

RIGHT TO AN ACCUSED PERSON UNDER JUDICIAL AND POLICE CUSTODY**KHUSHI PRASHESH UPADHYAY**

STUDENT OF VEER NARMAD SOUTH GUJARAT UNIVERSITY

ABSTRACT

There's a rapid increase in crime and habitual criminals. Unfair treatment, Fraud, cheating, assault, murder and many more which is an act against the public peace and safety. The offences in count are still increasing. Already we have many laws to curb and prevent it but it's impossible to completely erase it from this world. Laws are enforced and amended keeping in view the present scenario. It doesn't mean that there is no humanity, it still exists. According to law and the society the offenders should be punished for their lawlessness towards the public peace, safety and tranquility. The law provides rights, liabilities and punishment on violation of it. But it also takes into consideration that though an offender is charged with an offence, it could not be made to suffer an inhumane treatment. In the light of this our constitution of india the supreme law of the land provides certain rights to the accused in custody. This research work provides the knowledge and information related to the right of the accused person in judicial and police custody. A detailed information relating to the accused right which are fundamental and enforceable.

INTRODUCTION

The constitution of India guarantees its citizens the fundamental right. A systematic concept is laid down in the constitution of India to strike a balance between the individual's freedom and Social Justice. A person who is a victim or sufferer approaches the court for enforcement of its right on being violated by another person i.e the wrongdoer. There are certain principles which are to be considered before convicting a person for the offenses alleged. No person should be subject to any kind of suffering for which he is not entitled to. The Preamble of the Constitution clearly serves the purpose of declaring rights and freedoms intended to be secured to all its citizens. The object of the Preamble justice, equality, liberty and fraternity plays an important role and which are the base of the Constitution. Thus the detention of a person should be made in the light of the object laid down by law.

In the constitution there are many rights granted to the individual and the state to protect them from lawlessness, weak from the strong once and those who do not abide by law. Various means for the enforcement of the right is provided. In this modern state the protection that is sought to be achieved, wrong to be redressed by punishing the offender for the violation of right vested in a person by law. But mere allegation on a person does not convict him or her. It should be proven beyond any doubt as per the provision of law in the legal proceeding.

During the ancient period the accused had no rights to enforce. They were subject to wrongful and inhuman treatment. Those being accused for any offences were subject to harsh punishment or inadequate remedy. There was no system of evidence or right to be heard. The only thing left to those who suffered was suffering. For petty offences they were ill treated, isolated to distant places etc. But as the time passed, people started realizing that prisoners are not an outcast in our community to be shunned and condemned to unfair treatment.

Before going through the topic of rights to the accused in judicial and police custody lets understand what judicial and police custody mean. Custody means taking the charge of a person or apprehending him for some reason in protective care for legal procedure under which he is taken.

Police Custody means when a person is in the custody of police and the place where the custody of a person is held is known as Lockup. But when a person is in police custody he/she must be produced before the Magistrate within 24 hours and also have to comply with some procedure.

Judicial Custody means when a person is in custody of the Magistrate and the place where the custody held is known as Jail. There are many provisions laid down and rights provided which are to be considered so as to ensure that an innocent is not victimized or become a part of it.

The various rights to which the accused is entitled provided in the constitution are:-

1. RIGHT TO EQUALITY (ARTICLE- 14)
2. PROTECTION IN RESPECT OF CONVICTION FOR AN OFFENCE
(ARTICLE- 20)
3. RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE-21)
4. RIGHT TO SAFEGUARD AGAINST ARBITRARY ARREST AND
DETENTION. (ARTICLE- 22)

5. CONSTITUTIONAL REMEDIES - ARTICLE 32 AND 226 (WRITS AND APPEAL)
6. RIGHT TO COMPENSATION

THE ABOVE FOLLOWING POINTS ARE ENUMERATED FURTHER:-

1. RIGHT TO EQUALITY (ARTICLE- 14)

Equality is a dynamic concept in many aspects and which is not confined to any traditional custom or limits. Thus, it provides the right to equality under Article-14 of the Constitution which contemplates equality before law and equal protection of law.

