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RIGHTS OF ACCUSED UNDER INDIAN CONSTITUTION- Nitika Mahajan¹

“LET HUNDREDS GO UNPUNISHED, BUT NEVER PUNISH AN INNOCENT PERSON.”

ABSTRACT

"Never punish an innocent person, but let hundreds go unpunished." One aspect of the right to equality (Article 14) is the right to be fairly represented in a criminal proceeding. According to Article 20, "no one shall be found guilty of any offense other than a violation of a law that was in effect at the time the act charged as an offense was committed, nor shall he be punished more severely than what might have been imposed under the law that was in effect at the time the offense was committed." Justice denied is justice postponed. This assertion is especially pertinent to criminal processes, even though it is true for the majority of legal conflicts. The accused suffers greatly emotionally from being under the Damocles sword of a prison term. Every defense attorney can vouch for the detrimental impact that existential doubt may have on clients over the course of months or years. After a protracted trial, the accused will frequently lose her job, her marriage will be in ruins, or her once-thriving business will be destroyed. Many people have stress-related illnesses or despair. In certain situations, even a final acquittal may seem like a Pyrrhus victory. Laws protect the rights and privileges of those who are accused of crimes, including the right to a fair trial. Originally (usually starting in the 18th century) limited to the trial itself, several nations started to expand these rights to include the time leading up to and following the trial in the second half of the 20th century.

INTRODUCTION

The social component of the Indian independence struggle, which in turn grew out of an understanding of the predicament of the Indian people, was largely responsible for the ideology that characterizes the Constitution. The Constituent Assembly's members' experiences and the prevailing needs of the moment greatly influenced the Constitution's

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practical provisions. The Constituent Assembly's members weren't working alone.² They drafted the Constitution with consideration for Indian requirements and circumstances in mind. A living document is the Constitution. The defense of fundamental rights is one of the democratic tenets on which it is founded. According to Y.K. Sabarwal, the Chief Justice of India at the time, in the ruling quoted as C.J. in *I.R. Coelho v. State of Tamil Nadu*³, he stated that the legality concept, which calls on the courts to uphold the constitutionalism principle read laws with the presumption that lawmakers wouldn't want to enact laws that violate basic rights. Although the legislature can impose restrictions on basic rights, laws that uphold these rights cannot be implicitly abolished by subsequent legislation. The core principles that underpin the rule of law are embodied in Articles 14, 19 and 21.

A person's freedom, which is a fundamental right, is restricted when they are arrested or detained. The legislature no longer has the authority to enact laws that impact basic rights as envisioned by the founding fathers and as outlined and supported by the Apex Court, the defender of fundamental rights. Renowned legal scholar Nani A. Palkhivala⁴ said that the Indian Constitution is a well developed organism, not a jellyfish. The vocative Preamble serves as its identifying card, giving it a unique identity and integrity. Its identification cannot be destroyed throughout the amending procedure. He stated that the Parliament's will is unquestionably not the people's will when it comes to constitutional revisions. The idea is completely confused if Parliament is equated with the people. The electorate considers many variables when selecting their representatives, none of which are related to constitutional revisions. This has repeatedly been demonstrated in nations where a referendum is used to determine the will of the people in response to a proposal by Parliament to amend the Constitution.

According to Sri H.M. Seervai,⁵ "does it mean that a person is not part of 'we the people' if he is not educated at least to the level of reading and writing the minimum, so that he can buy the official gazette and read the proposed statute? Even if all citizens are expected to have access to these official gazettes, how is the public to

²G. A. (1972). *The Indian Constitution : Cornerstone of nation* (pp. Pp.XII, XIV)

³ AIR2007 SC861:(2007)2SCC

⁴*We the People*. UBS Publishers, 2004. p.208.

