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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GENDER JUSTICE IN INTERNATIONAL LAW:
EXAMINING INTERNATIONAL LEGAL RESPONSES TO
GENDER-BASED VIOLENCE AND DISCRIMINATION.

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ABSTRACT:

Gender justice in international law compares the legal frameworks and mechanisms for combating gender discrimination and gender-based violence at the global level. For the last few decades, international law has made remarkable progress in terms of recognition of gender-based violence as a human rights violation and of responses to it, especially through conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and United Nations Security Council Resolution 1325 on Women, Peace, and Security. The International Criminal Court and International Criminal Tribunal for Rwanda have been instrumental in holding the perpetrators of sexual violence accountable. Intersectional issues, however, related to race, class, and sexual orientation present complications in achieving full gender justice. The paper abstracts the evolution of international legal responses to gender-based violence and discrimination, weighing successes and failures toward gender equality and justice. A critical discourse analyses the treaties, international court cases, and the advocacy framework, thereby pointing toward the need for a more inclusive, comprehensive, and intersectional approach to gender justice under international law. The roles of international organizations, such as the United Nations and NGOs, in framing legal responses to gender-based violence are also discussed in the paper. Increased recognition of sexual and gender-based crimes as war crimes and crimes against humanity in international criminal law is also examined. Finally, the future of gender justice is discussed, with calls for better enforcement mechanisms and greater global unity in fighting gender inequality.

KEYWORDS: Gender Justice, International Law, Gender-Based Violence, Human Rights, Discrimination.

INTRODUCTION:

Gender justice has become an increasingly prominent and essential aspect of international law, particularly in the context of gender-based violence (GBV) and discrimination. Historically, international legal attempts to protect and uphold women's rights found considerable challenges which are still today perpetuated by deeply engrained patriarchal norms and the marginalization of women and gender minorities. However, the last century saw an intense drive to establish a legal edifice that would promote gender justice by combating acts of violence and discrimination on the basis of gender.

From the early 20th century, the conception of gender justice and equality in international law had historical beginnings in the work of the League of Nations and the International Labour Organization (ILO), addressing minor aspects of gender inequality mainly related to labours rights. Really, it was not until after World War II under the aegis of the United Nations (UN) that gendered violence and discrimination started to be more deliberately addressed in a global context.¹ From 1948, with the introduction of the Universal Declaration of Human Rights (UDHR), some semblance of a modern understanding of gender equality emerged, declaring that equal rights and dignity belong to all human beings without distinction as to sex.

A great watershed occurred in the making of women's rights as a legal subject with the CEDAW Convention, which was adopted in 1979 and gave birth to its own comprehensive framework for the protection of women's rights and formulated global standards for the elimination of discrimination against women.² Today, therefore, the work at hand for gender justice at the international plane is fully engaged by international courts, governments, and NGOs, trying earnestly to make a difference in the lives of those affected by gender-based violence or discrimination.³ This dynamic and fluid area demonstrates the commitment of the international community to the advancement of gender equality and the right to live free from violence and discrimination.

¹ Radhika Ghosh, offenses against women, 5 Feb 2021.

² Ohchr.org.

³ Un.org.

2. THE ROLE OF INTERNATIONAL TREATIES (CEDAW, ICCPR, ICESCR) IN ADDRESSING GENDER-BASED VIOLENCE:

International treaties form the bedrock of the development of a standard and practice in international law toward the rights of women and access to gender justice. These treaties include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁴ the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) who play a central role in shaping an international law regarding the extent and nature of gender-based violence (GBV) and discrimination.

CEDAW (1979) remains the most detailed and legally binding international treaty concerning the discrimination of women. It includes definitions of discrimination against women and the corresponding set of obligations of states to erase it in the political, economic, social, and cultural realms. When it comes to gender-based violence, CEDAW obliges state parties to take measures to prevent treat any violence against women, be it in the public or private spheres. Article 2 of CEDAW requires that states should consider the adoption of measures that will modify or abolish existing laws, regulations, customs, and practices that bring about discrimination. Besides, legal measures under CEDAW obligate states to provide laws protecting women from violence including domestic violence, sexual harassment, and trafficking.

