Constitutional Federalism Institute

JUDICIAL FEDERALISM

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Structures, mechanisms, and their implications for Myanmar

November 2023

Constitutional Federalism Institute

Contents

Introduction

Throughout ages in Myanmar, when discussing federalism related to the three pillars of government, there have been more discussions on the executive and legislative than the judicial branch among each government level of distribution power. This is due to the structural nature set up within these parties, the appointment, authority, and others etc. When it comes to authority, the assumption is that politics is more important than the judiciary. However, it is the judiciary that can determine and guarantee the states to strengthen their administrative and legislative powers. It is therefore necessary to identify the roles of judicial federalism and their structures.

When speaking about judicial federalism, like the unitary government, it is mainly divided into two types: general court system and constitutional review. This brief paper will discuss these two systems currently put into practice in federal countries by comparing them with other relevant countries with case study. This brief paper aims to significantly contribute to the constitutional discussions in Myanmar on the legal systems that have already been exercised in federal countries today, their characteristics and effects, which are also accepted in the academic community. It is not intended to impose any particular system to be applied in Myanmar. In addition, it also will briefly identify the meaning and benefits of these systems that are having impacts on Myanmar. Finally, it includes how the pluralist justice system in Myanmar can be put into practice in the future federal justice system? It will shortly address how race, religion, language and gender representation can be taken into consideration in courts? including how to arrange the military courts under the civilian justice system.

Options for Designing General Court/Civil Court System

Like administration and legislation, there are more than one option for designing the general court system in a federal country. General court systems in federal countries are divided into levels of government (usually the federal and state levels) and whether there is a separate court system or not. If there is a separate court system, the two systems can be divided into the following categories depending on whether or not they work independently or jointly.

1. Dual Court System
2. Shared or Integrated System
3. Single Court Hierarchy

However, one important thing to note is that as with other federal matters, the practical legal systems in practice may not share the same characteristics as the systems discussed

below, may even contain some characteristics of other systems, and there are even exceptions for each country. In order to completely understand these different formal systems mentioned above, it is necessary to know the customs and practices existing in each country informally. The court systems described in the written constitution are determined by the historical turning points that each country has experienced, and the customary judiciary has also changed its courses over time.

Dual Court System

Generally, it is a system where both the federal and state levels have their own independent court systems. The system is in practice to limit the power of the central judiciary and protect the judicial power of the states. In addition, it is also to ensure the legal system that is most compatible with the characteristics of the relevant region, and at the same time it is regulated by the fundamental rights in accordance with the law. As seen in the legislative branch, powers that can be delegated at the state level are vested in the states, powers that only can be handled at Union level, vested in the Union, and it is similar to the subsidiary principles. In countries where different groups coexist, this system allows states to freely administer courts. In fact, this system makes administrations more efficient, helps to meet and fulfil the needs of diverse ethnicities and religious groups.

In this court system, federal courts usually hear cases related to the union or federal laws, while state laws are handled by state courts as it is the jurisdiction of state courts. In the courts administration, the Union/federal level laws define the management and jurisdiction of the federal courts, and the state level laws define their own jurisdiction of the state courts. Federal courts' jurisdictions often include hearing interstate disputes and interstate crimes such as drug trafficking, human trafficking. Sometimes, both levels of courts' jurisdictions may overlap, but usually their jurisdictions are independent of each other. Cases are initially heard in the Trial Court and can get appeals to the highest court of the relevant court system. The court systems at the federal and state levels have jurisdiction over areas given by their legislatures. Depending on the structure, cases initially hearing at the state supreme courts can be appealed and heard by the Federal Supreme Court (e.g., Australia), but cannot be appealed and heard by the Federal Supreme Court (e.g., the United States). It is referred as a unifying effect in a system where cases in state supreme courts can be heard by the Federal Supreme Court like Australia (Saunders, 2019)[1]. Depending on the division of legislative

[1] Unifying effect means guaranteeing that the right of an individual to legal protection is as uniform as possible throughout the country. For example, when it comes to basic human rights in cases initiated

power, these two types of court systems handle and hear cases differently. In the United States, more than 90 percent of cases are heard and decided by the state court system (Longley, 2020).

Structure of state courts may have similar issues to federal courts, and states are free to manage their court systems accordingly, such as structure, procedures, number of courts, judges, jurisdiction, etc., may also have different distinct characteristics. However, those systems cannot be separated away from the Constitutional Judicial Principles (Saunders, 2019).

Shared or Integrated Court System

In this court system, the basis level courts are organized and managed by the states. The courts of appeal including the Federal Supreme Court, and Superior courts are established by the federal. It is a court system, divided powers into two tiers of government; the federal and state governments, whereby the Supreme Court can hear appeals from state courts' cases. In some countries, except for a few areas that are specifically defined, the court levels have no distinction, which court handles which legal issues. Usually, all courts hear a case by its nature regardless of the federal or state law.

Of all the three systems, this system is the most unique one. Apart from the general description mentioned above, how power is divided and shared with each level varies from country to country. The important question is the distribution power between the two levels of government in the areas of management, judges' appointment and salary? How are they shared and integrated? Nigeria, India, Germany, and Canada are notable examples of practising this system. In appointing judges for the state supreme courts, the President, Supreme court and Senate appoint them with a requirement of consultation with the state governor and state parliament (for example, India).[2] There is also a country where states directly get involved in appointing the federal judges (for example, Germany).[3] In Nigeria, with the recommendation of the National Judicial Council, federal judges are nominated by the president and confirmed by the Senate, state judges are nominated by the state governor with the recommendation of the National Judicial Council and confirmed by the state house of assembly.[4] In the Supreme Court of Canada, nine judges must represent four provinces and three must be from the French-speaking province of Quebec (Department of Justice,

by European Union member states, the European Union is allowed to appeal to the European Court of Human Rights.

[2] Chapter 5 of the Constitution of India; Article 217 Appointment of State Supreme Court Judges

[3] Article 95 (2) of the Constitution of the Federal Republic of Germany; Federal Supreme Court

[4] Chapter 7 of the Nigerian Constitution; Article 231 Supreme Court of Nigeria

Canada).[5] In some systems, some state High Courts have jurisdiction over more than one state and are also vested with jurisdiction over the Union Territories. For example, the Guwahati High Court in India can hear cases for four states.

There are various forms of appointing judges. Moreover, there is a structural design of non-judicial institution influences over judges appointment within the federal system. In Germany, ministers of justice are members of the federal level parliamentary committee that selects and appoints federal judges. The Federal Senate which has the right to appoint half of the Constitution Court judges are not directly elected by people, but by state government's proportional representatives. The fact that special bodies (for example, the National Judicial Council of Nigeria) that can recommend judges appointments, how they are established, appointed, and operated are also equally important. Therefore, when designing the shared or integrated court system over those two systems; Dual Court system and Single Court hierarchy, it is necessary to have a comprehensive understanding of the working link mechanism of administrative, legislative branches and with all related stakeholders' involvement.

