

Role of Mediation as ADR System in India

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Abstract – Elective Dispute Resolution or ADR alludes to a collection of question goal systems that fundamentally fill in as options in contrast to prosecution and are by and large directed with the help of an impartial and autonomous third party.¹ Mediation, Conciliation, Arbitration, Lok Adalats, Med-Arb, Early Neutral Evaluation and Mini Trial are a portion of the instances of ADR techniques. ADR is basically founded on the way of thinking that a debate is an issue to be settled together rather than a battle to be won and it pictures a participative and synergistic exertion of the disputant parties, encouraged by the ADR nonpartisan, to show up at a satisfactory goal of the contest outside the limitative interaction. The essential goal of each legal system is to deliver justice² and admittance to equity is one of the esteemed objectives, which is the sine qua non for the presence of a vote based and edified state. It is, along these lines, one of the superb elements of a government assistance state to give satisfactory question goal systems and in reality in a popularity based society individuals should have powerful admittance to such contest goal components as the proverb 'ubi jus ibi remedial' can't be allowed to be decreased to a vacant guarantee. Described by an immense and persistently expanding populace and restricted assets, 'admittance to equity for all' in India is as yet a far off dream even following sixty years of autonomy. The legal system in India, weighed down with unconquerable unfulfilled obligations, damaged by a helpless adjudicator to populace proportion and went to with procedural intricacies, intrinsic deferrals and taking off costs, in the new past, had gone into a stage where its validity and viability was getting disintegrated to a significant degree.

Keywords – ADR System, Socio Legal

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INTRODUCTION

Elective Dispute Resolution or ADR alludes to a collection of question goal systems that fundamentally fill in as options in contrast to prosecution and are by and large directed with the help of an impartial and autonomous third party. Mediation, Conciliation, Arbitration, Lok Adalats, Med-Arb, Early Neutral Evaluation and Mini Trial are a portion of the instances of ADR techniques. ADR is basically founded on the way of thinking that a debate is an issue to be settled together rather than a battle to be won and it pictures a participative and synergistic exertion of the disputant parties, encouraged by the ADR nonpartisan, to show up at a satisfactory goal of the contest outside the limitative interaction. The essential goal of each legal system is to deliver justice and admittance to equity is one of the esteemed objectives, which is the sine qua non for the presence of a vote based and edified state. It is, along these lines, one of the superb elements of a government assistance state to give satisfactory question goal systems and in reality in a popularity based society individuals should have powerful admittance to such contest goal components as the proverb 'ubi jus ibi remedial' can't be allowed to be decreased to a vacant guarantee.

Described by an immense and persistently expanding populace and restricted assets, 'admittance to equity for all in India is as yet a far off dream even following sixty years of autonomy. The legal system in India, weighed down with unconquerable unfulfilled obligations, damaged by a helpless adjudicator to populace proportion and went to with procedural intricacies, intrinsic deferrals and taking off costs, in the new past, had gone into a stage where its validity and viability was getting disintegrated to a significant degree.

This pushed the quest for new other options and the outcome was the appearance of the ADR in its contemporary present day manifestation and without a doubt over these years ADR has end up being quite possibly the most encouraging cures which have been supported to counter the issues looked by the equity conveyance system. The order of the Legal Services Authorities Act, 1987 and the Arbitration and Conciliation Act, 1996 unequivocally shows the administrative awareness and worry towards the need and significance of ADR in India. In any case, the defining moment in the ADR development was the administrative order explained in the authorization of segment 89 CPC⁴ followed by an uncommon, submitted and deliberate legal undertaking, which set off an ADR insurgency in

India of a height which was extraordinary and transcendently awesome. In the new past the ADR upset has acquired gigantic energy in India, not just by virtue of ADR being a viable instrument for clearing the legal agendas, yet in addition since it avoids unbending nature and intricacy and offers an extra affordable and speedy solution for goal of questions, a cure which is genuinely suitable in the given situation. The Supreme Court and the High Courts have likewise vociferously upheld the inescapable utilization of ADR and have themselves taken horde activities for advocating and advancing ADR in India. The succinct targets of this exploration are to discover, inspect and investigate the idea and law identifying with ADR, to additionally learn, look at and dissect the structure, roads, practices and systems identifying with ADR and all the more explicitly identifying with four individual ADR measures to be specific Mediation, Conciliation, Lok Adalats and Permanent Lok Adalats and Arbitration with India and to additionally determine and examine their need, benefits and weaknesses and further to assess their viability and achievements again with India and to additionally detail conceivable medicinal measures for beating the deficiencies and propose ideas for their better and more viable execution and progress in India .

