LAW AND OUR RIGHTS "All citizens are equal before law and are entitled to equal protection of law"- Article 27 of the Constitution of the People's Republic of Bangladesh

Bangladesh at the CERD Committee Session 2001

Ensuring penalisation of the acts of racial discrimination

A. H. MONJURUL KABIR

HE concern of the United Nations with the promotion and protection of human rights and fundamental freedoms stems directly from the realization by the international community that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", and from the resultant pledge of States Members of the United Nations "to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms".

Today, the United Nations works to promote and protect human rights through a variety of approaches. Through the United Nations Technical Cooperation Programme in the Field of human rights, states may receive, at their request, technical assistance in the promotion and protection of human rights. Technical cooperation projects are undertaken in specific countries, as well as at the regional and international levels. Such projects might include training courses for, inter alia, members of the armed forces, police forces or the legal profession, as well as advisory services for the incorporation of international human rights norms and standards into national legislation. Financed mainly by voluntary contributions, technical cooperation is a quickly expanding area of the United Nations Human Rights Programme.

At the institutional level, six committees established under the principal international human rights treaties are currently in operation. The main function of the committees, also referred to as treaty-monitoring bodies (conventional mechanisms), is to monitor the implementation of the respective treaties by reviewing State party reports submitted under those treaties. The treaty bodies endeavour to establish a constructive dialogue with States parties to assist them in fulfilling their treaty obligations and to offer guidance for future action through suggestions and recommendations.

The 58th Session of the CERD Committee

Torture, Committee on the Elimination of Racial Discrimination) also accept and render views on individual complaints of human rights violations by States parties

In March 2001, the Committee on the Elimination of Racial Discrimination held its 58th session (6 - 23 March), at the United Nations in Geneva, Switzerland. The Committee is an international panel of 18 independent experts from all regions of the world. CERD has spent most of its three-week session reviewing the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The following Countries were examined: Algeria, Argentina, Bangladesh, Gambia, Georgia, Germany, Greece, Iceland, Japan, Laos, Portugal, Sierra

The review of national implementation of the Convention by CERD provides a valuable opportunity to examine efforts undertaken by governments to combat racial discrimination and to promote interracial tolerance and understanding. It is important to recall that, according to article 1 of the Convention, racial discrimination refers to any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic

Conclusions and Recommendations on the Periodic Reports of Bangladesh

The CERD Committee considered the seventh, eighth, ninth, tenth and eleventh periodic reports of Bangladesh, which were due on 11 July 1992, 11 July 1994, 11 July 1996, 11 July 1998 and 11 July 2000 respectively, at its 1457th and 1458th meetings (CERD/C/SR.1457 and 1458), held on 19 and 20 March 2001. At its 1462nd meeting, held on 22 March 2001, it adopted a number of concluding observations.

The Committee welcomed affirmative action programmes undertaken to ensure the enjoyment of the rights contained in article 5 of the Convention by the socially and economically disadvantaged groups, in particular the tribal population of the Chittagong Hill Tracts.

The Committee appreciated the signing of the 1997 Chittagong Hill Tracts Peace Accord, and the implementation of certain of its provisions.

The Committee noted the information given about the constitutional prohibition of racial discrimination, but was concerned that racial discrimination as such was not explicitly and adequately prohibited and penalised in criminal law. The Committee recommended that Bangladesh consider giving full effect to the provisions of article 4 of the Convention in its domestic legal order to ensure penalisation of acts of racial discrimination.

The Committee appreciated the importance accorded by Bangladesh to the educational curriculum as a means to spread awareness of human rights among the population and, in particular, the emphasis given to the inclusion of human rights standards, as set out in the different UN Conventions.

Regarding concerns and recommendations, the Committee noted the lack of details in the report on the demographic composition of the population. The Committee reiterated its recommendation to Bangladesh to provide in its next report information on the composition of the population. In particular, the Committee wished to receive disaggregated information on the economic and social status of all ethnic, religious and tribal minorities, as well as their participation in public life.