Cultural diversity, diverse backgrounds, political and historical turning points, and legal practices can give birth to each federal country with distinctive characteristics (Saunders, 2019).

Single Court Hierarchy

A Single Court Hierarchy is a system in which all or nearly all judicial powers reside at the federal level. The power to appoint chief justices at the state level is usually vested at the federal level. Peoples and institutions such as President, Parliament, Chief Justice, Justice council, those involved in the activities process of nominator, advisers, appointed candidates are usually at the federal level. The country in practice of this judiciary system is considered as a unitary rather than a federal system.

South Africa and Nepal are notable examples. Myanmar under the 2008 Constitution is one of them. As it is a Single Court system, the Federal Supreme Court is the head of the entire legal system. Except at the time of a separate constitutional court is established, the Supreme Court can hear appeals from its subordinate general courts (including the state level), Military Court, Tax Court, Special Courts such as Anti-Corruption Court, the National

[5] Department of Justice, Canada

Human Rights Commission; in some systems, it can even hear appeals against the decision of Semi-judicial Body such as the Anti-Bribery Commission.

In Nepal, except for the Chief Justice, the National Judicial Council which plays a pivotal role in the process of judges' appointment and dismissals of all levels, are merely composed of the federal-level organizations or individuals. The court system in South Africa reflects more of a unitary system than a federal one. The system is due to the result of the African National Congress's position during the dialogue of drafting the constitution. It considers that a strong central government was necessary to transform a society where institutionally rooted in three centuries of race segregation. Under the semi-miliary controlled Myanmar 2008 constitution, the President appoints judges for state and region courts, including the Chief Justice of the Supreme Court, and the relevant state and region parliaments have no right to reject for any reasons other than their credentials.

Key Takeaways

- In the Dual Court Systems: The Federal and State levels are responsible for the establishment and operation of courts; the appointment of judges in each level of government respectively. Judicial powers are in accordance with the division powers given by the Constitution. There is a system where the Supreme Court can hear or cannot hear appeals initially from state courts.

- The shared or integrated Court Systems is the most distinctive system. In the process of establishment and operation of courts, financial support to courts and the appointment of judges at the federal and state level courts, there are other levels' influence and involvement. The structural mechanism between the administrative and legislative bodies should be considered.

- The Single Court Hierarchy where the Federal level appoints and operates the state level courts is regarded as Unitary rather than the federal court system.

Constitutional Review

Constitutional Review means the review of the actions, decisions of a state's existing laws or administrative laws whether they are in accordance with the constitution. Such review and checking are an effective system to help prevent the violation of rights granted by the Constitution. Constitution Review is accepted as a form of political guarantee for Individual rights, Separation of Power and Self Determination. Despite each country's different terminology of Constitutional Review, from the Federal Supreme Court to Federal Supreme

Court and all Courts (or) State Supreme Courts, Constitutional Special Court, Tribunal, Councils or in other forms, the review process is performed according to the constitution.

In today's democratic countries, constitutional review has become part of the rule of law's pillar. Generally, it is crucial for strengthening constitutional government. There are six models of constitutional review (Mavciv, 2008). They are:

1. American or Diffuse Model (e.g., United States, Malaysia, Canada)
2. European/Austrian or Concentrated Model (e.g., Germany, Austria, Italy, South Korea)
3. Mixed: Diffuse and Concentrated Model) (e.g., Portugal, Greece, Switzerland)
4. The Model of French Constitutional Council (e.g., France, Morocco)
5. The New Commonwealth Model (e.g., Mauritius in Africa) and
6. Other Form of Constitutional Review Model (e.g., Ethiopia)

The following may not always be true, but in general, countries in practice of English Common Law use the American model. Countries that in practice of the Roman-German law (Civil Law) system applied the Concentrated model (Saunders 2019).

The diffuse model of constitutional review is a system that does not have a distinct constitutional review court, but rather is entitled to all courts related to the civil judiciary system or Supreme Court or High Court or Superior courts. Though more than one court may have such power, the Supreme Court of the state is the apex court and has the final decision as in the regular judicial system. If applied to the general court system, there is no need for designing the court process such as the establishment of court, appointment of judges, and their tenure. However, when such power is with the courts or the superior courts at the appellate level, it is usually where the federal level appoints, operates, regulates the courts. So, it needs to take into consideration the factors whether states' consent can influence or not, and the ability to represent the states' wills.

Unlike the above model, the power of Constitutional review of the concentrated model is vested in a special court and established separately. As separately established, the matters of composition, appointment, tenure, court process, etc., must be dealt with separately. On one hand, the advantage of this system is that it can design the states' influences and representatives in a special court, which will be the main body to decide distribution of powers. On the other hand, it can lead to a design where the federal level dominates, and the states' influence is minimal.

The Constitutional Court is established as an independent court to interpret the Constitution and resolve the constitutional disputes. The decisions from this Court on constitutional disputes are also final. Therefore, the general courts have no rights to interfere with the verdicts of the Constitutional Court. While it is true that general courts do not have the right to interfere with the constitutional courts, certain measures should be in place in the federal judicial system to protect against interference by the executive and legislative authorities.

In most countries where it is made more difficult to amend their written constitutions, it is explicitly described that the judicial system levels and the highest standard of judiciary in the constitution. The Constitution is referred to as the Basic Law or/and the Supreme Law. In addition, unlike other laws, special procedures are in place to make it more difficult in amending the constitution. The "constitutional review" term is considered to be a concept derived from the Common Law System. But when looking at the historical background from countries with written constitutions, it is especially descended from European countries. For instance, the country which directly adopted the “Constitutional Review” based on its constitution is the United States and it can be found in the landmark case *Marbury v. Madison* (1803).

Another unique feature of this model is that all judges and courts are vested with the constitutional/judicial review jurisdiction. This kind of constitutional/judicial review orders or verdicts often have only effects on two parties. When coming to make a decision after the judicial review, if it is clear that a law is contrary to the Constitution, it has the right to decide until it is declared null and void. If a court in the U.S. ruled such a verdict, it will have a retroactive effect.[6] There are 54 countries that have adopted the American model or diffuse model of vesting constitutional/ judicial review powers in the hands of the Supreme court or the subordinate/intermediate courts equal with the judicial court according to the constitution.

The Article 120 of the Constitution of the Netherlands explicitly prohibits courts reviewing laws that passed and ratified by the parliament whether they are complied with the Constitution. The main reason for prohibition is the separation of powers’ principle where the judicial branch cannot intervene in the legislative branch. Another reason why the Supreme Court in the Netherlands is not vested for constitutional review is due to the declaration of the establishment of the Netherlands and the general principles of law. Most of the states

[6] See Teague v. Lane, 109 S. Ct. 1060 (1989) case, which was reviewed by the U.S. Supreme Court and ruled retroactively about the racial discrimination statute and Robinson v. Neill, 409 U.S. 505, 507 (1973), writ of certiorari filed in the United States Supreme Court on a parallel action from a municipal court and a state court for a felony.

