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## WORKPLACE DISCRIMINATION IN THE LGBTQ+ COMMUNITY: LEGAL STRATEGIES FOR INCLUSIVITY

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### ABSTRACT:

Discrimination against LGBTQ+ people at work is still a big problem that goes against the main ideas of equality, dignity, and non-discrimination in today's job market. Although the general awareness of LGBTQ+ rights among people worldwide increased, and the law acknowledges it, LGBTQ+ individuals still experience systemic discrimination in employment, salary, and promotion opportunities, as well as the culture at work. The current paper critically examines the nature and extent of discrimination of LGBTQ+ individuals at the workplace, with a particular focus on the Indian legal framework and how it has evolved due to the constitutional interpretation and judicial activism. The paper will analyze key provisions in the constitution namely, Articles 14, 15, 19 and 21 that guarantee equality, non-discrimination, freedom of expression and the right to a dignified life. Cases such as *Navtej Singh Johar v. Union of India*<sup>861</sup> and *National Legal Services Authority v. Union of India*<sup>862</sup> are referred to illustrate how significant judiciary is in acknowledging sexual orientation and gender identity as fundamental rights. The paper also looks at the legal protections offered by the Transgender Persons (Protection of Rights) Act, 2019, and how well they work to stop discrimination at work.

The study also looks at the global perspectives, i.e. the norms set by the International Labour Organization and the United Nations, to enable a comparative analysis of workplace inclusivity. The paper identifies key areas where enforcement, the attitudes of the people, and the law fail particularly in the case of discrimination of sexual orientation. The paper ends up proposing a multiplicity of legal and institutional strategies, including extensive anti-discrimination legislation, changes in workplace policies, grievance addressing mechanisms, and awareness-raising programs, all with the goal of fostering inclusiveness. It concludes that as much as legal recognition is an essential first move, continued implementation and cultural change is required to achieve substantive equality of LGBTQ+ individuals in the workplace.

Key words: LGBTQ+, Individuals, Workplace, Discrimination.

<sup>861</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>862</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

## Introduction:

The contemporary workplace is not only the site of carrying out business but also the site of coming together of basic rights, identity and dignity. Still, it is not always fair and discriminatory at work in the eyes of many members of the LGBTQ+ community. Discrimination in the workplace can be very difficult to detect since it occurs in the manner in which the firms are established, how they recruit the individuals and how they relate with one another on a day to day basis. This makes it harder to find and fix the problem. The LGBTQ+ community remains marginalized due to discriminatory employment policies and absence of policies that are accommodating. This impacts on their personal and professional development.

Historically, stigma and cultural conservatism have contributed to the attitude of society in India towards sexual orientation and gender identity. Legal progress has been more important in the last few years, but acceptance in the workplace has not kept up. Transgender rights and identity came into the limelight with such judicial precedents as National Legal Services Authority v. Union of India.<sup>863</sup> Navtej Singh Johar v. Union of India<sup>864</sup> was also crucial in the sense that it ensured that all people, regardless of their sexual orientation had dignity, privacy and equality. These determinations have transformed the understanding of what is meant by constitutional morality and have provided the possibility of larger debates regarding inclusiveness.

Although these are good, legal principles in the workplace are significantly deficient in mechanisms to translate them into practice. Not all organizations have clear anti-discriminatory policies, and employees might not know their rights, and/or they might be afraid to pursue redress being afraid to lose their jobs or be socially ostracized. This disjuncture between law and practice

underlines the necessity to adopt a broader strategy.

This paper is an investigation of how legal frameworks coupled with institutional reforms and awareness campaigns can be instrumental in creating inclusive workplaces. It tries to examine not just the legal protections that can be used, but also the practical tactics that must be put in place to make equality a substantive achievement in day-to-day employment settings.

Moreover, the issue of inclusivity of LGBTQ+ people in the workplace should be addressed within the context of the social justice and human rights. Employment is a source of livelihood, identity, dignity and social involvement.

## Conceptual

## Framework

A conceptual framework helps to give a theoretical basis to understanding the workplace discrimination against LGBTQ+ individuals and the legal strategies that need to be used to work on these cases. It explains major concepts and establishes connections among them and puts the problem in context within larger principles of equality, human rights, and social justice.

