

## Paper II

Q1. Examine critically the power of the President in the US Constitution (CSS-2003)

Q. Analyze the place the President occupies in the U.S political system today. Account for his supremacy in the Government. (CSS-2007)

Q. Discuss in detail the legislative powers of the USA President. (CSS-2012)

Ans I-INTRODUCTION: CRITICAL EXAMINATION OF THE POWER OF THE PRESIDENT IN THE US CONSTITUTION

The US President  
has



The largest amount  
of limited Authority

It is often remarked that the President of the United States wields the largest amount of authority wielded by anyone in a democracy. The constitution did not make him so powerful but later the Congressional legislation, judicial decisions and development of conventions granted him much power. The American president have executive (chief administrator, commander-in-chief), legislative (veto, patronage), financial (supervisor of budget), judicial (appoints judges, grants pardon) and emergency (declaration, termination of war) powers. However, the founding fathers envisaged a system of 'limited government' with a strong system of checks and balances. Thus, the US president possesses the largest amount of limited authority.

## II - EXECUTIVE AND LEGISLATIVE POWERS OF THE US PRESIDENT

"The American Presidency is the greatest office in the world."

(Lord Bryce)

## a) Executive Powers

### i) Chief Administrator

The President is the Head of the State - all executive actions are taken in his name. He executes the laws and the decisions of the courts and appoints his ministers as Cabinet members, as long as he is pleased with their work.

Example: The US President appoints experts as Cabinet members.

### ii) Commander-in-Chief

The American President is the Supreme Commander of the Armed Forces. He appoints military officers (with Senate's consent) and can remove them at will. Theoretically, the power to declare war rests with Congress, but the power to terminate war exclusively rests with President. He also has broad constitutional power to take military action before / in response to terrorist attacks.

Example: On at least 125 occasions, the

President <sup>has</sup> acted without prior express military authorization from Congress i.e. the Philippine-American War, NATO bombing campaign of Yugoslavia, missile strikes on Syria (2017), etc.

### iii) Foreign Relation Powers

The American President represents US in foreign relations, formulates US foreign policy, appoints all diplomatic representatives of the US to foreign states (with Senate's consent) and can negotiate treaties and agreements with the foreign states in his discretion (but all such treaties must be ratified by the Senate's 2/3<sup>rd</sup> majority).

Example: Obama's Iran Nuclear Deal, Paris Climate Accord, etc.

### iv) Appointments Power

The US has two categories of federal services: inferior and superior services. The President appoints the superior service members (with Senate's consent) but appoints the inferior service members alone, according

to Civil Service rules. He also has the sole right to remove federal officials from service (except judges of Federal Judiciary and members of various commissions appointed under civil service rules.

## b) Legislative Powers

The US President has limited legislative powers as follows:

### i) Veto

All bills passed by the Congress must be referred to the President for his approval. He can deal with it in 3 ways:

1. May give assent to the Bill (convert it into act).

2. Pocket Veto: The President may reserve the Bill with him which becomes a law when the President does not sign within the expiry of ten days <sup>when</sup> and the Congress is still in session. The Bill gets killed ~~if~~ the Congress adjourns before the expiry of ten days and the President does not sign.

Example: Lincoln used it against Wade-

Davis Bill in 1864.

- 3 Regular Veto: The President may reject the bill and return it to the House with or without amendments. In such a case, the Congress needs  $2/3^{\text{rd}}$  majority in each house to repass the Bill.

Example: Keystone XL Pipeline Bill (Obama).

As of February, 2023, the USA had a total of 2584 presidential vetoes.

## ii) Messages

The President may send messages proposing some legislative measures. In US many laws owe their origin to the Presidential messages.

Example: 1. The famous Monroe Doctrine enunciated by President Monroe was transmitted to the Congress through a message.

2. President Roosevelt got the New Deal programs accepted from the Congress by sending messages.

### iii) Patronage

The President has extensive patronage in his hands. He makes a large number of appointments in the federal services.

Example: The President and members of the Congress often bargain in favor of his proposals to be passed by Congress and in favor of their members to be appointed by the President.

### iv) Delegated Legislation

The President has the power to make rules and regulations in the form of executive orders. In most cases, the Congress makes laws in general outlines, the details are left to be filled by<sup>in</sup> the executive.

The rules thus made have the force of law.

Example: President Roosevelt holds the record for most issued executive orders: 3721 orders.

