

**Judicial  
Federalism  
(DoP,  
Independence &  
Challenges of  
power balances)**

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အာဏာသိမ်းမှု မဖြစ်နိုင်စေရန် ဘယ်လို  
တရားရေးစနစ် ဖော်ဆောင်ကြမလဲ။

## **Division of Judicial Powers in a Federal Constitution**

Varies based on the Constitutional Structure of each Country

Key element of Federalism (seeks to balance the powers & responsibilities between Federal and Subnational (state or regional) governments)

# Division of Judicial Powers

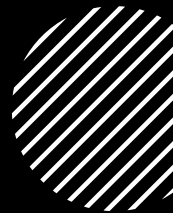
**United States** - judicial powers are distributed between federal courts and state courts, with each having its own jurisdiction

**India** - distinct pattern due to its asymmetrical-federal system, where there's a single unified judicial system, and judicial powers are distributed between federal (Supreme Court) and state (High Courts) courts / **unlike the U.S**

**Australia** - a federal model, with judicial power divided between federal courts and state courts



# Division of Judicial Powers



**United States** - Clear division between federal and state courts with some overlap in jurisdiction for federal law

**India** - Unified judicial system with a Supreme Court overseeing constitutional and federal law issues, while High Courts handle state matters

**Australia** - Federal and state courts have separate jurisdictions, but state courts can adjudicate federal matters under certain conditions

\*\*\* In all three countries, the Supreme or High Court typically serves as the final arbiter for constitutional issues, ensuring the balance between national and subnational authorities.

# The Federal Judicial Power & Federal Jurisdiction

## The Federal (National/Central) Judicial Power

- refers to the authority of a federal judiciary to interpret and apply the law in disputes that arise under a federal system of government
- divided between federal courts and state (or regional/province/canton) courts (**under the Constitution**)

## Federal (National/Central) Jurisdiction

- determines the scope and boundaries of cases that federal courts can hear
- Not all legal matters fall under federal jurisdiction; some remain under state or regional courts

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## United States

the federal judicial power is vested in the Supreme Court and other lower courts established by Congress

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Article III of the US Constitution -defines the scope of the federal judiciary's power, including interpreting the Constitution, federal laws, and treaties

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Federal Jurisdiction: Federal courts have jurisdiction over cases involving the Constitution, federal laws, disputes between states, cases involving ambassadors, and issues like bankruptcy and admiralty law.

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Federal courts also handle diversity cases, where the parties are from different states and the amount in dispute exceeds a specific threshold

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## ❖ India

- India follows a single integrated court system (the federal judicial power lies with the Supreme Court & High Courts of India/ state-level (Subordinate Courts) judicial structure)
- The Supreme Court has the authority to hear appeals from state high courts and to act as the **final interpreter of the Constitution.**
- The federal jurisdiction of India's courts includes **disputes between the Union and states, or between two or more states, as well as matters involving fundamental rights and constitutional questions.**
- The Supreme Court also has **advisory jurisdiction**, where the President can seek the Court's opinion on significant legal questions..

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## Germany

- Germany's judicial system is structured with both federal and state (Länder) courts.
- **The Federal Constitutional Court** (Bundesverfassungsgericht) has significant authority in overseeing constitutional matters.
- It can strike down federal or state laws if they are deemed unconstitutional
- Federal Jurisdiction: The jurisdiction of federal courts covers constitutional law, **administrative disputes involving the federal government**, and certain areas of civil law that require **national uniformity**, such as **patent law or social security issues**.
- However, Länder courts handle many civil and criminal matters unless specified as federal matters.