The Committee noted the information given about the constitutional prohibition of racial discrimination, but was concerned that racial discrimination as such was not explicitly and adequately prohibited and penalised in criminal law. The Committee recommended that Bangladesh consider giving full effect to the provisions of article 4 of the Convention in its domestic legal order to ensure penalisation of acts of racial discrimination.

The Committee was concerned about reports of human rights violations by security forces present in the Chittagong Hill Tracts affecting the trial population, including reports of arbitrary arrests, detention, and illtreatment. The Committee recommended that Bangladesh implement effective measures to guarantee to all Bangladeshis, without distinction

based on race, colour, descent, or national or ethnic origin, the right to security of person and protection by Bangladesh against violence or bodily harm.

Notwithstanding certain positive developments, the Committee was concerned about the slow progress in implementing the Chittagong Hill Tracts Peace Accord. The Committee urged Bangladesh to intensify its efforts in this regard and recommended that Bangladesh provide in its next report details regarding the work of the Chittagong Hill Tracts Regional Council.

The Committee considered that the term 'descent' did not solely refer to race or ethnic or national origin, and was of the view that the situation of castes fell within the scope of the Convention.

The Committee was concerned about the poor living conditions in the refugee camps for Rohingyas, and recommended that Bangladesh suitably address the situation pertaining to refugees.

The Committee requested that Bangladesh provide in its next report information on efforts made in the country to address the ethnic dimensions

of migration and trafficking in persons. The Committee encouraged Bangladesh to continue to take steps to strengthen awareness about human rights in general and the Convention in particular through education. It further recommended that Bangladesh undertake training in the provisions of the Convention in the training

programmes of law enforcement officials. The Committee requested that Bangladesh provide in subsequent reports information about jurisprudence relating specifically to violations of the Convention, including the accordance by courts of adequate reparation for such violations.

Bangladesh was also invited to provide in its next report further information on the steps towards establishing an independent National Human Rights Commission and an Office of the Ombudsman.

The Committee noted that Bangladesh had not made the declaration provided for in article 14 of the Convention, and the Committee recom-

mended that the possibility of such a declaration be considered. The Committee recommended that Bangladesh ratify the amendments to article 8, paragraph 6 of the Convention. The Committee also recommended that Bangladesh's reports be made readily available to the public from the time they were submitted and that the Committee's observations

on them be similarly publicised. Like many other 'so called democratic countries', the Government of Bangladesh routinely concealed the conclusions and recommendations of the UN treaty bodies made on its periodical reports. The previous experiences confirm this tendency. This year the CERD Committee considered the five periodic reports of the Government together. The Committee dealt the issues with critical insight. The Government, so far, has not communicated anything on the observations of the CERD Committee to the media for public record. The secretive ministers and the bureaucrats often forgets that

keeping such information shelved at the their discretion is now difficult. At

least, the present age of information has made the situation troublesome for

Source: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Bangladesh. 22/03/2001. CERD/C/58/Misc 26/Rev 3. (Concluding Observations/Comments)

LAWSCAPE

Violation of the Constitution: Should locus standi matter?

MUHAMMAD SAMSUL HOQUE

ONSTITUTION is the most precious public property and it is the duty of every citizen to protect it. The Supreme Court of India held as reported in All India Reports 1982, page 149, para 17 "where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right ... and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

Regarding public interest litigation, Bangladesh is lagging far behind compared to Pakistan and India. Reason amongst others may be the attitude of looking at things and interpretation of the constitutional expression 'locus standi' and 'person aggrieved'. However, with regard to person aggrieved, Mr. Justice B.B. Roy Chowdhury held that the term 'any person aggrieved' does not necessitate that one must be personally aggrieved; rather one may feel aggrieved for the cause of others.

Is it any offence to feel aggrieved for the cause of others if no malafide can be traced in the approach? While a woman is attacked by some hijackers or mastans should the people around resist the mastans and save the woman? Where is the locus standi of the people if questioned by the mastans or by the police?

