
Amenability of Sports Law to Management of sports in India

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An industry of billions of dollars with pervasive global presence is bound to breed its own disputes and this resulted in the growth and development of sports law as a separate discipline in its own right. Sports Law basically deals with issues that arise during the preparation for or execution of sports event. Sports Law also deals with issues connected to relationships between, and activities of, individuals and institutions in the sporting world. It transgresses into the already established body of labour law, contract law, competition law and the law of torts. However, in the present times, Law relating to sports is now established and is considered a separate and important entity that coincides with the popularity of sports and players participation, enhanced by increased media scrutiny. The term 'sports law' can be a misnomer too. There is no specific sports law as such, and it would be more meaningful to adopt the rubric of 'sports and the law', for describing the various laws that govern different aspects of sports

In the U.S.A. & U.K. the sports bodies have multiples obligations under the Sports Law. They are under the law, bound to them not to make any gender discrimination among the players. Title IX in the U.S.A is an important Act of 1972, which prohibits a federally funded institute to discriminate on the basis of gender. While in India, some National as well as provincial sports bodies, clubs, associations or societies are usually set up under the Law of Societies which worked as an autonomous non- profit making private bodies but we still lacks on many fronts. Thus, there the need for giving a re-defined shape to policy initiatives governing Sports Law in India.

Keywords: Sports Law, labour law, contract law, competition law and the law of torts, Law of Societies

INTRODUCTION

Sports have evolved into a massive public entertainment industry, closely connected to the unprecedented growth and react at the contemporary global media. Sports Law is a compilation of laws that apply to athletes' ad sports. Sports Law intersects considerably with other branches of law since it has to touch on a wide variety of issues concerning agreements, contracts, torts, agency, due process norms, trade mark, sex discrimination, privacy rights etc. Increased viewership worldwide has turned nearly all national and international sporting events into potential opportunities for generation of revenue . Sports Law is a new domain with its own set of peculiarities. Significant educational and physical benefits have been identified as arising from athletic participation at competitive levels. There is now a growing need to encourage the lawyers to represent the sportsmen in courts for dealing with unfair practices such as doping in sports, breach of contract etc or when they suffer unexpected injuries due to sports bodies or clubs.

Sports Law is no longer an applied law in some countries who have taken the lead and enacted separate legislation concerning sports event. The judiciary all over the world has acknowledged the positive values associated with sports. In case of *Lilley vs. Elk Grove Unified School District* (1998) 68 Cal App 4,939, California Appellate Court

ascertained the values associated with sports and emphasized that among other subjects, sports also become an integral part of learning. The Supreme Court of India in case of *Zee Telefilms Ltd and Anr. vs Union of India (UOI) and Others*. AIR 2005 SC 2677, observed that sports is considered to be a part of education.

HIERARCHY OF SPORTS AUTHORITIES IN INDIA

In the field of sports, the club is the basic unit at the grass root level. At the top of the hierarchy are the international sports bodies for each sports made up of national bodies of different countries. The national sports bodies again consist of the provincial or state bodies of different countries. The provincial state bodies comprise the different districts or clubs. In many countries including India, national as well as provincial sports bodies, clubs, associations or societies are usually set up under the law of societies. These are autonomous non-profit making private bodies. Further, many of these are also established as non-profit associations under the company law jurisdiction. These organizations cannot distribute their surplus or make payment of dividends to members. Their surplus, if any, has to be solely and wholly applied for furtherance of organizational objectives. In many countries, these national sports bodies field the national team representing the country for participation in international competitions where good performance is a matter of pride for the entire nation. They consider the players for participation and selection. These bodies also award telecasting and broadcasting rights to the successful bidder for hefty sums and also earn revenues from advertisement in sports events. They also take disciplinary action against the erring players including debarring them from the game. These bodies control even domestic matches or games within the country. Though in the narrow legal sense these are private bodies, yet in reality

they are performing important public functions in the field of sports where national or public interest is at stake.

For enforcement of their public duties and obligations prerogative Constitutional Writs of High Courts lie against these private bodies like any public or Government Authority.

