

International Instruments and Protection of Children from Sexual Offences ACT (POCSO ACT) 2012

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Abstract

Children are human resources that are both important and fragile, yet they have the capacity to blossom in a loving environment. All of this is the dawning humanity and social progress in its early stages, the vast possibilities of future. The research approach is the most important aspect of a study. A researcher can only go where they want to go by following a certain method or road plan. The research project will be like a ship without a rudder without adequate technique. The French word 'Recerche,' which means 'research,' is where the English word 'research' comes from. Victims of sexual assault endure bodily as well as mental injury and pain. Male victims of sexual abuse are just as vulnerable as female victims. In police custody or jails, male inmates may also be subjected to sexual violence. Sexual minorities, including the transgender population, are also exposed to this discrimination.

Keywords: Children, Custody, Discrimination, Sexual, Violence, Police, Humanity, Social

1. INTRODUCTION

Children are human resources that are both important and fragile, yet they have the capacity to blossom in a loving environment. All of this is the dawning humanity and social progress in its early stages, the vast possibilities of future. From a position where children were considered as simple beings and material things, to a position of human dignity where they are not only free from exploitation and abuses but are also permitted to achieve their full potential with fair access to food, health, and education. The strategy's stated objective of allowing children the freedom to be children in a better society is an admirable one. As people became more conscious of the value of children's human rights, a more child-friendly atmosphere began to take shape. Human rights are the greatest benefits for children because they have the power to influence the legal and social systems to create a regime that protects children and

initiates social change. However, children haven't always been respected and safeguarded. For a long time, people didn't see childhood as something exceptional. Because of their tiny size and lack of uniqueness, children have long been considered inferior to their parents. It is widely accepted nowadays that since children are a human creation (a social construction), they should be fostered and safeguarded from the harsh world. This value of children's lives was exacerbated by the severity and prevalence of sickness, as well as the public display of death. Because children lack political clout, they are also vulnerable. Most civilizations saw children as the property of their parents. In other circumstances, parents may have considered their children as "nothing more than additional mouths to feed," a sentiment that may be expressed quite passionately.

Innocent, defenceless, and destitute children are found across the globe. And yet, they're full with wonder and a sense of possibility. Playing, learning, and developing should be a time of pleasure and calm for them. As a group they should work together to create a better future. As kids get older and acquire more experience, their childhood should become more mature. It is a crime against humanity to abandon children and deny them a solid start in life. For the wellbeing of children, the policy emphasises that society and the legal system must treat children with care, love, and devotion. Humanism's credo should be this. The growth and maturity of a society that cares for a kid is evident.

“According to the Supreme Court in *Bandhua Mukti Morcha*, A kid of today cannot grow into a responsible and productive member of tomorrow's society unless and atmosphere which is favourable to his social and physical health is provided to him.” Even in countries that are both developed and developing, a nation's destiny is tied to how well or poorly children are raised. Without children, mankind would be utterly without hope.

1.1 RESEARCH METHODOLOGY:

The research approach is the most important aspect of a study. A researcher can only go where they want to go by following a certain method or road plan. The research project will be like a ship without a rudder without adequate technique. The French word 'Recerche,' which means 'research,' is where the English word 'research' comes from. Experimentation and research on a certain topic are carried out to discover new information and draw a fresh conclusion from it. Methodologies for collecting data and other information for use in making business choices are referred to as "research methodologies." A few methods that fall under this category include interviews, surveys, and literature searches. In all cases, current and historical data are used. When doing theoretical research, paradigms may be employed to meet most of the methodological requirements. Because paradigms are a constructive framework, they are useful in their application. Using research methodology, one may determine the outcome of a certain

problem or issue, which is referred to as a research problem.

2. GENERAL INTERNATIONAL INSTRUMENTS

2.1 “*Universal Declaration of Human Rights*”

“An important turning point in human history was marked with the signing of the Universal Declaration of Human Rights on December 10, 1948.” A lot of people throughout the world were still mourning the deaths and destruction caused by World War II and the Nazi regime, which included genocide and other horrors. Many people perished because of military conflict, and the countries would not accept war crimes that were founded on false pretexts. Rights violations are no longer to be tolerated in any form, and all States Parties from all corners of the globe agreed to this in an unprecedented accord.

