

## CONTEMPT OF COURT IN THE LIGHT OF ISLAMIC INJUNCTIONS

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### Abstract:

Courts are an integral part of justice system in a state, where the sanctity attached to the verdicts of these must be given deference. This is crucial for smooth process and functioning of courts in a state. The concept of 'contempt of court' has been discussed and viewed by scholars in various backgrounds and perspectives. This article looks into the contempt of court in the prism of Islamic injunctions. It covers theoretical basis provided under the primary sources of Sharia and also sheds light on practical applicability of this fundamental necessity warranted by the holy Quran and Sunnah. Since Pakistan is an Islamic state whose legal framework is required to be in consonance with the injunctions of Islam, it warrants legal framework on the sanctity of courts in Pakistan to pass the litmus test of Islamic basis. Tendency of contempt of courts and their verdicts in Pakistan like other Muslim developing states is an issue which is required to be examined in the light of the Quran and Sunnah. This research would urge policy makers, law makers and academics to find a constitutional basis for an effective legislation on contempt of court in Pakistan.

**Keywords:** Contempt of court, Legislation, Pakistan, Islamic Jurisprudence.

### Legislative Framework of Contempt of Court in Pakistan:

Courts can be disrespected in two different ways, showing impoliteness and disrespect towards courts, or not complying with the orders of the courts in the world. This may also include disruption or illegal intervention in courts' proceedings and publishing a material which may hinder or befall against a fair trial. Judges, hence, have been putting the contemnors behind bars. The government of Pakistan enacted contempt of court Act 2012 and same was declared unconstitutional and void by the Supreme Court of Pakistan and further ordered the revival of contempt of court ordinance 2003. The main allegation which was levelled against the Act was exemption given to all officials, head of government, and ministers of the government under section 248(1)<sup>1</sup> by the then government of Pakistan People's Party. The court also held that the power to punish contemnors lies only with the Supreme Court and high courts of the provinces under article clause (2) of article 204. Section 2 (a) of the contempt of court Act 2012 defined the word 'judge' in the meaning of all officials working in the administration of justice which is against article 204 (1) where the word 'judge' means Supreme court and high courts only.<sup>2</sup>

The judgment also ruled that no immunity can be extended to any office bearer whosoever from criminal proceedings under article 248(1).<sup>3</sup> Giving exemption or immunity to a certain class or office bearer means negation of the principle of equality before law. Thus, the court found various

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<sup>1</sup> Constitution of Islamic Republic of Pakistan 1973 (Article 184(3),204

<sup>2</sup> Constitution of Islamic Republic of Pakistan 1973, entry 55 4th schedule, article 63(1)

<sup>3</sup> Ibid: article 248(1)

provisions of the Act unconstitutional which inter alia renders the legislation of no use in totality whereby the principle of severability ordained in Mehram Ali vs Federation of Pakistan and Dr Mubashir Hassan case cannot be relied on.<sup>4</sup> The court also ruled that in the absence of the Act, the contempt of court ordinance 2003 shall be revived with same effects as these of the Act.<sup>5</sup>

### Islamic Teaching on Principles of Morality and Contempt of Court:

The word Islam is derived from the word 'Salama' that means submission and obedience and in religious sense, Islam means submission to the will of God and obedience to His law.<sup>6</sup> The morality and faith in Islam are interlinked in the sense that a person, who made submission before the will of Allah, will never commit immorality. Islam is a comprehensive way of life and morality is one of its cornerstones. Morality is one of the main causes of nation's strength and immorality is one of the main causes of nation's decline. Islam has very effective moral system and the principles of morality has been summed up in one word, that is "Taqwa'(God fearing) the person who is God fearing has been declared as the most respectable person amongst others as it appears in the holy Quran as

"إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَاكُمْ"<sup>7</sup>

In the above mentioned *ayah*, it is clearly stated that "Taqwa' (God fearing) is the cornerstone of Iman (belief) in Islam. It is because of the belief in Allah as the subsequent principles and directions follow the fundamental principle which is belief in Allah.

