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A DOCTRINAL AND JUDICIAL ANALYSIS OF LEGITIMATE EXPECTATION IN INDIAN CONTEXT

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ABSTRACT

The principle of legitimate expectation, which stems from the tenets of natural justice and administrative fairness, has developed into a crucial element of administrative law. Originating from English legal traditions and integrated into Indian law through judicial creativity, this doctrine seeks to ensure fairness in administrative decision-making, even when there are no enforceable legal rights. This paper provides an in-depth examination of the doctrine's origins, evolution, and its procedural and substantive aspects. By referencing landmark cases such as Schmidt v. Secretary of State, Navjyoti Corp. Group Housing Society, and Union of India v. Hindustan Development Corporation, the analysis illustrates how Indian courts have defined the parameters of this doctrine, anchoring it in Article 14 of the Constitution. While the judiciary has consistently affirmed the procedural aspect of legitimate expectation, its substantive enforceability is still approached with caution. Additionally, the paper explores the significance of procedural fairness, particularly the right to be heard, and the delicate balance between individual expectations and the greater public interest. Ultimately, the doctrine's significance is in fostering transparency, preventing arbitrariness, and ensuring accountability in public administration, all while respecting the boundaries of legislative and executive powers.

Keywords: Legitimate Expectation, Administrative Law, Procedural Fairness, Judicial Review, Natural Justice, Substantive Expectation.

INTRODUCTION

Administrative Law is comprehensive in scope, making it challenging to classify its various functions into distinct categories. As a result, several principles and doctrines have been established to facilitate the effective operation of the administration. This doctrine is closely related to the principles of natural justice, non-arbitrariness, promissory estoppel, rule of law,

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and proportionality, all aimed at preventing the misuse of administrative power. The doctrine of legitimate expectation was first articulated by Lord Denning in the 1969 case of *Schmidt v. Secretary of State for Home Affairs*.² Since then, it has gained prominence in public law within various legal systems. This principle addresses the relationship between government authorities and individuals.

This principle clarifies the expectations that arise from administrative actions which may have legal implications. Legitimate expectations may arise either from a clear promise made by the authority or from a well-established, consistent pattern of past conduct that an individual can reasonably expect to continue. Such practices must be regular, dependable, and clearly defined in terms of how the authority functions or makes decisions. Public authorities are generally expected to respect these expectations unless there are strong, overriding reasons rooted in the public interest. In such cases, deviation from the expectation is justified only when required to serve the greater public good. It is crucial to understand that legitimate expectation does not equate to an enforceable legal right. Instead, it occupies a middle ground between having no claim and possessing a full legal entitlement, allowing public authorities to be held accountable when such expectations are ignored without justification.

THE DOCTRINE OF LEGITIMATE EXPECTATION

The doctrine of 'Legitimate Expectations' is one of several tools the judiciary employs to scrutinize administrative decisions. It addresses the relationship between individuals and public bodies. Through this principle, a public authority can be held responsible for failing to meet a legitimate expectation. Such an expectation may arise when a person reasonably anticipates certain treatment based on a past pattern of conduct or a clear promise from the authority. This doctrine has become an important aspect in the development of judicial review jurisprudence. It posits that an individual may have a legitimate expectation of being treated in a particular manner by an administrative authority, even in the absence of a legal right under private law to such treatment. Even when there is no legal entitlement, an individual may still hold a legitimate expectation of obtaining a benefit or privilege. This expectation may stem from a promise or from the presence of a consistent practice that the applicant can reasonably anticipate will continue and be applied in their situation as well. If these expectations are not met, the Court or Tribunal may step in to safeguard the individual by invoking principles akin

² *Schmidt v Secretary of State for Home Affairs* [1969] 1 All ER 904.

to those of natural justice and fair play in action.³ The principle of legitimate expectation is grounded in Article 14 of the Constitution and is fundamentally based on the idea of fairness. Legitimate Expectations can be categorized into two types:

Procedural Legitimate Expectations and
Substantive Legitimate Expectations.

1. Procedural –

The procedural aspect of this doctrine pertains to the procedures that have been consistently followed by the authorities for all individuals.