As per our constitutional and legal framework, citizens of this country have to perform some duties. Under section 44 of the Code of Criminal Procedure every person aware, as to cognizable offence committed or likely to be committed, has a duty to forthwith give information to the police or to the Magistrate and under section 150 of the Police Code upon receipt of such information have to prevent commission of cognizable offence and take appropriate action. Question of locus standi of the informant does not arise. Under section 190 (1) (c) of the Code of Criminal Procedure a Magistrate can take cognizance upon information from any person, upon his own knowledge or upon suspicion as to commission of any cognizable offence. Question of locus standi of that any person does not arise. This is so because in case of any cognizable offence being committed against others the informant is not personally aggrieved; he, however, may be a person aggrieved for the cause of others and in the interest of the law and order situation. The police or the Magistrates having the legal obligation are to take cognizance and take action when cognizable offence is alleged to have been committed or likely to be committed question of locus standi of the informer does not

Now whether question of locus standi can be a bar in invoking writ jurisdiction by a citizen however he is not personally aggrieved particularly when violation of the Constitution is alleged. Article 21 (1) of the Constitution of the People's Republic of Bangladesh if properly construed can remove any doubt regarding the obstacles of so-called locus standi while the approach is bonafide and made in the public interest. To interpret 'any person aggrieved' of article 102 of the Constitution, article 21(1) is required under the Constitution to be the guiding principle. The article 21(1) runs as follows: "It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property." But how every citizen can perform public duties and protect public property if the expression 'locus standi' and 'person aggrieved' are not interpreted in a broadersense?

In the context of our country it is also required to be taken into judicial notice that weaker section of the people are not aware of the rights granted to them under the Constitution. Further, the weaker section of the people may not dare to challenge misdeeds of the mighty interested group. They sometimes even do not know how to seek remedy. And in such a situation if a conscious citizen, a public-spirited person comes forward to assist the Hon'ble Court in the discharge of constitutional obligation should he be made an accused for such act of benevolence? He may just be an informer (as in the case of cognizable offence information is given to the police) to the High Court Division saying that the Constitution is being violated. And on such information if the High Court is satisfied that there has been any violation of the Constitution it becomes obligation of the learned judges exercising constitutional jurisdiction to resist the violation of the Constitution Eno matter how the allegation as to violation reached the notice of the Court no matter who and in what manner has brought the allegation before the Hon'ble Court. No technicalities should stand in the way to defeat the cause of justice particularly while the learned judges are oath bound to defend the Constitution.

When the approach is bonafide, liberal approach needs to be taken in defense of public interest. And it is more so when the Court is satisfied that there has been violation of any of the fundamental rights enshrined in the Constitution of the People's Republic of Bangladesh. No petitioner or formal petition is required for this. Information, received from any source might be a placard or a post card is sufficient. Informant sometimes may not dare to disclose his name. Moot point is to see whether any provision of the Constitution is violated or not. Each case can be distinguished and decided on respective merit; but point of locus standi should not defeat the cause of

It has been rightly said that rule of locus standi has an adverse effect on the rule of law. If a plaintiff with a good case is turned away merely because he is not sufficiently affected personally, justice can not be done. As the legal maxim goes "there should not be a wrong without a remedy" it is very clear to understand that the framers of the Constitution did not intend to allow any public wrong to go without any remedy and so in view of the whole scheme and fundamental principles of the Constitution the expression 'locus standi' and 'any person aggrieved' have to be interpreted liberally so as to keep the basic principle of the Constitution alive.

When cognizable offences are committed endangering law and order every citizen becomes concerned and aggrieved. When Constitution of the country is violated every citizen of the country becomes concerned and aggrieved. When fundamental right of a person or a community is violated

every other person or community becomes concerned and aggrieved. Allowing violation in one case shall certainly multiply violations. Will we opt for that?

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Three of the treaty bodies (Human Rights Committee, Committee against

Leone, Sudan, Togo.

origin.

Advertising law firms on internet

Reappraising the anti-advertisement rule

IMRANUL KABIR

ANGLADESH Bar Council, the regulatory body of the advocates in Bangladesh, debars the advocates from procuring briefs through advertisements. In chapter one, clause two, the Rules

"An Advocate shall not solicit professional employment by advertisement or by any other means. This clause shall not be construed as prohibiting the publication or use of ordinary professional cards, name plates, or conventional listings in directories, so long as the information contained therein is limited to professional and academic qualifications and public offices currently held, and does not contain any matter which savours of personal advertisement".

