Laws and rules are imperative for the governance of a state or Kingdom. Parliament is the body which is primarily engaged in law making. It is not a new body rather its history goes back to many years but in the initial years its powers and privilege were limited. It was in the 11th century when the kings began consulting great men on state matters. Gradually it took the shape of a committee to which the King assigned specific duties which later on became an assembly court. However, the decision of the assembly court was not final, the King had the final veto.¹ The Royal courts were held thrice a year on the occasions of Christmas, Easter, and Whitsun when the king wore his crown. All the greatmen of England such as archbishops, bishops, abbots, earls, thegns and knights used to grace the occasion. A special writ of summons sent to each tenant in chief and penalties were imposed if they did not attend it. Hundred years later, in 1176, Henry II held his Christmas Court at Nottingham and immediately after wards held a Great Council with bishops.

earls and barons of the Kingdom to discuss various issues. In the middle of the next century i.e. 1258, the barons at Oxford demanded three Parliaments a year. During this period the King relied upon a small number of personal advisers who belonged to the royal families. These were mainly drawn from the baronage group but with the growing complexity of administration men from non baronial groups with professional expertise were also included to fill some most important offices of the Chancellor, Treasurers and those of Justices. Thus, on the one hand there was a general assembly of the tenant-in-chiefs wherein the whole nation was conceived to be present and met at intervals to advice the King on the major issues and on the other side there was a small body of personal advisors to assist him in the actual day to day business of the government. Parliament is the successor of occasional national assemblies and therefore still retains its essential character of advisory body.

With the passage of time the importance of advisers got enhanced however, they never governed. The King and his Private Council constituted the government i.e. the ministry and civil servants or the legislature and the executive. This is the basic concept of Parliamentary government. The moot point is as to

what converted the feudal great council into Parliament and why?

The word came into use to describe assemblies consisting only of Kings, his personal advisers, and the prelates, earls and barons. The word 'Parliament' as Parliment was first came into being in the 11th century to hold discussions between two persons. In 12th century Italian cities were called Parlamenti, describing such meeting in which Harold took his Oath to William. At the meeting of barons King John gave the great charter as a "Parliament" and was applied first to its great councils of the English Kings emphasizing their delibrative functions. First time Parliament was justified by 1258. In June of the same years barons at Oxford demanded a reform for three Parliaments a year to treat the King and Kingdom's business. In 1261 Henry III issued writs to the sheriffs in which he said that barons had called three knights from each county to meet (at st. Albans) and discuss the common affairs of the kingdom. In 1264 Simon De Montford (ruler of England) in the name of King declared to send four most legal and descrete knights from each county to the Parliament at Oxford to discuss the King's and Kingdom's business with prelates and magnate. In June, 1265,

3. Ibid., p.12.
4. Adam, op cit., P.177.
he summoned his second famous Parliament at West Minister calling only five earls (Leicester, Gloucester, Norfolk, Oxford, and Derby) and eighteen barons. The middle class was represented by two knights from each shire. The special features of this Parliament was the innovation of two citizens from each city and two burgesses from each borough as representatives. To make the participation more direct writs were not summoned to them through sheriffs of the county as the customs was but sent directly. The Parliament of Simon de Montford contained all the constituting elements of Historical English Parliament like lords, burgesses, knights and sheriffs, thus provide an opportunity not to tender individual advices but to discuss and petition their local liberties apart from more financial matter. Making the strict feudal ideas disappearing, the burgesses were rapidly increasing the power and means of making their power rapidly felt. What was more in 1275 the commons were included in more genuinely national assembly when the Edward I held his first general Parliament summoning knights, citizens and burgesses to discuss with magnate the affairs of Kingdom which were more than the mere financial matter. But despite the fact of getting recognition in Parliament they were summoned to attend just four or five

Parliaments out of thirty Parliaments in twenty five years of his regime.

A remarkable change noticed in 1295. The Parliament of 1295 was called as model Parliament because of it's complete embodyment of all the elements of Parliament. There were bishops, abbots, earls and barons, knights and burgesses and even more crucial the representation of lower clergy but the lower clergy representation was not a permanent feature, the king even did not insist their presence rather arose a distinction between the majors and minors, the idea behind their representation was just to have the nation's support behind him and make them ready to bear heavy expenses necessary in urgency. With the passage of time, the process tended to become even more selective and some great men also used to receive summons years after years. The presence of Commons which seems so natural today is novel indeed in that age, thus brought about a structural change in composition contributing the formation of House of Commons. In February, 1305, writs were issued to summon Parliament to enable persons or groups seeking favours on the redress of grievances to present their petition. The

