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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21: A BRIEF STUDY OF ITS MEANING AND DYNAMIC SCOPE WITH THE HELP OF CASE LAWS.**

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## **Abstract**

When we called these rights are the 'soul' of the Constitution then out of these six rights the right to life and personal liberty under Article 21 is called as a 'heart of the fundamental rights' by the Supreme Court of India. As since the enforcement of the Constitution the ambit of Article 21 is positively expanded and time to time through various judicial pronouncements many other rights that are essential to make a person life meaningful became part of this right. Here the judicial activism played a crucial role in the development of the concept of right to life and personal liberty. Judicial wider approach strikes down the narrower meaning of Article 21. The 'right to life' means a right to be protected of life of a human being that nature give us. It is also a natural right that is not given by a person but derived its validity from the natural principle. The meaning of right to life for an animal is the interest of the protection of his body or a mere existence without fear of killing. But for a human being the sense of right to life is different as it has a wider scope. It does not merely mean protection of body but also guarantees bodily as well as mental development of a person. In right to life the Constitution guarantees happy, healthy, meaningful and complete life to a person. As a social animal a human being not only have an interest of mere existence but need something more than that. To live a life a human needs a good food, good health, fresh environment, shelter, livelihood, education and other things without which we cannot imagine a life of human being. This research paper highlights the developing meaning and scope of Article 21 of the Constitution of India.

**Key-Words:** Article 21, Right to life, Fundamental Right, Personal liberty.



## **I. INTRODUCTION:**

The Constitution of India provides six fundamental rights to the people of India. They are termed as 'fundamental' as because they are very basic rights for all round development of a person. These all six rights are equally essential for a complete, safe, healthy and happy life for all persons. When we called these rights are the 'soul' of the Constitution then out of these six rights the right to life and personal liberty under Article 21 is called as a 'heart of the fundamental rights' by the Supreme Court of India. Article 21 provides that "No person shall be deprived of his life or personal liberty except according to the procedure established by law". This right protects life of personal liberty of a person from arbitrary or oppressive encroachment by the State. It is living progressive part of our basic rights that mold it meaning as per the need of a person in a society. It evolves and evolves like a living phenomenon which shows the value of Article 21 for all persons. All rights are exists only when a person has a life and Article 21 provides security to the life of a person that clearly shows its greater importance. It specifically includes two types of rights; right to life and right to personal liberty but this is not enough when we talk about the scope of Article 21 we find its larger area of expansion as it includes number of rights under their ambit like, right to clean environment, right to privacy, right to livelihood, right to shelter, right to speedy trial, right to go abroad, right to education and the list is goes on. All these rights flow from the judicial interpretation of the right to life and personal liberty. As since the enforcement of the Constitution the ambit of Article 21 is positively expanded and time to time through various judicial pronouncements many other rights that are essential to make a person life meaningful became part of this right. Here the judicial activism played a crucial role in the development of the concept of right to life and personal liberty. Judicial wider approach strikes down the narrower meaning of Article 21. A group of rights becomes the part of right to life and personal liberty by the positive approach that fundamental right to life and personal liberty is not just a right that merely give security for bare survival of a person but also gives security to a complete and meaningful life.

## **II. RESEARCH METHODOLOGY:**

The present Article is done by doing an critical analysis of secondary data that includes various books, journals, research papers, articles and case laws. These sources are critically reviewed and analyzed that helped to make a base of study. The nature of study is descriptive.



### **III. OBJECTIVE OF THE STUDY:**

- i) To discuss the meaning and scope of Article 21.
- ii) To discuss the development of the right to life and personal liberty.
- iii) To discuss case laws to understand the meaning of the right to life and personal liberty.

