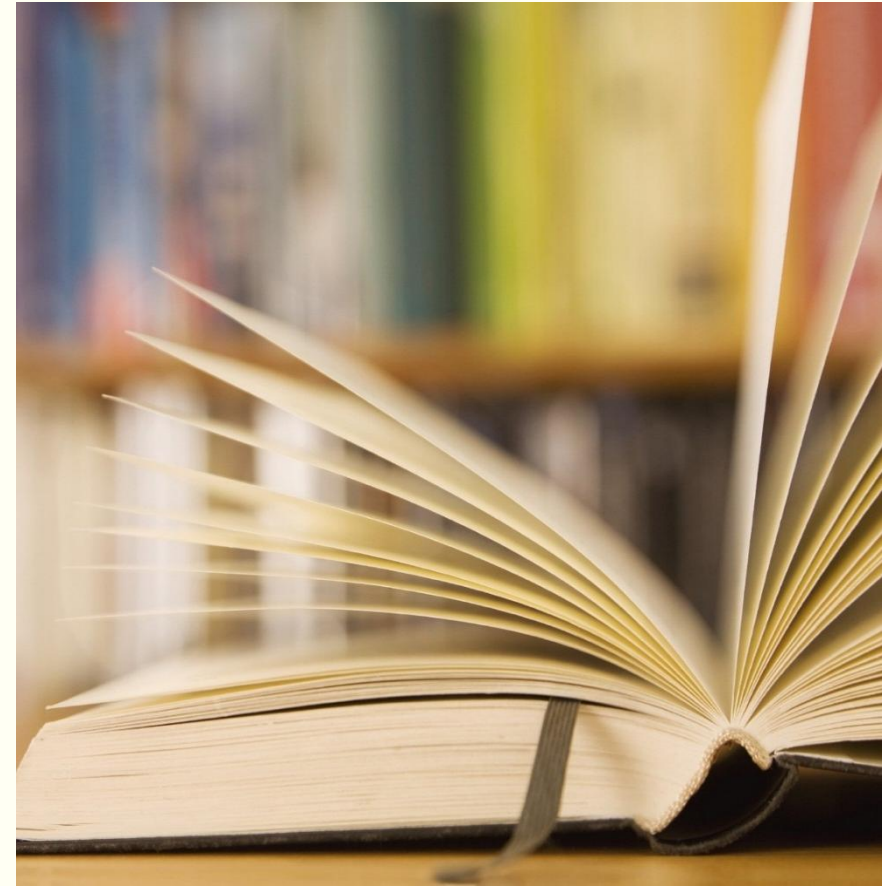


Constitutional Guarantees in Federalism and Pathways for Reform in Myanmar Future

**Dr Daisy
Day 4**



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

Objectives

- ❖ Understand the Concept and Function of Constitutional Guarantees in Federal Systems
- ❖ Identify the Gaps in Myanmar's Current Constitution Related to Federalism
- ❖ Suggest Practical Ideas for Federal Reform in Myanmar

Outlines (Day 4)

Session 1 – Lecture (1 hour and 45 Minutes)

- Constitutional Guarantees in Federalism
- Key Constitutional Guarantees in Federal Systems
- Pathways for Reform in Myanmar's Future Constitution
- How to Reform the Constitution to Prevent Future Coups?

Session 2

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

Constitutional Guarantees in Federalism

Constitutional guarantees in federalism are the legal protections enshrined in the constitution that ensure:

- ❖ The powers and autonomy of states/regions,
- ❖ The division of powers between federal (national/central) and states (regional) governments
- ❖ The rights and identities of ethnic groups or subnational units
- ❖ The functioning of courts to uphold the powers balance (federal & states)

Key constitutional guarantees in federal systems

- A. Division of Powers
- B. Non-Derogable Autonomy
- C. Representation and Participation
- D. Judicial Safeguards
- E. Fundamental Rights

A. Division of Powers

A federal constitution clearly allocates

- legislative,
- executive, and
- judicial powers (between the union and subnational governments)

There are usually

- exclusive,
- concurrent, and
- residual powers with mechanisms for resolving disputes (e.g., through courts).

