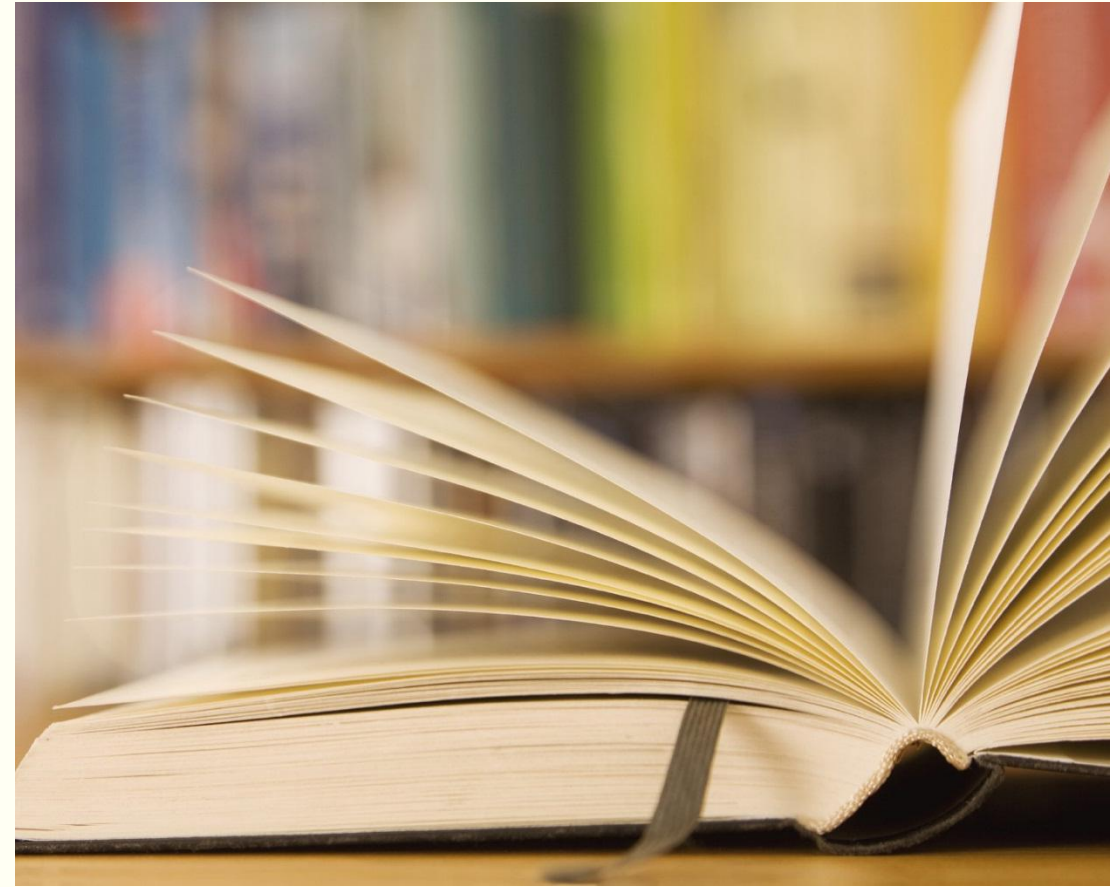




Comparative Federal Approaches to Judicial Independence

**Dr Daisy
Day 2**



Structure of the Four Days Agenda

Day 1- Mutual Reinforcement of the Rule of Law and Judicial Independence



Day 2 – Comparative Federal Approaches to Judicial Independence



Day 3 – Constitutional Guarantees for Judicial Independence



Day 4 - Constitutional Guarantees in Federalism and Pathways for Reform in Myanmar Future

Outlines (Day 2)

Session 1 – Lecture (1 hour and 45 Minutes)

- Foundations and Legal Frameworks
- Why Judicial Independence Matters in Federalism?
- The Three Dimensions of Judicial Federalism
- Rule of Law Across Judicial Federalism

Session 2

- Group Work Discussion (30 minutes)
- Group Presentation (30 minutes)

Foundations and Legal Frameworks

Judicial independence means that judges must be free from external pressures—

- especially from the executive and legislative branches
- so, they can make impartial decisions **based on law**