Legal profession commands great awe, confidence, faith and respect amongst public. Our Constitution has entrusted the judiciary with the duty to ensure justice for all, irrespective of their profession and as the officers' of the Court, legal professionals play active role in securing that objective. Because of this distinguished feature of the profession, the regulating bodies of the lawyers in all over the world are very much strict in protecting the high dignity of the profession and in doing so, sometimes discourage their members from acting in a manner which may not be seen as unfair to the men in other

professions.

India. Indian Bar Council prohibits arise. First, whether the publication advocates from advertising their is an advertisement, and hence, practice (Rules 36 and 37 of Chapter violative of the Bar Council Rules. II of the Bar Council of India Rules). The chief objective of this ban, on advertising, has been to preserve the dignity of the legal profession. The to what extent such presence should Supreme Court of India in Bar Council of Maharashtra v M V not briefs and not merchandise and the heaven of commercial competition or procurement should not vulgarise the legal profession".

In CD Sekkizhar v Secretary, Bar Council of Madras (AIR 197, Mad 35) it was stated that "advertising in any form by a member of the profession advertising" of law is and has been for ages considered as reprehensible conduct. This is as it ought to be because of the standard which the gentlemen Committee determined fairly easily of the profession have zealously that lawyer's web sites are generally developed and set up for themselves as befitting the honour, dignity and thus constitute a public media high position of the noble profession as rightly regarded as a kind of rules. misconduct from the point of view of professional ethics. On that matter profession cannot be judged in the same way as the trade or rest of

Presently, individual lawyers and law firms have started opening their official websites on the Internet. These websites, generally, give a brief overview of the firms, their partners and associates, area of practice, major clients and contact addresses. Whether such activities should be regarded as advertising is a matter that deserves serious con-Similar prohibition exists in sideration. Two questions would

Secondly, whether in the light of present day need, room for web presence should be facilitated. If so, be permitted?

observed that, "law is not a trade, ing was dealt by the Florida Bar Ethics Department ('FBED'). In its guideline the FBED says, "Information that a lawyer makes available to the public about the lawyers or the lawyer's services via the internet, or similar computers based technology, is considered a form of lawyer

Richard Hille, chairperson of the Texas Bar's Advertising Review Committee states that the intended to sell legal services and advertisement under the ethics

The Bar Council of Delhi, in a notice declared that advertisements on the Internet are violative of Rules 36 and 37 of Chapter II of the Bar Council of India Rules. The notice issued on 21st October 1999 ordered all Advocates to withdraw their advertisements immediately, failing which, action would be taken. Bar Council of Mumbai followed the same line. Law firms, thereafter, have withdrawn themselves from the Internet. Some of them have published the following notice.

"The Bar Council under whose jurisdiction we practise, holds the view that we pages may infringe professional conduct rules. Although we may hold a different view, what is of paramount consideration is maintaining professional discipline. In the circumstances, we are constrained to sign off until further notice." (See http://ww.cj-

In the light of India and American experience there seems persuasive reason to argue that publication of firm profile of the law firms on Web is advertisement and hence violative of the rules of Bangladesh Bar Council. Bangladesh Bar Council, should make its stance clear on this ambiguity as more and more law firms are becoming interested to open Web page and these would turn into futile investment if Bar Council takes view similar to Indian Bar Council and various USA state bar councils.

