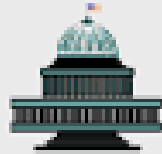


Federal Government



State Government

Balancing Judicial Powers Between Federal and State Levels

Dr Daisy



Structure of the Three Days Lecture

Day 1- The Concept of Judicial Federalism

Day 2 - Balancing Judicial Powers
Between Federal and State Levels

Day 3 - The Importance of Judicial
Independence in Federalism

Outlines (Day 2)

Session 1 – Lecture (1 hour and 45 Minutes)

- Division of Judicial Powers
- Challenges in Balancing Powers
- Myanmar's Potential Judicial Structure

Session 2

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



Federal Judicial Systems

- ❖ Several types of federal judicial systems
- ❖ each with its own structure, balance of power, and mechanisms for handling the division of authority between national and subnational courts.
- ❖ The organization and interaction between federal and state courts differ based on each country's constitution and political needs



Continue...

Dual Federal Judicial System (the federal and state judicial systems operate independently of each other, and each has its own set of courts with distinct jurisdiction e.g., US, Australia)

Integrated Federal Judicial System (there is a unified judicial system where national and state courts work closely together e.g., Germany)

Coordinative Federal Judicial System (both the national and subnational courts have their own jurisdiction, but there is more coordination and overlap between the two systems e.g., Canada, Switzerland)

Continue...

Asymmetric Federal Judicial System (certain states or regions may have more judicial autonomy than others e.g., Spain, Russia)

Decentralized Federal Judicial System (subnational courts have significant autonomy and independence, and the national courts have limited power to intervene in state judicial matters e.g., Belgium)

**Hierarchy of
laws in
Federalism**

state law

state constitution

federal law

federal constitution

Legal Systems that Apply in Federal Jurisdictions

| Legal System | Description | Federal Countries |
|-----------------------------|--|--|
| Common Law System | Based on judicial precedents; federal and state courts. | United States, Canada, Australia |
| Civil Law System | Based on codified laws and legal codes. | Germany, Switzerland, Mexico, Argentina |
| Mixed Legal System | Combines elements of common, civil, customary, or religious law. | Canada (Quebec), South Africa, India, Nigeria |
| Religious Law System | Religious law applied in specific areas or for personal matters. | Nigeria, Malaysia, Pakistan |
| Customary Law System | Customary law coexists with formal courts, often for indigenous matters. | Canada (First Nations), Australia (Aboriginal law) |

Balancing Judicial Powers Between Federal and State Levels in Federal Systems

Through Constitutional Design

- ❑ Distributing Jurisdiction
- ❑ Ensuring Hierarchical Appeals, and
- ❑ Preventing dominance by either level

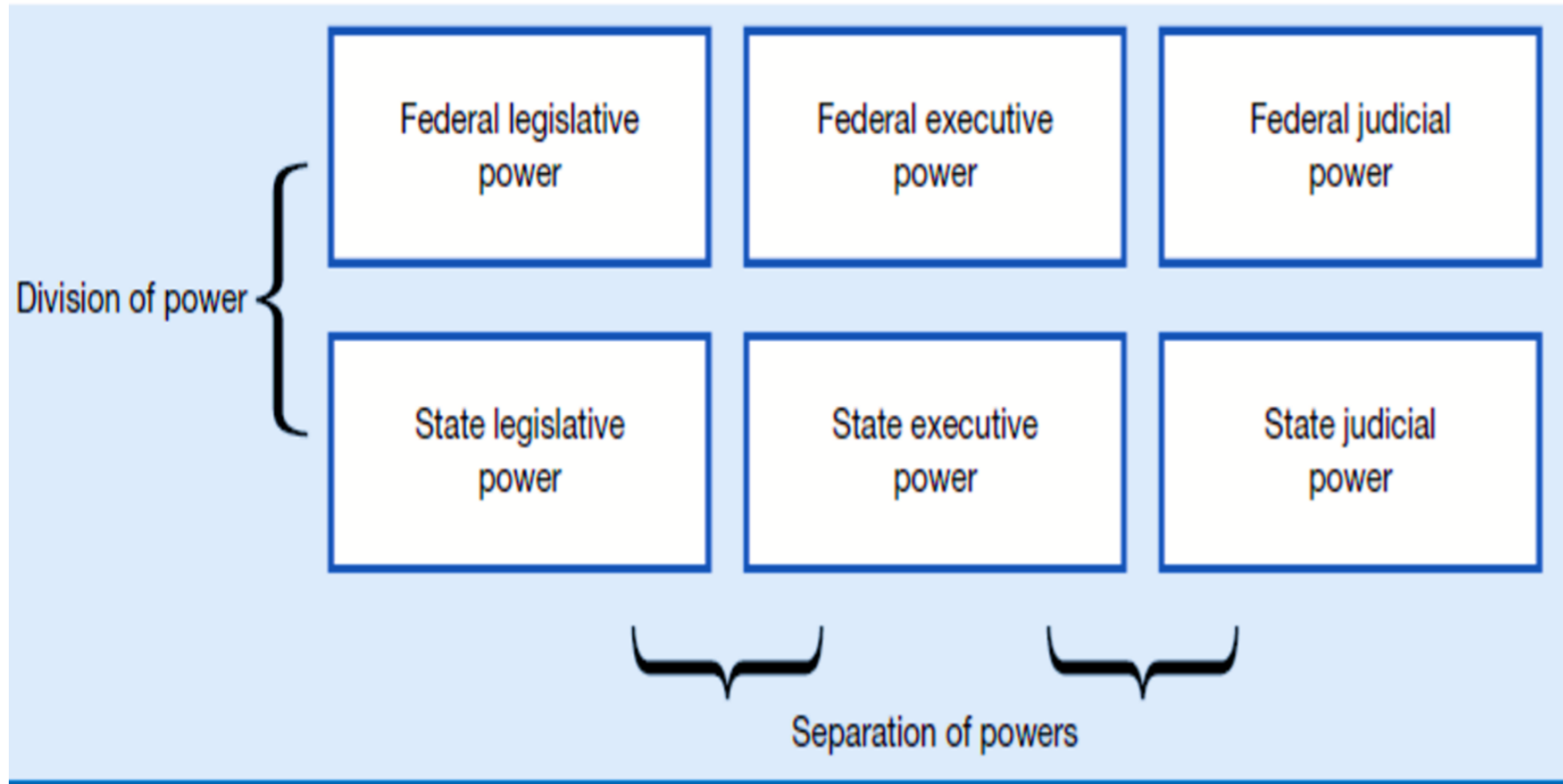
- ✓ **Dual Court System** e.g. **the US** - separate federal and state courts
- ✓ **Single-Integrated Court Systems** e.g. **India and Malaysia**- **one hierarchy** handles both federal and state matters **under a Supreme Court**



