



# Constitutional Federal Analysis of National Equality in Education:

Exploring Access to Equal Higher Education in Myanmar



An alumni-led CFI research project from 3<sup>rd</sup> July to 31 October 2023

# Constitutional Federal Analysis of National Equality in Education: Exploring Access to Equal Higher Education in Myanmar

## **Copyrights**

The authors, along with the organization and donor that enabled this research, reserve the right to associate their names with this document in the future. You are free to share and distribute as long as you give appropriate reference to the source (and potentially authors in the future), but you may not use it for commercial purposes or make any changes to the work.

## Preface

The research papers in this publication are written by participants of the Constitutional Federalism Institutes Mini-research programme from July to October 2023. All researchers are alumni from the Constitutional Federalism Institutes academic courses including the Master in Constitutional Federalism, the Diploma Course in Constitutional Law, and the training on 'Federalism, Human Rights and Minorities Protection'. The five-person research groups were trained and supported by a Professor in Law with extensive lecturing and research experience, and has been reviewed by the Constitutional Federalism Institute's Senior Policy Advisor.

The three research publications provide the reader with valuable insights into key consideration on Myanmar's potential constitutional future, namely;

- Constitutional Design in Ethno-federalism: Examining the Relationship between Minority Rights, Self-Determination, and Political Stability
- Constitutional Federal Analysis of National Equality in Education: Exploring Access to Equal Higher Education in Myanmar
- The Consequences of Taxation Decentralization Among Intergovernmental Relations in Myanmar Federal System

# Constitutional Federal Analysis of National Equality in Education: Exploring Access to Equal Higher Education in Myanmar

## Abstract

Education holds both practical and intrinsic value for individuals and entire civilizations. In a federal country, it is widely accepted that all nations' access to education should be equal. The central government is responsible for providing access to equal education nationwide. No state should be left behind with access to education due to barriers such as educational policies and allocation of resources related to education, and the government must address these barriers. This paper aims to achieve access to equal higher education in Myanmar, exploring the federal system by studying the 2008 Constitution's barriers and national educational policies. This research applies a qualitative research methodology by using primary and secondary data review in related literature, collecting data for Myanmar's situation, and identifying the obstacles that cause inequality. This paper studies constitutions of other federal countries such as the United States, India and Canada and finds out how each nation in those countries has done to ensure access to equal education, and compares this study with the situation in Myanmar, the requirements and obstacles for access to higher education will be exposed. The key finding of this research is that the lack of educational power division, coupled with constitutional constraints and centralized laws and policies, poses significant challenges to achieving national equality in higher education in Myanmar. Considering these findings, the proposed solution is the inclusion of provisions for higher education within Myanmar's future federal Constitution. This step would help address the identified barriers and promote the autonomy of universities, ultimately fostering a more equitable educational landscape.

**Keywords** - Higher education, National Equality, Educational Division of Power, Federal Constitution, University Autonomy

## 1. Introduction

Education is vital in enhancing living standards, upholding the rule of law, and promoting peace. The two main branches of education are the Department of Basic Education and the Department of Higher Education, which includes Universities, Degree Colleges, and Institutes in Myanmar. The Central government ensures equal access to higher education, as stated in the Constitution. However, the Constitution can also hinder equal access to higher education nationally. In Myanmar, access to higher education is unequal due to insufficient provisions in constitution, prolonged military government, and centralized government traditions. Despite having three Constitutions since independence in 1948, there are inadequate provisions for education, and there needs to be more autonomy in Constituent units, which hinders the self-governance of universities and higher education institutions.

This research examines the constitutional framework and federal dynamics influencing the realization of national equality in education, specifically focusing on access to equal higher education in Myanmar. The country's educational landscape has been marked by disparities, particularly along regional and ethnic lines, which hinder social cohesion and sustainable development. This research aims to shed light on the constitutional provisions, policy gaps, and potential pathways to fostering an inclusive and equitable higher education system within the federal context of Myanmar. Through an interdisciplinary approach, the study will investigate the challenges faced and propose policy recommendations to advance the nation's commitment to educational equality and harmonious coexistence.

This research paper explores the main problem of inequality in access to higher education in Myanmar and finds the answer to the question, "**Why does inequality persist in national access to higher education in Myanmar?**". In order to understand the challenges of achieving national equal access to higher education in Myanmar, it is important to consider the need for authorization of educational power to constituent units and the barriers posed by the country's post-independence constitution. The centralized structure of government and education policies have also contributed to unequal access to higher education in the country. In addition, this research paper also to examine the educational reform of Myanmar and the inadequate provisions of the national equality in higher education. This paper also investigates the case study of the United States of America, the Republic of India and the Dominion of Canada on how to promote their national equality for equal access to higher education with federal systems and comparative studies of Myanmar's situation. Thus, this research paper

aims to analyze national equality in higher education in Myanmar by exploring constitutional federalism.

## **Research Question**

Why does inequality persist in national access to higher education in Myanmar?

## **Research Objectives**

- To analyze the deficiencies in the division of educational power within post-independence constitutions and how these constitutional barriers hinder equal access to higher education in Myanmar.
- To identify shortcomings in educational laws and policies due to the effect of centralized Constitutions and government structure of Myanmar and examine the educational reform and the exclusion of the point of national equality in higher education of Myanmar.
- To investigate the case study from the United States of America, the Republic of India and the Dominion of Canada on these federal systems promote national equality for equal access to higher education and comparative analysis to contextualize Myanmar's situation.

## **Research Methodology and Methods**

This research focuses on achieving equal access to higher education in Myanmar by exploring constitutional federalism, conducting qualitative data analysis through semi-structured interviews, and using primary and secondary data sources.

The data in this research was collected through primary and secondary sources. Primary data was gathered through semi-structured interviews conducted with a total of seven participants selected using the snowball sampling method. For clarity, the interview questions directed towards experts are provided in Appendix 1, while those tailored for students are included in Appendix 2. These interviews were conducted via the Zoom application. The research also involved Constitutions in Myanmar, other Federal States' Constitutions, relevant laws and policies, and a comprehensive review of secondary sources, such as academic articles, books, websites, and government reports.