It was on December 10, 1948 that the final Declaration embodying these essential rights was prepared by 48 states at UN headquarters in Paris, and the international community agreed to ensure that all people had access to them. It is clear from the Declaration's thirty-one articles that signatories agree on the importance of adhering to fundamental rules in various aspects of human life, including substantial rights (such as freedom and the right to life), civil rights and liberties, economic rights (such as the right to a fair wage), and social rights (such as the right to health care) (e.g., the right to speak your native language and practise your culture).

According to the UN's declaration of children's rights, it is critical to create a framework that prioritises their education, health, and well-being.

However, the Declaration is not a legally enforceable document in and of itself, and as a result, the signatories to the Declaration cannot be held accountable for any duties they fail to uphold. States Parties may, nevertheless, use the Declaration as a basis for enacting domestic legislation to safeguard human rights since it is considered one of most fundamental international treaties on human rights.

2.2 “International Covenant on Civil and Political Rights”

Even before 1948, many international participants considered that the Declaration of Human Rights needed to be formalised into one or more treaties in order to have legal power. Thus, on December 16, 1966, the UN General Assembly enacted the International Covenant on Civil and Political Rights (ICCPR), which came into force on March 23, 1976, to safeguard these sorts of liberties.

“Within their authority, States Parties are obligated to ensure that men and women have equal access to all civil and political rights in accordance with the Covenant. In order to emphasise the importance of the family, it refers to it as the natural and essential group unit of society.” The ICCPR defines the child as a minor, and as such, they are entitled to certain rights regardless of their family, community, or state's race, colour, sex, language, religion, national or social origin, property or birth. A child's right to identify is emphasised in the ICCPR as well, including the right to birth registration, a name, and the acquisition of a nationality. A direct participation right for children, such as the right to be engaged in choices that affect them, is not explicitly provided by the International Covenant on Civil and Political Rights (ICCPR).”

As the body in charge of keeping tabs on the ICCPR's implementation, the Human Rights Committee examines the reports submitted by States Parties, noting the steps they have taken to put the treaty into practise and the difficulties they have encountered, and issuing concluding remarks outlining the treaty's successes and failures, as well as making recommendations.

2.3 The International Covenant on Economic, Social and Cultural Rights

An international treaty specifies that "the right to the maximum possible level of physical and mental health" will be preserved. Reduced baby and stillbirth mortality, more public access to healthcare, better environmental and industrial hygiene, and disease prevention and treatment are only a few of the suggestions offered in this article. Other critical rights that are emphasised by this committee include those of safe drinking

water, food, shelter, and working conditions; of access to information on sexual and reproductive health; of having predictable work hours; and of having special protections for children from economic insecurity. These are all important components of the Committee's recommendations. There are provisions in the Covenant for the right to an education, found in articles 13 and 14. It is UNESCO's responsibility under Article 18 of the Covenant to ask its representatives to participate in committee meetings, formulate recommendations on final observations made, and prepare reports reflecting the accomplishments made in accordance with the Covenant's obligations. This obligation stems from Article 13 of the Covenant. Accordingly, at least in theory, the ICESCR's education mandate is preserved by UNESCO's role in writing and codifying its right to education requirement. Signed, but not ratified, is India's commitment to the International Covenant on Civil and Political Rights.

2.4 SPECIAL INTERNATIONAL INSTRUMENT

2.4.1 “The Declaration on the Rights of the Child (1924)”

“League of Nations enacted a resolution known as the Declaration on the Rights of the Child in 1924, 24 years before the Universal Declaration, which was the first international declaration on human rights and the first of its type only defending children's rights.” The Geneva Declaration, as it is often called, compels members to address the monetary, social, and psychological needs of children, as well as those of their families. Adults are required to obey certain ethical standards in the care of children, but the Declaration does not identify any specific legal privileges for children.

This declaration's concentration on orphans and abandoned children (Article 4), as well as children caught up in war and other national catastrophes (such as natural disasters), is evident in the Declaration of the Rights of the Child, which comprises just five principles (Article 3). Another thing to bear in mind is that there is no mention of the responsibilities of biological parents or the family in these five

principles of adoption. As a result, the Declaration did not aim to formalise current child safety norms into a legally binding framework.

