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Land Acquisition: Sentimental, Constitutional, and Legislative Aspects of It

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ABSTRACT

“Bhoomi”, “Zameen” and “Dharti”, this is the thing that can be compared to a mother. It is the supreme prioritized entity in India. This Research Paper will ornate the emphasis on property holdings, the sentiments devoted to the same, the prominence put on the thoughts of the inhabitants, and discussing the laws related to land and elaborating on the important ones. This will include a precise view of Bhoomi’s importance and how much emphasis is given to the same legally and by the government. Concepts like “Panch Maha Bhoota”, “Doctrine of Eminent Domain” and multiple legislations are discussed. This will include both sides of the coin including all concepts and theories that will be discussed. The reading will begin with the Indian emotional elaboration of Land then the comparative timeline analysis of the laws relating to Land Acquisitions in different periods of civilization and proportional examination with present-time laws. Focus is put more on qualitative data and reliable evidence to compare the laws in multiple civilizations, and to set an expectation and cure the forthcoming Land Laws in India. Also, giving it a religious prescription and land relocation and rehabilitation, the focus is kept on how sentimental, emotional, and historic prominence was sacrificed for and by legalities.

The objective of this paper is to elaborate on how sensitive the topic of land acquisition is. The sentimental value and the scale of importance given to it by the legislative bodies in India including the Indian Constitution.

The significant results were that legislations like The Land Acquisitions Act, 2013 or The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 require some deliberations, as well as the other rules regarding the same, important points regarding the Constitutional and fundamental rights, are also discussed and matters are jagged.

Keywords: *Land acquisition, Rehabilitation, and relocation, Panch Maha-Bhoota, Fair compensation, transparency.*

I. INTRODUCTION

Only people who have suffered the pain of losing their mother know how it feels. Just like that,

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what happens in a country where people who regard their land as their mother lose it in the name of development and public purposes? People, even after receiving monetary compensation for the same do not know what next to do in their life because their land was their pride, identity, and the only way of living and means of livelihood.

Legislations are passed for the people, and hence the after-effects of such legislation on those people shall also be taken into account.

Since British rule, India has been subjected to the Land Acquisition Act of 1894. According to this Act, the government may purchase any land for any "public use" it chooses. Since the British never provided a clear definition of the term "public purpose," a government might theoretically purchase land for any reason and claim that the acquisition was for a "public purpose." Following independence, Indian governments at the national and state levels continued this pattern of acquiring huge tracts of land for a variety of infrastructure and development projects, including roads, highways, ports (air and sea), power plants (thermal, hydro, and nuclear), etc.

This paper will be analyze how the different legislations, amendments, doctrines, and Hon'ble Supreme Court guidelines have helped shape the procedure of land acquisition in India.

(A) Research methodology

For the present paper, the authors adopted a doctrinal form of research wherein extensive data was collected from the grassroots level by interviewing farmers who have participated in the land acquisition process. To understand the intricacies of the concerned law, the authors have also conducted interviews of notable legal luminaries. Lastly, extensive academic data was reviewed for conducting the research of the present paper.

II. HISTORIC LEGAL ANALYSIS

"Our land is worth more than your money." It will last indefinitely. It will not even be consumed by fire. This land will be here to give life to men and animals as long as the sun shines and the waters flow. The compulsory land acquisition not only results in the loss of economic assets and livelihood, but it also disrupts communities, cultural identities, and local markets for goods and labor, placing the oustees in a "spiral of impoverishment."³

People all over the world, especially in India, have always held high regard for their land and considered it their mother, parting from which is problematic. One's land is not only a source

³ Isapo Muxika or Blackfoot, 19th Century Chief of Siksika First Nation Tribe in Current Day, Canada. Cited from Sharon O'Brien, *American Indian Tribal Governments*, 70 (University of Oklahoma Press: Norman and London, 1993).

of income and livelihood but even a way to identify oneself in society. However, the government needs to carry out development work in the country for which land is a basic requirement. As said that the end should justify the means, no matter if it's even an immoral one, but in this case, at what cost are we ready to develop? At the cost of the farmer's lands that have been feeding us for centuries? At the cost of the livelihood of a poor farmer and a family of four dependent upon him? That should certainly not be the case and alternatives must be looked for. For finding solutions for the future, we must first analyze the historical aspects of the same.