OLYMPIC ORGANISATION

The Olympic Laws derive their sources from the Olympic Charter which is the combination of the fundamental principles and laws implemented by the International Olympic Committee (IOC). It manages and controls the organization and the propagation of the Olympic Movement and formulates the rules, terms and conditions for the commemoration of the Olympic Games. Though the IOC uses French and English as its official language, however, at the International Olympic Committee Sessions, synchronized translation is also provided into German, Spanish, Russian and Arabic.. The Olympic Movement is a sum total of the International Olympic Committee, Organising Committees of the Olympic Games, the National Olympic Committees, the International Federations, national associations, clubs and the participating athletes. The IOC Sport and Law Commission was created in 1996 with the aim to provide a platform for discussion on contemporary legal issues which affect the different organizations which constitute the Olympic Movement²³. The IOC Juridical Commission was created in 1974.

SPORTS REGULATIONS IN INDIA

Nowadays, there is growing trend of interaction between law and the world of Sports which in turn, has created demand for a greater understanding of the relation between Law and Sports. The Legal Consultation Center within the premises of the Lakshmi Bai National Institute of Physical Education, as mentioned above, creates awareness

about the laws regulating the field of Sports and offer expert consultations in diverse disciplines. The State has taken suitable measures to mobilize the Electronic Media, including the National Broadcasters, the Private Channels and the Print Media for strengthening a Sports Culture in the country.

CONSTITUTIONAL FRAMEWORK

In India, the encouragement of games and sports is the responsibility of the states in terms of Entry 33 List II of the Seventh Schedule of the Indian Constitution, which reads theatres & dramatic performances; cinemas subject to the provision of Entry 60 of List I; sports, entertainment & amusements. In India sports figures in the Concurrent list or Union List - I of the Seventh Schedule of the Constitution. However the sport has been entered at list 33 on State list - II as such only the state legislatures are competent to make laws. There are already 4 States; Kerala, Rajasthan, Himachal Pradesh and Uttar Pradesh, which have enacted laws on regulating sports activity including registration, regulation and recognition of Sports Associations (Uttar Pradesh has since repealed the Act).

The Sports Authority of India is the apex body to co-ordinate various sports activities in India. The Legal Consultation Centre within the premises of the Lakshmibai National Institute of Physical Education has been established in 1996 with an initiative to create awareness about the laws regulating the field of sports and offer experts consultations in diverse disciplines such as sports law & policy. The National Sports Policy of India seeks to raise the standard of sports in India. As per the terms of the National Sports Policy, 2001, the Central Government, in association with State Government, The Indian Olympic Association (IOA) and The National Sports Federation has a main objective to achieve excellence in sports at the National and International Levels.

There are various schemes formulated and implemented by the Govt. of India such as scheme relating to events of sports, schemes relating to Awards and schemes relating to talent search and training. The five year plans focused on different arenas namely The First Five Year Plan emphasized on integration of physical education and sports with formal education, The Seventh Five Year Plan focused on the creation of sports infrastructure, the Ninth Five Year Plan emphasized the need for modern sports infrastructure and the Tenth Five Year Plan sought to promote both the broad-basing of sports and the promotion of excellence in sports.

The Constitution measures to operationalize the Comprehensive Sports Policy, by confining the role of the Union Government to merely supplementing the efforts of Sports completely leaving the primary to the State Government. This has led to both the uneven development of Sports across the country and the non-emergence of sports as a national priority. Only a few States have been able to find the required resources for sports development whereas the remaining have not been able to afford it. Been It has been considered by the parliament to transferring the subject of "Sports" from the State List to the Concurrent List in the Seventh Schedule. It has been proposed to pursue in Parliament the need to shift the emphasis on Sports from its present Constitutional position where it is clubbed with 'entertainment' and 'amusements' to treating sports as a key instrument of youth development . It requires a concurrent effort by the Central and the States just as in the case of Health and Education, both of which are in the Concurrent list. Accordingly, the Eleventh Five Year Plan document recommends the inclusion of 'Sports' in the Concurrent list.

NATIONAL SPORTS POLICY

The National Sports Policy of India seeks to raise the standard of Sports in India. As per the terms of

National Sports Policy, 2001 the Central Government, in association with the State Government, the Olympic Association (IOA) and the National Sports Federation seeks to pursue the objectives of achieving excellence. The Policy attempts to promote the Sports activities in which the country has potential strength and competitive advantage. The National Sports Development Fund was created by the Government with an objective to mobilize resources from Government as well as other Non-Governmental sources for the promotion of sports in India. There are various Schemes formulated and implemented by the government of India as regulatory measure for the Sports Sector and they relate to infrastructure, Events, Awards, incentives, talent search, training, etc.

