



Impacts of 26th Constitutional Amendment on the Independence of Judiciary in Pakistan

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Abstract

The most controversial 26th constitutional amendment which changed the process of appointment of the judges of the Higher Judiciary and their powers, badly impacted democracy and rule of law in Pakistan. Justice is only available in a country, where the judiciary works independently and speedily without any pressure from any branch and institution of a state. The chief objective for the selection of this research is to discuss the limitations imposed on the independence of judiciary in Pakistan under the 26th constitutional amendment. This article also highlights the procedure of appointment of judges and their powers which erode the role of judiciary for the protection of human rights since the amendment. Being guardian of the constitution, the power of the higher judiciary has been taken by executive branch of government by limiting judicial role, indirectly influence it through appointment mechanism. This study employs qualitative research design and analyses the provisions of the amendment which destabilized the higher judiciary in Pakistan.

Keywords

Appointment Mechanism, Constitutional Amendments, Human Rights, Independence of Judiciary, Writ Jurisdiction.

Introduction

Independence of the judiciary means that the judicial system should be isolated from the influence of executive and legislature. It should not be marginalized to an inappropriate pressure from the other branches of government, governmental institutions or from private. Promoting judicial independence needs appointment of judges by merit, granting them security and long tenure for them, which guarantees their freedom for deciding cases and make rulings according to the constitution, and judicial discretion. It is necessary to ensure justice, meritocracy rule of law, human rights protection and democratic principles, even if such decisions are politically disliked or opposed by powerful interests.

The passage of 26th Constitutional amendment in Pakistan has ignited severe debate on the independence of judiciary. This amendment passed quickly without taking the public into confidence and no time provided for consultation among the judicial intellectuals. The structure and functioning of the judiciary changed particularly, the judicial appointment, powers and accountability mechanism. Critics says this amendment institutionalized political influence over the higher judiciary and ignores the long-time efforts for the independence of judiciary in Pakistan. The International Commission of Jurists called the amendment a blow to the independence of judiciary in Pakistan. This amendment eroded the independent capacity of judiciary and to perform its functions effectively as a check against excesses by other branches of the State and protect human rights.” (Canton, 21 Oct 2024)

The amendment replaced the seniority principle with a special parliamentary committee for the appointment of Chief Justice of Pakistan. The committee appoints CJP from the three most senior Supreme Court judges. The committee shall be comprised of 12 members, 8 from National Assembly and four from Senate. The committee, requiring a two-thirds majority for approval of the CJP. So, the amendment introduced political influence over Judiciary and it became a severe threat to impartiality of judiciary.

The JCP is a constitutional body and its main function is the nomination of judges to the superior judiciary was restructured. JCP consists of 13 members, Chief Justice of Pakistan as its chairman, 3 seniors most justices of supreme court, one senior most justice of constitutional bench, Federal Minister for Law, advocate to be nominated by Pakistan Bar Council for two years, Attorney General for Pakistan and two members from the National Assembly and two members from the senate, one woman or minority member nominated by the Speaker of the NA. This body nominates judges by simple majority. As a result, seven of member of the JCP are selected by parliament of Pakistan due to which judicial members become a minority in the selection process and increasing political control over judicial appointments.

Article 191(A) and article 202(A) included in the constitution for the formation of Constitutional Benches at Supreme Court and at each High Court respectively. The original jurisdiction of SC and HC were given to them. Their decisions cannot be challenged in SC or High Court. So, it means that the higher judiciary further deprived of its power of original jurisdictions. Article 186A, the constitutional bench of the SC can transfer cases to itself or other high court. Any case, appeal, or other proceedings that are exiting without solution, before any high court may be transferred to another high court or to the Supreme Court itself if it deems it to be in the best interests of justice.

This thesis finds out how the 26th amendment re-established Pakistan's constitutional framework, which threatens judicial independence by politicizing the superior judiciary. By analyzing the legal, political and social implications, this study tries to give proper recommendations necessary for the protection of judiciary and for the uplifting of democratic principles.

Problem Statement

The 26th amendment in the constitution of Pakistan is a threat to the independence of superior judiciary. It handicapped the Judiciary by political influence through the process of appointment of Chief Justice of Supreme Court and other judges of the higher judiciary: Supreme Court and High Courts, restructuring it by the creation of Constitutional Benches and curtailed its power. This amendment has precarious impacts on the Judiciary's autonomy and jeopardized its role for democratic principles, rule of law and justice.