Seven interviewees participated in this research. Approximately three experts and four university students familiar with federal education were selected from urban and rural regions to know the educational conditions they encountered. This research aims to achieve access to equal higher education in Myanmar, exploring Constitutional Federalism by studying the 2008 Constitution's barriers and centralized political government structure and policies. Students at universities were asked to evaluate inequality in access to higher education. Many different responses were gathered from the diverse regions they studied. In addition, interviews were conducted with two teachers and one expert who taught in higher education.

This paper used snowball sampling to gather information from students and experts regarding federal education. Among the expert interviewees, one professor and one lecturer teach in higher education and are currently involved in federal education. The last expert is a federal and constitutional law specialist serving as the department's Deputy Director. Three students currently participate in interim and federal education programs. One student interviewee worked as a Senior Assistant Teacher, and he is currently involved in federal education. The details on the educational backgrounds of the interviewees can be found in Appendix 3.

## **2. Literature Review**

The research begins with a comprehensive literature review, underscoring the significance of education as a means of achieving justice on an individual and societal level. Plato defined education as a means of achieving justice, encompassing both individual and social justice. In addition, Indira Gandhi defined *education* as a liberating force. In our age, it is also a democratizing force, cutting across the barriers of caste and class and smoothing out inequalities imposed by birth and other circumstances (Doss,2018). Higher education focuses on in-depth learning in specific fields of study, enabling individuals to develop expertise and advanced knowledge in their chosen areas (Meaning, Purpose & Objectives of Higher Education, Lisedu network). The University shall carry out the main objectives to produce well-trained university students for participation in the development of the country. It shall teach branches of studies conforming with the political, economic, and social system (The Role of the University Education in Myanmar,2020).

In addition, the educational power division plays a vital role in becoming a qualified higher education system. In federal countries like the United States, Switzerland, and India, the practice of division of power and educational power is vested in States' governments and

reduces centralized government structure (Ethnic Nationalities Affairs Center-ENAC, 2018). Myanmar is one of the South East Asia countries and influenced by centralized government structure and long-term dictatorship. According to Geddes, poor economic performance increases the likelihood of authoritarian and economic development related to higher education, and the authoritarians intentionally limit access to education (Geddes,1999).

The dictatorship governments limit access to education due to maintain their authoritarian powers. In Myanmar, the dictatorship intentionally decreases the quality of education and causes national inequality of access to higher education.

### **3. Analyzing Division of Educational Power and the Barriers of Myanmar's Constitutions After Independence**

In federal countries, there are at least two levels of government: central government and constituent unit government and the division of educational power is primarily vested in the constituent units. Division of educational power is vital in implementing national equal access to higher education. Higher education is essential for developing advanced knowledge, skills, and job prospects for people. It entails specialized academic and professional programs that lead to bachelor's, master's, and doctoral degrees. The power to provide higher education is primarily vested in states' governments, and the Universities have their autonomy. This session examines the division of educational power in Myanmar's Constitutions after independence. It highlights the centralized nature of the educational system and the lack of division of power, focusing on key constitutional provisions and historical developments.

#### **3.1. Division of Educational Power under Myanmar Constitutions After Independence**

After the independence of British rule in Myanmar in 1948, there are three Constitutions. The first one is the Constitution of the Union of Burma (Myanmar),1947; the second one is the Constitution of the Socialist Republic of the Union of Burma (Myanmar), 1974; and the third one is the Constitution of the Republic of the Union of Myanmar, 2008.

In 1948, after achieving independence from British Colonial rule, Myanmar faced the challenges of establishing its educational system and determining the division of educational power within the newly formed nation. However, Myanmar adopted a centralized educational



system, with the majority of educational power held by the central government initially and a lack of educational division of power.

In seeking to understand the contemporary role of higher education, a central premise is that, in many nations, universities are created, chartered, financed, and governed by the state. This means the state is intertwined with and – in some political systems – inseparable from higher education. Acknowledging the role of government and other institutions (i.e., the legal and executive branches of the state, regulatory entities, and institutions of national security), state-theoretical models have offered a holistic approach to studying the politics of higher education.

### **3.2. Analyzing the Division of Educational Power under the Constitution of the Union of Burma 1947**

The 1947 Constitution of the Union of Burma was the first constitution of Myanmar after independence, and compared with the later constitutions, it includes the initial features of federalism. Section 22 of this Constitution prescribed no discrimination concerning admission into State educational institutions (The Constitution of The Union of Burma,1947). The first constitution of Myanmar after independence was initially good before the Military took the power of the State.

According to interviewee DP, the educational policies were withdrawn due to the Military. According to interviewee P, the promotion of higher education is limited under military authority because they feared that if the number of educated people increased, their sovereignty would be lost. So, they limited equal access to higher education from 1962, and only the state capitals like Yangon and Mandalay have universities. In addition, compared with Yangon and Mandalay, Yangon has more infrastructure and educational resources than Mandalay. In 1974, the Military government enacted the Constitution of the Socialist Republic of the Union of Myanmar.

As per the analysis of the 1947 Constitution of the Union of Burma and the responses obtained from the interviewees, it was observed that the Constitution initially aimed at decentralizing educational power. However, these plans were eventually abandoned due to the military's seizure of power from the elected government.

### **3.4. Analyzing the Division of Educational Power under the Constitution of the Republic of the Union of Myanmar 2008**

After the 1988 nationwide protests and the cancellation of the 1990 election results, there was no constitution until the enactment of the 2008 constitution of the Republic of the Union of Myanmar. The 2008 Constitution of the Republic of the Union of Myanmar, section 22(c) and 366 outlines the promotion of socio-economic development, including education for less-developed national races. Every citizen has the right to education as defined by the Union and is free to conduct scientific research, explore science, and conduct research in other cultural fields under the provisions. These constitutional provisions are limited by the provisions and laws that must not contradict the Union provisions, and there needs to be more authority in higher education.

The 2008 Constitution grants the central government, including the Ministry of Education, significant authority over higher education institutions, curriculum development, and research centers. The central government is responsible for setting overall higher education policies. Over time, there were efforts to decentralize educational power and provide more autonomy to regions and states. The division of educational power also mirrored the ethnic and political divisions within the country. Conflicts between the central government and ethnic minority groups, particularly in border regions, often extended to education-related issues. Special provisions were included in the 2008 Constitution to grant certain privileges and autonomy to ethnic areas, which encompassed education, among other areas. However, the extent to which these provisions were implemented and the actual distribution of educational power in practice could vary.