### A. LGBTQ+ Identity.

LGBTQ+ is an inclusive term that includes a diverse collection of identities such as lesbian, gay, bisexual, transgender, queer, and other gender and sexual minorities. The identities are associated with:

- Sexual orientation - emotional or physical attraction.
- Gender identity- the inner feeling of gender in an individual.
- Gender expression - external demonstration of gender.

These identities have been established as natural and inseparable properties of personality and this has been approved in courts like National Legal Services Authority v. Union of India.<sup>865</sup>

Workplace discrimination is a subject of interest,

<sup>863</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>864</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>865</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

as it manifests in various forms. Workplace discrimination is any form of discriminatory treatment on the basis of identity that has a significant impact on the conditions or employment opportunities. It includes:

- Direct discrimination - open exclusion or prejudice.
- Indirect discrimination - disproportionately affected neutral policies.
- Harassment - offensive or hostile working environment.

Systemic discrimination: institutional processes of inequality.

This discrimination breaches the concept of substantive equality discussed in *Navtej Singh Johar v. Union of India*.<sup>866</sup>

3. Equality and non-discrimination  
The framework is based on:

- Formal equality - equal treatment before law.
- Substantive equality - responding to structural inequalities.

Indian constitutional provisions (Articles 14, 15 and 21) provide an incentive towards a shift towards substantive equality, to real and effective inclusion as opposed to formal recognition.

4. Human Dignity and Autonomy.  
One of the essential constitutional values is dignity. It includes:

- Right to identity
- Right to privacy
- Freedom of self-expression

In the case of *Navtej Singh Johar v. Union of India*<sup>867</sup>, the Supreme Court stressed that deprivation of identity is a loss of dignity.

5. Intersectionality  
LGBTQ+ persons can experience several levels of discrimination due to:

- Gender
- Caste
- Class
- Religion

This notion emphasizes that the discrimination is not a homogenous phenomenon and should be addressed with delicate legal solutions.

6. Legal Inclusivity  
Legal inclusivity is the inclusion of protections of LGBTQ+ people in laws and policies. It involves:

- Anti-discrimination legislation
- Affirmative action
- Workplace safeguards

One such Act, albeit narrow, is the Transgender Persons (Protection of Rights) Act, 2019.

7. Organizational Inclusivity  
In addition to law, inclusivity needs:

- Inclusive workplace policies
- Diversity training
- Equal benefits and opportunities

Organizations are major players in legal norm translation into practice.

8. Relationship and Law and Society.  
The model acknowledges an interactive connection:

Social attitudes are determined by law. Social change is the impulse of legal reform. Constitutional morality can transform the societal norms as seen in such a judicial ruling as *Navtej Singh Johar v. Union of India*.<sup>868</sup>

This theoretical framework incorporates the law and human rights values, as well as social realities, to comprehend discrimination toward LGBTQ+ in the workplace. It points out that involves inclusivity is not just a matter of legal recognition but also structural and cultural change in the workplaces and society.

### Study Objectives.

The current study will seek to analyze the discrimination of LGBTQ+ people in the workplace and determine effective legal approaches that can be used to ensure inclusivity. The targeted objectives include:

1. To examine the nature and types of workplace discrimination of LGBTQ+ people, such as direct, indirect, and systemic discrimination.
2. To investigate the constitutional provisions in India, specifically Articles 14, 15, 19, and 21, in protecting the rights of LGBTQ+ individuals at the workplace.
3. To examine the effects of judicial

<sup>866</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>867</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>868</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

decisions, particularly the case *Navtej Singh Johar v. Union of India* and *National Legal Services Authority v. Union of India*<sup>869</sup> on equality and acknowledgment of LGBTQ+ rights in the workplace.

4. To determine the efficiency of statutory measures, such as the *Transgender Persons (Protection of Rights) Act, 2019*, in curbing employment discrimination.

5. To determine gaps and shortcomings in the current legal and institutional system concerning the rights of LGBTQ+ people in the workplace.

