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An Analytical Perspective On Judicial Review And Legislative Privileges In The U.S. Constitutional Framework

Yogendra S[1]

[1] Assistant Professor, Visveswarapura College of Law

Introduction

Judicial review is among the most valuable contributions of the United States to modern political thought. Originating from a landmark judicial decision, and its continuance has been ensured through established constitutional conventions. The concept was developed by Chief Justice John Marshall of the U.S. Supreme Court in the historic *Marbury v. Madison* [2] *case*. In this case, the Court held that, as the Constitution is expressly declared the supreme law of the land, it is the judiciary's duty to interpret and uphold it, and therefore the courts have the authority to invalidate any state law or act of Congress found inconsistent with its provisions. This judgment firmly established the principle of judicial review as a cornerstone of constitutional governance. The same principle holds with regard to executive actions contrary to the Constitution. Supreme Court pronouncements on questions of constitutionality are final and binding for all other courts and governmental authorities, whether state or federal. Judicial review of the constitutionality of legislation presents an exciting and perplexing encounter between legislator and judge, between statute and judgment. However, judicial review is but a part of a much larger whole. If "constitutional justice" is understood as a state in which citizens can trust their government to safeguard certain inviolable rights, then judicial review of statutes represents only one path to achieving this ideal. In some nations, political mechanisms may serve as more effective checks than courts against the threat of majoritarian tyranny. Even within the sphere of judicial protection, formal review of statutes against a written constitution is merely one of several tools available to uphold constitutionality.[3]

[1] Assistant Professor, Visveswarapura College of Law
[2] 5 U.S. 137 (1803)
[3] Ceck, Judicial Review of Statutes: A Comparative Survey of Present Institutions and Practices, 51 CORNELL L.Q. 250, 252 (1966)

In the United States, both the national and state constitutions confer crucial privileges on legislators to ensure the free and effective operation of the legislative process. The Constitution of U.S.A. gives Freedom of speech or debate and exemption from arrest are the privileges most often safeguarded.[4] The members of legislators are protected by the doctrine of legislative privilege and immunity when "performing basic legislative functions—proposing, amending, voting on, and passing legislation—such that their actions fall within the scope of legitimate legislative activity."[5] However, the doctrine is not limited in scope to activities associated with the processing of legislation, but it extends to other types of legislative activities, such as chairing or serving on a committee; preparing committee reports or other documents; issuing subpoenas; undertaking investigations, studies, inquiries, or information-gathering; requesting, seeking, or obtaining any form of aid, assistance, counsel, or services from legislative staff; conducting disciplinary or impeachment proceedings; or taking any other actions regarding matters within the jurisdiction of either house.[6] These legislative privileges grant legislators fundamental constitutional protection, enabling them to perform their duties independently and without interference from the judiciary or executive. This shields them from unnecessary distractions and allows them to focus on lawmaking without the distorting influence of an inquisitorial executive or a hostile judiciary, even though questions of legislative privilege may still arise.

An Overview of Legislative Privileges in the U.S. Constitution

1. **Legislative Privileges: The Freedom of Speech and Debate Clause**

The Constitution of the United States provides that for any speech or debate in either House, members of Congress shall not be questioned in any other place.[7] Forty-three State Constitutions include similar provisions.[8] This provision's guarantee of free speech has been interpreted broadly, aiming to protect the freedom of representatives to serve the public interest, not just the rights of individual members. Thus it has been held that the immunity extends to:- (a) Anything said or done by a member as a part of the business of the House or any committee thereof[9] including the giving of a vote, the making of a written report, or initiating legislation and, in general, to all thing done in a session of the House.[10] (b) The immunity is not lost even though its exercise was contrary to the rules of the House,[11] or guided by an improper Motive.[12] But the immunity offered by the clause would not extend: - (a) to aid a member to violate an otherwise valid criminal law, in preparing for or implementing legislative acts.[13] (b)To immunize a member from liability for any act which does not from an 'integral part' of the deliberative or legislative business of either House, or in other words, which is not essential to the deliberations of the House.[14] If,

