

A Comparative Analysis: Islamic Law and Human Rights

Dr. Shahla Teshseen

¹Assistant Professor, Department of Political Science, University of Karachi

E-mail: dr.shahla80@gmail.com

Abstract: The concept of human rights has been intermittently underscored in Islamic law, offering guidelines for adherence. Similarly, Western human rights discourse addresses both individual and collective rights across diverse social, political, and cultural dimensions. Notably, the evolution of the Western human rights concept, with its roots in the aftermath of the World Wars, contrasts with Islam's historical emphasis on the rights of both men and women, positioning it as a prototype for fostering a welfare society. This research article seeks to conduct a comparative analysis of international human rights law and Islamic law. By engaging with various scholarly debates and identifying commonalities between the two legal systems, the study concludes that, while both frameworks advocate for human dignity and freedom, Islamic law is positioned as the ultimate and unchanging revelation from the Almighty. In contrast, the Western understanding of human rights is viewed as potentially malleable over time, challenging its claim to universality. This perspective suggests that Islamic law, in promoting human rights, is considered more resolute and universally applicable compared to the Western concept, which may be subject to alterations.

Key Words: Human rights, Islamic Law, International human rights law, Universal Declaration of Human Rights, Muslim World

Introduction

The genesis of civilisation in the retrospect reveals the fact that the phenomenon of human rights has at times received much attention among scholarly communities in the world. This particular issue has always been explicated and propagated by the intellectuals and champions of human rights, respectively (Peicu, 2019). Philosophers and sages of the past had debated on the issue at a great length, and perhaps all of them had left a manifesto or a code, which determines the significance of the human rights issue. Even a cursory look at the stipulations of Islamic ideology reveals that the two primary sources, Quran and Sunnah, have emphasised on every important aspect of human rights in detail. As a religion of peace and tolerance, Islam has always stood for the provision of basic human rights to the individuals with freedom and tolerance (Chishti, 2012).

From centuries after the prevalence of Islam as a global religion, the West in particular has proceeded to deal with the individual and collective rights of human beings with regard to political, economic and socio-cultural aspects. It is important to note that the phenomenon of 'human rights' is the corollary to 'natural rights' that emerged in between the two major world wars. Afterwards, it accelerated the process of development and subsequent revolution of the 'Universal Declaration of Human Rights (UDHR)' in 1948. Thus, human rights echo as the precursor to a welfare society in the contemporary era (Fahlevy, 2020).

Thus, taking these perspectives into consideration, this research article attempts to comparatively analyse the concept, development and implementation of international human rights and the ensuing laws with

the traditional Islamic law. In particular, the concepts of religious freedom, women's rights, socio-economic living of people both in the Muslim and non-Muslim world, and state practices have been focused on.

Emergence and Development of Human Rights in Islamic Law

Besides being a religion, Islam is also a complete code of life. It stipulates political structures, law concepts, ethics, economy, social, logic, and behaviours. It is the foremost religion of the world which represents a comprehensive and complete idea of human rights. The concept of human rights in Islam is based on the notion of equality and human dignity of all mankind. The Almighty had made human being superior to other species, and also in legal, moral, religious, and socio-political fields (Dorraj, 2011). In reality, the best charter on human rights has been rendered to the Muslims, while the last sermon of the Holy Prophet provides with a thorough guidance for leading an ideal life. Unlike the man-made rights that are conferred to parliaments and kings, these rights are universal, unchangeable, sacrosanct, and inviolable. Thus, in Islamic law, human rights have been bestowed on the humankind, where the state has a limited role to play in granting such rights (Chishti, 2012).

Literature Review

Understanding Human Rights Concept in the West

The term 'human rights' is relatively new in the West, which came to parlance particularly after the World War I, with the formulation of 'League of Nations (LON)', which was subsequently replaced by the 'Universal Declaration of Human Rights (UDHR)' in 1945 under the auspices of the United Nations. The perception of the west with regard to Human Rights

Law generally emphasis on the basic political, economic and civil rights of people. However, the question of what the 'right' actually means it itself deemed as controversial and subject to debate as far as the western world is concerned (Rehan, 2013). While some rights appear to be enforceable, others seem to have a possible future patterns of attitude and behaviours. Those rights which are regarded to be binding are commonly known as 'fundamental rights'. Nevertheless, they may still be altered, restricted or changed under special circumstances by the state of government (Fuller, 2018). Thus, the enforcement of human rights in west is neither universal nor having divine elements. Rather, they were directly constituted by the theory of 'natural law' and consequent development of the society.