The history of the law of land acquisitions in India has not only been long but also passed several alterations since its inception. It all began with the Bengal Regulation I of 1824 to promote British commercial interests. Under the said Regulation, land for railway construction was acquired, and the first railway opened in 1853.

The Bengal Regulation I of 1824 was replaced by Act I of 1850, which extended the provision for land acquisition to Calcutta city. By 1857, various laws governing land acquisition had been consolidated into Act VI of 1857, which was made applicable throughout British India. The Land Acquisition Act replaced the 1857 Act (Act X of 1870).

However, in the case of *Radhey Shyam(D) Through LRs and others v. State of U.P. and others*⁴, the court held that the Act of 1870 mandated proper valuation of acquired land. In the event of a disagreement over the amount offered in lieu of acquisition, the Collector could refer the matter to the Civil Court, which was assisted by the assessors. If the Civil Court and the assessors disagree, an appeal can be filed in the High Court. The mechanism was declared to be ineffective by the Hon'ble Supreme Court because the litigation took up a lot of time.

The Act of 1870 was repealed, and the Act of 1894 was enacted to make it easier for the government to acquire private land for public purposes. However, the Act of 1894 did not give landowners/persons with an interest in land the opportunity to object to the acquisition of land. Their concerns were limited to the amount of compensation and related issues. The lack of opportunity for landowners to object to the acquisition resulted in widespread resentment among the landowners.

This resulted in the addition of Section 5A to the 1894 Act in 1923, under which any person interested in land that was needed or likely to be needed for a public purpose or for a Company could file objections to the acquisition of the land within 30 days of the date of publication of the Notification under Section 4(1), plus an opportunity to be heard was to be provided by the

⁴(2011) 5 SCC 553.

Collector to the person interested in the land under 5A(2). With this, the principle of Natural justice i.e., *audi alterem partem* was incorporated into the process of land acquisition.

The British enacted the Act of 1894 with the specific goal of constructing infrastructures such as railways, post-telegraph lines, roads, bridges, canals, communication networks, and means to transport their army and weaponry to various parts of the country. Their primary goal was to extend, control, and consolidate their rule throughout the country. As a result, rural landowners' land was acquired under the Act. The government retained complete ownership and control of the infrastructure and communication network built after land acquisition for use in public purposes.

III. INDIAN SENTIMENTS IN VIEW WITH PANCHA-BHOOTA

Although there has been some demand for the reinstatement of the right to property as a fundamental right, there has not been much political support for the same. The initial withdrawal of the rights was done keeping in mind the socialist view and to somewhat narrow the gaps of inequality between the rich and the poor, however, the effect of the same is now felt not by the affluent group but by those who ideally should have benefitted from the same.

In India, people hold Ayurveda and Yoga in great esteem and one of the most important concepts arising from the same is Panch Bhoota⁵. Panch Bhootas are the five great elements constituting the environment in Hinduism which are Prithvi (Earth), Jal(Water), Vayu(Air), Agni(Fire), and Akasha (Ether) and are derived from Prakriti- the primal energy.

The earth element i.e. Prithvi is the foundation on which all the other elements are built. When Indians are deprived of their fundamental right to property, it not only feels like withdrawal of their legal right but also as a restriction to way of living according to their beliefs and long followed traditions. We humans, irrespective of our religion or nationality, consider land as our mother. The land, like a human mother, protects, amuses, and meets our economic, social, and religious needs. We have a mother-daughter/son relationship with the land. We are hurt when our land is taken away or destroyed because we belong to it and are a part of it.⁶

During our research, when we talked to people from villages of Gujarat regarding their views of the new land acquisition act, we gathered that they didn't have much knowledge of the same but somewhat felt exploited by the government's actions of acquiring their land for public purposes. Their main concern was that they weren't even paid enough compensation for the

⁵ Yayathi, S. (2020). The Mystery of the Five Great Elements & Astrology: A classic work based on Pancha Maha-Bhoota. Independently published.

