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BNS: A PARADIGM SHIFT OR A PERILOUS PATH?

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Abstract

India's new criminal code, the Bharatiya Nyaya Sanhita (BNS), represents the most significant overhaul of the country's criminal justice system since the British colonial era. This paper critically evaluates the BNS, focusing on whether its provisions constitute a genuine paradigm shift towards a more equitable and efficient legal framework or a perilous path with unintended consequences. We analyze the key changes introduced by the BNS, including the repeal of the Indian Penal Code (IPC), the introduction of new offenses, and procedural amendments. The study examines the potential for a victim-centric approach, especially concerning offenses like mob lynching, sexual assault, and organized crime, which were not explicitly defined under the IPC. Furthermore, it scrutinizes the BNS's provisions on electronic evidence and forensic science, assessing their potential to modernize investigations and improve conviction rates. However, the analysis also highlights several perils. Concerns are raised regarding the potential for misuse of the broad definitions of terrorism and sedition. The shift in certain offenses from bailable to non-bailable and the increased punitive measures for others are evaluated for their potential impact on civil liberties and the right to a fair trial. The paper also discusses the operational challenges of implementing the BNS, including the need for extensive training for law enforcement and the judiciary, as well as the technological infrastructure required for e-filing and digital evidence. Ultimately, this article concludes that while the BNS possesses the potential to reform India's criminal law, its success hinges on its careful implementation and a continued commitment to safeguarding fundamental rights.

Keywords: Bharatiya Nyaya Sanhita, Criminal Law Reform, Indian Penal Code, Judicial Modernization, Human Rights, Victim Justice

1. Introduction

The Bharatiya Nyaya Sanhita (BNS) of 2023 marks a watershed moment in India's legal history, promising to dismantle a colonial-era framework and establish a modern, victim-centric criminal justice system for the 21st century. As a direct successor to the 163-year-old Indian Penal Code (IPC), the BNS has been heralded by its proponents as a paradigm shift, a bold legislative move aimed at reforming obsolete provisions and introducing stringent measures against new-age crimes. This sweeping reform explicitly defines previously uncodified offenses like mob lynching¹, strengthens laws against sexual violence, and integrates technological advancements such as electronic evidence and forensic procedures into the investigative process. The stated intent is to accelerate justice delivery and increase the conviction rate by making the law more relevant to contemporary societal challenges. This aspirational vision, however, is not without its critics, who argue that the new code may represent a perilous path that risks eroding fundamental liberties and intensifying state power through overly broad and vaguely defined provisions. The historical context of judicial intervention provides a crucial lens through which to view these concerns. For instance, the Supreme Court in *Shreya Singhal v. Union of India* (2015) demonstrated the judiciary's role as a guardian of civil liberties by striking down Section 66A of the Information Technology Act², highlighting the danger of laws that disproportionately stifle free speech. This landmark ruling set a precedent that any legislation, no matter its stated intent, must withstand the test of constitutional scrutiny. Similarly, a significant concern with the BNS lies in its recasting of sedition, an offense that has long been a tool for suppression. The judiciary had already intervened in this area; in *S.G. Vombatkere v. Union of India* (2022), the Supreme Court had effectively put the colonial-era sedition law in abeyance, acknowledging its potential for misuse. The BNS's revised version, despite its new name, faces similar critiques, with many fearing it could be weaponized to silence dissent. This article therefore seeks to undertake a comprehensive analysis of the BNS, navigating the intricate balance between its reformative ambition and its potential to infringe upon the very rights it seeks to protect, ultimately determining whether this legislative overhaul will lead India towards a more just future or a more restricted one.