⁵*Constitutional Law of India*. 4th ed., vol. 1. pp. 415, 416.

know which section and which issue of the gazette the proposed modification or statute is published in? Therefore, simply passing legislation and amending the Constitution or laws does not accomplish

The Apex Court in *Minerva Mills v. Union of India*⁶ had expressed the view: If by a constitutional amendment, the application of Article 14 and 19 is withdrawn from a defined field of legislative activity, which is reasonably in public interest, the basic framework of the Constitution may remain unimpaired. But if the protection of those Articles is withdrawn in respect of uncatalogued variety of laws, fundamental freedoms will become a 'parchment in a glass case' to be viewed as a matter of historical curiosity

The Supreme Court established the theory of the fundamental structure of the constitution in *Keshvananda Bharati v. State of Kerala*⁷ to evaluate the legality of constitutional revisions that might affect Part III of the document. Article 21 was given a tight textual meaning in *A.K. Gopalan v. State of Madras*⁸, but it was given a broader reading in *Menaka Gandhi* (above), and *A.K. Gopalan* was ruled to be no longer a good law. Similarly, *Gopalan's* perspective was strongly criticized in *R.C. Cooper v. Union of India*⁹, and the interpretation offered in *Gopalan's* case (above) was rejected in *Sakal Papers Private Limited v. Union of India*, which was resolved prior to the *Bank Nationalization* case. Additionally, the court in this case has determined that while considering the nature and content of fundamental rights, the court must not be too astute to interpret the language in a literal sense so as to whittle them down. The court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

Classification of Constitutional Rights of Accused/Arrested person

A survey of literature on the topic reveals that various authors have identified and classified the rights of an accused in various manners. Therefore it is essential to identify the nature and characteristic manner in which these rights can be classified and to study the same in a fruitful manner. In fact, the various protections provided to an accused/arrested person are originated under the Constitution, developed under the laws like Code of Criminal Procedure,

⁶ (1980)3 SCC625

⁷ AIR1973 SC1461:(1973) 4SCC225

⁸ AIR1950 SC27 :1950Cri.LJ1383:1950 SCR88

⁹ AIR1970SC546(also popularly known as Bank Nationalization case)

1973 and expanded through various landmark judgments of the Apex Court and other High Courts. Accordingly, the present study can be classified under the following heads:

1. Constitutional Rights,
2. Legal Rights, and
3. Judicial Rights.

1. CONSTITUTIONAL RIGHTS

The following are some of the important constitutional protections¹ provided, inter alia, to the accused/arrested persons on the ground of committing some or other offences. These rights form part of inherent characteristics of a democratic nation like India and its Constitutional aspirations, requiring a discussion in the context of the present research study:

1. Rights under Article 14 in respect of Convictions (Equality before law)
2. Rights under Article 19 in respect of various Freedoms (Right to Freedom)
3. Rights under Article 20 in respect of convictions (Rights against Double jeopardy and Self-incrimination)
4. Rights under Article 21(Right to Life and Personal Liberty)
5. Rights under Article 22 in respect of arrest and detention in certain cases;
6. Prohibition of traffic in human beings and forced labour(Article23)
7. Prohibition of employment of children in factories etc.(Article24)
8. Writ protections under Article 226 before the High Courts and Article 139 before the Supreme Court
9. Remedies for enforcement of rights conferred by Part-III(Article32)and Protection of Right to Property

The Constitution of India itself provides certain basic fundamental rights to every citizen of the country. An accused person also is supposed to enjoy those rights.

Rights under Article 14 in respect of Convictions

Right to equality before law and equal protection of law (Article 14) is one of such rights that are provided to the citizens by the Constitution of India. Every person in the country should be treated equally despite being an accused criminal. As a result, everyone must follow the

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law and no one is above it. Nonetheless, even with fair discrimination, Article 14 allows for reasonable classification in order to provide benefits to specific underprivileged groups of individuals. An accused person may also exercise his right under Article 14 if the State or any other authority treats him in an inappropriate manner.

