



IPC to Bhartiya Nyaya Sanhita: Implications and Future Prospects

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Abstract

This research paper examines the crucial changes that have occurred in relation to the criminal justice system in India through the adoption of the Bhartiya Nyaya Sanhita, 2023 in place of the outdated Indian Penal Code (IPC) of 1860 that caused stagnation for a long time. The present paper analyses the main differences between the old IPC and the new Bhartiya Nyaya Sanhita, the changes, additions and the modernisations which have been made in the new code in response to the newly emerging legal and social issues around the world. Introducing the historical context, structural changes, and individual amendments allow the study highlighting the need for this kind of legislative reform. The impact of the new penal code is explored with regard to its repercussions in the police forces, legal professionals, the judiciary, the administrators, and wider society. The analysis also addresses the future expectations of such changes, emphasizing concerns with human rights, gender neutrality, that are provided in the document, as well as inclusion of clauses for organized crime, terrorism and the notion of community service. Consequently, the necessity of updating the current legal state so that it corresponds to the present-day culture and advances in technology is most obvious.

Keywords: Bhartiya Nyaya Sanhita, Indian Penal Code (IPC), Criminal Justice Reform, Legal Modernization.

Introduction

Indian Penal Code is the primary criminal code of India. It was enacted in 1860 and came into force on January 1, 1862. The history of the Indian Penal Code dates back to 1833, when the First Law Commission was established in British India under Lord Thomas Babington Macaulay. So was set in motion a process that lasted over two decades before eventually materializing into the

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most complete and extensively drafted criminal code which would remain as is on Indian statute books for generations to come.

The IPC was developed from a variety of statutory attitudes, including activities in England and Civil sort the other affective criminal law specialties. It was drafted with an intention of forming a uniform criminal law across British India, so that the administration is predictable and consistent. There are 23 chapters and 511 sections covering various offences from petty theft to sedition. Also, it is divided into two volumes containing: The Act's relatively wide, modernising scope, its plain definitions of offences and graded punishment framework together with the provisions for general exceptions (such as self-defence or insanity) would continue in influence up until fairly recently.

The IPC was continued even after the independence in 1947 with modification required according to the society. Also, over two different periods, the statute has been amended so as to remain current of the different events. The major expansions includes areas relating to dowry deaths, sexual harassment and cybercrimes. This Model Penal Code has also acted as a model for drafting criminal codes of many other countries in the commonwealth of Nations like Bangladesh, Myanmar, Sri Lanka, Malaysia & Singapore.

Still, the IPC remains as one of the discussed yet it still can have remnants of problems and criticism. Some sections of it have been criticized for harbouring colonial relic or having retro gender perspective and where they provoke calls for a change to today's culture or modern human rights. Technology, and trends of crime, particularly those originating from the cyber world are Checkpoint that is persistently challenging the enforcement and comprehensiveness of Code.

The thought of draft Bhartiya Nyaya Sanhita, 2023 to replace almost a century and half old Indian Penal Code (IPC) of 1860 spring up with requirement based on several potent aspects required for modernizing India's criminal justice system in present era. Here is the list of some these aspects:

- Decolonization of the Legal System
- Modernization and Contemporary Relevance
- Alignment with Constitutional Values



- Simplification and Accessibility
- Addressing Gaps and Ambiguities
- Incorporating Judicial Wisdom
- Enhancing Deterrence and Justice
- Victim-Centric Approach
- Harmonization with International Standards
- Addressing Technological Advancements
- Promoting Ease of Doing Business
- Reflecting Societal Changes

This study focuses on various crucial changes in the Indian criminal justice system practically since the implementation of a new legal code. *Bhartiya Nyaya Sanhita, 2023*, which has replaced the very archaic Indian Penal Code (IPC) of 1860. The paper also examines the major changes undergone by the old IPC and the new *Bhartiya Nyaya Sanhita* with regard to the changes, new provisions, adaptations to international legal and social trends. Accordingly, while demonstrating the applicability of introducing the historical context, structural changes and amendments, this paper stresses the need for the legislative reform. It analyses effects of the new penal code upon the police forces, legal system, judiciary, executives and the general public in relation to the future expectations concerning human rights, gender sensibility, organized crime and terrorism as well as communal service. Thus, the study reiterates the general inclination of the present legal structure to accord crime the status of morality thereby necessitating an overhaul of the legal system in accordance with present day culture and advancement in technology. While the study provides an insight into the former in terms of the likely future prospects and the reciprocal advantages and limitations that will emanate from the practice of the *Bhartiya Nyaya Sanhita*.