According to all interviewees, Myanmar has no educational division of power. As outlined in the 2008 Constitution of the Republic of the Union of Myanmar, the division of higher education in Myanmar primarily emphasized central government control over higher education policies and institutions. The 2008 Constitution establishes a centralized approach to higher educational governance in Myanmar, with the central government having substantial control over policies, funding, and coordination. The 2008 Constitution of the Republic of the Union of Myanmar has led to some challenges, including disparities in resource allocation and university autonomy. Only the central government has the authority to manage and control the Universities. According to interviewee P, the Ministry of Education (MOE) controls the educational staff transfer. The whole universities of the Myanmar curriculum are only drawn at Yangon University. Lack of the educational division of power, the state government has no

authority to manage higher education, and the University has no autonomy. According to interviewee L, the Department of Higher Education (DHE) controlled all Universities in Myanmar, and she faced the challenges of transportation difficulties, the time framework related to scholarship opportunities, the communication gap, and others. For example, Yangon and Mandalay University students have more opportunities to get scholarships than state university students. Because the government's scholarship declarations are late to reach the State University, the students have no sufficient time to prepare for application due to the deadline. In addition, the experiences of the expert interviewees and the lectures from the Yangon and Mandalay Universities are more qualified because they keep in touch with foreign teachers, and the capacity-building courses are more for them.

Analyzing the 2008 Constitution of the Republic of the Union of Myanmar and the interview question about the barriers and challenges to achieving equal access to higher education in Myanmar reveals a need for educational division power. The lack of division of educational power and insufficient grants in the Constitution are significant obstacles to attaining national equal access to higher education in Myanmar.

From the analysis of the educational division of power related to Myanmar's constitutions after independence, it has a centralized system and lack of division of educational power with the primary data from interviewees and literature. Regarding the Division of Educational Power in Myanmar's Constitutions after Independence (1948 - 2008), it is clear that Myanmar initially adopted a centralized educational system with the central government holding the majority of educational power. So, to achieve national equal access to higher education in Myanmar, there must be an educational division of power, and it must be granted in the future Federal Constitution of Myanmar with exclusive provisions.

#### **4. Identifying Educational Laws, Policies and Educational Reform of Higher Education in Myanmar**

According to Marian Wright Edelman, "Education is for improving the lives of others and for leaving your community and world better than you found it"(Edelman, 1992). Education can change the ideologies and the living standards of the people. Section 6 of the Law of University Education, 1964 (the Revolutionary Council Law No.9/64) states that the aims and objectives of the Universities are to produce experts, specialists, and skillful academicians who participate in establishing a Socialist Society. The Socialist government aims for the higher education system to support their socialist ideologies and maintain their

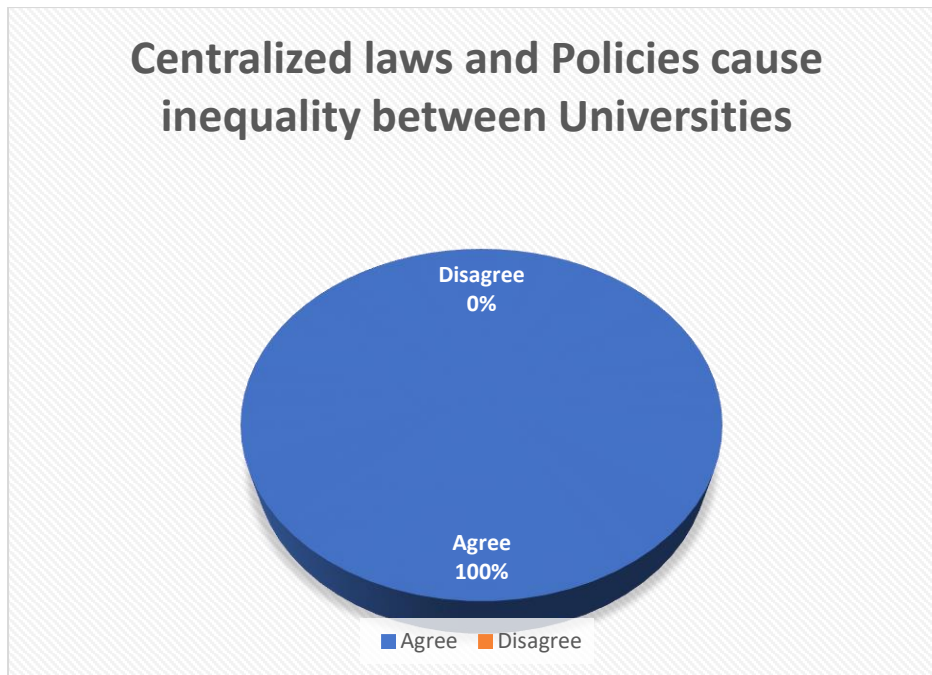
power. So, it can be assumed that the Higher education system affects government structure and policies.

#### **4.1. Centralized Government Structure and Policies Related to Higher Education**

Higher education system of the Myanmar is influenced by the centralized government structure and policies. Education is one of the fundamental rights that must be granted in the Constitution. The behaviours of the government that exercise centralized or decentralized can be investigated in the Constitution. The centralized government controls the higher education systems, and there is no authority at the State-level government and the Universities.

According to interviewee P, the military government intentionally repressed the higher education system of Myanmar, and they made significant gaps between the Yangon and Mandalay prominent Universities and other state universities. There are disparities between the Universities' human resources, infrastructures, library access, insufficient quantity, and qualified teachers. The qualification of the higher education system of Myanmar is "just to pass the University examination and get a degree." According to interviewee DD, there are no grants for job opportunities after higher education. Insufficient grants for future opportunities can worsen the higher education system in the ethnic areas, and the people who have difficulty with higher education must choose survival or higher education.

According to interviewees S 1, 2, 3, and 4, no equal resources are shared between the Universities. According to S3, there are not enough books in Myitkyina University's Library. There are no sufficient qualified teachers at the University, and the qualified teachers from other universities are transferred due to their promoting position and the period at which they left the University and moved to their original Universities. There are no capacity-building programs for the Universities' teachers, and most teachers use teacher-centred teaching methods. Moreover, insufficient support and promotion of research and academic skills, the "rote learning trap," in which the students are taught with a rote learning system, and those students become teachers and do not know how to use critical learning methods happens repeatedly (Pann et al.,2022). The teachers appointed by the central government control processes, and the appointments have biases. According to interviewee S3, the higher education system of Myanmar is "to hand out graduate photos in the living room".