[4] Article 1, section 6 of the U.S Constitution
[5] Bogan v. Scott-Harris, 523 U.S. 44, 55 (1998))
[6] https://www.leg.state.nv.us/Division/Research/Documents/2025LegManual_Ch8.pdf
[7]. Article 1 Section 6(1) of the U.S.A Constitution
[8] Explain under state constitutions
[9]. Tenney v. Brandhove, (1951)341 US 363 (377)
[10]. Kilbourn v.Thompson (1881) 103 US 168 (204-05)
[11]. Ibid
[12]. Ibid
[13]. Gravel v.U.S (1972) 408 US 606
[14]. Ibid

therefore, a Member arranges for a private publication of any document which forms part of the debate of either House or any committee thereof, he would be punishable under any law which makes it an offence, and also liable to be questioned before a body investigating into that offence.[15]

Members of Congress are protected by the privilege of freedom of speech or debate. This means they cannot be sued for libel, slander, or otherwise held legally liable for statements made in the course of their official duties, except by their respective chamber—either the House or the Senate. This protection extends not only to speeches made on the congressional floor but also to written reports, proposed resolutions, votes, and all actions generally carried out by a member during a session in relation to legislative business. [16]This clause specifically applies to the absolute freedom of speech only in Congress while performing legislative work. For example, A Congressman may not invoke this clause to protect himself from a libel suit if he has committed libel outside of his official duties. The courts have repeatedly upheld this interpretation. According to the Supreme Court, activities are within the sphere of official legislative duty if they are integral to the deliberative and communicative processes by which Members of Congress participate in committee and house proceedings with respect to their legislative work. For instance, the clause protects voting, speaking in committee hearings or on the floor of one of the houses, and even the reading of stolen classified materials into the record[17]. On the other hand, negotiations with federal agencies, issuing a press release, or delivering a speech outside of Congress are not protected. The text of the clause mentions Members of Congress, but the Supreme Court has declared that it also applies to congressional staffers conducting official congressional business. Curiously, the Court has ruled that if a member's actions fall within the scope of the "legislative process," their immunity is absolute. Even if the member's conduct violates the law, they cannot be prosecuted if the alleged offense is based on legislative acts. The Speech or Debate Clause shields Members of Congress from both civil and criminal proceedings, including grand jury investigations, as long as the conduct in question qualifies as a "legislative act." This protection also extends to congressional aides, but only insofar as they are performing duties that are part of the legislative acts of the members they assist.[18] The word "legislative acts" includes everything integral to deliberations and communicative processes by which the member participates in the official business of the Congress.[19]

In *Maddox* v. *Williams*,[20] the Court stated that "the Speech or Debate Clause stands as an insuperable obstacle to [a party's] attempt to acquire by compulsion documents or copies of documents in the possession of the Congress". Historically, the Clause's fundamental purpose was to free the legislature from executive and judicial oversight that threatens legislative independence.[21] The Court has been willing to go beyond the actual text of the Clause in order to effectuate this purpose.[22] But the Court has made clear

[15]. Dr. Durga Das Basu, Commentary on the Constitution of India, 8th Edition, 2008(Revised)
[16]. C.Herman Pritchett, the American Constitution, 3rd Edition,Tata McGraw-Hill Publishing Co.Ltd.New Delhi
[17]. United State v.Brewster, 408 U.S. 501. 507(1972)
[18]. Ibid
19. Dr. Durga Das Basu, Commentary on the Constitution of India, 8th Edition, 2008(Revised)
[20] 855 F. Supp. 406, 413 (D.D.C. 1994)
[21] Gravel, 408 U.S. at 618
[22] See Brewster, 408 U.S. at 516