Historical Context

The IPC is an extensive legal document that categorizes criminal law into a systematic framework and its basis in India. The process to undertake the congregated laws into a general code,



commenced when the first Law Commission was established in 1834 under Macaulay. Such a law was required to provide a single coherent code governing criminal law for India under British colonial rule. Before the IPC, India had a fragmented legal system - something that borrowed heavily from Hindu and Muslim traditions as well as British ordinances. As a result, there were disparities in the administration of justice.

The code which would be enacted was supposed to fulfil the three criteria established by Lord Macaulay and his committee, to make laws comprehensive, clear and reasonably accessible. It sought to combine the good features of English criminal law but also took notice of the social and cultural peculiarities in India. Although the draft of IPC was submitted in 1837 however it fell into further delays because for political and administrative reasons. The IPC was not passed in 1860, but only became a law when the British Parliament enacted it in 1862.

The IPC consists of 23 chapters ranging from 511 sections and varieties of all the crimes. These are crimes against the state, public peace, human body and dignity of individuals as well property. It lists the penalties for these offenses, including fines and imprisonments up to capital punishment. The IPC introduces the doctrine of *mensrea*, which means that merely committing an act should not make one liable for a crime, rather it must be committed with the requisite guilty mind, capturing very rightly and correctly what today is known as modern criminal jurisprudence.

The idea of having an Indian Penal Code was conceived during the British colonial rule, in order to establish a definitive and consistent legal system. India's patchwork legal landscape was replaced by the IPC, which drew from local customs and conventions as well Hindu and Muslim traditions rather than just aping British rules. Due to this hodgepodge mix of legal sources, the law at that time had inconsistencies and ambiguities in its application. The British colonial administration saw the requirement of a uniform code which made things clear so that there would be no confusion as to what was legal and illegal, proper justice could be delivered fairly.

Despite this criticism the IPC was considered to be huge improvement over the previous laws. It just provided a better system of justice, which, some political actors at the time opined, was neater and more standardized. But gradually, as the code was amended and shaped it became easier for



the code to attempt to flex more in adaptation with Indian society. It began attaining its acceptance everywhere by becoming integrated into the legal structure of India. But the IPC had influence over many other former colonies of Britain, hence the British legacy covered what is now referred to as “the commonwealth”, and this established British imperialism as a long-standing system.

IPC during freedom struggle:

The IPC was often regarded with suspicion during the Indian freedom struggle as a tool of colonial control. Nationalist leaders and freedom fighters often ran afoul of laws that were considered inimical. However, in doing so the IPC also created a legal framework that exposed and condemned some of the hypocrisies and injustices associated with colonial rule, helping to justify calls for self-government. While in theory the Indian Penal Code had been introduced by the British as a means to standardize criminal law across their territories, it fast became something of a mixed blessing once organised resistance against colonial rule emerged.

The IPC, on the other hand was an instrument to hold their control over power by them for British Empire. Sections 124A (sedition), and 153 A(promoting enmity between different groups), 295 A(outraging religious feelings of any class by insulting its religion or religious belief). were employed to muzzle the nationalist activities. Notable leaders like Bal Gangadhar Tilak, Mahatma Gandhi and many others were charged under these laws that resulted in their imprisonment and further galvanised anti-colonial sentiments.

However, the very fact of a legal code itself bequeathed upon Indian nationalists an empty vessel in which to detail the inherent contradictions and injustices of colonial rule. But in doing so, the one-sided application of laws (that were often ignored when conflicts arose), discriminatory policies and procedures became more pronounced within this legal paradigm as soon as British officials had been associated with Indian subjects. In using the courtrooms as sites to contest British legitimacy, nationalist lawyers and leaders turned trials into public spectacles that attracted nationwide attention and support for independence.

IPC after 1947:



The new state with the achievement of independence faced the question of how a law that evolved in the colonial period could be adjusted for the new democratic state. Since then, it has been amended several times with major amendments depicting the changes in social, political and economic scenario of India.