2.4.2 “The Declaration on the Rights of the Child (1959)”

Children's rights were once again addressed in a special international document, this time because of armed conflicts in the post-World War II era, as in the 1924 Declaration. “In accordance with a General Assembly decision, the United Nations International Children's Emergency Fund (UNICEF) was established in 1946.” Children who were directly or indirectly affected by World War II were the initial focus of UNICEF, but it has now evolved into a global aid agency for the world's poorest nations. “Around fifty different groups contributed to the 1950 re-drafting of The Declaration on The Rights of The Child. Children's rights finally gained worldwide attention in 1957, when the Commission on Human Rights launched a well-defined endeavour to develop an internationally recognised Declaration of Children's Rights.”

According to the 1959 Declaration and subsequent documents adopted in the 1960s and following decade, “children may and should depend on the sole protection of adults to safeguard the enjoyment of their rights. Principle 8 of the Declaration states,” the child should under all circumstances is among the first to receive protection and aid, which shows a preference for international law that views children as objects.

The 1959 Declaration has a far broader reach than earlier declarations of its kind. As a result, despite the Declaration's focus on children with disabilities or other special needs, it really encompasses a far broader range of issues than its 1924 predecessor.

Both laws on children's issues and directions for "education and guidance" in the Declaration referenced the best interest of the child (Principle 7). Besides addressing important issues impacting children, this proclamation establishes a series of principles on which children might best enjoy their childhoods. There is no mention to parent-child

relationships or how parental power affects this connection in the Declaration.

2.4.3 The United Nations Convention on the Rights of the Child (1989)

The CRC is the most well recognised human rights pact in the world, having been approved by 192 countries.

As a result, many countries believe that children's rights are more vulnerable than adult ones. Additional assistance is needed for children since they are members of society with a limited ability to develop their own cognitive, emotional, social, and political power.

A child's right to life, survival, development, and participation are protected by the CRC and its four fundamental principles (i.e. best interest for child rather than parental interests, accessing basic rights which include the right to life and survival as well as respecting the right to participation and having).

As a result of a lack of an international statute whose implementation can be monitored by any international mechanism other than the obligation for States parties to provide periodic reports to the UN Committee on Children's Rights, abuse, neglect, exploitation, and discrimination against children have become increasingly common in recent years. The CRC cannot override these domestic laws.

Many States Parties have signed on to the CRC, but the examination of its implementation has been entrusted to bodies that also handle education, health, and social care.

If the CRC principles are enshrined in domestic legislation, it is of little use if there are no effective means of promoting awareness.

Even while all CRC members are required to apply its principles into their legislative actions and practises, no precise technique has been provided.

2.4.4 “The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking”

All sorts of child trafficking, from sexual exploitation to forced labour to war to forced marriage to the organ trade, are major business across the world. The United Nations Children's Fund (UNICEF) believes that two million

children are trafficked each year for prostitution or other criminal purposes.

For the sake of protecting children, fighting against the most horrific human rights breaches, and better dealing with child prostitution, child pornography requires stricter regulations.

Children's Rights Optional Protocol to the UN Convention was accepted by the United Nations on May 25, 2000. It addresses child sales, prostitution, and pornography. This Protocol, which asks for the prevention of specific acts by appropriate laws and regulations, forbids the sale of minors. Additionally, the supplementary Protocols are aimed at improving the protection of children during armed situations. Regarding child trafficking prevention On August 16th, 2005, India ratified the Protocol.

2.4.5 “The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts”

Child labour in armed conflicts is banned for children under the age of 18, but those 16 or 17 years old can be recruited on a voluntary basis because children, particularly from poor families who are far away from home, living in war-torn areas, or lacking access to education, are viewed by this Protocol as being at risk of being enlisted in armed conflicts.

Atrocities and suicide missions against one's own family and neighbours should not be carried out by children. They should also not be given medicines that make them more courageous while also making them less sensitive to pain. As a result of their inexperience and lack of preparation, children are more likely than adults to be killed or suffer lasting disabilities like blindness or psychiatric illnesses because of traumatic incidents. The Protocol was signed by India on November 15th, 2004, and ratified on November 30th, 2005.

3. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO ACT) 2012

Children's rights are protected by a variety of legislative enactments in India, including the Constitution, the Indian Penal Code, and other statutory legislation, “all of which have a significant impact on the lives of children.” The

Indian Constitution allows the State to create specific arrangements in favour of children, which is an exception to the broader concept of equality. For children ages six to fourteen, free and compulsory education has lately been enhanced by constitutional amendments. Child trafficking and hazardous work are also addressed in a number of laws in Chapter 3 of the Fundamental Rights. A kid's constitutional protections, however, aren't confined to only the State's obligation to safeguard the child. India is also a signatory to the United Nations Convention on the Rights of the Child, which was signed by the country in 1989. However, despite this clear mandate from the world community and the Indian constitution to defend children's rights, the Indian legislature has yet to follow through on this promise. The Indian Penal Code, the country's primary criminal legislation, is notable for its hesitation to prosecute acts of sexual abuse against children.

An inability to clearly define child sexual abuse as an individual crime has resulted in prosecutors and courts being forced into using broad provisions that are often insufficient to deal with many cases of sexual abuse. Penovaginal penetration of female children is the sole legal definition of rape that the law recognises. However, the rule does not penalise any other types of sexual abuse such as showiness or caressing, penile-anal or oral penetration, or object-vaginal penetration. Another clause of 'outraging the modesty of women' covers such other sorts of penetration, which comes with its own baggage.

The Supreme Court's legal interpretation of women's modesty has made it difficult for youngsters to develop their own sense of modesty. Because of this, the maximum punishment for a child abuse conviction is now just two years, rather than the seven years required for a sexual assault prosecution under Section 354. These laws would not apply if the child abuse victim was a male, which is arguably even more distressing than that. One of the Code's most contentious provisions, 'unnatural offences,' is the only one that is gender neutral. In spite of its acknowledgment that boys may be subjected to sexual abuse, the high standard used to define "penetration"

excludes molestation. Advocacy groups for children's rights say that a separate law addressing child sex abuse is the only way to stop such crimes from occurring in the first place. The Ministry of Women and Child Development championed the Protection of Children from Sexual Offences Act, 2012, to effectively address the horrifying crimes of child sexual abuse and exploitation. Since it prohibits almost all forms of sexual abuse of kids, the Act is widely seen as beneficial. Victims of sexual assault are urged to sue their abusers to get restitution for their losses and assistance in healing from their ordeals. The state's numerous agencies, such as the police, courts, and child welfare institutions, work together as partners to get justice for a child who has been sexually attacked.

3.1 THE POCSO ACT, 2012

Acts like sex abuse and lustful behaviour are protected under the "POCSO Act or The Protection of Children from Sexual Offences (POCSO Act) 2012 which was created to protect children from these crimes. It was created to provide a youth-friendly framework from which the offending parties may be deterred. Any individual under the age of 18 is considered a child under the Act. It also takes preparations to prevent the re-use of adolescents according to the legal system. Various forms of sexual abuse, including both penetrative and non-penetrative forms, are depicted in the Act. Prurient behaviour, as well as sex games, are also part of it. For example, if the abused child has been rendered mentally incapacitated or the abuse has been perpetrated by someone in a position of trust or authority over him or her, such as a family member, police officer, teacher, or expert, or by an organisation or staff of a crisis centre, public or private, POCSO says the assault should be considered aggravating. In addition, the Act mandates the reporting of such incidents. It legitimises the obligation of a person who is aware of the violation to report it. Anyone who fails to do so will be subject to punishment, which may include a year in jail or a fine of up to \$10,000." In addition, the law specifies that the verification of the child must be made within a thirty-day period. In order for the Special Court to conclude the starter within one year of the day on which it took cognizance

of the abuse, it should be given the option to do so. Cameras should be used to record Special Court proceedings, and gatekeepers should be people that the kid may trust or rely on to protect him or her. Fraudulent complaints or false data are not tolerated under the Act's provisions for punishment. It depicts a level of retribution that is appropriate to the seriousness of the crime.

3.2 PREAMBLE

Set up Special Courts to handle cases involving kids who have been sexually harassed or attacked, as well as instances involving pornographic material.