In federal systems,

- powers are divided between central and sub-national governments (e.g., states, provinces)
- judicial independence is even more crucial to resolve conflicts between levels of government and
- ensure **constitutional supremacy**

Key Components of Legal Frameworks for Judicial Independence

Component	Examples
Constitutional Guarantee	Art. III (USA), Art. 97 (Germany), Art. 124 (India)
Security of Tenure	Life tenure in the USA; fixed terms in Germany & Canada
Financial Autonomy	Salaries cannot be reduced in office (USA, India, Germany)
Appointment Mechanisms	Judicial councils, parliamentary election, executive input
Dispute Resolution Role	Federal-state disputes: USSC, Germany FCC, Indian SC
Judicial Review Powers	Strong in USA, India, Germany; limited in Switzerland

Country	Legal Provisions	Key Features
USA	Article III, U.S. Constitution	Life tenure, Presidential appointment, Senate confirmation, dual court system
Germany	Basic Law (Grundgesetz), Art. 92–100	Independent Constitutional Court (BVerfG), Länder courts operate under Länder authority
India	Articles 124–147, 214–231	Single integrated judiciary, independent collegium for appointments, state High Courts
Myanmar (2008)	Articles 308(a), 299, 302	Judges appointed by President, no judicial commission, centralized system

Why Judicial Independence Matters in Federalism?



Shared sovereignty between Union and States



Judicial independence: Freedom from interference by other branches of government



Importance in federalism: Neutral arbiter in center–state conflicts



Myanmar 2008 Constitution: Articles 293–308 provide a unified judiciary, with no independent state-level courts and no true judicial independence