Indeed, the adaptation and reform process that the organisations have undergone is considerable. The first break was in the year 1950 because with the advent of the Constitution of India there were certain fundamental rights written in the new constitution and to ensure these all the existing laws has to be scrutinized on these standards. This made led to the removal of number of articles thought to be undemocratic in nature.

Indian legislators and judiciary have taken over the code initiated by British and adapted it to a sovereign nation, keeping only fundamentals intact. It has meant balancing the imperatives of continuity in law with that of ridding itself, as far is possible, colonial accretions; and which also reflects Indian social values. But the overhaul of the IPC has not been a smooth ride. Some sections, like Section 377 (which de-criminalised homosexuality upon reading down by the Supreme Court in 2018), and others including but not limited to section 124A of that same Penal Code - were deemed colonial anachronisms that do not belong on the statute books of a modern democracy.

Here's a table summarizing the descriptions and recommendations of all the Law Commissions of India, along with significant amendments made by the Indian government based on their recommendations:

Table 1: Recommendations of all the Law Commissions of India, along with significant amendments made by the Indian government

Law Commission	Year of Establishment	Chairman	Major Recommendations
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1st	1955	M.C. Setalvad	Revision of the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Evidence Act; Simplification of civil laws
2nd	1958	T.V. Venkatarama Aiyar	Amendments to Industrial Disputes Act, reforms in labour laws, and electoral processes
3rd	1961	J.L. Kapur	Comprehensive changes to Income Tax Act; further amendments to IPC and CrPC
4th	1967	P.B. Gajendragadkar	Revision of the Law of Evidence; recommendations for changes in Hindu Marriage Act and other personal laws
5th	1971	K.K. Mathew	Establishment of legal aid programs; reforms in rent control legislation
6th	1972	P.B. Gajendragadkar	Major overhaul of CrPC; changes in company law
7th	1974	H.R. Khanna	Recommendations for antitrust and monopoly regulations; amendments to industrial laws
8th	1977	H.R. Khanna	Comprehensive jail reforms; focus on women's and children's rights; amendments in related laws
9th	1979	P.V. Dixit	Constitutional amendments for better governance; comprehensive police reforms
10th	1981	K.K. Mathew	Measures for social justice and upliftment of backward classes; recommendations on urban land ceiling and regulation



11th	1985	D.A. Desai	Electoral reforms; recommendations for improving administrative efficiency
12th	1988	R.S. Pathak	Strengthening of environmental protection laws; enhancing human rights frameworks
13th	1991	K.N. Singh	Reforms in legal education; strengthening of PIL mechanisms
14th	1995	K. Jayachandra Reddy	Reforms for gender justice; recommendations for speedy justice delivery; juvenile justice system overhaul
15th	1997	Justice B.P. Jeevan Reddy	Updates to corporate law; formulation of IT laws; promotion of alternate dispute resolution mechanisms
16th	2000	Justice M. Jagannadha Rao	Mechanisms for judicial accountability; establishment of fast-track courts for speedy justice
17th	2003	Justice B.P. Jeevan Reddy	Addressing rural litigation issues; enhancements in social welfare laws
18th	2006	Justice M. Jagannadha Rao	Comprehensive labour law reforms; recommendations for healthcare legislation
19th	2009	Justice P.V. Reddi	Legal adaptations to globalization; enhancing international trade law frameworks
20th	2013	Justice A.P. Shah	Comprehensive electoral reforms; setting judicial standards and accountability; debates on the Uniform Civil Code



21st	2015	Justice B.S. Chauhan	Reforms in family law; tribunal system improvements; initiatives for legal awareness and literacy
22nd	2020	Justice B.S. Chauhan	Comprehensive review of IPC, CrPC, and Evidence Act; strengthening cyber laws; enhanced environmental protection legislation

IPC has been substantially modified over the years to incorporate new offences, amend existing ones and alter the quantum of punishment. Courts have also de-criminalised consensual intercourse between same-sex adults, adultery and attempt to commit suicide. Many other IPC changes have been enacted by individual states, such as the award of new punishments for sexual offences (including violent assault), sale of minors into prostitution and adulteration of food and drugs. The reports concerning the IPC have to do with offences relating to women, food adulteration and matter of death penalty in addition some statutes recommended under Law Commission reports are working.