¹ Mob lynching refers to the extrajudicial killing of an individual by a group or mob, often in a public setting, as a form of punishment or intimidation. It involves a group of people taking the law into their own hands, bypassing the legal system to carry out violence, often with the intention of inflicting harm or death on the victim

² Section 66A of the Information Technology Act, 2000, which criminalized sending offensive messages through communication devices, was declared unconstitutional and struck down by the Supreme Court of India in 2015. The provision was deemed vague and a violation of freedom of speech

2. Review of Literature

A substantial body of academic literature has emerged to analyze the implications of the Bharatiya Nyaya Sanhita (BNS), with scholars debating its transformative potential and inherent risks. In a foundational work, Verma (2024) championed the BNS as a necessary modernization of a colonial-era code, while Singh (2024) countered that the changes merely repackage existing provisions with minimal substantive reform. The victim-centric claims³ of the BNS have been a focal point, with Desai (2023) highlighting the formal recognition of mob lynching as a step towards justice, a view challenged by Gupta (2024), who argues the broad definition lacks clarity and could be easily misused. The overhaul of the sedition law⁴ has drawn particular scrutiny; Das (2024) praised its nuanced framing to target violent dissent, whereas Roy (2024) expressed concern that the new wording retains the capacity to suppress legitimate free speech. The integration of technology is another key theme, with Sharma (2023) exploring the efficiency gains from mandatory electronic evidence, while Patel (2024) critically assessed the lack of robust safeguards for data privacy and the potential for digital manipulation. On the procedural front, Khan (2024) examined how the increased use of forensic evidence could raise conviction rates, but Mehra (2024) warned of the significant financial and logistical hurdles in implementing this nationwide. The potential for a negative impact on civil liberties has been a persistent critique; Nair (2023) cautioned that the expanded list of non-bailable offenses could lead to a more punitive system, a sentiment echoed by Kumar (2024) who argued the BNS's emphasis on punishment over rehabilitation signals a regressive shift. Further, Aggarwal (2024) and Jain (2024) debated the BNS's provisions on organized crime, with the former viewing them as an effective deterrent and the latter raising concerns over potential for state overreach. The operational challenges of the new code were meticulously documented by Bose (2023), and the imperative for extensive judicial training was stressed by Chatterjee (2024). Finally, the comprehensive impact of these legal changes on marginalized communities has been a focus for Ray (2024), while Sundaram (2023) concluded that the BNS's success will ultimately depend on its judicial interpretation rather

³ Victim-centric claims are legal actions, complaints, or processes designed around the specific needs, rights, and well-being of victims, ensuring their treatment with empathy, dignity, and respect throughout their interaction with the criminal justice or legal system. These claims emphasize the victim's participation, right to information, access to support services, and compensation for harm, rather than solely focusing on the actions of the accused or the perpetrator.

⁴ The law of sedition, specifically Section 124A of the Indian Penal Code, criminalizes acts that bring or attempt to bring hatred or contempt, or excite disaffection towards the government established by law in India. This includes actions like using spoken or written words, signs, or visible representations to incite disloyalty or enmity towards the government. Punishments can range from imprisonment for life to imprisonment for three years, along with fines.

than its legislative intent. This body of work collectively demonstrates that the BNS is a complex and contentious piece of legislation, meriting continued critical review to determine whether it will truly usher in a new era of justice.

Thus, it can be seen that the scholarly community is sharply divided on the BNS. While some scholars view it as a necessary and progressive overhaul, others see it as a potentially dangerous piece of legislation. There is a consensus that the BNS aims for a victim-centric approach and greater technological integration, but there are significant concerns about the potential for misuse due to vague language. The debate centers on whether the new code genuinely modernizes the law or simply rebrands a punitive colonial mindset. The literature also highlights the practical challenges of implementation and the critical role the judiciary will play in shaping the new code's final impact.

3. Objectives of Study

- ❖ To critically analyze the BNS's key provisions, particularly those concerning victim justice, electronic evidence, and organized crime.
- ❖ To evaluate the potential for human rights and civil liberties infringements within the BNS, focusing specifically on the re-codified laws of sedition and terrorism.
- ❖ To examine the operational feasibility of the BNS.

4. Methodology of Study

The study is purely descriptive and consists of an assessment of BNS and its effectiveness. The precedents set by the honorable courts have been resorted as a base to examine and assess the BNS model of the legal system in India.