SPORTS LAW AND WELFARE ASSOCIATION OF INDIA

The Sports Law and Welfare Association of India is a national nonprofit and professional organization which works for promotion of Sports, by bringing Legal Practitioners and Sports persons together. The Sports Law and Welfare Association of India has developed links and carries out consultancy work with many organizations and partners. The Association provides consultancy on various matters including Regulation of sports governing bodies, General sport and law issues, Intellectual property issues in sport, Online Advocating in legal disputes of sports in Court on behalf of sports persons and sports bodies, etc..

SPORTS ARBITRATION AND MEDIATION COMMISSION OF INDIA (SAMCI)

The Government of India, Ministry of Youth Affairs & Sports has to facilitate Sports Bodies and National Sports promotion organisation to reform and

modernize themselves to meet the challenges of highly competitive and commercialized world. Moreover, with the increasing commercialization of sports, in the wake of the XIX Commonwealth Games, 2010, Delhi, the need to regulate sports has also become a necessity. There is a need for 'Sports Regulatory Framework' prevailing in different countries. The intervention of the Indian Courts, in Indian Sports regulatory organisation, made it even more necessary, that they modernize their structures, systems and processes. Therefore, a robust dispute resolution mechanism, especially a strong grievance redressal mechanism for athletes is necessary. To resolve such dispute and ensure the development of sports in conformity with the Olympic Charter and in keeping with the aims and objects of Comprehensive Sports Policy, and an independent arbitration and mediation mechanism may be established on the lines of similar initiatives taken in the United Kingdom (The UK Sport Dispute Resolution Panel) and Australia (The National Sports Dispute Centre). The Union Cabinet Minister for Youth Affairs & Sports of Government of India had assured the Members of Rajya Sabha in the Parliament of India that there have been recommendations for enactment of a separate Sports Law by the Central. Dr. M. S. Gill, Minister of Youth Affairs & Sports, Govt. of India, on 12th August 2010 to answer the Question No. 2105 in the Parliament of India. The Minister has further assured the Parliament that Government has carefully studied the sports regulation systems prevalent in different countries and is considering several options, including that of enacting a National Sports law for better governance and management of sports. A draft of the, "Sports Tribunal of India Act, 2010" has submitted on behalf of the Sports Law India and All India Council of Physical Education, to the Indian Olympic Association on their request. The Indian Olympic Association has incorporated the Sports Arbitration as the, "Arbitration Commission of the Indian Olympic Association" in their General Board

Meeting held at Jharkhand. This Arbitration Commission of the Indian Olympic Association has also been accorded by the International Olympic Committee. Now on the promulgation of the, "Arbitration Commission of the Indian Olympic Association" all the Sports Dispute will be resolved in accordance with the, "Arbitration Commission of Indian Olympic Association" and thereafter as per the, "Court of Arbitration for Sports" of the Rule 59 of the Olympic charter in India.

TORT LAW IN SPORTS

Anyone who sustains sports related injury is entitled to recover medical expenses from the person whose negligence caused the same. In case of injuries from intentional torts such as battery or assault, the guilty is also liable to pay compensation to the injured. The degree of care that the concerned person is liable to exercise is a material consideration. Dangerous sports call for a higher degree of care than others. Expectations and probabilities in a particular situation also have a role in this regard. For instance, a spectator in a base ball game hit by a foul ball while sitting in the stands is not entitled to damages for injuries since such stray balls are very likely in base ball. On the other hand, anybody standing on the interior path of a stadium hit by a stray ball would be entitled to recover compensation for injuries, since such an unlikely event was never in his contemplation. In suits for damages on account of sports related injuries, the following defenses might be available to the defendant depending on the facts of the case.