9. Faith Thompson, op.cit, p.11.
statute of 1322 did not include the lower clergy among the estates whose consent is necessary in matters touching the King and the realm which was insisted in 1321. The withdrawal of inferior clergy helped to make possible the formation of the Commons into one body. In 1339 and 1340 they took the burden of supply and internal peace and became an active part. In time, the habit of separate debate began in the form of petitioning and to bring the petition of the Commons into being as unique Parliamentary function, exercised without the magnates (though after some times consultation with them) and in 1343 Common's deliberations found record in special section of the role under the heading “Petitions of the Commons and the responses to them.” In 1348 their petitions were still more clearly marked as being delivered to the cleark of Parliament. While the individual petitions continued to be handed to the chancellor. In 1351 some thirty nine petitions were sponsored by the commons some of which were favoured by the King, some became statute while others were considered unreasonable and refused. It was the time when their legislative functions sought dominance, the grant of supply became conditional upon the redress of their grievances

11. Ibid.
and said that the redress of the grievance should actually precede the grant of supply. In 1376 the practice of electing a speaker to carry their agreed reply to the King also started and in the same year the process of "Impeachment" though not in perfect form was used for the first time against Edward and in 1386 against Richard's ministers.

Impeachment was the sign of the growth of Parliament and powers of its Members. It was considered a transforming feature in the development of modern Parliament. The King was bound to enlarge the law making body which was stated in the Magna Carta, after this the feudalism was no longer existed. Thus, fourteenth was the century with more advancement of Parliament in powers. This advancement in reality was not that of both Houses of Parliament equally but that of the House of Commons. The House of Lords was considered to be relatively less important at the end of the century. The House of Commons evidently had in that age, admirable leadership, high degree of self confidence and a feeling of equality with lords and royal ministers.

In the fifteenth century (1407) the King declared the Commons lawful in discussing the financial matters of the state.

13. Kenneth Mackenzie, op. cit., p.34.
14. Ibid.
This was the Golden age for the Commons so far as liberties were concerned. A number of privileges were demanded during this period, though the claim for freedom of discussion and immunities was first raised unsuccessfully in the beginning of the 12th century. In 1455 the first express claim for liberty of speech in the Commons was made. Sir Thomas Young, one of the knights for the Shire and town brought a petition into the Commons complaining his arrest and imprisonment in Tower. Freedom of speech and expression was thought convenient and desirable without any restrictions to allow the House to discharge its duties effectively. This was considered unique in the Middle Ages, and it is true that political circumstances of the moment happened to be favourable to Young. Thomas More was the first speaker (1523) to beg the royal indulgence for any untoward expressions by individuals in debates. In his speech before the King he pointed out:

"among so many wise men neither is every man wise a like and pleaded the King as" to give to all your commons here. Assembled, your most gracious licence and pardon feely without doubt of your dread full displeasure, every man to discharge his conscience, and boldly in every thing incident among, declare his advice and what soever happened any man to say, it may like your noble Majesty of your inestimable goodness to talk all in good part, interpreting every man's words, how uncunningly soever
they may be couched, to proceed yet of a good zeal towards the
profit of your Realm and honour of your Royal person."15

In 1542 a similar petition was moved by speaker Moyle which
was allowed by Henry with great humility and was followed
regularly in Elizabeth's reign and by 1565 it had become
sufficiently usual to be included in Sir Thomas Smith's
parliamentary procedure.

Though the discussions to English Parliament were free and
unrestricted and the Crown had no power to limit their debates
or to control the votes of the Member but each higher authority
in his reign had his own method of controlling the Commons.
During the reign of Elizabeth Commons were warned not to
discuss certain subjects particularly related to religion, trade and
the succession.

The claim to freedom of speech was not finally substantiated
in practice untill the constitutional struggle of the sixteenth
century had been won by Parliament. In Charles VI reign the
struggle for freedom of speech was merged in the greater conflict
between the King and Parliament. It received statutory
confirmation after the revolution of 1688. The Bill of Rights
declared that the freedom of speech and debates in proceedings

15. Ibid., p.35.
in Parliament ought not to be impeached or questioned in any court or place out of parliament\textsuperscript{16} thus, the freedom of speech finally established.

The privilege of the Member of Parliament to freedom from arrest had also existed from the days of the Saxom Assembly but it was formally recognised by Henry IV in 1403 and regulated and extended by statute under Henry VI which provided that persons should not be hindered by arrest from coming or going to parliament. In the early fifteenth century the Commons began to claim freedom from arrest except for treason, felony or breach of the peace. In sixteenth century the right to determine all questions relating to the election of Members was also claimed by the Commons. Previously these questions had been determined by the King-in-Council. The Commons had also appointed a committee to enquire the matter. In 1586 the Commons in opposition to the Queen, insisted that it is for them to inquire into the circumstances of a disputed election. So far as their control over taxation is concerned their position as the exclusive originators was conclusively affirmed in 1660s and refused the Lord's first reading on bills seeking to impose taxes. In 1667 they

resolved that in all aids given to the King by the Commons, the rate or tax, ought not to be altered by the Lords and by 1678 all aids and supplies and aids to His Majesty in Parliament are the sole gift of Commons and all the bills for granting such aids and supplies began with the Commons and Lords were not allowed to reject Money bills.