### v) Special Session

The President has the right

to convene special sessions of the Congress  
Example: All important laws enacted in 1913 were passed in special sessions convened by the President Woodrow Wilson.

### vi) Appeal to Public Opinion

The President is also the leader of the nation. His office carries an inherent respect, he can create public opinion against his opponents in Congress.

Example: Woodrow Wilson's favor took to streets in favor of League of Nations.

### vii) Personal Influence

The President at the dinner table discusses most of the legislative programme of the Congress with the prominent party leaders in the Congress.

## III FINANCIAL, JUDICIAL AND EMERGENCY POWERS

### C) Financial Powers:

Although the control over federal finances has been vested in the Congress, yet in actual practice the President's input



becomes important.

Example: The Budget and Accounting Act of 1921 put additional responsibilities on the presidency for the preparation of the U.S. federal budget, although the Congress was required to approve it.

### d) Judicial Powers

Article II, gives the president the power of clemency. The two most commonly used clemency powers are those of pardon and commutation, which can be granted to all offenders convicted for the breach of federal laws except those impeached by the Senate. The President also appoints the judges of the Supreme Court with the consent of the Senate.

Example: Susan B. Anthony - a suffragist - was pardoned by Donald Trump, who was convicted of voting in the 1872 election.

### e) Emergency Powers

The Constitution does not exp-

ressly grant the president additional powers in times of national emergency. However, the courts will only recognize this power of President if it is granted by the Congress.

Example:

1. President Abraham Lincoln's suspension of habeas corpus without Congressional approval in 1861.
2. Harry Truman's use of emergency powers to nationalize private steel mills in 1952, during Korean War. However, the Supreme Court later turned down this decision.

#### IV - CRITICAL ANALYSIS

The American President is the most powerful head of the state. He has executive, legislative, financial, judicial and emergency powers. However, these unlimited powers of the President are curtailed by the system of checks and balances; he cannot appoint military and superior services officers, cannot enter into foreign treaties, cannot declare a war

without Senate's/Congress's consent. This system of checks and balances is beneficial because it limits the authoritarian tendencies of the President and ensures the freedom of citizens. On the contrary, this system also creates severe deadlocks, and inefficiencies and government shutdowns because of the lack of consensus between the Congress and the President.

This point ~~is~~ is also discussed by Francis Fukuyama in his book "Political Order and Political Decay" that the UK's Westminster parliamentary democratic model is more efficient and responsive than that of the US Presidential model. Thus, the US President possesses a limited amount of largest power in the world.

## Vx- CONCLUSION

To summarize, the President of America enjoys <sup>extensive</sup> executive, legislative, financial and judicial powers (also emergency powers). Thus,

he is the most powerful head of the state.  
However, the system of checks and balances places a limit on the extensive powers enjoyed <sup>by</sup> the President.

Q2. Discuss the powers of the senate of USA.  
Also analyze. (CSS-2022)

Q. Discuss the powers and functions of the US Senate. Also explain the concept of Senatorial Courtesy. (CSS-2014)

Ans. **I-INTRODUCTION: THE POWERS AND FUNCTIONS OF THE US SENATE**

The US Senate	=	The Most Powerful Upper Chamber in the World
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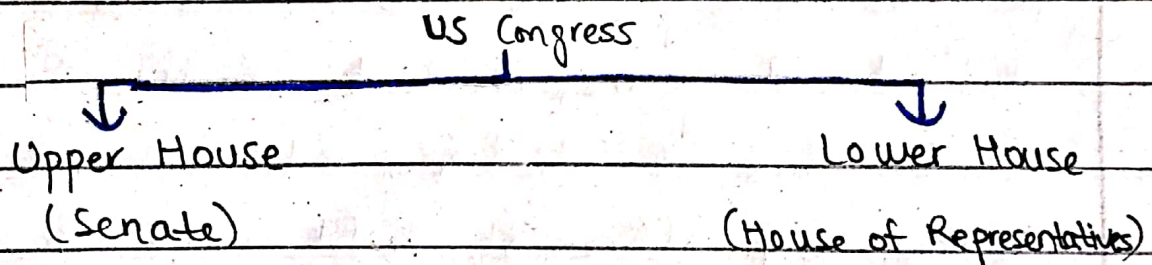
The Great Compromise of 1787 defined the legislative structure under the US Constitution. US Congress is bicameral i.e. upper house is Senate and lower house is House of Representatives. The Senate consists of 100 members elected for six

years if they satisfy certain qualifications.