Objective of the Study

1. To find the impacts of 26th amendment in the Constitution on the independence of Superior Judiciary.

Research Questions

1. What are the impacts of 26th constitutional amendment on the independence of judiciary?
2. How the role of judiciary has been curtailed due to 26th constitutional amendment?

Research Methodology

This study used qualitative method to find out the impacts of 26th constitutional amendment on the independence of judiciary in Pakistan. This study has been made for analyzing the impacts of the mentioned amendment on the independence of judiciary in Pakistan. Considering the objectives and the stipulated time of the research secondary data technique was used. This research was completed in six months from March to the end of June.

Significance of the Study

This research tries to find out the impacts of 26th Constitutional Amendment on the Independence of Judiciary in Pakistan. It is intended to provide the real and authentic knowledge about the articles that are amended relating to superior judiciary. By analyzing the impacts of 26th amendment, this research can create awareness among policy-makers, intellectuals, students, politicians and the public at large. It highlights the important amended or added articles that crippled the independence of judiciary in Pakistan.

This thesis will enable the readers that how the amendment indirectly deprived the people of Pakistan of their basic rights, justice, merit and rule of law. The judiciary became more accountable to

the executive branch of government and deprived of its common role which is important for democratic ideals. This study is important that how much the democratic principles have been eroded through this amendment.

Proper analysis of the amendment may provide appropriate recommendations to review the amendment and make changes for the proper functioning of the judiciary and to enhance its role for public interests within its jurisdiction. These recommendations may be proved fruitful for policy-makers and judicial authorities.

Literature Review

(Shakoori, 2024) Studied the constitutional 26th amendment passed in utmost haste by the parliament on October 21, 2024 receiving the assent of president of Pakistan on the same day, claims to bring 'necessary reforms in the country judicial system, enhancing judicial transparency, and encouraging the well-being of its citizens', is being severely criticized by supporters of an independent judiciary.

(Turk, 2024) conducted this study that after the passage of the controversial bill, PTI vowed to initiate a comprehensive nationwide movement against the amendment, without any fear of repercussions. Lawyers and the human rights commission of Pakistan have expressed the fear that the amendment would bring the judiciary under the executive and legislative switch, and demanded to cancel or withdraw the amendment. Some significant alterations made to the constitution involve limiting the Supreme Court's ability to act independently, establishing constitutional benches, and evaluating the performance of high court judges. The amendment also empowers the SC to transfer any case to itself, and includes a federal minister and a senior counsel in the process of appointing the Islamabad high court top judge.

(Ali, 2025) Explores the 26th amendment to the constitution of Pakistan, which was passed by the parliament on October 21, 2024, in an unusually swift manner. It examines the effects of its actions on the independence of the judiciary in Pakistan. The supporters of the amendment believed that it was crucial at that moment to tackle the socio-political and legal issues that were prevalent. This amendment upset the balance of power principle, which is the foundation of the constitution.

(Shahid, 2024) Analyzes the relationship between legal reforms and judicial crises in Pakistan, with a specific focus on the 26th constitutional amendment passage day, which is considered a 'black day' for the judiciary in the country. This amendment, which caused a lot of commotion within the legal and political realms of the nation, was a major topic of discussion. This amendment was created to enhance governance, but it raised concerns about the independence of the judiciary due to the perception of political interference. The "black day" declaration echoes a broader conflict between the judiciary and other branches of government, highlighting structural and procedural flaws in Pakistan's legal system.

(Tanoli, 2024) conducted this thesis that this amendment has limited the country democracy and curtailed the role of judiciary important for democratic principles. Under this amendment the judicial system will be fully manipulated by the government. Various judicial experts requested to come forward and save an independent judicial system. Human Rights Commission expresses concern over the potential of the legislative and executive branches over the judiciary. the constitutional benches have been made at each high court and supreme court, and they have their own heads and process of selecting judges. Due to this amendment the constitutional problems will be in all cases. Now it is the time to remove these shortcomings of the judiciary, otherwise, these will severe the hurdles in the process of and independent judiciary in the future.

