

Introduction to the Concept of Judicial Independence

Dr Ying



What does "judicial independence" means?

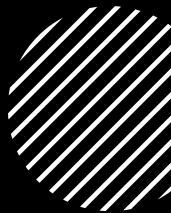
Can you give an example of non-independence of the judicial system?

How has Myanmar judicial system been non- independence?





Content



Development



Definition & Purpose



Core Principles



Global Practices

Historical Development



Historical Development- Cont



United States



1787 – U.S. Constitution: Article III established a separate judiciary. Judges were given life tenure “during good Behaviour” and protection against salary reduction—core pillars of independence.



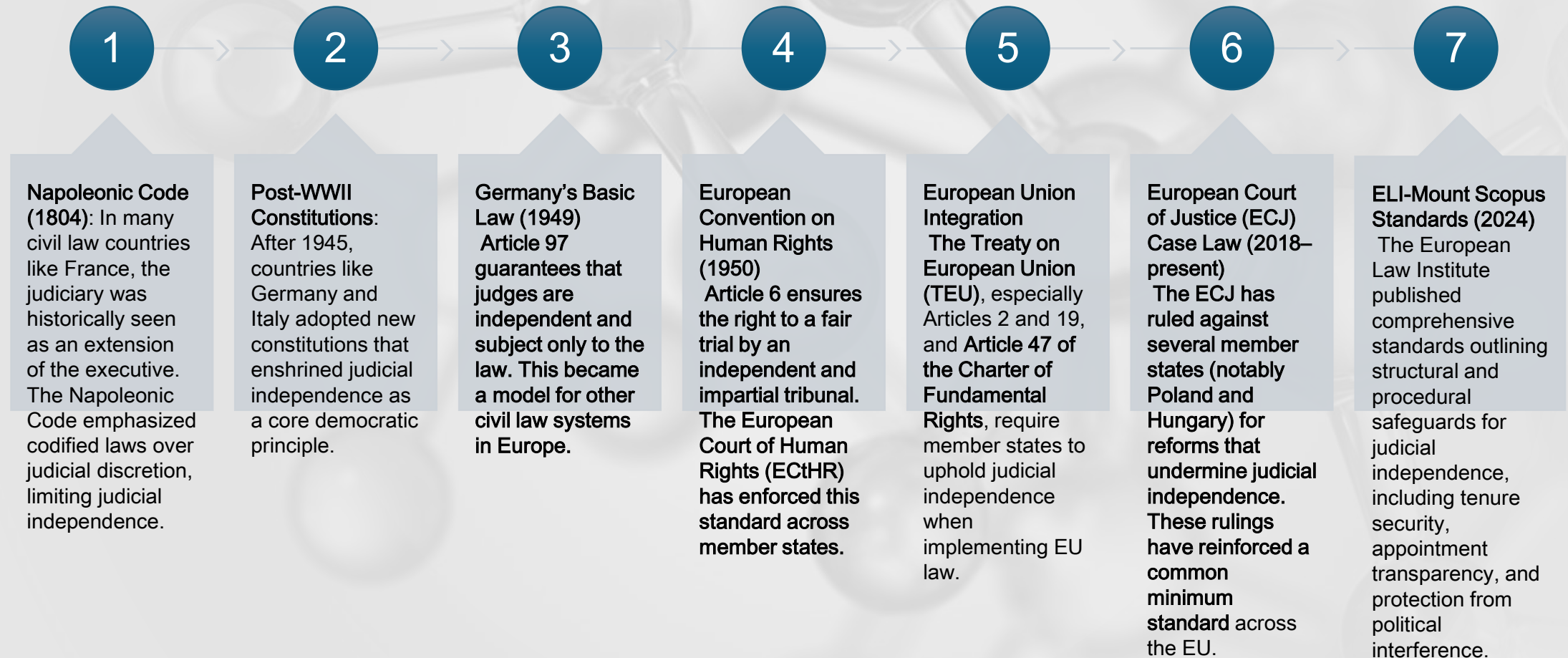
1803 – Marbury v. Madison: Cemented the judiciary’s power of judicial review, allowing courts to strike down unconstitutional laws.



