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Historical Evolution and Constitutional Framework of The Anti-Defection Law in India

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ABSTRACT

India's anti-defection law was enacted to restrain opportunistic floor-crossing, but its constitutional operation now reaches far beyond the prevention of party switching. This article traces the political and institutional history that produced the Constitution (Fifty-second Amendment) Act, 1985; explains the architecture of Articles 102(2), 191(2) and the Tenth Schedule; and evaluates the transformation of that architecture through constitutional amendment and judicial interpretation. Using doctrinal, historical and limited comparative methods, it argues that the law has passed through three stages: legislative constitutionalizing of defection, judicial constitutionalizing of the Speaker's jurisdiction, and a contemporary phase concerned with institutional accountability, party identity and effective remedies. The analysis shows that the present framework protects electoral stability but also concentrates power in party leadership, permits adjudicatory delay to alter political outcomes, and inadequately distinguishes government-survival votes from ordinary legislative disagreement. The article proposes a narrower whip-based disqualification rule, an impartial and time-bound adjudicatory process, clearer treatment of resignation and party identity, and reasoned decisions subject to effective judicial review. Its central claim is that the legitimacy of the Tenth Schedule depends upon preserving electoral fidelity without extinguishing responsible representative autonomy.

Keywords: *Anti-Defection; Tenth Schedule; Speaker; Party Whip; Legislative Dissent; Judicial Review; Electoral Mandate.*

I. INTRODUCTION

Political defection tests the foundations of parliamentary government. A representative is elected from a territorial constituency, usually under a party label, and then exercises constitutional power as a member of a deliberative House. When those representative changes allegiance, three claims collide: the electorate's choice, the political party's mandate, and the member's freedom of judgment.

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India's response is unusually constitutional. The Constitution (Fifty-second Amendment) Act, 1985 inserted Articles 102(2) and 191(2) and the Tenth Schedule, making specified forms of defection grounds for loss of legislative membership.

The reform answered a real political pathology. After the 1967 general elections, unstable coalitions and repeated floor-crossing contributed to the fall and reconstitution of several State governments. The expression "Aaya Ram, Gaya Ram" came to symbolise this traffic in legislative allegiance. Yet a rule designed to suppress political corruption can also suppress legitimate dissent. If every party direction is enforced by the threat of disqualification, the legislator risks becoming a delegate of the party leadership rather than a representative accountable to constituents and constitutional conscience.

This article asks whether the historical evolution and present constitutional structure of the Tenth Schedule achieve a defensible balance between stability and representative government. It advances two connected propositions. First, the Schedule has evolved through three stages: legislative constitutionalisation in 1985, judicial constitutionalisation beginning with Kihoto Hollohan, and an institutional-accountability stage focused on delay, neutrality, party identity and government formation. Secondly, reform should protect votes that determine the existence of a government while restoring greater freedom in ordinary legislative business. The object is neither unrestricted floor-crossing nor unrestricted party command, but responsible representative autonomy.

II. RESEARCH PROBLEM, QUESTIONS AND METHODOLOGY

The research problem is not simply whether defection should be punished. It is whether a constitutional mechanism created to defend the electorate's mandate can do so without transferring excessive control from voters and legislators to party organisations and presiding officers. The inquiry therefore addresses four questions: what political history produced the law; how do its text and amendments allocate authority; how has the Supreme Court reshaped that allocation; and what institutional reforms can reconcile stability, impartial adjudication and legislative deliberation? The study principally adopts doctrinal legal research. It analyses the Constitution, the Fifty-second and Ninety-first Amendment Acts, leading Supreme Court decisions, parliamentary materials, committee recommendations and Law Commission reports. A historical method is used to connect doctrinal change with the political conditions that generated it. A limited comparative method is employed not to transplant foreign rules, but to demonstrate that the permissible scope of party discipline depends upon electoral design and the constitutional conception of representation. The analysis treats judgments as legal authorities and also as institutional interventions whose timing and remedies affect political outcomes.