B. Non-Derogable Autonomy

- ❖ Constitutions guarantee a level of autonomy that cannot be arbitrarily removed by the central government
- ❖ States or regions often have their own constitutions, legislatures, and courts, subject to compatibility with the national constitution

C. Representation and Participation

- ❖ Subnational units are represented in national institutions (e.g upper or lower house)
- ❖ Participation in constitutional amendment processes

D. Judicial Safeguards

- ❖ An independent constitutional court or tribunal
- ❖ Courts can review laws for consistency with federal principles and protect minority or subnational rights

E. Fundamental Rights

- ❖ Constitutional guarantee for human rights and minority protections
- ❖ These rights serve as a floor, not a ceiling

Key Constitutional Guarantees in Federal Countries

Federal Country	Important Guarantees	Constitution Provisions
Germany	State (Länder) autonomy in education, policing, culture	Basic Law Arts. 28, 30
India	Division of powers (Union, State, Concurrent lists)	Constitution, Schedule VII
Ethiopia	Right of ethnic nations to self-determination and secession	Art. 39 of 1995 Constitution
Canada	Provincial control over language and education	Constitution Act, 1867
United States	States retain sovereignty unless powers are delegated to federal level	Tenth Amendment

Pathways for Reform in Myanmar's Future Constitution

1. Clear Division of Powers

- ❖ Define Union, State, and Concurrent Lists like in India or Nigeria
- ❖ Give states/regions real authority over
 - Education and language,
 - Natural resource management,
 - Local policing and customary justice

Continue...

2. Strong Judicial Federalism

- ❖ Create federal & state-level courts and constitutional courts.
- ❖ Allow states/ regional courts to apply customary and local laws
- ❖ Guarantee an independent judiciary, not under military or executive control

Continue...

3. Protection of Ethnic Rights

- ❖ Recognize the right to self-rule and cultural preservation
- ❖ Use Ethiopia's model to allow ethnic federal units to draft their own constitutions
- ❖ Ensure representation of ethnic minorities in federal institutions.

Continue...

4. Resource and Fiscal Autonomy

- ❖ Allow states to manage their own resources and taxation systems
- ❖ Share federal revenues equitably (like in Canada or South Africa)

Continue...

5. Demilitarization of Governance

- ❖ Remove or limit military dominance in politics
(abolish Sections. 20(b), 436)
- ❖ Establish civilian-led governments at all levels.

Toward a Genuine Federal Democracy in Myanmar

To build a peaceful, inclusive, and democratic Myanmar, the future constitution must

- ❖ Embed constitutional guarantees that protect the powers and identities of all ethnic nationalities
- ❖ Create a true division of powers between the federal and the States
- ❖ Ensure independent institutions, especially the judiciary, to uphold the rule of law
- ❖ Move away from centralized military rule to a participatory federal system based on equality, justice, and autonomy

How to Reform the Constitution to Prevent Future Coups

- future constitutional reforms must focus on strong democratic safeguards, rule of law, and reducing military control

1. Remove or Reframe Section 417–421 (Emergency Powers)

- ❖ Emergency declaration must be based on:
 - Parliamentary approval
 - Independent Constitutional Court Review
- ❖ Prevent any one actor (e.g., Vice President or military) from using it alone.

How to Reform the Constitution to Prevent Future Coups

2.

Strengthen Separation of Powers and Check & Balance System

- ❖ Ensure the military cannot interfere in executive, legislative, or judicial functions
- ❖ Civilian institutions must be fully independent
- ❖ Ensure Checks and balances system

What is Check and Balance System?



A check and balance system ensures that no single branch of government (executive, legislative, or judiciary) has absolute power



Each branch has tools to limit the powers of the others



This prevents abuse of power and protects democratic governance

Why It's Important for Myanmar?