20th Century: The U.S. Supreme Court increasingly asserted its independence in landmark civil rights and separation-of-powers cases.

Historical development Cont.

European Civil Law System Countries



Global development

Post-1945 – Rise of Constitutionalism: After WWII, many nations adopted written constitutions with explicit protections for judicial independence, inspired by U.S. and UK models.

1945

UN Basic Principles on the Independence of the Judiciary: A global standard-setting document affirming that judicial independence is essential to the rule of law.

1990

1948

Universal Declaration of Human Rights: Article 10 affirms the right to a fair and public hearing by an independent tribunal.

21st Century

Countries like South Africa, India, Germany, and Canada have developed robust constitutional courts. However, some democracies have faced setbacks due to political interference.


Concept

“The ability of courts to decide cases free from external pressures, particularly from the political branches of government” (David J. Barron)

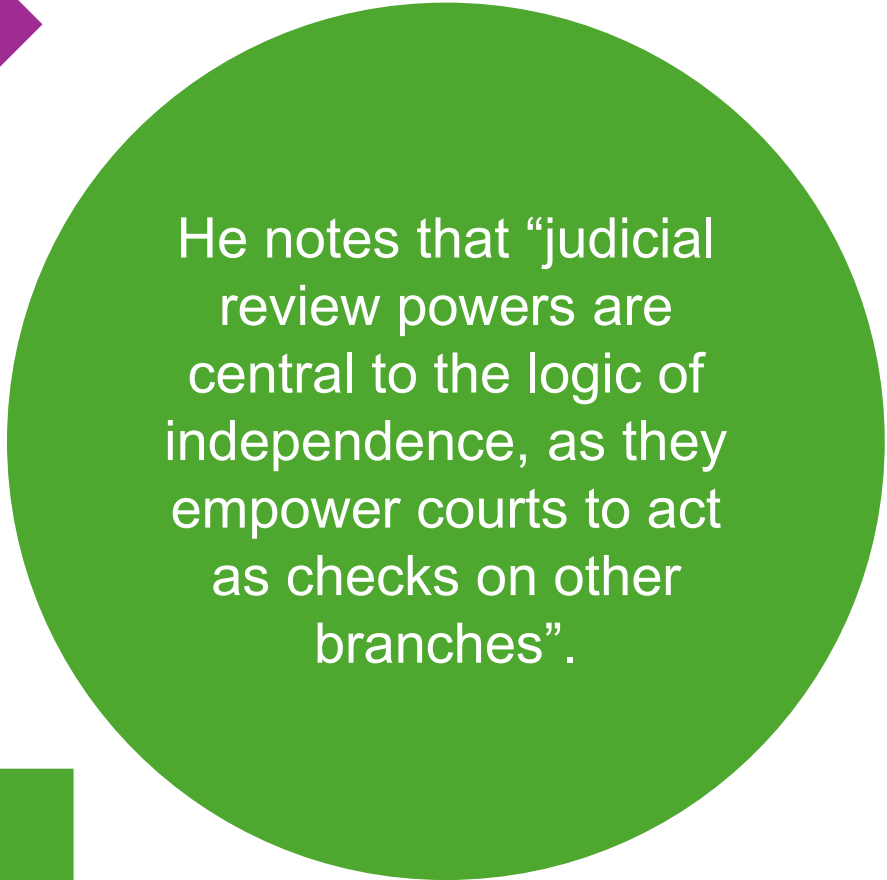


He emphasizes that independence is not just structural but also cultural, requiring public trust and institutional norms.