Parallels between Islamic and International Human Rights Law

There are certainly some major differences in terms of scope between the international human rights law and Islamic law. However, this does not establish a general antithesis between the two. Though Islamic law is considered to be not uniformly executed in all Muslim counties, yet Islamic norms and principles make up the compendium of a legitimising criteria for legal-cultural norms in majority of the Muslim States (Saeed, 2018). Besides, since substantive justice and morality are significant principles which are applicable to the ideology of Islamic law as well as that of the International human rights, the justification principle requires to be associated in proposing practical synthesis of the conceptual differences between them.

The fundamental question in this regard is that how face can Islamic Law be interpreted in the light of international human rights law and vice versa? There is surely a need for a congruence between the two extremes with the provision of a substitute perspective to the relationship between the two forms of law (Olayemi, Hamzah & Hidayah, 2015).

Influence of the Muslim World in the International Sphere

Although the theoretical debates surrounding the foundation of human rights may be complex to settle, the inevitable fact is that human rights under the aegis of international law hold no prerogative of a single nation; rather, they are regarded as a universal affair the pertains to the well-being and dignity of all human beings. Moreover, while the intermittent abuse of human rights in the Muslim world is unacceptable particularly under the pretext of socio-cultural differences, the influence of Muslim States in accomplishing a peaceful coexistence within the international sphere does allow them to question a universal approach vis-à-vis the Islamic Law (Moeckli et al., 2022). Since human rights can best be attained through the enforcement of domestic laws of states, acknowledgement of relevant Islamic law principles and norms will certainly enhance the realising of

objectives set by the international human rights in the Muslim world that either partly or fully apply Islamic law as the State law.

Arguments Centred on Human Rights from an Islamic Perspective

In a traditional manner, a raft of difficulties confronts the debate of human rights from an Islamic perspective. On one side is the prevalent domination of the 'Western' perspective of human rights, which establishes a tendency of using values established by the West in every discourse on human rights (Peicu, 2019). While it can be conceded that the influence of the formulation of standards in the international human rights emerged from the west, the same cannot be claimed of the holistic concept of human rights, which is conceivable with distinct human civilisation. Most often, some of the criminal punishments under Islamic law are cited as lack of provision for human rights by the Western analysts as evidence. This specific part of the western notions is generally termed as 'Islamophobia', which has negatively affected the views about human rights in Islamic law (Kayaoglu, 2022).

The view that Islam as a congruence with the human rights is most sustainable as far as the principles of Islamic law are concerned. The methods and sources drawn out from it contain common principles of human welfare and good governance that vindicate modern ideals of international human rights. Protection of human life, respect, human dignity, and others, are all the central tenets inherent in the Islamic law (Shari'ah). Besides, the view that truly asserted human rights can be fully realised only under the aegis of Islamic law is somehow exclusionist and accounts for the same egocentrism of the exclusive Western notion towards human rights (Dorraj, 2011). Verily, in its true essence, Islam is not egocentric when it comes to temporal matters; rather, it encourages compassion and cooperation for the accomplishment of the common good towards humanity. Also, the religion encourages sharing of perception and interaction. In this regard, it has been observed by that 'Islam calls for human equality, social justice, and submission to the Almighty and his will and directions, which requires profound and sharpest sense of both individual as well as collective responsibility, besides the complete absence of egoism and human arrogance, both in internal and external behaviour (Gunn, 2020).

Furthermore, the perception that the regime with regard to international human rights is more like an imperialist agenda, which is not specific to the Islamic discourse on human rights. In such a discourse, it is common for all developing nations or states. This ensues from fear and repression of neo-colonial system, and is an impact of the retrospective colonial experience of most of the nations which had remained under the shackles of western imperialism (Oh, 2011). This fear is often consolidated by the insistence from the Western nations towards defining human rights

solely within their own perspective, without considering the understanding and contribution of other cultures.

