

FREEDOM OF EXPRESSION AND FROM PUNITIVE JUSTICE TO RESTORATIVE JUSTICE: COMPENSATION AND REHABILITATION ISSUES ON WRONGFUL CONVICTION

LIBERDADE DE EXPRESSÃO E DA JUSTIÇA PUNITIVA PARA A JUSTIÇA RESTAURADORA: QUESTÕES DE INDENIZAÇÃO E REABILITAÇÃO EM CASOS DE CONDENAÇÃO INJUSTA

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Abstract

Freedom embodies the intrinsic human aspiration to exercise autonomy and make choices concerning one's own life. While, injustice is compounded when wrongful convictions occur, resulting in irreversible damages to both individuals and societal perceptions of the justice system. This paper discusses the transition from purely punitive justice systems focusing on retribution to systems advocating restorative justice, with the emphasis being placed on the corrective measures, rehabilitation, and reintegration of the wrongfully convicted individuals. This paper uses doctrinal and comparative approaches to examine the absence of statutory frameworks on compensation in Pakistan, and the more comprehensive federal and state laws in the United States concerning wrongful conviction compensation. In this context, the Pakistan judicial system relies on constitutional guarantees and the judicial discretion, while the United States provides formalised statutory remedies through the Innocence Protection Acts

Resumo

A liberdade incorpora a aspiração humana intrínseca de exercer autonomia e fazer escolhas relativas à própria vida. A injustiça, por sua vez, agrava-se quando ocorrem condenações injustas, resultando em danos irreversíveis tanto para os indivíduos quanto para a percepção da sociedade sobre o sistema de justiça. Este artigo discute a transição de sistemas de justiça puramente punitivos, focados na retribuição, para sistemas que defendem a justiça restaurativa, com ênfase nas medidas corretivas, na reabilitação e na reintegração de indivíduos condenados injustamente. Este artigo utiliza abordagens doutrinárias e comparativas para examinar a ausência de marcos legais sobre indenização no Paquistão e as leis federais e estaduais mais abrangentes dos Estados Unidos referentes à indenização por condenações injustas. Nesse contexto, o sistema judicial paquistanês baseia-se em garantias constitucionais e na discricionariedade judicial, enquanto os Estados Unidos oferecem soluções legais formalizadas por meio das Leis de



and various state compensation laws. This paper advocates for a paradigm shift in Pakistan's restorative justice philosophy in criminal justice, centered on the international human rights framework coupled with the U.S. model. For this reason, the authors proposed the enactment of comprehensive statutory rehabilitation laws, accompanied by state support to regain lost dignity, promote mental health, and social standing of the rehabilitated wrongfully convicted individuals.

Keywords: State liability. Compensation. Restorative Justice. Rehabilitation. Pakistan. United States. Doctrinal Analysis.

Proteção da Inocência e de diversas leis estaduais de indenização. Este artigo defende uma mudança paradigmática na filosofia da justiça restaurativa no sistema penal paquistanês, centrada no arcabouço internacional de direitos humanos, em conjunto com o modelo dos EUA. Por essa razão, os autores propuseram a promulgação de leis abrangentes de reabilitação, acompanhadas de apoio estatal, para recuperar a dignidade perdida, promover a saúde mental e a reintegração social dos indivíduos condenados injustamente e reabilitados.

Palavras-chave: Responsabilidade do Estado. Compensação. Justiça restaurativa. Reabilitação. Paquistão. Estados Unidos. Análise doutrinária.

1 INTRODUCTION

The publication of books reflects the advancement of a country's civilisation. Every person enjoys the right to free speech and expression. The fundamental duty of the government is to protect the life, liberty, honor, expression and property of both citizens and non-citizens. This is primarily accomplished through the application of criminal law, which is essential to preserving peace, tranquilly, and the orderly development of society. Detecting suspects, apprehending the accused, investigating crimes, charging, adjudicating, convicting or acquitting, sentencing the convicted, and carrying out the penalties are all examples of the enforcement of criminal law. Every citizen has the fundamental rights to liberty, life, property, and honor, all of which are protected when criminal laws are properly enforced (Ahmed *et al.*, 2022).

