure. It is further stated that courts have no jurisdiction over any Officer or Member for exercising the powers vested in him under Constitution/Govt. of Union Territories Act, 1963. The Delhi High Court on one occasion has said that:

"the court will not intervene in matters relating to the conduct of the business and internal management of such statutory bodies like the metropolitan council when such matter fall within their authority of power."²¹

The Constitution guarantees immunity from proceedings in any court in respect of any thing said in the House of Parliament or State Legislature and the word 'any thing' according to Supreme Court version is equivalent to every thing, thus Articles 122 and 212 of the constitution, Section 37 of the Govt. of Union Territories Act, 1963, and Section 26 of Delhi Administration Act, 1966, strengthen the provisions contained in Article 105, 194 and Section 16 of the Govt. of Union Territories Act, 1963, respectively.

On the other hand when MPs ignore the summons sent by the Supreme Court or any other court, seems strange since Article 144 of the Constitution says:
“All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court”. It is significant that no qualifications or exceptions are given. If as representatives of the peoples M.Ps do not “act in aid of the Supreme Court” and thus set an example how can they logically expect their constituents to do so? And is the Supreme Court meant to be ignored by the constituents and their representatives when the later expect the court to interpret their laws.”

And to say that it is no possible to reconcile the powers and immunities of Member essential to the legislative process with the Fundamental Rights of the citizen is only to sanction abuse of privilege.