Defendants may plead that the plaintiff was negligent or callous or assumed the risk of injury inherent in the game under the circumstances. Since players are nowadays under public and media attention, these bodies must be careful not to cause any damage to the reputation of the players and not to exploit the celebrity status of the players without their consent. In default, these bodies become liable

in damages to the aggrieved player. Public institutions defending such suits may take recourse to the doctrine of sovereign immunity to escape from any possible liability. This doctrine prohibits suits against government organizations unless expressly permitted by the government. However, in many cases the courts have refused to apply the said doctrine on the ground that the action complained of does not fall within the sovereign governmental functions.

MAJOR ISSUES IN SPORTS

Sex Discrimination

Girls and women had long been shut out from many sports. However, eventually Title IX was modified to ban sex discrimination in sports in schools that receive any amount of federal funding. Such schools are obliged to give women and girls equal access to sports. In terms of the provisions of the said Title IX (U.S, 1972 Act) federally funded schools must give athletic opportunities to females that are proportionate to those provided to their male counterparts. However, courts do not expect complete equality to be achieved overnight. A roadmap to reach such goal of equality in a phased manner should be firmly in place. Courts adopt a three-tier approach to examine whether a school is fulfilling its obligations under the provision. Firstly, the court checks if participation opportunities are available to members of both sexes in proportion to the number of enrolments. In the absence of such proportional representation, the court examines if there is expanding opportunity for the underrepresented sex to make up for the shortfall. If not, finally the court examines if the concerned school has accommodated the interests and abilities of the underrepresented sex fully. In case the school in question has not done so, the court would hold it guilty of violation of the provisions of Title IX and direct the school to take affirmative action in compliance thereof. Conventionally, the courts in India have not interfered with the under

representation of women in contact games as long as the same is not due to any paternalistic view of women. Though traditionally the Indian courts have been hesitant to direct the formation of a female team or squad in such contact games, yet they have passed mandatory orders for inclusion of eligible female players in exclusively men's teams. Gender based classification by publicly funded entities is liable to be struck down under equal protection claims by virtue of the Equal Protection Clause of the fourteenth amendment to the Indian Constitution. However, the courts make exceptions in those cases where such sex based classification serves important government interest.

Ban on Advertisement by Players during World Cup

From a mere source of entertainment and personal recreation, Sports has grown into a highly competitive industry with global pervasiveness. It is one of the largest revenue generating industries in the world comprising 3% of the world trade. In India though Hockey is the national game, it's Cricket that is being followed as a religion. No other game in India today has the craze that cricket generates. The governing council that is the ICC has prescribed certain rules regarding the commercial activities of players during the world cup. It takes care of interest of commercial partners because they provide revenue for to stage international events, which in turn provides funding for the development of the games. There are standardized Squad Terms for the events there are various restrictions around commercial activity around the event. The questions that arise are the reasonability of restrictions ,authorities who could decide reasonability and also questions of violation of freedom of trade of the players. Certain questions are also put up like If a player is endorsing a product of a company which is not on the list of commercial partners of ICC then would that be breach of regulations ? Only a proper law on sports be an answer to all these questions

Direct to Home Broad Casting Piracy

The primary aim behind any sport is to provide entertainment. This industry also became a victim of piracy. Broadcasting Rights which are part of Intellectual Property rights are often encroached upon by the pirates and this leads to a very big problem of Broadcasting Piracy. At times this is done intentionally but it also happens when there is ambiguity related to the rights of broadcasting between two parties. The problem lies in the distinction between the TV broadcast and Broadcast piracy. Some giant broadcasters, are able to bid for high TV rights and converge maximum rights in their own hands. . There are also issues related with the methods adopted by Ministry of Information and Broadcasting in India to stop film piracy. We can implement similar laws with suitable modifications and reduce piracy in broadcasting field.

Doping in Sports

Sports is the fabric which connects the society and even it can be used to maintain friendly ties between two countries like India and Pakistan, however, Doping is the thing which is causing damage to the reputation of sports. Doping is not just a scientific triumph put to application but is essentially the consequence of the various personal, sociological, psychological and economical factors. The mental will to win, pressure and expectations, constant push to excel and discrepancy in the facilities available are just a few to mention. Efforts to eradicate the use of doping in elite sports have been discredited as a losing battle so many times it is all but impossible to believe in an ultimate victory against the cheats. Performance enhancing substances have always been part of sports and always will be, as will be the efforts to set limits to them and catch the wrongdoers. The war against doping may be tough but adoption of proper strategy and implementation of Government plans through an independent Sports Arbitration Tribunal needed to be framed. The time will definitely lead the country towards a better sport.