that the Clause was meant to preserve legislative independence, not to establish legislative supremacy.[23] Additionally, the Clause is meant to protect the "functioning of Congress," not the reputation of its members.[24] Courts applying the Clause are tasked with doing so in a manner that will ensure Congress's independence without elevating it at the expense of the other two branches. [25]The language of the Clause does not differentiate between civil actions brought by individuals and criminal actions brought by the executive branch.[26] The U.S. Supreme Court has established that the Clause immunizes members of Congress from civil actions seeking redress for individual rights violations.[27] These decisions indicate that the Clause applies equally in cases initiated by the executive and in cases brought by private citizens. A private civil action "creates a distraction and forces members to divert their time, energy, and attention from legislative tasks to defend the litigation.[28] Private civil actions can also be used to "delay and disrupt" the legislative process. And in the modern era, civil actions brought by private parties may be an even more significant threat to legislative independence than criminal investigations and charges initiated by the executive branch. Without the Clause protecting members of Congress, litigants could disrupt the legislative process by using civil discovery.[29] Civil discovery threatens to have a chilling effect on the business of legislators, including whether they choose to exchange views on legislative activity. According to the U.S. Court of Appeals for the D.C. Circuit: "Exchanges between a Member of Congress and the Member's staff or among Members of Congress on legislative matters may legitimately involve frank or embarrassing statements; the possibility of compelled disclosure may therefore chill the exchange of views with respect to legislative activity. This chill run counter to the Clause's purpose of protecting against disruption of the legislative process.[30] the Supreme Court's interpretations and holdings in cases involving the Speech or Debate Clause indicate absolute protection for Members when speaking on the House or Senate floor,[31] introducing and voting on bills and resolutions, preparing and submitting committee reports, acting at committee meetings and hearings, and conducting investigations and issuing subpoenas. Conversely, the Clause "does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs" or a member's congressional duties, "but not a part of the legislative process itself." The Court has identified these acts to include speaking outside of Congress, writing newsletters, issuing press releases, private book publishing, distribution of official committee reports outside of the legislative sphere, and constituent services.[32]

2. The Privilege of Speech and Debate Clause in U.S.A. State Constitutions

The constitutions of forty-three states contain a privilege for state legislators analogous to the privilege that the federal Constitution provides members of Congress, and the common law has frequently recognized a

[23] Brewster, 408 U.S. at 508.
[24] Brown & Williamson Tobacco Corp. v. Williams, 62 F.3d 408, 419 (D.C. Cir. 1995).
[25] See Brewster, 408 U.S. at 508
[26] Reinstein & Silverglate, supra note 28, at 1171.
[27] Dombrowski v. Eastland, 387 U.S. 82, 84–85
[28] Eastland v. U.S. Servicemen's Fund, 421 U.S. 491, 503 (1975).
[29] MINPECO, S.A. v. Conticommodity Servs., Inc., 844 F.2d 856, 859 (D.C. Cir. 1988)
[30] Mark Tyson, Monitored Disclosure: A Way to Avoid Legislative Supremacy in Redistricting Litigation, Washington Law Review [Vol. 87:1295
[31] Cochran v. Couzens, 42 F.2d 783 (D.C. Cir. 1929)
[32] Congressional Research Service, www.crs.gov

similar protection as well. The provisions related to the legislative privilege of speech or debate at the state level can generally be grouped into five broad categories, which are discussed below.

Firstly, the Alabama, Arkansas, Colorado, Connecticut, Delaware, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, and Wyoming these Twenty-three states whose privilege exists under a constitutional provision essentially similar in the text to the federal Speech or Debate Clause. The only substantive differences in language among this group are that: (1) in addition to their standard prohibition of questioning legislators about "any Speech or Debate" in either House, the Colorado Constitution also by its terms protects speeches or debates in "any committees" of either House, the Kansas Constitution also explicitly prohibits questioning about any "written document," the New Jersey Constitution expressly extends the protection to "any statement," as well as to any Speech or Debate "at any meeting of a legislative committee," and the New Mexico Constitution explicitly prohibits questioning about 'any vote cast in either house"; (2) the state of Louisiana's and Michigan's provisions omit any reference to "debate," and in its place refer only to "speech"; and (3) three variations exist among all of the provisions as to whether they prohibit questioning legislators 'in any other place," 'elsewhere," or 'in any court or place elsewhere." Also, the Rhode Island provision uses the phrase "speech in the debate" rather than "Speech or Debate," a difference the state Supreme Court has held lacks significance.