(Kumar, 2024), studied the 26th amendment and pointed out that Pakistan's political landscape has been quite chaotic. This constitutional turmoil could potentially alter the country's future. Yet, even during these challenging times, the Supreme Court of Pakistan has made efforts to uphold its independence and transparency, trying to shield itself from undue influence by the executive and legislative branches. The current scenario poses a serious challenge to the judiciary's resilience, with significant consequences for constitutional governance and the stability of democracy in Pakistan.

(Guramani, 2024) studied the 26th constitutional amendment and has been described it as "a shock for judicial freedom, rule of law, and human rights protection." It has had a significant political impact on how judicial appointments are made and how the judiciary operates. This amendment undermines the judiciary's ability to function independently and effectively serve as a check on the excesses of other branches of government, ultimately jeopardizing human rights. The International

Court of Justice (ICJ) criticized the rapidity with which the bill was turned into law, noting that the proposed amendments were kept under wraps and that there was no public consultation prior to their passage in Parliament. It's concerning that such a crucial constitutional amendment, which affects the public interest, was approved in such secrecy and in less than 24 hours.

(Saleem, 2024) studies that this thesis is about judicial appointment process after passing the 26th amendment. By amending Article 175A, the revision alters the Judicial Commission of Pakistan, incorporating members of Parliament into key decision-making processes, such as appointing judges to higher courts. This reorganization provides formal roles for both government and opposition representatives in the judge selection process, potentially posing a threat to judicial independence. The amendment also includes a significant change in criteria for the appointment of the Chief Justice of Pakistan. Departing from the earlier process of appointing almost purely by dint of seniority, the revised procedure gives the choice of the next CJP in the hands of a parliamentary panel from a short list of three names. An intention behind this amendment that is hard to reconcile may be that it is a panacea to guarantee merit, expertise and experience would be in front of tenure, thus magical concepts that will help the best nominee for the top "judiciary" job to be selected. This amendment has also reined in the suo motu powers of the judiciary, which would frequently intervene on its own to take up cases in wider public interest. Interfered Let alone interfere in the political and administrative affairs of the government (for which the judiciary has the above said policy to ensure justice by not interfering) but interfered with the judiciary even in the matter of upholding its own dignity and honour. A judicial committee of the three judges was need to authorize the action to be taken. (A very heartening development is that judicial accountability and evaluation has now become part of the 'judicial' landscape through the recent amendment).

(siddiqui, 2025), conducted this thesis and argues that the 26th constitutional amendment brings about major shifts in Pakistan's legal landscape, particularly concerning the Supreme Court and high courts. These changes significantly boost political influence over judicial appointments and the internal workings of the judiciary. Consequently, this political sway threatens the judiciary's ability to function independently and effectively as a check on government actions. In the past, the judiciary enjoyed the autonomy to select and appoint judges without outside interference. However, the amendment now grants the executive branch greater power in these decisions. This politicization of judicial appointments raises serious concerns about potential bias and the judiciary's capacity to remain neutral.

(Thabet, 2024) discussed the 26th constitutional amendment bill, which passed on Monday, is stirring up some serious concerns from international organizations regarding the potential threat to judicial independence in the country. This amendment modifies Article 175 of the constitution and sets a new selection process for the chief justice of Pakistan. A parliamentary committee will now select the chief justice from the three most senior judges of the Supreme Court, but the president still has to give the green light. The chief justice will serve a three-year term and can retire at 65. Moreover, the amendment requires the formation of constitutional benches, with the senior-most judge presiding over both the Supreme Court and the high courts. The composition of these benches will be decided by a joint session of parliament and the provincial assembly, which will need a simple majority to make it happen.

(Sani, 2024) studied that the 26th Constitutional Amendment has sparked controversy in Pakistan, raising significant issues regarding Judicial independence and its effects on the power balance. The amendment was approved rapidly and without transparency, facing criticism for infringing on Constitutional principles and the separation of powers. This study comprehensively examines the clauses of the Amendment, highlighting its possible effects on the independence of the Judiciary and the operation of democratic institutions. Furthermore, the examination contrasts the effects of the Amendment with International standards and suggests reforms to safeguard Pakistan's democratic framework.