Since the criminal procedure is used to implement the criminal laws, the CJS cannot function effectively in the absence of strong criminal procedural laws. People will strive to enforce their rights on their own and take the law into their own hands if CJS is not effective and efficient, which will cause chaos and internal disruption of the nation's law-and-order conditions (Ahmed *et al.*, 2022). However, the wrongful conviction of innocent individuals represents an even greater breakdown of the system, often termed a 'double injustice' (Yearn, 2023).

Focusing on deterrence and retribution, the punitive model of justice does little to help those wrongfully convicted. Restorative justice, on the other hand, targets repairing

the damage, reintegrating victims, and restoring public trust in the justice system (Zehr.H, 2002).

Pakistan's criminal justice system continues to be geared towards punishment. Ideas surrounding the accountability of the state for wrongful convictions seem to be in their infancy. Although the life and liberty guarantees in Articles 4, 9, and 10-A of the Constitution of Pakistan provide a basis for wrongful conviction compensation, no statutory basis exists. In contrast to the United States, even with its significant wrongful conviction challenges that compensation for wrongful conviction is a legal and moral obligation of the state, as is evident in the Innocence Protection Act of 2004 and state compensation laws (Abdul *et al.*, 2022).

Even worse (from the perspective of a researcher) is the lack of a systematic method for identifying false convictions after the fact. A study of autopsies of patients who pass away at that age will reveal how many people who die at that age have early-stage Alzheimer's disease, even if the symptoms may not be noticeable. Convicted criminal defendants' guilt cannot be shown or disproved using a generic test that can be applied after the fact. As far as we can tell, these exonerations are rare, unpredictable, and not representative of wrongful convictions in general, but we are aware of cases where defendants who were wrongfully convicted are exonerated typically years later, by DNA evidence, a confession from the actual criminal, or other convincing evidence of innocence that was not available at the trial. As a result, our knowledge of the traits or even frequency of false convictions is quite limited (Gross & O'Brien, 2008).

The objective of this paper is to analyze the legal foundations compensation and rehabilitation systems for wrongfully convicted persons and to compare the systems of Pakistan and the USA. The main argument is that Pakistan must move from a punitive justice approach to a restorative approach that provides compensatory justice and rehabilitative justice for exonerees. This study is doctrinal in nature and focuses on primary legal materials constitutions, statutes, case laws and secondary materials like legal scholarship and treaties.

2 METHODOLOGY

A country's level of civilisation is often reflected in the vibrancy of its literary publications, and every citizen holds the inherent right to speak and express freely.

According to the weight of the literature, doctrinal legal research methodology investigates the systematic exposition, interpretation, and understanding of legal rules and principles extracted from primary statutes, constitutions, and case law. This article considers the doctrinal method to assess the legal recognition and scope of compensation for wrongful convictions in Pakistan and the United States (Banakar & Travers, 2014). The research draws extensively on primary data, including official documents, legislative texts, and policy guidelines (Mohd Zamre Mohd Zahir *et al.*, 2019a; Mohd Zamre Mohd Zahir *et al.*, 2019b). It consists of the critical interpretation of legal texts, case law, and comparative statutory provisions, focusing on normative as opposed to empirical construction. Data collection is mandatory (Na'aim *et al.*, 2025). This is beneficial study and review stage (Rahman *et al.*, 2023).

3 LITERATURE REVIEW / THEORETICAL FRAMEWORK

3.1 Wrongful conviction and human rights laws

The right to liberty and to a fair trial is a universal human right. The Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966 declare the right to an effective remedy for wrongful conviction under Article 14(6). Wrongfully convicted victims, and also those faiths must abide by the laws and the authorities, and the oversight of a valid judicial system are primarily affected by the distrust emanating in the system, as commented by Aamer *et al.* (2023).

According to research done by Gross and OBrien in 2008 it was deemed that morally rebuilding the state must as well have included rehabilitation and compensation within it. Nevertheless, the degree to which these aspects are implemented is highly variable, owing to disparate legal cultures and political priorities within the different jurisdictions (Gross & O'Brien, 2008).