Although the International Covenant on Civil and Political Rights (ICCPR) (1966) would be primarily discussing civil and political rights, it is a very important instrument in the area of gender justice.⁵ It thus embraces fundamental freedoms as provided under it, including the right to life and liberty and security for everybody, which could be genuinely under threat due to different forms of gender-based violence, and not limited to the above. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966 also establishes the right to health, education, and an adequate standard of living against gender-based violence and discrimination.⁶ In this way, they bring forward the argument about a holistic approach to gender justice in that it includes civil, political, and now economic rights toward protection of women from violence and exploitation.

⁴ Aparna Jayakumar, CEDAW, I pleaders, 24 Jun 2021.

⁵ <https://treaties.un.org>.

⁶ <https://nhrc.nic.in>.

These treaties emphasize the encompassing aspect of gender justice, reflecting the multifaceted nature of gender-based violence. By engaging in continual monitoring and periodic reviews, it is the international bodies, i.e., Committee on the Elimination of Discrimination against Women (CEDAW Committee) and Human Rights Committee, that would create the accountability and call for compliance with its provisions by countries.

2.2 IMPACT OF CEDAW AND PUBLIC INTERNATIONAL LAW:

CEDAW has made substantial contributions to national legal reforms and policies to combat gender-based violence. Ratifying countries are obliged to align their domestic laws with the provisions of CEDAW. The vast approach makes it possible to influence more even legal standards and social attitudes by stimulating awareness and creating spaces for addressing gender inequality.

The general recommendations by CEDAW on some specific issues, like domestic violence and human trafficking, have been the main reason for stronger protective laws and policies. The different international laws contained in different treaties, for instance, CEDAW, bring about a culture of accountability in states by demanding not just prevention of violence but also providing remedies, which include legal and support services, for the victims.⁷

Despite the progress realized, these laws have not been effectively enforced in many cases. In many instances, civil society, with its norms and at times through political resistances in some countries, comes to block the proper application of these international obligations. Nonetheless, CEDAW and its complementary treaties, such as the ICCPR and ICESCR, are still important instruments for progressing the global agenda of gender justice and for combating gender-based violence.

3. GENDER-BASED VIOLENCE AS A HUMAN RIGHTS VIOLATION:

Gender-based violence (GBV) is recognized worldwide as a violation of human rights and discrimination. GBV in international law means very harmful acts directed to an individual due to his-her gender, including domestic violence, trafficking, sexual harassment and violence experienced in war.⁸ All forms of GBV violate the dignity of human beings but are magnified

⁷ <https://www.refworld.org/legal/agreements/unga/1979/en/13757>.

⁸ <https://www.unhcr.org>.

in their effects on women and girls much more than males. The broader international legal framework establishes GBV as a right violation by leading it to the realm of life, liberty, security, and freedom from torture or cruel inhuman or degrading treatment.

3.1 INTERNATIONAL LAW MEANING OF GENDER-BASED VIOLENCE:

In relation to violence against women, it is violence performed against a woman by the very fact that she is a woman. It implies physical, sexual, emotional, and economic violence similar to aggression or harm perpetrated against people on the basis of their gender.⁹ The two, CEDAW and the Declaration on the Elimination of Violence against Women (1993), specify GBV as deeply-rooted violation of human rights; unfortunately, the definitions and further obligations of the meaning differ across pillars and contexts.

A wider definition is provided by the Declaration on the Elimination of Violence against Women, which understands GBV as all forms of violence in such diverse arenas as public and private life and violence perpetrated by the state as well as private individuals. For many countries, this framework set a trend in national laws and practices; however, the full realisation and enforcement of this framework continues to pose challenges.

3.2 INTERNATIONAL CRIMINAL TRIBUNALS ON ARMED CONFLICT- APPROACHES TO SEXUAL VIOLENCE:

The International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC) have gained relevance in sexual violence in armed conflict over time. Indeed, it is at these tribunals that the international law defining sexual violence has been modified to include war crimes, crimes against humanity, and genocide.¹⁰ These courts have brought a lot to the understanding of sexual violence as a weapon of war; they have also been foundational to creating a jurisprudential framework for prosecuting crimes of sexual violence. Convicting perpetrators while ensuring that survivors are heard and their needs are met, however, remains challenging.

⁹ <https://www.unicef.org>

¹⁰ Olga Jurasz, Gender based violations vol 108, 2014.