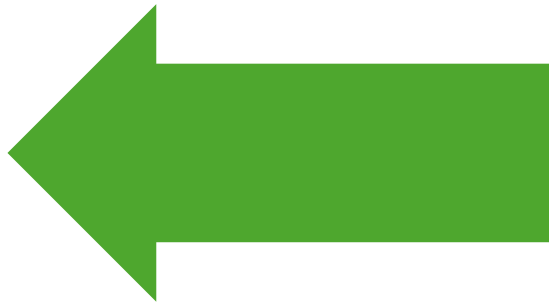
Concept



"Judicial independence involves both de jure (legal guarantees like tenure and salary protection) and de facto (actual freedom from interference) dimensions" (Brad Epperly).



He notes that "judicial review powers are central to the logic of independence, as they empower courts to act as checks on other branches".



“judicial independence is essential not only for fair adjudication but also for maintaining democratic legitimacy”
(Shihimon Shetreet and Hiram Chodosh)

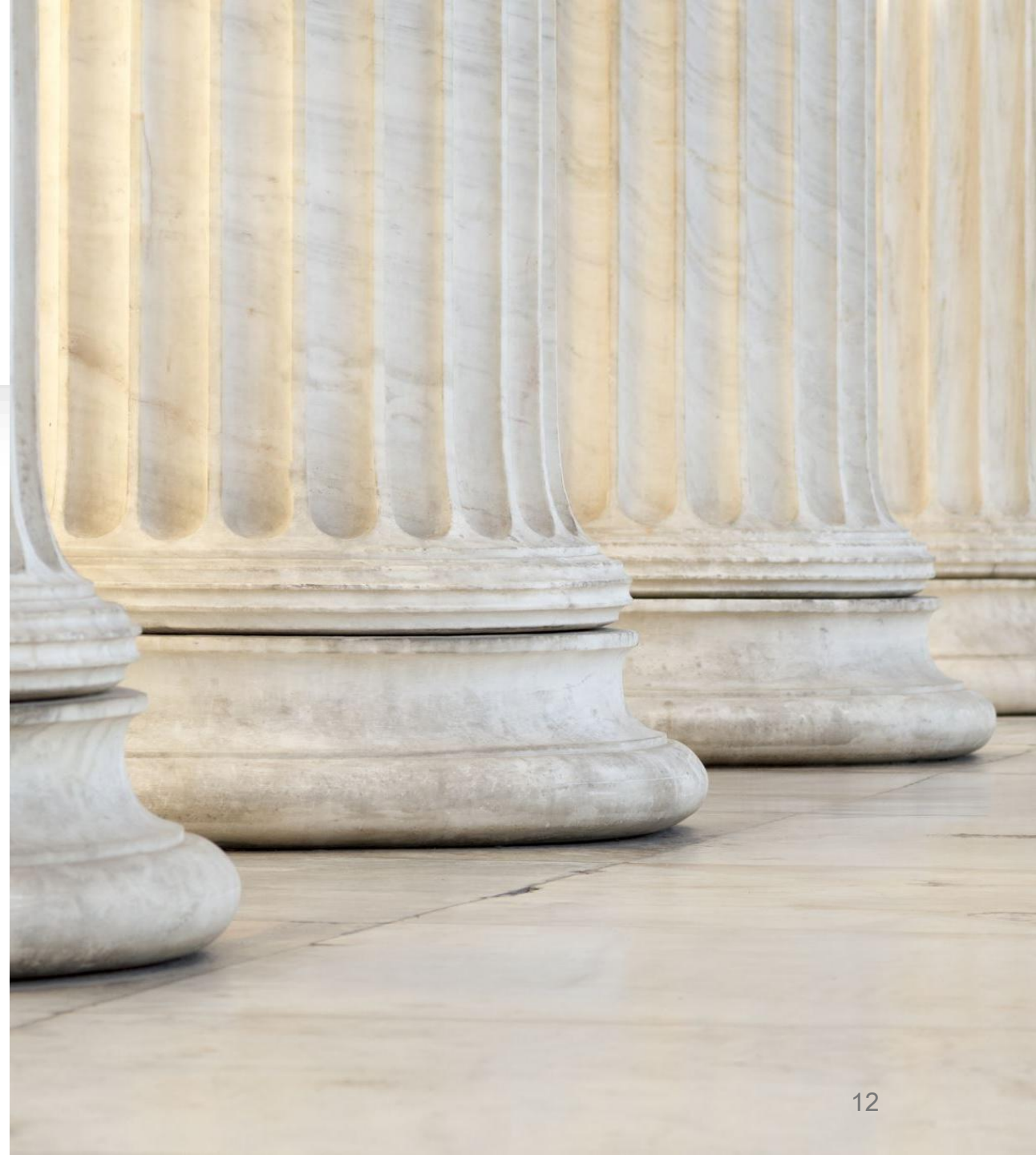
It explained how independence is shaped by constitutional design, political culture, and international norms.