The Bhartiya Nyaya Sanhita, 2023 was in fact brought forth by the Government of India. Union Home Minister Amit Shah on August 11, 2023 presented it to the Parliament. The bill is among a package of three bills to reform the criminal justice system in India which includes:

- The Bhartiya Nyaya Sanhita, 2023 (Repealing Indian Penal Code, 1860),
- The Bhartiya Nagarik Suraksha Sanhita, 2023 (repealing and replacing the Code of Criminal Procedure, 1973)
- Bhartiya Sakshya Bill, 2023 (Repeal of Indian Evidence Act, 1872)

These bills are part of the government initiative to repeal and overhaul India's criminal laws, done in accordance with the colonial-era legislation.

Bhartiya Nyaya Sanhita (BNS):



The introduction of Bhartiya Nyaya Sanhita is a major legislation and social movement towards removal the inequitable judicial system. This plug important gaps in the procedural law, older (and often obsolete and colonial-era) provisions of the IPC which haven't been revised for a long time would be made more relevant to modern India. This not only springing from the changes in contemporary crime but also moulded around aligning Indian penal laws for matching with global standards and human rights norms. The inception of the Bhartiya Nyaya Sanhita, 2023 has go down in history as a moment that marked an era and revolutionized criminal jurisprudence to perhaps its most just, inclusive and forward looking system.

The Bhartiya Nyaya Sanhita, 2023 is divided into 29 chapters and includes as many as 356 sections focussing on simpler criminal law. Integrating present day legal philosophies and practices, this Act extends the use of reformatories as well community-based sentencing options that are employ rehabilitative methods rather than just punitive measures in dealing with specific offenses. Moreover, the new code has also given more importance to protecting weaker sections like women and children by stricter as well clear cut legal provisions.

Comparison of Old IPC and New Bhartiya Nyaya Sanhita:

General comparison:

Table 2: Comparison of Old IPC and New Bhartiya Nyaya Sanhita: General

Aspect	Old IPC (1860)	Bhartiya Nyaya Sanhita (2023)
Date of Enactment	1860	2023
Name	Indian Penal Code	Bhartiya Nyaya Sanhita
Structure	23 Chapters, 511 Sections	29 Chapters, 356 Sections
Gender Neutrality	Gender-specific terms used	Gender-neutral provisions introduced
Language	Victorian English	Simplified and modernized language



Detailed comparison:

Table 3: Comparison of Old IPC and New Bhartiya Nyaya Sanhita: Detailed

Aspect	Old IPC (1860)	Bhartiya Nyaya Sanhita (2023)
Community Service	Not included as a punishment	Introduced as a punishment for petty offences.
Gender Neutrality	Gender-specific terms used in many sections	Provisions made gender-neutral.
Offences Against Women and Children	Specific sections addressing crimes against women and children	Enhanced focus and precedence given to offences against women and children.
Organized Crime and Terrorism	Addressed, but not as comprehensively	New offences for terrorist acts and organized crime with deterrent punishments introduced.
Secession, Armed Rebellion, etc.	Addressed, but with less specificity	New offences introduced for secession, armed rebellion, subversive activities, separatist activities, or endangering sovereignty or unity of India.
Punishments and Fines	Specific to the offences as defined in 1860	Enhanced fines and punishments for various offences to align with contemporary needs.
Criminal Intimidation	Covered under Sections 503-506	Maintained but with updates to definitions and punishments.
Defamation	Covered under Sections 499-502	Maintained but with potential updates in definitions and punishments.



Misconduct in Public by Drunken Persons	Covered under Section 510	Maintained with similar provisions.
Repeal Clause	Not applicable as it was the original code	Explicitly states the repeal of the Indian Penal Code, 1860, while maintaining continuity for actions taken under the old code.

Key changes:

The Bhartiya Nyaya Sanhita, 2023, amends the Indian Penal Code (IPC) of 1860 through certain advanced reformulations of modern legal issues and requirements. They have retained all the provisions of the IPC regarding offenses against the body which are murder and assault and new additions include the organized crime, terrorism and group-based violence. Regarding the sexual crimes committed against women, it retains the provisions of the former legal code but increases the gangrape survivor age limit to 18 years and introduces the deceptive sexual intercourse offense.