In addition, the Myanmar government ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2017. According to this convention, the government is responsible for enacting and ensuring educational laws and policies consistent with the convention. However, due to the barrier of the 2008 Constitution of the Republic of the Union of Myanmar and the centralized government structure, educational laws and policies continue to centralize, leading to disparities between universities. Above the pie chart is presented in this research paper is supporting evidence that centralized laws and policies cause inequality between the universities and, which was compiled based on the interview data.

With regard to the centralized government structure and policies of higher education in Myanmar, it has been found that the laws and policies are centralized and prioritize the two leading universities (Yangon and Mandalay). The result is unequal access to educational resources and infrastructure between the universities.

## **4.2. Centralized Policies and Educational Reform of Myanmar**

In 1952, Prime Minister U Nu introduced the Pyi-Taw-Thar project, a 5-Year Plan to establish a democratic socialist state based on prosperity and Buddhist principles—the project aimed to develop an industrial-based economy and balance agricultural and industrial development. The Anti-Fascist People's Freedom League (AFPFL) government implemented the Pyi-Taw-Thar project to improve social life after internal rebels were suppressed, and the slogan "Everyone must have a country" was well-known.

Before the military took the power the state, Myanmar had one of the best education systems in Southeast Asia. However, after more than 50 years of military rule, Myanmar is now one of the poorest countries in the world, and its education system is inferior. The physical infrastructure of the education system is still poor; teaching methods have not advanced much compared to those widely applied in the 1940s and 1950s, and teachers, even at the high school and college level or university, have few opportunities and little incentive for professional development. The country's education system is going through a long and challenging recovery. On March 2, 1962, the Revolutionary Council was established and took over the State power to protect and defend the sovereignty of the Union of Myanmar. The University Education Law was passed by the Revolutionary Council in 1964. The Law of University Education 1964 was repealed by the Union of Myanmar University Education Law 1973. The State Law and Order Restoration Council (SLORC) passed the Law Amending the Union of Myanmar University Education Law in 1973, and the existing Law established universities. It was revised three times in 1983, 1989, and 1998. Although the educational system aims to produce skilful academicians and qualified intellectuals, the structure of the higher education sector is still subject to higher education, with a rudimentary set of laws intended only to limit the growth of the higher education system. The 2008 Constitution of the Republic of the Union of Myanmar is one of the centralized and rigid constitutions. Even though the Constitution describes the educational rights and promotion of underdeveloped regions, it is just a paper description. Due to the interference of the Military, 25 per cent of the 2008 constitution of Myanmar, the legislatures cannot pass the laws and policies over the Military, and it can be a barrier to updating the curriculum of Higher Education, teaching methods, and management system of the Universities. However, in the 2010 election and the withdrawal of isolation, more promotion was needed in the educational system.

On September 30, 2014, the parliament enacted the Myanmar National Education Law to reform the country's education system. The main objectives of the National Education Law are provided in Section 2. Section 2(s) of the National Education Law, 2014 states that higher education means the education trained and taught by any school recognized by the National Education Commission to people who have completed the highest level of primary education or the level equivalent to those mentioned earlier. The government forms the National Education Commission with the approval of Pyidaungsu Hluttaw, composed of a Union-level person as chairman, the Minister of Education and other ministers of relevant ministries, experts from ethnic groups, and other appropriate persons to effectively and successfully implement the provisions contained in this Law.

To sum up, Myanmar's educational policies after independence and educational reform, more effort was necessary to guarantee equal access to higher education nationally. However, policies led to a centralized education system and failed to support underdeveloped universities adequately.

### **4.3. University Autonomy**

An autonomous university is an independent regulator of curriculum and teaching methods. The term autonomy means no outside interference. Sawyer (1966) defines *university autonomy* as the self-government of higher education institutions in regulating their affairs in enrollment criteria, promotion, and discipline of faculty and staff. Dlamini Sc (1996) stated that autonomy concerns its independent status as an institution concerning other external institutions, including the government, the church, organized industry and business, and other organizations. On the other hand, academic freedom concerns the working conditions and conditions of service of staff and students regarding teaching, learning, research, expressing opinions, and publication. It entails the freedom of an academic to perform his functions without unnecessary restrictions. An autonomous university is characteristically a higher education institution in which its day-to-day operations and curriculum are exercised independently (Noor, 2017). It is generally associated with university institutions and implies that the funding agency or state does not have control over academic matters.

University autonomy has been a long-standing concept in Myanmar, particularly concerning the University of Yangon (YU) and the University of Mandalay (MU). YU, located in Lower Myanmar, was established in 1920 and has had autonomy since its formation. Meanwhile, MU obtained autonomy through the Mandalay University Act of 1957, which granted it the power to manage its organizational, financial, staffing, and academic affairs until 1962. The military coup followed decades of a centrally controlled and run education system with little room for creativity and adaptation to emerging needs. Administrators and educators alike are apprehensive of impending changes, preferring instead a centralized system's predictable routines and procedures. With increasing awareness of the limitations imposed on education and the damage done to creativity and productivity by a centrally controlled system, stakeholders have realized the need for educational autonomy for long-term progress and sustainability. To enable universities to cater to the emerging needs of the job market and communities, a certain level of initial autonomy is advisable: the ingrained habits of controlling all aspects of the teaching and learning enterprise despite the awareness of its shortcomings

will need to be eliminated incrementally given the autocratic nature Myanmar education has assumed over the years. Administrators still need to prepare to give up their control, citing the relative lack of experience by educators who have been intentionally starved of consistent professional development. These educators have been sent haphazardly to universities and institutes all over Myanmar. They are uprooted time and again after a few months, a year, or a few years to be assigned elsewhere with little consideration of what benefits mobility brings to education and its stakeholders (Dr.Soe & Dr.Myint, 2022).