The Three Dimensions of Judicial Federalism

1

Institutional
Dimension

2

Jurisdictional
Dimension

3

Jurisprudential
Dimension

1. Institutional Dimension

Judicial Institutions

```
graph TD; A[Judicial Institutions] --> B[Federal/ National/ Central Courts]; A --> C[State/ Regional/ Provincial/ Subnational Courts];
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Federal/ National/ Central
Courts

State/ Regional/ Provincial/
Subnational Courts

***Strong judicial independence relies on institutional guarantees such as separation of court hierarchies, transparent appointments, and security of tenure

The Practice of Judicial Systems in Federal Countries



SINGLE COURT



DURAL COURT



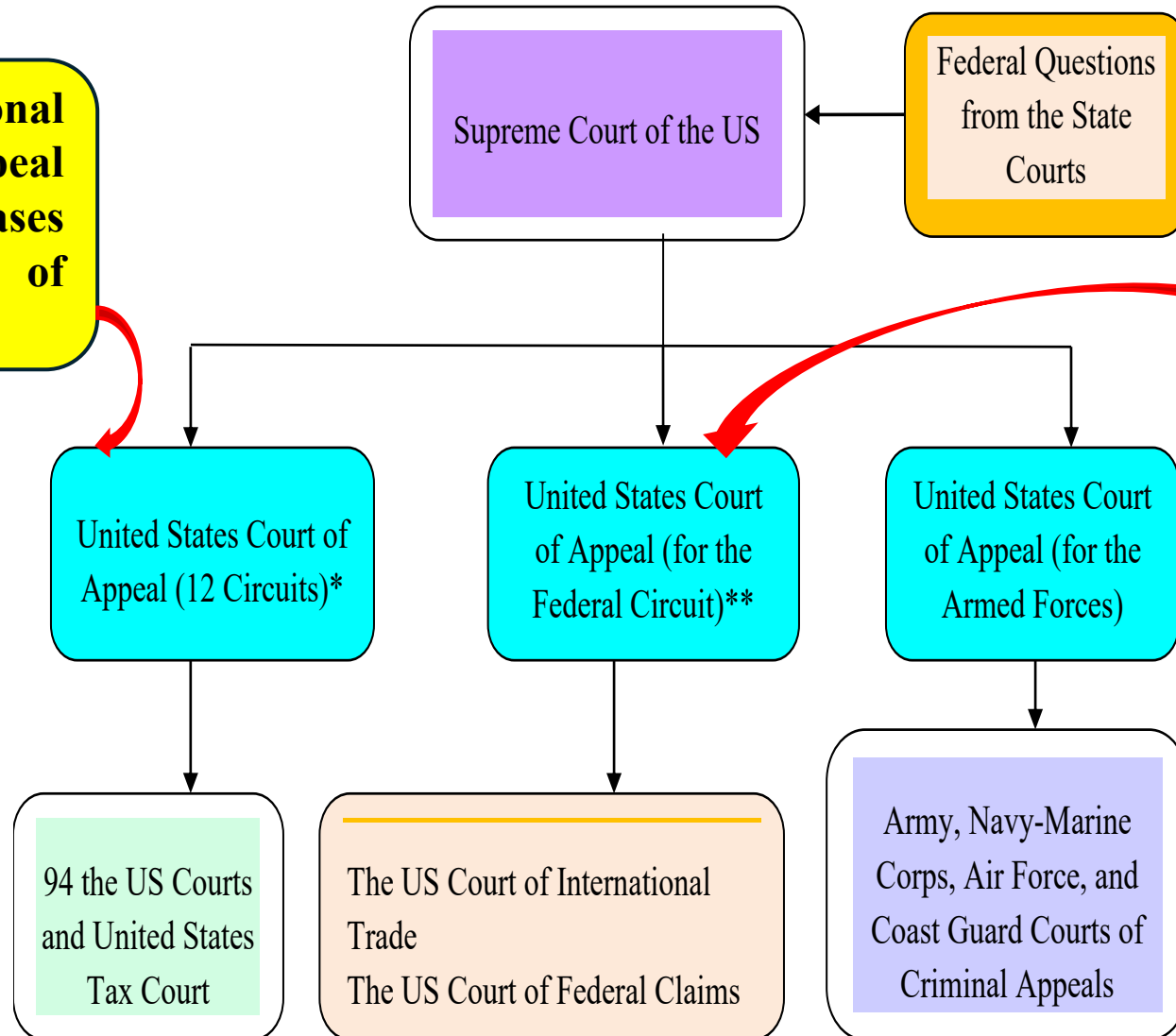
INTEGRATED COURT

Continue...

- ❖ Judicial Independence is the key point
- ❖ Judicial structure and composition affect autonomy from political branches
- ❖ An independent appointment mechanism protects courts from partisan control
- ❖ **Comparative Examples:**
 - **United States:** Dual court system (federal + state courts); federal judges are appointed for life → strong institutional independence
 - **Germany:** Federal Constitutional Court is independent; Länder (states) have their own courts with local competence → Integrated Court System