If one endeavours to understand the international human rights framework strictly as a humanitarian responsibility for individual protection against the misuse of state power or authority and for the accentuation of human dignity, then the notion that Islam is not compatible with it would result in an irrational conclusion. The interpretation of Quranic verses and other sources depicts that the preservation and enhancement of human dignity has always been at the pinnacle of Islamic legal and political theory (Olayemi et al., 2015). While there may be some aspects where conceptual differences exist between the international human rights law and Islamic law, this does make them compatible whatsoever. The legal principle is itself a fundamental principle under Islamic law in which all human actions are permitted except those which are clearly enshrined and forbidden by the Shari'ah. This means that each human has an inherent right to the things except those that are particularly forbidden. To say that human beings have only obligations to be complied towards the Almighty and no individual rights expresses a principle of legality, which makes life relatively difficult and restrictive. That remains in sharp consistency with the overall objectives of Shari'ah, which is to promote human welfare (Karim & Murad, 2011).

Deciphering ICCPR AND ICESCR and their Compatibilities with Islamic Law

In order to determine the scope of compatibility between the international human rights law and Islamic law, there is a need to examine some provisions of the ICCPR (International Covenant on Civil and Political Rights) and one particular of the ICESCR (International Covenant on Economic, Social and Cultural Rights). Besides, references to the jurisprudence of HRC (Human Rights Committee) alongside those of the ESCR (Committee on Economic, Social and Cultural Rights) are necessary to examine too.

When it comes to ICCPR, the Member States of the Covenant undertake 'to ensure' and 'to respect' human rights and their appropriate and effective implementation, respectively, as guaranteed in the covenant, sans any kind of distinction of discrimination. In the same vein, the ICESCR showcases the positive law on social, economic and cultural rights under the United Nations' human rights objective. Besides, under Islamic law, the parliamentary or, in particular, the legislative power of states is limited (Abdulraheem, 2017). It is considered by the Islamic jurists that any state legislation that makes lawful what has been forbidden by the Almighty or forbids what he has made lawful is tantamount to exceeding the restrictions of human-induced legislation under Islamic law. For example, while ICCPR was considering the periodic report of

Sudan, the representatives of the country stated before HRC that: The Parliament of Sudan had decided to go against the abolition of the death penalty. It was the continued arguments from the Sudanese jurists that the very punishment was compulsory for certain types of offenses under Islamic law (Muhammadin & Mohd, 2019). To infer, it is worth examining whether the Shari'ah law contradicts the decision of the Sudanese parliament or the provisions of the Covenants with regard to fundamental human rights.

Equal Rights of Men and Women

Islamic law recognises equality of both the men and women as individuals; however, it does not assert equality in terms of roles between them, particularly in household relations. Under the Cairo Declaration on Human Rights in Islam, women are terms equal in terms of duties to perform, financial independence, welfare of family and one's own civil entity. In contrast, Fuller (2018) is of the view that this Declaration falls short of the guarantee of equality to the enjoyment of all political and civil rights as enshrined in the ICCPR. However, it is necessary to note that Islam recognises equality of women not on the basis of equivalence, but in terms of equality solely. Although both the genders are considered to be equal, they may not imply total identity of equivalence in terms of roles, especially within the family. So, it can be inferred that while the right to equality between men and women is both natural as well as reasonable, it cannot be extended to a transformation of functions and roles. This establishes an exemplification of differences in gender roles under Islamic law. Although annotations from the UN on equal rights recorded an appreciation through the draft of the Article 3 that 'it is difficult to assume that legal traditions and systems could be overridden, that conditions that appeared to be inherent in the growth of families and, eventually, organised societies could be changed, or that stipulations on the articles of religion and faith could be moulded or altered (Ignatieff, 2017). Presently, it appears that HRC is convinced to push through a universal form of complete equality of both men and women under the Covenant.

When it comes to the cases of harassment and punishment of women, the 1993 Committee of the Islamic Republic of Iran observed that those women do not adhere to the strict dress code, do not feel the need to obtain their spouses' permission to leave abode, show discriminatory behaviour for compensated payments to the families of murder victims, or snub prohibition against partaking in any public sports, are all not totally compatible with the Articles of the ICCPR, particularly Article 3.