In the light of basic teachings of Islam, it is not allowed even to humiliate, disgrace or disrepute any common man irrespective of his religion, creed, color and status. In this regard, it has appeared in the holy Quran that:

"وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ  
عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا"<sup>8</sup>

"And we bestowed dignity on the children of 'Adam and provided them with rides on the land and in the sea, and provided them with a variety of good things and made them much superior to many of those whom We have created."

Humanity was created by the single order of Almighty Allah, where they trace their lineage from first created humans on earth i.e Adam and Eve. This concept is central to anthropological order of human existence that humanity is, in fact, a single family. In Islam, all humanity makes one great family "الْخَلْقُ عَيْالُ اللَّهِ"<sup>9</sup> and the origin of all people is one and all human beings are created from one soul. It is appeared in the Holy Quran that:

<sup>4</sup> Ibid: article 25

<sup>5</sup> Ibid 238-239

<sup>6</sup> Muhammad Shafi, Mufti, Muārif-ul- Al Qurān, Lahore, Maktaba usmania, 1982, Vol.2, P. 103

<sup>7</sup> Al-Quran 49: 13

<sup>8</sup> Al-Quran 17 :70

<sup>9</sup> Ahmed, Bayhaqi, Sh'ub al Aimān lil Baihaqi, bab: Rahmun āla Khalq, Hadith nibr 4999, Riyadh, Maktaba ar Rasheed in 2003, vol.4, p.258

“O mankind! Behold. We have created you all out of male and female and have made you into nation and tribe, so that you may know each other. Surely, the noblest of you in the sight of Allah is the one who is the most pious.”<sup>10</sup>

In this Quranic verse, the criterion set for being noble is only and only piousness, otherwise all human beings are equal for the reason of common parentage. Discrimination is not allowed in any circumstances. The concept of nobility in Islam is very clear that virtuousness and piousness is the touchstone where this very fundamental trait of Islam is measured. It is appeared in the tradition that “People of all race, creed, and color are equal like the teeth of comb”.<sup>11</sup> This simile is very apt since if the teeth of comb be of different sizes or be unequal, the hair cannot be combed properly but the head shall be injured. The simile thus exemplifies the effect of inequality too.

As such, human equalities and inequalities have been beautifully exemplified in the tradition. All humans have variety of traits and qualities where they are unequal in terms of utilities and settlements. However, these kinds of different settings and inequalities do not mean the superiority of one human being over the other until he or she earns that superiority by virtue of his/her piousness. The well-known tradition of the Holy Prophet says that: “No Arab has any superiority over non-Arab, Nor any non-Arab over Arab, nor any white man over black, nor a black man over white man, save in respect of piety and fear of Allah.”<sup>12</sup>

So, it is not allowed to humiliate any human being on any ground because the Allah almighty has given him dignity over other creatures and appointed him as his vicegerent on earth. It is recommended in Islam to be gentle and respectful to other fellows, as once a companion of the last prophet (SAW) addressed to the prophet where he turned his face towards him in order to show a gesture of attention and respect for the companion.<sup>13</sup> We have been even ordered to treat the non-believers kindly. Allah almighty says that:

“Allah does not forbid you that you show Kindness and deal justly with those who did not fight you in your religion and did not drive you out of you homes.”<sup>14</sup>

The holy Quran orders not to laugh at others and not to defame others by using sarcastic words as usually happens in the society. Allah almighty says that:

“يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُوا قَوْمًا مِّنْ قَوْمٍ عَسَىٰ أَنْ يَكُونُوا خَيْرًا مِّنْهُمْ وَلَا نِسَاءً مِّنْ نِّسَاءٍ عَسَىٰ أَنْ يَكُنَّ خَيْرًا مِّنْهُنَّ وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا تَنَابَرُوا بِالْأَلْقَابِ بِئْسَ الْإِسْمُ الْفُسُوقِ بَعْدَ الْإِيمَانِ وَمَنْ لَّمْ يَتُبْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ”<sup>15</sup>