Types of Discrimination LGBTQ+ People encounter at the workplace.

In the workplace, LGBTQ+ people face numerous types of discrimination which can be overt and in the background. These shapes, in addition to limiting career prospects, also impact mental health and self-respect.

1. Direct Discrimination  
It happens when a person is treated unjustly directly due to his/her sexual orientation or gender identity.

- Denial of employment of qualified applicants.

- Dismissal following exposure of identity.

- Denial of promotions

These are actions that are against equality principles that were applied in *Navtej Singh Johar v. Union of India*.

2. Indirect Discrimination  
Neutral workplace policies can be disproportionately disadvantageous to LGBTQ+.

- Binary dress code of gender.

- No gender-neutral restrooms.

- Benefits limited to heterosexual spouses

These policies though not explicit, foster exclusionary situations.

3. Harassment and Hostile Work Environment

- Slings, insults or humor.

- Bullying or intimidation

- Misgendering (wrong pronouns)

It is a degrading behavior that fosters a bad work environment and goes against the dignity that is highlighted in *National Legal Services*

*Authority v. Union of India*.

4. Discrimination based on Wages and benefits.

- Lack of equal pay.

- Refusal of same sex partners to receive insurance or family benefits.

- Coverage of maternity/paternity benefits.

This brings about financial inequality and strengthens marginalization.

5. Occupational Segregation

LGBTQ+ individuals can be:

There are a few roles that they are restricted to.

- Excluded from leadership positions

- A victim of stereotyping in regard to abilities.

6. Rejection of Gender Identity Recognition.

Specifically impacts transgender persons:

- Refusal to acknowledge chosen name/pronouns

- Obstacles in revising records of officials.

- Dress according to gender identity.

This goes against the rights as understood in *National Legal Services Authority v. Union of India*.

7. Retaliation and Victimization

Workers who make complaints can be subjected to:

- Demotion or transfer

- Workplace isolation

- Threats or termination

The fear of retaliation will deter reporting.

8. Systemic/Institutional Discrimination.

Practices which are ingrained, as:

- Lack of inclusive policies

- Lack of grievance systems.

- Heteronormative workplace culture

It is the most difficult to detect but has the long-term effects.

9. Intersectional Discrimination

LGBTQ+ people can also be discriminated against based on:

- Caste

- Gender

- Religion

- Socio-economic status

This discrimination is stratified and this increases exclusion.

<sup>869</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

Although the Constitution of India does not explicitly state either the term workplace discrimination or LGBTQ + rights, it provides a strong legal foundation to address the fair treatment in the workplace, defend the equality, dignity, and freedom against discrimination. Courts have construed these rules to assist in safeguarding the LGBTQ+ individuals in the workplace.

Article 14 ensures everyone is treated the same under the law and receives the same legal protection.<sup>870</sup> It prevents unfair hiring approaches by the government and maintains equitable employment guidelines in the society. In the workplace, employers (government agencies in particular) cannot treat LGBTQ+ employees in any other way unless there is a good reason. The Supreme Court of Navtej Singh Johar v. Union of India pointed out that under Article 14 of the Constitution, LGBTQ+ people have the right to equal protection.

Article 15 outlaws' discrimination based on sex<sup>871</sup>. The court has construed the meaning of sex in such a way that it encompasses sexual orientation and gender identity. This renders discrimination of the LGBTQ+ individuals in hiring, promotion, or benefits unconstitutional.

Sun, the courts have indicated that sexual orientation and gender identity are considered to be sex. It implies that employers are not allowed to discriminate LGBTQ+ individuals with regard to hiring, promotions, or benefits. Article 15 is violated by excluding someone at work based on his or her identity. Article 19(1)(a) secures the right to free expression, such as the way a person identifies as a gender and the manner in which he or she dresses and appears.<sup>872</sup> Dress codes or gender expressions that are prohibited by the rules in the workplace can violate this right, as it was acknowledged by the court in National Legal Services Authority v. India, as one.

<sup>870</sup> INDIA CONST. art. 14.