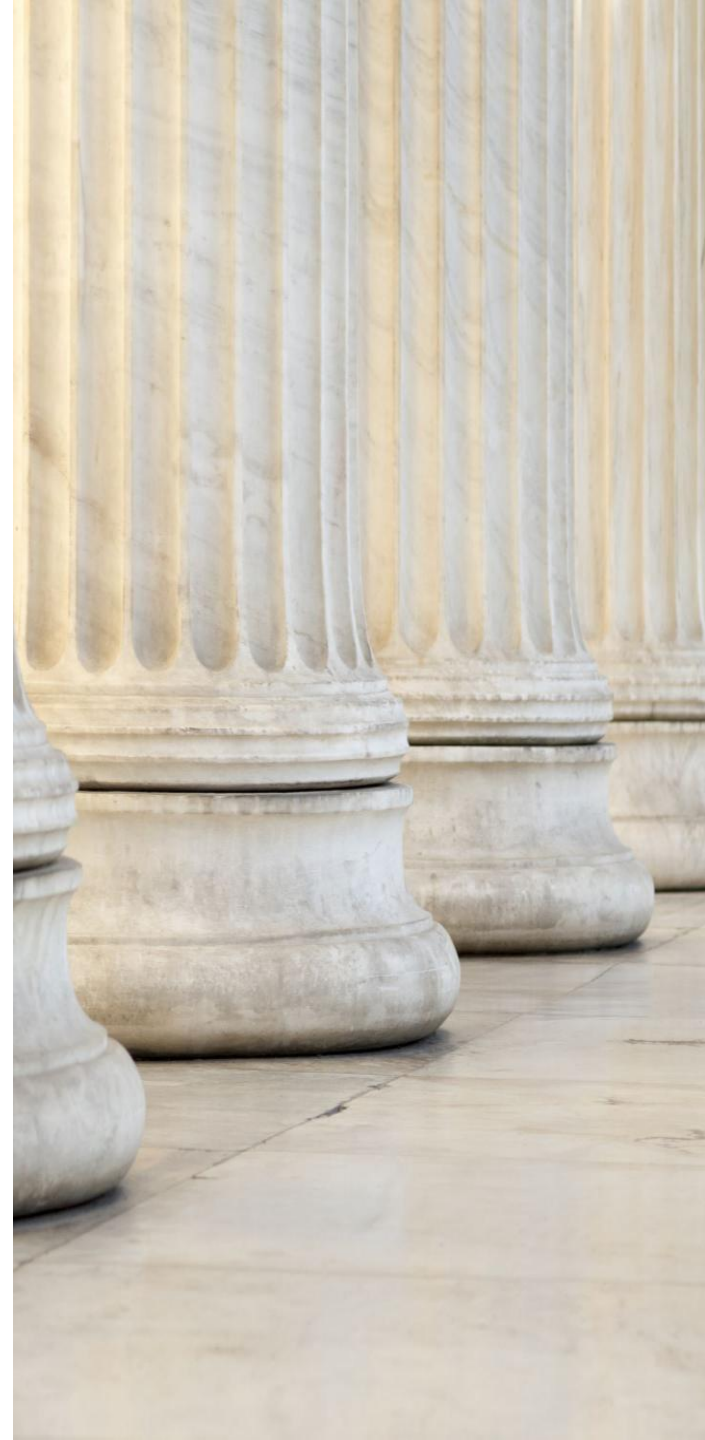
# Key Similarities and Differences of U.S, India and Germany

## ❖ Similarities –

- the federal judiciary has the power to resolve constitutional disputes and interpret national laws
- Federal courts handle cases that require uniformity or that impact the federal structure.

## ❖ Differences-

- While the **U.S. and India** have a hierarchical court system where the federal courts hold appellate jurisdiction over state courts, **Germany** separates its constitutional matters more distinctly, with the Federal Constitutional Court being primarily concerned with constitutional interpretation



# States or Provinces Judicial Power & Judicial Federalism

Judicial Power - to interpret and enforce laws within its jurisdictions (Autonomy & Balance)

- State/Province Courts have authority over cases that involve state laws, including criminal cases, family law, property disputes, and most civil matters Interpret and apply state constitutions and laws
- Cannot decide cases that are exclusive to federal law, such as federal constitutional issues (General limitation)



# States Judicial Power & Judicial Federalism

the distribution of judicial authority between federal and state courts in a federal system (determining which court systems have authority over particular legal issues)

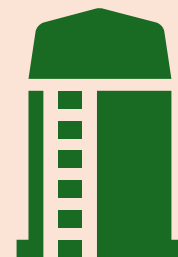
State Judicial Power – (Jurisdiction over State Laws, Interpretation of State Constitutions, Concurrent Jurisdiction, Judicial Autonomy)

The New Judicial Federalism (Dual Court Systems, Supremacy of Federal Law, Appeal and Review, Constitutional Interpretation, Variation Across Federal Systems)

# The Federal Courts & States Courts



Development



Structure

Judicial Federalism – Balance between State and Federal courts/  
Judicial independence/ check and balances/ safeguarding national  
unity in federal legal interpretation