Meaning

As per Black's Law Dictionary the word 'Elective' signifies 'giving a choice'. It additionally alludes to looking external the antagonistic court setting to determine a few questions. Also the word 'Question' signifies a contention or discussion. In a similar way the word 'goal' signifies a conventional articulation of an assessment'. In entirety a surmising might be drawn that ADR is a choice other than the customary antagonistic technique or component for settling a reasonable contention.

ADR is a term, which alludes to different techniques created in US. Motivated by it, a few nations including Australia, Canada, Germany, Holland, Hong Kong, New Zealand, South Africa, Switzerland and the United Kingdom have been utilizing the said system which urges the disputants to show up at an arranged comprehension with at least external assistance; its essential item being evasion of vexation, costs and postponement and advancement of 'admittance to equity'. In the expressions of Sir Laurence Street:

ADR isn't in truth elective. It isn't in rivalry with the set up legal system. It is an extra fierceness of component inside the generally speaking accumulated instruments for the goal of questions. Nothing can be option in contrast to the sovereign authority of court system. We can, notwithstanding, oblige components which work as extra or auxiliary cycles in the release of the sovereign's duty. These empower the court system to give its valuable time and assets to the more serious undertaking of administering equity for the sake of sovereign.

The examination work introduced thus under the title: "Elective DISPUTE RESOLUTION SYSTEM IN INDIA:

Issues AND PROSPECTS" is an investigation of equity organization in India calling attention to the prerequisite and position of ADR (Alternative Dispute Resolution) in India as a reinforcing instrument and proposes the fundamental suggestions. This examination depends on the statute of the Constitution of India, United Nation Commission for International Trade Law (UNCITRAL), the resolutions established by the lawmaking body and system and practice created by legal wing of the Government of India which has the duty of regulating equity.

Exploration on this point has been done with a between disciplinary methodology covering every one of the applicable arrangements identified with the ADR which has become the need of great importance in India. So as to clarify the territory of study clearly, the scientist thinks of it as important to offer at this stage a concise remark on the fragments of the law associated with this investigation, and the space of the examination with which they are connected.

Locating 'Justice' in the Constitution of India

The Constitutional law is the key law of land. It sets up the different parts of Government presenting powers on them for different purposes simultaneously it forces limit on the authority of the State. Taking everything into account, beginning with the Preamble, which is viewed as a key to the psyche of the creators of the Constitution, equity has been given a highest need in the rundown of subjects of safety. Equity is the foundation of any general public. Under Preamble of the Constitution of India, equity has been combined with words—social, monetary and political, which featured its central significance.

Part III of the Constitution of India manages the Fundamental Rights including the rule of correspondence, as indicated by which the State will not deny to any individual fairness under the watchful eye of law or equivalent security of the law. Further the Article 21 of the Constitution of India is additionally comprehensive of the idea of right of rapid preliminary, modest preliminary, reasonable preliminary or reach to equity as deciphered by the legal executive in India.

In like manner Part IV of the Constitution of India, which relates to the Directive Principles of the State Policy, gives due significance to the social request in which social equity may thrive. Under Article 38 of the Constitution of India there is a commitment on the State to get a social request for the advancement of government assistance of individuals by giving social, monetary and political equity which will illuminate all the foundation regarding public life. Further, Article 39A gives that State will get that the activity of the legal system advances equity, on a

premise of equivalent freedom, and will, specifically, give free legal guide, by appropriate enactment or plans or in some other manner, to guarantee that chances for getting equity are not denied to any resident by reason of financial or different handicaps. Article 40 of the Constitution accommodates the association of town panchayats, which depends on the since quite a while ago established Indian custom of having Pach Parmeshwar for settlement of debates. Moreover Article 51 plainly accommodates the consolation of settlement of worldwide debates by assertion (a method of settlement of ADR).

