PREFACE

Powers and privileges of MPs and MLAs have always been a problematic issue before the concerned persons. During the British empire very few privileges and powers were vested with Indian legislators and that too just for the namesake as the then Govt. was of the opinion that if equal power would be awarded to Indian legislators as those given to the House of Commons, they could misuse them. But their non satisfaction lead them to do hard struggle as a result of which the Govt. of India Act, 1919, and 1935, came into existence which empowered them a little but not fully as punitive powers were still not rendered to them which were conferred on the Members of the House of Commons. Similarly the functions and powers of the presiding officers too were very limited, mostly for preserving their orders and regulating the business of the House. After independence the position changed entirely. The functions of the Dominion were handed over to the Constituent Assembly by the India Independence Act, 1947.

The Constitution of India under Article 105 and 194 equated their rights with those of the House of Commons of
British Parliament. Article 105(3) reads as the powers, privileges and immunities of each House of Parliament and of the Members and Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its Members and Committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment) Act, 1978.

The Presiding officer is also vested with sufficient power in the capacity of guardian of rights and privileges of the Members of the House. To strengthen his capacity, punitive powers have Law also been vested with him.

Privileges when asked for the first time were very few in number. They were mainly for freedom of speech and discussion, freedom from arrest, access to the royals and power to regulate their own constitution. But now apart from these, the Members have enjoyed two in broad, a lot more as they are uncoded. Prior to Independence more efforts were made to get them codified as it could enable them to acquire equal position with those of the Members of the British House of Common in order to enhance their active participation and contribution in the legislative functioning. But after Independence almost all the
efforts have been put to save them from codification since there is a belief that codification can restrict the strength of privileges. But the noncodification too poses a problem because it is due to the noncodification unrestricted debates abusive language undemocratic scenes and low standard in deliberation is quite common. Further, unlike Britain we have a written Constitution underlying a chapter on ‘Fundamental Rights’ which are justiciable in the Court of Law. Thus, any act which violates the right of an ordinary citizen of the country which is provided under Fundamental Rights can be challenged in the Court. We have a “Judicial Review” system empowering each and every man to knock the judiciary if the acts of the legislators do not have any consistency with that of the citizen. Courts have the power to held them guilty. Our Parliament is not as much sovereign as that Britain.

Because of the clear and detailed provision, the people and the press both are very much conscious of their rights. They do not even hesitate to challenge the acts of Parliamentarians and Parliament in court of law. They demand from them more accountability for their omissions and commissions which in any way is not found in England, Parliament is Supreme there and
can do every thing which is physically not impossible because of its unwritten character, thus, making it the High Court of Parliament there but not in India.

In this connection I have divided the whole study under five chapters.

Chapter I deals with the background of powers and privilege. How did they come to exist. A comparative look of past and present have been highlighted. Chapter IInd focuses the importance of powers and privilege as why they had been needed the most, their consequences on the function of legislators. Chapter IIIrd high lights the “Freedom of Speech” to the Members of Parliament and State Legislatures under Acticle 105 and 194 respectively. Its effects on Fundamental Rights which guaranteed the freedom of speech and expression to ordinary citizen & Press.

In Chapter IVth an attempt has been made to discuss another crucial privilege i.e. Freedom from Arrest.

Chapter Vth focuses the relationship between Parliament and Judiciary which highlights the importance of privileges but not so easy to claim them in the presence of doctrine of Judicial
Review and Fundamental Rights.

Concluding part shows their importance and the consequences which now days are faced by the common man because today the threat is not to the legislators from out side rather their own acts and activities as legislators pose a major problem to themselves and to the common man, and the nation is the victim of their degrading standard of deliberations.

Broadly speaking every chapter is divided in three parts, which deals the nature, position in England, and position in India.

Material collection have been done and information gathered from Library, Newspapers and Journals. Constitutional and Legislative Assembly Debates, Debates of Parliaments, Lok Sabha, and Rajya Sabha have been an important source consulted extensively. Reports of privilege committees of Lok Sabha and Rajya Sabha constituted another important source, utilized most for the study.