3.2 From punitive to restorative justice

Restorative justice emerged as an alternative paradigm to punitive approaches that emphasize harm without healing. Restorative justice aims to repair harm by including all

parties involved victims and offenders as well as communities in the way of restoration (Zehr, 2002). Restorative justice, looking at wrongful convictions, adds the 'state-offender-victim' framework where the state is the offender and the wrongfully convicted individual is the victim (Cunliffe *et al.*, 2015).

The laws put in place during the British colonial era in the Indian subcontinent have had a substantial influence on Pakistan's legal system. The British established a legal system based on English law, which had a significant impact on how Pakistan's legal system developed today. Even after colonial rule ended, Pakistan continued to implement several colonial laws, which had long-lasting effects on its legal system. In Pakistan, restorative justice, though innovative, remains on the periphery, overshadowed by retributive traditions and the legal systems inherited from the colonial era (Hamza *et al.*, 2021). The current legal system in Pakistan does not sufficiently take into account the social, political, and economic conditions that exist there. As a consequence, the continued use of this has led to numerous challenges in the legal system, including drawn-out court cases, unethical behaviour, and limited access to fair justice (Hamza *et al.*, 2021). In contrast, the U.S. has gradually incorporated restorative aspects with the implementation of exoneree support programs, governmental apologies, and financial reparations (Aamer *et al.*, 2023).

3.3 Compensation as state obligation

Compensation for wrongful conviction is not simply an act of grace; it is a legal and moral responsibility of the state (Tabernacka & Wrocławski, 2024). Restorative justice emphasizes replacing revenge, repression, and punishment with reparation and reconciliation undertaken with consideration for the needs and dignity of the victim of a legally recognized crime (Tabernacka & Wrocławski, 2024). As well as according to the law of delict when an individual may be held civilly liable for harm he has caused to another person, i.e., when he must bear the consequences of such harm. The individual who has been harmed has the right to claim compensation since the perpetrator is obligated to compensate for the harm. An obligatio, or obligation, is thereby established between the two parties. The law of obligations is the area of private law that includes the law of delict (Law, 2015).

The idea of wrongful conviction suggests a scenario in which an individual is charged with a crime, but later evidence establishes their innocence and provides a practical definition of wrongful conviction. After being falsely convicted, the victim endures a great deal of hardship, loses the support of friends and family, and his reputation deteriorates. Ironically, there is no statute that would compensate him for the time he was unlawfully imprisoned upon his release, and a similar miscarriage of justice would ruin his life. One negative aspect of Pakistan's criminal justice system that requires scholarly study is wrongful convictions (Abdul *et al.*, 2022).

As of 2008, Pakistan has been a signatory of the International Covenant on Civil and Political Rights 1966, which acknowledges the right to compensation for those legally declared wrongfully convicted. There is no enforcement of these treaties. Consider the case of wrongful conviction of Rani Bibi. Even with the criminal justice system highlighting its vacuums, Rani Bibi's case, which involved a wrongful conviction with a 19-year imprisonment term, is clearly on the list of poorly handled cases. She was not compensated for the gross injustice and nearly 20 years of imprisonment. These years were formative, as they savage imprisoned most of her teenage and young adult years (Abdul *et al.*, 2022).

The reason for exposing up the international documents is that Pakistan has ratified several treaties and covenants that explicitly stipulate that an innocent person who has been wrongly condemned shall receive compensation if he is found not guilty. It draws attention to the necessity of providing restitution and legislation for those who were unfairly convicted and fell prey to this oppression. A few global tools will provide the option to pay in the case that an illegitimate sentiment occurrence occurs. The right to compensation is guaranteed by the Universal Declaration of Human Rights. Relative emphasis is also placed on compensation in Article 3 of the European Convention on Human Rights and Article 10 of the American Convention on Human Rights, as well as article 14 (6) of the ICCPR also clearly guide when a person wrongfully convicted and later on declared innocent by the court due to disclosure of new facts or evidence that should be liable for compensation but Pakistan is the signatory of ICCPR but did not submit reservation on this clause nor implementing the law regarding compensation for wrongful conviction (Abdul *et al.*, 2022). While In the United States, the compensation system for wrongful imprisonment lacks consistency across different States, with some

providing as little as \$50,000 for the entire year of wrongful imprisonment (Bernhard, 1999).