Secondly, the Massachusetts, New Hampshire, and Vermont- these three states that continue to employ a "deliberation, speech and debate" formulation of the privilege that, shortly predates the federal model;" In Massachusetts, for instance, the provision today still reads: The freedom of deliberation, speech, and debate, in either House of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court of place whatsoever.[33] The New Hampshire Constitution using the same language, except "action, complaint, or prosecution" replaces 'accusation or prosecution, action or complaint."[34] The Vermont Constitution using the same language except for the omission of "either house or."[35] Both because of its explicit inclusion of legislative "deliberation" among the protected activities and because of its inclusive list of the types of prohibited judicial inquiry, this formulation arguably could admit of a broader construction than that of the federal Speech or Debate Clause. But in fact, the federal clause has been interpreted with an equally broad scope.

Thirdly, Arizona, Idaho, Maryland, Nebraska, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, West Virginia, and Wisconsin are the twelve states that give legislators immunity "for words spoken [or uttered or used] in the debate," a formulation that appears to date from the middle of the nineteenth century. Five of the twelve states employing a "words spoken" formulation also have a further variation, which in theory could also justify a narrower construction. Specifically, the provisions of Arizona, Maryland, Nebraska, Washington, and Wisconsin, by their terms, do not express a complete prohibition of questioning about legislative speech but rather provide only that no state legislators "shall

[33] Massachusetts constitution. Pt. 1 Art. 21 Para 1
[34] New Hampshire Constitution. Pt. 1 Art. 30 Para.1
[35] Vermont Constitution. Ch. I, Art. XIV

be liable" in either civil actions or criminal prosecutions. Meanwhile, the provisions of the constitutions of Idaho, North Dakota, Oregon, South Dakota, Texas, Utah, and West Virginia continue to use an express prohibition on "questioning in any other place."

Fourthly, Alaska, Georgia, Hawaii, Illinois, and Maine the five states that employ a formulation that protects legislators from being made "liable to answer" for their legislative statements. The Constitutions of Illinois, as revised in the mid-twentieth century, Georgia, and Maine, each contain a formulation of the legislative privilege that immunizes legislators from being "liable to answer" or "held to answer" for "anything spoken" or for "any speech or debate, written or oral" in either House. Alaska and Hawaii, in their 1959 Constitutions, similarly have language providing that legislators may not "be held to answer before any other tribunal for any statement made ... in the exercise of [their] legislative functions [or duties]."

Fifthly, California, Florida, Iowa, Mississippi, Nevada, North Carolina, and South Carolina, these seven states entirely without any constitutional language granting the privilege, but two of these states- North Carolina and Florida, have a constitutional provision privileging their state legislators from certain types of arrest or civil process during the time the Legislature is in session. Florida once had both a Speech or Debate provision and an arrest provision in its Constitution, but it has not had either provision since 1868.[36]Some interpreters have occasionally used these arrest provisions also to support the recognition of a common-law privilege of free legislative debate.[37] Such a privilege, however, likely exists even in states without a constitutional arrest clause. For example, the Florida Supreme Court in dicta has strongly signaled its readiness to recognize a legislative privilege as a matter of common law in appropriate cases.[38] In California, state courts have recognized a common-law legislative privilege for state legislators, following the U.S. Supreme Court in Tenney v.Brandhove.[39] Although Mississippi does not yet appear to have expressly recognized a legislative privilege for state legislators, it was one of the earliest jurisdictions to recognize a common-law privilege for local legislators.[40] North Carolina also has recognized a common-law legislative immunity for local legislators.