Basic Principles on the Independence of the Judiciary (UN, 1985)

1. Independence from the Executive and Legislature
2. Security of Tenure
3. Adequate Remuneration
4. Institutional Independence
5. Impartiality and Integrity
6. Transparent and Merit-Based Appointments
7. Freedom of Expression and Association (within limits)

Independence from the Executive and Legislature

- Judges must be free from influence by other branches of government.
- **Example:** In the UK, the *Constitutional Reform Act 2005* separated the judiciary from the House of Lords, creating the independent UK Supreme Court.



Security of Tenure



Judges should not be arbitrarily removed from office. They must serve until retirement age or until they resign or are removed for proven misconduct.



Example: U.S. federal judges are appointed for life under Article III of the Constitution, ensuring they can make decisions without fear of dismissal.



Any challenges during Trump Administration?

Adequate Remuneration



Judges must receive fair salaries and benefits to prevent corruption and maintain dignity.



Example: In Canada, the *Judicial Compensation and Benefits Commission* reviews judges' pay to ensure it remains independent of political manipulation.



Let's find "Salary and income of Canadian Judges"

Institutional Independence

Courts must control their own procedures, administration, and budget to avoid external interference.

Example: Germany's Federal Constitutional Court has its own administrative autonomy, including control over its docket and internal operations.

Impartiality and Integrity

- Judges must be neutral and base decisions solely on law and evidence.
- **Example:** In South Africa, the Constitutional Court has ruled against the government in several high-profile cases, reinforcing its impartial stance.



Transparent and Merit-Based Appointments

- Judicial appointments should be based on qualifications, not political loyalty.
- **Example:** The UK's *Judicial Appointments Commission* selects judges through an open and merit-based process, reducing political influence.



Freedom of Expression and Association (within limits)



Judges can express opinions and join associations, provided it doesn't compromise their impartiality.



Example: Judges in many democracies are members of judicial associations that advocate for legal reform, but they refrain from partisan political activity.

Myanmar



The **Supreme Court of the Union of Myanmar** has outlined its principles of judicial independence in a document titled the *Code of Judicial Ethics for Myanmar Judges*.



This code, introduced by the Union Chief Justice, emphasizes the foundational values judges must uphold to maintain public trust and the rule of law.



The code was developed with support from international legal experts and organizations such as the UNDP and the International Commission of Jurists, reflecting a commitment to aligning Myanmar's judiciary with global standards.

Key principles Code of Judicial Ethics for Myanmar Judges.

- **Independence:** Judges must remain free from external pressures and uphold impartiality in both individual decisions and institutional conduct.
- **Equality:** All individuals are entitled to equal treatment under the law.
- **Competency and Diligence:** Judges are expected to demonstrate legal expertise and a strong work ethic.
- **Impartiality:** Decisions must be made without bias or favoritism.
- **Integrity and Propriety:** Judges must act with honesty and maintain high moral standards, both in and out of court.
- **Your Opinion?**



Judicial Independence or Judicial Illusion?

- Activity for Day 2 : Argue for or against
 - "An independent judiciary means judges should NEVER face consequences for their rulings!"
 - "Democracy can survive without judicial independence!"