 - **India: Single Integrated** Court System; although centralized, Supreme Court maintains high institutional independence
 - **Myanmar :** Single Court System -No separate federal and state courts → under one unified judiciary

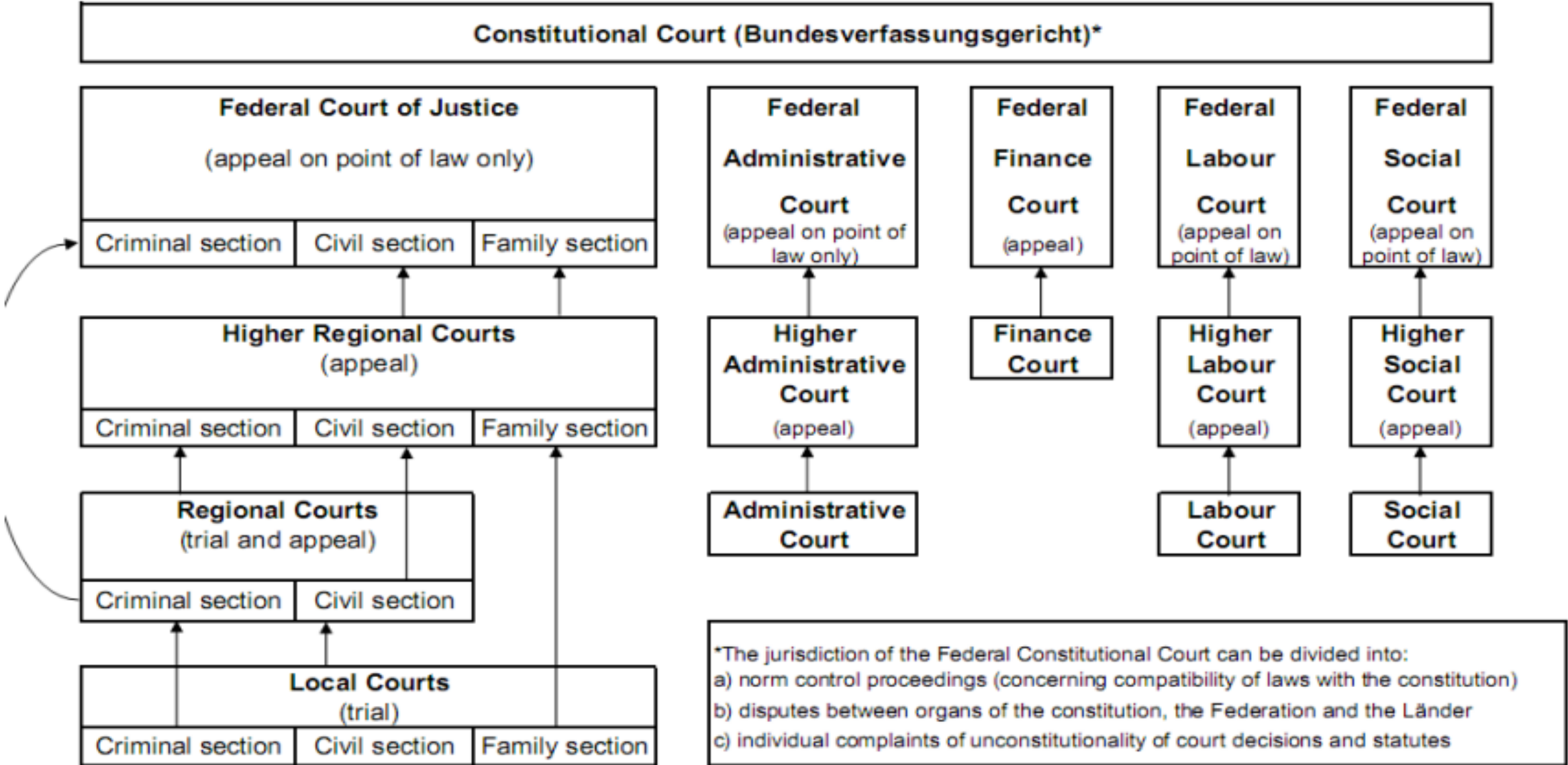
Hierarchy of Courts in the United States

* The 12 regional Courts of Appeal also receive cases from a number of federal agencies.

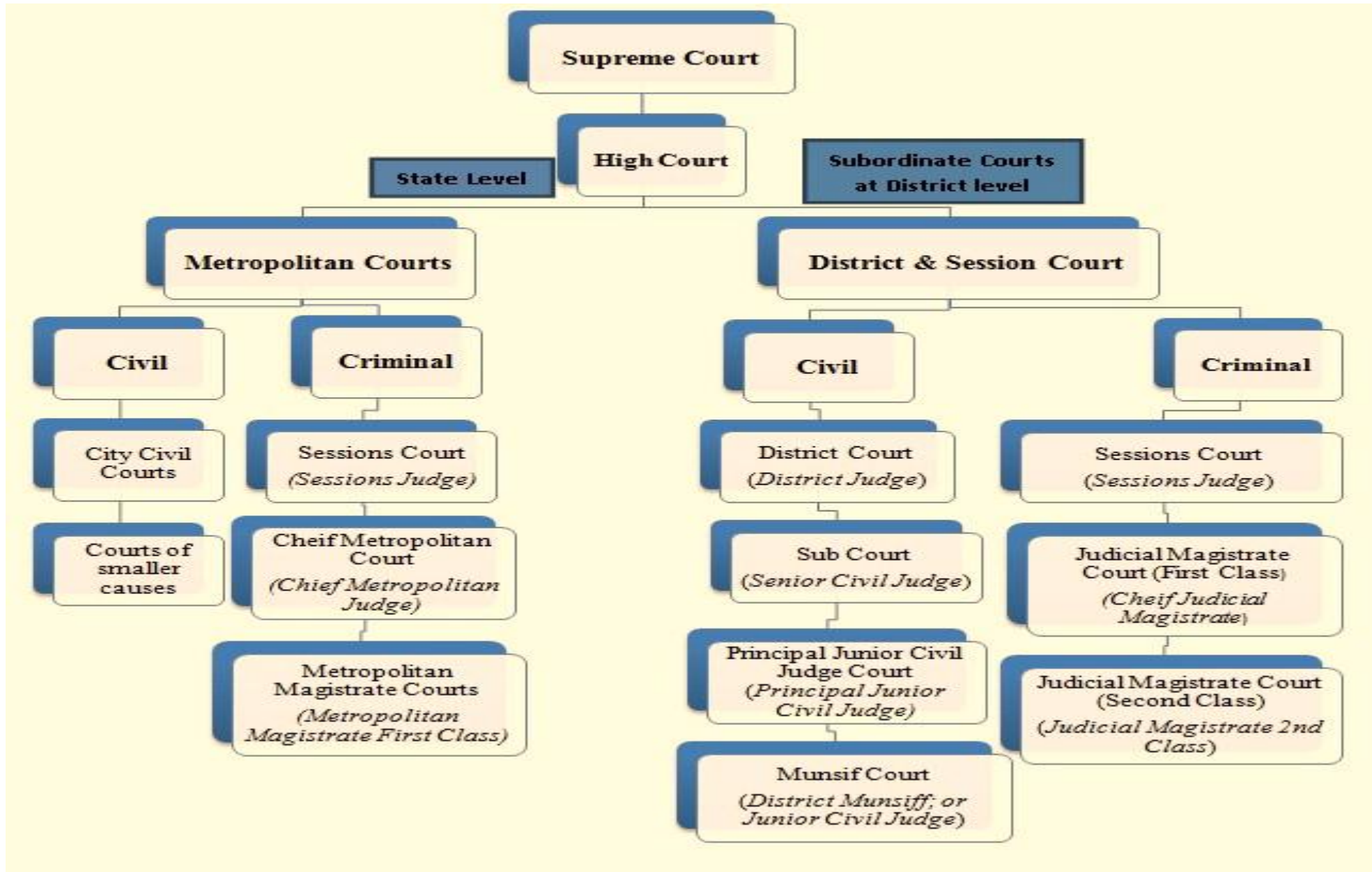


** The Court of Appeals for the Federal Circuit also receives cases from the international Trade Commission, the Merit Systems Protection Board, the Patent and Trademark Office, and the Board of Contract Appeals

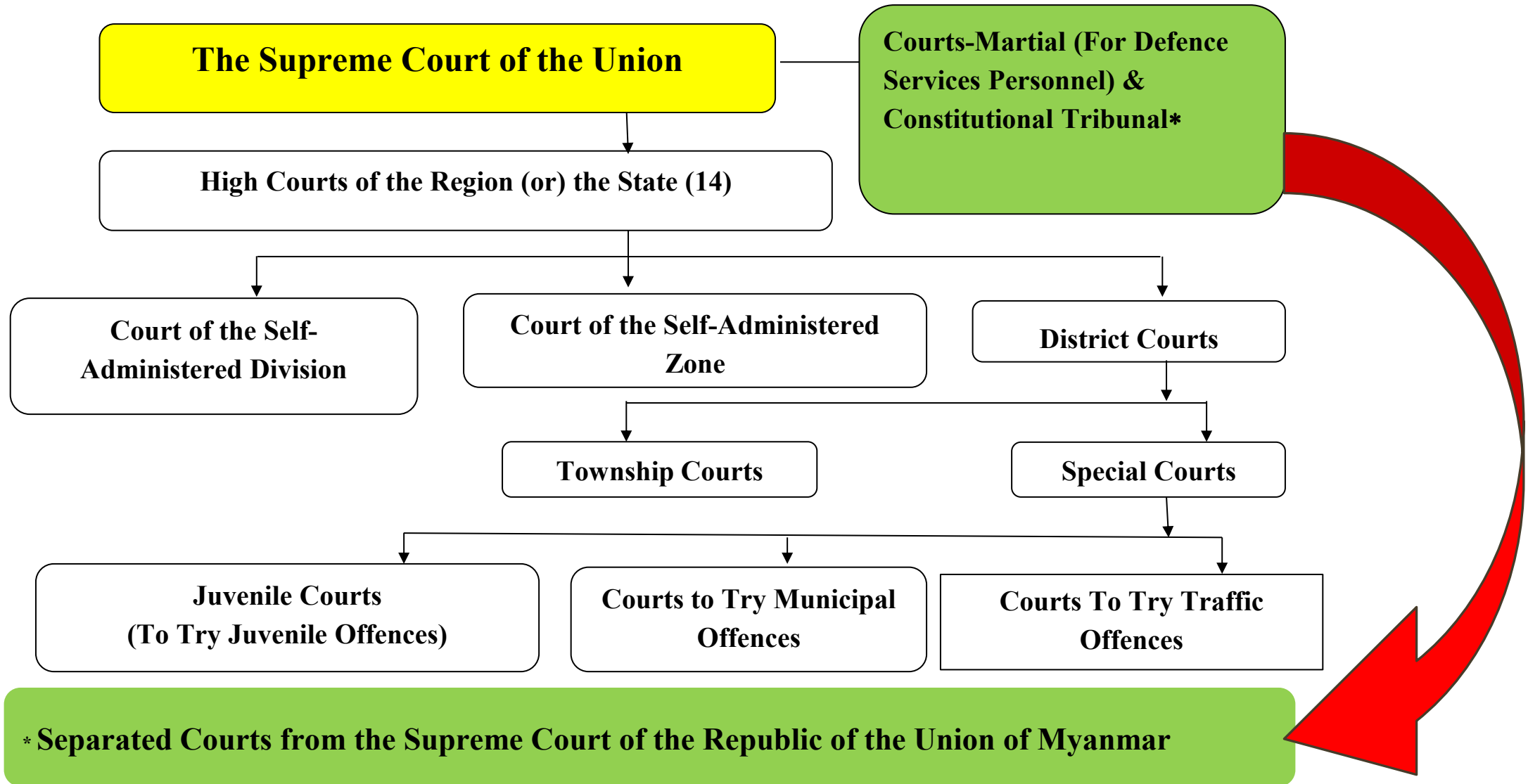
Hierarchy of Courts in Germany



Hierarchy of Courts India

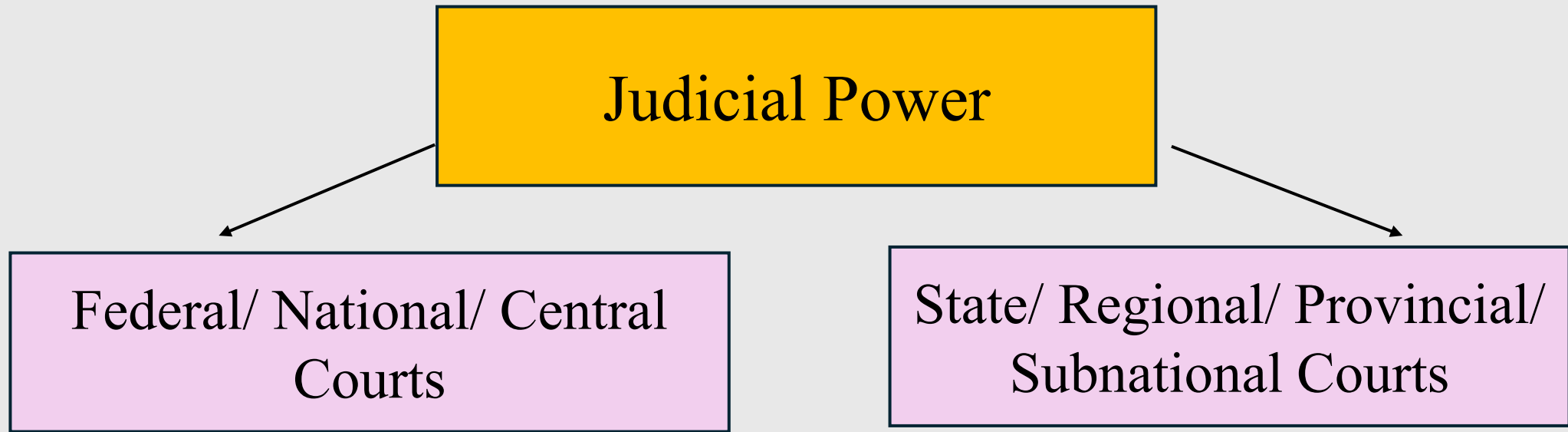


Hierarchy of Courts in Myanmar (Judicial Structure)



“Without strong institutions, courts cannot enforce laws fairly or restrain unlawful executive or legislative acts”

2. Jurisdictional Dimension



- which courts have the power to interpret what kinds of law

Continue....

- ❖ Federalism requires clear allocation of judicial powers between Federal and States Levels Courts
- ❖ Courts must have the jurisdiction to decide intergovernmental disputes, constitutional questions, and protect fundamental rights
- ❖ Comparative Examples:
 - **Canada:** Provincial courts can interpret federal law, but constitutional disputes are often reserved for the Supreme Court.
 - **Ethiopia:** States can establish their own courts for regional and customary matters, but federal courts have final say on constitutional matters
 - **United States:** State courts rule on state law; federal courts rule on federal law, but both can interpret constitutional issues → jurisdictional balance
- ❖ Jurisdictional clarity prevents legal confusion and ensures all actors are bound by the correct legal authority

“Clearly defined and protected court jurisdictions at both federal and state levels safeguard judicial independence by limiting political interference and ensuring equitable access to justice across the federation”

3. Jurisprudential Dimension

- ❖ How courts interpret and develop constitutional principles over time—especially federalism, rights, and the role of the judiciary
- ❖ Judicial independence is reinforced when courts develop a consistent, rights-based, and federal-friendly jurisprudence
- ❖ Courts that uphold constitutional supremacy and rule of law become a check on political power

3. Jurisprudential Dimension

❖ Comparative Examples:

- **Germany:** Constitutional Court strongly defends federalism and fundamental rights through its case law
- **India:** Judiciary developed "basic structure doctrine" to protect the constitution from political amendments
- **United States:** Courts have historically played a strong role in shaping federal-state relations (e.g., *McCulloch v. Maryland*, *Marbury v. Madison*)

❖ Jurisprudence strengthens the predictability and stability of the legal system

“Clearly defined and protected court jurisdictions at both federal and state levels safeguard judicial independence by limiting political interference and ensuring equitable access to justice across the federation”

Rule of Law Across Judicial Federalism (Institutional Dimension)

Rule of Law requires independent and impartial institutions that apply the law equally

Institutional safeguards (e.g., tenure security, transparent appointments, protection from political influence) ensure that judges uphold the law, not the interests of ruling powers

Example: In Germany, the independence of the Federal Constitutional Court is guaranteed through fixed terms and appointment by both federal chambers—ensuring it can enforce the rule of law even against the federal government

Without strong institutions, courts cannot enforce laws fairly or restrain unlawful executive or legislative acts

Rule of Law Across Judicial Federalism (Jurisdictional Dimension)

The Rule of Law depends on clear legal boundaries and enforcement mechanisms.