Meanwhile, North Carolina and Iowa have statutory privileges. The North Carolina statutory provision closely tracks the federal and typical state constitutional provisions, stating that state legislators "shall have freedom of speech and debate ... and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken."[41] In contrast, Iowa's statutory provision expressly provides only that state legislators "shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee."[42] The Iowa attorney general has opined, however, that at common law, state legislators should receive the same broad immunity as

[36] See Girardeau v. State, 403 So 2d 513, 515 n.3 (Fla. Dist. Ct. App. 1981).
[37] See, e.g., 1979-80 Op. Att'y Gen. Iowa 173, available at 1979 Iowa AG LEXIS 101 (using constitutional arrest privilege and limited statutory Speech or Debate privilege to derive broad common-law legislative privilege).
[38] See Hauser v. Urchisin, 231 So. 2d 6 (Fla. 1970); see also Girardeau, 403 So. 2d at 516-17.
[39] See Allen v. Superior Court, 340 P.2d 1030, 1034 (Cal. Dist. Ct. App. 1959).
[40] See Jones v. Loving, 55 Miss. 109, 109 (1877).
[41] N.C. GEN. STAT. § 120-9 (2001).
[42] IOWA CODE § 2.17 (2002).

provided by the U.S. Constitution's Speech or Debate Clause.[43] Some states with constitutional legislative immunity provisions also have statutory immunity provisions.[44] The District of Columbia also has a statutory provision granting its legislative council a privilege analogous to that provided by the federal Speech or Debate Clause.[45] Thus, the above textual differences among the various Speech or Debate clauses in state constitutions appear to reflect stylistic adjustments in the phrasing of the privilege, more than substantive differences in the nature of the privilege,'

3. The Privilege of Freedom from Civil Arrest

Under modern English law, the privilege from arrest extends for forty days before the opening of a legislative session and forty days after its conclusion.[46] There is some conflict of opinion as to what was the rule of the common law at the time of the framing of the early state constitutions and the constitution of the United States. The English case cited above the authority for the opinion that the rule of the common law was that of forty days, and had been such for a long time.[47] In the case of *Hoppin* v. *Jenckes*,[48] The Rhode Island court carefully reviewed the relevant authorities and concluded that, under common law, the privilege from arrest was intended to cover a reasonable period for traveling to and from a parliamentary session, rather than a fixed duration. The court held that no specific timeframe—such as forty days—could be definitively recognized as the common-law rule.[49]

The Constitutional provisions in the United States differ in their treatment of the duration of the privilege from arrest. Some of the constitutions merely use such phrases as "going to" and "returning from" the session of the legislature.[50] ' Other constitutions provide that the privilege is in operation for fifteen days before the opening of the session,[51] while some provisions specify a given number of days both before and after the session during which the privilege shall be in effect.[52] Where the constitution provides that the privilege exists for a specific number of days in addition to the time of the session of the legislature there is little difficulty. Such a specific enumeration of days would seem to deny the application of a rule of convenience such as perhaps obtained at common law.[53] It might be noted that if the legislator reaches his destination before the specified period following the close of the session has expired the privilege ceases to exist.[54] Members of Congress are not allowed a period to be computed by the twenty-miles per day travel rule which is applicable in some other instances.[55] Just what is a convenient and reasonable time in "going

[43] See Op. Att'y Gen. Iowa, supra
[44] See, e.g., MICH. COMP. LAWS ANN. § 4.551 (West 1994).
[45] See D.C. CODE ANN. § 1-301.42 (2001).
[46] (1847) Goudy v. Duncombe, 1 Ex. 430, 5 D. & L. 209
[47] See, also, Cushing, op. cit., sec. 580.
[48] (1867) 8 R. I. 453, 5 Am. Rep. 597.
[49] Cushing also doubts that there was any such fixed period. See Cushing, op. cit., sec. 580.
[50] See, for example, the constitutional provisions of Illinois, Kentucky, and Minnesota,
[51] The following states have provisions for a certain period before and after the session; California, Connecticut, Michigan, Mississippi, Nebraska, Rhode Island, South Carolina, West Virginia, Wisconsin.
[52] These states provide for a number of days either before or after, but not both: Idaho, Kansas, Nevada, Utah, Virginia, Washington, Indiana.
[53] See Watson, op. cit., 310 for comment on Hoppin v. Jenckes, (1867) 8 R. I. 453, 5 Am. Rep. 597;
[54] Colvin v. Morgan, (1800) 1 John. Cas. (N. Y.) 415. Also, Corey v. Russell, (1830) 4 Wend. (N. Y.) 204. In the latter case it was said, "The protection from arrest is secured to enable members of the legislature to return to their homes, and having in fact returned, they cannot claim an exemption from arrest, although the fourteen days are not expired." p. 205.
[55] Lewis v. Elmendorf, (1801) 2 John. Cas. (N. Y.) 222.