United Nations Commission on International Trade Law (UNCITRAL)

The General Assembly of the United Nation suggested that:

All states give due thought to the model law on global refereeing considering the allure of the consistency of the law of arbitral strategy and the particular requirements of worldwide business practice.

Various nations instituted law to give legal power to the UNCITRAL Model Law inside their purview. In compatibility of the protected command and the previously mentioned UN goal, India passed its Arbitration and Conciliation Act, 1996. The preface of the statute explicitly showed that: "It is practical to make law regarding Arbitration and Conciliation, considering of aforementioned Model Law and Rules."

Besides, the European Commission recommends that:

ADRs offer an answer for the issue of admittance to equity looked by residents in numerous nations because of three factors: the volume of debates brought under the steady gaze of courts is expanding, the procedures are turning out to be more extensive and the expenses caused by such procedures are increasing.

Historic Milestones at National Level

To give the idea of ADR access India thrives; at public level policymakers have taken some significant walks through instituting a few resolutions in this field. Resulting upon the order of UNCITRAL, India has subbed Arbitration Act, 1940 with Arbitration and Conciliation Act, 1996. There have been a few changes in the Civil Procedure Code of India towards meeting the objective of prospering of ADR. The Legal Services Authorities Act, 1987 was additionally a huge paradigm towards the advancement of Lok Adalats.

The Code of Civil Procedure, 1908

The Code of Civil Procedure as changed in 1999 embedded area 89,20 which manages the arrangements for the settlement of the questions outside the Court. Area 89(1) enables the courts that when apparently there exist components of a

settlement between the gatherings, to detail the terms of settlement and offer them to parties for their perceptions and in the wake of accepting such perception of the gatherings, the court may reformulate the conditions of a potential settlement and allude something very similar for discretion, pacification, legal settlement through Lok Adalat and mediation. Moreover Order X21 of the Code of Civil Procedure, 1908 likewise accommodates the methodology to be received for settlement of questions outside courts.

Legal Services Authorities Act, 1987

The institution of the Legal Services Authorities Act, 1987 gives special status to the working of the Lok Adalat and furthermore accommodates the arrangement of legal guide to understand the objective of admittance to equity for all. The Act additionally accommodates the pre-prosecution settlement whereby the disputants are not needed to go to the Courts first rather without moving to the Courts the debates might be settled by taking the response of the legal administrations establishments.

Consistence of the Constitution of any country consistently stays the sine qua non for the smooth working of the popularity based foundations. Present examination reflects upon the statute of the Constitution managing the security of the equity or admittance to equity. Society has a propensity of progress from static to reformist and this makes a requirement for law be changed as needs be for meeting the overwhelming challenges of contemporary world. Since the Constitution of India accommodates a remarkable plan for the security of equity to the resident, it is of most extreme significance to consider its important arrangements and further to break down them. Moreover the activities taken as order of different rules, to meet the protected command, require a 10,000 foot perspective for the current examination. To meet this prerequisite, the rules like: Arbitration and Conciliation Act, 1996, Legal Services Authorities Act, 1987, the Code of Civil Procedure, 1908 and so forth have been taken to build up the base of the current examination. Since the previously mentioned rules need a logical methodology for coming to towards the exploration based end, the current investigation mirrors a sound relationship between's the current laws and subject of the examination. The current subject has been planned to meet out the current issues looked by present legal organization. The current examination likewise centers on the new advancement in the domain of equity conveyance system. The objectives of this work being the investigation of equity arbitration system with the rise of the ADR in the tune of present interest of checking the current lacunae in getting equity.

TRACING THE DEVELOPMENT OF ADR IN INDIA

The contemporary ADR system which is common in India is basically founded on the western model and is motivated by the encounters of the western nations. The fundamental ADR techniques, nonetheless, are not new to India and have been in presence in some structure or the other long before the cutting edge equity conveyance system was presented by the provincial British rulers. Truth be told, the Panchayat, in its unique origination was, basically, an instrument of the rule of law, a methods for pacification and mediation inside the local area. The honors were known as choices of Panchayats, generally known as Panchats. In antiquated India Disputes were calmly settled by the intercession of Kulas (family gatherings), Srenis (societies of men of comparable occupation), Parishad, and so on

ADR is in this manner in no way, shape or form a new wonder, however it has been coordinated and systematized, communicated in more clear terms, utilized all the more generally in contest goal lately than previously. The Arbitration Act, 1940 was an early advance towards perceiving and giving an elective method of question goal outside the courts, albeit the whole interaction under the Act ended up being court arranged.