During the early Stuart period, the conflict between the King and Parliament developed into a civil war but at last he was made to sign the "Petition of Right" in 1628 and when denide, put on trial, condemned and executed. After the execution of Charles. I the governmental changes came in quick succession. The Kingship and the House of Lords were abolished. The Parliament of 1640-41 which lasted for ten months, (Nov. 3, 1949-Sept. 14) passed the first Act to secure regular meetings of Parliament. It provided for a meeting at least once in three years. It was also provided that no Parliament should be dissolved or prorogued within 50 days of its meeting without its own consent but the life of Parliament was limited to three years. This was an act changing the constitution as it had come down from the past, and it was in principle, permanent though not in the enacted form. A little later Parliament went a step farther in the same direction by a still more revolutionary enactment that existing
Parliament should not be dissolved or prorogued without its own consent, asking the king to surrender more than the previous bill required, and deprived him of all his usual weapons against Parliament. In 1649 Parliament proclaimed England a "commonwealth," without either King or the House of Lords, ordinances now became Acts. The significant thing of the Stuart period in the constitutional development was the parliamentary supremacy and an attempt to compromise it with strong monarchy, taking away the King's constitutional power. The collection of *tunage and poundage* without the authority of Parliament was made illegal; ship money was abolished, abuse of forest were done away with and the royal right of purveyance limited. G.B. Adams stated "the result of 1660 was a compromise, not less truly a compromise because it was expressed in facts rather than in words. The question which had arisen at the beginning of the reign of James I as 'whether it would be possible to make the strong monarchy of the sixteenth century and the strong parliamentary control of the fifteenth' work together in practice? What boundary line could be found between the King and the Constitution had been answered by the discovery of a compromise but it was a compromise of peculiar type. It meant that forms and appearance remained with the
King, the reality with the Parliament. The King in theory is sovereign but his sovereignty can be declared and exercised only in Parliament. The King gave up the power to determine by his individual will, the policy of the state but the surrender was disguised by an appearance of power and for a long time by the exercise of very substantial power and permanent possession of important rights and influence. It was more than a hundred years before all that the compromise implied was clearly recognized and the balance established at its present level. But it was really made in 1660."

The outline of English Constitution was practically completed by 1688-89 during the Hanover period, Britain had become a limited monarchy, Parliament had established her supremacy over the royal prerogative. It was for the first time during this period that the Commons considered the army, navy, and ordinance estimates and the accounts of expenditure and loans for these services. In 1691, they appointed a number of their members as commissioners of public accounts and rejecting the claim of the lords to participate in this work. The other significant features of this period included the declination of the actual powers of the

Kings, the growth of the cabinet system, the democratization of the House of Commons, the rise of the House of Commons to a position of superiority over the House of Lords and the growth of the party system.

Though the Bill of Rights had established the principle of parliamentary supremacy but the King still constituted the pivot. For nearly two decades King continued to exercise the right of veto. Thus, the Parliament though supreme in principle, was subjected to limitations in practice. It was during 1714 that some important changes took place as far as the relative importance of the two Houses of Parliament are concerned. Before Glorious Revolution the House of Lords used to exercise unquestioned supremacy and was the dominating chamber for all purposes. But gradually the House of Lords began to lose its powers and the House of Commons succeeded first in attaining equal footing with the House of Lords and later supremacy over the Lords. Various factors contributed to this changed position one of them was the fact that during the reign of the first two Georges the dominating figure in the government was Walpole who was the Member of the House of Commons, using his personal qualities and outstanding abilities in management managed the Commons and made it the centre of legislature and political leadership. And the
important principle "that the support of the House of Commons is necessary for the Kings' ministry in Parliament, was first recognised in his time and maintained it steadily. Though the democratisation of the House of Commons was brought during nineteenth century but their victory was finally confirmed in 1919.

The "Septennial Act" of 1716 also contributed to the strength of the House of Commons as it extended the life of the House from three years to seven years. It was however, the Act of 1911 which sharply curtailed the powers of the Lords and definitely settled the ultimate supremacy of the Commons otherwise from its earliest days the House of Commons had consisted of men who could hardly claim themselves to be the representatives of the peoples inhabiting the several counties and boroughs. County member were elected by the rural peoples and borough members by the borough residents. Many seats had fallen under the control of land lords and magnates and many were openly sold and bought. Under these conditions the House of Common could hardly be called a democratic and was more representative to the House of Lords than to the nation. In words of Munro, "The House of Commons at the end of the eighteenth century was a representative body in form but a very unrepresentative in fact."^18

It was in 1832 the process of democratising the House of Commons was set when the Reform Act of 1832 widened suffrage. It also enhanced its prestige and increased its strength. The successive Reform Acts further extended the suffrage and regulated the conditions under which campaign were to be carried on. These reforms culminated in the epochal representation of the People Act 1919 and in 1928 which brought the House of Commons to a point where it can easily be counted amongst the most democratic parliamentary bodies in the world.