<sup>871</sup> INDIA CONST. art. 15

<sup>872</sup> INDIA CONST. art. 19(1)(a).

Article 21 gives the right to live with dignity, ensure privacy and uphold identity.<sup>873</sup> Supreme Court dealt with these protections in Navtej Singh Johar v. The Union of India indicated that sexual orientation is an important aspect of privacy and human dignity. At work, it implies being safeguarded against harassment, being respected as to who you are, and being safe in the workplace.

Article 23 – Protection against Exploitation (Indirect Relevance).

Although the main focus is forced labour, it may apply to: Protection against exploitative working conditions, Marginalized groups, such as LGBTQ+ persons. Influence of Court Decrees on LGBTQ+ employment rights.

Court decisions in India have been a transformative factor in promoting the rights of LGBTQ+ people especially in the face of a lack of a comprehensive law against discrimination in the workplace. Courts have broadened constitutional guarantees to provide dignity, equality and non-discrimination, which have formed the basis of inclusive employment practices.

Id. Recognition of Identity and Dignity. The National Legal Services Authority v. Union of India ruling was a breakthrough as it accepted transgender people as a third gender and their right to self-identification.

- It stressed on dignity, autonomy, and equality in Articles 14, 15 and 21.

- This judgment in workplace context requires gender identity respect by providing due respect in employment records and policies.

2. Decriminalization and Social Legitimacy In Navtej Singh Johar v. Union of India, the Supreme Court decriminalized same-sex relationships involving consent by interpreting down Section 377 IPC.

- Such a verdict eliminated the criminal label that LGBTQ+ identity was labeled with. It has also provided a legal framework in which people are not afraid to be themselves, thus

<sup>873</sup> INDIA CONST. art. 21.

enhancing participation and inclusion in the workplace.

3. Broadening of Constitutional Morality. The judiciary has placed more emphasis on constitutional morality as opposed to social morality.

Courts have explained that discrimination can not be justified by societal prejudice. This principle requires employers and institutions to make sure that workplace practices uphold the constitutional values instead of societal prejudices.

4. Strengthening Anti-Discrimination Principles The judiciary has through these verdicts:

- Interpreted “sex” to include sexual orientation and gender identity
- Extended the areas of equality and non-discrimination.

This has had an impact on the workplace norms by promoting inclusivity in hiring, promotions and policies towards employees.

5. Impact on Legislation and Policy. Judicial activism has had a direct impact on law-making, including the Transgender Persons (Protection of Rights) Act, 2019. It has also led to organizations postulating diversity and inclusion policies.

Courts have also taken the initiator role where the legislature was not fast enough or responsive.

6. Privacy and Autonomy. Such decisions as Justice K.S. Puttaswamy v. Union of India<sup>874</sup> supported privacy as a basic right.

This guarantees that LGBTQ+ people will not be subject to invasive investigations and job discrimination.

Assessment of Statutory Remedies in combating Employment Discrimination. The passing of the Transgender Persons (Protection of Rights) Act, 2019 allows the Indian State to make a bold legislative move in dealing with discrimination against transgender individuals, especially when it comes to employment. The Act literally bans discrimination in issues that pertain to

recruitment, promotion, training and other employment aspects and thus acknowledges the importance of establishing inclusive workplaces. It also requires all the establishments to appoint a complaint officer to handle grievances and also provides a formal redressal mechanism in organisations. The fact that the Act acknowledges the principle of equality and strives to harmonize the statutory protections with the constitutional guarantees of Articles 14, 15, and 21 is one of the key strengths of the Act. The Act will help institutionalize non-discrimination in workplace practices by requiring employers to post equal opportunity policies, and implement inclusivity measures. Such provisions indicate the ethos of court rulings like National Legal Services Authority v. Union of India, which stressed dignity, autonomy, equal participation of transgender individuals in social life, including work.

