

Social Welfare in Ancient India: A Jurisprudential Perspective



Abstract – The evolution of the discourse of “rights” is a very modern, Western phenomenon in the Indian context. The idea of social welfare has been entrenched in the Indic civilization since ancient times in the concept of duty as opposed to rights. This paper seeks to explore the underlying concept of duty in the notion of *Dharma* and its linkage with social welfare. The Indic being a self-centric civilization, conceived welfare as a duty which the individual owed both to the self and to the society at large. It was this spiritual sense of duty through *Dharma* which made an individual feel obliged to perform one’s duties and work towards *Kalyan* and *Mangal*, which resembled the overall good of both the individual and the society. Discharging one’s duties in accordance with *Dharma* was considered as essential for the spiritual upliftment of an individual. This fine blend of duty along with spirituality formed the basis of social welfare, where we see the blossoming of an inward-looking civic society. So, consequently the social welfare activities carried out by the State (king) were understood as the duties or *Dharma* of the king rather than the rights of the subjects which could be demanded from the state. The evaluation of the performance of a king could hence be judged on the basis of whether he had been successful in discharging the duties he owed towards his subjects and thus in fulfilling his *Rajadharma*. The Ashokan era could be argued to be one such example of a full-fledged welfare state of the Indic civilization. Ancient Indic literature is abound with instances where the fundamental duties of the kings (state) have been described at length. Through a description of the concept of social welfare of the ancient Indic era, including that followed by the state, the author seeks to argue that it would prove to be an excellent learning model for the present Indian state and its citizens because it emphasizes on one’s

duties rather than rights, which paves the way to the realization of one's social and spiritual upliftment, thus producing an overall elevation of the nation at large.

Introduction

The Indic has been a duty-oriented, inward-looking civilization throughout history. The emphasis has always been on the duties of an individual as opposed to one's rights. This has also been a major cause for the nurturing of a culture of responsibility. There is a direct causal link between this sense of individual responsibility which has influenced the functioning of the ancient Indic welfare state. The Indic welfare state (which manifested in the position of the King) worked on a welfare model where the subjects of the state did not demand the proper execution of welfare activities as a matter of their own rights, but rather it was the obligation of the state or the King to look into and carry out those activities as a matter of its responsibilities. This could obviously not have been the case if the emphasis on one's duties would have been read only in the context of the state. It is the notion of Dharma which was universally applicable to all, and which led to the formation of a duty-oriented welfare state. Also, the idea of being duty-oriented wasn't something imposed directly on the state but instead was first nurtured within the civic society itself. It is important to note that the adherence to Dharma was more of a prerogative on the part of the individual or the State rather than it being a kind of imposition, and so consequentially the conformation to one's Dharma was ensured and judged morally as a question of ethics instead of being penalized.

The Concept of Dharma

Before touching upon the idea of Dharma itself, let us have a look at the modern, Western conception of duty to be able to relate and contrast the concept of Dharma better with modern jurisprudence. Duty finds its way explicitly in H.L.A. Hart's theory of primary and secondary rules. Hart describes them as follows:

“Under rules of the one type, which may well be considered the basic or primary type, human beings are required to do or abstain from certain actions, whether they wish to or not. Rules of the other type are in a sense parasitic upon or secondary to the first; for they provide that human beings may by doing or saying certain things introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations. Rules of the first type impose duties; rules of the second type confer powers, public or private. Rules of the first type concern actions involving physical movement or changes; rules of the second type provide for operations which lead not merely to physical movement or change, but to the creation or variation of duties or obligations.”¹

Hart conceptualizes the functioning of the entire legal system on the basis of primary and secondary rules, where primary rules serve as the laws framed to govern the civil society while the secondary rules serve as the media of conferring power on various centers of authority to legislate laws for governing the civil society. The interesting aspect of Hart's

theorization of the legal system is its emphasis on the idea of obligations or duties. It is fascinating to see Hart, a modern legal philosopher living in the era of rights, to base his entire explanation of the functioning of the legal system on the idea of obligations. Hart contends that the laws, rules and regulations being framed are actually calls for individuals to act or abstain from acting in a certain manner. Hart draws a clear distinction between obligations and being obliged to do something².