**Position in India:**

In India the Charter Act of 1853 established the Legislature. The Act provided for an establishment of a twelve members legislative Council including the Governor General, four members of the Executive council and Chief justice and other judges of the Supreme Court. By the Act of 1861 council was reinforced by additional members usually not more than twelve, nominated by the Governor General for two years.

With a view to reach more near to the people's aspiration for more purposeful representation in the legislative process, the Indian Council Act of 1892 was enacted, introducing a method of election for filling up some of the new official seats in the Indian
Legislative council. Further it gave the Legislative Council the right of asking questions and discussing certain financial matters. Since these measures did not satisfy the Indians they continued to press further for more representative and responsible government. Thus, the Act of 1909, also called Morely Minto Reforms Act, was enacted to enlarge the Indian Legislative Council so as to include a greater variety of Indian opinion and interest than had been included ever before. Another advancement in the democratisation of the Legislature reached under the Government of India Act, 1919, which provided the Indian Legislature to consist the Governor General and two chambers i.e. Council of States and the Legislative Assembly. Each Chamber having the majority of of elected members and headed by a president, appointed by the Governor General in case of Council of States and elected for the Legislative Council. Though the Assembly constituted under the Government of India Act 1919, did not possess the same powers as enjoyed by the legislatures of other independent countries. The then presiding officer Patel wanted the Assembly to function with maximum independence and tried to discharge his duties not as a mere presiding officer but also as the custodian of the rights and privileges of the Members individually and of the House collectively and also to uphold the
dignity of the House. The legislature as a representative body of the peoples and trustee of their sovereignty used to watch their interest and did all to ensure that the executive government must act within and according to the authority given to it by the legislature. To utilize their rights and discharge their responsibilities without fear or favour, the Members of the legislature demanded the liberty of criticizing all aspects of administration and bring them to the public scrutiny. To function effectively with competent manner and independent of the control of the executive government they also needed a secretarial assistance, the independence of which is essential for the parliamentary democracy and interest of the people. This demand was made in 1921 and constituted in 1929. Govt. of India Act, 1935, contains provisions of the privileges for Federal and Provincial Legislature. Section 28(3) and 71(31) expressly denied to those legislature any penal jurisdiction of the House of Commons whereas section 28(4) and 71(4) obliged the said Legislature to approach the court for punishing persons who refused to give evidence or produce documents before its committees. Since it's coming into force the question whether the section 28 and 71 of the Act should be amended so that the privileges of the Indian Legislature where made the same as those enjoyed by the British
House of Commons’ rose. The Indian Independence Act, 1947, contained provisions and powers for framing a new Constitution as well as for adapting the Govt. of India Act, 1935, in the changed situation. Till the new Constitution was framed it was this Act (1947) by which the functions of the Dominions were handed over to the Constituent Assembly of India.

So far as their privileges and power are concerned on no aspect of the life of Parliament has India since her independence, modelled her ways more carefully on those of Britain than in regard to the privileges of the House and their Members. The Constitution itself prefers not to attempt to describe those powers, privileges and immunities but instead, says simply that until they are defined by law they “shall be those of the House of Commons of the Parliament of the United Kingdom.”¹⁹ These have been described as “the sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords.”²⁰ Some are available against the Crown, some against the House of Lords, “and others against the citizens, they are much more important. The Privileges are

commonly divided into two classes, namely those specifically claimed by the speaker at the opening of a new Parliament and those not so claimed. Though the fact of a privilege being claimed by the speaker carries with it no superior force Indeed, some of those specifically claimed by the speaker, have been confirmed or limited by the statute. The privileges formally claimed by the speaker since very early are; freedom of speech in debate and freedom from arrest during session. And those which were not so claimed by the speaker are; the right of the House to regulate its own composition in the right to take exclusive cognisance of matters arising within the House; the right to punish members and strangers for breach of privilege and contempt; and the right of impeachment.

The status of Indian legislative bodies from the view point of privileges and immunities had been a matter of concern to Indian legislators and in particular to Indian presiding officers almost from the inception of the 1921’s Assemblies. Upto 1935, the Assemblies tried to pretend that they had privileges analogous to those of the House of Commons and persuade others to respect them as if they were supported in law, but whenever actual cases arose it was only too clear that privileges were neither part of the law of the land nor had it been statutorily conferred, even if
newspapers offended against supposed privileges there could be no question calling the editors to the Bar of the House'. In 1933 during the consideration of reforms for India in the Joint Parliamentary committee, a memorandum was sent by the presiding officers of Indian legislative bodies urging that since they were helpless to deal, for instance, with press abuse, they should have conferred upon them the powers, privileges and immunities of the Commons. The Act of 1935 protected the freedom of speech in legislature and empowered the legislature to make laws whereby the courts would be able to punish person refusing to give evidence before legislative committees. It did empower legislatures to attempt the definition of their privileges by law but it expressly forbade the conferring on any legislature the status of a court or any punitive or disciplinary power other than a power to remove or exclude persons infringing the rules.