❖ What is Separation of Powers?



❖ What is Division of Powers?



Practice of Separation of Powers under 1947 Constitution of the Union of Myanmar

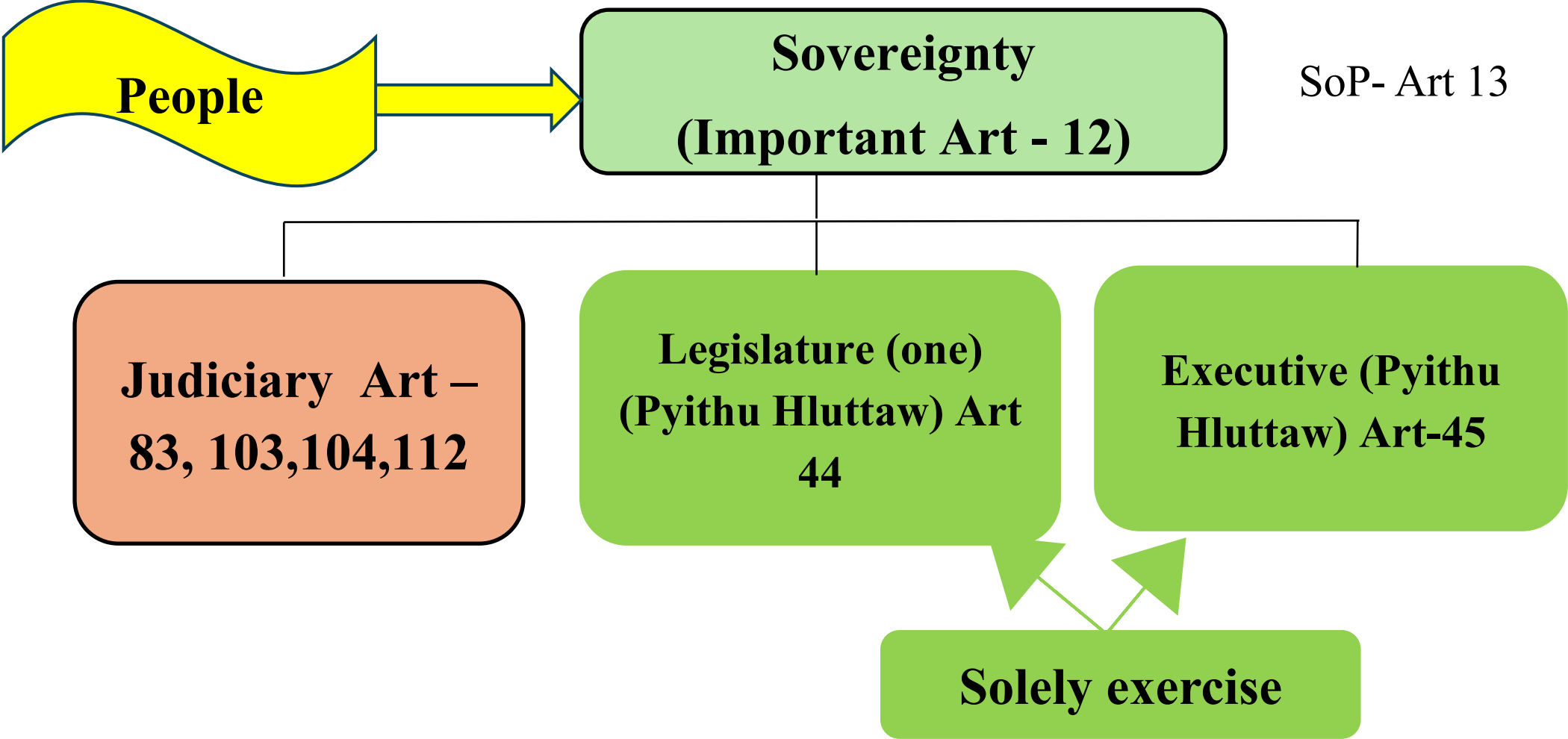
Sovereignty

Judiciary
(Independent) Sec
141, 152

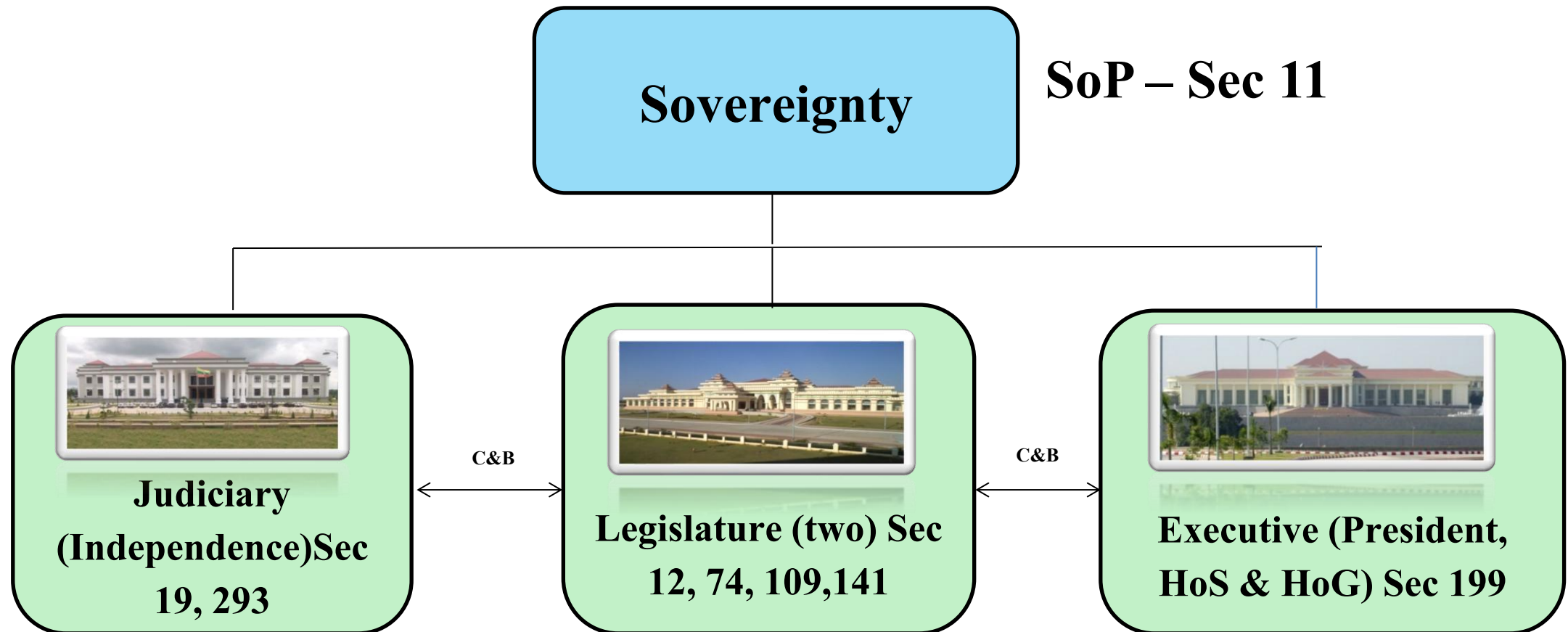
Legislature (two)
(Union
Parliament) Sec-
46, 56, 65, 80, 115

Executive
(President, HoS /
Prime Minister,
HoG) Sec-59, 56,
114

Practice of Separation of Powers under 1974 Constitution of the Socialist Republic of the Union of Myanmar



Practice of Separation of Powers under 2008 Constitution of the Republic of the Union of Myanmar



Division of Judicial Powers

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

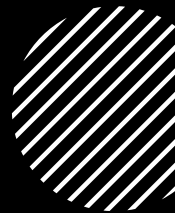
United States - judicial powers are distributed between federal courts and state courts, with each having its own jurisdiction

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

Continue....

United States

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

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

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.

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

Continue....

❖ 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..

Continue....



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)

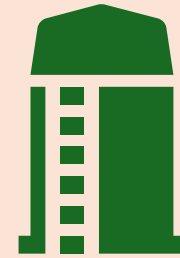
State Judicial Power – (Jurisdiction over State Laws, Interpretation of State Constitutions, Concurrent Jurisdiction, Judicial Autonomy)

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

Continue..

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



Next- Discussion Time