According to Jean Jacques Rousseau, education is the process of guidance by the teacher, but it is not instruction by the teacher. Higher education can only be qualified with the methods of a teacher-centred approach. The Myanmar Educational Law 2014 was amended in 2015 to reform education in Myanmar. In this law, 16 Universities in Yangon and Mandalay consider giving University Autonomy. According to Interviewee P, the central government rejected the idea of other universities forming autonomous universities due to insufficient capacity. However, the government should have promoted their capacity and supported their needs. So, when the universities requested their autonomy, the government rejected it, and the circle processes continued and happened repeatedly. This can cause a big gap between the autonomous universities and non-autonomous universities. According to interviewee DD, the University knows the qualifications of the teachers and what the University requires. So, the authority to manage the University itself is fair and promotes equal access to higher education. According to interviewee L, giving the university autonomy can make it competitive among the universities and lead to the development of higher education and qualifying higher education. However, the federal constitution must grant the side effects of competitive education and standard provisions related to higher education. The Universities must be interrelated and share resources and program exchange, and the government must support the Universities' requirements.



<b>Table 1: Unequal Access to Resources among Three Universities in Myanmar</b>							
No.	Universities' Name	Official Website	Library Access	E-Library	Department	Number of Teachers (2019-2020)	Number of Day Students (2019-2020)
1	Yangon University	Yes	Yes	Yes	29	783	7737
2	Mandalay University	Yes	Yes	Yes	23	541	4972
3	Myitkyina University	No	No	No	18	319	7005

The above reasons and interviewees' responses point out the insufficient educational laws and policies due to the effect of centralized Constitutions and political government structure of Myanmar support unequal access to higher education in Myanmar and to establish equal national access to higher education in Myanmar, the educational laws and policies play a vital role and university autonomy can grant the quality of higher education and can destroy the root causes of unequal national access to higher education in Myanmar.

Table 1 outlines the uneven distribution of resources among universities in Myanmar, notably Yangon University in the Yangon Region, Mandalay University in the Mandalay Region, and Myitkyina University in Kachin State. In addition, the number of teachers is collected from the University of Myitkyina Students' Union Facebook page, Yangon and Mandalay University official websites.

## **5. Comparative Analysis of Myanmar Higher Education with Some Federal Countries**

This paper is a comparative analysis of higher education in Myanmar and federal countries such as the United States of America (US), the Republic of India, and the Dominion of Canada. It identifies the allocation of educational powers in federal countries, highlights

Myanmar's education power and unequal resource allocation system, and examines how the central government of federal countries ensures equal national access to higher education for their citizens.

## **5.1. Comparative Analysis between Myanmar and The United States**

The United States Constitution does not mention education, which results in a sense of decentralization without restrictions. In the United States (US), universities and colleges generally enjoy a high degree of autonomy from direct government control, especially for academic and research affairs. This autonomy enables educational institutions to set their curriculum, faculty hiring, and research goals. In addition to allowing university autonomy with no constitutional restrictions on education, there are initiatives to achieve National Equality. To achieve national equity in the US, efforts to improve access to higher education have focused on raising college enrollment rates, reducing financial barriers, and strengthening educational opportunities for traditionally underrepresented groups.

Since 1965, federal support for college students has shifted from primarily assisting low-income students to making college education more affordable for higher-income backgrounds(Encyclopedia, n.d.). Financial aid is provided through scholarships and grants, loans, and student "work-study" funds, with a total of \$186.9 billion in aid for undergraduate students in 2018-2019 from various sources. These sources include federal loans, institutional grants, federal Pell grants, federal education tax benefits, state grants, private and employer grants, and federal veterans benefits.(College Board, 2019).The US federal government offers need-based grants, loans, and work-study programs to help undergraduate students cover the costs of tuition, books, and Pell Grants aim to aid low-income students, loans and tax credits primarily benefit middle-class families(Dynarski & Scott-Clayton, 2013). The government's financial support and resources play a crucial role in providing greater access to higher education for students of all backgrounds and living expenses. The Pell Grant program provides \$136 billion a year in financial assistance, with awards in Mississippi and Louisiana averaging around \$3,770 and \$3,821, respectively.

The Constitution of the US does not outline specific provisions for ensuring educational equality. However, the Supreme Court has interpreted various provisions of the Constitution to safeguard educational rights and promote national equality. The Equal Protection Clause of

the 14th Amendment to the United States Constitution ensures equal treatment under the law, including in education. It states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." This clause has been used in several landmark Supreme Court cases to challenge discriminatory educational practices and policies. For example, in the *Gratz v Bollinger* Case, the Court decided that the University's use of race in its current first-year admissions policy is not narrowly tailored to achieve respondents' asserted compelling interest in diversity; the admissions policy violates the Equal Protection Clause of the Fourteenth Amendment.

The Civil Rights Act of 1964 includes provisions for monitoring and evaluating education, such as conducting a comprehensive survey to address educational opportunity gaps based on race, colour, religion, or national origin in public educational institutions. The Act also allows for partnerships with higher education institutions to run training programs for educators and financial assistance to school boards for in-service training and hiring specialists. The Commissioner of Education considers various factors when deciding on granting financial assistance. The education sector in the United States has implemented decentralization to fulfill the needs of achieving national equality. Therefore, to achieve National Equality, the education sector in the United States has implemented Decentralization without any constitutional limitations and in such a way that it fulfills the needs.

It is a longstanding American tradition that primary responsibility for education at all levels rests with the individual states (Bastedo & et al.,2023). The Supreme Court has affirmed that the right to education encompasses access to a cost-free public education. In the 1973 legal case, *San Antonio Independent School District v. Rodriguez*, the Court determined that education is not considered a fundamental right protected by the Fourteenth Amendment. However, the Court established that states must provide all students with a primary and satisfactory education. Unlike in the United States, the education sector in Myanmar has been centralized, with government controls. According to the interviewee L's responses, centralization and a lack of university autonomy negatively impact national education access equality. Additionally, interviewee L's responses point out that the study of the Constitution and Human Rights laws in universities has been restricted since 1988.