3.4 Reintegration and rehabilitation

In addition to financial remuneration, wrongful conviction casts profound psychological and social distress. Exonerates contend with the consequences of stigma, unemployment, and trauma long after their release (Grounds, 2004). Restorative justice requires a holistic framework, which includes psychological counseling, vocational training, and reintegration efforts. The U.S. model, through the Innocence Project and state-sponsored reintegration services, rehabilitative justice exemplifies how restorative legal redress truly becomes restoration (Morel & Morel, 2022).

By contrast, the lack institutional frameworks for rehabilitating exonerees in Pakistan demonstrates the absence of the state-sponsored psychological support, reintegration, or the basic social services provided for reintegration, which shows the state's lack of recognition of the moral responsibility it holds. This gap in policy illustrates remarkable restorative potential for Pakistan in its criminal justice reform (Soomro & Soomro, 2023).

4 MECHANISM FOR COMPENSATION IN PAKISTAN

4.1 Legal and constitutional background

Under the Constitution of Pakistan Articles 4, 9 and 10-A grant the rights to life and liberty and the right to a fair trial. Articles 4, 9 and 10-A declare fundamental rights, but do not provide readily actionable rights to compensation for wrongful conviction. There is no equivalent to the Innocence Protection Act on a statutory basis in Pakistan (Aamer *et al.*, 2023).

The CrPC does not provide compensation for wrongful detention or conviction for the detained or convicted persons. Pakistan's courts have at times awarded *ex gratia* relief in cases of unwarranted detention or custodial death, exercising constitutional jurisdiction under Article 199(Qureshi *et al.*, 2023) . These remedies, however, are discretionary.

4.2 Judicial discretion regarding compensatory mechanism

Pakistan's higher judiciary has recognized state liability for unlawful acts of its agents but has done so inconsistently. According to Hussain Tauqeer (2018), whenever the act of police officers caused embarrassment and psychological torture to the exonerates and wrongful arrest has resulted in unwarranted and excessive expenses, the police officer is liable to compensate the exonerates, The Sindh High Court declared that in the Mst. Afsana case, taking an extremely exemplary stance against the delinquent officers. The individuals who were detained by the police without authorization are eligible to receive Rs. 5,000 per day for each day they were under the custody of both police officials. Since the police officer's actions are against public policy, they order that they be immediately removed from their positions as S.H.O. and S.I.O. and that they not be sent to any field postings in the future, at least for the next three years (Hussain, 2018). This is the only implemented judgment in Pakistan that declares that the exonerated shall be compensated according to law. Still, in other cases, like Mazhar Hussain, about 19 years after he was charged with killing Mohammad Ismail in a suburban Islamabad community in May 1997, he was exonerated but nothing has granted in the regard of compensation to the exonerated (Nazir *et al.*, 2016).

According to Section 250 of the CrPC, an acquitted accused has, at least prima facie, a remedy against a complainant's false, baseless, or vexatious accusations at the time of his release or his acquittal by a magistrate. In the provinces, the maximum compensation is only twenty-five thousand rupees, whereas, in the capital territory of Islamabad, it is one hundred thousand rupees. Upon the magistrate's order, this compensation is to be provided by the complainant or informant to the innocent accused (Hussain, 2018). But when a punishment has more than 3 years, there is no codified compensatory mechanism for exonerated persons in session and Higher courts in criminal procedure code of Pakistan.

4.3 International obligations regarding compensation

Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2008 and thus obligated itself under Article 14(6) to pay compensation to victims of wrongful convictions (Aamer *et al.*, 2023). Still, the practical enforcement of this

provision remains apathetic. During the 2016 review of ICCPR compliance, the UN Human Rights Committee noted Pakistan's inaction on this provision and encouraged the Pakistan government to take steps to create a “legal order” to make this right effective. As of now, there remains a legal void--no statute, regulation, or policy compensating victims of wrongful convictions. This lack of provision is a testament to the ebbing of the legal and moral state obligation to provide remedy for wrongful convictions. Pakistan's constitution guarantees justice, equity, and equality before the law, yet the state remains detached from its ICCPR implementation responsibility under human rights law. The lack of effective legislation confirms Pakistan's largely procedural compliance with the ICCPR, which insists on urgent reform (Aamer *et al.*, 2023).