The Role of Judicial Independence in Building a Democratic Nation

Dr Ying



Elements of Building a Democratic Nation

Building a **democratic country** requires several fundamental elements that ensure fair governance, citizen participation, and protection of rights. Key requirements are:

1. **Free and Fair Elections**
2. **Rule of Law**
3. **Separation of Powers**
4. **Protection of Human Rights**
5. **Active Civil Society**
6. **Transparent and Accountable Governance**
7. **Political Pluralism**
8. **Economic Stability and Social Welfare**

Free and Fair Election and Judicial Independence

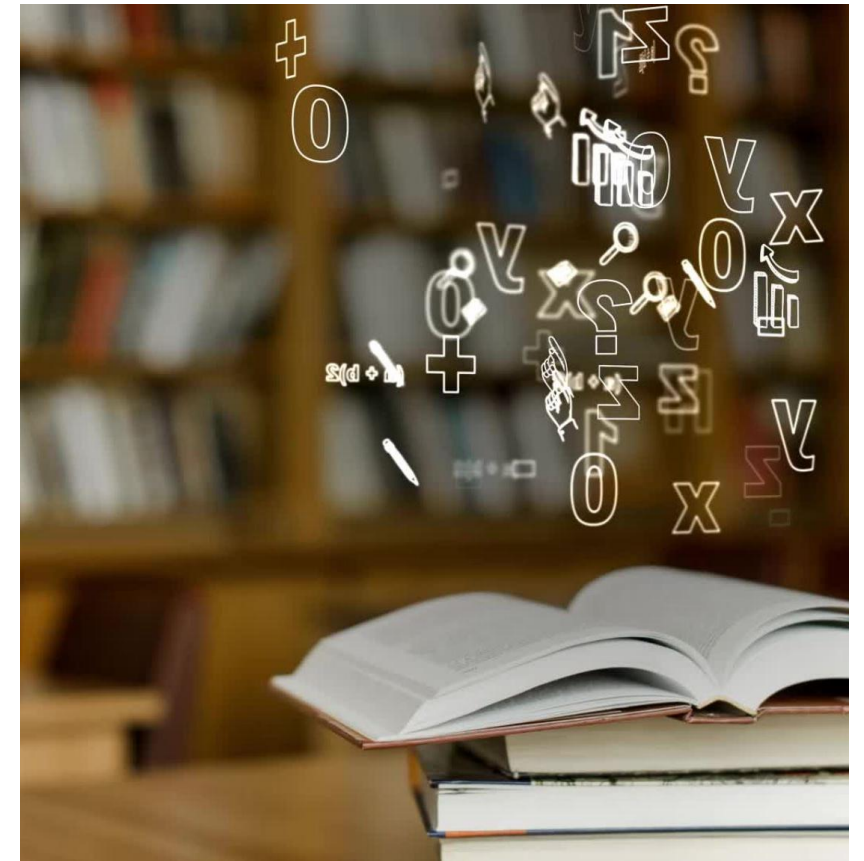


Judicial independence plays a crucial role in ensuring free and fair elections by safeguarding electoral integrity, protecting democratic principles, and preventing political interference. Here's how:

- **Upholding Electoral Laws**
- **Protecting Voter Rights**
- **Resolving Election Disputes**
- **Preventing Government Overreach**
- **Strengthening Public Trust**

Judicial Independence and Rule of Law

- The **Rule of Law** is a fundamental principle that ensures laws are applied fairly and consistently to all individuals, regardless of status or power. It guarantees that no one is above the law and that legal processes are transparent and just.
- Key aspects include:
 - **Equality Before the Law** – Everyone is subject to the same legal standards.
 - **Legal Certainty** – Laws must be clear, publicized, and stable.
 - **Accountability** – Governments and officials must operate within legal frameworks.
 - **Access to Justice** – Citizens must have the right to seek legal remedies.
- **Judicial independence is essential for upholding the rule of law** because it ensures that legal decisions are made based on established laws rather than external influences like political pressure or personal interests.