⁶ Djiniyini, T. (1985). The Land Is My Mother. Aboriginal and Islander Health Worker Journal, 9(2), 6–7.

same and most of the time, they didn't know what to do with the money received as they have been involved in agricultural activities all their life.

IV. CONSTITUTIONAL AMENDMENTS RELATING TO LAND ACQUISITION

There were four primary systems in place in India before its independence: the Ryotwari, Mahalwari, Zamindari, and Jagidari systems. Since these huge tracts of land were owned by zamindars, tenants, and similar individuals, there is an uneven distribution of land, widening the gap between the affluent and the poor.

The constitution makers while devising a constitution for a diverse country like India took into account what would be best for a newly born democracy and tried to do a fairly good job. The Indian constitution is the lengthiest written constitution all over the world and explains everything in minute details. However, one can never know what a nation truly requires until various incidents or say, experiences come along. Especially, with laws, it can never be a one-size-fits-all situation. A law which might be thriving in some country shall be rejected outrightly by another.

For when we talk about the most controversial law mentioned in the constitution of India, it has to be the fundamental right of right to property. This right has so far induced the maximum number of amendments to our constitution (and the only fundamental right to be ultimately abolished)⁷ and has also given way to some laudable and historic judgments by our judiciary.

The Indian Constitution was drafted by the constituent parliament between 1947 and 1950, working day and night. As a result of their concern for the circumstances at the time and their knowledge that the above-mentioned system would require the passage of several land reform and acquisition acts, the constituent assembly took the following actions to redistribute land and repair the harm:

- By the Constitution First Amendment Act of 1951, new provisions relating to the preservation of certain legislation were included in Articles 31A and 31B. No legislation granting the purchase of any estate, any right, or the change of any right would be ruled invalid under Art. 31A because it conflicts with Art. 14 and Art. 19. According to Article 31B, none of the actions or regulations included in the IX Schedule of the constitution would be ruled invalid because they are incompatible with the rights guaranteed in Part III of the constitution. The estate's scope was further expanded by the Fourth Amendment of 1955, which now encompasses any

⁷ Choudhry, S., Khosla, M., & Mehta, P. B. (2016). *The Oxford Handbook of the Indian Constitution*. Oxford University Press.

concessions of a comparable nature, including jagir, inam, and muafi.

- One of the most effective actions made in this direction was land ceiling. The term "ceiling" refers to the maximum amount of land that a private individual may purchase. It was determined in 1959 at the Indian National Congress conference in Nagpur that legislation or ordinances relating to the restriction of land limits must be put into effect by the end of the year. The Land Ceiling Act was put into effect twice, from 1976 to 1999 and 1960 to 1972.

The zamindars and other landowners who had their ceiling limit exceeded despite the government's efforts filed a case with the Supreme Court invoking their basic right to property to declare the actions unlawful. Consequently, to prevent this from happening and to uphold economic fairness, Art. 31 and Art. 19(1)(f) were adjusted as constitutional rights in the new chapter IV Part XII of the Constitution as Art. 300A, which is still in effect today. The ability to own property was taken from the list of essential rights by the 44th Amendment of 1978. The constitution was amended to include a new clause, Article 300-A, which stated that "no individual shall be stripped of his property unless by authority of law."

V. RELATED DOCTRINES

- **Doctrine Of Eminent Domain**

The monarch, or in more contemporary terms, the elected government in authority, is the main landowner. As a result, even if the monarch or the government, as the case may be, transfers land to specific individuals for agricultural or other uses, ownership will always stay with the king or the elected government. The doctrine of "Eminent domain" refers, in its broadest sense, to the absolute authority of the monarch or the government to appropriate someone else's property for the benefit of the general populace. However, over the years, the king or the government has only been able to take over property after paying the landowner compensation. Eminent domain is therefore defined as the authority of the monarch or the government to seize a private person's property when it is required for a public purpose. The "eminent domain" doctrine is founded on two tenets:

- *Salus populi supreme lex esto*, which translates as "people's wellbeing is the highest law,"
- The Latin phrase *necessita public large est quan* says that the need for the public is greater than the need for the individual.