### **IV. REVIEW OF LITERATURE:**

#### **i) In Article 21: A Comprehensive Journey Of Right To Life And Personal Liberty<sup>1</sup>:**

In this research paper the author comprehensively studies the journey of the right to life and the personal liberty under Article 21. The study discussed the meaning of right to life and personal liberty, make classification of the right to personal liberty. It classifies the personal liberty in two category one is 'positive liberty' and the other one is 'negative liberty'. The Constitutional development is the main area of the study that is discussed thoroughly with helping of leading case laws. One could easily understand the scope and area of the study of Article 21 through this research work. The author examined the value of limitation on the right to life and personal liberty by saying that the liberty exists only if the restriction exists. Some restrictions are necessary for the common interest.

#### **ii) In The Aspects And Provisions Of Personal Liberty Under Article 21 Of The Constitution Of India-A Detailed Study<sup>2</sup>:**

The author do a detailed study on the concept of the Personal Liberty under Article 21. The study analyzed the right to personal liberty is one of the most fundamental human right as it affects the individual's personal freedom. If the right to life is the basis of the society, then the right of liberty is also an important essence. It is essential for the existence of human being in a society. The study discussed the interpretation of the right tom personal liberty given by the Courts in different leading cases that helped to understand the true sense of the personal liberty. The author concluded his study as the concept of personal liberty is not a simple or isolated issue but dependent on the securities of the other fundamental rights.

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<sup>1</sup> Utkarsh Yadav, Article 21: A Comprehensive Journey Of Right To Life And Personal Liberty, Indian Journal of Integrated Research in Law, Volume I Issue II | ISSN: 2583-0538.

<sup>2</sup> Swapnil Pattanayak, The Aspects And Provisions Of Personal Liberty Under Article 21 Of The Constitution Of India-A Detailed Study, 2019 IJLMH | Volume 2, Issue 4 | ISSN: 2581-5369.

### **iii) In The Critical Analysis On Interpretation of Article 21 Of The Indian Constitution<sup>3</sup>:**

The author discussed the interpretation of the Article 21 evolved through leading judicial pronouncement. The wider approach of the Courts towards the right to life and the personal liberty put a life on Article 21. The study analyzed that due to purposive interpretation it is possible to expand Article 21 to include right to the means which provides a proper livelihood like right to food, clean water, healthy environment, education etc. The Doctrine of Purposive interpretation and the Doctrine of Constitutional silence holds a lot of importance in the interpretation of Article 21.

### **iv) In Expanding And Evolving The Ambit Of Article 21 Of The Constitution Of India With The Developing Scenario<sup>4</sup>:**

The research paper highlights the developing meaning and scope of Article 21 of the Constitution of India. The study comprehensively discussed the expanding nature of Article 21 by showing its evolution. The study highlights the nature of Article 21 as most essence of this Article is that it is not a straight jacket rule instead it keeps on evolving with the change in time. The Right to life and Personal Liberty has a deep meaning which is not only about the survival of person but also entails being able to live a complete life of dignity. Further the paper discussed the historical creation of Article 21 as a part of our Constitution. At first the Parliamentary Committee passed it as Article 15 and used its exception in the words “due process of law” instead using “except procedure established by the law”. But the assembly through the second amendment substituted phrase “due process” with “except procedure established by law”. The study provides a clear understanding of the nature and scope of Article 21.

## **V. EXPLANATION OF THE RIGHT TO LIFE AND PERSONAL LIBERTY:**

Article 21 says that:

*“No person shall be deprived of his life or personal liberty except according to the procedure established by law”.*

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<sup>3</sup> Piyasha Das, The Critical Analysis On Interpretation of Article 21 Of The Indian Constitution, 2020 IJLMH | Volume 3, Issue 5 | ISSN 2581-5369.

<sup>4</sup> Nisha Gandhi, Expanding And Evolving The Ambit Of Article 21 Of The Constitution Of India With The Developing Scenario, Volume II Issue IV | ISSN: 2583-0538.

According to former Chief Justice of India Justice P.N. Bhagwati, Article 21 saves the democratic values in the society. On the path of the principles of Article 21 our society goes on a right direction.