The US Constitution provides no provision for higher education. Instead, it delegated authority to the states, and higher education was generally controlled at the state level. However, federal laws, such as the Civil Rights Act of 1964, prohibit discrimination in education, including higher education. Also, in Myanmar, education is not mentioned in the

2008 constitution, but the government restricts it from achieving National Equality. According to the respondents, no discrimination law exists in higher education. However, there is discrimination in central government activities in practice. University autonomy has been granted to universities in the United States, allowing universities to operate autonomously. According to Interviewee P, who teaches in higher education, the University of Yangon, in addition to being controlled by the central government in Myanmar, additionally regulates universities throughout the country.

## **5.2. Comparative Analysis between Myanmar and India**

Due to India's diverse population, guaranteeing equal access to higher education is challenging. The Indian Constitution provides a framework for addressing these challenges. The reservation system, which reserves gaps for specific categories of students, is one of the main strategies used to promote national equity in higher education.

The Constitution of India provided that the following Sections relevant to Higher Education. Article 29(1) of the Constitution of India ensures that no citizen can be denied admission into a state-maintained or state-funded educational institution solely based on factors such as religion, race, caste, or language. This upholds the fundamental Right to equality, prohibiting discrimination based on position, caste, class, or creed in the eyes of the law. Furthermore, it emphasises the significance of equal educational opportunities for all. Article 30 grants minorities, whether identified by religion or language, the right to establish and manage educational institutions of their choice. It also safeguards these institutions from compulsory property acquisition, ensuring that any determined amount does not infringe upon their established rights.

Additionally, the State is prohibited from discriminating against educational institutions managed by minorities when providing aid to them. Article 37 outlines special provisions for educational grants benefiting the Anglo-Indian community during the initial three financial years after the Constitution's commencement. However, these grants may decrease by no more than 10% in each successive three-year period, and after a decade, they will cease altogether as a special concession. To be eligible for such grants, educational institutions must allocate at least 40% of their annual admissions to individuals from communities other than the Anglo-Indian community. Finally, Article 342 authorises the President, in consultation with the State Governor, to designate tribes, tribal communities, or specific groups within them as Scheduled

Tribes for constitutional purposes in a State or Union Territory. Parliament can only alter this designation through legislation, ensuring stability in recognizing Scheduled Tribes.

Moreover, ensuring that those who teach at Indian universities are qualified teachers is essential to maintaining standards and quality of education. The Federal Government of India, through the University Grants Commission (UGC) and the National Council for Teacher Education (NCTE), has taken several steps to ensure that higher education institutions employ qualified teachers. UGC sets minimum qualification standards for teaching positions in higher education institutions. This depends on your position (Assistant Professor, Associate Professor, or Professor). Typically, these requirements include a master's degree with a specified percentage of marks and, for many teaching positions, the mandatory qualification of passing the National Eligibility Test (NET) or equivalent examinations. These measures aim to maintain academic standards and promote the quality of education in the Indian higher education sector.

In Myanmar, the quality of teaching at universities is improving, but there is still a need for more investment in teacher training and examining teacher's quality. Teachers require ongoing training for their professional growth, particularly in research skills, and university educators also benefit from technological training to enhance their teaching abilities (Htun, 2020). Equipping teachers with appropriate training and professional development programs is essential for their readiness and competence in the classroom, playing a vital role in driving educational reform within the country (Ulla, 2018).

### **5.3. Comparative Analysis between Myanmar and Canada**

According to the Canadian Constitution, the power to regulate collective bargaining is mainly held by the ten provinces and three territories, not the federal government (Barnetson, 2006). The Canadian Constitution does not explicitly mention higher education. However, certain sections can be interpreted as having implications for higher education. Section 93 of the Canadian Constitution grants exclusive jurisdiction to provincial governments over education, thereby restricting federal intervention in educational matters, with certain exceptions.

But in Myanmar, the management of education is exclusively controlled by the Central Government, and no educational division of power is granted to the State Government for intervention. According to interviewee P, due to this Centralization, all University teachers in other regions convene at Yangon to discuss the pertinent curriculum. Consequently, Yangon

University can wield influence and authority over Universities across the Nation. Section 23 of the Canadian Constitution ensures minority language education rights, extending the right to receive education in one's minority language to all levels, including higher education. Section 15 of the Canadian Constitution safeguards equality rights, emphasizing that no individual should face discrimination based on various factors, including race, national origin, religion, and disability, encompassing all aspects of life, including education.

These three sections of the Constitution provide the framework for the legal system in Canada and ensure that all students have the right to access quality education, regardless of their background or circumstances. Moreover, in Canada, the responsibility for education, spanning all levels, including Universities, rests with individual provinces and territories. Unlike some countries, Canada lacks a centralized or federal education system. Consequently, each province and territory regulate educational standards, ensuring high-quality education nationwide (Smurthwite, 2022). The Canadian government, Provinces, and Territories have enacted several laws and Acts that regulate and govern higher education in the country, including the Post-Secondary Education Acts, the Education Act, the Tuition Fee Act, and the Canada Labour Code. Established laws and codes rigorously regulate the educational system in Canada, and it is demonstrated that Canada places a strong emphasis on its education system. Examining Myanmar, there needs to be more straightforward and comprehensive legislation on education in Myanmar, and the policies established for education are also weakly binding that can be found out.

According to the interviewee DD's review, Canada's educational system operates decentralized, and this division of authority bestows a considerable degree of independence upon universities in the various provinces and territories. For example, the University of Toronto has the autonomy to raise its funds and manage its operations with a substantial level of independence. Furthermore, in the University of Nova Scotia and Ontario, this was evident in several aspects, including having individual acts governing them rather than a common act, having fewer government appointees on their boards, being outside the government reporting entity (GRE), and receiving a relatively lower proportion of their total revenue from the province (Eastman et al., 2018). The structure of Canada's education system allows provinces and territories to exercise authority over their respective educational institutions, including universities. On the other hand, in Myanmar, there is no educational division of power to States and a lack of self-autonomy related to universities.

<b>Constitution</b>			
<b>Countries</b>	<b>Division of Educational Power</b>	<b>University Autonomy</b>	<b>Types of Constitution</b>
United States	State Government and Central Government	Yes	Federal (decentralized Constitution)
India	State Government and Central Government	Yes	Federal (decentralized Constitution)
Canada	State Government and Central Government	Yes	Federal (decentralized Constitution)
Myanmar	Central Government	No	Quasi-Federal (Centralized Constitution)

Compared to other federal countries such as the United State of American, the Republic of India and the Dominion of Canada, the study found that Myanmar's Constitution has a strong centralization that hinders equal access to education. It may be beneficial to decentralize the power of education under the Constitution to improve educational equity. By doing so, states can adapt to their individual needs, and granting them autonomy will allow for national equality in education. Additionally, Myanmar can learn from Canada's approach to addressing unequal educational opportunities through the principle of equity.