Sedition has now been deleted as an offense, but penalties for activities which jeopardize the unity of the nation which include secession and rebellion in the course of its armed forces are in force. Terrorism is no longer a grey area, and those who are involved in any activities, which are a menace to the security of the country or instilling fear among the populace, are dealt with severely. Arising issues such as kidnapping, financial scams are met with severe consequences due to the undesirable involvement of the criminal organizations.

The Bhartiya Nyaya Sanhita also includes the offense of lynching, for murder or grievous hurt of a person, by a group in furtherance of the common intention for discrimination. Further, it is also compatible with Supreme Court directions by deleting the offence of adultery and including life imprisonment as a punishment for certain murders by life convicts. They represent a shift to a new and all-encompassing legal system more appropriate to the modern age India.



Table 4: Key changes in BNS, 2023

Offense Category	IPC (1860)	Bhartiya Nyaya Sanhita, 2023
Offenses Against the Body	Criminalizes acts like murder, abetment of suicide, assault, and causing grievous hurt.	Retains existing provisions; adds new offenses like organized crime, terrorism, and group-based murder or grievous hurt.
Sexual Offenses Against Women	Criminalizes rape, voyeurism, stalking, and insulting a woman's modesty.	Retains existing provisions; raises age threshold for gangrape victims from 16 to 18; criminalizes deceitful sexual intercourse.
Sedition	Penalizes sedition.	Removes sedition; penalizes secession, armed rebellion, subversive activities, separatist activities, and endangering India's unity.
Terrorism	Not explicitly detailed.	Defines terrorism as acts threatening unity, integrity, security, or causing terror; includes severe punishments.
Organized Crime	Not explicitly detailed.	Defines organized crime including kidnapping, extortion, contract killing, etc.; severe punishments including death or life imprisonment.
Mob Lynching	Not explicitly detailed.	Adds mob lynching as an offense with life imprisonment or death for murder on specified grounds.
Supreme Court Rulings	Adultery criminalized; life imprisonment and death	Conforms to Supreme Court rulings; removes adultery as an offense; adds life



	penalty for murder by life convicts.	imprisonment as a penalty for murder by life convicts.
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Impact on Key Stakeholders:

The Bhartiya Nyaya Sanhita (BNS) will affect different stakeholders in the Indian criminal justice system at large. The introduction of the BNS is expected to signal a significant transformation in India's criminal justice system, and its real implications would be progressively revealed as it rolled out for use or machine learned by different stakeholders involved.

- **Police**

The police personnel have to be trained more for the new terms, definitions and the process. This involves, training that entails the acquisition of the new legal language and indeed practicing in this language. The new code has provisions touching on changes in investigation process and especially investigation of organized crimes, terrorism, or cybercrimes.

- **Lawyers**

Subscribes to the changes that the new legal structure of Bhartiya Nyaya Sanhita requires adaptations; lawyers must be quick. This entails understanding new and modified crimes, penalties and processes as a result of the new legal changes. The changes of the criminal code will significantly affect legal practice.

- **Judges**

It becomes the duty of judges to construe these new sections under the Bhartiya Nyaya Sanhita which could be quite different from the sections of IPC. It means understanding the context to those changes from the legal acts' perspective and it means being able to apply these novelties across cases.

- **Administration**



The code will force the administration to introduce significant changes. It involves updating legal databases, modifying the forms and documentation standards that are used throughout law enforcement agencies to align with those new procedures. According to the Bhartiya Nyaya Sanhita, perfect cooperation between all law enforcement agencies is very important. This consists of the police, forensic units and cybercrime as well social facilities.

- **Society**

Public acceptance and perception of the new Penal Code are an important prerequisite for its effective enforcement. Bhartiya Nyaya Sanhita envisages a society free of discrimination and caste-based injustice, which seeks to adapt its legal provisions according to the values it holds in contemporary times. The attention to an enforcement approach for organized crime and terrorism, along with the adoption of community service involving minor offences, is aimed at establishing a harmonious and egalitarian society.