(Bundesländer) also have their own separate courts established for this same purpose. The courts do not deal and hear civil and criminal cases but administer separately. The Federal Constitutional Court of Germany can review and reject the constitutional amendments (Verfassungswidriges Verfassungsrecht) that are inconsistent with the federal constitution. Neither the Supreme Court of the U.S. and Canada obtains such kind of provision and authority. In the process of constitutional amendment, when proper procedures are carried out rightly, depending on the content of the amendment, the Supreme Court has no right to declare it as null and void.

Ethiopia's constitutional review system is the other Form of Constitutional Review Model. The power to interpret Ethiopia's constitution is vested in the Upper House (in other words) House of Federation. In the constitution, it states that all the constitutional disputes must be resolved by the House of Federation and the Council of Constitutional Inquiry.[7] Though the House of Federation and the Council have the final say, that power is not the distinct power that determines whether laws are inconsistent with the constitution.

However, only the Council and the House of Federation can inquire whether laws passed by federal or state legislatures; rules and regulations, directives and international agreements issued by the executive body are unconstitutional. When speaking of the merit of constitutional review, whether the jurisdiction is broad, competent or not, it depends on the related laws, legal customs and practices including its constitution. There is a strong constitutional review system in the U.S, Germany, and India.

In India, the Supreme Court has the power to rule that the constitutional amendments are unconstitutional and prevent them from taking effect. On the other hand, there are also countries with weak systems on constitutional review. Most of these countries are from the British Commonwealth of countries, and their legislative bodies can override the court verdicts (Erdos, 2010). Whether the constitutional review mechanism is an effective or just symbolic process is a question to each country that needs to be examined and answered.

Key Takeaways

- The Constitutional review is one significant power of the judiciary system. There are systems, in which such power is vested in the Supreme Court, or the Constitutional Tribunals, or the established Councils. When establishing tribunals or councils, there

[7] The Council is established under Section 82, Chapter 9 of the Ethiopian Constitution, is composed of the Chief Federal Judge, Deputy Chief Federal Judge, six legal experts appointed by the President on the recommendation of the House of Representatives (lower house) and three members of parliament appointed by the Senate (upper house).

is a composition of some judges from the Supreme Court including the Chief Justice and persons nominated by the Parliament and the President.

Constitutional Review and Federalism

In today's federations, constitutional review is essential to protect the autonomy of the states and for constructing constitutional federalism. There is always the possibility that the ongoing political developments will undermine the division of powers between the levels of government enacted by the constitution. Constitutional review is not only to prevent and protect states' powers and rights from being violated by the federal government, but also should be aimed for protecting and preventing violations of the federal system mandated by the Constitution at any level of government.

From the *Principal and Agent Theory's point*, one aspect of economics and social sciences, it is said that federalism is similar to the relationship that between the people and the levels of government possess. In this, people are the principal, and all levels of government (federal, state, and local) are agents who are tasked with working on their behalf for the public's interests. However, a problem arises from this theory is that the principal and agents do not possess the same working skills and receive the same information (Information Asymmetry). If there is a conflict of interest between public, representative politicians, and government officials, there is a possibility that it could lead to violations and controversy in practical implementation of constitution and federalism. Violations of constitutional federalism can occur at both the federal and state level. For example, during the time of Chief Justice of the U.S. William Regnquist, in the *New York v. United States* case the Supreme Court noted that, sometimes State government officials themselves may have incentives of inviting the federal government intervention when regarding unpopular public policies in order to condemn the federal government. Even state government officials are also doing either for their own benefits or their controlled state's benefits (for instance, they submitted to the federal government due to the incentives to receive financial support). The idea that could deviate from the constitution, which defines federalism is for all the peoples of all states (Nationalist Theory) rather than for states' opportunities (State' Rights Theory) (McGinnis and Somin 2004).

With rare exceptions, governments' actions are determined by referendums whether they are constitutional or not in Switzerland, but it is determined by the upper house, known as the House of Federation in Ethiopia. From the *Principal and Agent Theory's* perspective, the peoples are not in the best position to protect and punish those violations of the constitution.

In addition to information and skills asymmetries and public policy issues, the public are not in the right position to deal with the complexity of separation of powers and legal issues. Therefore, an inevitable “credible commitment problem” arises between the public and the governments levels. It is a fair and practical choice for assigning a workable independent, professional body like the Supreme Court or the Constitutional Tribunals to deal with these issues. In other words, it is difficult for many constituents to monitor personally and effectively their representatives’ actions.

As mentioned above, there is an example of constitutional review by the Upper House in Ethiopia. In its nature establishment, it is still a body under the influence of agents or representatives of state councils, which are appointed by the people. Even the separate institutions; the Federal Supreme Court and the Constitutional Tribunals, located in the capital, and closer to the federal government officials, so some accuse that there are more inclined to the Federal government when coming to the questions of how to govern the country most effectively (Russel, 2017). For this reason, innovative methods can be used in appointing personnels for such organizations such as setting the minimum requirement number of judges who can represent the respective states, ethnic groups, and different languages. However, the political alignment of an individual and organizations depend on the political culture of its country. Where the political culture of federations flourished in Canada, the Federal Supreme Court’s pro-Central government is moderated by the Judges’ desires to be legitimate decision makers on federal affairs (Russell, 2017).

Thus, it can address that federalism and constitutional review (or) the entire legal system has impacts on each other. On one hand, the judicial branch tends to shape how the federal system evolves over time through the constitutional review process that has real impacts on the distribution of power between the levels of the government. On the other hand, the courts in the judicial system is an institution to make impartial decisions between the interstates, federal and state governments disputes, and the structure of these courts is influenced by federalism (Aroney and Kincaid, 2017). The Principal of the Federal Law Academy, U Aung Htoo pointed out that 'The more the constituent units have the right to exercise the powers of three branches, the stronger the judiciary is when they define and apply according to the characteristics and features of the respective country.’

Legal scholars and political scientists do not have the same views on the constitutional reviews. There is a legalistic view that focuses on sources of law such as the constitution, other relevant laws and practices. On the other hand, the court is only one political actor, decisions and reviews can only be studied and understood in relation to partisans, influences and political conditions, which is referred to as political reality view. Countries that use

Common Law legal systems and possess strong judicial systems such as the United States, Canada, Australia. A research study analyzing the constitutional reviews in these countries notes that the practical reviews fall somewhere in the middle of two radical sides (Baier, 2006). According to the study, the sources of legal information cited by the court are neither part of the political motives behind it nor legal thinking and reasoning.