# Relationships between States and Federal Courts

The “Federalization” of Criminal Law

Habeas Corpus (ရှေ့တော်သွင်း စာချန်တော် အမိန့် / ရုံးထုတ်မိန့်)

Certification

Cooperative Arrangements

# Challenges in Balancing Powers

Jurisdictional Overlap (Concurrent Jurisdiction/ Preemption Issues)

Varying Standards of Interpretation (Diverse legal Interpretations, Federal Supremacy and State Rights)

Judicial Independence

Cooperation

Modern Issues

# Myanmar's Potential Judicial Structure

Balance centralized judicial oversight with the autonomy of regional (state or provincial) courts

2008 Constitution -a centralized judicial system

- Limited Regional Autonomy (Limits Judicial authority)
- Limited judicial Independence
- Restricted Role of the Constitutional Tribunal
- Ethnic and Cultural Representation Gaps

# Myanmar's Potential Judicial Structure

To enhance Myanmar's judicial system in a potential federal structure

- ❖ promote regional autonomy
- ❖ Ensuring judicial independence (establishing transparent and merit-based appointment processes for judges)
- ❖ Increasing ethnic representation in the judiciary
- ❖ providing for the use of local languages in court proceedings
- ❖ creating a more equitable and effective legal framework

# Simple Formula for Judicial Balance

Clear Jurisdiction + Independent Appointment + Dispute Mechanism + Minority Protection = Federal Judicial Balance

**Noted - Ambiguity in jurisdiction = imbalance of power**

# Why judicial independence is important in Federalism

Balances Power (အာဏာ ထိန်းညှိပေး)

Protects Minority Rights (လူနည်းစုအခွင့်အရေးများကို ကာကွယ်ပေး)

Upholds Rule of Law (တရားဥပဒေစိုးမိုးရေးကို လက်ကိုင်ပြုသည်။)

Ensures Legal Uniformity (ဥပဒေဆိုင်ရာ ညီညွတ်မှုကို သေချာစေ။)

Builds Public Trust (အများပြည်သူ ယုံကြည်မှု ကို တည်ဆောက်ပေး)

# How does judicial independence contribute to balanced power in federal systems?

Impartial Conflict Resolution ဘက်လိုက်မှုကင်းသော ပဋိပက္ခဖြေရှင်းခြင်း

Protecting State Autonomy ပြည်နယ် ကိုယ်ပိုင်အုပ်ချုပ်ခွင့်ကို ကာကွယ်ပေး

Uniform Application of Law ဥပဒေကို အသုံးပြု မှု တပြေးညီဖြစ်စေ

Safeguarding Minority Rights လူနည်းစုအခွင့်အရေးများကို ကာကွယ်ထိန်းသိမ်းစောင့်ရှောက်ပေး

Enhancing Public Trust အများပြည်သူ ယုံကြည်မှု တိုး တက်စေ

# The Importance of Judicial Independence in Federalism (ဖက်ဒရယ်စနစ်တွင် တရားစီရင်ရေးဆိုင်ရာ လွတ်လပ်ရေး၏ အရေးပါမှု)



**Protection of Federalism Principles** (ပြည်ထောင်စု/ဖက်ဒရယ် မူသဘောတရားများကို ကာကွယ်ပေး)



**Safeguarding Rights and Liberties** (လွတ်လပ်မှုများ နှင့် ရပိုင်ခွင့်များကို ကာကွယ် ထိန်းသိမ်းစောင့်ရှောက်ပေး)



**Conflict Resolution** (ပဋိပက္ခ ဖြေရှင်းပေး)



**Promoting Accountability and Transparency** (ပွင့်လင်းမြင်သာမှုနှင့် တာဝန်ခံမှု ကို မြှင့်တင်ပေး)



**Operates free from external pressures** (ပြင်ပ ဖိအားများမှ လွတ်လပ်စွာ ဆောင်ရွက်)

# What is Judicial Independence?

(တရားစီရင်ရေး လွတ်လပ်မှုဆိုတာ ဘာလဲ။)