Rights under Article 19 in respect of various freedoms

In addition to the freedom to pursue any profession, Article 19 of the Indian Constitution recognizes six other sorts of freedoms, including the freedom of speech, peaceful assembly, union formation, freedom of travel, and residence, subject to the restrictions and exceptions outlined therein. Subject to the specified legal restrictions, an accused person may also exercise certain rights. Article 19 is limited to Indian citizens only. The Madras High Court ruled in *Khoday Brewing & Distilling Industries Ltd. v. State of T.N*¹⁰ that a company is not a citizen.

Despite offering a number of liberties, Article 19 of the Constitution also imposes limitations on those liberties. In the context of this article, it might be stated that while an accused person may exercise the rights outlined therein, doing so is contingent upon the accused or arrested individual securing bail or bond, if applicable, or using the rights granted under Article 22, which deals with preventative detention, is once more subject to restrictions.

Rights under Article 20 in respect of Convictions (Rights against Double Jeopardy and Self-Incrimination)

The Indian Constitution's Article 20 offers protection for those found guilty of crimes. There are three clauses in it. No one can be found guilty of any crime under Article 20(1) unless they violated the law that was in effect at the time of the offense. Similarly, no one shall be punished more severely than what would have been possible under the applicable law at the time the offense was committed. However, it should be noted that Article 20(1) only serves as a fundamental tenet of criminal jurisprudence and that it does not grant the aforementioned right to an accused individual because it only safeguards pre-existing rights, not post-existing ones.

In *Basheer v. State of Kerala*¹¹, the Supreme Court had held that if the Act in question had contained any provisions to the detriment of the accused, then undoubtedly, it

¹⁰ AIR1990Mad 124

¹¹ (2004)3 SCC609

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would have been hit by the rules against post facto legislation contained in Article 20(1) of the Constitution.

Protection against retrospective provisions of an Act {Article 20(1)}:

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. The crime of a person can only be judged by the law that is in force.

Right to protection against double jeopardy {Article 20(2)}:

No person shall be prosecuted and punished for the same offence for more than once. This is a restriction on enforcement of criminal law. By undergoing trial, the accused has cleared his debt to society and he cannot be prosecuted twice even though he is in fact guilty. Article 20(2) can be studied under two heads, namely, (1) Doctrine of Double Jeopardy¹²(synonymous to French Maxim“ *autrefois acquit* or *autrefois convict*”), which prohibits retrial of a defendant. As held by the Apex Court in *Harjinder Singh v.State of Punjab*¹³,where these prosecution is for the same offence, the right against double jeopardy is available to the accused. The court is bound to give effect to the doctrine of double jeopardy if the second prosecution is for the same offence, as held by the Supreme Court in *Thomas Dana v. State of Punjab*¹⁴has been acquitted or convicted, for the same offence.

Right to protection against self-incrimination {Article 20(3)}:

No person accused of any offence shall be compelled to be a witness against himself. The Apex Court in *Veera Ibrahim v. State of Maharashtra*¹⁵, had opined that now it is well settled so that, only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution, would fall within the or bit of the expression‘ accused of any offence’.

¹² In U.K, Government's law reform advisers recommend reform of the double jeopardy rule in 2001 and the law was changed in the Criminal Justice Act 2003. Accordingly, the court of appeal must order a re-trial if there is any new and compelling evidence and it is in the interests of justice for an order to be made. The new law was brought into force in 2005 and used successfully the following year in a case where an acquitted murderer had subsequently confessed. <http://www.theguardian.com/law/2012/jan/03/double-jeopardy-change-law-retrial>.

¹³ AIR 1985 SC 404

¹⁴ AIR 1959 SC 375; 1959 CRI.LJ 392 (SC)

¹⁵ AIR 1976 SC 1167

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In *K. Joseph Augusthi v. M.A. Narayan*¹⁶, the Supreme Court held that accusation of an offence, is a condition precedent for invocation of the principle embodied in Article 20(3). In the *State of Bombay v. Karthi Kalu Oghad*¹⁷ the Supreme Court had declared that in order to bring a statement within the ambit of Article 20(3) of the Constitution, the accused person must have stood in the character of an accused person at the time he made it.