Nevertheless, in spite of its progressive motive, the Act does not show a lot of success in its efforts to combat discrimination in the workplace. One of its weaknesses is that it has a limited reach since it only protects transgender people and does not provide protection to the wider LGBTQ+ community, especially those who are discriminated against due to their sexual orientation. This poses a big loophole in the law that regulates equality in the workplace. Moreover, the enforcement mechanisms of the Act are not very effective. Lack of strict sanctions, elaborate compliance requirements and minimal monitoring diminish its practical effects. Most employers are not aware of their responsibilities and implementation can be different in different organisations. Also, procedural conditions like getting a certificate of identity have been condemned to compromise the right to self-identification that was affirmed in National Legal Services Authority v. Union of India. Summing up, the Transgender Persons (Protection of Rights) Act, 2019 is a noble initiative to establish statutory protection, but the ability to address the employment

<sup>874</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

discrimination issue is limited due to the narrow range, ineffective enforcement, and problems with implementation. The Act needs to be enhanced by spreading its coverage, providing more explicit guidelines and ensuring effective enforcement to provide a meaningful workplace inclusivity. Loopholes and shortfalls in the Current Legal and Institutional Framework. Although constitutional interpretation of the progressive interpretation is progressive and the judicial consideration of the LGBTQ+ rights, the legal and institutional framework of the workplace equality in India seems to be incomplete and insufficient. The translation of landmark cases like Navtej Singh Johar v. Union of India and National Legal Services Authority v. Union of India into enforceable workplace rights remains a difficult endeavor despite the fact that these cases have offered a solid normative basis.

One of the gaps is the lack of overall anti-discrimination laws. India does not have a well-organized statute on sexual orientation and gender identity in the workplace, unlike many other jurisdictions that do have such statutes. The Transgender Persons (Protection of Rights) Act, 2019 offers little protection and is confined to transgender persons to a large extent, leaving lesbian, gay and bisexual persons without clear statutory provisions against workplace discrimination. The other important constraint is a deficiency in effective enforcement and accountability mechanisms. The current legislation lacks specific rules of compliance and severe punishment in case of violation. No single designated body or authority exists that specifically oversees the LGBTQ+ workplace discrimination. Consequently, it is not implemented consistently, and not all employers actively adhere to the inclusivity requirements. There are no regular audits or reporting requirements, which further undermines enforcement. The structure also lacks institutional flaws in redressing grievances. A difference between the

formal framework of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the current system is that organizations are not compelled to create special committees to address the problem of LGBTQ + discrimination. This poses hindrances to justice because the victims might be afraid of retaliation, confidentiality, or may face bias in the available complaint systems. Moreover, there is still a problem of administrative and procedural impediments to successful protection. As an example, some of the clauses of the Transgender Persons (Protection of Rights) Act, 2019, which mandates certification of gender identity, has been criticized as being contrary to the concept of self-identification as addressed in National Legal Services Authority v. Union of India. These contradictions are confusing and they deter people in claiming their rights. Lack of awareness and sensitization whether at the institutional or societal level is another serious problem. Numerous employers and employees do not know about LGBTQ+ rights, or they do not comprehend the significance of an inclusive practice. Social stigma and prejudice have deep roots and still affect the behavior at the workplace, which frequently results in subtler discrimination, which is not reported. Further, there is a gap between public and private sector accountability. Although constitutional protections can be enforced against the State, they apply indirectly and in limited ways to privately employed workers. This generates a regulatory gap in the private sector where a substantial amount of the work force works.

To sum it up, the current legal and institutional framework is marked by fragmented protections, lack of enforcement, and coverage. To close these gaps, it is necessary to implement extensive anti-discrimination laws, create powerful enforcement agencies, harmonize the statutory provisions and the judicial principles, and continue to work on awareness and cultural transformation. It is only with this kind of multi-dimensional reforms that

LGBTQ+ individuals will be able to achieve meaningful equality in the workplace.

### Research

The current research on LGBTQ+ workplace discrimination shows that a few critical results regarding the legal framework, institutional practice, and ground realities of Indian workplace discrimination exist in the country. These results show the gains achieved as well as the obstacles that still persist towards complete inclusiveness at the workplace.

1. Continued Workplace Discrimination. The study concludes that LGBTQ+ people are still being discriminated against on a large scale in the workplace, in terms of prejudiced hiring, promotions, harassment, and benefits. A large portion of this discrimination is subtle and systemic and this makes it not easy to detect and deal with it.