III. LITERATURE, INSTITUTIONAL REPORTS AND ANALYTICAL GAP

Existing writing approaches anti-defection law through several overlapping frames. One body of scholarship treats defection chiefly as a problem of political ethics and governmental stability. It explains the law as a response to inducement, office-seeking and the collapse of elected ministries. A second body examines parliamentary privilege and the freedom of legislative choice, asking whether

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the threat of losing a seat is compatible with debate and voting under Articles 105 and 194. A third concentrates on adjudication: the Speaker's political location, natural justice, judicial review and the remedial consequences of delay. Comparative scholarship adds a further question - why only some parliamentary democracies constitutionalise party loyalty while others rely on electoral or intra-party sanctions.

Institutional reports have repeatedly identified the tension between stability and deliberation. The Law Commission's 170th Report supported restricting disqualification for breach of a whip to votes that affect the government's continuance and proposed that the decision should be made by the President or Governor on the Election Commission's opinion. The National Commission to Review the Working of the Constitution similarly considered limiting binding directions to votes determining the life of the government. The Dinesh Goswami Committee and later electoral-reform discussions also questioned whether the presiding officer should remain the final adjudicator. These proposals share an insight: the law's legitimate objective does not require identical sanctions for every form of party indiscipline.

Much of the literature, however, studies the grounds of disqualification, the Speaker and legislative freedom as separate issues. Contemporary disputes show that they are parts of a single allocation problem. The authority to identify the political party determines who may issue the whip; the timing of the Speaker's decision determines who may vote; resignation affects the available remedy; and gubernatorial action may convert an internal disagreement into a question of government survival. This article addresses that gap by analysing the Tenth Schedule as an integrated constitutional process rather than merely a list of prohibited acts.

IV. FROM FLOOR-CROSSING TO CONSTITUTIONAL REGULATION

The early decades after Independence were marked by Congress predominance and relatively stable legislative majorities. The political transformation of 1967 fragmented that environment. Defections became instruments for forming and unmaking governments, and individual legislators could acquire bargaining power disproportionate to their electoral mandate. On 8 December 1967, the Lok Sabha adopted a resolution seeking a high-level inquiry. The resulting Committee on Defections, chaired by Y.B. Chavan, examined the causes and consequences of floor-crossing and recommended legal and political responses.

The problem resisted immediate constitutional settlement. Earlier legislative initiatives did not culminate in an enforceable national framework. By the mid-1980s, however, the argument that unregulated defection threatened democratic stability had gained sufficient force. The Constitution (Fifty-second Amendment) Act, 1985 inserted the Tenth Schedule and connected it to the disqualification provisions for Parliament and State legislatures. The new scheme converted what had largely been a matter of political morality and internal discipline into a question of constitutional status.

The original Schedule combined broad grounds of disqualification with exceptions. Paragraph 3 protected a split involving not less than one-third of the members of a legislature party, while paragraph 4 protected qualifying mergers. Experience demonstrated that the split exception could legitimise organised defection rather than prevent it. Groups could be assembled to reach the

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numerical threshold, converting inducement into a constitutionally protected "split". The Constitution (Ninety-first Amendment) Act, 2003 therefore deleted paragraph 3, retained the merger exception with a two-thirds threshold, limited the size of ministries, and restricted certain remunerative political appointments for disqualified members.

This trajectory is important. The 1985 settlement was not a final answer but an experimental constitutional design revised in response to political practice. It moved from tolerating smaller organised splits to recognising only a more demanding merger. Even so, the post-2003 framework did not eliminate strategic resignation, delayed adjudication or disputes over which faction represents the political party. Those problems have driven the contemporary case law.

V. CONSTITUTIONAL ARCHITECTURE OF THE TENTH SCHEDULE

Articles 102(2) and 191(2) supply the constitutional bridge: a person is disqualified from membership of Parliament or a State legislature if disqualified under the Tenth Schedule. The Schedule then specifies status, conduct, exceptions, decision-making authority and procedure. Paragraph 1 distinguishes the "legislature party" from the political party. That distinction is crucial because legislative numbers are not identical to organisational authority within the original political party.