In *Basheer v. State of Kerala*¹⁸, the Supreme Court had held that if the Act in question had contained any provisions to the detriment of the accused, then undoubtedly, it would have been hit by the rules against post facto legislation contained in Article 20(1) of the Constitution

Rights under Article 21 (Right to Life and Personal Liberty)

The rights of accused/arrested under Article 21, mainly under the following two heads, followed by the sub-heads emanating there from:

1. Right to Life of the Accused/Arrested, and
2. Right to Personal Liberty of the Accused/Arrested.
3. Each one of the above is discussed below in brief:

Right to life of Accused/Arrested

The Indian Constitution takes pride in Article 21 as one of the fundamental rights. No one "shall be deprived of his life or personal liberty except according to procedure established by law," according to this provision. Therefore, according to the constitution, personal liberty is a valued and treasured right. A protection against torture and assault by the state or its agents would fall under the definition of "life or personal liberty," which has been interpreted to include the right to live with human dignity.

However, increasing rates of torture and deaths in police custody have become troubling elements despite the constitutional and legal measures meant to protect citizens' personal liberty and lives. Experience has shown that the worst human rights abuses occur during an investigation, when police frequently use third-degree tactics, such as torture, to obtain evidence or a confession. They also use screening arrest techniques, which either fail to record the arrest or describe the deprivation of liberty as a protracted interrogation. There have

¹⁶ AIR 1964 SC 1552

¹⁷ AIR 1961 SC 1808

¹⁸ AIR 1960 SC 756

been reports of dehumanizing torture, assault, rape, and death while in the custody of law enforcement or other government authorities.

The rising number of police-inflicted torture and fatalities has reached such concerning heights that it is practically undermining the legitimacy of the rule of law and the criminal justice system. The collective clamor for justice is growing stronger every day. In a civilized society where the rule of law is upheld, one of the worst offenses is perhaps custodial death. The rights outlined in Articles 21 and 22(1) of the Constitution are constantly in danger of being undermined by dishonest people who don't respect the rule of law or the constitutional safeguards. Article 21 of the Constitution prohibits torture and cruel, inhuman, or humiliating treatment by state authority.

Therefore, inmates, detainees, under trials, and other prisoners cannot be denied the priceless right protected by Article 21 of the Indian Constitution unless in accordance with the legal process by imposing the reasonable limitations allowed by law.

The freedom of an individual must give way to the security of the State, even though the aforementioned is the position with regard to the rights of arrested or accused people falling under the purview of Articles 21 or 22 or any other Article under Part III of the Indian Constitution. Higher courts have affirmed the right to preventative detention of individuals in the interest of state security under distinct statutes in a variety of circumstances. An individual's right to personal liberty must yield to the right to question detainees, criminals, or arrested individuals in the benefit of the country.

"Safety of the people is the supreme law," or *salus populi est suprema lex*, and "safety of the State is the supreme law," or *salus reipublicae est suprema lex*, should coexist, according to the Latin maxim. The idea that the "welfare of an individual must yield to that of the community" is based on these two maxims, which are also significant and pertinent. However, the State's action must be "right, just, and fair".¹⁹ Since it would not be "right nor just nor fair" to use any kind of torture or harassment to coerce information out of an arrested or accused individual, it is prohibited and violates Article 21. A criminal suspect must be questioned for an extended period of time and scientifically, but only in compliance with the law. However, one cannot be tortured or subjected to third-degree methods in order to obtain information, a confession, or details regarding his weapons, collaborators, etc. Although there

¹⁹*The Constitution and Criminal Justice Administration*. 2nd ed., A.P.H. Publishing Corporation. p. 9.

would be a qualitative difference in the way such a person is questioned compared to a typical criminal, his fundamental right cannot be restricted unless it is required by law. Even in terrorist cases, the current constitutional safeguards are sufficiently expansive that a terrorist may be held accountable for violating the human rights of innocent people.