(kureshi, 2025) investigated the constitutional amendment in Pakistan. He asserts that the 26th constitutional amendment included provisions for court-packing, court-curbing, and court-managing, which were influenced by political executive. The chief justice was no longer appointed according to the seniority rule. Instead, in violation of the meritocracy principle, a "special parliamentary committee" now selects a chief justice from the senior most three judges of the SC for a period of three-year. Legally, both members of the ruling and opposition parties would be included,

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but because opposition parties are currently not allowed in Pakistan's parliament, the ruling party could choose the chief justice they want. Second, the ruling parties' members were added to the judicial commission that was in charge of selecting and elevating judges until they surpassed the commission's judges. The amendment and the laws that followed significantly broadened the authority of the courts, even increasing the size of the Supreme Court. With the ruling coalition now in control of the judicial commission and new positions being created in the courts, the government is busy appointing loyalists to these roles. Additionally, the amendment restricted the courts' ability to initiate cases independently, without a petitioner. Over the past decade, suo moto cases have been a controversial way for the Supreme Court to step in and influence the governance and decision-making of previous administrations. Furthermore, the amendment empowered the government to effectively supervise the judiciary. The 26th amendment established a constitutional bench in each court, segmenting the courts and enabling them to handle cases related to constitutional matters. The judicial commission, which is under government control, selects the judges for these constitutional benches and appoints the presiding judge, who then organizes panels for specific constitutional cases from the available judges. The commission holds the authority to report judges for disciplinary reasons, often based on vague notions of 'inefficiency.' It can also manipulate the selection of judges for constitutional benches and the presiding judge whenever it sees fit, which enables the government to control the assignment of cases that pertain to itself. This led to the 26th amendment filling the judiciary with individuals who were loyal to the government, limiting its powers and placing it under government control.

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The Swift Legislative Procedure of the 26th Amendment and Absence of Openness for Discussion

The amendment was approved by Majlis-e-Shoora (Parliament) in 24 hours without public consultation and disclosure of the bill of the amendment. The opponents of the amendment, including international Commission of Jurist condemned the clandestineness and swiftness and states that such an important amendment should have involved a wide range of discussion within the parliament and among the public to sustain democratic values. The UN Human Rights Chief also expresses his apprehension over the lack of transparency, stating this legislative process seriously miscalculate the judicial independence in Pakistan.

The Influence of Party in Power/Parties on the Independence of Judiciary through Selection of Judges

The 26th constitutional amendment has significantly altered the judicial system, particularly in the appointment of the Chief Justice of Pakistan. Earlier, the appointment of the Chief Justice of Pakistan was based on seniority and merit, but now a special Parliamentary Committee has the authority to select the Chief Justice from among the three most senior judges of the Supreme Court. This committee comprises of 12 members, consisting of eight representatives from the national assembly and four from the senate. The merit and seniority have been undermined, and it is a violation of the article 14 of the ICCPR, which states that no political interference should occur in the legal system. Consequently, there is a detrimental effect on the equilibrium between judicial independence and political governance. This amendment too exasperates the structure of the Judicial Commission of Pakistan which is responsible for the appointment of judges to the higher judiciary.

The Judicial Commission of Pakistan has been re-organized under article 175A consisting of members 13 including CJP as a chairman, three 3 seniors most judges of the SC, one senior most judge of the Constitutional bench, federal minister of law, attorney general, one advocate having 15 years a long time experience from the bar council of Pakistan, 2 each from the national assembly and senate separately and one for minority or woman nominated by the speaker of the national assembly. Due to this reorganization of the JCP, the members of Judiciary have been diminished to five and expanded the non-judicial and parliamentary members. Subsequently, the judicial system has lost its control and has been overwhelmed by political influence.

Political Influence has been institutionalized over the Higher Judiciary

The political influence on the judiciary has been institutionalized and legalized. By increasing the members of the JCP, especially parliamentary members and this body can appoint judges by simple majority and its 7 members are non-judicial. Now the JCP appoints only those candidates as judges of the higher judiciary whom the JCP wishes. The role of judiciary, due to its 5 members in the JCP has

been curtailed. Therefore, by doing such changes, political influence has been institutionalized and legalized which in turn erode the independence of judiciary as the appointed judges will be subordinated indirectly to the parliament.