<sup>10</sup> Al-Quran 49:13

<sup>11</sup> : Muhammad Misrī, Musnad al Shahāb, bab: al-nās ka asnan-il-musht, hadith nمبر 195, Lahore: Shabbeer brothers in 2016, P. 114

<sup>12</sup> Musnad Ahmed, bab: Musnad al ansār, hadith nمبر: 23885, Lahore: Maktaba Rahmania, 2011, Vol.10, P.832

<sup>13</sup> Muslim, Al hajjaj, Sahih Muslim, hadith nمبر 6219, Riyadh: Darusslam publications, 2009. Vol. 4, P. 559

<sup>14</sup> Al-Quran 60 : 8

<sup>15</sup> Al-Quran 49: 11

“O, you who believe, no men should ever scoff at other men. May be, the latter are better than the former, nor should women (ever scoff) at other women. May be, the latter women are better than the former ones. And do not find fault with one another, nor call one another with bad nicknames. Bad is the name of sinfulness after embracing Faith.”

We have been restricted to use abusive language against non-believers and their idols, they may in retaliation, will use the same language against Allah. The Holy Quran says that:

" وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ  
عَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ<sup>16</sup>"

“Do not revile those whom they invoke other than Allah, lest they should revile Allah in transgression without having knowledge. This is how We have made the deeds of every community attractive in their sight. Then, to their Lord is their return, after which He shall tell them what they have been doing.”

Apart-from this, we have been commanded to follow the life of Muhammad, the last Prophet that: “And take what the Holy Prophet gives you and avoid that which is forbidden by him”.<sup>17</sup> It is also mentioned in the Holy Quran that: “For you, the life of the Prophet is an example to follow.”<sup>18</sup> Regarding the Character and morality of the Muhammad, it is mentioned that: “Verily O Muhammad you are an exalted standard of character.”<sup>19</sup> The Holy Prophet himself says that “I have been sent to perfect the good conduct.”<sup>20</sup>

The concept of Islam about the behaviour and attitude of a Muslim towards fellow men and even animal is very much clear. In the light of tradition, A Muslim is one from whose tongue and hands, other Muslims are not harmed.<sup>21</sup> Apart from this, Islam ordains to treat even animals gently. While slaughtering animals, it is ordered to make the knife sharp, so that the animal may not be tortured.<sup>22</sup> During war, it is not allowed to destroy the green trees and crops belonging to hostile nation or enemy.<sup>23</sup> The above discussion shows that how sensitive is Islam towards toleration and piety. This piety is not restricted to human beings but is also strongly recommended for animals as well. And also, principles regarding protection of crops and trees of the conquered areas have been laid down in Islam. Tolerance and piety is so important in Islam that transgression

<sup>16</sup> Al-Quran 6: 108

<sup>17</sup> Al-Quran 59 : 7

<sup>18</sup> Al-Quran 33:21

<sup>19</sup> Al-Quran 68 : 4

<sup>20</sup> Imam Mālik, bin Anas, bab: Husn-ul-Khulq, hadith nmr 2633, Lahore: Nomani kutub khana,2010, Vol.1, P.858

<sup>21</sup> Bukhāri, Muhammad bin Ismael, Sahīh Bukhāri, bab al Muslim man Salim al muslimūn min lisani wa yadih, hadith nmr, Riyadh:Maktaba Darusslam, 2011, Vol. 1, P. 81

<sup>22</sup> Tirmizi, Muhammad bin Isa: Jamié, bab: finn nuhā ánil mis lih, hadith nmr: 1409, Lahore: Nomani kutub khana, 2012, Vol.1, P.781