He does not see the element of fear of facing sanctions being the sole motivating force to carry out one's duties, and also rejects the element of an external force applied on an individual to "oblige" it to do a certain activity as a valid law. Rather, he identifies the existence of a characteristic social pressure in play driving the creation of an obligation. According to Hart, although there might be a variety of rules out there, but "what is important is that the insistence on importance or *seriousness* of social pressure behind the rules is the primary factor determining whether they are thought of as giving rise to obligations."³ Hart in fact comes quite close in a way to the nature of duty that Dharma advocates, which involves sacrifice or renunciation. The following passage is illustrative of what has just been stated:

"Two other characteristics of obligation go naturally together with this primary one. The rules supported by this serious pressure are thought important because they are believed to be necessary to the maintenance of social life or some highly prized feature of it. Characteristically, rules so obviously essential as those which restrict the free use of violence are thought of in terms of obligation. So too rules which require honesty or truth or require the keeping of promises, or specify what is to be done by one who performs a distinctive role or function in the social group are thought of in terms of either 'obligation' or perhaps more often 'duty'. Secondly, it is generally recognized that the conduct required by these rules may, while benefiting others, conflict with what the person who owes the duty may wish to do. Hence obligations and duties are thought of as characteristically involving sacrifice or renunciation, and the standing possibility of conflict between obligation or duty and interest is, in all societies, among the truisms of both the lawyer and the moralist."⁴

Another major contribution to the discourse of duty in modern jurisprudence is found in the work of W.N. Hohfeld. Hohfeld acknowledges the idea of duty to be a vital part of modern legal theorization, and sees it as a jural correlative of rights and a jural opposite of privileges, placed in a larger conceptual matrix. In fact, Hohfeld defines the meaning of rights in a limited sense through the concept of duty.

He states that:

"Recognizing, as we must, the very broad and indiscriminate use of the term, "right", what clue do we find, in ordinary legal discourse, toward limiting the word in question to a definite and appropriate meaning. That clue lies in the correlative "duty", for it is certain that even those who use the word and the conception "right" in the broadest possible way

are accustomed to thinking of “duty” as the invariable correlative. As said in *Lake Shore & M.S.R. Co. v. Kurtz*:

“A duty or a legal obligation is that which one ought or ought not to do. ‘Duty’ and ‘right’ are correlative terms. When a right is invaded, a duty is violated.”

In other words, if X has a right against Y that he shall stay off the former’s land, the correlative (and equivalent) is that Y is under a duty toward X to stay off the place.”⁵

Hohfeld’s worldview of rights can’t sustain itself without a co-existence of duties.⁶ He indicates the inevitable and indispensable connection between the two concepts and argues that a violation of either of the two would result in an undermining of the other.

Now let us move on to the concept of Dharma. Before dealing exclusively with the idea of the ancient welfare state, it would be pertinent to have a fair understanding of the concept of Dharma itself. An authoritative text defines Dharma as follows:

““Dharma” or the code of righteous conduct was evolved with the object of enabling an individual to establish control over his desires and senses and to be contented. The rules so formulated or evolved over a long period were meant to ensure peace and happiness to the individuals and the human society as well. They covered every sphere of human activity. They all together came to be called by a compendious word “DHARMA”.”⁷

The following verses of Manusmriti throw light on the relevance of Dharma:

“The basic rules of conduct required to be observed by human beings which are laid down by Manu are those ordained by the Vedas.” (Chapter 2, Verse 7)⁸

“An educated man in the real sense of the term should scrutinize all the sources of law with the eye of knowledge and should perform his duties in conformity with the injunction flowing from Vedas.” (Chapter 2, Verse 8)⁹

“A man who conforms to the rules of Dharma in his day to day life, not only gains fame in this World, but also attains eternal bliss after death.” (Chapter 2, Verse 9)¹⁰

“The Vedas, the Smritis, a continued or established course of good conduct and those which are agreeable to the conscience (Priyamatmanaha) are the four definite sources of Dharma.” (Chapter 2, Verse 12)¹¹