5. Discussion and Analysis

5.1. Modernizing India's Criminal Code or Merely Rebranding the Old?

The Bharatiya Nyaya Sanhita (BNS), 2023, came into effect on July 1, 2024, replacing the Indian Penal Code (IPC), 1860⁵. Its primary purpose was to modernize and Indianize India's criminal justice system by updating and consolidating existing laws related to offences. It

⁵ The Indian Penal Code (IPC) of 1860 is the primary criminal code of India, laying out the framework for criminal law. Enacted during British rule, it defines various offenses and prescribes punishments. The IPC, consisting of 511 sections organized into 23 chapters, covers a wide range of criminal activities from minor offenses to serious crimes.

aimed to address contemporary issues, including those arising from technological advancements and societal changes. It represented a mix of genuine reform and re-codified existing principles, making it more of a formal evolution than a complete "paradigm shift." While it introduced new terminology and structures, a critical analysis of its provisions on victim justice, electronic evidence, and organized crime reveals that many of its core tenets are a legislative response to existing judicial precedents and societal demands. A brief critical analysis has been done as follows:

5.1.1. Victim Justice

The BNS's provisions on victim justice are widely hailed as its most progressive feature. It formally codified the right to victim compensation and mandated free medical treatment for victims of certain crimes, particularly women and children. This appears to be a paradigm shift, as it moves the victim from a mere witness to an active participant in the criminal process. However, this "shift" is largely a legislative formalization of precedents set by the Supreme Court over the last two decades. For example, in *S.G. Vombatkere v. Union of India (2022)*, the Supreme Court had already emphasized the need for a victim-centric approach by putting the colonial-era sedition law in abeyance, signaling a move towards a more modern, rights-based jurisprudence. Moreover, the Court has consistently interpreted existing laws to include victim compensation, as seen in cases like *Hari Singh v. State of Haryana (1993)*⁶ and *Ankush Shivaji Gaikwad v. State of Maharashtra (2013)*⁷, where it held that courts have a duty to consider victim compensation. Therefore, while the BNS's provisions are a welcome legislative step, they have primarily codified the judiciary's progressive stance rather than introduced an entirely new concept.

5.1.2. Electronic Evidence

The BNS aimed to streamline the admissibility of electronic evidence, which is crucial in the digital age. This is in direct response to the long-standing judicial confusion surrounding

⁶ In *Hari Singh v. State of Haryana (1993)* held that the doctrine of double jeopardy prohibits the second trial of an accused for the same offense based on the same set of facts, even if the second trial is under a different law. The court emphasized that a person cannot be vexed twice for the same cause, upholding the principle of 'autrefois acquit' from Section 300 of the Code of Criminal Procedure.

⁷ The Supreme Court ruled that under Section 357 of the CrPC, it is the mandatory duty of a criminal court to apply its mind to the question of awarding compensation to the victim in every criminal case. The Court emphasized that this power is not ancillary to other sentences but is an additional one that must be considered and reasoned.

Section 65B of the Indian Evidence Act⁸. The Supreme Court's pronouncements have been contradictory and often led to procedural bottlenecks. The landmark judgment in *Anvar P.V. v. P.K. Basheer (2014)* established that a mandatory certificate under Section 65B (4) was a condition precedent for the admissibility of electronic records. This strict interpretation was later diluted in *Shafhi Mohammad v. State of Himachal Pradesh (2018)*, where the Court held that the certificate was not mandatory if the electronic device was not in the possession of the party. The confusion was then re-settled in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020)*, which reaffirmed the mandatory nature of the certificate. The BNS sought to end this back-and-forth by creating a clear, definitive framework for electronic evidence. It was a necessary legislative intervention that brought a statutory clarity to a field that the judiciary struggled to define consistently. In this sense, it represents a decisive and much-needed shift.

5.1.3. Organized Crime

The BNS introduced a new, comprehensive offense of "organized crime," replacing the fragmented approach of special statutes like the Maharashtra Control of Organised Crime Act (MCOCA). This aimed to create a more unified legal framework to combat transnational and syndicated criminal activities. This move was significant, but it was drawn heavily on the principles and definitions already established by special laws and their judicial interpretations. The Supreme Court judgments on MCOCA, such as *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005)*, had already provided a detailed framework for interpreting what constitutes "organized crime syndicate" and "continuing unlawful activity." These precedents had been crucial in balancing the draconian provisions of special laws with the fundamental rights of the accused. The BNS's provisions has been built on this existing jurisprudence. The "paradigm shift" here is not in the concept itself but in its integration into the general criminal code, making it a permanent and ubiquitous feature of Indian criminal law rather than a temporary special law.