2. Substantive - Substantive legitimate expectation pertains to the scenario where the applicant is pursuing a specific benefit or commodity. The entitlement to such a benefit is grounded in governmental actions that validate the presence of a pertinent expectation. Consequently, this suggests that if a significant benefit is awarded or if the individual is already receiving the benefit, it should be maintained without substantial alteration, thus making it enforceable.

ORIGIN AND DEVELOPMENT OF DOCTRINE OF LEGITIMATE EXPECTATIONS IN ENGLISH LAW

The Court elaborates on how the doctrine of legitimate expectations was first introduced into English Law in the case of *Schmidt v. Secretary of State for Home Affairs*,⁴ where it was noted that a foreign national granted leave to enter the United Kingdom possessed the right to be heard and had a legitimate expectation of being permitted to remain for the designated period. The Court further examines the notable case of *A.G. of Hong Kong v. Ng Yuen Shiu*,⁵ in which Lord Fraser remarked that when a public authority commits to a procedure, it is essential that it operates fairly and honours its commitments, in the interest of effective administration.

The Court observes that there is a lack of clarity and definition regarding the doctrine of legitimate expectation as articulated by the Supreme Court, and therefore, it intends to provide further insight on the matter. The Court differentiates between expectation and anticipation, asserting that an expectation can only be deemed legitimate if it possesses legal endorsement or is supported by a procedure or custom that has been consistently adhered to.

³ Thakker CK, *Administrative Law* (2nd edn, Eastern Book Company 2006).

⁴ *Schmidt v Secretary of State for Home Affairs* [1969] 1 All ER 904.

⁵ *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629.

This case is significant within the Indian legal context as it explicitly delineates the boundaries of the doctrine, indicating that it does not encompass a 'crystallised right' and consequently does not facilitate a direct claim for relief. The doctrine is limited to the right to a fair hearing in instances where a promise has been retracted or is negative. A substantive expectation does not inherently constitute an absolute right unless the decision-maker fails to justify the retraction based on overriding public interest. Moreover, such a decision must be rooted in arbitrariness and unreasonableness, rather than being justifiably made in the interest of the public. The Court further clarified that when the matter pertains to a question of policy or a shift in policy, the Courts should maintain their jurisdiction and avoid interference. Therefore, while legitimate expectation may result in judicial review, the extent of relief that the Court can provide is quite restricted.

THE ORIGIN AND EVOLUTION OF THE DOCTRINE OF LEGITIMATE EXPECTATIONS IN INDIA

In India, the doctrine of legitimate expectation serves as a notable illustration of the Supreme Court's judicial creativity. The adoption of this doctrine is relatively recent, primarily emerging over the past thirty years. However, this does not imply that the doctrine is either extra-legal or extra-constitutional. In India, this doctrine is firmly grounded in Article 14 of the Constitution, which mandates public authorities to act fairly and prohibits arbitrariness in administrative actions.

The doctrine was first applied in the case of *Scheduled Caste and Weaker Section Welfare Assn. v. The State of Karnataka*.⁶ In this instance, the government issued a notification detailing the areas designated for slum clearance schemes. Subsequently, the notification was amended, excluding certain previously identified areas. The court determined that the earlier notification had created legitimate expectations among the residents of those areas. Consequently, without providing a fair hearing, these legitimate expectations could not be disregarded. Thus, the Supreme Court acknowledged the procedural dimension of the doctrine, emphasizing that legitimate expectations cannot be denied without affording those affected a fair opportunity to be heard.

The Doctrine of Legitimate Expectation was initially examined in the Indian context in the case

⁶ *Scheduled Caste and Weaker Section Welfare Association v State of Karnataka* [1991] AIR 1117 (SC).

of *State of Kerala v. K.G. Madhavan Pillai*.⁷ In this instance, a sanction was granted for the respondents to establish a new aided school and to enhance the existing schools; however, an Order was issued 15 days later to suspend the previous sanction. The respondents contested this Order on the grounds of a breach of natural justice principles. The Supreme Court determined that the sanction had conferred upon the respondents a legitimate expectation, and the subsequent order infringed upon the principles of natural justice.

In another Supreme Court case, *Navjyoti Corp. Group Housing Society v. Union of India*,⁸ the new criteria for land allotment were contested. Under the original policy, seniority for allotment was determined based on the date of registration. However, a policy change occurred in 1990, altering the criteria for seniority determination to the date of approval of the final list.