Equality before law simply means that nobody is above but equal before law. Everybody is entitled to the benefits conferred by the law without any discrimination on grounds of sex, caste, race and religion (more described under the Article -15). Equal protection of law means that a person of similar circumstances must be treated alike in both the privileges conferred and liabilities imposed by the law. The rule is that like should be treated alike and not the unlike should be treated alike.

The person accused must be treated as per the procedure laid down and the right to be enforced to which they are entitled. Our Constitution is based on the Fundamental that, “let hundred go unpunished but never punish an innocent person”. Right to get fair representation in a criminal procedure is a facet of Right to Equality. Thus it also includes the principle of natural justice which has been further discussed in Article 21.

1. PROTECTION IN RESPECT OF CONVICTION FOR AN OFFENCE (ARTICLE- 20)

The article 20 of the constitution provides protection of accused for conviction of an offence in the following particular way:-

(a) PROTECTION AGAINST EX-POST FACTO LAW:-

A person who is accused of an offence is protected against ex post facto law which means that a person convicted of an offence should not be punished for any other offence other than the laws which were in existence or were in force at the time of the Commission of that offence. This article-20(1) actually talks about the retrospective effect of the law. It bars the law makers from imposing any retrospective effect on the present law amendment which directly or indirectly increases the punishment. The person who is charged for an offence under a law which is now having a retrospective effect or is not in force for time being than such accused must be punished in accordance to the law which had effect during its happening. No greater penalty can be imposed except what was prescribed during the commission of an offence. The protection afforded under the article is only for those who are convicted and not those who are on trial.

A famous case relating to it is *Pareed Lubha vs Nilambaram*, it was held by the Kerala High Court that the defaulter cannot be charged for an offence of non-payment of panchayat Tax as during that period there was no law for collecting the tax on such basis and now it has come into effect thus the case filed for earlier time and the effect of such law was not into effect at that time. Thus, the case has retrospective effect and the same cannot be enforced in today's time.

(b) PROTECTION AGAINST DOUBLE JEOPARDY

Article 20(2) provides that no person should be prosecuted and punished for the same offence twice. The term ‘Double Jeopardy’ is used when a person is prosecuted and punished for the same offence twice. The word ‘prosecuted and punished’ are the important words which need to be highlighted in determining the rights of the accused. This protection is based on the maxim “Nemo Debet vis vexari” which means no person should be put to peril for the same offence. This Article protects the accused from being trailed and punished for the offence for which he has already been convicted. This is provided in order to prevent the prosecution from taking double advantage or violating the right of the accused. This is to be sought only when a person has been prosecuted and punished in the court of law and not when acquitted. But there is no bar on either party to appeal to the higher court from the acquittal or conviction of a person as it does not amount to prejudice the rights of the either party but it is a means to resort to more help.

(c) PROTECTION AGAINST SELF INCRIMINATION

Article 20 (3) of the constitution provides that no person should be compelled to act as a witness against himself. When an accused is prosecuted in a case he/she must not be compelled to give testimony in their own case against their own free will. The basic principle that embodies this protection is every person accused of an offence is innocent till the contrary is proved. The onus is on the prosecution.

In the case of *M.P Sharma vs Satish Chandra*¹, the supreme court observed that the right embodies the following essentials to be undertaken they are:-

- (i) The right provided is to the accused.
- (ii) The right provided is against compulsion to be a witness in its own case.

3. RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE- 21):-

A very significant and dominant part of the Constitution is Article-21 which says that:-

¹ Dr. J.N. Pandey, Constitutional law of India 276 (57th ed, 2020).

“No person shall be deprived of his Life and Personal Liberty except in accordance with the procedure established by law. The rights guaranteed under Article 21 of the Indian Constitution is available to the citizen as well as to the non- citizen.

The famous case with regards to this Article 21 is *Maneka Gandhi vs Union of India*¹, in which it was held by the Honorable Supreme Court that this right to life and personal liberty not only protects its citizens from Executive actions but even from the Legislative acts. In this case the essential condition were laid down in order to deprive a person to his right under the Article 21 which are as follows:-

- (a) There must be a valid law.
- (b) The Law must provide a procedure which is just, fair and reasonable.
- (c) The law must satisfy the requirements of Article 14 and 19.