Constitutional Benches Decline Independence of Judiciary

Article 191A was included in the 26th constitutional amendment under which the constitutional benches will be established. The members and tenure of the constitutional bench will be determined by the Judicial Commission of Pakistan. This bench will be comprised from equal judges from each province of Pakistan. The senior most judge will be the presiding officer of the bench. All the original jurisdiction of Supreme Court has been given to the constitutional bench and the decision of the bench cannot be challenged in any court, including Supreme Court. Same constitutional benches were made in the High Court of each province including the High Court of Islamabad under article 202A. These benches are also made by the JCP. The Constitutional benches have given the original jurisdiction of the High courts and their decision cannot be challenged in any High Court. As we know that the JCP is completely under the control Parliament, so the judges of the constitutional benches as well. It means that all the judges are bound to the parliament or mostly the government because of their appointment. Therefore, it is crystal clear that the constitutional benches are threat to the independence of judiciary.

Inefficiency of Judges Undermines the Independence of Judiciary

Article 209 deals with Supreme Judicial Council and the process of removal of judges of the Supreme Court and High Court. The judge may be removed while committing gross misconduct, corruption, physical or mental inability to perform duties. But now under the 26th amendment the word inefficiency has been introduced, which is ambiguous and unclear. The inclusion of the term "inefficiency" as a criterion in this Amendment for the removal of Judges raises significant questions. This clause might be employed to focus on those Judges whose rulings oppose political agendas, ultimately threatening judicial independence so, there is a possibility that a competent judge due to inefficiency by the Supreme Judicial Council's proposal and the decision be taken by the president or parliament. A political unfavoured judge will be removed without any proof simply by applying the word "inefficiency". The word "inefficient" is the main cause of the dependence of judiciary.

Losing Public Trust over the Judiciary

After the passage of the 26th amendment, judiciary has been downgraded to such an extent that public trust has been lost on the higher judiciary due to political influence. The role of a free judiciary has been waned, now it will be the party in power or the majority in parliament which uses judiciary for its own interest. These changes are seen by the public as a blow to the fair and impartial justice, leading to a loss of trust in the legal process. This is also responsible for the lack of independence of judiciary.

Judiciary cannot solve Constitutional Crisis

The 26th amendment significantly brought changes in the Judicial Commission, potentially increasing political influence in judicial appointments and potentially ignoring the rightful judiciary's ability to act independently. The judiciary after the amendment is unable to solve constitutional crisis which is its legal duty. As the appointment of judges are politicized and they will subject to the political influence so they cannot take judicial review over any decision of the government and will always support such decisions. Therefore, the judiciary has been deprived of its real power.

The Executive Dominating the Independence of Judiciary

Judicial independence is an essence of democracy, allowing courts to function without fear of political or executive revenge. The 26th Amendment exposed the delicateness of Pakistan's judiciary and its continued battle for upholding its independence in an atmosphere where political forces put needed weight on the scales of justice. All these events made the crisis highlight the fact that the executive branch had been increasing its reach into the jurisdiction of the judiciary, and the judiciary is increasingly concerned about institutional checks and balances which was ignored by the executive in securing the passage of the 26th Amendment, especially the lack of consultation with the judiciary.

The debate regarding Suo Motu Authority within Pakistan's Judiciary

The modification in clause 3 of Article 184 presents significant challenges for Pakistan's legal and political structure, influencing the power balance among the Judiciary, Executive, and Legislature. It prompts inquiries regarding judicial independence, as the judiciary's capacity to engage in issues of public concern could permit the executive and legislative branches to prevail without adequate

oversight. From a political perspective, this action may be viewed as strengthening executive authority. Possibly undermining the Judiciary's role in balancing political power and diminishing public confidence in the legal system.

The 26th Amendment presents a significant danger to Human Rights and the Rule of Law by Weakening Judicial Independence

An autonomous judiciary is crucial for protecting basic rights, including the right to a fair trial and defence against unlawful imprisonment. Nonetheless, permitting political influence in judicial selections and terminations under ambiguous phrases such as "inefficiency" puts these rights at risk, exposing citizens to possible governmental oppression. Additionally, the absence of defined accountability and transparency measures undermines the integrity of the legal system, fostering public distrust. This political power undermines the trustworthiness of the judiciary and also deters individuals from pursuing justice, as they are afraid of partial judgments. In the end, the 26th Amendment erodes public trust in the judiciary's capacity to provide fair and unbiased justice, jeopardizing the core tenets of Human Rights and the Rule of Law.