Categories of Rights of Accused/Arrested/Detainee

The higher judiciary in India has been adding novel meanings to the word "life" and significantly broadening its definition throughout time. The Apex Court stated in *Sheela Barse v. State of Maharashtra*²⁰ that, subject to reasonable limitations, citizens incarcerated as either convicted or awaiting trial are entitled to the protections afforded by the expanded definition of "life" as embodied in Article 21.

According to Article 21, the accused must be treated with human dignity by the state authority. There is no law that permits the police to mistreat someone while they are in their custody. A person's fundamental human rights are not restricted or taken away only because they have committed a horrible crime since the Constitution protects people from such arbitrary and inhumane actions by the government. An accused person may be eligible for the following protections:

1. Police cannot thrash or beat anybody in their custody.
2. They cannot abuse them.
3. They cannot handcuff and parade an accused in public.
4. Woman accused cannot be handled by men police.
5. A woman cannot be detained in the same cell where men are detained.
6. An arrested person cannot be detained in police custody beyond twenty-four hours.
7. The fundamental right of life and liberty includes speedy trial. Hence, except for the circumstances of a given case, a criminal trial cannot be inordinately delayed.

Rights to personal liberty of accused

The Apex Court, departing from the then-dominantly restrictive interpretation of Article 21 in *Kharak Singh v. State of Uttar Pradesh*²¹, but in *A.K. Gopalan v. State of Madras*²² adopted a broader stance, holding that the phrase "personal liberty" as it appears in Article 21 is a

²⁰(1987) 4SCC373

²¹ AIR1963 SC1295

²²AIR1950 SC27

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compendious term that encompasses all the many types of rights that comprise a person's "personal liberties" outside of those covered by the various provisions of Article 19(1). The Apex Court attempted to provide the following explanation of the ratio of its previous ruling in *R.C. Cooper v. Union India*²³ The majority court in Gopalan's case, which was mentioned above, ruled that since Article 22 was a self-contained code, a statute implementing preventive detention did not need to meet the requirements of Articles 19, 14, and 21. On the other hand, Fazal Ali, J. believed that preventative detention needed to be subject to the kind of judicial scrutiny that was acquired under that article's paragraph (5). The aforementioned premise of the majority in Gopalan's case was rejected in *R.C. Cooper*, hence it is no longer valid.

The Supreme Court ruled in *Maneka Gandhi v. Union of India*²⁴ that Article 21 does not preclude Article 19, and that even if a law exists that specifies a process for denying someone their "personal liberty," and there is thus no violation of the fundamental right granted by Article 21, the law must be challenged insofar as it restricts or eliminates any fundamental right under Article 19. Therefore, in order for Article 21 to comply with Article 14, it must pass the reasonableness test. It must not be capricious, unrealistic, or harsh; rather, it must be "right and just and fair."

The Supreme Court ruled, among other things, in *Zahra Habibullah Sheikh v. State of Gujarat*²⁵ that a court of law must decide any criminal charge within a reasonable amount of time. One of the requirements of Article 21 of the Constitution is a free and fair trial. Even the most basic requirements of due process of law are broken when neither the prosecution nor the accused are given a fair hearing. According to due process of law, a condemnation should only be issued following a trial in which the hearing is genuine and not a farce or a fraud. An hurried trial may vitiate and breach the right to a fair hearing, which demands an opportunity to preserve the process.

In order to uncover the truth and avoid injustice, a fair trial for a criminal offense requires not only a technical observance of the law's framework and forms but also an acknowledgment of a reasonable application of its principles in practice. From the accused's perspective, a trial

²³(1970) 1SCC248

²⁴ (1970) 1SCC248

²⁵ AIR2006 SC1367Cri. LJ 1694

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cannot be considered fair if it does not provide them with a sufficient opportunity to cross-examine the prosecution's witness.