Manusmriti regards ten attributes as constituting Dharma: “Contentment, forgiveness, forbearance, non-attachment to worldly matters, non-avarice, purity, control or subjugation of senses, spiritual knowledge, truthfulness and being devoid of anger are the ten specific attributes of Dharma.” (Chapter 6, Verse 92)¹²

Further, it lays down certain rules to be followed as a part of Dharma: “Not indulging in violence against any one, truthfulness, not stealing and not acquiring any wealth through immoral/illegal methods, control of senses and cleanliness of mind and body, i.e., conformity in thought, word, and deed (TrikaranaShudhi) are the five rules of Dharma to be followed by all.” (Chapter 10, Verse 63)¹³

Thus, Dharma could be seen as a model righteous code of conduct prescribed for every sphere of human activity and human existence as whole and is expected to be followed by all. It is a code of conduct which has been prescribed for humanity for its own betterment and for the establishment of peace and harmony within the civic society. When an individual follows one's own Dharma and works for the betterment of self and the society at large to further its Kalyan or Mangal, the acts of the individual are seen in high regard and considered to be a path to the attainment of Moksha. The Indic being a self-centric civilization, the acts done in furtherance of the betterment of the society are seen not simply as being done for the welfare of the society but are treated as contributing to the evolution and betterment of the self as well. The concept of Dharma has been succinctly described by Justice K. Ramaswamy in *A.S. Narayana Deekshitulu v. State of Andhra Pradesh*¹⁴ as follows, "Word 'Dharma' denotes, upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfillment of these objects is Dharma. It is Hindu Dharma."¹⁵

Whether interpreted as a model righteous code of conduct or duty or obligations, Dharma as visualized in the Manusmriti shows the existence of these narratives in ancient Indic thought way before they were theorized in modern jurisprudence. It is a testimony to the fact that the vitality of a duty-driven approach has always been understood and emphasized upon by our society since ancient times. It also draws our attention to the decline of attention and importance attached to the discourse of duty in modern legal jurisprudence and a simultaneous emergence of the discourse of rights independent of their corresponding duties. A contrast between the ancient conception of Dharma and modern conception of duty is revealing in many ways as it brings out our lackadaisical attitude toward the importance of duties. A cursory reading of modern legal texts shows that even those legal philosophers who based their understanding of the legal system on the narrative of duties could not attribute enough importance to it and failed to grasp its centrality as the driving force of any civil society. Some of the stark differences that come out clearly are as follows: In Hart's conception of obligations, although there is no role of any external force which makes sure that an individual follows one's duty, yet it identifies a "social pressure" as the driving force and also implies a reluctance on part of the individual to follow one's duty (Hart observes that the duty expected to be followed seems to be in conflict with what the person wishes to do). This is why Hart states that the observance of one's obligations involves sacrifice or renunciation (as an individual has to carry out certain obligations against what one wishes to do). On the other hand, Dharma does not see the observance of duty as something opposed to one's temperament. Rather, it is considered as a self-fulfilling activity which brings about spiritual upliftment and well-being. Also, observance of one's Dharma is regarded as a basic requirement for one's well-being and the sustenance of a civil society at large rather than being treated as an achievement to be cherished. The observance of Dharma is not considered as something opposed to what a person wishes to do, neither is it seen as done under any sort of social pressure. Hence, adherence to Dharma could be regarded as exercising self-restraint and involving sacrifice or renunciation, but not in a sense contrary to one's wishes. Rather, observance of Dharma is something that an individual is expected to willfully wish and do,