Article 39A⁵⁶ was embedded into the Constitution of India and inside couple of years the Constitutional order of Article 39A showed itself in the authorization of the Legal Services Authorities Act, 1987 which entomb alia gives was coordinating Lok Adalats which are significant ADR fora.

In 1989, the Government of India, established an advisory group, famously known as the Malimath Committee to entomb alia propose healing measures to oversee and back out the legal agendas. The Malimath Committee presented its far reaching report in August, 1990 entomb alia recognizing different reasons for amassing of back payments and supported the suggestions made by the Law Commission of India in its 124th and 129th reports such that the legal void bringing about the failure of the courts to cause the contesting gatherings to turn to assertion or mediation needs to be helped by important administrative activity. The council additionally supported the presentation of placation as a question goal measure.

A joint meeting of Chief Ministers of the States and Chief Justices of High Courts was hung on fourth December, 1993 at New Delhi wherein likewise the deficiencies of the conventional equity conveyance system were examined and recognized and the requirement for plan of action to ADR was underlined.

During this period, everywhere on the world, there was a development pointed toward smoothing out and normalizing the law overseeing mediation and

mollification under the sponsorship of the United Nations Commission on International Trade Law (UNCITRAL). In this scenery the Arbitration and Conciliation Act, 1996 was instituted by the Indian Parliament, which unequivocally exhibits the authoritative cognizance and worry towards the need and significance of ADR in India.

The defining moment in the ADR development was, in any case, the authoritative command verbalized in the order of area of the Code of Civil Procedure, 1908 followed by an exceptional, submitted and purposeful legal undertaking, which set off an ADR unrest in India of a height which was extraordinary and transcendently awesome. The lawmaking body gave legal acknowledgment to the significance of ADR, in regard of sub judice matters, by engaging the courts to elude the gatherings to ADR for goal of forthcoming claims. The Supreme Court of India repeated the significance of ADR while fastidiously breaking down and explaining the arrangements of area of the Code of Civil Procedure, 1908. The Supreme Court and the High Courts have vociferously pushed the unavoidable utilization of ADR and have themselves taken horde activities for advocating and advancing ADR in India. From that point forward there has been no thinking back and ADR prospers in India and keeps on achieving more prominent echelons step by step.

REVIEW OF LITERATURE

Hon'ble Justice Dr. M.K. Sharma (2005) saw that "With the progression of time there has been stuffing in quantities of prosecution. There has additionally been delay in removal of suit for different reasons like lack of judges and legal official's deficiency of foundation and increment in population. Better agreement and attention to their privileges by the overall population has likewise prompted recording of more cases in the courts. Accordingly, it was believed that as there is a weighty traffic in the principle avenue, a bye pass is to be opened to facilitate the pressing factor in the primary careful toll and therefore the gadget of elective debate goal framework like placation and mediation has been cut out. This structure or interaction is settlement outfitted and is additionally unquestionably cost saving.

Stephen C. Sawicki (2006) expressed that misdeeds and agreement debates are the establishment as a mediation practice. Creator saw that it is 'the arrangement' for which a middle person encourages the gatherings towards goal. The creator examine the parts of the cycle like introduction, arrangement, assessment, inspiration and gave them his own terms like the introduction resembles 'The Pitch' as it is the initial step of the arrangement, at that point comes the arrangement which resembles 'The Dance' since, supposing that any trade of thoughts regarding cost and terms, at that point comes the phase of assessment which resembles

the meat of the coconut, here the middle person survey the likelihood for the goal from there on the go between rouses the defendants towards dynamic or the last arrangement.

What are the cravings of the gatherings and their attorneys in mediation which impact the interaction? This was attempted to be looked in the paper 'The main impetus of wants arriving at goal in mediation'. The paper clarifies nine cravings of the gatherings which are "[T]he main impetus during the time spent mediation as the longing to be heard, the longing for affirmation and expression of remorse, the longing for reasonableness, the craving to know, the longing for pride, the craving for equity, the longing for a sensible outcome, the longing to show improvement over expected, the craving to be done. Thus, it is seen that cash isn't the lone help. Middle person ought to likewise consider different perspectives like legitimate, passionate, and down to earth and so forth to set a phase to know the genuine craving of the gatherings is the principle job of the arbiter which additionally impacts the decrease at last.