Considering Article 15 of India's constitution, which gives it the ability to create specific measures for children, and the fact that India joined UNCRC on December 11, 1992, which established a set of principles for all governments to adopt to safeguard children's rights, Due to the fact that a child's right to privacy and secrecy must be upheld at all times, including during any judicial proceedings that may have an impact on the child.

This Convention on the Rights of the Child mandates States Parties to Take Appropriate Measures To Prevent Child Abuse. The legislation must work in a manner that ensures that the best interests of a child are always considered paramount—

- (a) Sexual behaviour with a minor under the influence of pressure or persuasion;
- (b) Child prostitution and other illegal sexual acts that exploit youngsters;
- (c) Obscene acts and materials that include the exploitation of minors;

While sexual abuse and exploitation of kids are heinous crimes, they must be dealt with in a timely manner.

3.3 SURVEY OF MINISTRY OF WOMEN AND CHILD DEVELOPMENT

According to a 2007 government-commissioned survey, more than 53% of Indian youngsters had been sexually abused, however the majority of victims do not come forward and report the attacks.

According to the results, two out of every three children had experienced some type of physical, sexual, or emotional abuse at some point in their lives. The poll also looked at the issue of female child neglect.

Child sex abuse cases in the United States tend to be carried out by those who know the victim or who have a position of trust and responsibility to the victim's family or acquaintances. According to a poll conducted by the Ministry of Women and Child Development, those between the ages of 5 and 12 years reported the greatest levels of abuse. This is particularly important in light of the Nithari fatalities.

"Child abuse is cloaked in secret and there is a conspiracy of silence surrounding the whole matter," former women and child development minister Renuka Chowdhary stated at the time of the survey's release. According to a Ministry of Education research, 53.22 percent of children in 13 states, with a total sample size of 12,447, have been sexually abused. Andhra Pradesh, Bihar, Assam, and Delhi had the highest proportion of such incidents. The offenders in half of all incidents of child abuse were somebody the kid knew or trusted, and most children did not disclose the abuse to anybody.

4. SALIENT FEATURES OF POCSO ACT

1. Gender neutral

In other words, offences against children, whether male or female, will only be prosecuted under this provision.

2. Burden of proof

False allegations or false information with malicious intent will result in punishment under this statute, which replaces the customary rule of "innocent until proven guilty."

3. "It makes the recording of abuse mandatory"

This legislation mandates that all incidents of child abuse be reported to the police by filing a FIR. Female police officer not lower than a sub-inspector should record a kid's statement, even if the youngster is at home or in a place of his choosing.

4. "It lists all known types of sexual offences towards a minor"

An offence should be reported as soon as possible if there is any suspicion that an offence will be committed or that someone is trying to commit or helping in the commission of an offence. Failure to report an offence may result in a jail sentence of up to 10 years. A six-month prison term, a fine, or both may be imposed for failure to comply.

5. It ensures that kids are protected throughout the court proceedings.

i) The child's testimony must be documented within 30 days for a timely trial.

ii) Trials are scheduled to begin within a year and are expected to be completed.

At no time should a youngster be exposed during the recording of evidence or during the investigation or trial of an accused. The evidence of the minor does not have to be repeated in court, and it may be given by video connection instead. It is forbidden for the defence to ask questions directly of the court, and the judge has the last say. Minors in court are assisted by experts such as an interpreter or a translator. As a result of the abuse, the Special Court has established a set of criteria for granting compensation. In addition to the loss of school and employment opportunities, disability, sickness, or pregnancy are examples of these conditions.

6. Conscientious sex has been elevated from the Indian Penal Code, 1860's 16-year-old limit to 18-year-olds. This means that –

- If a spouse under the age of 18 is caught having intercourse with their spouse, they might face criminal charges.
- Regardless of whether the kid involved gave their permission, anybody (even a child) may be held accountable for participating in sexual conduct with a minor.
- Under the Act's abetment provisions, those who trade minors for sexual reasons are likewise punished.
- It is against the law to withhold information on suspected cases of child sexual abuse; failing to do so may result in imprisonment

of six months or a fine, depending on the severity of the case. This follows the highest international standards for child protection.