Along with the above mentioned conditions the accused under Article 21 is entitled to humane treatment and also to the basic necessity which a sober and ordinary people need to survive like right to food, shelter, sleep, clean environment, air and water etc. The protection provided under this article also extends to protect the accused or convicts in jails or custody. Even though a person is accused of a charge is not totally denied of the fundamental rights guaranteed by the constitution. A person should not be made to suffer by reason of its conviction. An accused is not disentitled to the right conferred like right to hold, acquire and dispose of the property as it is not something which impedes its detention, but such person is deprived of right to profess or right to move freely. The restrictions on exercising the right only depends upon the facts and the circumstances of the case.

Before proceeding and depriving any person of his right the Principle of Natural Right should be strictly followed which are:-

- (a) Audi Alteram Partem i.e No person should be condemned unheard.
- (b) Nemo Judex In Causa Sua i.e No person should be judged in his own cause.
- (c) Reasoned Decision i.e one who hears should decide.

The most important rights in relation to the accused under this article are as follow:-

- Lapse in investigation
- Right to free trial
- Right to speedy trial
- Right to free Legal Aid
- Right against handcuffing
- Right against inhuman treatment by the police authority
- Right to meet family, friends and relatives.

(1) Lapse in investigation:-

When a person is charged or accused of an offence but the trial is still pending because of which he is subject to undergo many legal processes and may also be subject to punishment thereafter if there is any kind of a delay in investigation of the case by the investigation officer or agency appointed thereof may cause a serious effect and the right of the said person under this article is violated. Thus, it violates the right of fair trial or investigation.

(2) Right to fair trial:-

The accused is also entitled to the right of fair trial. As the trial is the most significant element of the legal process, every investigation or legal proceeding carried out must be in accordance with the due process of law otherwise contrary to it will lead to omission to take proper diligence or unlawful act which directly violates the fundamental right of a person. The fair trial is an integral part of Article 21 of the Indian Constitution.

(3) Right to speedy trial:-

The proverb “ justice delayed is justice denied” is applicable on this right, as a person accused of a crime is being tried and proceeded in the court against it must not be subject to any kind of unreasonable delay or postponement. The laches i.e undue delay will directly affect the right of a person. The proceeding must be carried out as fast as possible so that neither party is being suffered. The right to speedy trial is the main essence of criminal justice.

In the case of *Hussainara Khatun vs Home secretary, state of Bihar*²,

In this case numerous writ of Habeas Corpus was filed in Supreme Court for the speedy disposal of the trial of the Prisoners who are in the jail of State of Bihar. The Supreme Court held that the right to speedy trial is a Fundamental Right which is implicit as the guarantee of life and personal liberty and enshrined in Article 21 of the Constitution.

(4) Right to free Legal Aid:-

¹ Dr. J.N. Pandey, Constitutional law of India 281 (57th ed, 2020).

² Dr. J.N. Pandey, Constitutional law of India 337 (57th ed, 2020).

Free Legal Aid the word itself is wide enough in its meaning. It covered all the aspects of justice. This right under Article 21 is incorporated so that the citizens who are unable to enforce their right due to any reason which may be financial or of being illiterate or due to having belonging to economic backward classes or any other kind of disability that bars such person from challenging the wrong done against them can by this mean brought before the court. This specifically works as social welfare. The right is provided in order to create a proper legal system to ensure that no person or a citizen is left unaddressed to his remedy due to any reason. Thus, this right is a fundamental right of a citizen to aid themselves by approaching the proper authority organized for it.

This Article 21 is to be read with Article 39 (A) of Directive Principles of State Policy. The Article 39 (A) is separately discussed in the points later. When Article 21 is read with Article 39 (A) of Directive Principle of State Policy, it clearly shows that by this rule the right to Free Legal Aid is served to the citizens of the country as the Article enables the state to create a legal system that works thoroughly for providing the free services to the needy. By this article the Government of the state was able to form a Grant in Aid Service in the private and the public law colleges or some similar facilities with the same purpose. More Legal education and more opportunities to those who enrolled themselves in legal studies for their work was created and authorized the law graduates to provide grants in aid to the citizens.

In the case of *Sunil Batra (No. 2) vs Delhi administration*¹,

The Supreme Court held that keeping undertrials convicted in jail offended the test of reasonableness under Article 19 and fairness under Article 21. They are to be presumed innocent until convicted and if they are kept with criminals in jail it violates the test of fairness under Article 21.