Paragraph 2(1)(a) disqualifies a member belonging to a political party if the member has voluntarily given up membership of that party. The phrase is deliberately wider than formal resignation. Paragraph 2(1)(b) addresses voting or abstaining contrary to a direction issued by the political party, or by a person or authority authorised by it, without prior permission where the conduct is not condoned within fifteen days. The constitutional consequence thus turns not only upon the member's vote but upon valid party authority, permission and condonation.

Paragraph 2 also deals with categories for whom post-election affiliation has special significance. An independent member is disqualified on joining a political party after election. A nominated member may join a political party within six months of taking the seat, but joining thereafter attracts disqualification. These rules rest on different conceptions of voter expectation: an independent candidate is elected without a party affiliation, while a nominated member receives a limited period to choose one.

Paragraph 4 protects a merger where the original political party merges with another political party and not less than two-thirds of the members of the legislature party agree to the merger. A member may accept the merger or function as a separate group. The text requires attention to both the original political party and the legislature party; numerical strength inside the House cannot by itself rewrite the identity of the political organisation. Paragraph 5 creates a limited exemption for a member elected as a presiding officer who, by reason of that office, gives up party membership and later rejoins in the circumstances specified.

Paragraph 6 entrusts questions of disqualification to the Chairman or Speaker, whose decision is described as final. Paragraph 7 purported to exclude court jurisdiction, and paragraph 8 authorises procedural rules. Read literally, these provisions created a powerful internal adjudicatory system.

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Constitutional supremacy, however, prevented finality from becoming immunity. The Supreme Court's interpretation of paragraph 7 and the character of the Speaker's function transformed the Schedule's operation.

The framework also interacts with other constitutional provisions. Articles 105 and 194 protect legislative speech and voting, while Articles 122 and 212 limit judicial inquiry into mere procedural irregularity. Articles 163, 164, 174 and 175 become relevant when defection disputes intersect with the Governor's functions, floor tests and government formation. Article 190(3)(b), dealing with resignation of a seat, cannot be used mechanically to erase an antecedent disqualification inquiry. The Schedule is therefore not a self-contained island; it forms part of the Constitution's broader arrangements for responsible government.

VI. JUDICIAL CONSTITUTIONALISATION

Kihoto Hollohan: Validity with Review

Kihoto Hollohan v Zachillhu is the foundational authority. The majority upheld the substantive anti-defection scheme, rejecting the argument that party discipline under the Schedule necessarily destroyed freedom of speech or parliamentary democracy. At the same time, it treated the Speaker, when deciding paragraph 6 disputes, as a tribunal whose decisions are subject to judicial review for jurisdictional error, mala fides, violation of constitutional mandate and non-compliance with natural justice.

The Court also held paragraph 7 invalid because the exclusion of Supreme Court and High Court jurisdiction attracted the proviso to Article 368(2) and had not received the required State ratification. The remainder of the Schedule survived through severability. Kihoto thus produced a constitutional compromise: the Speaker remains the primary decision-maker, but finality is conditional upon legality. Ordinarily, review follows the Speaker's final decision, although exceptional interlocutory intervention remains possible where constitutional protection would otherwise be defeated.

Conduct as Voluntary Relinquishment

In Ravi S. Naik v Union of India, the Court held that "voluntarily giving up membership" is not synonymous with formal resignation; it may be inferred from conduct. This purposive construction prevents evasion by a member who retains a party card while unmistakably abandoning allegiance. It also creates a boundary problem. Political disagreement, contact with rivals, public criticism and factional activity exist on a spectrum. A standard broad enough to capture disguised defection must not turn every act of dissent into constructive resignation.

G. Viswanathan v Speaker, Tamil Nadu Legislative Assembly addressed expelled members. The Court reasoned that, for the Schedule, such members continue to belong to the party that set them up unless they resign, and joining another political party can support disqualification. The decision prevents expulsion from becoming an automatic escape route, but it also illustrates the artificiality sometimes required by the deemed-membership rules: organisational expulsion does not necessarily dissolve constitutional affiliation.