Turning to the second question it is submitted that there is material ground to seek reappraisal in the Bar Council rules. It should not be forgotten that law is now a full fledged profession, which requires an intended lawyer to go through rigorous academic and professional training. It provides bread and butters for thousands of lawyers. Lawyer of Bangladesh are now

providing services to both national dard of service and so on. Moreover, and foreign clients. The USA and the the Code prohibits the 'Advertise-UK could not deny the need of - ment' of inaccurate and misleading advertisement. Ban on US lawyers information. The Florida and Texas from advertising was partially lifted Bar require lawyers advertising on by the Supreme Court in 1977 as the the Internet to file a hard copy of the court thought that the lawyers advertisement and exercise various deserve limited form of protection other controls. What these jurisdic-The question whether presence of the First Amendment of the US tions are doing is controlling adver-Dhabolkar ((1976) 2 SCC 291) in the website constitutes advertis- Constitution. Even the law of the tisement so as to maintain decency, England and Wales wherefrom the rather than blindly denying the need present judicial system of the subcontinent took its inception permits the Barristers' to advertise their practice. Code of Conduct of the Bar of England and Wales in section 307.1 states as follows:

307.1. "Subject to paragraph 307.2 a barrister in independent practice may engage in any advertising or promotion in connection with his practice which conforms to the British Code of Advertising Practices (and in the case of overseas work conforms to any further requirements binding on him under local law or under the rules of any national law or local bar) and such advertising or promotion may

(a) photographs or other illustration of the barrister;

(b) statements of the rates and methods of charging;

(c) statements about the nature and extent of the barrister's services; (d) with that client's express written consent the name of any professional or lay client. 307.2 "Advertising and promo-

tion must not: (a) be inaccurate or likely to mislead;

(b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;

(c) make comparisons with or criticisms of other barristers or members of any other profession; (d) include statements about the

quality of the barrister's work, the size or success of his practice or his success rate; (e) indicate or imply any willingness to accept a brief or instructions

or any intention to restrict the per-

sons from whom a brief or instruc-

tion may be accepted otherwise than in accordance with this Code; (f) be so frequent or obtrusive as to cause annoyance to those to whom it is directed.

The rules of Bangladesh Bar Council allow certain form of advertisement such as publishing visiting cards with qualification and professional position or being present on public directories like Yellow Pages. But what is important is maintaining decency while publicising our

England and Wales, therefore, prohibits comparison with other lawyers, making statement as to stanof advertisement.

many 'democracies' around the world.

Nobody claims that the lawyers Web pages in Bangladesh contain false or exaggerated information. Such cannot be claimed without prior and proper investigation. As a supporter of decency many lawyers may find it unacceptable to claim, even if those claims are true, who our clients are, how big we are, and sometimes to claim that we are getting assisted by the former judges of the courts, which is an assertion of quality service. The presentation of the advertisement, therefore, needs to be decent that is something to perceive not to define. Jeffrey R Kuester, chairperson of

the NetEthics Committee of the Georgia State Bar's Computer Law Section suggested that a prolugatory disclaimer in the following form would ensure compliance with rules governing lawyers advertising in most jurisdictions:

"This Web page is a public resource of general information which is intended, but not promised or guaranteed, to be correct, complete and up-to-date. However, this Web page is not intended to be a source of advertisement, solicitation, or legal advice; thus the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein and should always seek the advice of competent counsel in the reader's State. The owner does not intend links on the Web page to be referrals or endorsement of the linked entities, and the owner of this Web page will not accept referrals for employment from unregistered referral services. Furthermore, the owner of this Web page does not wish to represent anyone desiring representation based upon viewing this Web page in a state where this Web page fails to comply with all laws and ethical rules of that State. Finally, the use of Internet E-mail for confidential or sensitive information is discouraged"

The implementation of Jeffery's suggestion will instigate uncontrolled commercial advertisement. Such disclaimer will create an opportunity for making unrestricted assertions under safe protection. A lawyer when talks, is expected to talk that makes sense The Code of Conduct of the Bar of and carries weight. After apprising the client about his practice, if the lawyer advises not to rely on what has been said so far then instead of

getting the knots opened the client finds himself in fresh knots. A disclaimer will surely protect the lawyer from legal liability but may not absolve him from legal responsibility. A Lawyer can suggest the idea of using a disclaimer to a tradesman but not expected to use the same to protect himself.

Decent presence on the Internet is needed. Increasing presence of the foreign investors and join collaboration between the Bangladeshi and foreign entrepreneurs is exposing us to the global market more than before. Moreover, in the changing environment of globalization, the clients seeking our service do not necessarily reside within the territory. Web page may be used as another form of directory as that is accessible from almost every part of the world. In that case the name of the firm, its practice area, brief overview of its partners and associates, qualification they achieved would ensure a decent presence on the Internet. The Bar Council is expected to review the whole matter to make its way towards the future.