Courts are more or less partisanship, political biases and ideology bias. The Marbury v. Madison (1803) case, which is known as the modern constitutional review, even the cases' decision is said to be part of the political power struggles (W. van Alstyne, 1969). However, the reviews on decisions of the limits of government power and decisions related to human rights show that they are less bias (Aroney and Kincaid, 2017).

To strengthen the constitutional review system, it depends on the public's awareness and trust (Public Trust in Institutions) over the system and the entire Constitutional Governance. On this point, U Aung Htoo discussed, 'How much a society in the respective country expects from and relies on the judiciary? At the same time, how much is there the Constitution Cultural that respects the Constitution? How much is there appreciation of the Independent Judiciary?"

In order for the public to understand, to have high trust in government, it once again depends on the qualifications of judges (especially those responsible for constitutional review). On the judges' qualifications, U Aung Htoo discussed that "when asking the questions, should there be a special tribunal for the constitutional review? A question of Should such power (constitutional review) be delegated to the duty of the Supreme Court's duty? also be addressed. The number of Supreme Court Judges are between 9 to 10. Based on Really qualified or not. If they are not qualified, decide irrationally then the country will only get worse."

Key Takeaways

- In the form of distribution of powers described in the Constitution, the ongoing political development, the federal and state interests can always be challenged. It is noted that the supreme Court or the tribunals are regarded as delegated by the people to safeguard the constitutional federal system. The important things are the courts and tribunals must be independent, the judges are competent, rule among people in accordance with the constitution, and understand and appreciate the independent judiciary system.

Pluralist Justice System

To implement a pluralistic justice system, legal pluralism needs to be considered based on legal pluralism, and the definition of legal pluralism may also differ depending on the legal views and concepts of legal scholars. For Cane and Kritzer, legal pluralism refers to the existence of more than one legal system in a geographical area within a country's borders. After colonizing a society with laws derived from religion, customary laws, the colonial countries impose their legal system on the society, in which the imposed legal system and the existence laws of the colonized societies coexist and interconnect of the legal systems that leads to the emerge of the legal pluralism (Cane and Kritzer, 2013). However, these customary laws are not as effective as the legal decrees imposed by the country, and also the conlonizing countries' laws happen to influence these customary laws (Cane and Kritzer, 2013).

A territory where there is more than one legal system, the ways in which they approach a case and the impacts of these approaches on a case in that territory is also referred to as legal pluralism (Buchler, 2011). Legal pluralism is also defined as being related to legal fragmentation[8] and fusion of legal systems[9] (Buchler, 2011). Another definition is that legal pluralism means that when more than one legal system exists in a social environment, those legal systems interact with each other (Griffiths, 1986).

For Yilmaz, legal pluralism is a legal concept that reflects the complex relationship between law and society, and law is not only the passed laws of a country, but also includes other customary laws (Yilmaz, 2016). According to Yilmaz's view, the respective ethnics' traditional customary practices should be regarded as laws and put in practice with rules and regulations. In the definition of law, Yilmaz sees law as the construction of social culture, and legal pluralism is the coexistence of the multicultural customary tradition (Yilmaz, 2016). Therefore, in legally binding on the social issues of the countries that are collectively built through with various autonomous territories, differences such as race and religion, the Statutory laws and customary laws help to connect socio-legal Interactions (Yilmaz, 2016).

Legal pluralism should be viewed as a concept that manages multiple legal procedures and practices that recognize the diverse legal systems, whether customary or existing law in society, and strive to achieve justice (Yilmaz, 2016). Like Yilmaz, Sack defines legal pluralism

[8] Legal fragmentation is mainly found in international law, and it means the conflict between a particular law and existing laws, rules, and regulations that make exceptions to that law.

[9] The fusion of legal systems means the existence of more than one legal system as a mixed law system when both legal systems are still in use when trying to transition from the English Common Law System, which originally used in colonial countries to Roman German Law or Civil Law system.

as a practical expression of the coexistence of different legal systems within a society (Sack, 1986). According to legal pluralism, it is conceptually challenging to define the meaning of law (Tammnaha, 2010). This is because according to the legal pluralism, only the statutory laws are recognized and considered as official law by the country in which both statutory laws and customary laws exist (Tamanaha, 2010).

Such recognition is the influence of statutory laws on the customary that are considered unofficial, and the laws that control the country's customs and change them into the country laws (Hooker, 1975). For example, in England, there are stages in which Islamic laws are officially recognized and stages in which they are not officially recognized by the country's official legal system (Yilmaz, 2016).

When putting legal pluralism in practice, a pluralistic judicial system is a fundamental and most important aspect when implementing legal pluralism. Along with the 16th century of European colonization, legal pluralism blossomed in South America's countries such as Bolivia, Columbia, Ecuador, Peru, and Venezuela (Baffero, 2022). Due to the colonists imposing their legal, administrative systems over the customs and traditions of indigenous peoples in other countries, these indigenous peoples have lost their cultural, customary, and traditional rights (Baffero, 2022). However, in today's time, there has been an establishment of a fair pluralistic justice system which is based on the judiciary of indigenous peoples for the recognition of indigenous peoples' rights and the civil system (Baffero, 2022).

In Bolivia, Columbia, Ecuador, Peru and Venezuela, the constitution grants indigenous peoples the right to practice a pluralistic justice system in accordance with customary laws within their territories (Garcia and Carrillo, 2016). Given the legal system, indigenous peoples have the right to establish their own governance system, self-determination on resolving the disputes, conflicts and other issues within their communities (Garcia and Carrillo, 2016). In Bolivia, Columbia, Peru and Venezuela, the constitutional court is composed of an equal quota of indigenous people and governments' representatives, vested with the authority to handle the disputes and human rights violations that occurred between the two legal systems (Garcia and Carrillo, 2016). According to the Bolivia 2009 constitution, a judicial system in which both the ordinary judicial court and the indigenous judiciary system have equal judicial power has been added.[1] Therefore, the pluralistic judiciary in these countries is seen as developing two equal judicial systems that will shape the nature and appearance of law in the human community (Garcia and Carrillo, 2016). However, there have not been any laws, legal procedures established in these countries to resolve the legal disputes that may arise between the domestic judicial and the indigenous judiciary (Garcia and Carrillo, 2016).