Eminent domain refers to the state's unrestricted, perpetual sovereignty over real estate. The

Indian Constitution now recognizes the State's authority to appropriate private property for a public purpose and the owner's subsequent right to just compensation. However, this state power has received attention primarily for the supposed harm that it is thought to do. Soon after India gained its independence, the Supreme Court was tasked with determining whether various legislation meant to do away with the feudal zamindari (landowning) system were constitutional. The Union and the States governments are given the authority to establish legislation about the acquisition of property under entry 42 list III of the seventh schedule of the Indian Constitution. When just one particular piece of property can fulfill the public purpose in issue and there is no alternative, the exercise of eminent domain authority for land purchase is also appropriate. Private property that is impliedly acquired or taken into possession under clause (2) of Article 31 of the Indian Constitution must be taken for a public purpose. The second requirement is that no property may be appropriated unless the legislation authorizing the appropriation contains a clause requiring payment of compensation in accordance with the terms of the contract.

The Supreme Court in *Sooraram Reddy v. Collector, Ranga Reddy District*⁸, has articulated the following grounds for review of this power:

- malafide practice of power;
- a community drive that is only seemingly a public determination but in authenticity, an isolated purpose or collateral purpose;
- gaining without following the practice under the Legislation;
- when the acquisition is unreasonable or irrational;
- when the acquisition is not a public purpose at all and the fraud on the statute is apparent.

No individual shall be dispossessed of his property unless by authority of law⁹. Therefore, the State may only limit, abridge, or alter property rights by using its legislative power. Without the support of a law, an executive order that takes away someone's property is unconstitutional.

In addition, for a law to be considered valid, it must pass the following three requirements:

- The authority that passed the law must possess the necessary legislative authority;
- It must not violate any other fundamental rights protected by part III of the

⁸ (2008) 9 SCC 552

⁹ Indian Constitution, Article 300-A, providing: No person shall be deprived of his property save by authority of law.

Constitution; and

- It must not violate any other Constitutional clauses.

In *Basantibai v. the State of Maharashtra*¹⁰, the court attempted to provide the property owners a favorable interpretation of Article 300-A by interpreting it to include both the "public purpose" and "compensation" elements. The legislature is prohibited from authorizing the taking of property for a public purpose under Article 300-A. However, the Parliament did not intend to give the legislature unrestricted authority to take a citizen's property by just adopting formal legislation.

- **Doctrine Of Colourable Legislation**

The doctrine of colourable legislation refers to the question of the legislature's competence when enacting a provision of law.

If a legislature is prohibited from doing something, it may not do so while acting within its lawful jurisdiction, and this prohibition is an implied result of the maxim "what cannot be done directly, cannot be done indirectly," and this doctrine is based on the maxim "what cannot be done directly, cannot also be done indirectly." It applies when the legislature wishes to accomplish something indirectly that cannot be accomplished directly.

In such a case, Constitutional Courts such as the Supreme Court or High Court can use this doctrine to invalidate the law.

*In, State of Bihar v. Kameshwar Singh*¹¹ the Honourable supreme court applied the doctrine of Colourable Legislation and declared the Bihar Land Reforms Act 1950 as unconstitutional. It ostensibly purported to establish the principle of compensation, but it did not do so and thus implicitly attempted to deprive the petitioner of any compensation.

Similarly, in the matter of land acquisition, the legislature must keep in mind this doctrine and exercise power over matters within its jurisdiction as well as scope.

VI. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION, AND RESETTLEMENT ACT, 2013

An Act to ensure that land acquisition for industrialization, development of essential infrastructural facilities, and urbanization is done in a humane, participatory, informed, and transparent manner with the least amount of disruption to the landowners and other affected

¹⁰ (1986) 2 SCC 516

¹¹ AIR 1952 SC 252.

families, and to provide just and fair compensation to the affected families whose land has been acquired, in consultation with institutions of local self-government and Gram Sabhas, established under the Constitution therewith or incidental thereto.