The Supreme Court opined that the Housing Societies had a right to 'legitimate expectation' due to the consistent and ongoing practices in the past regarding allotment. The Court further clarified that the existence of 'legitimate expectations' can lead to various outcomes, one of which is that the authority should not disregard 'legitimate expectation' unless there is a justifiable public policy reason to do so. It was also highlighted that providing a reasonable opportunity to those likely to be affected by a change in a previously consistent policy is essential for fair conduct. The Honourable Court concluded that such an opportunity should have been afforded to the Housing Societies through a public notice.

The Supreme Court provided an in-depth analysis of the doctrine of legitimate expectations in the case of *Food Corporation of India v. Kamdhenu Cattle Feed Industries*.⁹ It stated that the obligation of public authorities to act fairly grants every citizen a legitimate expectation of fair treatment. It is crucial to acknowledge this expectation to fulfil the requirement of non-arbitrariness in state actions; otherwise, it could lead to an abuse of power. Furthermore, the Court highlighted that while such a reasonable or legitimate expectation may not constitute a directly enforceable legal right, neglecting to consider it could render a decision arbitrary. Determining whether an expectation qualifies as legitimate is context-dependent and must be assessed on a case-by-case basis.

⁷ *State of Kerala v K G Madhavan Pillai* (1988) 4 SCC 669.

⁸ *Navjyoti Cooperative Group Housing Society v Union of India* (1992) 4 SCC 477.

⁹ *Food Corporation of India v Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71.

In the case of *Union of India v. Hindustan Development Corporation*,¹⁰ the Supreme Court examined the doctrine extensively, beginning with an explanation of its scope as outlined the Halsbury text.¹¹ This source indicates that an individual may possess a legitimate expectation of being treated in a particular manner, even in the absence of a legal right to such treatment.

CIRCUMSTANCES FOR THE ESTABLISHMENT OF LEGITIMATE EXPECTATION

Circumstances that may result in the establishment of legitimate expectations were articulated in *Madras City Wine Merchants v. State of Tamil Nadu*,¹² specifically stating that there must be an explicit promise or representation made by the administrative body. This promise should be clear and unequivocal. Additionally, the presence of a consistent past practice that the individual can reasonably anticipate will continue in the same manner is essential. In *P.T.R. Exports (Madras) Pvt. Ltd. and Others vs. Union of India and others*,¹³ it was determined that the doctrine of legitimate expectations does not apply when the relevant authority is authorized to make decisions under an executive policy or the law itself. Furthermore, the Government is not constrained from developing new policies due to 'legitimate expectations' when necessary for the public good.

The Supreme Court determined in *M.P. Oil Extraction v. State of M.P.*¹⁴ that the doctrine of legitimate expectations functions within the domain of public law and is regarded as a substantive and enforceable right in suitable circumstances. It was concluded that industries had a legitimate expectation concerning past practices and the renewal clause, which indicated that agreements would be renewed in a similar fashion.

In *National Buildings Construction Corporation v. S. Raghunathan*,¹⁵ the respondents were assigned to a deputation for an overseas project to be executed in Iraq by NBCC (a Government Company). The respondents opted to receive their salary at the same rate as that of employees of the Central P.W.D, along with a Deputation allowance. They were also granted a foreign allowance amounting to 125% of the basic pay; however, their basic pay was subsequently

¹⁰ *Union of India v Hindustan Development Corporation* (1993) 3 SCC 499.

¹¹ *Halsbury's Laws of England*, 4th edn, vol 1(1), para 151.

¹² *Madras City Wine Merchants Association v State of Tamil Nadu* (1994) 5 SCC 509.

¹³ *PTR Exports (Madras) Pvt Ltd v Union of India* AIR 1996 SC 3461.

¹⁴ *MP Oil Extraction v State of Madhya Pradesh* (1997) 7 SCC 592.