In practising the pluralistic judicial system in South Africa, the legal system is divided into ordinary courts and special courts. The special courts are established and officially recognized in tribal areas throughout the country to resolve disputes arising within the community tribes in accordance with their customs, they can even perform legislative and administrative functions in regarding the crime and criminal matters (Garcia and Carrillo, 2016). In Ethiopia's pluralistic justice system, it includes a legal system based on the Roman German Civil law system and a religious legal system (Aneme, 2015). Customary courts hear and handle disputes according to the customary tradition, religious courts which are Sharia courts resolve disputes in accordance with the Islamic rules and laws (Aneme, 2015). Sharia courts only deal with illegal issues based on the disputants' wishes, while customary courts deal with both criminal and illegal charges (Aneme, 2015). The pluralistic justice system in Indonesia is vested with jurisdiction over matters defined by Islamic law (Isra, Ferdi and Tegnan, 2017). However, Indonesia, like pluralistic justice systems in South America's countries, has no clear legal procedures in accordance with law, the constitution to resolve disputes that may arise between the two legal systems (Isra, Ferdi and Tegnan, 2017). Although the pluralistic legal system is recognized through constitutions, the judicial bodies are also required to respect the standard values of human rights in the constitution (Garcia and Carrillo, 2016).

As mentioned above, since before the judicial system and laws drafting were popular, ethnic peoples were living one place to another, transitioning to the civilized society system, they have established and applied their own judicial system to heal and resolve grievances, and disputes. In Myanmar, there were judicial systems in practice according to the various groups of each ethnic and each religion. Burma (otherwise Myanmar) before the independence of Burma, they had ruled with the ancient Burmese laws such as yazathats (Royal's orders), Dhammathat since at the time of ancient Burmese kings' eras. During the colonization period, Myanmar was divided into the upper Burma, the lower Burma, Chin Hill, Kachin Hill, federated Shan State and governed by the divide and rule policy. However, there were liberated areas such as Karenni, having territory sovereignty. In each of those governing regions, they have tried to influence their respective judicial systems with statutory laws.

According to tradition and custom, agricultural, and ancestral lands have been handed down through tribal generation. When disputes over lands happen, the customary mediation method is used to resolve the case. However, the customary method was replaced with laws such as the Upper Burma Land and Revenue Regulation Act of 1889[2] and the Lower Burma Land and Revenue Act of 1876.[3] Regarding social causes such as marriage, divorce, inheritance rights, according to the section 13 of Burma Act 1898, the law allows verdict by

Buddhist law if it is Buddhist, by Mahammadan law if it is Muhammadan, by Hindu law if it is Hindus. There are also inheritance laws still put in practice today that are often adopted according to ethnicity, but not according to religion.[4] However, when it comes to customary laws, "only Burmese people have written customary laws. For all other ethnic minorities, no written customary laws but unanimously accepted among them. In the research collections of U Mya Sein, it noted that Myanmar Customary laws are accepted by Burmese people. The court also prepares it. However, the rest of the non-Myanmar ethnic groups do not have them, and the court did not come up with a plan for the joint use." U Aung Htoo said.

In terms of inheritance rights, according to the pluralistic justice system in Sgaw Karen, males usually give movable property to sons and immovable property to daughters. If there is an elephant, give it to the sons, but farm, betel nut farm, Coconut farms are often given to daughters. Money is usually shared equally. And especially more to the youngest sons and daughters. For Po Karen, however, when distributing the inheritance of the deceased's property, the deceased may make a wish as a will regarding the property left before his/her death. If the wishes are known, the community's elders usually follow up to fulfil those wishes. The benefactors of the deceased are also distributed. In terms of Hkun peoples' inheritance, the eldest son is the father's heir, but if there is no son, the eldest daughter has the same right. Inheritance is according to the will of the parents. The youngest son and daughter are the most loved ones and often get more. For Yun ethnic, the parent's wills is the most important thing in distributing inheritance. If the eldest son and daughter get married, they decide to divide the inheritance. However, if the parent dies, the person who lives with and takes care of them receives more inheritance. There are no strict inheritance rules to abide by.

For Yang ethnic people, the inheritance of parents can be inherited by the eldest son and daughter. If there are no children, uncles and nephews in the household can inherit. Inheritance can be divided according to parent's will. Divorced people usually only get things given to them when they get married by their parents. After divorced people move out, the decision is they are no longer parts of the parents' inheritance. Most of the inheritance is only for those who live with, take care of their parents, and have the right to inherit all or most of the property. For Palaung ethnic, the eldest son follows the parent's footsteps and gets the inheritance. If there is no elder son, nephews, uncles inherit. Inheritance can be given according to the parent's will. For ArKha ethnic, the eldest son inherits from the father. Only sons, not daughters have the right to inherit the inheritance. It is a custom of regarding females as outsiders as they get married, they have to follow their husbands. In dividing inheritance for Lahu ethnic people, it is according to the parent's wills. Most of the inheritance is given to children who lived with them until they passed away, or who lived with them during their death

time. For Loi La ethnic, the eldest get the inheritance. If there is no eldest son, then nephew, brother, uncle get the inheritance which is distributed according to the parent's will. For Siyin Chin people, only the youngest son is usually given to the inheritance. If the inherited youngest son moves out at his own will, starting a new family, the inheritance is terminated according to traditional customs. The second youngest son then gets inheritance. For Naga people, the eldest child gets the right guardianship over the left family members if the parent demises. If a wife dies in a family, her parents have the right to reclaim her property, but her husband does not. But the wealth must be distributed among the children. For the house, the eldest son can inherit it but if the parents die with no sons, then the fathers' relatives can take over the house. In addition, in distributing inheritance among Yang Tale ethnic people, the eldest and youngest one gets more inheritance and property when the parents pass away (International Development Law Organization, 2014).

However, the rulings in the areas where those ethnic groups live are binding as a pluralistic justice system, but the legal recognition and rulings of the ethnic groups are not recognized by the law. Regardless of what kind of rulings they make, according to the court structures described in the Article 293 of the 2008 Constitution, and [5] Article 56 of the Federal Judiciary Law of 2010, which gives jurisdiction to the township courts to verdict civil/criminal cases [6], pluralistic judicial system is clearly not recognized by the 2008 Constitution.

In addition, the Communal Land System was adopted and practised among the various ethnic groups in the past, but after the 1962 coup, it was no longer recognized by the 1974 and the 2008 Constitution. U Aung Htoo pointed out and called it as "Customary Land Rights," and it got unrecognised after the 1962 coup period. Further the article 37 of the 2008 Constitution states that all water, air, land within Myanmar is owned by the State, in which he remarks the law destroys the customary land rights.

After the 1970s period, the Karen National Union (KNU) established a legal system in their controlled territory such as courts hearing in Karen language, prisons, and Karen National Police Force (KNPF) (Kyed, 2017). Similarly, during 2021 in the Rakhine State, the courts were formed and opened to accept and hear cases. Although these are symbols of a pluralistic justice system, it can be argued that the system is only implemented in the controlled areas rather than incorporated within a legal system. In addition, the informal justice system, in which cases are mediated and settled by ward administrators, monks, religious persons, and villages' figures, adopted in some rural villages. But it is best to notice that it is the supporting system that embodies a pluralistic justice system.