<sup>23</sup> Abu Dawood, Suleman bin Ashás, kitab ul Jihad, bab: fi dua il mushrieken, hadith nmr 2614, Riyadh: Maktaba Darusslam, 2007, Vol. 3, P. 127

and ill-mannered talk is prohibited against other sects and religions with the purpose that others should not do the same for your sect or religion. The administration of justice in Islamic polity is not only one of the prime State functions but also it has been described as a sole purpose of sending prophets to make the people firm on justice. All the Prophets of Allah were entrusted with not only the propagation of religion of Allah but, at the same time, with the administration of justice and equity among the people. Allah Almighty says that:

"ولكل امة رسول فاذا جاء رسولهم قضى بينهم بالقسط وهم لا يظلمون"<sup>24</sup>

"To every people (we sent) apostle. When the apostle comes (before them) the matter will be judged between them with justice and they will not be wronged."

It is Prophetic mission and the holy Prophet had said that:

"امرت لاعدل بينكم"<sup>25</sup>

"I have been commanded to judge justly between you".

Imam Shamsuddin Sarkhasi, the prominent Hanafi Jurist writes that:

"ان القضاء بالحق من اقوى الفرائض بعد الايمان بالله تعالى وهو من اشرف لعبادات."<sup>26</sup>

"A just decision is one of the highest duties after faith in Allah and the best form of worship."

It is basic right of a citizen to get easy and prompt justice and the Islamic State is bound to set up speedy and effective judicial system. The above quoted verses and traditions reflect that the virtue of justice has been emphasized again and again in Islam. Justice in Islam has been explained as placing things at their rightful settings and maintaining equality in matters of engagements and giving rightful due. Also, it has been commanded as moral and supreme virtue. Islamic concept of justice deviates from an equilibrium based concept of justice of west with no identical rights and duties. Equality is demanded in Islam and standing out firmly is the order for establishing justice even if it be against you, your parents, kith and kin, and rich or poor.<sup>27</sup> Thus, Justice stands next to the fundamental principle of Islam which is belief in Allah (Towheed) and acceptance of Hazrat Muhammad's (SAW) prophet hood making justice central to the Islamic principles as it has appeared in the verse:

"We sent the prophet with a message and the holy Book and the measure in order to establish/ maintain justice among people".<sup>28</sup>

### **Historical Perspective Underpinning Law of Contempt of Court in Islam:**

The history is a witness that great statesmen, politician, philosophers have bowed down their heads before the Court of law in reverence and whole heartedly accepted the judgments of the Honourable judges. Few examples are reproduced in the following paragraphs in order to give

<sup>24</sup> Al-Quran 12 : 47

<sup>25</sup> Al-Quran 42 : 15

<sup>26</sup> Sarkhasi, Al-mabsoot, book adab al qazi, Berūt Lebnon: Dar ul Marifah, 1989, Vol.16, P. 53

<sup>27</sup> Al-Quran 4 : 135

<sup>28</sup> Al-Quran 57 : 25

testimony of accepting and extending respects to the judgments of courts by the politicians and jurists of their times.

When Hazrat Umar (RA) appeared before the Court in connection with a civil case, the Judge of the court rose in his seat in order to pay the Khalifa due respect, Hazrat Umar Said to him that: "You have committed injustice at the very outset of the proceeding".<sup>29</sup> He along-with his opponent appeared before the Court sitting on the ground. In this example, a clear principle can be drawn on how sensitivity and carefulness has been shown by the caliph towards courts.

Khalifa Mamon Rasheed had a dispute with someone which he referred to Qazi Yahya bin Asam for adjudication. The Caliph went to the Court followed by a valet with a carpet for him but the Qazi did not allow him to have special sitting arrangements as it would have amounted to discrimination against the other party. So, he advised the Caliph not to have for himself such discriminatory seating arrangements. Khalifa Mamon ashamed and sent for another carpet for his opponent to sit on.<sup>30</sup>