¹⁵ *National Buildings Construction Corporation v S Raghunathan* (1998) 7 SCC 66.

revised. They contended that this allowance should be disbursed based on the revised pay scale. The claim, which was founded on legitimate expectations, was denied by NBCC. The Court concurred with the ruling that NBCC did not fulfil any such promise or agreement. In elaborating on the doctrine, the Court indicated that its origins lie within administrative law, emphasizing that government departments should not operate without constraints, particularly when influenced by an abuse of discretion. Furthermore, the Court highlighted a procedural element, noting that the argument of 'legitimate expectation' should have been introduced in the pleadings themselves. Consequently, the High Court erred in permitting the plea during the argument phase without the necessary pleadings and affidavit to substantiate it. From the case discussed, it can be deduced that the doctrine encompasses both substantive and procedural dimensions.

In the case of *Bannari Amman Sugars Ltd. V. CTO*,¹⁶ it was reaffirmed that the protection of legitimate expectation should not undermine the fulfilment of a paramount public interest. Thus, it can be stated that if an individual's legitimate expectation is not met, the decision-making authority may conceal itself behind the notion of 'overriding public interest'.

ARTICLE 14 AND LEGITIMATE EXPECTATION

The application of the doctrine has been fundamentally integrated into Article 14 of the Constitution, establishing 'non-arbitrariness and unreasonableness' as essential criteria for evaluating whether there has been a denial of legitimate expectation. This requirement has rendered the doctrine somewhat ineffective within the Indian context. For the doctrine to develop independently, it is crucial to establish lower standards as qualifiers, which may inevitably introduce risks such as excessive judicial intervention.

PROCEDURAL FAIRNESS AND LEGITIMATE EXPECTATION

No order may be issued without providing an opportunity for a person to be heard if it results in civil consequences. Even if an individual does not possess an enforceable right, if they are affected or likely to be affected by an order made by a public authority, the doctrine of legitimate expectation becomes applicable, granting the individual a legitimate expectation of being treated in a specific manner by an administrative authority.¹⁷

¹⁶ *Bannari Amman Sugars Ltd v Commercial Tax Officer* (2005) 1 SCC 625.

¹⁷ Jain MP and Jain SN, *Principles of Administrative Law* (6th edn, LexisNexis 2017).

A situation involving legitimate expectation arises when an entity, through representation or established practice, creates an expectation that it has the capacity to fulfil. The protection offered is confined to this scope, and judicial review is limited to these parameters. An individual who bases their claim on the doctrine of legitimate expectation must first demonstrate that there is a foundation for their claim, thereby establishing locus standi to pursue such a claim. Legitimate expectations can manifest in various forms and stem from different circumstances, such as anticipated promotions, contracts, government distributions of benefits, and similar scenarios. For instance, discretionary grants of licenses or permits may carry a reasonable expectation, albeit not a legal right, for renewal or non-revocation; to abruptly thwart that expectation may be perceived as unjust without allowing the affected individual an opportunity to be heard. The court must determine whether the action was taken as a matter of policy or in the public interest.

A decision that denies a legitimate expectation on such grounds does not warrant interference unless, in a specific case, the decision or action taken constitutes an abuse of power. Consequently, the limitation is highly restricted, and if the doctrine of natural justice does not govern the exercise of power, the notion of legitimate expectation cannot play any role. The court must refrain from encroaching upon the discretion of the public authority that is authorized to make decisions under the law. The Court is anticipated to apply an objective standard that allows the deciding authority the complete spectrum of choices that the legislature is believed to have intended. In instances where the decision is entirely at the discretion of the deciding authority without any legal constraints, and if the decision is made fairly and objectively, the Court will not intervene on the basis of procedural unfairness to an individual whose interests, grounded in legitimate expectation, may be impacted. Legitimate expectation may serve as one of the potential grounds for judicial review; however, the provision of relief is significantly constrained.

The principle of legitimate expectation is intricately linked to the 'right to be heard.' Such an action can manifest in various forms. One form may involve the expectation of prior consultation. Another form may be the expectation of being granted time to present representations, particularly when the aggrieved party is attempting to convince an authority to deviate from a lawfully established policy related to the exercise of a specific power due to