because it helps in the betterment of the individual. While modernity regards morals and duties as aspirations, the Indic civilization has always treated them as a lived reality. Another interesting fact to be noticed in Hart's, and all the more so in Hohfeld's, conception of duty is that they treat it as a category, the observance of which is to be realized indirectly (for example, duty being a correlative of right). So, the observance of one's duties would be an outcome of not infringing upon someone else's rights, or as a result of not violating any laws, rather than it being done for the sake of itself. However, the Vedic (or Indic) conception of duty is direct, in the sense that it treats the realization of one's duties as an end in itself, and consequentially, it explicitly states the duties to be observed without their observance being dependent on securing corresponding rights. In addition, it should be noted that while in Hart's theory of primary and secondary rules, the act of lawmaking is referred as a 'power' conferred on the authorities, while in the worldview of Dharma, it would also be treated as a duty on part of the authorities. This is the basic difference in the approach of the two worldviews. The state and its branches are not treated as authorities having certain powers of lawmaking. Instead, Dharma binds them to carry out their duties, without having the privilege of being vested with certain powers. What follows from this observation is that the present crisis in the modern states regarding their failure of protection of rights is an outcome of the treatment of lawmaking and providing justice as an exercise of state's power and not its duty. That is why the poor citizens have to demand their rights from the state. Such a situation would not have arisen if the discourse would have aimed at emphasizing on the state's duties and not treating the activities it is expected to carry out as an exercise of power which it would do at its own discretion. In passing, the difference between Dayitva and Dharma would be insightful in having a better understanding of state's activities. While the former regards them as the state's responsibilities (which might be interpreted as sort of an imposition, and something that the state would do unwillingly), the latter treats it as the state's duties which would help uplift both the nature of the state and the civil society.

Rajadharma and the Ancient Welfare State

Having discussed at length the concept of Dharma, we now move on to evaluate the Dharma of the King/state, which is also known as the Rajadharma. According to Manusmriti, the highest duty of the King is the protection of its people. It states that, "The highest duty of a King is to protect his subjects. The King, who receives the prescribed taxes (from his subjects) and protects them, alone acts according to Dharma." (Chapter 7, Verse 144)¹⁶ The ancient text codifies the duties of the King towards its subjects in detail, and explicitly states that the King is required to follow the Rajadharma. It also observes that the King should not discriminate between its subjects and should be supportive towards one and all, and states that, "The King, conducting himself always in conformity with Rajadharma, should command all his servants to work for the welfare of the people." (Chapter 9, Verse 324)¹⁷

The idea of the welfare state revolves around the model of taxes imposed on its subjects by the state. So, Manusmriti first states that revenue collection done by the state or the King needs to be reasonable and in accordance with Dharma. It observes, "The King should

love his subjects as his own children and ensure proper collection of revenue every year. He must obey the rule of Dharma in the matter of collection of taxes.” (Chapter 7, Verse 80)¹⁸ Further:

“As the leech, calf and bee take their food little by little, even so a King should levy annual taxes at reasonable rates against his subjects.” (Chapter 7, Verse 129)¹⁹

“A King should not cut his own roots by levying no taxes and he should not also cut the roots of his subjects by levying excessive taxes. By doing either of these, the King ruins himself.” (Chapter 7, Verse 139)²⁰

Manusmriti even provided for exemption from taxes for certain categories of people, “Persons who are physically or mentally handicapped and those who are above seventy years of age, persons who extend help to Vedic scholars shall be exempted from payment of tax.” (Chapter 8, Verse 394)²¹ The King was also required to make sure that all the revenue collected was used for the welfare of the people and not appropriated wrongly either by the King or by the government officers. In chapter IX of the text, it is stated that, “As the sun during the eight months draws up the water with his rays from the water source, even so King should draw up taxes from his subjects gradually” (Chapter 9, Verse 305)²² and further observed that, “Similarly, as the rain God causes rain throughout the earth, it is the duty of the King to distribute the benefit of tax collected, to all the classes of the society at large.” (Chapter 9, Verse 304)²³ Although the text doesn’t go into much detail as to what kind of welfare projects are to be taken up by the King/state, it does mention that state revenue should be used on such projects. In Chapter VII of the text, it is mentioned that, “The King should acquire wealth and enrich the treasury, he should protect the acquired wealth and he should spend the money for the benefit of the needy on projects which are for the welfare of the people.” (Chapter 7, Verse 99)²⁴