In another tradition, a dispute was brought before the holy prophet (PBUH), the dispute was between an Ansari and Hazrat Zubair (R.A) on a matter of irrigating land. The holy prophet ordered Hazrat Zubair to irrigate his land first and leave the remaining water for Ansari. On this verdict, Ansari objected to the decision made by the prophet alleging that Hazrat Zubair (R.A) is close relative of the Prophet; hence, the decision is partial. The Prophet was irked by the objection raised by Ansari and thus, the prophet ordered Hazrat Zubair (R.A) to irrigate his land and block the rest till it reaches the parapet of the wall.<sup>31</sup> The decision of prophet was explained and interpreted by Allama Al Qurtaubi in a manner that if the disgruntled party criticizes the Qazi/judge but not his decision, Qazi/judge is empowered to punish him.<sup>32</sup> Moreover, Allama Maverdi also interpreted the verdict as a punishment.<sup>33</sup>

Moreover, in an another tradition, Imam Shafi was of the opinion that if disputant parties of the case start quarrelling in court, the Qazi can stop them, and if they still continue quarrelling with each other, the Qazi can strictly admonish and also can order for their detention which may vary depending upon the severity of the situation.<sup>34</sup> Similarly, Allama Shaheer Arsalan opined that Qazi Abu ul Mofid Saif Ibn Jaber awarded sentence to a person who was found guilty of contempt of court by abusing the Qazi in his court during Abbasi Caliphate period.<sup>35</sup> It was also reported by Dr Abdul Aziz that if the litigant parties are found disrespecting the court or the Qazi, the Qazi is legally authorized to punish the culprits by anyway or sent them behind gallows in order to establish the dignity of the court.<sup>36</sup> Hazrat Imam Hasan along with

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<sup>29</sup> Wakee, Muhammad bin Half, *Akhbar-ul-Quzath*, Cairo: Al-Tijāria al-Kubra, 1947-50, Vol.1, P. 108

<sup>30</sup> Audah, Abdul Qadir, "Tashriul Jinaiul Islami", Berut: Darul Kitab al Arabi, 2001, Vol.1, P. 238

<sup>31</sup> Nissai, Ahmed bin Shoaib, Sunan Nisai, bab: Al-Ruksa lil Hakim ul ameen, hadith nمبر 5409, Mombay, Darul I'll, 2013, Vol.1, P. 346-347

<sup>32</sup> Quddama, Al Mughni, Riyadh, Dar Alim al-kutub, 1986, Vol. 9, P. 43

<sup>33</sup> Mawardi, Adab al qazi, Baghdad, Diwan al oqaf in 2005, Vol. 1, P. 33

<sup>34</sup> Ibid: page 44

<sup>35</sup> Ibid page 70

<sup>36</sup> Abul Hassan, Ibne Aseer, "Al kamil fi attareekh" Riyadh baitul afkar adauliyyah, 2009, Vol. 3, P. 265

another witness appeared before the Court of Qazi Shuriah in connection with the ownership of Shield, which was used for protection from arrow and swords during war. Qazi Shuraih refused to accept the evidence of Imam Hasan in favour of his father.<sup>37</sup> Hazrat Ali (RA) argued with the Qazi Shuraiah and enquired that whether he has learnt the sayings of the Holy Prophet in favor of Hasan and Hussain, The leaders of the youth in heaven, he said: yes I have learnt these remarks in favor of Hasan and Hussain but it relates to the life hereinafter.<sup>38</sup>

Under Islamic law, a Qazi (judge) has the power to punish a contemnors or a person creates hurdle in smooth dispensation of justice. It is based on public interest or Masliha. It is established fact that under the principle of siyasat-u-Shariah, the man in authority or head of the State is empowered to enact laws for the administrative purposes or running the affairs of the state smoothly. This particular law is meant to uphold the majesty of law and the dignity of Courts and protect their image in the eyes of the members of the public and to prevent undue interference with the administration of justice. We find in the classical writings of the ancient jurists, justifying the punishment for those who do not care the dignity of the Court and Hon judges or creating hurdle in smooth dispensation of justice. In this respect, few examples/precedents are reproduced in the following lines.