## **Conclusions and Recommendations**

In conclusion, this research paper can find out the challenges of National equal access to higher education in Myanmar by exploring federal Constitutions. Firstly, the researchers analyzed the division of educational powers in Myanmar's Constitutions after independence and found no grants for the higher education system like the Federal Constitutions. Case studies and the interviewees' responses support the unequal access to higher education in Myanmar due to the limited division of educational power in constitutions and the Myanmar government's intentional repression of higher education.

Secondly, the researchers identified the impact of educational laws and policies. These can cause unequal allocation of educational resources between the Universities and lead to unequal access to higher education. Moreover, examining the educational reform of Myanmar that intended for the Universities' autonomy to just Yangon and Mandalay Universities can cause inequality between the other Universities. There was no sufficient implementation of educational laws and policies at practical and insufficient qualification and assessment systems for the Universities.

Thirdly, when investigating case studies of federal countries and constitutions, the researcher found that establishing national equal access to higher education in Myanmar must be granted in the federal Constitution. The Constitution is the mother law of the State, and the Federal Constitution is the only solution to achieve national equal access to higher education in Myanmar. Therefore, the above reasons are the reasons that this paper found why inequality persists in national access to higher education in Myanmar.

The research paper's findings provide a solution for the gap in citizens' access to higher education, as the Constitution requires consistency with the international standards granted in human rights conventions. The study highlights the vital role of the federal Constitution in ensuring equal access to higher education in Myanmar. The federal Constitution can bridge the gap by granting educational division of power, reducing centralized government control over educational laws and policies, and promoting national equal access to quality higher education through university autonomy. Additionally, the federal government should support universities in less developed areas, thus avoiding further disparities.



## References

### Constitutions, Laws, Conventions and Charters

- National Unity Consultative Council (NUCC).(2021). Federal Democracy Charter. Myanmar.
- The Civil Rights Act of the United States, 1964, Congress passed Public Law 88-352 (78 Stat. 241), July 2, 1964.
- The Constitution of Canada, 1867.
- The Constitution of Germany,1949.
- The Constitution of India, 1949.
- The Constitution of the Republic of the Union of Myanmar, 2008.
- The Constitution of the Socialist Republic of the Union of Myanmar, 1974.
- The Constitution of the Union of Burma, 1947.
- The Constitution of the United States of America, 1789.
- The Law of University Education. (1964). The Revolutionary Council. Law No.9/64.
- The Mandalay University Act, 1957, Parliament of the Union of Burma Law No. 58/1957, 20 November, 1957.
- The Ministry of Education.(2014). The National Education Law, The Republic of the Union of Myanmar, The Pyidaungsu Hluttaw Law No. 41.
- The Myanmar University Education Law, 1973 (the Revolutionary Council. Law No.13/74)
- United Nations (General Assembly). (1966). International Covenant on Economic, Social, and Cultural Rights. Treaty Series, 999, 171.

### Books and Articles

- Barnetson, B. (2006, January 10). Labour law in Canadian higher education.
- Bastedo, Michael N., Philip G. Altbach, and Patricia J. Gumport, eds. American higher education in the twenty-first century: Social, political, and economic challenges. JHU Press, 2023.
- Dlamini, C.R.M. (1996). Human rights in Africa. Which way, South Africa? Durban: Butterworth.
- Doss, R. (2018). A STUDY OF SKILLS REQUIRED FOR EFFECTIVE DISTANCE LEARNERS FOR QUALITATIVE DISTANCE EDUCATION. International Education and Research Journal.

- Dynarski, S., & Scott-Clayton, J. (2013). Financial aid policy: Lessons from research
- Eastman, J., Jones, G. A., Caouette, O. B. -, Li, S. X., & Trottier, C. (2018). Provincial Oversight and University Autonomy in Canada: Findings of a Comparative Study of Canadian University Governance. 48(3), 76
- Edelman, Marian Wright, *The Measure of Our Success: A letter to My Children & Yours* (Boston, Beacon Press, 1992)
- Ethnic Nationalities Affairs Center-ENAC.2018.မိခင်ဘာသာစကားအခြေပြု ဘာသာစကားစုံ ပညာရေးစနစ်၊ မြန်မာနိုင်ငံပညာရေးမူဝါဒဆိုင်ရာ စဉ်းစားချက်များ။ Equity Policies in Global Higher Education.
- Geddes.(1999). WHAT DO WE KNOW ABOUT DEMOCRATIZATION AFTER TWENTY YEARS?.*Annu. Rev. Polit. Sci.* 1999. 2: 115-144.
- Hasbrouck, B. (2022). “The Antiracist Constitution.” *Boston University Law Review* 102 (1): 87.
- Htun, Z. W. (2020, December 17). *Motivated but Overstretched: Job Satisfaction among Myanmar’s University Teachers.* Tea Circle.
- Lall, M. C.(2020). Myanmar’s Education Reforms: A pathway to social justice?
- Ma.J, Pender.M., & Welch.M.(2016). *Education Pays 2016: The Benefits of Higher Education for Individuals and Society.*
- Nathan, C. (2014). “Confronting A Double-Edged Sword: Providing Bullies Due Process Protections Without Undercutting Massachusetts’ Efforts To Combat Bullying.” *Boston College Journal of Law & Social Justice* 34 (1): 111.
- Pann Ei Phyu and Sasiphatra Siriwato.2022.The Progress and Challenges of Higher Education in Myanmar.Proceedings of RSU International Research Conference (2022).
- Sawyer, A. (1996) “Academic Freedom and University Autonomy: preliminary thoughts from Africa”, *Higher Education Policy*, 9(4): 281-287
- Soe, T., & Myint, S. (2022). *University Autonomy: a Multi-Dimensional Perspective on University of Mandalay.*
- Than, T. (2013). *The Languages of Pyidawtha and the Burmese Approach to National Development.* South East Asia Research.
- Ulla, M. B. (2018). In-service teachers' training: The case of university teachers in Yangon, Myanmar. *Australian Journal of Teacher Education (Online)*, 43(1), 66-77.