4.4 Social and psychological dimension

Stigma, psychological impact, and financial challenges characterize the post release phase for exonerate in Pakistan. They receive no institutional support, making reintegration into the mainstream even more difficult (Abdul *et al.*, 2022). Restorative justice argues that sole payment does not suffice; mental health rehabilitation and social reintegration efforts should be restorative. These actions lack restorative justice in Pakistan lagging such an essential anti-trafficking policy approach (Hussain, 2018).

5 REHABILITATION AND COMPENSATORY MECHANISM IN UNITED STATES

In search of a better compensatory mechanism, the United States' mechanism is one of the most attractive to other countries, therefore, Pakistan's Criminal Justice System may adopt it for the betterment of the Criminal Justice System. The significant case of Henry McCollum and Leon Brown is a milestone in the United States' history of compensatory mechanisms. According to the one scholar, two brothers, Henry McCollum and Leon Brown, were convicted of raping and murdering an eleven-year-old girl. The court ruled that both brothers, McCollum and Leon Brown, should face the death penalty and life imprisonment. Almost 30 years later, both were exonerated and acquitted of charges based on DNA evidence. The state of North Carolina awarded each exonerated person \$750,000. The state governor guaranteed payment upon receipt of full

condonation. A compensation Statute is a form of law or statute that grants compensation without the submission of a claim or action. Every year, North Carolina grants \$50,000 to each exonerated person (Encarnacion, 2016).

The United States of America ratified the International Covenant on Civil and Political Rights (ICCPR) in 1977. According to Article 14(6) of the ICCPR, any person wrongfully convicted is entitled to compensation. The Covenant explicitly states that the state must provide compensation to individuals exonerated of criminal charges, as they often encounter significant hardships during and after the legal process. In the United States, 33 states have compensatory mechanisms to grant compensation through the due process of law as obligation of the state (Morel & Morel, 2022).

The famous Innocence Project takes on cases of wrongful exoneration and has several key objectives. Pedagogy is the key function because the basic Innocent Moment organization is based on the law school Innocence Project, where students review the Cases. Another function is to assist in granting compensation for exoneration. The basic function of the project is to bring reform to the Innocence Project's policy (Morel & Morel, 2022).

5.1 Reintegration and rehabilitation programs

A significant number of states acknowledge the social service needs of the exonerated within their statutes, although only a few provide a complete set. Several states provide, with certain limitations, the following outlined services: educational benefits like tuition waivers or reduced tuition rates at public state educational institutions, as well as employment training and job placement services, integrated with medical and counseling services, along with the reentry or reintegration services (Gutman, 2016).

Statutes and legal frameworks in Minnesota may be the most thorough in the country. Medical and dental expenses, along with future unpaid expenses anticipated as a result of the wrongful imprisonment, and the reimbursement of tuition costs and fees for any educational programs or training related to employment skills and development for training, along with future education and training expenses for up to a four-year public university and paid or unpaid reintegrative expenses " for intermediary services secured by the claimant upon exoneration and release, including housing and transport, subsistence reintegrative services and medical and dental reintegrative health care and

reintegrative aides, and the balance of the reinstative services in the claim" are additional considerations in Minnesota wrongful imprisonment claims (Gutman, 2016).

6 COMPARATIVE ANALYSIS: PAKISTANI MECHANISM WITH UNITED STATE'S

6.1 Comparing structure

The differences in approaches by Pakistan and the United States to compensation for wrongful conviction are also rooted in the structures and the philosophies of the two countries. While the compensation of wrongful conviction in the United States is the result of statutory and institutional frameworks, in Pakistan, compensation is entirely dependent on the discretion of the courts and the interpretation of the constitution. The formal recognition of the moral and legal responsibility of the state in the compensation schemes of the United States starkly contrasts with the prevalent view in Pakistan which sees compensation as an act of grace on the part of the executive (Abdul *et al.*, 2022).

Legislation such as the Innocence Protection Act of 2004 outlines the foundational level of monetary and non-monetary support and the institutionalised approach to compensation within the United States (RAJOO, 2012).

6.2 Procedural mechanism

In the United States, the provision of such compensation is done in a procedurally fair manner. Most states operate autonomous boards or commissions to assess the applications.