The subjects of the King were considered the state’s most valuable assets. The importance attached to the people is reflected emphatically in the following verse of Shantiparva, “Oh King, there are six types of forts (desert, water, land, forest, mountain and people). But the people’s fort is the most formidable.” (Shantiparva 56-35)²⁵ This verse reflects the attitude that was desirable of the King by its people and was simultaneously informing the King to always have one’s subjects into confidence and keep working tirelessly for their betterment because in hard times, it was the subjects who would be the most helpful for the King or the state to hold on to power and maintain its legitimacy. If the subjects would not be satisfied with the welfare projects carried on by the King, this factor would go against the King at a later stage in times of crisis. The people’s fort has been used as a metaphor signifying the relevance of subjects in ensuring the authority of the state. Justice M. Rama Jois highlights this point and states, “Rajanitiratnakara, in the context of the coronation of a prince, eulogises the people by calling them ‘Prajā Vishnu’ (people are the incarnation of Lord Vishnu). The welfare of the people was declared to be the chief concern of the State and it was the duty of all the officers and servants appointed by the King to work for the happiness and welfare of the people.”²⁶

Ancient texts explicitly provided for safeguard provisions for the weak and the needy. In Manusmriti, there is a provision for the protection of the property of minors and women as follows, “The King shall protect the inherited property of a minor, until he returned from his teacher’s home (Gurukula) or until he ceased to be a minor.” (Chapter 8, Verse 27)²⁷ Similarly, Shantiparva states that, “The King should look after the welfare (Yogakshema) of the helpless, the aged, the blind, the cripple, lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women, by giving them food, lodging, clothing and medicines according to their needs.” (36, 24-25)²⁸ In fact, there were provisions for the subsistence of soldiers’ wives as well, “Their (soldiers’) wives, who have no other means of livelihood, shall be given subsistence (by the King).” (Vasishta (S.B.E.) p. 98-20 (Ch. IX 20))²⁹ R.C. Majumdar rightly sums up (as reproduced by J. Rama Jois) the ancient Indic society’s orientation towards the observance of Dharma and Rajadharma in the following manner, “In those days a man’s status in society was looked at not so much from the point of view of his rights, as from that of his duty, which had moral and religious sanction behind it; and it would have created as much sensation in those days, if the king had failed in his duties, as would follow the violation of peoples’ rights in modern days.”³⁰

The Indic welfare state functioned on a model of freedom, equality and non-discrimination. In Rigveda it is stated that, “No one is superior or inferior. All are brothers. All should strive for the interest of all and should progress collectively.” (5-60-5)³¹ Again, in Atharvaveda it is observed that, “All have equal rights on articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together with harmony *supporting one another like the spokes of a wheel of the chariot connecting its rim and hub.*”³² This was also known as the description of Samjnanasukta, or the right of each individual in respect of the natural resources.³³

Manusmriti, which can be regarded as arguably the most detailed prescriptive text with regard to the duties of a King or the state, signals a self-centric approach prescribed for the King as well. One gets the sense of the old adage that charity begins at home and change always starts with the self. The requirement on part of the King to begin with reformation of the self before moving forward to engage in the welfare of the people reflects how central the self-centric approach is to the Indic civilization. The Indic demands a radical physical, mental and spiritual reformation of the self from every individual, as it is only then that the individual realizes the worth of following Dharma and moves towards the realization of Moksha. Following verses show the obligation on the King to reform himself:

“The King has been created (to be) the protector of the castes (varna) and orders, who, all according to their rank, discharge their several duties.

Whatever must be done by him and by his servants for the protection of his people, that I will fully declare to you in due order.

Let the king, after rising early in the morning, worship Brahmanas who are well versed in the threefold sacred science and learned (in polity), and follow their advice.

Let him daily worship aged Brahmanas who know the Veda and are pure; for he who always worships aged men, is honored even by Rakshasas.

Let him, though he may already be modest, constantly learn modesty from them; for a king who is modest never perishes.

From those versed in the three Vedas let him learn the threefold (sacred science), the primeval science of government, the science of dialectics, and the knowledge of the (supreme) Soul; from the people (the theory of) the (various) trades and professions.

Day and night he must strenuously exert himself to conquer his senses; for he (alone) who has conquered his own senses, can keep his subjects in obedience.

Let him carefully shun the ten vices, springing from love of pleasure, and the eight, proceeding from wrath, which (all) end in misery.

For a king who is attached to the vices springing from love of pleasure, loses his wealth and his virtue, but (he who is given) to those arising from anger, (loses) even his life.” (Chapter 7, Verses 35-46, Manusmriti)³⁴

Manusmriti emerges as the key authoritative text dictating the codes of conduct to be followed by individuals and the state itself.