(5) Right against handcuffing:-

Handcuffing to the accused also depends upon the gravity of the offence committed and the behavior of the accused. Handcuffing must be done only in the rare cases where the escorting authority is beyond any reasonable doubt and is sure about the accused to escape from the custody of the authority if not handcuffed. Contrary to this will affect the fairness, reasonableness and the Due process of law under Article 21 of the constitution.

*Prem Shankar vs Delhi Administration*²,

In this case every undertrials who were accused of a non bailable offences and whose punishment is more than 3 years of the jail term was to be handcuffed which resulted into the violation of the article 14, 19 and 21 of the Constitution. The Supreme Court held that Handcuffing should only be done or resorted when it is clear and their is presence of danger of escape from the police control or clear on material and not merely on assumption as Handcuffing is prima facie leads to an inhuman treatment and thus such practice is Harsh and unreasonable on the Prisoners.

(6) Right against inhuman treatment by the police authority:-

No person accused of an offence should be treated in an inhuman way and the police official does not have any authority to use third degree torture on the accused. They are subject to be treated with human dignity. Using any of the acts which results in abusive and maltreatment will implicitly violate the right Under Article 14, 19 and 21 of the Constitution. Treating them in an uncivilized manner like living them on a filthy ground, or not providing food, medical treatment, or loitering in the prison are barbarous and lashed activities which are to be prevented.

*Kishore Singh vs State of Rajasthan*³,

In this case the Hon'ble Supreme Court held that the third degree method used by the police officials is violative of Article 21 and said that "Human dignity is a clear value of our constitution which should not be bartered away for mere apprehension and entertainment by jail officials". And directed the government to take necessary steps against such behavior of public services.

(7) Right to meet relatives, Family and Friends:-

The person detained whether in judicial or police custody such detenu has the right to meet his family, friends and relatives. The Right to life also includes the right to socialize. The detenu has the right to have two interviews with his family members or relatives or friends but only at the prior permission of the Magistrate; earlier it was allowed to have only one interview but later amended.

4. SAFEGUARD AGAINST ARBITRARY ARREST AND DETENTION (ARTICLE - 22) .

Article 22 is framed keeping Article 21 of the Constitution in mind. Article 21 provides that no person shall be deprived of his life and personal liberty except in accordance with the due process of law. Article 22 which provides for protection against arbitrary arrest and detention and lays down the procedures which are to be followed before depriving a person of his right. This article is included in fundamental rights which is a guaranteed right protected under the constitution.

It deals with two aspects which are as follows:-

- (a) Person detained under the ordinary law of crimes and
- (b) The person arrested under preventive detention act.

¹ Dr. J.N. Pandey, Constitutional law of India 332 (57th ed, 2020).

² Dr. J.N. Pandey, Constitutional law of India 333 (57th ed, 2020).

³ Legal service india, <https://www.legalserviceindia.com/legal/article-4754-custodial-deaths-and-rights-of-an-arrested-person.html>, (last visited August 13,2023)

In the case of *AK Gopalan vs State of Madras*¹,

It was held by the court that a Detenu's restriction of the right should be tested or brought into question for reasonableness under preventive detention Act and under Article 21 for the procedure laid down by law .

But in the case of *Maneka Gandhi vs Union of India*².

The above case was reviewed by the Hon'ble Court and decided that the arrest of a person must be done in accordance to article 21 through the due process of law. It should be reasonable, just and fair contrary to this will be violative under article 14, 19 and 21 of constitution. This right is available to both citizens and non citizens.

Article 21 provides four essential rights to the person arrested for any offence under the ordinary law which are as follows:-

(a) The right to be informed of the grounds of arrest as soon as possible:-

The first and the most essential right of the detenu is the right to be informed of the grounds arrested. When a person is arrested for any offence he has a right to know for which offence and under what ground he or she is being arrested. The ground of an arrest must be informed to the arrested person by the arresting authority as soon as possible. The word as soon as possible means the arrested person is to be informed within the reasonable period. This right also helps the defendant or the arrested person to take defense from the charges for which he has been arrested.