By contrast, victims in Pakistan have no such mechanism, administrative or quasi-judicial. Here, victims have no choice but to file high court writ petitions under Article 199, which can be slow, expensive, and unpredictable. Additionally, in Pakistan the individuals comprising the components of the criminal justice system, i.e., police, prosecutors, and judges, face little to no repercussions for wrongful prosecution or wrongful convictions. In the United States, under 42 U.S.C. §1983 civil liability actions allow individuals to sue public officials for violations of rights, although the doctrine of qualified immunity imposes significant limits.

6.3 Philosophical overview

Although far from perfect, The U.S. approach to wrongful conviction is grounded in compensatory and restorative justice, recognizing that wrongful conviction is a harm inflicted by the state that needs to be remedied (Roach, 2013). Pakistan, in contrast, is fixated on a punishment-oriented legal culture dominant since the colonial era. Here, the colonial legal framework focuses on punishing offenders, not fixing systemic flaws. These philosophical differences emerge from deeper normative frameworks: The U.S. system seeks “corrective justice,” while in Pakistan the more relevant normative framework is “sovereign immunity,” which provides the state with protection from liability.

6.4 Rehabilitation and reintegration

The most obvious difference is in the USA and Pakistan post-exoneration rehabilitation systems. USA incorporates some restorative practices consisting of psychological rehabilitation, job training, and community reintegration. Pakistan provides no such support, and as a result, exonerees are ostracized by society and live in destitution.

This disregard is indicative of a lack of restorative vision and practices within the scope of Pakistan’s penal system. Rehabilitation and compensating financially, if even possible, is restorative and will not achieve the goal of restoring trust within the community.

6.5 Normative shift from punitive to restorative justice

6.5.1 The necessity of a paradigm change

Wrongful convictions reveal systemic issues within a legal system coerced confessions, unreliable evidence, and prosecutorial misconduct. A purely punitive system will not correct such harms as it only perpetuates them. According to legal Zehr (1998), restorative justice “transforms the focus from punishment to healing. The restorative

justice paradigm asks not ‘What law was broken?’ but ‘Who was harmed and how can that harm be repaired (Zehr & Mika, 1998)?’.

Pakistan has a punitive legacy, and is still working from colonial-era punitive laws such as the Criminal Procedure Code (1898) and Pakistan Penal Code (1860) which provide no means for restoration. For Pakistan to comply with the principles of restorative justice, the state must redefine the concept of accountability as a legal and moral duty, not an act of goodwill.

6.6 Philosophical justification

Restorative justice is further justified by the responsive nature of the discipline in the context of international law and the harmonization of the various international human rights treaties (Zehr & Mika, 1998). In the context of the globalization of punitive policies, the international human rights law framework lends justification and imparts discipline as it relates to soft law and anti-discrimination policies. Given the focus on compensatory, as opposed to punitive, reparations, the international framework aids in being responsive to the existing punitive policies in the State of Pakistan. In particular, the responsive nature allows the State to focus on the compensatory aspects of reparations and international law as opposed to punitive aspects.

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7 CONCLUSION

Freedom represents the human desire to act and make decisions independently in life. While, justice systems whose legitimacy is undermined by some wrongful

convictions waste innocent lives and erode societal trust. Systems of justice, which only punish and do not restore, have no moral claim to authority. This doctrinal and comparative study indicates that while the U.S. has built up a fairly mature, albeit flawed, system of rehabilitation and compensation, Pakistan is still punitive and has no remedy, at law or at institutions, to restore the imbalance. Moving from punitive justice to restorative justice requires a substantial change to the law, administrative systems, and a societal shift. Compensation should not be contingent upon the goodwill of a judge or politician; it should be a legally protected right, as affirmed by the Constitution and international law. Rehabilitation should also include psychological, vocational, and social reintegration, not just financial assistance.

In conclusion, the shift towards restorative justice as opposed to punitive justice in Pakistan is more than just a legal shift; it is a moral obligation. Learning from the experience in the United States, Pakistan can develop a justice system that not only holds wrongdoers accountable, but also brings a healing aspect to justice, embracing the fully restorative nature of justice.

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Authors' Contribution

Both authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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