James A. Divider Jr. (2006) clarified the job of contest seriousness and time pressure in the peacekeeping mission of mediation. It was tracked down that the debate seriousness is a viable variable when contrasted with time pressure which has its moderate impact on the interaction yet the question seriousness influences the go between's decision of techniques. The creators clarified the mediation styles like help, detailing and control in the matter of worldwide questions. The previously mentioned styles viably affect the interaction. Formal arrangement, post-emergency strain decrease and commitment to emergency reduction are the various factors which are the result factors. The global emergency Behavior Project (1918-2001) has been dissected. The creator showed that the various styles impacts in various manners as control impacts formal arrangement help sway the pressure decrease. The arbiters should utilize the various styles in adjusting approaches to get the most extreme outcome.

Hon'ble Justice S. B. Sinha (2006) Judge, Supreme Court of India Critically analyze the current situation of legal executive which is chipping away at the example given by Britishers and noticed " The antagonistic framework, which is one of the extraordinary traditions of the British principle in India, has functioned admirably for quite a long time. In any case, in see the agenda blast, the confidence and trust in the Judiciary has gone through generous disintegration. The working of the framework is additionally being addressed in various quarters having respect to the procedural fights, huge expenses and exorbitant defer associated with it. Equity conveyance framework in India is blasting at the creases and may fall except if prompt healing measures are embraced by the legal executive as well as by the council and the chief. The explanations behind the current circumstance are not far to look for. Initially, there is a subjective and

quantitative change in the idea of case. Not just have new and assorted territories of case have sprung up, there is likewise tremendous expansion in the quantum of prosecution prompting what is regularly called 'agenda blast'. Also, case against the State and the State-like elements has developed significantly and fast and complete consistence by the State of the orders via writs, and so forth, would be totally fundamental for carrying the case to an end.

Ex. Leader of India Dr. APJ Abdul Kalam (2007) in additionally upheld the elective settlement and supported the need to empower mediation as an elective debate component. His Excellency noticed The mediation and assuagement is unquestionably a quicker technique for question goal contrasted with the customary court measure. Just thing is that we ought to have prepared arbiters and conciliators, who can see the issue dispassionately without predisposition and encourage influenced gatherings to go to a concurred arrangement. As I would like to think, this arrangement of question goal is certainly a financially savvy framework for the penniless."The Constitution of India mirrors the mission and yearning of the humankind for equity when its introduction talks about equity altogether its structures: social, monetary and political. The individuals who have endured genuinely, intellectually or financially, moved toward the Courts, with incredible expectation, for the last settlement of their complaints. They cease from going rogue, as they accept that one day or the other, they would get equity from the Courts. Equity Delivery System, along these lines, is under a commitment to convey instant and modest equity to its buyers, without in any way settling on the nature of equity or the components of decency, equity and fair-mindedness. His lordship further saw that, the legal executive needs to guarantee that the essential right to an expedient preliminary doesn't remain only a pipedream to a huge number of individuals"

Stevent Knapnel (2007) clarified the job of mediation in the separation proceedings. The creator saw that the separation is in it an overwhelming interaction separated from the monetary obstacles. Separation mediation is a decent solution for different structures and quicker than the other ill-disposed framework. The issues like kid authority and appearance rights can be viably tackled through mediation. However, the separation mediation deals with the numerous issues like lack of qualified go betweens, inconsistent bartering, enthusiastic weakness and the mentality of the general population everywhere towards the couple. When these issues controlled, the mediation in separate from case can be demonstrated compelling device to arrive at a value full settlement.

Francis E. McGovern (2007) saw that The Quantitative contrasts acquired in complex debates have subjective ramifications in the jobs and elements of mediators".134Author further saw that

the worldview of mediation varies with the kind of case. Just the essential way is helpful for a middle person no standard methodology. As indicated by creator the greatest test in the mediation cycle is to unload the basic realities of the debate and to repack them to assist the contesting parties without contaminating them.