- ❖ Myanmar's 2008 Constitution gives too much power to the military, especially through
- ❖ Section 20(b): The military is the “guardian of the Constitution”
- ❖ Sections 201 & 232: 25% of parliament seats are reserved for the military (nomination selection)
- ❖ Section 417: The President can declare a state of emergency with military involvement, allowing a military takeover

How to Reform the Constitution for Better Checks and Balances?

Civilian Control of the Military

- In countries like Germany and India, the military is under civilian command

Independent Judiciary

- Article 137 of the South African Constitution allows courts to strike down unconstitutional laws

Balanced Appointment of Key Officials

- Use independent commissions for appointing judges, as in Canada

Emergency Powers Limited by Law

- Article 352 of the Indian Constitution requires approval from parliament for emergency rule

How to Reform the Constitution to Prevent Future Coups

3. End Military's Political Control (Sections 20, 436, 14–17)

- Remove guaranteed 25% military seats in parliament (Article 14c)
- End military appointment of key ministers (Defense, Home Affairs, Border)
- Reform Section 436 (which gives military veto power over amendments)

How to Reform the Constitution to Prevent Future Coups

4. Create Independent Constitutional Tribunal

- An independent Constitutional Tribunal should decide constitutional disputes, not the military-controlled Constitutional Tribunal
- Allow civil society, regional governments, or opposition to bring constitutional complaints

How to Reform the Constitution to Prevent Future Coups

5. Guarantee Democratic Elections and Civilian Rule

- Protect electoral results from being overturned
- Ensure peaceful transitions of power are mandatory and enforceable

How to Reform the Constitution to Prevent Future Coups

6. Federal Democratic Principles

- Adopt a new federal constitution that shares power with ethnic states
- Protect regional autonomy, ethnic rights, and self-governance
- Ensure judicial independence at both Union and State levels

Reform Area

Emergency
Powers

Military Role

Constitutional
Reform/
Amendment
procedure

Judiciary

Federal
Provisions (SoP,
DoP and Check
& Balances)

Guarantee of
Minority Rights
and fundamental
Human Rights

Elections &
Democracy

Continue...



The 2021 military coup was a **clear violation of constitutional principles** and democratic norms



To ensure Myanmar never returns to military dictatorship, its future constitution must be fully democratic, federal, and civilian-led — with no space for military interference in governance

အုပ်စုဖွဲ့ဆွေးနွေးရန်

- ၁။ ဖက်ဒရယ် ပြည်ထောင်စု ပြုပြင်ပြောင်းလဲရေး အခြေအနေတွင် ဖွဲ့စည်းအုပ်ချုပ်ပုံ အခြေခံ ဥပဒေဆိုင်ရာ အာမခံချက်များကို လေးစား လိုက်နာရန် နှင့် တရားဥပဒေ စိုးမိုးရေးကို ထိထိရောက်ရောက် အကောင်အထည်ဖော်ရန်၊ လူတစ်ဦးချင်း၏ အခြေခံ လူ့အခွင့်အရေး များဖြစ်သည့် ရပိုင်ခွင့် နှင့် လွတ်လပ်ခွင့် တို့ အပြည့်အဝ ခံစားနိုင်ရန် မြန်မာနိုင်ငံတွင် မည်သည့် တရားစီရင်ရေး ဆိုင်ရာ အပြောင်းအလဲများ လိုအပ်နေသည်ကို အုပ်စုဖွဲ့ ဆွေးနွေးကြရန်ဖြစ်သည်။
- တရားစီရင်ရေးဆိုင်ရာ လွတ်လပ်မှု၊ တရားဥပဒေ စိုးမိုးရေး၊ တရားစီရင်ရေးဆိုင်ရာ အာဏာခွဲဝေမှု နှင့် ဖက်ဒရယ်ယူနစ်များ (ပြည်ထောင်စု၏ နယ်မြေဒေသများ) အတွင်း တရားမျှတမှု လက်လှမ်းမီ ရရှိရေးတို့နှင့် ပတ်သက်သည့် ပြုပြင်ပြောင်းလဲမှု များကို ထည့်သွင်း စဉ်းစားပါ။

**Any
questions**