The Senate possesses certain powers and functions such as legislative, financial, foreign affairs, judicial, constitution amendment, investigations, war declaration, and executive (senatorial courtesy) powers.

It is due to these unlimited powers of the US Senate that it is termed as the most powerful upper chambers in the world.

## II - THE US SENATE



The US legislative structure retained the bicameral legislature as proposed by Roger Sherman. It possesses upper house as Senate and lower house as House of Representatives.

The specifications of the US Senate are:

### a) Composition and Election

The Senate is composed of 100 members (two members from each state). Formerly, the senators were elected by state legislatures but after 17<sup>th</sup> amendment, the senators are directly elected.

### b) Tenure and Qualifications

The senators are elected for 6 years; 1/3<sup>rd</sup> retiring and up for election every 2 years. Retiring senators are eligible for re-election. The senators must have: at least 30 years of age, resident of the US for at least 9 years, resident of the state at the time of election, and must not be holding any office of profit under the US government. The vice-president of the US is the presiding officer of the Senate.

## III - POWERS AND FUNCTIONS OF US SENATE

"American Senate is the saucer in which the boiling tea of the

House is cooled."

(George Washington)

The powers and functions of the US Senate are:

### a) Legislative

The Senate enjoys equal and coordinate legislative authority with the House of Representatives. The legislative history of the Congress shows that all important Bills are originated in the Senate and then referred to the House. In case of disagreement between the two Houses, a Conference Committee consisting of 3 to 9 members is constituted to resolve the deadlock.

### b) Financial

The Origination / Revenue clause says that money bills can only be originated in the lower House, But the Senate has vast amending powers and such bills must be approved by the Senate for their

enactment.

Example: On one occasion, the Senate made 847 amendments in a money bill received from the House.

### c) Control Over Foreign Affairs

The Foreign Affairs Committee of the Senate exercises considerable influence over the Foreign Policy of the US. All treaties and negotiations concluded in the name of the President are subject to ~~rat~~ ratification by 2/3<sup>rd</sup> majority of the Senate.

Example: 1. The disapproval of the Woodrow Wilson's League of Nations by Senate.

2. Non-ratification of the Paris Climate Accord (Obama).

### d) Judicial

1. The Senate is the Court for impeachment of the President, Vice-president and other high-ranking officials of the US. The charges of impeachment are preferred by the House of Representatives and the



proceedings of conviction are to be conducted by the Senate. The proceedings are heard by the Committee of Judiciary which is presided over by the Chief Justice of the Supreme Court.

d. Presidential nominations of the Judges of federal judiciary and Supreme Court are subject to Senate's approval.

Example: Andrew Johnson and Bill Clinton were impeached by the House but acquitted by the Senate.

### e) Constitutional Amendments

The US Senate shares with the House of Representatives the power of proposing amendments to the US Constitution.

Example: Since its ratification, the US Constitution has been amended 27 times.

### f) Investigations

The Senate serves as the eyes and the ears of the American Public. The Senate has a right to demand information

about any administrative matter.

Example:

1. The constitution for Watergate Committee for investigating the Watergate Scandle.
2. The Iran-Contra Hearings

### g) Executive

Power to declare war rests with Congress. Also, the approval of the Senate is necessary for all federal, military and judiciary's appointments.

## IV - THE SENATORIAL COURTESY

### a) Definition

The Senatorial Courtesy is a long-standing unwritten, unofficial, and non-binding political custom (or constitutional convention) describing the tendency of US Senators to support a Senate colleague in opposing the appointment to federal office of a presidential nominee from that Senator's state.

## b) Why Senatorial Courtesy?

The practice of Senatorial Courtesy is motivated by a general sense of collegiality among Senators and the assumption that a Senate colleague will have the best first-hand knowledge of the personal character and qualifications of nominees from his or her own state.

Example: The Senate's rejection of Fishbourn has been regarded as the first assertion of "Senatorial courtesy".