Under Part VII of the 1894 Act¹², large-scale land acquisitions have been made for firms in recent years with plans to use the property for the benefit of the public. Large rural land parcels that belonged to farmers or other rural landowners were purchased by state governments for dirt cheap in the name of development initiatives. The land was then given to private developers for the development of multi-story residential and commercial complexes, factories, etc. when the land's use was changed.

Later, these private business owners offered these complexes for highly expensive purchase by the general public. The worried state governments have colluded with private businesspeople to swindle the rural landowners. In some instances, landowners and farmers received guarantees that their relatives would be hired, but this did not materialize since the relatives lacked the necessary skills and qualifications. Due to undervalued sale deeds and the government acting as a broker or agent for the private players, the farmers have been taken advantage of under the pretext of acquiring property for public use. Even if the landowners/farmers receive compensation from the government, it does not provide any monetary benefit to them, as the money received is either wasted or spent unwisely reducing them to landless/unemployed individuals.

From a respectable and dignified landowner, the person now becomes a landless rogue because he has no skills apart from farming. Moreover, there is no agency to counsel these farmers/landowners for proper use or long-term investment or management of the money¹³.

The provisions of the above-mentioned Act can be applied to different kinds of land purchases under Section 2.

It divides the purchase of land into three groups:

- Appropriate government purchases property for its own needs and the benefit of the public;
- Appropriate government purchases land for PPP projects or private firms for the benefit of the public; and
- Private company purchases through private agreements.

¹² Part VII of the 1894 Act provides for the Acquisition of Land for Companies. (Sections 38A-44B).

¹³ <http://docs.manupatra.in/newsline/articles/Upload/FF6D173D-E5C5-4954-A73A-9D77708DD9B6.pdf>

The activities listed under Section 2(1) are referred to as "public purposes" under Section 3(a) of the Act, and they include the following:

- a) For strategic goals about the naval, military, air force, and the Union's armed forces, including paramilitary forces, or for any task essential to national security, the defense of India, state policy, or the protection of the populace;
- b) For transportation, agriculture, industry, education, sports, tourism, and other infrastructure projects;
- c) For relief development;
- d) For planned housing;
- e) For planned development; and
- f) For housing for displaced people.

The provisions of the Act about the acquisition, compensation, rehabilitation, and resettlement must apply when the government purchases land for its use, possession, and control, including for any Public Sector Undertaking (PSU) and public purposes.¹⁴

However, the provisions of the Act relating to land acquisition, consent, compensation, rehabilitation, and resettlement shall also apply when the government acquires land for public-private partnership projects, where the ownership of the land continues to vest in the government and private companies for public purposes¹⁵. The proviso to Section 2(b) states that in order to acquire property for a public-private partnership, at least 70% of the affected families¹⁶ must approve in advance, and to acquire land for a private company, at least 80% must consent in advance.

Interestingly, if the government buys land for its own use, possession, and control, including for a public sector undertaking, there is no need for prior approval. Before the government acquires property for a public purpose, Section 4 of the 2013 Act mandates the completion of a social impact assessment study in conjunction with the affected Panchayat, Municipality, or MCD. In other words, this clause allows for a review of the project's potential effects on society.

(A) Cons of the 2013 act¹⁷

The state government's flagrant abuse of Section 175 is a significant reason for worry. Because

¹⁴ Section 2(1).

¹⁵ Section 2(2).

¹⁶ The term 'affected families' is defined in section 3(c) of the Act.

¹⁷ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

the landowner whose land is planned to be taken cannot obtain an injunction against the proposed acquisition, the Land Acquisition Act of 1894 has been considered to be a draconian statute. The Land owner is limited to objecting to the planned property purchase under Section 56A, which is a fundamental human right. As per the doctrine *audi alterem partem*.

But in other instances, different state governments have acquired land by abusing the 'urgency clause's Section 17(4)¹⁸ provision. According to this clause, the state government may order that Section 5A's requirements do not apply and restrict landowners' ability to register complaints. Because of this, the laws of urgency are abused by the state. In the past 50 years, there has been a lot of litigation involving the purchase of land under Section 4(1) read with Sections 17(1) and 17(4).