**Codification of Privileges:**

The privileges of the House and its Members are neither defined in England nor in India. In United Kingdom no attempt so far has been made to codify the entire law of privilege. The privileges of the Parliament are based "partly upon customs and precedents which are to be found in the Rolls of Parliament and the journals of the two Houses and partly upon certain statutes
which have been passed from time to time for the purpose of making clear particular matter wherein the privileges claimed by either House of Parliament have come in contact either with the prorogatives of the Crown or with the rights of individual.\textsuperscript{21} The subject had engaged the attention of the Presiding officer since 1938. At the conference in 1939 it was agreed that there should be a definition of privileges. According to the section 28 of the Government of India Act which was amended by an adaptation order on 31st March, 1948, said that the “Privileges of the Members of the Dominion Legislature shall be such as may from time to time be defined by Act of Dominion Legislature and untill so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by the Members of the House of Commons of the Parliament of the United Kingdom.”\textsuperscript{22} In September, 1949, the Chairman, (speaker Mavalankar) in conference of speakers of Legislative Assembly, expressed his views as:

“It is better not to define specific privileges just at the moment but to rely upon the precedents of the British House of Commons. The disadvantage of codification at present moment is that wherever a new situation arises it will not be possible for us to

\begin{itemize}
  \item \textsuperscript{21} S.L. Shakdhar, \textit{Glimpses of the working of Parliament}, Metropolitan Book Co., New Delhi, 1977, p.84.
\end{itemize}
adjust ourselves to it and give Members additional privileges. Today, we are assured that our privilege are the same as those of the Members of the House of Commons..... In the present set up any attempt at legislation will very probably curtail our privileges. Let us, therefore, content ourselves with our being on par with the House of Commons. Let that convention be firmly established and then we may, later on, think of putting it on a firm footing.\textsuperscript{23}

the terms of the Constitution of India laid down that "the status equivalent to that of the House of Commons."\textsuperscript{24} In 1954 the Press commission pleaded for the codification of privileges,\textsuperscript{25} to which the speaker G.V. Mavalankar in the Conference of Presiding Officers at Rajkot on 3rd of January, 1955, replied as:

"The Press commission considered this matter purely from the point of view of the Press. Perhaps they may have felt the difficulties of the Press to be real; but from the point of view of the legislature, the question has to be looked at from a different angle. Any codification is more likely to harm the prestige and sovereignty of the legislature without any benefit being conferred on the Press. It may be argued that the Press is left in the dark as to what the privileges are. The simple reply to this is that those privileges which are extended by the constitution to the legislature, its Members etc., are equated with the privileges of the House of Commons in England. It has to be noted here that the House of Commons does not allow the creation of any privileges; and only such privileges are recognised as have existed by long time custom. No codification, therefore, appears to be necessary."

therefore, it was decided unanimously as "in the present circumstances codification is neither necessary nor desirable."

Article 105(3) of the Indian Constitution also provides that "the powers, privileges and immunities 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 the House of Commons of the Parliament of the United Kingdom and of its Members and Committees at the commencement of this Constitution on 26th January, 1950." Since than no comprehensive law has been passed by the Parliament under this Article and hence, in the absence, the powers, privileges and immunities of the House and of its Members and Committees thereof continues to remain the same as those of the British House of Commons. On the 23rd March, 1967, when the speaker made an announce in Lok Sabha regarding a Writ Petition filed in the Supreme Court against the Speaker and Members of the Committee of privileges, questions were raised in the House, whether legislation should be undertaken to define the privileges of the House. The then Minister of law, P. Govinda Menon, stated that if the view of the House was that legislation should be undertaken on the subject defining the privileges of Parliament, that would be a welcome step and he would be happy to have steps taken in that
direction." He further replied to a question on 21st of June, that the question of defining Privileges was under consideration. In this connection M. Hidayatulla, ex-chief Justice of the Supreme Court, observed:

"If there is mutual trust and respect between Parliament and Courts there is hardly any need to codify the law on the subject of privileges. With a codified law more advantage will flow to persons bent on vilifying Parliament, its Members and Committees and the Courts will be called upon more and more to intervene. At the moment, given a proper understanding on both sides, parliamentary right to punish for breach of its privileges and contempt would rather receive the support of Courts than otherwise. A written law will make it difficult for Parliament as well as Courts to maintain that dignity which rightly belongs to Parliament and which the Courts will always uphold as zealously as they uphold their own."

The amended Constitution (forty second amendment act, 1976) did not presuppose any law to be passed by Parliament in the matter of defining the powers, privileges and immunities of each House, it's Members and Committees but are sought to be evolved by each House of Parliament from time to time. Some of the Privileges of Parliament and of it's Members and Committees are specified in the Constitution, certain Statutes and the Rules of Procedure of the House, while a large number of them are

continued to be based on precedents of the British House of Commons and on conventions which have grown in India also.

