Preface
This work, as its title suggests, is on a very important institution that has been transplanted in our country by the colonial rule. Like many other imperial residue privileges of the Parliament and State legislatures have found a significant place in our political system, but have not yet been fully absorbed in our political culture owing to a medley of factors. So this institution had a murky start. The founding fathers had enumerated only a few privileges and left the others to be decided by legal enactment in future. In the meanwhile, the legislators would go on enjoying, both individually and collectively, those privileges as were enjoyed by the British House of Commons at the time of the commencement of the Indian Constitution. No law has been passed and the reference to the Commons has given birth to numerous difficulties.

For one thing, while accepting the logic that the members of the legislatures require some rights and immunities for the free and fearless discharge of their functions we could not draw a line of attachment to the British tradition for the main reason that in Britain the Parliament, and not the Constitution, is sovereign, but the Indian position is just the reverse. The privileges of the House of Commons to-day are most uncertain and are not to be found in one place. They are based partly upon custom 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 matters
wherein the privileges claimed by either House of Parliament
have come in contact either with the prerogatives of the
Crown or with the rights of individuals. In this process a
good many privileges are now lost because they have not been
claimed for the past 100 years or more. But the Parliament has
not publicly and formally disowned them. The Indian legislatures,
particularly at the states have immensely been helped by this
silence, for they have been using the punitive powers of expul-
sion and committal when both of these have been non-existent
in Britain for more than 100 years. The over-sensitivity of our
parliamentarians about public criticism has created jurisdic-
tional conflict, on a number of occasions, between the legisla-
ture and the judiciary, and has also sapped the liberties of
the individual beyond repair. In no sense could it be said
that historical necessity that explains the emergence of pri-
ileges in Britain and political culture that stands in the
way of its abuse exist in India. Originally the privileges were
the prerogatives of the Crown in Britain. In the seventeenth
century they had come to be used as the weapon to defend the
House of Commons in its struggle against the monarchy. Since the
monarchy had been cut to size in 1634, the Parliament had used
privilege for a hundred years or more, as a weapon of aggre-
ssion against all and sundry. All over the eighteenth century
even a slight reflection on the Parliament and indignity to it was treated and punished as a 'high contempt'. Then the position began to change and in the twentieth century, particularly after World War II, the scope and importance of privilege have started narrowing down and in January, 1950, when the institution was picked up by the Indian Constitution the privileges of the House of Commons were turned into rights of the people. Forgetful of this long tradition the Indian legislators have sought to enforce the privileges in their eighteenth century form and sometimes created constitutional dead-lock.

Naturally the subject is a fascinating one and an in-depth analysis has been attempted here from a legal and socio-cultural perspective. The main thrust of the study is to show that a political institution is born of a historical necessity and promoted and ensured by a supportive socio-cultural complex. In Britain privileges once played a historic role but as the democratic way of life had taken firm roots in the British soil they grew redundant. Though the democratic institutions are still in an inchoate and abstruse form in India privileges have not only been drawn from the British system but they have been expressly declared to be the same as those of the House of Commons. This has caused a serious constitutional and political problem. The purpose of the present study is to explore the nature, cause and consequences of the problem and to offer solutions, if any, for the future guide of our legislators.
The following hypotheses have been sought to be tested in the present study:

1. The socio-political culture that supports and promotes the parliamentary privileges does not exist in India.

2. The supportive structural framework in the form of political institutions is not built so far in India.

3. Reference to the House of Commons is not well-founded.

4. The privileges claimed and enforced by the Indian legislators, individually and collectively, over the last four decades do not all exist in Britain, and the extent of the claim and the mode of their exercise in India have posed an ominous threat to the basic structure of our Constitution.

5. Parliamentary privileges are to be codified.

The study is divided into five chapters. The opening chapter delves deep into the historical evolution of parliamentary privileges in both Britain and India and also refers to the socio-cultural context that nurtures this institution. A critical examination of the privileges enjoyed by our legislators, both individually as members of either house of the Parliament or state legislature and collectively as a whole house, under the Indian Constitution and other laws of the land, has been made in the second chapter. The third chapter dwells at some length the problem of jurisdictional conflict between Legislature and
the Judiciary with its bearing on liberties of the people. The question of codification of privileges in all its ramifications has been taken up for a detailed examination in the fourth chapter. The concluding observations, suggestions and confirmation or rejection of the hypotheses are all made in the Epilogue. The findings all throughout are based on a critical examination of all available information and accessible data through historical-cum-analytical method.

I wish to express my gratitude to Dr. Shola Seth Banerjee, Reader in Political Science at the University of Burdwan, who has kindly guided me with care and affection throughout my study. I acknowledge my thanks to all of my friends and colleagues with whom I have had scholarly interaction that leaves a refreshing impact on my intellect. Thanks are also due to the staff members of the National Library, British Council Library, Secretariat Library, Assembly Library and the National Archives, New Delhi.

Putul Chattopadhyay
(Putul Chattopadhyay)