The Right to Religion, Conscience and Freedom of Thought

In spite of diversity in terms of religious and ideological learning within the global community as well as since the United Nations was founded, there

has been a recognised need for a collective acceptance in the contemporary society of the basic concept of the right to freedom of religion, conscience and thought. The same form of right is contained in the Article 18 of the ICCPR, while that of UDHR provides with the same right (Rehan, 2013). The terms of Article 18, particularly 'this right involves freedom to change one's belief or religion' is in sharp contrast principally from Muslim States like Saudi Arabia, Egypt, Afghanistan, and Yemen, which have emphasised on its abolition. Due to calls for deletion of such terms, a compromise was reached in the change of language to 'adopt a belief or religion of one's choice'. Nevertheless, the Article was adopted with serious reservations.

The trend among modern Islamic scholars with regard to the issue of religious freedom is mostly towards stressing on Quranic provisions. As a result, the Muslim is bound by his faith in which he believes, and he can present his claims nor by coercion or dogmatism, but through true intellect. Besides, the acceptance of the status of non-Muslims within the Muslim state denotes that Islamic law is not the proponent of forced conversion to Islam (Tahir, 2013). It can further be evinced by Article 10 of Cairo Declaration, which states that 'it is forbidden to exploit the main for his ignorance or poverty or coerce him to exercise any form of compulsion or forced conversion'. However, it has been stressed on numerous occasions that though nobody has a right to force anyone to embrace Islam, there is a collective duty to monitor and prevent anyone who seeks to go against anyone's freedom of religion or belief (Kayaoglu, 2022).

Right to Freedom of Expression and Opinion

When it comes to right to freedom of expression and opinion, it has been long recognised as one of the utmost rights of man. The Quran itself holds great importance for all other freedoms and rights. It is stipulated on numerous occasion that the right to hold expression, whether being internal or external, is absolute. However, while drafting Article 19 of UDHR, it was applauded that while freedom of expression appeared to be a precious heritage, such could turn out to be a dangerous instrument against personality of others and public order at large (Kamali, 2014). Therefore, while such a right was made as precise as possible in order to cover the seeking and imparting of information, it carries with itself special responsibilities and duties, and it also subject to certain restrictions enshrined in the ICCPR.

On the other hand, under Islamic law, the right to freedom of expression is the birth right as asserted by the Quran. Moreover, it has been observed by Dorraj (2021) that it is generally recognised that in Islam, freedom of expression is complementary in many ways to freedom of religion. Also, it is a logical consequence and an extension to the freedom of belief and conscience validated by Shari'ah. While it is affirmed

in Islamic law that the Almighty has given mankind the power and freedom to express, it also directs him to be always modest in speech. Thus, in Islam, the right to freedom of expression is not absolute but have certain restrictions regarding modest expression or speech.

Research Methodology

This study adopts a secondary qualitative analysis approach to delve into the complex relationship between international human rights law and Islamic law. The research design involves a meticulous examination and interpretation of existing literature, scholarly debates, legal texts, and case studies to uncover insights into the compatibility, disparities, and potential synthesis between these two legal systems.

In the first phase of data collection, an extensive literature review is conducted to retrieve and scrutinize scholarly articles, books, and historical documents that trace the historical development of human rights in the West and the underlying principles of Islamic law. This encompasses identifying relevant sources that delve into the historical context, philosophical underpinnings, and controversies surrounding human rights in both Western and Islamic perspectives. The study then proceeds with a comparative analysis, extracting pertinent information from legal texts, academic articles, and case studies to analyze the parallels and differences between Islamic law and international human rights law. The aim is to identify key principles, norms, and debates within both legal systems, facilitating a comprehensive comparative analysis.

Analysis and Discussion

Understanding the Debates about the Compatibility of International Human Rights with Islamic Law

One of the fundamental and inevitable challenges the Islamic law faces today is the issue of comparison between it and the international human rights law. The concerning debates surrounding comparison between both have their increased significance among both the Muslim and non-Muslim societies. The scholarly arguments addressing such a compatibility between the two legal systems is specifically important, at least, for the current socio-political environment vis-à-vis the rise of 'Islamophobia' in the West, be it the issue with regard to freedom of religion, veil (Hijab) wearing, linking terrorism with Islam in the West, and serving halal meet in hospitals and prisons in Denmark, France, Switzerland, and Norway (Al-Jabri, 2012).