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Evidence, Timing and The Speaker's Duty

Rajendra Singh Rana v Swami Prasad Maurya rejected an attempt to postpone the central disqualification issue by first recognising an alleged split. On the record, the Court concluded that the defecting members had incurred disqualification and, in the extraordinary circumstances, granted substantive relief rather than remitting a matter already overtaken by time. The case established that the Speaker cannot avoid constitutional adjudication through procedural sequencing or unsupported factional claims.

The significance of timing became explicit in Keisham Meghachandra Singh v Hon'ble Speaker, Manipur Legislative Assembly. Faced with prolonged inaction, the Court stated that petitions should ordinarily be decided within three months, absent exceptional circumstances, and invited Parliament to consider replacing the Speaker with a permanent tribunal or another impartial mechanism. The observation responds to a distinctive constitutional injury: if an allegedly disqualified member votes through the decisive portion of a legislative term, a later order may record illegality without reversing its political effects.

Resignation, Removal Proceedings and Constitutional Sequence

Nabam Rebia v Deputy Speaker held, among other things, that a Speaker should not decide disqualification petitions while a notice for the Speaker's removal is pending. The rule sought to protect adjudicatory impartiality but created a tactical vulnerability: removal notices could disable the Speaker at the moment disqualification petitions became politically urgent. In Subhash Desai v Principal Secretary, Governor of Maharashtra, the Constitution Bench doubted the correctness of that aspect of Nabam Rebia and referred it to a larger Bench. The reference shows that institutional neutrality cannot be secured by a rule that itself enables strategic paralysis.

Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly clarified the relationship between resignation and disqualification. A member cannot terminate a pending disqualification inquiry merely by resigning; the Speaker may examine the sequence and decide the disqualification. But the Speaker cannot create a further disability beyond the Constitution by barring the member from contesting elections for the remainder of the legislative term. The Ninety-first Amendment separately restricts appointment as a minister or to certain remunerative political posts until the term expires or the member is re-elected, whichever is earlier.

Party Identity and The Maharashtra Decision

Subhash Desai marks the contemporary stage of the jurisprudence. The Court distinguished the political party from the legislature party and held that the Speaker must identify the whip and leader authorised by the political party, not merely accept the preference of a legislative faction. It also examined the Governor's call for a floor test and concluded that a floor test cannot be used to resolve an internal party dispute without objective material showing that the government has lost the confidence of the House.

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The judgment demonstrates that anti-defection adjudication is intertwined with government formation, party organisation and constitutional remedies. The Court declined to restore the earlier government because the Chief Minister had resigned without facing the floor test. This remedial limit is a caution: correct doctrine delivered after irreversible political choices may not reconstruct the constitutional position. The effectiveness of the Tenth Schedule therefore depends as much on institutional speed and remedy as on the substantive definition of defection.

VII. ELECTORAL MANDATE, PARTY DISCIPLINE AND LEGISLATIVE DISSENT

The central normative issue is the ownership of the mandate. The individual-mandate account begins with the ballot: voters formally elect a candidate, not an abstract party list. It therefore values judgment, constituency representation and freedom to criticise party leadership. The party-mandate account responds that modern electoral choice is substantially organised by party symbols, manifestos, leadership and campaign resources. A member who changes allegiance may appropriate votes obtained through the party. The institutional account adds that a parliamentary executive must retain confidence in the House; unregulated switching can transfer governmental power without a general election.

The Tenth Schedule gives strong protection to party and institutional mandates. That preference is most defensible on confidence, no-confidence and essential financial votes, where defeat determines whether the Council of Ministers can govern. Its extension to every legislative direction is harder to justify. Ordinary Bills, committee questions and constituency-specific measures do not necessarily test the government's existence. A disqualification threat on such matters reduces deliberation, weakens legislative scrutiny and shifts effective law-making power toward party executives.

The constitutional text does not expressly confine paragraph 2(1)(b) to government-survival votes. Nevertheless, the case for reform is supported by constitutional structure. Articles 105 and 194 envisage legislative speech and voting as public functions, not merely party commands. Responsible government requires cohesion, but responsibility also requires scrutiny. A carefully limited whip would retain the stabilising core of the law while giving representatives meaningful space to debate and vote on ordinary business.