- A child sex abuse case must be resolved within one year of the day it was reported, according to the Act.
- Children are not held in custody at night. The child's statement must be recorded in its entirety. Allowing the youngster to take frequent breaks throughout the trial. The same child may not be summoned to testify more than once. The burden of evidence is moved to the accused in this Act, taking into consideration the vulnerable and innocent nature of children. It has been made illegal to make false accusations or to spread false information for malevolent purposes in order to prevent the law from being misused. The special court has prohibited the media from revealing the child's identity without his or her consent. Media may face up to a year in prison for violating this law.

4.1 ROLE OF CHILD WELFARE COMMITTEES (CWC)

Under this Act, complaints must be filed with CWC within 24 hours after their recording. If a kid's viewpoint is taken into consideration, the Child Welfare Committee (CWC) must make a decision within three days of receiving a case and determining whether the child should stay in an institution or return to their home. Any trustworthy adult or parent may consent to the CWC designating a support person to assist the child throughout all phases of the case investigation and trial if they both agree.

4.2 THE POCSO (AMENDMENT) ACT, 2019 (No. 25 of 2019)

On August 6, 2019, a special legislation was amended in order to increase penalties for child pornography (CSA) and to allow the Central Government to create procedures for reporting, deleting or destroying any pornographic material involving minors. An increase in the definition of "sexual assault" means that a child's early sexual maturation may now be defined as the injection of any chemical agent, medication or hormone. "Section 6 of the POCSO Act" mandates the death penalty for anyone convicted of serious penetrative assault,

and the minimum sentence has been increased from 10 to 20 years.

4.3 THE POCSO RULES, 2012 AND 2020

"Under the authority granted by Section 45 of the POCSO Act, 2012, the Central Government issued the POCSO Rules, 2012. Seven parts make up the elaborative structure of these rules. The NCPCR and the State Commission of the Protection of Child Rights (SCPCR) have defined specific words and made clear procedures for monitoring the Act's implementation (SCPCR)." This act also instructs the Child Commissions to provide a distinct chapter in their Annual Reports to reporting on the execution of different POCSO Act requirements.

On March 13, 2020, the "Ministry of Women and Child Development" issued new POCSO Rules, 2020 in support of India's "zero tolerance" policy for abuse against children. These rules emphasise education and capacity building, as well as the payment of compensation to victims and the provision of medical care for those victims, as well as a periodic orientation programme for police and forensic experts. It was on March 9, 2020, that the 2020 Rules went into effect. Special relief such as food, clothing, and other necessities may be awarded under Rule 8 if Rule 7 allows the victim to get legal help and support. To ensure that the interim compensation is reasonable, the court must use Rule 9(1) to compare it to the total amount of compensation to be awarded. Regardless of the outcome of the trial, the Special Court may award the child's ultimate compensation under Rule 9(2) if the Special Court determines that the child has suffered loss or harm because of the offence. As part of the NCPCR or SCPCR's annual report, the NCPCR or SCPCR must include a distinct chapter devoted to reporting on the Act's implementation under Rule 12. The POCSO Rules, 2012 have been abolished by Rule 13.

5. CONCLUSION

Victims of sexual assault endure bodily as well as mental injury and pain. Male victims of sexual abuse are just as vulnerable as female victims. In police custody or jails, male inmates may also be subjected to sexual violence.

Sexual minorities, including the transgender population, are also exposed to this discrimination. The perpetrators of sexual abuse vary from strangers to state agencies, state agencies to intimate relationships; most attackers are those who are most familiar to the victim. Sexual assaults occurred in a range of places, such as the workplace as well as at educational institutions and other public places. Childhood or adolescence is often the time of when it starts. Forced prostitution is another kind of sexual exploitation of women. Increased kidnapping, rape, and sale of minors is evidence of the growing co-modification of women and their vulnerability in their everyday lives, as is the rise in organised crime. A girl is devoted to a goddess (Devdasi) in certain rural regions of India, where she is sexually tortured and then sold by gangs to brothels in big cities. This phenomenon is known as temple prostitution in India. In addition to being a violation of one's human rights, sexual assault poses a serious threat to one's health in both the short- and long-term. Private and public health professionals are obligated to provide treatment to victims of sexual offences, and denial of the same is punishable under Section 166-B IPC with imprisonment for a term that may extend to one year or with fine or with both, as stated in the Criminal Law Amendment Act, 2013.

Survivors' needs must be met by health care providers in a thorough manner.

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