## V - CRITICAL ANALYSIS

The upper house of the US legislature i.e. the Senate is the most powerful upper body of any national legislature in the world. It acts as a watchdog on the President and the judiciary. Senate plays a significant part in the system of checks and balances. It limits the authoritarian tendencies of the President.

ensures the freedom of citizens. However, this system of checks and balances also creates severe deadlocks, inefficiencies and government shutdowns because of lack of consensus among involved groups. This point is also discussed by Francis Fukuyama in his book "Political Order and Political Decay" that the UK's parliamentary democratic model is more efficient and responsive than that of the US presidential model. Thus, the beneficiaries of the US system of checks and balances must <sup>also</sup> bear with its disadvantages.

## VI- CONCLUSION

To summarize, the US legislature comprises of an upper house i.e. Senate and lower house i.e. House of Representatives. The US Senate possesses powers over legislative, financial, judicial, executive, foreign, constitutional and investigational affairs. Thus, The Senators are united through a

concept of Senatorial Courtesy: All these powers and functions make the US Senate the most powerful upper chamber in the world.

Q3. Examine the role of Supreme Court in the evolution of the American Constitution.

(CSS-2005)

Q. What is judicial review? Discuss its impacts on USA decision-making process.

(CSS-2012)

Ans. **I-INTRODUCTION: EXAMINATION OF THE ROLE OF SUPREME COURT IN THE EVOLUTION OF THE AMERICAN CONSTITUTION**

"The Supreme Court has played a significant role in adapting the 18<sup>th</sup> century constitution to the space age needs of nuclear America."

The constitution of America was framed in 1787 for a country of 13 states having a pastoral agricultural economy. The

Supreme Court has done much towards the growth of the constitution. This body consisting of one chief justice and eight associate judges, appointed for lifetime tenure plays in a significant role in making important decisions in the US (along with other stakeholders). The Supreme Court evolved the US Constitution by expanding judicial and executive powers, by guarding the civil liberties and by interpreting the constitution. Thus, the Supreme Court <sup>helped</sup> enabled America in its journey of becoming a global power.

## II - THE AMERICAN SUPREME COURT AND ITS ROLES

### a) The Supreme Court

The US Supreme Court is the creation of the Constitution and not of the Congress. Its features are:

#### i) Organization and Appointment

The American Supreme Court consists of one chief justice and eight

associate judges who are appointed by the President with the consent of the Senate.

## ii) Tenure, Session and Powers

The federal judges in the US have a lifetime tenure. The Supreme Court holds one regular session every year beginning on the first Monday in October and ending early in the following June. The chief justice is the executive officer of the court. The Supreme Court has both the original and appellate jurisdiction.

## b) The Roles

The US Supreme Court is the: protector of federation, savior of the Constitution, guardian of the rights, developer of the Constitution and the highest court of appeal.

## III - JUDICIAL REVIEW AND DECISION-MAKING IN US

"An act (of another branch of government)

repugnant to the Constitution is  
void"

(John Marshall)

### a) Judicial Review

Judicial review is a doctrine related to the judiciary's power to ascertain the constitutional validity of laws and the legality of decisions made by public bodies.

Example: If the US Congress were to pass a law banning newspapers from printing certain information, courts would have the authority to declare it unconstitutional, as it violates the First Amendment.

### b) Origin of Judicial Review in US

Marbury vs. Madison was a landmark US Supreme Court case that established the principle of judicial review in the US.

### c) Decision-Making in US

The President, Congress, Political Parties, Interest Groups, federal and State Courts



all interact to make political decisions in the US. Thus, there is a system of checks and balances in the US.

#### IV - ROLE OF SUPREME COURT IN EVOLUTION OF THE AMERICAN CONSTITUTION

The American constitution was a skeleton document comprising seven Articles and about 7000 words. It was framed in 1787 for a country of 13 states having a pastoral agricultural economy. Today, America is a country of fifty states and a highly industrialized country. Following significant roles were played by the Supreme Court in US:

##### a) Expansion of Judicial Power

The power of judicial review established in the Marbury vs. Madison case has enabled the Supreme Court to become the guardian of the Constitution. Since then, judicial review is frequently used.

Example: By 1937, the Supreme Court had

declared ultra vires some 70 Federal laws and 300 State laws.

## b) Expansion in Executive Powers

1. The Supreme Court has upheld the Doctrine of Implied Powers — the powers which are not directly delegated to the executive by Constitution but, which are necessary for the execution of the powers directly conferred by the Constitution.