The phrase "voluntarily gives up membership" requires similar discipline. It must remain capable of addressing disguised defection, yet inference should rest on clear, cumulative conduct objectively incompatible with continued membership. Mere criticism, policy disagreement, absence from a meeting or association with political opponents should not automatically suffice. The decision-maker should identify the proven acts, the permissible inference, the party constitution or authorised position, and why less serious forms of dissent do not explain the conduct.

VIII. DEMOCRATIC COSTS AND THE PROPORTIONALITY OF DISQUALIFICATION

Disqualification is an unusually severe constitutional sanction. It removes the individual from the House, deprives constituents of the representative they elected and may change the legislative majority. Its use should therefore correspond to a sufficiently serious constitutional wrong. The mere fact that party discipline is convenient cannot establish proportionality. The relevant questions are whether the direction protects responsible government, whether a less restrictive political sanction is available, and whether loss of membership is necessary to preserve the electorate's choice.

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A broad whip also alters the internal distribution of democratic power. Candidate selection is often controlled by a small party leadership; once elected, the member faces disqualification for unauthorised voting; and future nomination remains in party hands. The combined effect can weaken both constituency responsiveness and internal party democracy. Paradoxically, a law enacted to protect voters may insulate party managers from legislative disagreement. This does not invalidate party discipline, but it supports differentiating constitutional disqualification from ordinary organisational sanction.

Nor does stability always equal fidelity to the electorate. A party may depart from its manifesto, replace its leadership, or form a post-election alliance that voters could not reasonably anticipate. The Tenth Schedule generally protects the party label at election time, not every later organisational choice. A principled regime must therefore preserve room for criticism and collective debate inside parties while drawing a firm line at conduct that objectively abandons membership or transfers governmental power.

IX. COMPARATIVE CONSTITUTIONAL PERSPECTIVE

Comparative experience shows that there is no universal anti-defection model. In the United Kingdom, changing party affiliation does not ordinarily vacate a Member of Parliament's seat; accountability is political and ultimately electoral. Party whips remain powerful, but their breach does not itself operate as a constitutional disqualification. Bangladesh lies near the opposite pole. Article 70 of its Constitution ties legislative membership closely to party allegiance and voting, producing exceptionally strong party control.

Pakistan's Article 63A concentrates constitutional consequences on specified votes, including election of the Prime Minister or Chief Minister, confidence and no-confidence, Money Bills and constitutional amendment Bills. Whatever the controversies generated by its interpretation, the design is analytically important because it distinguishes votes of systemic importance from routine legislative divisions. New Zealand's party-hopping rules operate within a mixed-member proportional system and are directed toward preserving the proportionality of party representation determined at the election. South Africa's experience likewise confirms that rules governing party change cannot be separated from a proportional electoral system in which party lists structure legislative membership.

India uses predominantly single-member territorial constituencies while maintaining a party-centred parliamentary executive. It should therefore copy no model wholesale. The comparative lesson is narrower: the reach of disqualification should correspond to the constitutional harm. A member who changes the government by betraying the electoral platform presents a different problem from a member who opposes an ordinary Bill. Constitutional design can recognise that difference.

X. INSTITUTIONAL DEFECTS AND REFORM

First, adjudication requires structural impartiality. The Speaker occupies a high constitutional office but is ordinarily elected from the governing majority and may face direct political incentives in a dispute affecting that majority. Judicial review corrects legal error after a decision; it does not

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remove the appearance of conflict at the first instance. Parliament should consider a constitutionally secured tribunal, or referral to an independent body followed by a formal legislative determination, with transparent appointment and removal safeguards. The Election Commission model under Articles 103 and 192 offers one possible point of comparison, though any transplant must preserve decisional independence.

Secondly, time must be treated as a component of effective constitutional relief. A three-month presumptive limit, derived from Keisham Meghachandra, should be placed in the constitutional or statutory framework, with a shorter schedule where a confidence vote or government formation is imminent. Extensions should require recorded reasons and remain reviewable. Courts should have power to issue case-management directions where deliberate inaction threatens to make the petition academic.