The Constitution of India does not specifically define the word 'life' and 'personal liberty' and left it for interpretation as per the needs and requirements of the society. It means we cannot give a definite meaning of life and personal liberty. The 'right to life' means a right to be protected of life of a human being that nature give us. It is also a natural right that is not given by a person but derived its validity from the natural principle. All others rights become meaningless without the protection of right to life that is the bedrock of all fundamental rights. The meaning of right to life for a animal is the interest of protection of his body or a mere existence without fear of killing. But for a human being the sense of right to life is different as it has a wider scope. It does not merely means protection of body but also guarantees bodily as well as mental development of a person. In right to life the Constitution guarantees happy, healthy, meaningful and complete life to a person. We all live in society. As a social animal a human being not only have a interest of mere existence but need something more than that.

To live a life a human needs a good food, good health, fresh environment, shelter, livelihood, education and other things without which we cannot imagine a life of human being. All these factors jointly make human life complete and meaningful. The Justice 'FIELD' in the prominent case of **Munn vs Illinois**<sup>5</sup>, said that "the word 'life' is more than mere animal existence and it embraces within itself not only the physical presence but also the quality of life. The expression 'personal liberty' not only means freedom from arrest, detention and false or wrongful confinement but also covers those rights and privileges that are essential to achieve happiness with liberty". To live as a member of society, the essential needs without which survival of human is meaningless becomes part of right to life and get protection under the umbrella of Article 21.

The personal liberty is made with two words 'personal' or 'liberty'. The word 'liberty' means freedom from unwanted interference and connected it with personal we find the meaning of personal liberty is 'the freedom to live a personal life as per their choice without any interference from any person'. This right to personal liberty was the part of the Magna Carta of the England. The Magna Carta of England

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<sup>5</sup> Munn vs Illinois, 94 U.S. 113 (1876).



of 1215 provides that “no free man shall be taken or imprisoned, but by the law of the land”.

In **A.K. Gopalan vs. State of Madras**<sup>6</sup>, the Supreme Court defines ‘personal liberty’ as “Personal liberty means freedom from physical restraint”. But the interpretation despite of clear the meaning of personal liberty narrowed the scope of Article 21. The personal liberty has more elaborate sense than only freedom from physical restraint. But in **Maneka Gandhi vs. Union of India**<sup>7</sup>, the Supreme Court took a step ahead to widened the scope of Article 21 and provides as “The Personal liberty given in Article 21 has the widest amplitude and covered a variety of rights related to the personal liberty of a person. Such a right could only be restricted by a procedure established by law, which had to be fair, just and reasonable, not oppressive or arbitrary”. It is the wider interpretation of the apex court of Article 21 that provides a dynamic approach towards the meaning of Right to Life and Personal Liberty. The Court emphasized the need to follow the principles of natural justice by the State while taking out the right of life and personal liberty. If any provision is made opposite to the Article 21 it must pass the test of the principles of fairness, just and reasonableness.

The use of word ‘Person’ in place of ‘Citizen’ expands the protection of the right to life to every person irrespective of his national identity. A citizen as well as an alien comes under the protective umbrella of Article 21.

The term ‘Deprived’ is used under Article 21. A person can claim protection under Article 21 only when such person is deprived of his right to life and personal liberty. The literal meaning of word deprived means ‘take away someone’s legal right’ or ‘injury to right’. The Supreme Court defined ‘deprived’ in case of **A.K. Gopalan vs. State of Madras**<sup>8</sup> as, Article 21 is attracted only in case of deprivation which means ‘total losses and that the said Article had no application in case of restriction upon the right to move freely’. The Supreme Court again provide a further explanation of word ‘deprived’ in case of **Ramcharan vs. Union of India**<sup>9</sup>, as to constitute ‘deprived’ there must e direct or tangible act that threatens the feelings of life of a person or member of the community.

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<sup>6</sup> AIR 1950 SC 27.

<sup>7</sup> 1978 AIR 597.

<sup>8</sup> Supra note 6.

<sup>9</sup> AIR 1989 SC 549.