Example:

1. The power of removal of all federal officials and the termination of war granted to the President.
2. It ended the Lochner era in which Supreme Court invalidated the legislation aimed at regulating businesses.
2. The power of national government to regulate inter-state commerce, railways, radio, etc., all owe their origin to the decisions of the Supreme Court.
3. The Supreme Court enhanced the federal character of the Constitution by empowering executive,

legislature and judiciary beyond the Constitution's envisioned powers.

### c) Custodian of the Constitution

The Supreme court's decisions have shaped the social reality of the American society i.e. the right and wrong persists according to Supreme Court's decisions. Similarly, the formal barrier of discrimination were lifted following liberal court rulings.

Example:

1. Plessy v. Ferguson allowed racially segregated accommodations and facilities.
2. Loving v. Virginia declared inter-racial marriages as constitutional.

### d) Constitutional Interpretation

The judicial and legal philosophies resulted from the constitutional interpretation (for judicial review), also evolved the US Constitution. These philosophies are:

1. Judicial Activism, Loose Constructionism, living document — supports liberal interpretation

of Constitution

2. Judicial Restrain, strict Constructionism and original Intent — discourages liberal interpretation of Constitution.

Example:

1. Brown v. Board of Education prohibited racial segregation of public schools via judicial activism.
2. Citizens United v. FEC declared unconstitutional the congressionally enacted limitations on corporate political spending.

## V-CRITICAL ANALYSIS

Courts are essential in all organized societies. The Supreme Court of the US also has a significant role, especially in the evolution of the Constitution. The Supreme Court via its judicial review power enhanced the rights and civil liberties, introduced the system of checks and balances, and has cemented the federal structure of USA. However, the judicial

review demoralizes the popular legislature (breaches ~~pr~~ legislative sovereignty), leaves the veto power in the hands of one man i.e. (4/4 case), declares a law as invalid if it does not appeal to the judges' sense. The judicial review is considered by some as the citadel of vested interests and not bastion of popular liberties, because it zealously protected property rights. It is worth to be mentioned that despite such criticisms, the Supreme Court significantly adapted the 18<sup>th</sup> century constitution to the space age needs of nuclear America.

## VI- CONCLUSION

To summarize, the Supreme Court of US is a body of 9 judges. It aided the development of the Constitution of the world's superpower which was once a pastoral economy. The Supreme Court expanded the judicial and executive powers.

protected the Constitution and interpreted it via judicial review doctrine. Thus, the Supreme Court/Judiciary is the most successful and significant institution in the US.

Q4. The Senate of the USA is the most powerful Upper House in the world. Can you justify this statement? Explain your answer with reference to the Upper Houses of India and Pakistan. (CSS-2016)

Q. American Senate is "the saucer in which the boiling tea of the House is cooled." Elucidate. (CSS-2013)

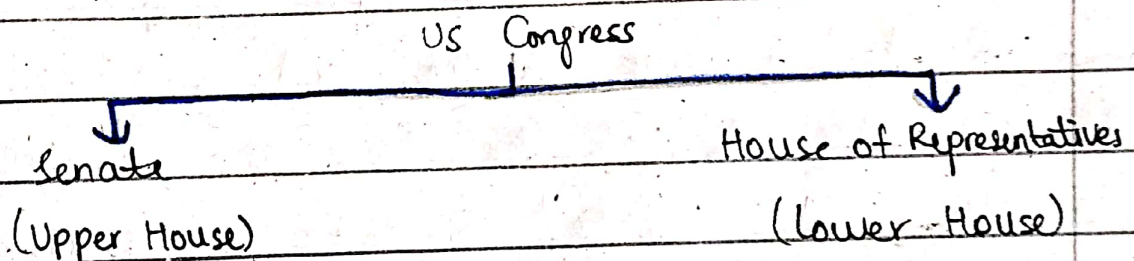
15. I- INTRODUCTION: THE AMERICAN SENATE IS THE MOST POWERFUL UPPER HOUSE IN THE WORLD

The US Senate	= Unlike other states'	= Is the Most Powerful Upper Chamber
	Powerful Lower House	

Generally, the chamber which repre-

reflects the wishes of the majority i.e. the lower House is the most powerful chamber. But in USA, the Senate has more power than the lower House. Its direct executive power, small membership with long tenure, senior politicians, direct election of members, freedom of amendment, freedom of speech and representation of states have made it the most powerful upper chambers in the world.

## II - THE AMERICAN SENATE



### a) The Senate

The Senate is the Upper house of the US Congress (bicameral). It is a body of 100 members, elected for six years and directly elected. It is a house based on equal proportion of members from each

state i.e. 2 members.