A. Privilege which are specified in the Constitution are:

- Freedom of speech in Parliament.\textsuperscript{27}

- Immunity to a Member from any proceedings in any Court in respect of any thing said or any vote given by Member in Parliament or any Committee thereof. The given Article also said that no person shall be liable to any proceedings in any Court "in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings."\textsuperscript{28}

- Prohibition on the Courts to inquire into the proceedings of Parliament.\textsuperscript{29}

B. Privileges which are specified in Statutes are:

- Freedom from arrest of Members in civil cases during the continuance of the session of the House and forty days before and forty days after its commencement.\textsuperscript{30}

- Immunity to a person from any proceedings civil or criminal,

\textsuperscript{27} \textit{Constitution of India}, Art. 105(1)
\textsuperscript{28} Ibid., (2)
\textsuperscript{29} Ibid., Article 22.
\textsuperscript{30} \textit{Civil Procedure Code}, S.135.
in any court in respect of the publication in newspapers of a substantially true report of any proceeding of either House of Parliament unless the publication is proved to have been made with malice.\textsuperscript{31}

C. \textbf{Privileges which are specified in the Rules of Procedure:}

- Right of the House to receive immediate information of arrest, detention, conviction, imprisonment and release of a Member.\textsuperscript{32}

- Exemption of Member from service of legal process and arrest within the precincts of the House.\textsuperscript{33}

- Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.\textsuperscript{34}

D. \textbf{Privileges which are based upon precedents:}

- Members or Officers of the House can not be compelled to give evidence or to produce documents in Courts of law related to the proceedings of the House without the permission of the House.

- Members or officers of the House can not be compelled to

\begin{itemize}
\item \textsuperscript{31} 	extit{Parliamentary proceedings (Protection of Publication) Act}, 1979, S. 53.
\item \textsuperscript{32} 	extit{Procedure of the Business of the House}, Rule, 229 & 230.
\item \textsuperscript{33} Ibid., 232 & 230.
\item \textsuperscript{34} Ibid., 252.
\end{itemize}
attend as witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and without the consent of the Member whose attendance is required.  

Apart from these privileges and immunities each House enjoys certain consequential powers also which are necessary for the protection of its privileges and immunities. These powers are:

- To commit persons, whether they are Members or not, for breach of privileges or contempt of the House.

To compell the attendance of witnesses and to send for papers and records.  

- To regulate its procedure and the conduct of business.  

- To prohibit the publication of its debates and proceedings and to exclude strangers.

**Position in some other Commonwealth Countries:**

In the United Kingdom privileges of the Parliament as said, have not been codified so far. They are largely based upon

35. 6th R(CPR-2LS).
36. op. cit., Rule 269 & 270.
37. op. cit., Article 118(1)
38. op. cit., Rule 387.
customs and presidents. However, there are certain statutes which have been passed from time to time for the purpose of making particular matters clear wherein the privileges claimed by the Houses of Parliament have come in contact either with the prerogatives of the Crown or with the rights of the individuals. The Select Committees of the House of Commons, U. K., on the Official Secret Acts, in their report in 1939, Observed:

"The privileges of Parliament, like many other institutions of the British Constitution, are indefinite in their nature and stated in general and sometimes vague terms. The elasticity thus secured has made it possible to apply existing privileges in new circumstances from time to time. Any attempt to translate them into precise rules must deprive them of the very quality which renders them adaptable to new and varying conditions, and new or unusual combinations of circumstances, and indeed, might have the effect of restricting rather than safeguarding Member's privileges, since it would imply that, save in the circumstances specified, a Member Could be prosecuted without any infringement of the privileges of the House. The dignity and independence of the two-House, says Sire William Blackstone with great force, 'are in great measure preserved by keeping their privileges indefinite'. If all the privileges of Parliament were set down and ascertained and no privileges to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privileges, and under pretence thereof to harass any refractory Member and violate the freedom of Parliament."\(^{39}\)

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In some other countries e.g. Australia and Canada, Parliament has been empowered under the Constitution to define by law its powers, privileges and immunities however, no such legislation has so far been enacted. In Australia, the powers, privileges and immunities of Parliament are governed by section 49 of the Commonwealth of Australia Constitution Act, 1900, which is much similar to Article 105(3) of the Constitution of India. In Canada, Section 18 of the British North America Act, 1867, substituted by the Parliament of Canada Act, 1875, empowers the Parliament of Canada to define from time to time, by Act, the privileges, powers and immunities of each House of Parliament and of the Members thereof thus the powers, privileges and immunities of the House of Parliament of Canada are potentially those of the British House of Commons. In South Australia, Section 35 of the Constitution Act, 1855-56, empowered Parliament to define powers, privileges and immunities of the two Houses and its Members, provided they did not exceed the privileges, immunities and powers of the British House of Commons as at the time of passing the Act. In pursuance of this Authority Parliament of South Australia in 1858 enacted Parliamentary Privileges Act which set out in comprehensive detail the privileges of the legislature. But this Act was repealed in 1872 since great difficulties were experienced in
its exercise. While speaking on the second reading of the same bill, James P. Boucaut, the Attorney General, quoted Lord Cairns as saying:

"Parliament's most important privilege is not to define their Privileges. A privilege to commit which is dependent upon the chance or some other body to whom a narrative shall be given of that which was done before their own eyes, being of the same opinion as you are as to whether it was a contempt or not, is no privilege at all."\(^{40}\)

Thus the Act of 1872 declared the powers, privileges and immunities of the two Houses and its Members same as those of the House of Commons at the time of passing of the South Australian Constitution Act, 1856.