## **VI. PROCEDURE ESTABLISHED BY LAW AND DUE PROCESS OF LAW UNDER ARTICLE 21:**

Article 21 provides right to life and personal liberty to all person but no right is absolute and there always an exception of every freedom. Same in Article 21 it is not absolute right which can be deprived according to the procedure established by law. The Constitution specifically used word 'procedure established by law' in place of 'due process of law'. The doctrine of Procedure Established by Law has a British origin. It limits the power in the hands of the judiciary hence provides a more restriction under Article 21 than due process of law. While the Doctrine of Due Process of Law is a part of the American Constitution that provides large power in the hands of the judiciary. The Due Process of Law checks the power of the State from making any arbitrary provision the is against the freedom under Article 21. According to this doctrine, the State cannot deprive any person from their right to life and personal liberty only by making any procedure by law. It means such law allow to deprive Article 21 when follow the just, fair and reasonable procedure that is termed as 'due process of law'. There is a long journey of the interpretation of both the term in relation to Article 21. At first the Supreme Court denied to use due process of law while a law provides a procedure for deprivation of the right to life and personal liberty.

In a very famous case **A.K. Gopalan vs. State of Madras**, the Supreme Court ruled that if the government takes away the freedom in according to the procedure established by law then it will not amount to a breach of Articles 14, 19 and 21 of the Constitution. The Supreme Court held that the expression "procedure established by law" in the Constitution of India has embodied the British concept of personal liberty rather than the American concept of "due process of law". It was a narrow interpretation of the Supreme Court of Article 21. But in 1978 the Supreme Court made a wider interpretation of the freedom given under Article 21 in **Maneka Gandhi vs. Union of India** case, this case overruled the A.K. Gopalan's case decision. The apex Court interlinked the freedom given under Article 21 with the freedom under Article 19. Both Articles held a interrelation with each other. The term 'personal liberty' has a wider meaning including many rights and those rights given additional protection under Article 19. The Article 21 and 19 are not watertight compartments as they have a wider scope. The Court held that State when make laws under Article 21 must comply the requirements under Article 19 as well. The most important thing that held by the Court is that the

Constitution of India inherit both concepts 'procedure established by law' and 'due process of law' that means any procedure of law for deprivation of rights under Article 21 must not be unfair, unreasonable or arbitrary. This case put a life in Article 21. It opens a door for wider interpretation of Article 21 that is justifiable to provide a freedom under this Article in true sense. After the judgement of the Maneka Gandhi's case Article 21 interpreted widely by Courts which makes a revolution in the area personal freedom.

## **VII. AMBIT OF THE RIGHT TO LIFE AND PERSONAL LIBERTY:**

The Supreme Court through Maneka Gandhi case starts a revolution in the interpretation of Article 21 through this today we get number of freedoms as a part of right to life and personal liberty. The Constitution in its original sense provides two specific freedom; i) Right to life and ii) Personal Liberty to all persons. But as Maneka Gandhi case said that Article 21 is not a watertight compartment it needs wider approach to established freedom of life and personal liberty in true sense. The language of the Article 21 provides a interpretation in the hands of judiciary to dig out the true sense of the article. The Indian Judiciary plays a significant role to give a dynamic approach to Article 21. With the passage of time a number of rights are joined as a part of right to life and personal liberty. The scope of Article 21 is very wide. Here we will not discuss every part of right to life and personal liberty but only discussed out of some of them important rights that become part of Article 21 in the following landmark decisions:

### **1. Right to Education:**

Education is one of the condition for a good or respectful life of a person. Education helps a person to create a good personality that is acceptable or respectable in the society. Without education a man is nothing but a animal. Originally the right to education provided under the directive principles of the state policy. But now it has become a separate fundamental right under Article 21A of the Constitution. It is the outcome of the judgements of the Supreme Court in the cases of **Mohini Jain vs State of Karnataka**<sup>10</sup> and **Unni Krishna vs. State of Andhra Pradesh**<sup>11</sup>, in which right to

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<sup>10</sup> 1992 SCC (3) 666.