BROADCASTING AND TV RIGHTS IN INDIA

The telecast of sports in popular media has comprehensively evolved to keep in line with the enormous commercial and public media tapping the popularity of sports among the population of viewers. Various broadcasting agencies in India are often locked in a battle vying for the telecast rights of major sporting events, the most prominent of them being cricket. This has led to the drafting of extensive legal rights for the exclusive or shared telecast of sport by these agencies. The need arises to critically analyse the laws and acts in force to effectively distribute the broadcasting rights for sporting events in tele-media. The Sports Broadcasting Signals (Mandatory sharing with Prasar Bharati) Act (commonly referred to as the 'Sports Broadcasting Act') lists various provisions that speak about the mandatory sharing of broadcasting information by the commercial media with the state owned media. The Central Government of India is vested with the sole authority of determining events of national importance and laying down the criteria for formulating guidelines for the same. So far, none have been laid down. Further, the importance of swift resolve with regard to this issue which compromises on the evolution and reform of broadcasting rights in India is also needed. The Act also fails to address effectively the issues of broadcast of sports clippings, time span of the same, and the defence of fair dealing.

SPORTS LAW VIS A VIS COMPETITION LAW AND INTELLECTUAL PROPERTY LAW

The Competition laws have relative nexus to various dimensions of sports. The sports activities are concerned with fair and unhindered competition at International, National, Domestic or Individual

level. Doping, Discrimination on basis of nationality or race, withdrawal or non-recognition by International federations of national federations, eligibility criteria's, bans or suspension of athletes, contractual disputes between athletes and sports club, all these pose hindrances for the purpose of competition.

In India, competition regime with regard to sports activities is at a new born stage and hence the need arises of a comparative analysis with legal systems of other countries. The need for structural and managerial changes in sports organizations to improve their responsibility and accountability to general public and sportsperson, specifically referring to anti-competitive practices by BCCI and controversy between Indian Hockey Federation and Hockey India. In India discrimination on the basis of Sex, Religion, Race, Caste or disability, sexual harassment, doping, poor infrastructural facilities, lack of dispute redressal mechanism, low salary caps, are impediments to competition in sports. In India, due to rapid privatization and commercialization of sports activities problems connected with IP Law have grown which include Trademark and Copyright protection, Right to Publicity, and Ambush marketing. IP law is constantly being invoked by Sports associations, Broadcasters and Sportsperson's in courts of law (ICC Development Ltd. vs Arvee Enterprises).

CONCLUSION AND SUGGESTIONS

Interestingly, sports law originated because of increased public dissatisfaction and media scrutiny of a variety of conflicts in franchise based leagues. Today sport is one of the largest revenue generating industries in the world comprising 3% of the world trade; Board of Cricket for Control in India is one of the richest cricket clubs in Cricket World. The successful bidding to host an international sporting event is a unique opportunity for developing countries to showcase their progress, development and their world standing through their soft power.

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Similarly this Common Wealth Games had huge impact for India; it spread the message that India is country who is ready to lead on all front. CWG in India was the platform through which India gave the message to the World about Incredible India, Indian Army, Fastest Developing Nation etc. But this change and fast development in sports field needs a protection from the problems of anti-doping, sexual harassment and age fraud. In India sports is synonymous of controversy. There is lack of ethics. Recent scam in cricket named IPL scam and Lalit Modi issue was shocking for country. Cricket match fixing concept was shameful for whole sporting world. In India sexual assault in different games, Corruption in Olympic federations and the famous Ruchika molestation case, recent death of national Kabaddi player Manisha Devi shows that India needs an immediate, well balanced and hard Law to protect the sports in the Country. Absence of sports Law shows our failure to protect Indian Sportsperson that is why we are struggling hard to survive in games other than Cricket.

India is now emerging hub of Sports. So to protect this atmosphere of healthy sportsmanship we need immediately a law to protect the rights of sports players. Sports have become the life line of entertainment in general public. It provides a platform to attain glory, name and fame with career and money to the aspiring competitive athletes. Now mega sports events added to the progress of any nation. That's why Nations are bidding to host the mega events like Olympic, World Camps, Common Wealth Games etc. Hence the importance of law in sports could not be ignored as equally to the society effective execution of sports laws not only enhance the glory of the mega event but also spread the message of ideal nation in the world.