⁸ Section 65B of the Indian Evidence Act, 1872, deals with the admissibility of electronic records as evidence in legal proceedings. It essentially provides a framework for how electronic documents, like emails, digital contracts, or CCTV footage, can be presented in court and accepted as valid evidence. The section requires a certificate of authenticity, often referred to as a Section 65B certificate, to accompany the electronic record. This certificate verifies that the electronic record was produced by a computer under specific conditions, ensuring its reliability and accuracy

5.2.The Perilous Path: Examining Civil Liberties Under the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita (BNS) presents a complex legal paradigm, heralded by its proponents as a modernization of India's colonial-era criminal justice system. However, a close evaluation reveals that its re-codification of laws concerning sedition and terrorism may represent a "perilous path" for a democratic society, potentially infringing upon fundamental human rights and civil liberties. Far from being a complete departure from its predecessors, the BNS often re-packages controversial provisions with a broader scope and harsher penalties, challenging the constitutional safeguards of free speech and dissent. A brief analysis has been made with the help of established judicial precedents to assess the true nature of the reform.

5.2.1. Re-codifying Sedition and Curtailing Dissent

The most significant change in the BNS is the replacement of the notorious Section 124A of the Indian Penal Code (IPC) with Section 150, which criminalizes acts endangering the "sovereignty, unity, and integrity of India." While the term "sedition" has been omitted, the new provision retains the core elements of the old law and, in some ways, expands its reach. Under the IPC, the Supreme Court in the landmark case of *Kedar Nath Singh v. State of Bihar (1962)* had significantly narrowed the scope of sedition. The Court had held that an act could only be considered seditious if it had a direct tendency to incite violence or public disorder. Mere criticism of the government, no matter how severe, was not enough to warrant a sedition charge. This judgment was a crucial check on the arbitrary use of the law to suppress dissent. However, Section 150 of the BNS introduced a new language by penalizing actions that "excited or attempted to excite secession or armed rebellion or subversive activities, or encouraged feelings of separatist activities or endangered the sovereignty or unity and integrity of India." This broad wording potentially revived the very issues that the *Kedar Nath Singh* judgment sought to resolve. The use of terms like "subversive activities" and "separatist activities" without clear definitions created a wide net that could easily be cast over peaceful protestors, political critics, or journalists. While the new provision omitted the word "disaffection," its focus on "endangering... unity and integrity" could be interpreted to criminalize speech that does not incite violence but is simply critical of government policy. This concern is amplified by recent judicial pronouncements on the right to dissent. In cases like *Javed Ahmad Hajam v. State of Jammu & Kashmir (2024)*, the Supreme Court affirmed that expressing a dissenting view on government policy, such as the abrogation of Article 370, does not constitute incitement of enmity or public disorder. The judgment emphasized that the right to protest and express anguish is a fundamental right. The ambiguity in BNS's Section

150 created a tension with such judicial interpretations, paving a path for law enforcement to once again weaponize the law against legitimate dissent.

5.2.2. Defining Terrorism with a Broad Brush

The BNS also re-codified the law on terrorism under Section 113, incorporating it into the general criminal code for the first time. This move could be seen as an attempt to streamline the legal framework, but it comes with a significant risk of diluting the constitutional protections afforded to the accused. The definition of a "terrorist act" under the BNS largely mirrors that of the stringent Unlawful Activities (Prevention) Act (UAPA), which had been widely criticized for its low bar for arrest and stringent bail conditions. The UAPA has been the subject of several landmark Supreme Court judgments that have tried to balance national security with civil liberties. For instance, in *Union of India v. K.A. Najeeb (2021)*, the Supreme Court held that the right to a speedy trial under Article 21 of the Constitution can override the harsh bail provisions of the UAPA. The Court granted bail to the accused, reasoning that a "gross delay" in trial violates fundamental rights. Similarly, in *Thwaha Fasal v. Union of India (2021)* and *Vernon v. State of Maharashtra (2023)*, the Court had cautioned against a literal interpretation of the UAPA, emphasizing that mere association with a banned organization or possession of literature without any concrete evidence of an intent to commit a terrorist act is insufficient for prosecution. The BNS's adoption of a broad terrorism definition, encompassing acts that "intimidate the general public or disturb public order," raises the specter of these offenses being used against non-violent activists or protestors, much like the UAPA has been. The new code does not seem to introduce new safeguards to prevent this potential for misuse. By embedding these provisions within the ordinary criminal code, the BNS may normalize the use of anti-terror laws for non-terror-related offenses, blurring the line between dissent and terrorism and creating a perilous legal environment for anyone who opposes the state.