In drafting the constitution to construct a federal system, the separation of powers must be considered not only in the executive and the legislative branch but also in the judiciary. In addition, as long as the judiciary of ethnic nationalities do not violate the constitutional federal justice policies, standard values of human rights (for example, gender violations on inheritance distributions, verdict that may threaten lives, verdicts of segregation, oppressed minority within minority), the federal level judicial system have to accept as the original jurisdiction with no right to influence and overrule.

When ethnic minorities choose the Formal court systems vested with statute laws over to their own legal system, they are unsatisfied with the decisions from their own judicial system, they submit appeals. Only except for such specified cases, the right of ethnic self-determination and the pluralist justice system must be guaranteed as part of the federal system.

As mentioned above, as long as human rights are not violated; "In India, if a maharaja prince dies, all his wives follow along by jumping into the ground and die. It has been the custom for a long time. The India Parliament finally decided. It is a custom. Accept it, value it, respect it and follow it. But this custom infringes on human life and health. So the Parliament passed a law and banned it. Except that respective ethnics have been practising the customs harmless to human life and health. We need to reconsider the fact that customs which have been practised by the people themselves should continue to exist with no statutory law." said U Aung Htoo. For the matter of guaranteeing human rights and a custom that is harmful to human life and health, the legislature can pass laws and ban it. For instance, in India, the practice of Sati custom; when a man dies, his surviving wife voluntarily cremated alive is prohibited by the Bengal Sati Regulation 1829, regulation XVII and the commission of Sati (prevention) Act 1987.

In order to avoid wild animal's danger, and hunting food in the mountainous hills, Chin people carry traditional swords and knives. Customary carrying knives for hunting is a crime under Section 19[7] of the Arms Act. Dawe people selling palm juice, thatch syrup[8] used for food ingredients can get them arrested according to the 1817 Excise law. It is also a problem of centralized law, unrecognized a pluralistic justice system that leads to unnecessarily inflated cases. With the pluralist justice system, social disputes and land disputes of ethnic groups, the recognition of the long past existence of customs should be emphasized as important parts of the federal legal system.

Considerations on Federal Pluralistic Justice for Myanmar

It is not necessary to consider the pluralistic justice system for the territory-based federal country. But it is very important to recognize and consider the pluralistic justice system in countries like Myanmar where there is a dynamic based on ethnic diversity and society. In Myanmar today, the British Common Law system is still practised in the legal system, as religious laws since the colonial period, customary-based social causes (such as marriage, inheritance, etc…) are still recognized within the legal system, it is quite important to consider how the customary laws and form of judiciary that have been practised in some remote ethnic areas are recognized and adopted within the federal judicial framework.

In Myanmar, traditional English law is still applied in the legal system, and religious law, which has been recognized since the colonial era, has been applied to this day. As the judicial system recognizes social issues based on custom (marriage, inheritance rights, etc.), it is important to consider how the customary laws and forms of justice that have been practised in some remote tribal areas are recognized and adopted within the framework of the federal judiciary. The types of cases and jurisdiction scope need to be explicitly defined and limited by law.

The types of cases and areas of jurisdiction need to be precisely defined and limited by law. Issues of law, issues of facts, and issues of law are based on the laws enacted by the federal parliament. A mechanism that can regulate conflicts of jurisdiction will be needed, and special consideration should be given to enshrining it as a Judicial Principle in the Federal Constitution.

In some countries that have adopted a pluralistic justice system, the right to resolve cases is vested to the Constitution Tribunal or the Supreme Court, which hold the authority to hear constitutional disputes. In Myanmar, if such a pluralistic judicial system is incorporated into the federal justice system, it needs to include a disputes resolution mechanism. In addition, according to the pluralistic justice system, even though more than one legal system is accepted, it is necessary to establish a legal system that can protect and give grantee any decisions that infringes a citizen’s rights and opportunities firmly into the federal justice system. For this, it needs to consider including the principles of jurisdiction that can review, amend, and revoke the verdict.

Key Takeaways

- The existence of more than one legal system in a country is called legal pluralism, and the existence of more than one legal system based on this legal pluralism is called pluralistic justice system. It is necessary to recognize and adopt a pluralistic justice system to build a federal country, to avoid losing the ethnic groups' culture and customs, and implement a legal system compatible with each region. The friction between the right to self-determination of each group and the rights of each individual; and a conflict of jurisdiction, a mechanism with good principles is inevitably required to resolve these issues.

Military Courts and Judiciary Independence[10]

According to the 2008 Constitution, the General Courts (Civil Courts) are a Single Court Hierarchy with no separation of powers between the federal and state levels to adjudicate public cases. The Supreme Court of the Union oversees all the courts in the country.[2] However, the highest judicial power vested with the Supreme Court of the Union is specified in the 2008 Constitution that the jurisdiction of the military courts and the National Constitutional Court shall not be affected.[3] So, it is a provision that designed the civil courts cannot interfere with the verdicts of military courts except in certain circumstances. To strengthen the judiciary system in a democratic country, the Supreme Court should be placed at the highest level of jurisdiction with no influences from any other institutions. Whatever cases or disputes they are, the Supreme Court has the power for the final decision, which needs to firmly be enshrined in the Constitution.

Military courts are established by the 2008 Constitution and other act, and they are mandated to prosecute military personnel.[4] Other Act means the Defence Services Act, 1959[11]. To examine military personnel from Army, Navy, and Air Force, General Court-Martial, District Courts-Martial, Summary General Courts-Martial and Summary Courts-Martial have been established.[5] According to this law, in accordance with Article 72, civil crimes committed by soldiers are tried and prosecuted only by military courts.[6] Any serious civil offences committed while in full military service either in outside of the country, or in a border military camp where assigned to under a separate order, can only be tried and decided by military

[10] Discussions about the military courts do not have an important role in the federal judicial features, but due to the extraordinary powers granted to the military courts in Myanmar judicial field, it is necessary to consider and discuss as an indispensable part of the brief paper.

[11] According to Section 72 of the Defence Services Act, 1959, there is a separate provision for territorial crimes that cannot be tried by military courts, but in practice, when the jurisdiction of the civil court and the military court are disputed, the military court usually prevails, and there have been almost no compliant cases of civil court proceeding to obtain the jurisdiction.

court. During that trial period, civil courts are not allowed to intervene in the cases.[7] These provisions become the provisions of the loss of a fair trial for people when the civil courts cannot review and hear appeals. In this sense, the provisions which testify the freedom and justice of the people including the soldiers, are not fully protected by the highest Constitutional law.

For a genuine federal judiciary, having judicial provisions written in the constitution are very essential. In the judiciary of federations, the establishment of court-martial or military courts are allowed to deal with military disputes, but their judicial powers are limited. The military court system established under Article 20 (b) and 319 of the 2008 Constitution grants military courts with unlimited powers. According to Article 294, the highest authority of the military court is not the Supreme Court of Union. In other words, no court has the right to interfere in any way with the decision of the Commander-in-Chief of Defence Services. In the United States, the final military court of appeal is the Supreme Court.