Asian countries with diverse legal, social, and economic ideologies and customs could create the Asian Sport law that is consistent throughout the region. Asian Sports law would be easier to develop

compared to other laws since it has less possibility that other political, religious, and regional factors intervene in the development of the law. Regionalization of Asia should be practiced in order to build an Asian Community for sports. In Indonesia 2004, 10 ASEAN nations, Korea, China, and Japan have agreed to economically cooperate by founding Asian bank. Such economical cooperation will be effective when exchange in sports is stimulated. Therefore, it is obvious that sports play a grave role in Asian economy as well. If the studies of Asian Sports Law and the activities of academic community are stimulated, the Sports Laws of each Asian country and the Asian Sports Law will gain their identities and independence.

With the largest youth population in the world and one of the fastest developing economies, India has witnessed progressive growth in its sports industry in the past few years. Global events like Commonwealth Games, thriving new infrastructure and large fan following for diverse sports is making India a major sports destination. From a mere source of entertainment and personal recreation, Sports has grown into a highly competitive industry with global pervasiveness. The emergent interaction between sports and law has shaped a new need for a greater understanding of how the law relates to the sporting world. The area of sports law is relatively new and at the nascent stage of conception in our country.. India needs expert sports law consultants to meet an amalgam of diverse legal disciplines such as sports law and policy, contract, tort, taxation, labor, competition, TV rights, match fixing and related criminal laws. In my opinion legal practitioners and sports persons must come together to understand, advance, promote and ethically practice sports law in India. Research must be undertaken to promote, encourage and support the law fraternity. The research topics may include: drafting Sports Act of India; contribution of Indian legislative body for support of Indian sports; Steps should be taken to constitute Indian Sports Services

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like Indian Medical or Indian Engineering Services. There should be appointment of the duly qualified Professionals on the post of Secretary, Joint Secretary, and at other responsible posts in the Ministry of Youth Affairs & Sports and Sports Authority of India. There is need for development of risk management program for safety in sports; Steps should be taken to avoid racial discrimination and national identity in sport. Legal support for women's participation in sport needs to be garnered

Sports Law, being an emerging area of practice triggers the need for Dispute resolution mechanism and enforcement of the same. With the commercialization of sports like cricket and football at the club level (e.g. IPL and EPL), the need is felt to regulate Players and teams in Contract management. There is a need for skilled lawyers while including addendums to the same. The establishment of the Sports Authority of India needs to be backed by equitable regulations and procedures of enforcement.

Disputes are somewhat usual in the sport and recreation sector covers a wide range of subject matters spanning commercial issues, governance and operational issues, discipline and conduct, nomination and selection of athletes and officials for national representation, employment issues and other matters such as discrimination and harassment. A number of features of this sector are not always well placed to prevent disputes from emerging or deal effectively with them when they arise. As a result, it is important that safeguards exist, particularly where the issues affect people's livelihoods.

Indian sports bodies like their counterparts in the USA and UK should have multiple obligations under the sports law. They should not make any gender discrimination among the players. They must also allow the players to unionize and negotiate collective bargaining agreements with the management on their terms and conditions of work

including pay, hours of work etc. In cases involving allegations of drug abuse and use of performance enhancing drugs these bodies must give the concerned player the right of being heard before taking any punitive action against him. Since players are nowadays under public and media attention, these bodies must be careful not to cause any damage to the reputation of the players and not to exploit the celebrity status of the players without their consent. In default, these bodies become liable in damages to the aggrieved player..

Sports in India are an extremely vast area and entail lots of legal issues, yet our laws related to sports are still not clear and transparent. The need of the hour is to set strong and lucid policies to combat all legal issues related to sports. The emergent interaction between sports and law has shaped a new need for a greater understanding of how the law relates to the sporting world. India needs expert sports law consultants and sports law to meet an amalgam of diverse legal disciplines such as sports law and policy, contract, tort, taxation, labor, competition, TV rights, match fixing and related criminal laws. At last the need for hour is that the legal practitioners and sports persons must come together to understand, advance, promote and ethically practice sports law in India.

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