Recommendations and Conclusion

Conclusion

The 26th Constitutional Amendment resulting judicial turmoil and shaken the sensitive equilibrium between enacting legal reforms and maintaining judicial autonomy in Pakistan. This Amendment could increase more political influence over Judiciary as the Judicial Commission of Pakistan more politicized by increasing non-judicial members. It could give birth to the appointment of Judges based on their loyalty to their politicians instead of their ability to be just and fair. This Amendment caused another threat to the independence of judiciary that the Judges can be removed on the grounds of "inefficiency" without providing the proper definition of "inefficiency" that could be misused to remove the Judges who disagree with the political interests of the party in power. This Amendment has weakened the Separation of Powers, which is needed to maintain a balance between the three organs of government. The amendment put the role of Judiciary at risk in protecting fundamental rights of the citizens and maintaining rule of law and democratic principles. As the judiciary became under the control of executive, the people lost their trust in the Legal System, having a fear of partial judgment of their cases. The right to fair trial has been at stake and it is an important right of the people. This amendment signifies regression in constitutional order and prioritizing political control over judicial independence, weakened rule of law, diminished human rights protection and made judiciary completely subservient to executive and legislative dominance. The Amendment is also against the International Standards for Judicial independence, which are meant to guarantee that the Courts can make the decisions without any political pressure. In the near future, the Judiciary under political pressure could damage the Democracy of Pakistan, giving more influence in the hands of Government and less freedom for the citizens. Keeping in mind the impacts of the amendment on the independence of judiciary, comprehensive reforms are required for judiciary to strengthen transparency, accountability, and collaboration between branches of government. Formulating open and an independent mechanism for judicial appointments, fostering open dialogue on constitutional amendments, and encouraging public consciousness about the judiciary's role are essential steps in ensuring an independent judicial system. Only by tackling these issues Pakistan's judiciary can fulfil its role as a protector of constitutional rights and the democratic principles.

Following are the Recommendations for Enhancing Judicial Independence and Openness

To tackle the issues of maintaining a balance between legal reforms and judicial independence and ensure justice and democratic principles numerous important suggestions can be offered to enhance judicial independence and transparency in Pakistan.

Recommendations:

1. Initially, the process of appointing judges which criticized the most requires a thorough revision to focus on merit and expertise prioritized over party loyalty in the selection of judges. This might entail establishing an autonomous judicial panel to conduct suggestions for judicial selections grounded on factors like legal expertise, honesty, and commitment to the law. The committee should consist of individuals from the legal field and Human Rights Associations. For making committee, it is necessary to take the feedback of the community, wider stakeholders and judicial experts so, that judicial appointments are not based on the loyalty to political parties but instead the capabilities and intelligence of the candidates.

2. The reform process should involve greater participation, with a more engaged role for the judicial system, particularly in relation to the selection of the CJP. It is advised that go back to the prior system where the senior most judge of the Supreme Court automatically becomes the Chief Justice of Pakistan. Remove the Special Parliamentary Committee for the elimination of the executive influence over the judiciary.
3. Politically motivated removal of judges by using the word “inefficiency” should be stopped. The removal process of judges should be with the international standards. Global Standards such as the United Nations' recommendations on Judiciary Independence and the European Convention on Human Rights ought to be taken into account to create the Judiciary independent of political pressures and to guarantee the safeguarding of citizen rights. These reforms will aid in maintaining the fairness and transparency of the Legal System while upholding the rights of citizens are fully safeguarded.
4. Back petitions in the Supreme Court to annul the amendment's unconstitutional provisions, as civil society groups and opposition parties have initiated. Engage International Bodies for strong scrutiny from the UN Human Rights Council and organizations like the International Court of Justice (ICJ) to pressure Pakistan to uphold its International Covenant on Civil and Political Rights (ICCPR) obligations.
5. The government should consider future amendments must involve transparent debates with legal experts, opposition parties, and civil society to prevent rushed, secretive legislation. It will Encourage bipartisan dialogue to depoliticize judicial reforms, drawing lessons from past amendments like the 18th and 19th, which aimed to strengthen judicial autonomy.

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