Creator John W. (2008) Cooley expressed that it is an extraordinary fortune of the current world wherein the organization like at the Geneva, where the world gatherings meet intermittently to talk about the pertinent issues and this sort of discussion can give an answer for global complaints. While finishing up he put together his perceptions with respect to the phrasings of Jean Meynaud "the advancement of global association will continuously deny the traditional mediatory methods of part of their optional components. The tranquil settlement of contrasts, resort to mediation and appeasement are among the commitments forced on the signatories of the deals and shows."

OBJECTIVES

1. To follow out the historical backdrop of Alternative Dispute Resolution Mechanisms in India.
2. To comprehend the various ideas identified with the examination issue.

RESEARCH METHODOLOGY

The doctrinal, non-doctrinal and insightful technique for examination will be received in this exploration. The researcher utilized the doctrinal examination technique for social event the assessments of the course reading essayists, the Law Commission writes about the primary and operational piece of the authoritative apparatus. The researcher has attempted to examine and distinguish the institutional insufficiency present in the Indian legal system, which has brought about the emergencies like circumstance. The investigation will likewise be led on scientific premise. It would likewise be led with a casual, explorative and evaluative in nature. Procedure adjusted here in this investigation is to gather the data sources from printed and electronic materials. Pertinent legal control arrangements have been eluded broke down and fundamentally assessed. The doctrinal examination strategy was additionally used to consider the distinctive Alternative Dispute Resolution Methods. The picked procedure of the examination pointed toward distinguishing the practical bottlenecks that are augmenting the hole between the filings and removal of cases under the watchful eye of the Courts of law and finding the answer for the issue with the assistance of mediation.

The above theories will be tried first by checking on the accessible writing as Statutes, Law Reports and the Reports of Committees and Commissions on the Mediation or ADR system in India. The archives

accessible in the Library of the University where I am looking for admission to Ph.D. will be explored along with the information accessible in other public libraries of the State of Rajasthan.

Essential hotspots for this investigation, essential sources incorporates the Code of Civil Procedure 1908, Constitution of India 1950, Contempt of Courts Act 1971, The Arbitration Act 1940, The Arbitration and Conciliation Act 1996, The Arbitration (Protocol and Convention) Act, 1937, The Legal Services Authorities Act, 1987 and The Legal Services Authority (Amendment) Act, 2002, pertinent guidelines of India and related writing have been alluded.

Optional Sources-further accessible writing on subject like books, diaries, articles, papers, distributions, periodicals, reports, past cases regarding the matter and the web is taken help from. The furthest down the line innovation will likewise be utilized to make the work beneficial.

RESULT & DISCUSSION

Conflicts have been inside the general public since creation. Conflicts or debates cause both positive and negative reactions relying upon the manner in which we treat them when they emerge. Conflicts are in fact a social interaction which is a typical and fundamental component of human life on the planet. Thus, mediation as an elective debate goal might be an exceptionally valuable approach to determine numerous legal issues out of court, especially in situations where feelings run high, like separation. Hence, mediation has gotten mainstream in the course of the most recent couple of many years and has some compellingly helpful ascribes.

CONCLUSIONS

Taking into account the different benefits it is reasonable to switch over the ADR systems, since harmony is the sine qua non for improvement of any general public. Since debates and clashes waste important time, exertion and cash, yet in addition obliterate the tranquil climate in the general public. To accomplish this it is of most extreme significance that there ought not be any contention in the general public. In any case, truth is told from a sensible perspective, this is beyond the realm of imagination. Along these lines, the following best arrangement is that any contention, which raises its head, is stopped from the beginning. With the legal system in the greater part of the nations being troubled with cases, any new case would deteriorate the circumstance. ADR is speedier, less expensive, and easier to understand than courts. It gives individuals an association during the time spent settling their questions that is unimaginable in broad daylight, formal and antagonistic equity system saw to be overwhelmed by the obscure methodology and esoteric language of law. It offers decision: decision of technique, of methodology, of cost, of portrayal, of

area. Since regularly it is faster than legal procedures, it can ease troubles on the Courts. Since it is less expensive, it can assist with checking the upward winding of legal expenses and legal guide use as well, which would profit the gatherings and the citizens. In this point, hardly any things are generally needed to be accomplished for advancement of smooth ADR components. Not many of them are: Creation of mindfulness and advocating the strategies is the principal action item. NGOs and medias have noticeable role to play in such manner.

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