to" and "returning from" a session is a little doubtful. It has been held that members of Congress need not take the most direct route in going to a meeting of Congress, nor are they precluded from stopping on the way, to rest, and even to visit with friends.[56] If illness befalls members of the family during the journey that fact may be pleaded in extenuation of what would otherwise be deemed an unreasonably long time. If a legislator finds himself unable to leave the city promptly following the close of the session because of financial embarrassment the court will take that fact into account in determining a reasonable time as applicable to his case.[57] There is some authority, however, which holds that the duration of the privilege should be strictly construed.[58] But twenty-four hours have been held to be too short a time in which to force the legislator to leave the Capitol on pain of losing the protection of the privilege.[59]

The court held that what is a reasonable time in "going to" the session might be different from a reasonable time in "returning from" the same session, as some time should be allowed the member to straighten his affairs in the Capitol before leaving for his home. A member on leave of absence is within the privilege,[60] and it has been held that if only a short time intervenes between the adjournment of one session and the opening of the next session of congress, the member is within the privilege if he visits about between sessions, it is inconvenient for him to go to his home because of the great distance of the same from the capital city.[61] There is no reason for believing that any distinction is to be drawn between regular and special sessions, and it has been decided that any constitutional meeting of the legislature is included within the meaning of the privilege clause. The privilege is in existence while the senate of a state legislature sits as a court of impeachment under its authority in such cases under the constitution.[62] It is not always easy to tell when the session of a legislative body is legally at an end but the test would seem to be whether the legislature has terminated the session.[63] This would mean that one house could not end the session by an adjournment, but both houses would have to adjourn to terminate the session, and it might be necessary that the adjournment is to the date of the next constitutional meeting.[64] Several state constitutions limit the period of the legislative session, and in those states, the question would be easily settled.[65] Treason, felony, and breaches of the peace are usually excepted from the privilege from arrest.[66] It is therefore sometimes asserted that the privilege is restricted to civil arrest.[67]

[56] Miner v. Markham, (1886) 28 Fed. 387.
[57] Dunton v. Halstead, (1840)
[58] Lewis v. Elmendorf, (1802) 2 John. Cas. 222.
[59] Ross v. Brown, (1889) 7 Pa. Co. Ct. Rep. 142
[60] Gray v. Sill, (1883) 13 W. N. C. (Pa.) 59; 2 Ann. Cas. 615, note. It was said in Respublica v. Duane, (1807) 4 Yeates (Pa.) 347, that "If a member should neglect his duty by not attending the session of congress, or should desert it without leave, he is no more entitled to privilege in such instances from arrest, than a mere private citizen. The court however will not presume a dereliction of duty, unless it is established by satisfactory proof; they will construe the privilege liberally, and by no means weigh the absence of a member in scales too nice."
[61] Flanders v. Kimball, (1869) 3 Am. L. Rev. 377. In this case congress had taken a recess, and the delegate lived in Washington territory.
[62] Cook v. Senior, (1896) 3 Kans. App. 278, 45 Pac. 126.
[63] Cushing, op. cit., sec. 584.
[64] Ibid., sec. 584.
[65] Mathews, American State Government 170 ff.
[66] Sometimes in addition to this exception "breach or surety of the peace" are also excepted.
[67] Willoughby, Constitution of the United States, sec. 233.