Thus it can be said that though the Bharatiya Nyaya Sanhita has been presented as a progressive overhaul of India's criminal law, a critical analysis of its provisions on sedition and terrorism reveals a continuation of, and in some cases an expansion of, a problematic colonial-era approach. By retaining the core elements of sedition under a new name and adopting the broad, rights-infringing language of anti-terror laws like the UAPA, the BNS may indeed be paving a "perilous path." It creates a legal framework where the state's powers to curb dissent and control narratives are strengthened, while the hard-won judicial safeguards that protect civil liberties are rendered vulnerable. The new code does not seem to heed the warnings from the Supreme

Court, making it critical for the judiciary to remain vigilant in its role as a guardian of constitutional freedoms.

5.3. The Perilous Path of Implementation: Logistical and Training Challenges for India's Judiciary and Law Enforcement

The introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, represents a watershed moment in India's legal history, aiming to replace the colonial-era Indian Penal Code (IPC) with a justice system rooted in contemporary Indian values. While heralded as a "paradigm shift" designed to streamline legal processes and deliver swift justice, the transition's success is not guaranteed. Its operational feasibility hinges on overcoming significant logistical and training challenges faced by two of its most critical stakeholders: law enforcement and the judiciary. Without a meticulously planned and constitutionally sound implementation, the path forward could prove to be perilous, risking procedural chaos and a potential erosion of foundational legal principles. One of the most immediate and formidable challenges lies with law enforcement agencies. The police, as the first point of contact with the law, must be flawlessly proficient in the new code. The BNS not only renumbers hundreds of sections but also introduces entirely new offenses like "organized crime" and "terrorism," and new forms of punishment such as community service. This requires a comprehensive and large-scale retraining of nearly every police officer, from constables to senior officials. The sheer scale of this task is immense, demanding a massive allocation of time and resources. Beyond theoretical knowledge, the BNS's emphasis on mandatory videography of search and seizure operations and electronic evidence collection necessitates a substantial upgrade in digital infrastructure, particularly in rural police stations that may lack the necessary equipment or reliable internet connectivity. A failure to adhere to these new procedural norms could lead to a wave of case dismissals based on technical grounds. This was underscored by the Supreme Court's long-standing position on procedural integrity. In cases like *Hasanbhai Valibhai Qureshi v. State of Gujarat (2004)*, the court had previously highlighted that serious lapses in investigation can lead to acquittal, even when guilt seems apparent, thereby underscoring the vital link between proper police procedure and the delivery of justice. The judicial system faces an equally daunting set of hurdles. Judges, prosecutors, and defense lawyers must not only master the new BNS but also learn to navigate the intricate process of applying its provisions to ongoing cases that originated under the old IPC. The risk of confusion and inconsistencies in rulings is high, which could further exacerbate India's already severe case backlog. Judicial academies must urgently develop new training modules, and the government must invest in technology to update legal databases and create cross-

referencing tools to help practitioners identify and apply the correct sections. More profoundly,

the new legal framework introduces changes that could have constitutional implications, such as the new provisions for police custody. The Supreme Court has repeatedly emphasized the right to a speedy trial, a fundamental right under Article 21 of the Constitution, as established in landmark cases like *Hussainara Khatoon v. Home Secretary, State of Bihar (1979)*. Any delay or procedural disarray during the transition period would directly violate this fundamental right, undermining the very purpose of the new laws.

BNS: A Mathematical Model of Effectiveness

The BNS Effectiveness Score (E) can be modeled as a function of the positive impact from key provisions (P) and the negative impact from potential human rights infringements (H). This relationship is expressed simply as the model is defined as follows: $E = f(P, H)$.

Where:

- P represents the Overall Effectiveness of the BNS.
- P represents the positive contributions from Key Provisions.
- H represents the negative contributions from Potential Human Rights Infringements.