Jurisdictional clarity allows individuals to know which law applies, and which court can provide remedy.

It also protects against arbitrary rule, where overlapping powers are exploited by stronger political actors.

Example: In **India**, both Union and State High Courts can enforce fundamental rights. This division increases access to justice, a core component of the rule of laws

Jurisdictional clarity prevents legal confusion and ensures all actors are bound by the correct legal authority

Rule of Law Across Judicial Federalism (Jurisprudential Dimension)

Courts uphold the rule of law when they develop a consistent, principled, and rights-respecting body of case law.

This includes:

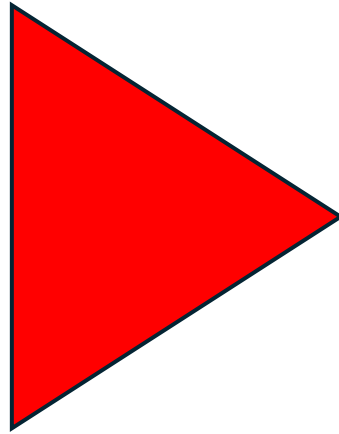
- Upholding constitutional supremacy
- Striking down arbitrary laws
- Protecting minorities and fundamental rights

Jurisprudence strengthens the predictability and stability of the legal system.

Example: In South Africa, the Constitutional Court plays a central role in shaping a post-apartheid rule of law by advancing rights-based jurisprudence within a federal-like system

Rule of Law becomes meaningful when courts actively interpret and defend it, especially against executive overreach

Group Discussion





**DO YOU
HAVE
ANY
QUESTIONS
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