In ***Radhey Shyam (D) via LRs and others v. State of U.P. and others***¹⁹, the Supreme Court made the following rulings:

*"In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and 17(4) ...excluding the application of Section 5A is likely to make the landowner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when the land is required to meet emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then the scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land."*²⁰

In ***Rajiv Saran v. the State of Uttarakhand***²¹, the Supreme Court's Constitution Bench ruled as follows:

According to Article 300A of the Constitution, "the occurrence of loss of property often happened in the context of public purpose. It goes without saying that any law that takes away a person's private property for a private interest will be subject to judicial review. Even if the definition of "public purpose" has undergone considerable interpretation in barely sixty years, it nevertheless remains the most crucial need for invoking Article 300A of the Constitution²².

¹⁸ Section 17(4) reads- In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of section 5A shall not apply where the appropriate Government so directs to where possession of the land has been taken with the consent of the person interested.

¹⁹ Supra Note 2 at p. 9.

²⁰ Ibid.

²¹ Civil Appeal No. 4772 of 1998 decided on August 09, 2011.

²² Ibid.

When land is bought for a public partnership project or a private enterprise, the Act's provisions about "affected households' prior approval" are applicable under Section 2(2)(a) and (b) (both for a public purpose). This implies that in certain situations, the landowners have the option to refuse to sell their property by declining to grant the required amount of "prior consent." However, "prior approval" from the affected households is not necessary when the property is bought by the government for its own use, possession, and control, including for PSUs and public purposes, under Section 2(1).

Thus, the approval of the impacted families is not necessary when the government buys property for its own use. Landowners have no input whatsoever in the government's forced acquisition of their property, and they are unable to object. The State governments have raised objections to the 2013 Act's Chapter III, which deals with the acquisition of agricultural land, arguing that since "transfer and alienation of agricultural land" are covered by State List, Entry 18, only the State Legislatures have the authority to enact laws in this area. The 2013 Act exempts several laws governing land acquisition from its restrictions, including the Railways Act of 1989, the Electricity Act of 2003, and the National Highways Act of 1956 (all 13 laws included in the Fourth Schedule).

1. Why is it so that the "Right to Property" cannot be made a fundamental right from a constitutional right and an exception to Article 13(b)?
2. The legislation ("The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement act, 2013") is uncertain if the Parliament has jurisdiction to levy rehabilitation and resettlement requirements on the private purchase of agricultural land.
3. Requirement of a Social Impact Assessment, that is to ensure implementation of certain government programs its delays.
4. Private firms and public-private partnerships that involve property acquisition must obtain the approval of 80% of the affected parties. However, PSUs (Public Sector Undertakings) are exempted from this requirement. Why?
5. For not more than three years, the government may temporarily purchase land. In such circumstances, there is no provision for rehabilitation or relocation.
6. The 1894 Act's "Urgency Clause" is the part that has received the greatest criticism and abuse.

VII. CONCLUSION

A balance between the requirements of landowners and farmers and those of the business sector, which needs land for its initiatives, is urgently needed. The government should abandon the notion that industrialization and employment growth are the sole ways to advance the nation. Food production and farming are crucial components of our economy that cannot be overlooked for the sake of progress. These sectors are the ones that employ the highest number of individuals in the nation and hence the sector's advancement is the advancement of a large number of individuals.

And so, both sectors should be given their due consideration by understanding the roles of both in the nation's economy and society. Of course, development is important, but at what cost? Not at the expense of our farmers, who have at least been feeding us. Both development and food security are urgently needed now.

The pros and cons of legislation are always going to be present, but what one can do to ensure the smooth functioning of the laws and to gain people's trust in them is what matters in the end. The country witnessed a fiasco last year when the three farm laws were passed for the benefit of the farmers but weren't discussed with the concerned before passing them.

Taking the stakeholders into confidence by making them aware and considering their opinions on the matter is of utmost importance. In this matter, the government should constitute a committee of experts and also provide for fair representation of the stakeholders in the same to take subsequent decisions in regard to policymaking.

For we live in a democracy, we shall make people feel that their problems matter and that they are being heard, and that this is not anarchy.

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