In the case of *Joginder Kumar vs State of Uttar Pradesh*³,

The court held that the arrest of a person must not be done on mere suspicion but there to be a reasonable cause to detain a person. The supreme court in this case laid down the guidelines to be followed while arresting a person which are as follows:-

- (i) The person arrested who is in custody is entitled to request for informing his friends or relatives about his arrest and where he is detained.
- (ii) The person after being brought to the police station must be informed of his right.
- (iii) An entry in the police diary is to be maintained about who was being informed of his arrest.

(b) The right to consult a lawyer of his own choice to represent in court on his behalf:-

A person who is arrested has the right to consult or appoint a lawyer. The lawyer must be of his own choice. The learnt concern will be representing the arrested for releasing and appearing before the court . This right is protected and is fundamental to the detenu but in some cases it happens that the arrested person is unable to employ a lawyer for him, maybe because of some financial reason or having no knowledge about it.

In the famous case of *Hussainara Khatoon vs Home Secretary, State of Bihar*⁴,

The Supreme Court held that this right to consult a lawyer is a right guaranteed in the constitution and it is a very substantial right in order to protect the arrested one. If a person is not able to consult a lawyer in such circumstances, he or she will be provided with the counsel by the respective State Government to represent and aid the accused. Thus, it is to be provided for free i.e free Legal Aid and in absence of such facility it will be violative under Article 21 of the Constitution.

(c) Right to be produced before Magistrate within 24 hours of arrest:-

When a person is arrested he has the right to know the grounds of arrest and to consult a lawyer in addition to it such arrested person must be produced before the magistrate and this should be done within the 24 hours of arrest. It is because the magistrate will ensure, scrutinize and will verify the ground of an arrest. After verification the magistrate may on the material record can either order for release or order for further detention on conditions if any.

(d) Freedom from detention beyond the said period:-

If a magistrate thinks that the commission of an offence or the ground for detention is Grave in such a case he may not be allowed to be released. It is only the order of the magistrate that a person can be released otherwise no person can be detained beyond the 24 hours. A person cannot be kept in custody beyond the prescribed period except in case of judicial custody which is also bound by the time limit. If the arresting authority fails to produce the arrested person within 24 hours from the time of commission of an offence before the magistrate then the arrest will be regarded as illegal and the detained person will be released. This right also serves in speedy disposal of the cases without affecting persons rights.

The constitution also provides protection to the person arrested under the Preventive Detention Act as the act has been made in the light of Article 22 of the constitution. The following are the procedure provided on being arrested under the preventive detention act:-

- (i) Review by the advisory board.
- (ii) Communication of ground of detention to the detenu.
- (iii) The Detenu's right to represent.

¹ Dr. J.N. Pandey, Constitutional law of India 379 (57th ed, 2020).

² Dr. J.N. Pandey, Constitutional law of India 379 (57th ed, 2020).

³ ipleaders, <https://blog.ipleaders.in/> (last visited August 13,2023)

⁴ Dr. J.N. Pandey, Constitutional law of India 381 (57th ed, 2020).

This additional safeguard under the preventive detention act by the constitution is provided in order to prevent the ill-treatment, suffering, unlawful activity and barbarous act. No innocent person should be barred and fettered behind the bars on unlawful grounds by the arresting authorities.

There are some exceptions to which this article does not provide safeguard is :-

- (a) Enemy alien.
- (b) Persons who are arrested under Preventive Detention Act, provided that the arrest of such person under the act must have been done in accordance with the procedure prescribed by law.

5. CONSTITUTIONAL REMEDIES :-

When a person's Fundamental Right is violated in such circumstances the aggrieved person is provided a means to enforce it. The Indian Constitution has embodied Article-32 and 226 which is a supplement to enforce the Right besides the other Law. This Article 32 is considered to be the heart and soul of the constitution. The incorporation of such an Article has been an effective machinery. This article is considered to be the fundamental right of a person itself. Article 32 of the Constitution guarantees right to move to the Supreme Court by the appropriate proceeding for the enforcement of the Fundamental Rights which is conferred in part III of the constitution. And under Article-226 a person can move to High Court by help of writs on violation of any of his Fundamental Right. Article 32 provides five types of Writs that is Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto for the enforcement of the right and along with that it also provide right to bring a "public interest litigation" in case if there is violation of a legal or any constitutional right of a group of person or any person.