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A forgotten promise

MUSTAFIZUR RAHMAN KHAN

TE live in a time when the nations of the rest of the world are bravely coming to terms with the W ghosts of their pasts. The spirit of Nuremberg, where the Nazi high command was tried after World War II, has spread far and wide. From Burundi to the Balkans. we see the wheels of justice in motion so as to hold those guilty of crimes against humanity accountable. Most recently, in Lithuania, one Kazys Gimzauaskas, 93, a former member of its security police, which had collaborated with the Nazis during World War II, was convicted of genocide for his role in betraying lews to occupying German forces. This begs the question as to whether we have come to terms with the ghosts of 1971, which are of more recent antiquity.

The present Government never loses an opportunity to flaunt its pro-liberation credentials to gain political mileage. The Awami League never hesitates to identify itself with any social, cultural or political movement that purports to uphold and realise the spirit of 1971. One such movement to which the Awami League had lent its support was the Ghatak Dalal Nirmul Committee, which was led by the late Shaheed Janani, Jhanara Imam. During the term of the previous BNP Government, the Committee had campaigned vociferously for bringing to justice individuals responsible for perpetrating atrocities against civilians during our liberation war. The consciousness thus engendered contributed significantly to coagulating support for the movement that led to the fall of the BNP Government and the subsequent election of the present Government in 1996, particularly in the segment of our polity that considers itself progressive. A comparison between the results of the parliamentary elections of 1991 and 1996 in urban constituencies would evidence the decisive effect such development

had in faovur of the Awami League. Prominent among the pledges of the Awami League during the 1996 elections was the promise that it would bring to trial the collaborators of 1971 and the killers of 1975. While the Government has followed through on its commitment with regard to the Bangabandhu and Jail Killings of 1975, nothing has been done to prosecute those amidst us who were responsible for the crimes of 1971. Of course, politicians are politicians, whatever be their hue. The promises they make are made to be forgotten, especially when political convenience so suits

(though one wonders whether the picture would have been different had a member of the Prime Minister's immediate family been a victim in 1971). But what particularly disappoints is that this instance of selective amnesia appears to have also afflicted those very same intellectuals, media personalities and the like who were so visible during the heydays of the Committee, but who have not shown any concerns whatsoever at the present Government for not keeping its commitment. At best they have kept silent. At worst, we have seen the spectacle of a significant number of them degenerating into bootlicking supplicants falling over each other to climb aboard the Awami gravy train, prompting one to ask as to the identity of the real dalals and their motives.

The focus now seems to have shifted to demanding an apology, as well as compensation, from Pakistan. As just as such demands are though one cannot deny that they ring a hollow note when we, as a nation, have not taken any steps to attribute blame and liability to those amongst us who collaborated with the Pakistanis in 1971. No measure of bluster at the world stage, expulsion of impudent Pakistani diplomats or building of monuments to the martyrs of 1971 can ever compensate for our failure to bring the villains of 1971 to justice. It was, and still is imperative that those who were responsible for the atrocities of 1971 are called upon to account for their deeds through a due process of law. This is necessary not only for retribution, but to also set a precedent showing that we, as a nation, will not tolerate any act of genocide in future. Indeed, it is fallacious to speak of establishing the Rule of Law when the perpetrators of the most heinous crime of our time walk amidst us with shameless impunity. It would have been ideal if the Government were to have set up a commission, chaired perhaps by a retired judge of the Supreme Court for the exclusive purpose of investigations specific instances of atrocities in 1971. Such a commission would systematically gather testimony from witnesses and collect physical evidence from crime scenes and archives before prosecuting, under prevailing laws, those who were responsible. But with every passing year, time takes its inevitable toll on both the perpetrators and the witnesses of the atrocities of 1971, and along with them dies. slowly but surely, both the prospects of bringing such perpetrators to trial as well as the testimony and evidence that would have enabled their conviction.

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