<sup>11</sup> (1993) 1 SCC 645.



education held a fundamental right under Article 21 because it flows from the right to life. The Court held that right to life held in its ambit the right to primary education. In 2002 through 86<sup>th</sup> Constitutional Amendment Act a new Article 21A was inserted in the Constitution which states that “The State shall provide free and compulsory education to all children of 6 to 14 years in such a manner as the State, may be law determine”. Now, the right to education is a separate fundamental right under Article 21A.

## **2. Right to Live with Human Dignity:**

In India every person has a fundamental right to live with dignity. It is protected under right to life in Article 21. Primarily this right was not a part of Article 21 but it was added through the judicial interpretation.

In the case of **Maneka Gandhi vs. Union of India**, the honorable Supreme Court provided a new approach of Article 21. It was held by the Court that right to life is not a physical act of living but it includes within its ambit the right to live with human dignity and all that goes along with it.

In the case of **People Union for Democratic Rights vs. Union of India**<sup>12</sup>, the Supreme Court once again emphasized on the right to live with dignity. The Court held that if minimum wages are not paid to the workers in various Asiad projects, it would be a denial of the right to have a dignified life under Article 21 of the Constitution.

## **3. Right To Shelter:**

The facility of shelter is one of the bare necessity of a human being to live their life. In **U.P. Aawas Vikas Parishad vs. Friends Cooperation Housing Society Limited**<sup>13</sup>, the Supreme Court held right to shelter to be a fundamental right that is protected under Article 19(1)(e) and the right to life guaranteed under Article 21. It is duty of the State to provide houses to the poor people.

Further the Right to Shelter is a more elaborative way held in case of **Chameli Singh vs State of U.P.**<sup>14</sup>, in which a three judges bench of the Supreme Court held that the right to shelter is a

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<sup>12</sup>

<sup>13</sup> 1996 AIR 114.

<sup>14</sup> (1996) 2 SCC 549.

fundamental right of every citizen. This right should be read with Article 21 of the Constitution. The Court observed that:

“Shelter for a human being, therefore, is not mere protection of his life and limb. It is however where he has opportunity to grow physically, mentally, intellectually and spiritually. Right to shelter therefore includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation etc. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as human being”.

#### **4. Right To Privacy:**

As per Black’s Law Dictionary, privacy means “right to be let alone; right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned”. For the first time the question of right of privacy as a fundamental right came in the case of **Kharak Singh vs. State of U.P.**<sup>15</sup> In which seven-judge bench held that: “Although the majority found that the Constitution contained no explicit guarantee of a ‘right to privacy’ it read the right to personal liberty expansively to include a right to dignity”.

In a recent case of **Justice Puttaswamy vs Union of India**<sup>16</sup>, the nine-judge bench of the Supreme Court unanimously recognized that the right to privacy is a fundamental right guaranteed by the Constitution as a part of right to life and personal liberty under Article 21. The Court overruled the decision of Kharak Singh’s case. The Court defines ‘right o privacy’ which includes autonomy over personal decisions, bodily integrity as well as the protection of personal information. J. Chandrachud opined that “the privacy was not surrendered entirely when an individual in a public sphere. Further, it found that the right o privacy included the negative right against State’s interference as well as the positive right to be protected by the State”.

J. Chelmeshwar opined that, the right to privacy implied a right o refuse medical treatment, A right against forced feeding, the right to consume beef etc.

J. Bobde opined that, the consent was essential for distribution of inherently personal data such as health records.

Now, every person can claim right to privacy under Article 21. It is duty of the State not to interfere

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<sup>15</sup> 1964 SCR (1) 332.

<sup>16</sup> AIR 2017 SC 4161.

any personal matter of any person. There must be a line of personal and public sphere of a person and in such personal sphere a person has a right to live their life without any interference of others.

### **5. Right To Speedy Trial:**

There is no elaborate provision for the right to speedy trial in our Constitution. But the spirit of our Constitution is based on the principle of 'justice for all'. It means justice not to be denied to anybody on any ground. The delay in getting justice is equal to injustice.