The most important writ for the accused person is writ of Habeas Corpus which means to have the body. The person so accused can file for the writ either under Article 226 i.e in High Court or under Article-32 in Supreme Court. When a person is illegally arrested and detained of any Fundamental Right such person can file a writ petition. The Supreme Court had made many changes and adapted new methods for safeguarding the Fundamental Right of the citizens. The court started accepting the petitions in form of letter, mail etc. Thus keeping the administration of justice

In the case of *Sunil Batra vs Delhi Administration*¹,

The writ petition was filed through sending a letter to the Supreme Court to which the Hon'ble court considered as a valid writ petition and initiated the proceedings about the warden who had brutally assaulted the prisoner Prem Chand and took away his freedom.

This step by the Court helped many aggrieved and illiterate who cannot act by appointing someone to redress their grievance instead they can address it directly to the court by such petition.

6. RIGHT TO COMPENSATION :-

When a person is alleged to be accused of a crime and has been detained and his Fundamental Rights are restricted it is counted to be a violation of the rights of a person this is based on the assumption that unless the offence alleged against him is proved beyond any reasonable doubt and such person is considered to be an innocent person. Further, if any of his rights are violated he is subject to get compensation. When there is an illegal detention and deprivation of any person's life and personal liberty, right to livelihood, mental and physical agony through detention or any other benefits to which such person is entitled, the remedy can be sought under Article 32 and 226. But only the release of the accused from detention and removing the bar from the rights to which he is deprived is not an adequate relief thus it requires some additional relief. That additional relief is Compensation which can help him to regain himself after being deprived and detained.

In the case of *Rudal Shah vs State of Bihar*²,

The petitioner file a writ of Habeas Corpus as he was illegally detained and asked for the compensation as great harm was suffered by the petitioner by the Government of State of Bihar. The Supreme Court in this case held that the petitioner was entitled to compensation and directed the state to pay Compensation of Rs.30000.

In *Nilabati Behera vs State of Orissa*³,

In this case, the deceased was being investigated in the offence of Theft. He was ill-treated by the police officials. They handcuffed the deceased, beaten and was thrown on the Railway track by the police while he was in their custody. The Supreme Court granted compensation of Rs. 150000 to the heirs and the survivors of the Deceased stating that the act of the police officers or any functionaries of the State if it causes any violation to the Fundamental Right of any person in such cases the State will be liable to compensate them.

CRITICISM OF THE RIGHT:-

1. The Right provided to the accused sometimes acts more favorable to cause them to escape from the crime committed by them.
2. As soon as the crime is committed in some cases it is difficult to get the evidence even after investigating the crime and according to the procedure the accused gets the opportunity to move freely.

¹ The Legal Lock, <https://thelegallock.com/case-analysis-sunil-batra-vs-delhi-administration/> (last visited August 15,2023).

² K D GAUR, Indian Penal Code,1365 (7th Ed,2020).

³ K D GAUR, Indian Penal Code,1366 (7th Ed,2020).

Today we have many laws for the protection of the rights, liberty, limbs etc. There is a proper enforcement system. Even if the accused after being tried and is declared not guilty he is entitled to get police protection if there are chances of danger to his life. As much as the victim is entitled to the enforcement of the right on the other side, the accused is also entitled to protect himself from illegal and vicious treatment. Much importance is given by law to those who are entitled to right whether they are accused or victim. The compensation for custodial death is increased. More limitations are inflicted on the officers having custody of the accused restricting to act upon his own by going beyond law unless and until it is reasonable. They need to maintain the diaries and record overtime for the cases filed. The constitutional law provides the basis for safety and protection to every person whether victim or accused as the matters are to be decided in court of law and the remedy and punishment will be served according to law. They are subject to equal treatment unless barred by law as per the facts and circumstances of the case.

CONCLUSION

Parties engaged in litigation either of the way they need to suffer to enforce their right or to uphold themselves to defend. The suffering here refers to help themselves with the legal proceeding to restore their lost. Certain rules are laid down in law which is required to be strictly adhered. These rules help to protect the parties from being oppressed and abused as these are being tied up as fundamental rights which will now be constitutionally enforced. They are guided by the basic principles of Natural Justice, innocent until proven guilty etc. There can be no deprivation of rights except according to law. Mere accusation cannot lead to depriving a person's right and no right can be enforced unless it has been proved.

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