Regrettably, hitherto, Islam has been presented as incompatible and inherently violent when it comes to peaceful coexistence and civility. Modern issues concerning human rights are considered as a direct threat to the concepts of human dignity and democracy. Some of the Western scholarship is adamant in believing that Islamists are hostile to the implementation of democratisation and human rights

in Muslim states. On the other hand, some conservative-cum-fanatic religious communities existing in Muslim countries are suspicious to human rights as a Western and, hence, an alien concept. As evinced by Kayaogu (2022), the two legal systems are not entirely irreconcilable. Since the last century, a raft of studies has been produced to address such a lack of reconciliation from both sides and to pursue some sort of nexus and consensus between the two systems. Therefore, there is a need to examine relevant conceptual issues revolving around the nature and concept of human rights in Islam and that in the International law. There is also a requisite need to analyse whether there is any sort of common ground between the two legal systems, and if there is any apparent area where conceptual differences exist between the two systems.

A myriad of works that emphasise on the relationship between human rights and Islam have been published at the turn of the Cold War. For instance, it is contended by Gunn (2020) that modern-day endorsement by Muslims regarding international human rights is more evident than real. It is due to one notion that human right pronouncements by Muslim communities have been minimised in terms of qualification, which is rooted down in Shari'ah. In the same vein, it is echoed by Saeed (2018) that historical capacity of Shari'ah to provide with more special rights to religious minorities and women is within the framework of international human rights. Besides, some studies call for the importance and possibility of emerging a human rights tradition with the ambit of traditional Islamic system by aiming to overcome contradictions with regard to Shari'ah rules and those existent within the international human rights framework.

Scholarly Debates Surrounding the Comparison between International Human Rights and Islamic Law

Since the twelfth century, the western world in particular took the concept of human rights, which was then regarded as one of the chief dimensions of an individual's organised life. It has taken a few centuries to begin from the famous 'Magna Carta' of 1215 to the 'Universal Declaration of Human Rights (UDHR)' in 1948. Prior to the movements regarding human rights, the West was indulged in the degraded form of life (An-Na'im, 2021). Thus, the concept of human rights in the West grew gradually and went through a painful process, particularly after the two famous revolutions (French and American Revolution) (Ignatieff, 2017). On the other hand, the concept of human rights in Islamic law is as old as human rights. It is more relevant and comprehensive for all times and people to come. It is this religion alone which securely systematises and safeguards human rights. So, it can be inferred that while human rights in other systems including the West are contingent, while they are deemed to be absolute in Islam (Tahir, 2013).

Unfortunately, in modern times, the western media depicts Islam as the religion of hate and terror merely by showcasing anti-religious incidents and elements that occur in both the Muslim as well as non-Muslim world. As it is acknowledged that the human understanding is limited, all the human rights statutes within the ambit of international law are manmade. Thus, due to a limited level of intellectual faculty, such laws can lack flexibility and wider expansion. For instance, when it comes to the UDHR, many Muslim countries consider some of its articles as hostile to the Muslim creed and in sharp contrast to the human dignity (Rehman et al., 2021). Even at certain places, it is conceded that the Western world has so far failed to put forward a comprehensive and concrete framework on human rights. Numerous rights have been rendered to humans by the Islamic law but a scare number of them are explicated in the UDHR, for instance (Abdulraheem, 2017). As evinced by the House of Commons of the United Kingdom in one of the occasions, 'the European Union is committed to respecting human rights and is an advocate of human rights in both its internal as well as external affairs, yet it lacks a coherent or comprehensive policy on human rights in either case' (Fuller, 2018). On the other hand, human rights within the ambit of Islamic law are divine in nature. It is said in the Holy Quran, 'Verily! We have honoured the children of Adam and carry them on the sea and land, and have rendered good things for them with a market preferment'. Thus, every Muslim will have to recognise, accept and enforce the divine rights from the Almighty (Kamali, 2014).

While the solemn protection in the international human rights law is in a documented form, which is free from its practical implementation, they are only conferred on paper and a mere expression of pious hope, as argued by Oh (2011), they have no force behind them, no sanction either moral or physical to enforce them. It is also important to note that the West does not firmly find the international human rights law as suitable as the contemporary global society is gliding by, while the fundamental rights in man-made universal instruments are ensured and protected for the sake of complacent satisfaction rather than abiding by the rules set by their forefathers (Sofi, 2016).