The *Hussainara Khatoon v State of Bihar*<sup>17</sup>, is a landmark case, decided on 9 March 1979, which provided a broad definition of Article 21 and stated that a speedy trial is a fundamental right of every citizen. It is the most popular case which discusses the human rights of prisoners in India. The honorable Supreme Court ruled out that the State should guarantee free legal aid and a speedy trial to administer justice. Free legal aid means no one is prevented to get justice on basis of their financial or other incapacities. The free legal aid and speedy trial put life on the justice system. It ensures trust on the justice system. This case was filed by the Public Interest Litigation in the honorable Supreme Court after a report was published in the Indian Express newspaper in 1979 about the detention of under-trial prisoners in the Bihar jail. Few of these under-trial prisoners were serving prison terms for a longer period, in fact, longer than their actual detention period. As long the trial is delayed the thrust of justice is increased. There is a very famous maxim which is perfectly described the problem as "Justice delayed is justice denied".

### **6. Right To Clean Environment:**

The fresh and clean environment is very essential for existence of life in the earth. The right to clean environment is part of right to life as because a life doesn't exist in an unfavorable environment. The Right to clean environment is rooted in the 1972 Stockholm Declaration, known as the Magna Carta of human environment. The Right to clean environment through 42<sup>nd</sup> Constitutional Amendment Act of 1976 incorporated in the form of Article 48A and 51A (g) as a directive principles of a state policy and fundamental duties respectively. The judiciary played a very significant role for protection of environment. In a very famous case of environmental matter **Vellore Citizens Welfare Forum vs.**

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<sup>17</sup> AIR 1979 SC 1369.



**Union of India**<sup>18</sup>, a Public Interest Litigation draw attention of the Supreme Court towards environmental degradation due to irregular activities of tanneries by discharging unfiltered waste in the soil in Tamil Nadu. These activities caused degradation of agriculture subsoil. The Court held that Right to clean environment includes under right to life. Right to life includes variety of rights such as protection of wildlife, forests, ancient monuments, fauna and flora.

In **Subhash Kumar vs. State of Bihar**<sup>19</sup>, the Supreme Court the right to life under Article 21 includes the enjoyment of pollution free water and air for full enjoyment of life. A person has a right under Article 32 to approach the Supreme Court for removing environmental pollution.

## VIII. CONCLUSION:

We can say without any kind of doubt that Article 21 is the most essential right of a person that guarantees every security to a person without which their life have no meaning to exist. It explicitly provides right to life and personal liberty which was more elaborated concept. In a single word 'life' has a very wide meaning in itself. The right to life and personal liberty is not restricted in a particular definition that bind them with a specific meaning. The journey of the development of Article 21 is very fascinating that shows the significant role of our judiciary. The Judicial approach towards Article 21 made right to life and personal liberty more meaningful and real right. The Supreme Court through Maneka Gandhi case starts a revolution in the interpretation of Article 21 through this today we get number of freedoms as a part of right to life and personal liberty. All others rights become meaningless without the protection of right to life that is the bedrock of all fundamental rights. All rights are exists only when a person has a life and Article 21 provides security to the life of a person that clearly shows its greater importance. As since the enforcement of the Constitution the ambit of Article 21 is positively expanded and time to time through various judicial pronouncements many other rights that are essential to make a person life meaningful became part of this right. Here the judicial activism played a crucial role in the development of the concept of right to life and personal liberty. Judicial wider approach strikes down the narrower meaning of Article 21. A group of rights becomes the part of right to life and personal liberty by the positive approach that fundamental right to life and personal liberty is not just a right that merely give security for bare survival of a person but also gives security

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<sup>18</sup> (1996) 5 SCC 647.

<sup>19</sup> 1991 SCR (1) 5.

to a complete and meaningful life. There is long journey of interpretation of Article 21 and this journey does not end. There is still a long journey ahead of Article 21.

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