Seperation of Power and Judicial Independence

- **Judicial independence is essential for maintaining the separation of powers** because it ensures that the judiciary functions autonomously, without interference from the executive or legislative branches. How it contributes:
- **Preventing Executive Overreach**
- **Holding the Legislature Accountable**
- **Ensuring Checks and Balances**
 - The judiciary acts as a **neutral arbitrator** between the executive and legislative branches. It ensures that each branch operates within its constitutional limits, preventing power concentration in any single entity.

Protection of Human Rights and Judicial Independence



Judicial independence is a key safeguard for human rights, ensuring that courts can uphold legal protections without political or external interference. How it contributes:



Ensuring Fair Trials and Due Process



Preventing Government violation of fundamental Rights through unlawful policies or actions.



Upholding Constitutional and International Human Rights Standards and Safeguarding Minority and Vulnerable Groups

Active Civil Society and Judicial Independence

Judicial independence is essential for protecting an active society by ensuring that legal systems function fairly, uphold rights, and prevent government overreach. How it contributes:

- **Safeguarding Civil Liberties** allowing citizens to engage in activism, protests, and political participation without fear of repression.
- **Preventing Government Abuse** ensuring that laws and policies do not suppress civic engagement or unfairly target activists, journalists, or opposition groups.



Good Governance and Judicial Independence



JUDICIAL INDEPENDENCE IS A CORNERSTONE OF TRANSPARENT AND ACCOUNTABLE GOVERNANCE BECAUSE IT ENSURES THAT LEGAL DECISIONS ARE MADE BASED ON LAW RATHER THAN POLITICAL INFLUENCE OR CORRUPTION. HOW IT CONTRIBUTES:



ENFORCING LEGAL ACCOUNTABILITY



PREVENTING CORRUPTION AND POLITICAL MANIPULATION



ENSURING TRANSPARENCY IN DECISION-MAKING



STRENGTHENING DEMOCRATIC INSTITUTIONS

Political Pluralism and Judicial Independence



Judicial independence plays a vital role in supporting political pluralism by ensuring that diverse political voices and ideologies can coexist within a democratic framework. How it contributes:

30



Protecting Political Diversity

An independent judiciary ensures that all political groups, regardless of ideology, have equal legal protections. This prevents dominant parties from suppressing opposition voices.