Correlative Methodologies between Two Regimes Vis-à-vis Human Rights

From the above comprehensive analysis, there is a partial, if not complete, denial of the incomparability between the international human rights and Islamic law; rather, there are some common grounds where in theory and practice, the enjoyment of personal rights hold compatibility to some extent. However, this does not cover some of the areas of difference in both its scope and application, but instead, permits a positive basis for bridging those differences by developing correlative methodologies between the two regimes (Chishti, 2012). With this perspective, encouragement of promotion and realisation of human rights in Muslim

countries requires development of consideration of Islamic values especially when dealing with those states that adhere to the Islamic law. This can only be made possible by adopting the margin of appreciation doctrine on moral issues that relate to ethic-religious including family norms.

It appears that the Muslim countries ought to be provide with some margin of appreciation with regard to not equal roles of men and women in family relationship, while there could be an assertion of involvement of both the genders when it comes to discriminatory treatment on other social and economic rights (Fahlevy, 2020). Though there may be a possibility that the factor of unanimous consensus among all the states would ensue problems regarding the application of margin of appreciation doctrine, some comparisons could be made from the two different systems where common consensus would gradually, if not instantly, develop.

With regard to the right to freedom of religion, conscience and thought, in addition to freedom of expression and opinion, it can be noted that such rights have limitation and, therefore, are not absolute both in the European legal regime as well as that in the Islamic law. One important component in the determination of limits to the margin of appreciation is the main aim that the limitation, which is in question, is intended to pursue. (Peicu, 2019) Thus, States may be allowed for a wide margin of appreciation to protect morals on the notion that this holds variation between different Muslim countries as well as the Member States of the above conventions.

Conclusion and Recommendations

There is no denying the fact that both Islam and international human rights law promotes human rights and individual freedom. Yet, both are variable in terms of having different perspectives especially when assessing equivalence of rights to both men and women. While western liberal thought perceives human rights from a democratic secular perspective, Islam treats it from the humanity perspective as the servants of Almighty. While the laws protecting human rights in the west can be altered or replaced if need be, the Islamic law is the final revelation from God and only he has the supreme control to change it. Despite there are clear difference of scope between the international human rights law and Islamic law, it does not establish a general antithesis between the two. Nonetheless, the relationship between human rights and religion is complex, and there will remain a normative competition since both the laws assert a worldwide view.

In light of the above exhaustive discussion, a blueprint of recommendations in relation to the research topic is undermentioned:

Promotion of Dialogue and Understanding

Considering the sensitive nature of the debates around the compatibility of international human rights and Islamic law, it is recommended that efforts be directed towards fostering a constructive dialogue between scholars, policymakers, and religious authorities from both Western and Muslim-majority countries. This dialogue should aim at understanding the nuances of each legal system, dispelling misconceptions, and seeking common ground where possible.

Exploration of Common Ground

In light of the identified areas of compatibility and commonality between international human rights and Islamic law, there should be a concerted effort to explore and emphasize these shared principles. Initiatives could include scholarly publications, seminars, and conferences that highlight instances where human rights principles align with Islamic values, especially in protecting individual rights and dignity.

Cultural Sensitivity and Margins of Appreciation

Acknowledging the cultural diversity among Muslim-majority countries, it is recommended to adopt a flexible approach that recognizes the importance of cultural and religious values in shaping legal norms. The concept of "margin of appreciation" could be applied, allowing states some flexibility in implementing human rights principles while respecting core values. This is particularly relevant to gender roles within the family where a nuanced approach might be necessary.

Legal Reforms and Harmonization

Encourage Muslim-majority countries to engage in ongoing legal reforms that align domestic laws with international human rights standards. This may involve a careful examination of existing laws that may conflict with human rights principles, with a focus on achieving a harmonized legal framework that respects both international norms and Islamic values.

Capacity Building and Education

Promote educational programs and capacity-building initiatives targeting both legal professionals and the general public in Muslim-majority countries. This could include workshops, training sessions, and educational materials aimed at enhancing understanding of human rights principles and their compatibility with Islamic teachings.

Incorporation of Islamic Ethics in Human Rights Discourse

Encourage scholars and practitioners to incorporate Islamic ethical principles into the broader discourse on human rights. This may involve developing frameworks that elucidate how Islamic values can enhance the understanding and implementation of

human rights, emphasizing the complementary nature of these two perspectives.

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