4. The Privilege of Congress to Punish for Breach of Privilege

In United States the power of expulsion vests in the House of Congress, by virtue of Article 1 section 5 (2) of the U.S.A Constitution provides "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two- thirds, expel a member". The Constitution of America, the power to punish its members for contempt belongs to each House of Congress. Even with regard to non-members, the Congress has the power to punish for contempt. In *McGrain* v. *Daugherty*,[68] the Supreme Court has ruled that each House has such auxiliary powers as are necessary and appropriate to make the express powers effective. Thus, the Congress gets the inherent power to punish even non-members.[69] The House may discipline its members without the necessity of Senate concurrence. The most common forms of discipline in the House are now "expulsion," "censure," or "reprimand," although the House may also discipline its members in other ways, including fine or monetary restitution, loss of seniority, and suspension or loss of certain privileges. In addition to such sanctions imposed by the full House of Representatives, the standing committee in the House that deals with ethics and official conduct matters, the House Committee on Ethics. Additionally, the Committee on Ethics has also expressed its disapproval of certain conduct in informal letters and communications to Members.[70] Each House of Congress has the sole authority to determine what conduct on the part of a Member is "inconsistent with the trust and duty of a member,"[71] and courts will not interfere with the authority of Congress even to make it a legal office.[72] In *Anderson* v. *Dunn* ,[73]in this case court held that each House of Congress has the inherent power to punish a non-member for contempt of its authority, e.g., bribing one of its members or ignoring its process[74] or refusing to answer its inquiries.[75]

Judicial Decisions on Legislative Privileges in the U.S.A

Judicial decisions that significantly influence American political life often involve questions of constitutional interpretation. The courts' role in the U.S. system of government stems from the fact that both the nation and its constituent states are governed by written constitutions, which establish a division of powers among the executive, legislative, and judicial branches. This division inherently forms the basis for the doctrine of judicial review. Because the distinctive features of the U.S. Constitution regarding this doctrine are reflected in the constitutions of all fifty states, principles of judicial review applied in federal courts can generally be extended to state courts as well. The doctrine of judicial review may be briefly stated: the courts are vested with the authority to determine the legitimacy of the acts of the executive and the legislative branches of the government. The doctrine arose in a restricted context and is sometimes understood narrowly: when the decision of a case before a court depends upon the application of a statute

[68]. (1927)273 U.S 135
[69]. T.S.RajaGopala Iyengar, *"Indian Parliament- A Critical study"* ,Published by the Director Prasaranga, manasagangotri,Mysore,1972
[70].Jack Maskell, Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives, https://fas.org/sgp/crs/misc/RL31382.pdf
[71]. May, 16th Edition,p.79
[72]. *Burton* v. *U.S* (1909),202 U.S 344(669)
[73]. (1821)6WH 204
[74]. *Jurney* v. *Maccracken* (1935)294 U.S, 125(150)
[75]. *McGrain* v. *Daugherty* (1927)273 U.S 135

or upon the validity of an executive action, the court has the power and the obligation to determine whether that statute or act conforms with the provisions of the applicable constitution. All of the state, as well as the federal courts, are bound pre-eminently by the federal Constitution, whose authority is supreme. A constitutional statute controls the court's decision. An executive act, once determined to be unconstitutional, will be set aside, and may even give rise to a claim for damages. The courts have, however, asserted the power of judicial review broadly. If the validity of an executive action is challenged in litigation as violative of a controlling statute, it is equally the duty of the judiciary to decide whether or not the executive action is invalid under the statutory mandate.[76]

The first recorded American interpretation of legislative privilege arose in the 1808 case of Coffin v. Coffin.[77] In this case, William Coffin asked Massachusetts legislator Benjamin Russell to introduce a bill authorizing the appointment of an additional Notary Public for Nantucket. After the House considered the bill and moved on to other matters, another legislator, Micajah Coffin, asked Russell where he had received the information. When told it came from William, Micajah retorted, "What, that convict?"—a reference to William's earlier acquittal in the Nantucket Bank robbery case. William then filed a slander suit against Micajah. In defense, Micajah invoked the Speech or Debate Clause of the Massachusetts Constitution. The court, in interpreting the clause, held that it extended broadly to "any opinion, speech, debate, vote, written report" and "every other act resulting from the nature and execution of the office," regardless of whether such actions conformed to the House's rules. The only limitation was that the legislature had to be in session. Yet despite this expansive reading, the court ruled narrowly that Micajah's statement was not part of his official duty, and therefore not protected.