Military tribunals and military courts established under martial law are different in nature. Military tribunals are set up as separate courts to prosecute soldiers under military rules and regulations. However, those military courts are given with limited judicial powers. Military tribunals are the courts that have the judicial power to prosecute ordinary citizens with no exception. In areas where martial law is declared, military commanders can set up the tribunals and hear cases. During that period, the tribunals can impose the death penalty with the consent of the Commander-in-Chief of Defence Services. After the verdict, the CoC can amend the sentence with its own will.[8] The time of the martial law imposed, it is the time that people lose their free and fair trials. The decision of the military tribunals is final, and neither appealed nor has the right to appeal in the general courts. Therefore, the existence of these laws and schemes neither strengthen the independence of Judiciary nor embrace genuine federal democracy. These provisions are a worse system devouring the people's rights to freedom and justice.

Not only that Courts-martial must be under the guidance of the civilian judicial system (especially in countries that have less experience in democracy), and there are other criteria that must be met in order for a stronger judiciary. The principal of the Federal Law Academy, U Aung Htoo, said that the four characteristics of a stronger judiciary, namely 'Independent, Impartial, Efficient, Resource Rich' are essential in any country. The top principle that each should and should have is 'an independent, impartial, and rich-resourced judicial system,' in a country or any country, and whether it's a federal or unitary system." These characteristics are important for the judiciary (both for criminal cases and cases assigned by statutory laws). It is even more significant for the independent and strong constitutional review in the newly

established federal countries. To protect and preserve the constitutional principles among the ongoing political development, strong government pillars and the levels of government, the judiciary branch must fulfil the above fourth characteristics.

Key Takeaways

- Military courts are institutions that exist in democratic countries. The different experience between Myanmar and other countries is that military courts in those countries are under the control of the civilian judiciary. The lack of transparency and accountability in the military judiciary brings meaningless to the rights of the public including soldiers from the protection of the law.
- To strengthen the judicial system, the following characteristics: Independence, Impartiality, efficiency, and wealth-resources must be fulfilled.

Analysis, Further Implications and Conclusion

According to the 2008 Constitution, the courts in Myanmar are set up in General Courts, Military Courts, and the Constitutional Tribunal separately and the judicial powers are designated to Separation of Powers/Horizontal Power Sharing.[1] When the dividing of judicial powers are put in practice in the federal system, it results lot of weaknesses in the practical real politics. It allows the military to gain influence over the judiciary system, and damages the judicial system. After the 2021 coup, the evidence can be clearly seen. If the federal system genuinely wants to be applied in Myanmar, it needs to learn the comparison of the judicial system of the successful federal countries. Then, we must choose and build a system that is compatible with Myanmar, where it possesses a diversity of politics, characteristics, and geographic location. It is not the aim of this paper, nor is it possible to recommend which system is most suitable for Myanmar.

Self-rule and shared rule; the main characteristics of federalism are in different types depending on their respective federal states political situation, religious beliefs, language and geography, each country tends to choose and apply the appropriate one for their country. The forms of division of powers among the government bodies are also different according to the country's governance system. In countries with a parliamentary system, the legislature forms the government, therefore, there is no clarity and often confuses the powers separated between the executive and legislative branch. The result of such overlapping has quite impacted on the federal judiciary. In federal countries with a presidential system, the separation of powers among executive, legislative, and Judicial branches are separate, have

their own responsibility and accountability. It can strengthen a check and balance system by coordinating and balancing each branch's functions. When developing federalism in Myanmar, the system of government also needs to be considered. Fundamentally, an independent and fair federal justice system depends on the strength of the federal government system. For the future of a free and independent federal justice system, the appointment and removal of judges, and the arrangement of their wages and salaries are necessary. Only if specific laws for this are drafted and passed, then a free and fair justice system can be applied.

Another factor that should be taken into consideration for Myanmar's future federal justice system is a court system, structure of court, and court jurisdiction. Regarding the court system, should the courts adopt a single court hierarchy system and give the highest power of hearing all cases to the Supreme Court, or will the state supreme courts be vested with the highest power for all cases related to state law by adopting Dual Court system, or adopt a shared or integrated system. In resolving the constitutional disputes, will an independent court be set up and practise the Constitutional Review method. Otherwise, as in the United States, whether constitutional disputes be resolved by the general court system through judicial review.

Whether a country has the rule of law, stand on truth justice or not, it depends on whether there is a strong independent judiciary system or not too. An independent, fair and strong judiciary is a good strength for a sustainable federal system. In building a federal country, it is very important to establish strong independent judicial mechanisms at the federal level, state levels including all levels of the courts.

In federalism, regardless how separate the courts are, the main considerate things to include firmly are the provisions of protecting the public liberties, from losing the right to accessible fair justice. Depending on historical background, political culture, ethnic diversity, geography landscape, accessible resources, different countries have different forms of federalism. So, it is quite impossible to determine which country's federal justice system is the best. There are things that are not as flexible as the above mentioned but are almost statutory (e.g. long history of diversity), on the other hand, there are discussions and demands from diverse groups in the country, idealistic desires that must be compromised in order to reach agreement, and the various culture and customs that must be respected and preserved; which will also shape the system set to practically put into practice. The most important thing is that it is necessary to try to achieve a model that actually works, even if it is not the perfect one, but commonly accepted among the discussed parties, which on the other hand, an individual's rights are respected and protected.

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Federal States

Constitution and Legal System and Year of Implementation	
United States of America	a written constitution, and states also have their own written state constitutions. Implemented in 1787.
Germany	a written constitution and states also have their own written state constitutions. Implemented in 1949.
Nepal	a written constitution, and the provinces do not have separate constitutions. Implemented in 2015.
Myanmar	a written constitution, and the states do not have state's constitutions. Implemented in 2008.
Malaysia	a written Constitution. States have their own written constitutions. Implemented in 1957.
India	a written Constitution. States also have their written constitutions. Implemented in 1949.
Canada	a written constitution. States also have their own written state constitutions. Implemented in 1867.
Australia	a written constitution. States also have their own written state constitutions. Implemented in 1901.