Thirdly, paragraph 2(1)(b) should be narrowed to votes that determine governmental survival or implement core constitutional responsibility: confidence and no-confidence motions, election of the head of government where applicable, appropriation and Money Bills, and perhaps specifically identified manifesto or constitutional measures subject to safeguards. Party discipline on other matters may remain politically enforceable through loss of party office, committee assignments or future nomination, but should not ordinarily cost the legislative seat.

Fourthly, procedure should be standardised. A petition should disclose material facts and authenticated evidence; the member should receive notice and a meaningful opportunity to respond; disputed questions should be addressed by findings; and the final order should separately determine jurisdiction, party authority, conduct, applicable exception and relief. Interim procedural orders should not become devices for indefinite suspension. Decisions and pleadings, subject to legitimate redactions, should be promptly published.

Fifthly, the law should address resignation-defection cycles without preventing genuine resignation. A resignation does not erase a disqualification already incurred, while a finding of disqualification should trigger only the consequences authorised by the constitutional text.

The original political party's identity and authority to appoint a whip should be determined from its constitution and lawful organisational structure, not simply from whichever faction holds more seats in the House.

Finally, reform should preserve judicial review. The lesson of Kihoto is that legislative autonomy and constitutional supervision are complementary. Courts should respect the primary fact-finding role of the designated adjudicator, but intervene where jurisdiction is refused, delay becomes destructive, natural justice is denied, constitutional categories are confused, or the decision is perverse or mala fide. A constitutional remedy must be timely enough to protect the constitutional interest at stake.

XI. FINDINGS

The study yields five findings. First, anti-defection regulation was a justified response to a historically documented pattern of opportunistic floor-crossing and unstable governments. Secondly, the original design proved porous: the split exception legitimised group defections and was rightly removed by the Ninety-first Amendment. Thirdly, judicial review has been constitutive rather than

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peripheral. Kihoto preserved constitutional supervision; Ravi S. Naik and G. Viswanathan expanded substantive affiliation; Rajendra Singh Rana and Keisham Meghachandra confronted evasion and delay; and the resignation and Maharashtra cases connected the Schedule with government formation and party identity.

Fourthly, the Speaker-centred model contains a structural conflict that good faith alone cannot cure. Delay can distribute political power before legality is determined, turning adjudication into retrospective commentary. Fifthly, the present law does not adequately distinguish betrayal of the governmental mandate from ordinary legislative dissent. Its stabilising justification is strongest where a vote makes or unmakes the government, and weaker where party direction governs routine legislative choice.

The original contribution of this analysis lies in describing the law's evolution as a shift in constitutional function. The 1985 law targeted instability; the post-Kihoto cases constitutionalized adjudication; the present phase allocates authority among competing institutional actors. Reform must therefore be evaluated not merely by the number of defections prevented, but by whether it preserves legitimate electoral expectations, impartial decision-making and meaningful legislative representation.

XII. CONCLUSION

The Tenth Schedule is neither an unqualified democratic success nor an avoidable constitutional mistake. It responded to the commodification of legislative allegiance and supplied a rule capable of protecting elected governments from opportunistic manipulation. The deletion of the split exception and the judicial insistence on review strengthened that design. Yet the law's evolution has revealed costs that the original settlement did not adequately anticipate: party control over ordinary voting, strategic resignation, uncertainty about party identity, politically consequential delay and the Speaker's dual institutional position.

The constitutional task is calibration. India need not choose between a market in legislative allegiance and a legislature deprived of independent judgment. Disqualification should remain available for formal or substantive abandonment of party membership and for defiance on votes that determine governmental survival. Outside that core, political sanctions ordinarily offer a more proportionate response than loss of the seat. Adjudication should be independent, reasoned, public and time-bound, with judicial review capable of furnishing effective rather than symbolic relief.

Understood in this way, anti-defection law protects the will of the electorate without treating that will as the exclusive property of party leadership. The voter elects, the party organises, the legislator deliberates, and the House sustains responsible government. A legitimate constitutional framework must hold those roles in equilibrium. The future of the Tenth Schedule should therefore be measured by a demanding standard: whether it prevents political betrayal while preserving the representative character of parliamentary democracy.

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