some proposed exceptional reasons that justify such a deviation.¹⁸

A legitimate or reasonable expectation may stem from an explicit promise made on behalf of a public authority or from the presence of a consistent practice that the claimant can justifiably anticipate will persist. This expectation may be founded on a statement or commitment made by or on behalf of the public authority responsible for making decisions. If the authority, through its representatives, has acted in a manner that would render it unjust or inconsistent with sound administration to deny the claimant such an inquiry, then the expectation is valid. It is important to note that expectation is not synonymous with anticipation. It differs from a wish, desire, or hope, and it cannot be equated to a claim or demand based on a right. Regardless of how earnest and sincere a wish, desire, or hope may be, and regardless of how confidently one may expect them to be realized, they alone do not constitute an assertable expectation, and mere disappointment does not invoke legal repercussions. A hopeful sentiment, even if it leads to a moral obligation, does not equate to a legitimate expectation. The legitimacy of an expectation can only be inferred if it is based on legal sanction, custom, or an established procedure that is followed in a regular and natural order. Furthermore, it is distinct from a genuine expectation. Such an expectation must be justifiably legitimate and worthy of protection. Not every legitimate expectation automatically transforms into a right, and thus it does not constitute a right in the traditional sense.

Legitimate expectation provides the applicant with sufficient standing for judicial review. This doctrine is primarily limited to the right to a fair hearing prior to a decision that negates a promise or retracts an undertaking. The doctrine does not allow for immediate relief from the administrative authority, as no crystallized right is involved. Legitimate expectation may arise-

1. If a public authority has made an explicit promise; or
2. due to the presence of an established practice that the claimant can reasonably anticipate will persist;
3. Such an anticipation must be deemed reasonable.

The principle of legitimate expectation is applicable solely within the realm of administrative decisions. If the claim of legitimate expectation pertains to procedural fairness, there is absolutely no possibility of invoking this doctrine against the legislation. Administrative

¹⁸ Ibid.

actions are subject to judicial review under three categories: -

- (i) illegality, where the decision-making authority has committed an error of law, for instance, by attempting to exercise a power it does not possess.
- (ii) irrationality, where the decision-making authority has acted in such an unreasonable manner that no rational authority would have arrived at the same decision;
- (iii) procedural impropriety, where the decision-making authority has failed to fulfil its obligation to act fairly.

When a person's legitimate expectation is not met due to a specific decision, the decision-maker must justify the denial of that expectation by demonstrating a compelling public interest. Consequently, even if there is an intention to provide substantive protection for such expectations, it does not confer an absolute right to any individual. The concept of legitimate expectation, being less than a right, functions within the domain of public law rather than private law, and to a certain degree, such legitimate expectations should be safeguarded but not guaranteed. There are more compelling arguments against the substantive protection of legitimate expectations than there are in favour of such protection.

If a denial of a legitimate expectation in a specific case equates to a denial of a guaranteed right or is deemed arbitrary, discriminatory, unfair, or biased, it constitutes a gross abuse of power or a breach of the principles of natural justice. Such a denial can be challenged on the well-established grounds that invoke Article 14 of the Constitution of India. However, a claim based solely on legitimate expectation, without any additional substantiation, cannot 'ipso facto' confer a right to invoke these principles. It is now firmly established that while Article 14 prohibits class legislation, it does not preclude reasonable classification for legislative purposes. To satisfy the criteria for permissible classification, two conditions must be met:

- (i) The classification must be based on an intelligible differentia that distinguishes the grouped individuals or entities from those excluded, and
- (ii) This differentia must have a rational connection to the objective intended to be achieved by the relevant statute. Classification may be based on various grounds, including geographical distinctions or categories of objects or occupations. What is essential is that there exists a nexus between the classification basis and the objective of the Act in question. Article 14 denounces discrimination not only through substantive law but also through procedural law.

The notion of legitimate expectation does not serve as the key to unlock the treasury of natural

justice, nor should it open the gates that prevent judicial review on the merits, especially when uncertainty and speculation are inherent in that very notion. The mere existence of a reasonable or legitimate expectation by a citizen does not, in itself, constitute a distinct enforceable right; however, neglecting to consider and appropriately weigh it may render the decision arbitrary. This illustrates how the requirement for due consideration of legitimate expectation is integral to the principle of non-arbitrariness, which is a necessary component of the rule of law.

Every legitimate expectation constitutes a pertinent element that necessitates careful consideration within a just decision-making framework. The determination of whether the claimant's expectation is reasonable or legitimate within the specific context is a factual matter that varies with each case. When such a question arises, it must be resolved not based on the claimant's viewpoint but rather in the broader public interest, where other more significant factors may take precedence over what would typically be regarded as the claimant's legitimate expectation. The principle of legitimate expectation is integrated into the rule of law.