**Contempt of the House/Breach of Privilege:**

The power of legislature to punish for contempt is very important. This power has been firmly established by the Speaker of the House of Commons, and he may issue a warrant on these grounds without further specifying the nature of the breach committed.\(^{41}\) In India, so long as privileges remain those of the House of Commons, the Supreme Court would probably uphold this power and protect it against restriction even by the

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Fundamental Rights. However, if they get codified or set out in an Act of Parliament the Court would certainly be entitled to enquire into the Matter. It is of recent Origin in India. Breach of privilege is considered contempt of the High Court of Parliament, and the power to punish the commission of it rests, as in the case of the Courts, upon the inherent power of an authority to do all that is necessary to maintain its own dignity and efficiency. The courts do not check each other in committing for contempt, and on the whole the accepted doctrine is that they do not interfere with the action of either House in this matter. Some of its examples which were given by May has been Summarised by Anson as:\(^2\)

a) disrespect to any Member of the House, as such, by a non-member eg. An attempt to threaten or intimidate Members for their action in the House have been declared 'breach of privilege' by the House and offenders have been punished in numerous ways as reprimand, imprisonment etc. The offering of a bribe to a Member is a breach of privilege, and the acceptance of bribe by a Member has been punished. Even the acceptance offers by Members for professional services

connected with any proceeding in Parliament is prohibited as "contrary to the usage and dignity of the House."

b) disrespect to the House collectively, whether committed by a Member or any other. This is the original and fundamental form of breach of privilege, and almost all breaches can be reduced to it. Any misconduct in the presence of the House or a committee thereof, whether by Members of Parliament or by members of the public who have been admitted to the galleries of the House or to sittings of committees as witnesses will constitute contempt of the House. Such misconduct may be defined as disorderly, contumacious, disrespectful or contemptuous behaviour in the presence of the House e.g. Interrupting or disturbing the proceedings of the House or of Committees thereof; Impersonating as a Member of the House and taking the Oath; Serving or executing a civil or criminal process within the precincts of the House while the House or a committee thereof, is sitting without obtaining the leave of the House; Refusal by a witness to make an oath or affirmation before a committee; Refusal by a witness to answer questions put by a committee and refusal to produce documents in his possession; Prevaricating, giving false evidence, or wilfully suppressing truth
or persistently misleading a committee; Trifling with a committee resulting insulting answers to a committee, or appearing in a state of intoxication before a committee.

c) disobedience to the orders of the House, or interference with its procedure, with its officers in the execution of their duty or with witnesses in respect of evidence given before the House or Committees. Among this class placed the breach of privilege as publication of debates which was frequently published when complaint is made of misrepresentation in the report of a speech. The Motion censuring the printer is a breach of privilege. Publishing of evidence taken by a Committee before it has been reported to the House is considered a breach of privilege. Misconduct of witness before the House or a Committee and for doing of signature to a petitions are other examples. This power of the House to punish for contempt or breach of privilege has been described as 'the Key Stone' of Parliamentary privilege and considered necessary to enable the House to discharge its functions and safe guards its authority and privileges. It owes its origin to the powers possessed by the Courts of law to punish for contempt and without such a power the House would sink and loose its efficiency. But the matter raised certain serious
questions about the area of jurisdiction between the Courts and Legislature and has led to conflict between them. The Act of 1919 which conferred certain privilege on Indian legislators did not give them the power to punish for contempt or breach of privilege.\textsuperscript{43} Even the Government of India Act, 1935, which widened the scope of privileges, expressly stated that nothing in that Act or any other Indian Act should be constructed as conferring or empowering the Federal Legislature to confer, on either chamber or on both chambers sitting together, or on any committee or office of the legislature, the status of a court or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. It was again with the commencement of the Constitution, this power to punish for contempt or breach of privilege and to commit the offender to custody or prison was conferred on the Houses of Parliament and the State Legislatures and was upheld by the Bombay High Court in 1957. The then Chief Justice (Coyajee) observed:

\ldots\ldots\ldots\textcolor{black}{\textit{the framers of the Constitution intended the House alone to be the sole judge on a question of admitted privilege. To my}}

\textsuperscript{43} Govt. of India Act, 1935, S.677 (Set out in the 9th Schedule).
mind, it is quite clear, therefore, that under Article 194(3), when it prescribed that the privileges shall be those of the House of Commons of the Parliament of United Kingdom, the power to punish for contempt is expressly conferred on the House in clear and unequivocal terms and therefore it must follow that the exercise of that power is identical with that of the House of Commons.