Similar to this, the Madras High Court stated in *State v. Sundaramoorthy*²⁶ that the issue of police custody is about the violation of an individual's rights, especially the fundamental right protected by Article 21. This was in response to an application filed seeking police custody. As a result, every request for police detention must be carefully evaluated based on the available information.

While Right to Life or Personal Liberty as enshrined under the Constitution of India is all pervading, in the context of the present study the following harbinger rights as emanated by the Supreme Court while interpreting utmost prominence:

1. Right to Bail,
2. Right against Hand cuffing,
3. Right against custodial torture,
4. Right to Speedy Trial,
5. Right to fair trial,
6. Right to counsel,
7. Right to legal aid, and
8. Rights in respect of Leading questions

Rights under Article 22 in respect of Arrest and Detention in Certain

The Indian Constitution's Article 22 provides protection against arrest and detention in specific situations. It states that no one who is arrested may be held in custody without being told why they were arrested, and that they cannot be denied the right granted by Clause (2) of Article 22, which stipulates that the person arrested and detained in custody must appear before the nearest magistrate within 24 hours of the arrest, excluding the time required to travel from the scene of the arrest to the magistrate's court. A person accused of a crime cannot be forced to testify against himself, according to Article 20(3) of the Constitution. A person accused of a crime cannot be forced to testify against himself in order to defend his personal freedom from any unwarranted actions by the government or its officials, according to Article 20(3) of the Constitution.

²⁶ 2008Cri.LJ898

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The scope and extent of the police's rights to use preventative detention in order to uphold law and order are also explained in Article 22 of the Indian Constitution. It assumes that, within reasonable boundaries, an individual's liberty must yield to the welfare of the populace. Preventive detention can be used to protect the nation's security and safety as well as the interests of society while also protecting individual liberty and personal freedom.

Conclusion

In summary, the prosecution must prove an accused person's guilt beyond a reasonable doubt in order to convict them. On the face of the record, such reasonable doubt is logically related to the evidence—or lack thereof. Not all doubts are in the accused's favor; only reasonable doubt is. In a criminal case, the burden of prosecution never changes. I believe that no one should be harmed when there is a reasonable doubt. Reason and common sense provide the foundation of the idea of proof beyond a reasonable doubt. It is never predicated on pity or bias. The judiciary must exercise extreme caution when using and interpreting the concept of "reasonable doubt," bearing in mind that the goal of the law is to give justice not harm justice.

“(1) No person shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for such journey from the place of arrest to the court of magistrate and no person shall be detained in custody beyond the said period without the authority of the Magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person for the time being an enemy alien,

(b) To any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of any person for a period longer than three months unless-

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(a) An advisory Board consisting of persons who are qualified to be appointed as, Judges of High Court has reported before the expiration of the said period that there is, in its opinion sufficient cause for such detention;

Provided that nothing in this clause shall authorize such detention beyond the period specified by any law made by Parliament under Sub-clause (b) of Clause (7); or

(b) Such person is detained in accordance with the provisions of any law made by Parliament under Sub-clauses (a) and (b) of Clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in Clause (5) shall require the authority making such order to disclose the facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) The circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause(a) of Clause(4);

(b) The maximum period of which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) The procedure to be followed by an Advisory Board in an enquiry under sub-clause(a) of Clause(4).

2 LEGAL RIGHTS

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In India and other countries, there are numerous general and special laws that offer protection to those who are detained or charged with crimes. In the current context of accused rights under the Indian Constitution, it is deemed appropriate to briefly outline some significant rights as provided by the Criminal Procedure Code, 1973, even though it is not directly pertinent to discuss all of the different rights of accused or arrested persons available under law rt 300-A).



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