System of Government	
United States of America	Practise a presidential system. The President is not elected by congress, not elected directly by the people. The president is elected by the electoral college, the selection of electors sent by each state.
Germany	Practises a mixed system: a combination of a presidential and parliamentary system. The President must be at least 40 years old and is elected by the Federal Convention. The Chancellor in other words, the Prime Minister is elected by the Bundestag (upper house) and approved by the President.
Nepal	Practise a parliamentary system. The president is the Head of State, the Prime Minister is the head of the federal government. The prime minister is also the leader of the winning party in parliament.
Myanmar	Practise a symbolic presidential system. The president is not directly elected by the people, but by the joint election of the two houses of assembly.
Malaysia	Practise constitutional monarchy and parliamentary system. The head of state is elected from the conference rulers of Malay states. The prime minister is the head of government.
India	Practise a presidential system. (The President is elected through and by the Electoral College).
Canada	Practise the mixture of constitutional monarchy and parliamentary system. The head of state is the King or Queen, and the head of government is the prime minister.
Australia	Practise a mixture of constitutional monarchy and parliamentary system. The head of state is the King or Queen, and the Prime Minister is the head of government.

Consolidated Union Territories	
United States of America	50 states, 1 union territory
Germany	16 Länder (states)
Nepal	7 States
Myanmar	7 States, 7 Divisions, 1 Union Territory under the direct administration of the President; 1 Autonomous region and 5 Autonomous regions
Malaysia	13 states, 3 Union Territories
India	28 states, 8 States and Union Territories
Canada	10 states and 3 territories
Australia	6 states and 2 territories

Court system	
United States of America	Practise a Dual Court system
Germany	Practise a shared or integrated court system in a country.
Nepal	Practise a single court system.
Myanmar	Practise a Single Court Hierarchy system under the Union Parliament. The General courts system is not divided and distributed between the Union and States**.** In addition to that, there are independent military courts and the constitutional tribunal.
Malaysia	General Courts system is not divided and distributed between the Union and States, rather it is under the Federal Court divided into each level. Sharia courts also exist separately in parallel.
India	General courts practise a shared and integrated court system is a country
Canada	General courts practise a shared and integrated court system is a country
Australia	Practise a Dual Court system in the country.

Structure of General Courts at Union and State Levels	
United States of America	Federal, in other words, Federal level courts can hear cases related to federal/union level law; State courts can hear cases related to state law.
Germany	The judicial power is vested in the hands of the judges, there are no specific laws divided and enforced by the Union or State court. All courts can interpret, hear appeals, make verdicts when it comes to legal matters.
Nepal	The Federal Chief Justice appoints judges of the state supreme courts. The Federal supreme court can hear appeals from the state courts.
Myanmar	The judiciary system is structured and organized as a Single Court Hierarchy system. State courts are not vested with the independent jurisdiction on final decisions.
Malaysia	It practises a single court hierarchy system by using a ranking system. Sharia courts also exist in parallel to the general courts.
India	Practises a single court hierarchy system. The National Judicial Appointments Commission (NJAC) appoints judges for both the Federal Supreme Court and State Supreme Courts.
Canada	Each court has its own jurisdiction, and the court is divided into (4) levels. 1. Provincial and Territorial (lower) Courts 2. Provincial and Territorial Superior Courts (High Court) 3. Provincial and Territorial Courts of Appeal and the Federal Court of Appeals 4. Supreme Court of Canada, also the final appellate court in Canada
Australia	The Judicial power is vested in the Federal Supreme Court and is called the High Court of Australia.

Power to Resolve Constitutional Disputes	
United States of America	Vest In the Supreme Court.
Germany	Place in the Federal Constitutional Court.
Nepal	Vest in the Constitutional Bench. However, the Constitutional Bench is composed of the Chief Justice and other four justices.
Myanmar	Vest in the separate court: the Constitutional Tribunal and apply the Constitutional Review.
Malaysia	Only vest in the Federal Court. No separate court system to resolve constitutional disputes. And Apply Limited Judicial Review.
India	Vest in the Supreme Court.
Canada	Resolve the constitutional disputes at the Supreme Court of Canada.
Australia	Resolve it at the High Court of Australia.

Highest Court and Jurisdiction of the Country	
United States of America	As it is a Dual Court System, the Federal Supreme Court's verdict is the final for cases initially from the federal courts; while the respective state supreme courts' verdict is final when cases initiated from state courts. However, if state courts' verdict is related to federal laws, the Supreme Court can hear the cases.
Germany	The Highest court and jurisdiction resides in the Federal Constitutional Court.
Nepal	The Supreme Court can hear from state supreme courts' appeals.
Myanmar	On general legal cases, the Supreme Court of the Union; on military cases, the military Court; on constitutional disputes, the Constitutional Tribunal. These the highest courts on their specified legal cases.
Malaysia	The Federal Court is the final court of appeal in all judiciary system.
India	The Supreme Court is the final court of appeal for relevant cases in certain circumstances specified by the Constitution.
Canada	The Supreme Court of Canada is the final court of appeal.
Australia	The High Court of Australia is the final court of appeal.

Appointment and Independent Judiciary System	
United States of America	Chief Justice and Associate Justices of the Supreme Court are appointed by the President with the approval of the Senate. The appointment varies according to the states' constitution. Appointing by State Governor; or by Election (or) by a hybrid method combining both election and appointment.
Germany	Article (97) states that judges shall be independent and subject only to the law.
Nepal	The President appoints the Chief Justice with the advice of the Constitutional Council, and appoints other Justices on the advice of the Judicial Council. The Chief Justice appoints judges of the State High Court and District Courts on the advice of the Judicial Council.
Myanmar	Article 19 of the 2008 Constitution allows an independent judiciary. However, other legal provisions (e.g., the right to issue martial laws) prevent its freedom to fully exercise it. Judges can only be appointed by the President with the consent of the Legislature.
Malaysia	According to the Chapter 9 of the Articles 121 to 131 of the Federal Constitution of Malaysia and the Act 695 of the Judicial Appointments Commission Act 2009, the independence of the judiciary is provided. In the appointment of judges, judges are appointed by the Yang di-Pertuan Agoan (the constitutional monarch and head of state of Malaysia), acting on the advice of the Prime Minister, and after consulted with the Conference of Rulers.
India	The National Judicial Appointments Commission (NJAC) consists of the Chief Justice and two senior judges of the Federal Supreme Court and members proposed by the Parliament, including the Minister of Law and Justice. Chief Justice and judges of the Supreme Court, chief justices and judges of the high courts in every state are nominated by the NJAC and appointed by the President.

Canada	For judiciary independence, it has three components which are; 1. Security of Tenure, 2. Financial Security, and 3. Administrative Independence. The federal government selects Chief justice and judges of the Supreme Court as well as the Federal Courts of Appeals. Judges of the Provincial and Territorial courts are selected by the state government. Judges must have at least 10 years of work experience. The Supreme Court of Canada consists of a Chief Justice and other eight judges all are federally appointed and selected by the Prime Minister. According to Article 96 of the Constitution of Canada, the Prime Minister has no influence on the appointment of judges in Nova Scotia and New Brunswick.
Australia	Judges of the High Court and other courts are appointed by the Parliament's resolution and selected by the Prime Minister.

JUDICIAL FEDERALISM

(ဖက်ဒရယ်တရားစီရင်ရေး)