As described by Prof. Vijender Kumar:

“Vedic literature states that the welfare of the people must be the central concern of the King or the leader of the society whose acts should be directed for the welfare of the people. We find the prevalence of this principle in all the law codes of Hindus. All attempts to reform the society are bound to fail if they neglect the individual, the basic unit of society. Therefore, the ancient Indian Philosophers, Jurists or reformers who had fully grasped the preaching of the scriptures, and had worked them out in practical life always stressed that the first step for a co-ordinated harmonious society is that ambiguities and conflicts must be eliminated from the minds of the individual. Hence every reform must start from the individual. The code of Manu, contains the principles which contribute to the solution for so many socio-legal problems of the conflict-ridden modern world, from which moral values are fast disappearing. There is a moral vacuum. The author of the Code is not an ordinary individual possessing worldly knowledge alone. He seems, certainly, to have comprehended the ultimate truth, the truth of the spirit, and it is in the light of this truth that he wants to reshape the actual life of the people.”³⁵

The entire concept of the Welfare state has been beautifully summed up by Kautilya thus (as reproduced by J. Rama Jois), “In the happiness of his subjects lies the King’s happiness; in their Welfare, his welfare, whatever pleases himself the King shall not consider as good, but whatever pleases his subjects, the King shall consider as good.

The King shall ever be active and discharge his duties.”³⁶

To quote Justice Rama Jois, “This is the eternal ‘Dharma’, the beacon light, which shows the right path to the Rulers under any set-up of the Government of a welfare State.”³⁷

Conclusion

The ancient Indic model of welfare state seems to be the perfect plausible response to the present-day welfare state. What we as individuals need to realize is that there is a deep underlying logic behind the idea of a duty-driven welfare state, because it is duties and responsibilities which when nurtured as a part of ethics of human conduct from within help in shaping a truly civilized civic society. Claiming goods and services as a matter of rights is a pretty obvious easy task, but taking responsibilities upon oneself and fulfilling them is the real challenge which needs to be faced head on by each individual so that we can once again rekindle the culture of taking up responsibilities and obligations and become a duty-driven society. Only a duty-driven society can give us a duty-driven state which doesn’t need to be forced to dole out services when claimed as rights by its subjects but takes up the mantle by itself as a prerogative and priority on its own part. But the change has to start with the self. Remember, we the Indic, are a self-centric civilization who have been and will always be a beacon of light and hope for all, and we can reclaim our ancient ideals, the ancient welfare model.

References:

- 1.H.L.A. Hart, *The Concept of Law* 81 (3 ed. Oxford University Press 2012), 2.*Id.* at 82, 3.*Id.* at 87, 4.*Id.*, 5.Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 *Yale L. J.* 16, 31-32 (1913), 6.For further understanding, see Suri Ratnapala, *Jurisprudence* 300 (1 ed. Cambridge University Press 2009), 7.Justice M. Rama Jois, *Ancient Indian Law: Eternal Values in Manu Smriti* 20 (1 ed. Universal Law Publishing Co. Pvt. Ltd. 2007), 8.*Id.*, 9.*Id.*, 10.*Id.* at 21, 11.*Id.*, 12.*Id.*, 13.*Id.*, 14.A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765, 15.A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765 ¶ 81, 16.Justice M. Rama Jois, *supra* note 7 at 104, 17.*Id.*,18.*Id.* at 117, 19. *Id.* at 118, 20.*Id.*, 21.*Id.*, 22.*Id.*, 23.*Id.*, 24.*Id.* at 122, 25.Justice Rama Jois, *Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights – Bhartiya Values* 37 (2 ed. Eastern Book Company 2000), 26.*Id.*, 27.*Id.* at 41, 28.*Id.*, 29.*Id.* at 42, 30.*Id.*, 31.*Id.* at 49, 32.*Id.* at 49-50, 33.*Id.*, 34.*Id.*, 35.Vijender Kumar, *Social Welfare in Hindu Jurisprudence*, 2 *NALSAR L. Rev.* 154, 155 (2004-2005), 36.Justice Rama Jois, *supra* note 25 at 52, 37.*Id.*
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