## b) Significance

1. The American Senate is "the saucer in which the boiling tea of the house is cooled."

(George Washington)

The "Senatorial saucer" conversation between George Washington and Thomas Jefferson indicates the significance of the Senate, from its origins through its evolution into the most powerful upper body of any national legislature in the world.

2. In Article 1 of the American Constitution, the word "Senate" precedes the term, "House of Representatives". This is because the Constitution makers wanted to give the Senate an important position in the whole federal system.



### III - REASONS BEHIND THE SENATE'S POWER

#### a) Direct Legislative Power

The US Senate controls the internal and external administration of the US government by sharing with the president his power of making top ranking appointments and ratification of his foreign state treaties.

Comparison: Pakistani and Indian Senates do not possess such immense executive powers.

Example: The disapproval of Woodrow Wilson's league of Nations by Senate.

#### b) Absence of Parliamentary Government

The absence of parliamentary form of government in America has also indirectly led to the domineering position of the Senate over the House.

Comparison: In parliamentary democracies, like Pakistan and India, the Lower House has control over the executive, and hence makes

lower house powerful.

### c) System of Checks and Balances

Framers of the Constitution of USA has devised Senate as an active check on both the lower house and other organs - executive and judiciary. The US Senate cannot be bypassed in any important matter's decision. Comparison: In Pakistan and India, the opposition and judiciary act as checks on government.

### d) Small Membership and Long Tenure

The small size i.e. 100 members and long tenure i.e. 6 years, really make Senate a deliberative body. The lower house of US Congress has 435 members elected for 2 years, each.

### e) Membership Consists of Senior Politicians

Senior politicians and people with legislative expertise and wider knowledge usually aspire to the membership of the Senate.

(and not the lower house)

Example: Robert Byrd (D) is the longest-serving US Senator i.e. for over 51 years.

### f) Direct Election of Senators

Formerly, the Senators in the US were elected by State legislatures but after 17<sup>th</sup> amendment (1913), they are directly elected.

Thus, they have more electoral legitimacy.

Comparison: In Pakistan and India, upper house members are elected through proportional representation and single transferable votes (STV) by provincial/state assemblies.

### g) Solidarity of the Senators

The US the members tend to have solidarity irrespective of the political affiliations.

Example: When President Roosevelt tried to bypass Senatorial Courtesy in 1938, the Senate stood solidly against him.

## h) Freedom of Amendment

The US Senators can propose as many amendments and propose both germane and non-germane amendments.

Comparison: In Pakistan, only limited number of amendments and only germane amendments can move on the floor.

## i) Freedom of Speech / Filibuster

A Senator can go on speaking for any length of time - based on the principle to ensure full-length debate on every matter.

This is known as filibuster. In 1917, the Senators adopted "cloture" rule i.e. to end a debate with a two-third majority. Later, this was reduced to three-fifths.

Comparison: Pakistan and Indian upper house members have a limited speech time.

Example: J. Thurmond filibustered for 24 hours and 18 minutes against the Civil Rights Act.

## j) Representation of States

The Senators in US are directly elected by the entire population of a state. Thus they have the greater representative character and also represent States as political units.

Comparison: In Pakistan and India, the National lower house members represent the states.

## IV - CRITICAL ANALYSIS

The upper house of the US Congress i.e., the Senate is the most powerful upper chambers in the world. This is because other ~~country~~ countries have parliamentary systems having powerful lower houses. ~~Further,~~ <sup>and</sup> in the US, Senate represents the states, so it should be powerful. The system of checks and balances also strengthened Senate's powers. However these unlimited powers of the Senate breaches the sovereignty of judiciary and executive and also creates severe deadlocks, inefficiencies and govern-

ment shutdown due to lack of consensus among involved groups. The technique of filibuster also creates delays. Thus, the powerful role of Senate in US has advantages and disadvantages with more advantages than the disadvantages.

## V - CONCLUSION

To conclude, the US Congress is bicameral. The upper house i.e., Senate is more powerful than the lower house i.e., the House of Representatives. The reasons for its immense powers are its: direct legislative power, checks on the executive and judiciary, small membership, long tenure, efficient members, freedom of amendment and speech and solidarity. No other upper house in the world is as much powerful as the US Senate. Thus, it is the most powerful upper chambers in the world.