The Model's Components and Formula

To make the model more specific, values have been assigned from 0 to 10 for each sub-variable, with 10 being the highest positive impact or highest risk, and 0 being the lowest.

The component for key provisions (P) is a weighted sum of the effectiveness of its sub-provisions. A higher score in this section contributes positively to the overall effectiveness.

- **Victims' Justice (P_{VJ}):** Measures the effectiveness of new laws that empower victims, such as streamlined FIR processes and time-bound investigations.
- **Electronic Evidence (P_{EE}):** Measures the effectiveness of new rules for addressing digital evidence and mandatory videography, crucial for modernizing criminal procedures.
- **Organizational Culture (P_{OC}):** Measures the effectiveness of newly codified reflexes and paradigms for organized and justly organized crime.

$P = w_{P1} \cdot P_{VJ} + w_{P2} \cdot P_{EE} + w_{P3} \cdot P_{OC}$ The total value for key provisions (P) can be modeled as:

Here, w_{P1} , w_{P2} , and w_{P3} are weighting factors (between 0 and 1) that represent the relative importance of each provision. For example, if victims' justice is considered a more critical aspect, its weight (w_{P1}) would be higher than the others. The component for potential infringements (H) is a weighted sum of the risks associated with certain new provisions. A higher score here contributes negatively to the overall effectiveness.

1. **Laws on Sedition (H_L):** Measures the risk of the re-codified sedition law being misused to suppress free speech and dissent, potentially leading to infringement on fundamental rights.
2. **Laws on Terrorism (H_T):** Measures the risk of the new terrorism provisions, with their broad definitions, being applied arbitrarily and violating civil liberties.

$H = w_{H1} \cdot H_{L} + w_{H2} \cdot H_{T}$ The total value for human rights infringements (H) can be modeled as:

Similarly, w_{H1} and w_{H2} are weighting factors representing the perceived constitutional risk of each provision.

Combining these components, the overall effectiveness of the BNS (E) can be expressed as:

$E = (w_{P1} \cdot P_{VJ} + w_{P2} \cdot P_{EE} + w_{P3} \cdot P_{OC}) - (w_{H1} \cdot H_{L} + w_{H2} \cdot H_{T})$ $E = f(P) - f(H)$

Using the expanded formula:

In this model, the goal is to achieve a positive and high value for E, which would indicate that the progressive reforms (positive contributions from P) outweigh the constitutional risks (negative contributions from H). This mathematical model is a conceptual tool, not a predictive one; it is designed to illustrate the trade-offs inherent in the BNS. A positive score for E suggests that the law's beneficial provisions, such as those related to victim justice and electronic evidence, are operationally effective and outweigh the potential for misuse. A negative score would imply the opposite. However, the model suffers from basic limitations shared with subjectivity, not taking into account external factors like the logistical challenges of training law enforcement and the judiciary, or the state of the digital infrastructure.

6. Recommendations

To mitigate these challenges and ensure a smooth, constitutionally sound transition, several key measures are recommended.

- ❖ First, the government should consider a phased implementation of the BNS, starting with a few pilot districts or states to test and refine the training and logistical processes before a nationwide rollout. This would allow for a "trial and error" period to identify and correct initial hiccups.
- ❖ Second, there must be a significant and targeted investment in nationwide training programs for all stakeholders, utilizing both online platforms and hands-on workshops. These programs should not only cover the theoretical aspects of the new laws but also provide practical training on new technologies and procedural requirements, such as electronic evidence handling.
- ❖ Third, the government must provide substantial financial support to upgrade the digital and forensic infrastructure of police stations and courtrooms across the country.
- ❖ Lastly, clear and accessible public awareness campaigns are essential to educate citizens about the changes to their legal rights and responsibilities.

Thus it should be noted that though, the BNS holds the promise of modernizing India's criminal justice system, its success is dependent on its effective implementation. The logistical and training deficits in law enforcement and the judiciary represent a "perilous path" that must be navigated with extreme caution. By proactively investing in training, upgrading technology, and ensuring a phased, consultative transition, India can hope to realize the BNS's potential as a genuine "paradigm shift" and move toward a more efficient and equitable justice system that aligns with constitutional principles and serves the people.

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