Abdul Aziz Amir the author of Al-Tazir fi Shariatil Islamiah writes that:

"التشاتب والتشاحن توجيهاً لتهمة أو دفعاً لاتهام ، فإن القاضى يحسن به أن ينهى الخصمين عن هذا التشاتم ، ويطلب من كل منهما الكف عنه ، والتزام السكوت، حفظاً لكرامة مجلس القضاء؛ وتوقيراً للهدوء. الضرورى لإدارة الجلسة - فإن لم ينتهياً بنهى القاضى لهما ، فإن له أن يعزرها ، حفظاً لهيبة مجلسه. وإن عفا فحسن." <sup>39</sup>

"In case of abusive language between the parties during the course of hearing, as a result of accusation and counter accusations before the judge, the Qazi can pass an order to the litigants to refrain from using abusive languages against each other and keep the dignity and decorum of the Court high. If they do not mend their attitude, the Qazi is empowered to punish them under Tazir. If Qazi forgive them, it is much better."

Allama Qurtubi, the renowned commentator of the Holy Quran while explaining:

"فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا."

"So, never by your Lord! Never shall they become believers, unless they make you the judge in the disputes that arise between them, and then find no discomfort in their hearts against what you have decided, and surrender to it in total submission."

<sup>37</sup> Ibid: 266

<sup>38</sup> Al-Mabsut, Sarkhasi, Berut, Dar ul Marifah in 1989, Vol. 16, P. 122

<sup>39</sup> Amir, Abdul Aziz, Al-Tazir fi Shariatil Islamiah, Cairo: Khaleej al Arabi, 1988, Vol. 1, P. 137

<sup>40</sup> Al-Quran 4: 65

Criticizing the judgment delivered by a judge according to dictate of Islam, is a sinful act and the person who criticizes has to make repentance. If he criticizes the person of the judge not his judgment, such person deserves punishment.<sup>41</sup> A person who is extremely quarrelsome and does not desist from creating disturbance in the Court room and do not care the dignity of the Court nor comply the order of the judge; such person will be awarded the punishment of imprisonment or the punishment of flogging/beating.<sup>42</sup> A judge asked a party of the case to produce witnesses, the party without cogent reasons, did not comply the court order or returned the notices arrogantly, in such circumstances, the judge is empowered to award any punishment either beating or imprisonment.<sup>43</sup>

There are many more precedents in the books of Fiqh on the permissibility of awarding punishment on contemnor of Court or a judge. Such punishments are based on Masliha (Public interest) because; the judiciary is an important organ of the Islamic state entrusted with the dispensation of justice between the people. If the judges or the courts are humiliated or ridiculed, then the sacred job of maintaining justice and equity which is basically entrusted to the messengers of Allah will be of no use.

Sanctity of the courts' verdict is important and fundamental to a justice system as an uncalled behavior of the litigant parties may jeopardize the fair trial

#### **Conclusion:**

This article has encompassed contempt of court in Islam where incidents from Islamic history and traditions, verses of the holy Quran have been relied on in order to reach a conclusion that courts' judgments must be given deference and nobody is immune whosoever from criminal proceedings if found guilty. This article also finds basis for an effective contempt of court legislative framework which could authorize the judge to deal with matters pertaining to contemnors by having recourse to a swift and prompt process of law. Thus, it concludes that it is of much importance to establish the dignity of courts by upholding their image and safeguarding them against undue interference in the smoothing functioning of justice system.

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<sup>41</sup> Mawardi, *Adab al qazi*, Baghdad: Diwan al oqaf in 2005, Vol. 1, P. 252

<sup>42</sup> *Ibid*: P 253

<sup>43</sup> Khasaf, *Sharh Adab Al Qazi*, Baghdad: Addar ul arabiyya, 1978, Vol. 2, P. 325



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- <sup>4</sup> Ibid: article 25
- <sup>5</sup> Ibid 238-239
- <sup>6</sup> Muhammad Shafī, Mufti, Muārif-ul- Al Qurān, Lahore, Maktaba usmania, 1982, Vol.2, P. 103
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