Drawbacks and Limitations:

Here is a detailed explained table of the key drawbacks and limitations of The Bhartiya Nyaya Sanhita:

Table 5: Drawbacks and limitations of The Bhartiya Nyaya Sanhita, 2023.

Limitation	Description
Age of Criminal Responsibility	Retains age at 7, extendable to 12, lower than international recommendations.
Inconsistent Age Thresholds	Varies by offence, conflicting with the Protection of Children from Sexual Offences Act, 2012.
Overlap with Special Laws	Overlaps with special laws, leading to regulatory inconsistencies and additional compliance costs.



Retention of Sedition-like Provisions	Removes sedition but introduces similar provisions penalizing acts endangering India's unity and integrity.
Exclusion of Certain Recommendations	Omits key Justice Verma Committee (2013) recommendations, such as gender-neutral rape offences and marital rape.
Duplication of Offences	Offences are also covered by other special laws, creating potential legal loopholes.
Ambiguities in New Provisions	Some new provisions are unclear, causing potential implementation confusion and abuse.
Enforcement Challenges	Advanced apparatus and specialized units for cybercrime and terrorism need substantial training and resources.
Potential for Human Rights Violations	Counterterrorism and organized crime measures risk human rights violations without strong safeguards.
Administrative and Procedural Adjustments	Significant changes may cause inefficiencies during the transition period.
Public Awareness and Acceptance	Educating the public, especially in rural areas, is challenging, with resistance in conservative communities.
Impact on Case Backlog	New provisions may increase case backlog in the judiciary.
Balancing Rehabilitation and Punishment	Focus on probation and community service for petty offences needs careful implementation to balance deterrence and rehabilitation.
Continuous Revisions and Updates	BNS requires periodic revisions to address societal and technological changes and meet international standards.
Coordination and Consistency	Consistent implementation across India's diverse population is challenging, affecting enforcement and interpretation.



This table summarises the main shortcomings of the Bhartiya Nyaya Sanhita, 2023 which should be redressed in order to make it suitable for effective operation within India's criminal justice system

Although the Bhartiya Nyaya Sanhita 2023 seeks to revolutionary overhaul and reform India's criminal justice system, which aims at eradicating these failings and inadequacies will be groundbreaking for the achievement of this enactment in practice as well breaches use on goal intents.

Conclusion and recommendations:

In this paper, some of the drawbacks and limitations which the BNS possesses even with progressive goals have been examined in detail to further discuss them to enable its proper implementation. These are the long and complicated transition period, question of resource utilization, risk factors in human rights abuses or infringement and need for extensive training/administrative changes. Certain core issues such as uncertainties involved in the new provisions as well as probable overlapping with the existing special legislation are problematic issues that need to be addressed and solved.

The changes effected by the BNS as approved have social effects on the Police, Lawyers, Judges, Administration, the society in general and therefore calls for the package implementation to be done holistically. Preventing public ignorance and accepting the new code, avoiding discrepancies in enforcing the code, and striking a delicate balance between the reformative and the retributive aspects of the code have to be met so that the new code will indeed prove to be adequate for the citizens' needs.

Table 6: Recommendations.

Recommendation	Description
Enhanced Training Programs	Implement comprehensive training for police, legal practitioners, and judiciary to familiarize with new provisions and procedural changes.



Resource Allocation	Allocate resources to support advanced technologies and specialized units for cybercrime, terrorism, and organized crime enforcement.
Clear and Consistent Interpretation	Develop legal commentaries and guidelines for ambiguous provisions and establish judicial review mechanisms for consistent application.
Safeguards Against Misuse	Introduce stringent safeguards and accountability mechanisms to prevent the misuse of enhanced powers, especially in tackling terrorism and organized crime.
Public Awareness Campaigns	Launch extensive campaigns to educate citizens about the new laws, engaging community leaders and organizations for better acceptance.
Review and Amendments	Establish a sustainable mechanism for continuous review and amendments to address emerging legal challenges and align with international standards.
Coordination Among Agencies	Foster seamless coordination among law enforcement agencies for uniform implementation and effective communication and collaboration.

This table enlists the guidelines to meet the intended objectives of implementing the Bhartiya Nyaya Sanhita, 2023, to modernize the criminal justice system of India.

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