Upholding Constitutional Rights

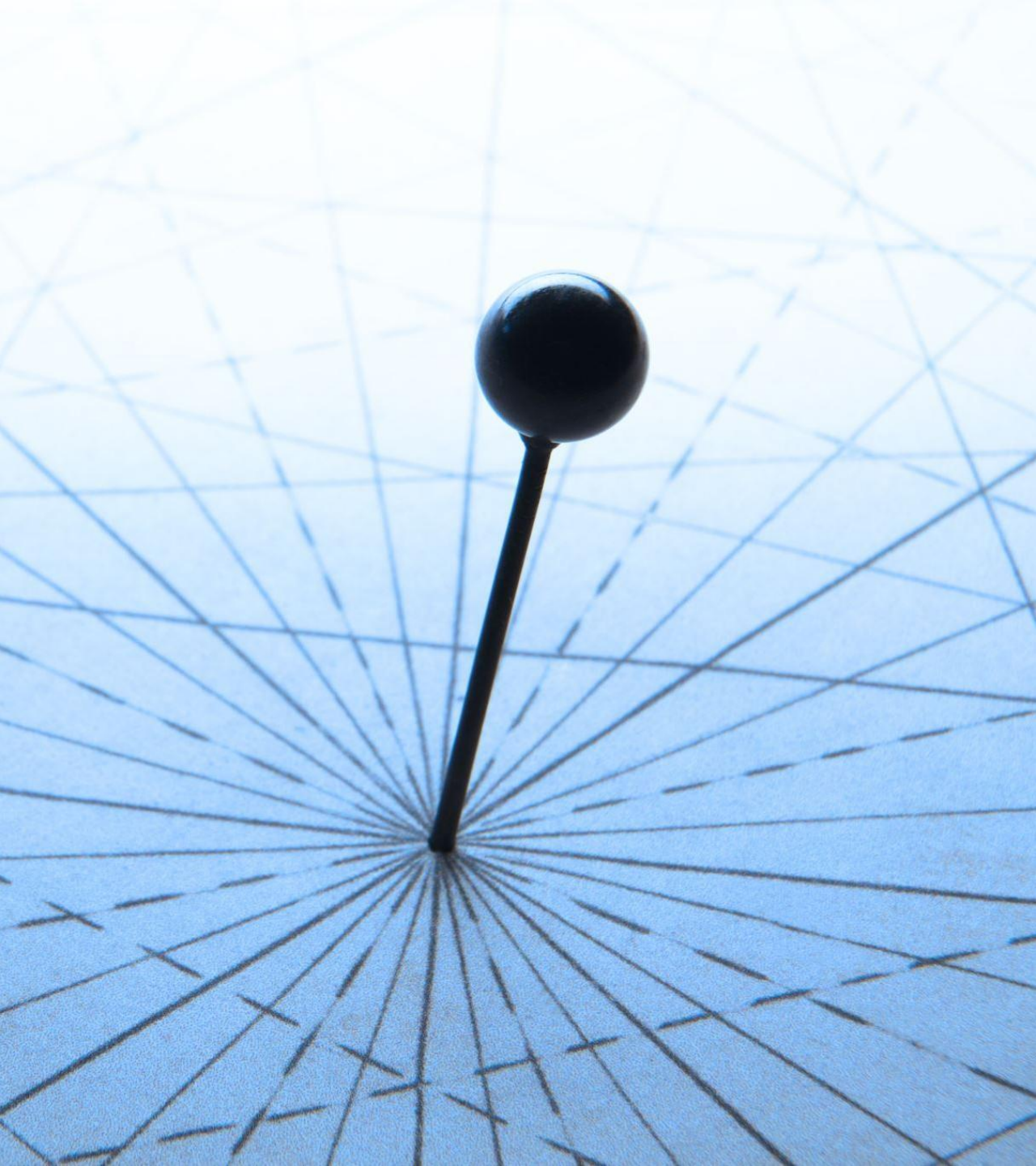
An independence judiciary enforces freedom of speech, assembly, and political participation, allowing citizens to engage in political discourse without fear of persecution.



Economic and Social Welfare and Judicial Independence

Judicial independence plays a crucial role in ensuring both economic stability and social welfare by fostering a fair legal environment, protecting rights, and maintaining accountability. How it contributes:

- **1. Economic Stability**
 - **Protecting Property Rights and Contract**
 - **Encouraging Foreign Investment**
 - **Preventing Corruption**
 - **Strengthening Business Confidence**
- **2. Social Welfare**
 - **Protecting Public Services** – Courts can challenge policies that undermine healthcare, education, and social security.



Index of Rule of Law

- <https://ourworldindata.org/grapher/judicial-constraints-on-the-executive-index?mapSelect=~MMR>
- <https://worldjusticeproject.org/rule-of-law-index/global/2024/Myanmar/Criminal%20Justice/>



Identify Challenges and Solutions

Activity: Discussion on

- What are the unique obstacles to establish an independence judicial system in Myanmar?
- What can be the solution for the challenges?

What Next?



Advocacy for Judicial Independence in Myanmar

- Public Awareness Campaigns
- Legal Education and Training
- Strategic Litigation
- Engagement with International Organizations
- Community-Based Legal Support



Judicial Reform Initiatives

- Strengthening Legal Institutions
- Policy Development for Rule of Law
- Capacity Building for Legal Professionals
- Collaboration with Civil Society

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