The United States Supreme Court relied on the broad language of *Coffin* in *Kilbourn v. Thompson.*[78]. In that case, an action was brought against members of a Congressional committee and the sergeant-at-arms for false imprisonment. The committee had subpoenaed Kilbourn to testify in an investigation concerning an illegal real estate pool. When Kilbourn refused to answer questions or produce the requested documents, the committee passed a resolution directing Thompson, the sergeant-at-arms, to arrest and imprison him for contempt of the House of Representatives. The Supreme Court ultimately held that the order for Kilbourn's arrest was unconstitutional. However, in addressing the members' defense under the Speech or Debate Clause, the Court ruled that the Clause extended to written reports, resolutions, votes, and, more broadly, "to things generally done in a session of the House by one of its members in relation to the business before it."

In *Tenney v. Brandhove*,[79] the Court first articulated a justification for protecting legislators under the Speech or Debate Clause, preserving their ability to perform legislative duties effectively. Jack Tenney, along with other California policymakers, was sued by William Brandhove for allegedly depriving him of constitutional rights, a suit that threatened Tenney with personal civil liability for his legislative acts. The Supreme Court held that Tenney was protected by legislative privilege, reasoning that legislators must be

[76] Alvin B. Rubin, Judicial Review in the United States, Louisiana La W Review, Vol. 40. 1979
[77]. 4 Mass. 1 (1880).
[78] 103 U.S. at 168 (1880).
[79] 341 U.S. 367, 377 (1951)

shielded from civil liability to ensure the "uninhibited discharge of their legislative duty" without the "cost and inconvenience and distractions of a trial." Although the Court did not name it explicitly, this established a "legislative-effectiveness" rationale for Speech or Debate Clause protections.

The next major case, *United States v. Johnson*,[80] extended legislative immunity on a separation-of-powers basis. Thomas Johnson, a former Congressman, was convicted of accepting a bribe, with evidence including a speech he gave on the House floor supporting an institution charged with mail fraud. The Court held that Johnson's speech, along with the preparations and motivations for it, were protected legislative acts, barring prosecution. The Court emphasized that such protections were essential to insulate the legislative branch from attacks by an unfriendly executive or hostile judiciary, describing legislative privilege as a form of "practical security" that ensures legislative independence.

Conclusion

The doctrine of separation of powers is a model of governance in which the functions of the state are divided among distinct branches—legislative, executive, and judicial—each with independent powers and responsibilities. This division ensures that no branch encroaches upon the authority of another. In the United States, Articles I, Section 6(1), and Section 5 of the Constitution grant members of the Senate and House of Representatives certain absolute privileges, including the Freedom of Speech and Debate Clause, immunity from arrest in specific circumstances, and the power to punish members and outsiders for contempt. These privileges are designed to protect legislators, enabling them to engage in open debate on national issues and perform their public duties without undue interference from either the judiciary or the executive. In the United States, the judiciary is regarded as the guardian of the Constitution, with judicial review being one of its most significant functions. Judicial review empowers the Supreme Court and the federal courts to examine the actions of Congress, the President, and executive authorities at both the federal and state levels. If any law, order, or action is found to be inconsistent with the Constitution, it may be declared unconstitutional or *ultra vires*, and such a law cannot be enforced by the government. Although the U.S. Constitution does not explicitly provide for judicial review, the principle has been implicitly recognized under Articles III and IV and firmly established through judicial interpretation. While the Constitution assigns distinct and independent roles to the legislature, executive, and judiciary, an absolute separation of powers between these institutions is neither possible nor intended.

[80] 383 U.S. 169 (1966)