In the realm of contracts, as in all other governmental actions, the State and its various entities are required to adhere to Article 14 of the Constitution, of which the absence of arbitrariness is a crucial aspect. Public law does not permit unrestricted discretion. A public authority is endowed with powers solely for the purpose of serving the public good. This obligation necessitates acting fairly and employing a procedure that embodies fairness in practice.

To fulfil the requirement of non-arbitrariness in governmental actions, it is essential to consider and appropriately weigh the reasonable or legitimate expectations of individuals who may be impacted by the decision. Furthermore, any unfairness in the exercise of power could be deemed an abuse or excess of authority, in addition to potentially undermining the bona fides of the decision in a particular instance. The rule of law does not entirely eradicate discretion in the exercise of power, as such a notion is impractical; rather, it establishes a framework for the oversight of its application through judicial review.

PROCEDURAL FAIRNESS

Procedural fairness pertains to the methods employed by a decision-maker, rather than the actual result achieved. It mandates that a fair and appropriate procedure be followed when arriving at a decision. The Ombudsman deems it highly probable that a decision-maker adhering to a fair procedure will arrive at a just and accurate conclusion. Every legal process

can be evaluated not only from the standpoint of its outcome but also from the perspective of the process itself. Consequently, the concept of process values has been defined as standards of value that allow us to evaluate a legal process as effective, independent of any beneficial outcomes. It has also been observed that those involved in the legal process judge it not solely based on the final outcome but also in terms of adherence to process values.¹⁹

Procedural fairness consists of two primary common law principles aimed at ensuring that fair procedures are observed when making decisions that impact individuals' rights, obligations, or legitimate expectations. These two principles, traditionally articulated, are:

- I. The decision-maker must provide a "hearing" when appropriate; and
- II. The decision-maker must not exhibit bias or be perceived as biased.²⁰

From a fundamental perspective, procedural fairness encompasses a set of values that must be safeguarded by the legal protections established in procedural law.

PROCEDURAL FAIRNESS AS A CONSTITUTIONAL PRINCIPLE

"The rules of natural justice are not codified regulations, nor can they be regarded as Fundamental Rights. Their purpose is to ensure justice or to avert miscarriages of justice. These rules are applicable only in contexts not governed by any validly enacted law. They do not replace the law but rather complement it. If a statutory provision can be interpreted in harmony with the principles of natural justice, the courts should do so. However, if a statutory provision explicitly or implicitly negates the application of any rules of natural justice, then the court must respect the legislature's or statutory authority's directive and cannot incorporate the principles of natural justice into the relevant provision."²¹

The right to be heard cannot be assumed in situations where there is a critical need for confidentiality, when decisions must be made in emergencies, or when immediate action is necessary to prevent delays that could undermine the intended outcome, or when such expectations exist.

The assurance of equal protection is applicable to both substantive and procedural laws. From

¹⁹ Thakker (n 3) 135.

²⁰ Rai K, *Administrative Law* (9th edn, Allahabad Law Agency 2017).

²¹ *J N Sinha v Union of India* (1971) 1 SCR 791.

the perspective of the latter, it signifies that all litigants in similar circumstances should have access to the same procedural rights for both relief and defence, without any form of discrimination. Article 14 mandates adherence to the principles of natural justice, which includes the necessity for reasoned decisions. The decision-making process ought to be transparent, equitable, and accessible. The entitlement to a fair trial is a fundamental human right. Any procedure that obstructs a party's ability to secure a fair trial would violate Article 14. The most crucial aspect of this is the right to a fair hearing.

CONCLUSION

The doctrine has certainly gained importance in Indian Courts, providing standing to individuals who may or may not possess a direct legal right. The doctrine of legitimate expectations effectively leads to a procedural right, namely the right to judicial review in India; however, the substantive dimension of the doctrine appears to be in its early stages. There has been some reluctance among scholars regarding the applicability of the doctrine to substantive rights. It has been contended that applying the doctrine to substantive rights could jeopardize the separation of powers and may be seen as an overreach of the Judiciary's authority.

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