## Internet Websites

<https://core.ac.uk/download/336585510.pdf>

<https://core.ac.uk/download/83111940.pdf>

<https://doi.org/10.1007/978-3-030-69691-7>

<https://doi.org/10.47678>

<https://doi.org/10.5367/sear.2013.0177>

<https://edpolicy.umich.edu/sites/epi/files/uploads/wp-dynarski-scott-clayton-financial-aid-policy-2013.pdf>

<https://files.eric.ed.gov/fulltext/ED490745.pdf>

<https://ierj.in/journal/index.php/ierj/article/view/1580>

<https://nation.com.pk/16-May-2017/university-autonomy>

<https://nucc-federal.org/federal-democracy-charter/>

<https://teacircleoxford.com/policy-briefs-research-reports/motivated-but-overstretched-job-satisfaction-among-myanmars-university-teachers/>

<https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-backgrounder-ethnic-minority-politics>

<https://www.encyclopedia.com/education/encyclopedias-almanacs-transcripts-and-maps/federal-funds-higher-education>

<https://www.hotcoursesabroad.com/study-in-canada/applying-to-university/the-canadian-higher-education-system-simplified/>

<https://www.law.cornell.edu/supct/html/02-516.ZO.html>

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<https://www.saradaschool.in/educational-issues/what-are-the-constitutional-provision-for-education.html>

[http://mmsis.gov.mm/statHtml/statHtml.do?orgId=195&tblId=DT\\_YAQ\\_0012](http://mmsis.gov.mm/statHtml/statHtml.do?orgId=195&tblId=DT_YAQ_0012)

<http://www.dhe.gov.mm>

[www.constituteproject.org](http://www.constituteproject.org)

## **Facebook Websites**

[https://m.facebook.com/story.php?story\\_fbid=pfbid02TfDKpAKCaiS96GrEkQYr6LQCNjFop3MjPBXFt4wNhFaEP5mkSRBMQcn3PJKRgGRLl&id=285352952048397&mibextid=Nif5oz](https://m.facebook.com/story.php?story_fbid=pfbid02TfDKpAKCaiS96GrEkQYr6LQCNjFop3MjPBXFt4wNhFaEP5mkSRBMQcn3PJKRgGRLl&id=285352952048397&mibextid=Nif5oz)

[https://m.facebook.com/story.php?story\\_fbid=pfbid025ssHV44cKiMEVHr6Nfo7D8vZvSkb4Qt2D3cYnoMDLSbZ3PtFpNdPjZukxPyoasbGl&id=285352952048397&mibextid=Nif5oz](https://m.facebook.com/story.php?story_fbid=pfbid025ssHV44cKiMEVHr6Nfo7D8vZvSkb4Qt2D3cYnoMDLSbZ3PtFpNdPjZukxPyoasbGl&id=285352952048397&mibextid=Nif5oz)

## **Case**

GRATZ V. BOLLINGER (02-516) 539 U.S. 244 (2003).

<b>Appendix-1</b>	
<b>No</b>	<b>Interview Questions for experts</b>
1	What do you think of Myanmar's higher education system?
2	What are the requirements for accessing higher education in your towns?
3	Are there any disparities in supporting infrastructure, learning materials, and other necessary things in the two leading universities (Yangon and Mandalay) and other universities?
4	Do you think that the centralized system of government structure, lack of allocation of resources, and the priority culture of the main cities are the main factors that cause access to higher education inequality in Myanmar?
5	Does university autonomy play a significant role in education reform?
6	What are the barriers and challenges to implementing equal access to higher education in Myanmar?
7	Does equity need to be done in some universities to get equal access to higher education?
8	What guarantees and arrangements should the Federal Constitution provide for equal access to higher education in the future?
9	What arrangements should be made for Minorities to access higher education in Federal Countries?
10	How do you think online learning platforms can help bridge the gap in access to higher education for people living in rural or underserved areas?

11	What actions should Federal Governments take to support initiatives that address disparities in educational opportunity and equal access to higher education in Myanmar?
12	What do you think of the future of higher education regarding equal access to education? How can educators and policymakers help create the future?
13	Do you think the 2008 budget allocations caused inequity in higher education?
14	What strategies would effectively address the barriers students of various backgrounds may face in acquiring an education?
15	What measures should educational institutions take to ensure that all higher education admissions processes are equal?
16	How important is representation and diversity among teachers and education staff in creating a higher education environment? What should educational institutions do to solve this diversity?

## Appendix-2

No	Interview Questions for Students
1	Where did you learn higher education?
2	What do you think of Myanmar's higher education system?
3	How does the quality of a student's primary education affect their chances of equal access to higher education?
4	What are the requirements for accessing higher education in the towns where you live?

5	Do you think that higher education has qualified teachers? If you receive it, why? If you do not receive it, why?
6	Are there any disparities relating to supporting infrastructure, learning materials, and other necessary things in the two prominent universities (Yangon and Mandalay) and other universities?
7	Is there discrimination in Myanmar's matriculation admissions options?
8	What role does socioeconomic status play in determining Myanmar's matriculation admissions options?
9	Do you think that the centralized system of government structure, lack of allocation of resources, and the priority culture of the main cities are the main factors that cause access to higher education inequality in Myanmar?
10	How do you think online learning platforms can help bridge the gap in access to higher education for people living in rural or underserved areas?
11	Do you think that university autonomy plays a significant role in education reform?
12	Do you think that equity needs to be done in some universities to get equal access to higher education?
13	What actions should Federal Governments take to support initiatives that address disparities in educational opportunity and equal access to higher education in Myanmar?

### Appendix-3

#### List of interviewees

No	Code Name	Positions	Age	Gender	Interview Date
1	P	Professor	45	Female	4.8.2023
2	DD	Deputy Director of one branch	37	Female	1.8.2023
3	L	Lecturer	34	Female	31.7.2023
4	S1	Senior Assistant Teacher	32	Male	1.8.2023
5	S2	Master Student	26	Male	30.7.2023
6	S3	2nd Year Honor	25	Male	29.7.2023
7	S4	4th Year Law Student	23	Female	27.7.2023