- ❖ Independent from other branches of government (အခြားအစိုးရအဖွဲ့အစည်းများ), such as the executive (အုပ်ချုပ်ရေး) and legislative (ဥပဒေပြုရေး) branches, as well as from external influences (ပြင်ပဩဇာ လွှမ်းမိုးမှုများ)
  - ❖ Courts should not be subject to improper influence (မလျော်ဩဇာလွှမ်းမိုးခြင်း) from the other branches of government or from private (ပုဂ္ဂိုလ်ရေး) or partisan (ပါတီ) interests (အကျိုးစီးပွားများ)
  - ❖ Impartial (သမာသမတ်ကျ/ ဘက်လိုက်မှုကင်း)
  - ❖ Perform judicial functions without fear or bias (ဘက်လိုက်)
- \*\*\* (Sec 19 (a) of the 2008 Constitution/ Article 1 of the UN Basic Principle/ Article 14 of the ICCPR)

# What do we mean by “Independence” ? (“လွတ်လပ်မှု” ဆိုတာ ဘာကို ဆိုလိုတာလဲ။)

## Two aspects:

- Independence of *individual* judges (တရားသူကြီးတစ်ဦးချင်းဆီ၏ လွတ်လပ်မှု)
- Independence of the court as *an institution* (အဖွဲ့အစည်းတစ်ခုအနေနဲ့ တရားရုံး၏ လွတ်လပ်မှု)

## Independence from What?

## What other branches of government?

- Political parties? (နိုင်ငံရေးပါတီ)
- Monetary interests? (ငွေကြေးအကျိုးခံစားခွင့်များ)
- Military? (စစ်တပ်)
- Personal ties (family, friends)? (ပုဂ္ဂိုလ်ရေးပတ်သက်မှုများ)
- Ethnic or religious interests? (တိုင်းရင်းသားလူမျိုးရေး သို့မဟုတ် ဘာသာရေးအကျိုးစီးပွားများ)

# Standards of Judicial Independence

Standards on judicial independence often emphasize key aspect such as:

- Appointment and selection process (ရာထူး ခန့်အပ်ခြင်းနှင့် ရွေးချယ်ခြင်းလုပ်ငန်းစဉ်)
- Security of tenure (ရာထူးသက်တမ်း လုံခြုံရေး)
- Remuneration (လုပ်ခ/လစာ/ ခံစားခွင့်)
- Removal (ရာထူးမှ ထုတ်ပယ်ခြင်း)

Design choices for all of the above should account for and separation of powers (အာဏာပိုင်းခြားခွဲဝေခြင်း)




# United States

- ❖ federal judges are appointed by the **President** and confirmed by the **Senate** (အထက်လွတ်တော်/ဥပဒေပြုအဖွဲ့) - This process includes scrutiny of qualifications and background
- ❖ Lifetime Tenure- make decisions free from political pressure.
- ❖ Judicial Review (တရားစီရင်ရေးဆိုင်ရာ ပြန်လည်သုံးသပ်မှု) - laws or executive actions (ဥပဒေများ (သို့) အုပ်ချုပ်ရေး၏ လုပ်ဆောင်မှုများ) that violate (ချိုးဖောက်) the Constitution



# Germany

- ❖ Federal Constitutional Court
  - ❖ Appointment Process- (Judges on the Federal Constitutional Court are appointed by a combination of federal and state representatives)
  - ❖ Financial Independence – (The judiciary's budget is separate from the executive and legislative branches)
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**India**

- ❖ Judicial Appointments (by the President based on recommendations from a collegium of senior judges  
အတွေ့အကြုံ ရင့်ကျက် သော စီနီယာ/ ဝါရင့် တရားသူကြီးများ အဖွဲ့)
- ❖ Public Interest Litigation (PIL) - (encourages Public Interest Litigation/ This practice enhances access to justice and demonstrates the judiciary's role in upholding rights)
- ❖ Judicial Review -The Supreme Court of India has the power to review laws and executive actions for constitutionality, serving as a crucial check on government power and protecting citizens' rights



# Enhancement of Judicial Independent/ Impartiality

Strengthen  
justice  
system/ fair  
trial  
(မျှတသော  
တရားစီရင်ရေး)

Guaranteed  
of people  
rights

Improve  
our  
democracy  
policy

Prevent  
arbitrary &  
corruption  
actions  
(executive,  
legislature  
authorities)

# Mechanism for Ensuring Judicial Independence

Constitutional Provisions

Judicial Review

Judicial Councils and Commissions

Financial Independence

Ethical Standards and Conduct Codes

Public Access and Transparency

Training and Education

**Any  
questions**



# Next- Discussion Time