2. Good Constitutional underpinning and weak Direct application. Articles 14, 15, 19 and 21 offer a firm foundation of equality and non-discrimination in the Indian Constitution. These rights have been extended by judicial interpretations over cases like Navtej Singh Johar v. Union of India and National Legal Services Authority v. Union of India that have incorporated sexual orientation and gender identity. Nevertheless, they are indirectly and sparingly used in the workplace in the personal setting.

3. Judicial Activism as a Key Driver of Change. The courts have been key in the acknowledgement of the rights of the LGBTQ+ and inclusivity. The research concludes that without a well-crafted legislation, judicial declarations have served as the main provider of legal security and have had an impact on policy-making and business operations.

4. Inequacy of the Statutory Protection. The Transgender Persons (Protection of Rights) Act, 2019 does offer a certain degree of protection but is not extensive. It does not reach out to the general LGBTQ+ spectrum but only to transgender individuals. Also, its effectiveness in dealing with workplace discrimination is diminished by weak enforcement and a lack of

clarity.

5. No Comprehensive Anti-Discrimination Law. The significant conclusion is that there is no specific legislation that deals with discrimination against sexual orientation and gender identity in the workplace. This brings about ambiguity in the law and leaves many people without a viable solution.

6. Weak Institutional Mechanisms. The absence of formal frameworks of grievance redressal mechanisms tailored at addressing the LGBTQ+ discrimination in the workplace is very high. There is no standard institutional framework as in other fields like sexual harassment and therefore, complaints are underreported and poorly handled.

7. Law and Practice. The paper reveals that there is a big disparity between law and practice as it relates to the workplace. The legal principles encourage equality, but numerous organizations do not adopt the policy of inclusiveness or establish supportive conditions.

8. Social Stigma and Awareness Lack. Deep-rooted societal prejudices and lack of awareness among employers and employees continue to be major barriers. The factors tend to lead to informal discrimination that is not readily resolved in the legal system.

9. New role of Corporate Sector. A number of private organizations are now starting to implement diversity and inclusion policies, and the LGBTQ+ inclusivity as a standard of corporate governance and ESG. Nonetheless, not all sectors are the same in terms of such initiatives.

### Conclusion

Discrimination against LGBTQ+ in the workplace is a rather complicated and ongoing problem, although there has been a significant improvement in the Indian legislation and the Constitution. The paper shows that although the judiciary has been instrumental in the acknowledgement and safeguarding of LGBTQ+ rights, especially in landmark cases like Navtej Singh Johar v. Union of India, and National Legal Services Authority v. Union of India, these rights

have yet to be actualized in real-life workplaces. Articles 14, 15, 19, and 21 in the Indian Constitution are a great source of equality, dignity, and non-discrimination. But a lack of an overall anti-discrimination law directly targeting sexual orientation and gender identity leaves a huge legal gap. Despite the fact that the Transgender Persons (Protection of Rights) Act, 2019 is a promising piece of legislation, its limited scope, difficulties in implementation, and lack of enforcement procedures limit the scope of its application in relation to the overall discrimination at the workplace. The study also reveals an evident disparity between the law and reality. Lots of organizations do not have an inclusive policy, a proper redressal system of grievances, and the knowledge about LGBTQ+ rights. Social stigma and deep-rooted prejudices still affect workplace behaviour, which in most cases leads to subtle and systemic discrimination that is hard to address using the current legal frameworks.

A multi-dimensional approach is urgently needed in order to attain substantive equality. This involves the adoption of all-inclusive anti-discrimination laws, reinforcement of institutional structures and harmonization of statutory enactments with progressive judicial values. Also, employers have to be proactive and implement inclusive workplace policies, sensitization programs, and safe and decent working conditions. Conclusively, despite the laudable steps that India has taken in ensuring the advancement of LGBTQ+ rights on a constitutional level, the road to the actual workplace inclusiveness is not yet finished. To make employment equal, it is necessary not only to introduce certain changes in legislation but also a cultural transformation that should be open to diversity and respect the dignity of all people.

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