Because of the unwilled importance a large number of privileges are recognised by the Courts.

*Privilege which are claimed by the House for its Members and recognised the courts are:*

1. Freedom of Speech
2. Freedom from Arrest in Civil Cases.

*Privileges which are claimed by the House for itself and are recognised by the Courts they are many:*

1. The right of each House to be the sole judge of the lawfulness of its own proceeding.
2. Power to frame Rules for procedure under Article 118 and 208 of the Constitution.
3. Right to punish for parliamentary misbehaviour
4. Right to call witnesses before its Committee
5. Right to exclude strangers.
6. Right to punish outsiders for breach of its privileges.

7. Right of the House to publish debates and proceedings.

8. Publication of proceedings under the authority of the House.

There are certain privileges also which although, are claimed by the House but still not recognised by the Courts. Such as:

1. Houses claim that power to punish for contempt is not subject to judicial review.

2. Right for its proper constitution.

Thus, it can be said that the present position is the result of continuous development of English Constitution through many centuries. The first distinctive period in the History of Constitution extends from the time of the settlement and rule of the Anglo-Saxons through Norman dynasties to 1485, this period is called the one in which the foundations of the Constitution were laid. The second period begins from the establishment of the Tudor dynasty through the early and later stuart period including the Puritan Revolution and Commonwealth coming to end with the Glorious Revolution (1485-1688). The third period extends from the Revolution of 1688 to 1919 while the fourth one extends from 1919 to the present day. The age-long struggle between the ruler and the ruled went for centuries till it became a central thread in the constitutional development of England and ended only when the English people had made themselves their own masters.
In this great struggle the leading role on behalf of the nation was played by a great institution- ‘Parliament’ which was essentially an extension of the Royal Council and came in the present form only after a long transformation. It's present form is the result of Great Revolution of 1688 which immensely contributed to the growth of Parliamentary System of Government. The Revolution and the Bill of Rights mark a culminating point. By the close of the seventeenth century the frame work of the English governmental system was almost completed in its larger aspects. It sounded the death knell of the Divine Right of King which meant that the King ceased to possess or at least to exercise once for all many powers which had been disputed. Since this great revolution, the Parliament acquire more and more powers making the King restricted to only some areas. This is the important change of shifting the power from the King or the House of Lords to the House of Commons along with it’s democratisation.

India has followed more or less same pattern suitable to the conditions prevailing in India. Powers and privileges of the Members of the Houses are same as those of Britain. They are not defined or codified any where in the Constitution rather Article 105 says that they should be similar as those of the House of Commons in the United Kingdom. Thus, Members have
full autonomy to utilize all those powers, privileges and immunities which are available to them in their deliberations within the precinct of the House. The executive government, under the Constitution, is responsible to the House of the People. Therefore, supremacy and independence of Parliament and the independence of its Members are vital and essential because without this supremacy and independence the Houses of Parliament and the Members thereof can not be expected to give effect to the will of that power which in our Constitution like all other democratic states, is the true political sovereign. This independence & supremacy of the Houses are needed today more than ever before. The modern state is a hydraheaded political organisation whose multifarious activities touch and concern the citizen at every point of his life. By slow and painful stages, the police state has transformed itself into the welfare state as the most potent instrument devised by men for attacking the five giants of poverty, disease ignorance, squalor and idleness. The executive government in the modern state is, therefore, endowed with vast and enormous powers. It is very necessary in these circumstances that Parliament should have constant watch over the activities of the Executive Government and in order that this can be properly done. It is absolutely necessary that neither the
executive government nor any body else, whether it be any member of the public, should be able to criticise or otherwise interfere with the functions of the Houses or their Members and their principal functions. All these privileges appertain equally to both Houses. Privileges are declared and breaches therefore, are punishable by each House. In such legislature neither House by itself can create a new privilege rather each one has exclusive jurisdiction to enforce its privileges. Approval of both the Houses is necessary in creating a new privilege. In U. K. and Thailand, the privileges and immunities have to be confirmed after every election by the Sovereign or Head of the State. The Speaker of the House of Commons, by customs, on his election asks still for the confirmation of the privileges of the Commons.

Collective privileges of Parliament and immunities of Members have, besides being derived from the Constitution and law, grown from the decision and practice of Parliament and decision of courts. There are potential areas of conflict between the Courts and the Legislature where courts have jurisdiction implied or explicit, as in U. K. and Canada and to some extent in India. But in India so long as privileges remain those of the House of commons, the Supreme Court would probably uphold this power
and protect it against restriction even by the Fundamental Rights. If the privileges were codified, set out and defined in an Act of Parliament the court would then at once, feel entitled to enquire into the constitutionality of such privileges.