3.3 STATE RESPONSIBILITY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE:

States have international responsibilities to prevent and respond to gender-based violence. This obligation finds support both in the equal rights framework of human rights law and in some aspects of international humanitarian law. CEDAW Committee has insisted upon states taking legal measures toward criminalization of violence against women; provisions for sanctions to be applied against perpetrators; and training of law enforcement agents for effective response to GBV.

States are also under obligation to follow their pronouncements under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), thereby protecting individuals against violence and assuring life, liberty, and security.¹¹ Failure on the part of the state to prevent or respond to incidents of gender-based violence shall make the state liable to these legal regimes.

This interaction of state responsibility is mostly hampered by an inadequate legal framework, lack of political will, and prevailing cultural practices that tolerate violence against women. International law requires states to actively intervene, develop preventive mechanisms, provide legal means for victims, and hold offenders of violence accountable. While the international legal framework already provides a basis for addressing GBV, the difficulty now lies in its enforcement at the national level.

4. DISCRIMINATION AND WOMEN'S RIGHTS IN INTERNATIONAL LAW:

Women's rights are human rights enshrined within international law—a fact clearly articulated in several of documents that are central to the field of human rights. Indeed, within this regard, the Universal Declaration of Human Rights (UDHR) of 1948 states that all people are entitled, unrestricted by sex, to equal protection under the law and to enjoyment of all civil, political, social, and economic rights. The inherent dignity and equal rights of every human being is defined in Article 1 of the UDHR,¹² while Article 2 prohibits discrimination on the base of sex. Article 7 further guarantees that every individual enjoys equal protection of the laws. The

¹¹ Gloria gaggioli, International Review of the Red Cross, May 2015.

¹² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, UDHR Art 1,2.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the principal international treaty dealing with women's rights and it reinforces the importance of the obligation on the states to eliminate gender-based discrimination in all forms. CEDAW obliges states to ensure equal opportunities for women in political, economic, and social spheres and to eliminate all forms of discriminatory laws and practices.

Although remarkable progress has been made in international human rights law since its inception, there still remain many challenges caused by discriminatory laws. Some of these discriminatory laws are enshrined in certain domestic legal systems which discriminated against the women, particularly in family law, inheritance, and personal status laws. Restrictive laws such as denying their equal access to property rights often, limit women's active involvement in political and public life. These laws also continue creating gender inequalities between the two sexes. Their removal requires legal reform according to international human rights law. The International Labour Organization (ILO) played a leadership role in the advocacy of equal pay for equal work through the Equal Remuneration Convention of 1951, which demands that equal remuneration be paid to all workers for work of equal value irrespective of their gender. International labour standards address workplace discrimination, which still afflicts numerous industries worldwide. These provisions obligate the states to amend the domestic law to meet the international standards in the workplace concerning gender equality, such as Article 15 of the Indian Constitution that guarantees rights against discrimination. Article 39, again ensures equal pay for equal work for men and women. Such provisions signify the importance of incorporating international standards within national legal frameworks. International law pushes itself toward reforms with the intent of making them progressive, thus ushering states to align their legal systems with the global human rights standards to which all areas in life should be free of gender-based discrimination.

4.1 CASE LAWS

FRONTIERO V. RICHARDSON (1973)

In the case the Supreme Court declared that gender-discriminatory treatment of military benefits violated the Equal Protection Clause of the 14th Amendment. The case concerned a female lieutenant in the U.S. Air Force who was denied dependent benefits for her husband comparable to those received by male servicemen for their wives. The Court stressed that administrative convenience alone can never justify discrimination for sex nor that gender-based classifications should be subjected to strict scrutiny. This landmark decision has proven to be

quite significant in the questions raised regarding the constitutionality of sex-based discrimination and laid the groundwork for further legal battles toward gender equality within the United States.¹³

VISHAKA V. STATE OF RAJASTHAN (1997)

The Supreme Court of India dealt with the issue of sexual harassment at the workplace in this landmark case. This case came to be where a public interest litigation was filed by Vishaka and others for a public interest litigation after a public sector raped a social worker in Rajasthan. The Court has now recognized sexual harassment as a violation of the fundamental rights guaranteed under the Indian Constitution, which includes the right to equality (Article 14) and the right to life and personal liberty (Article 21). The Court laid down detailed guidelines regarding the prevention of sexual harassment at the workplace, which would form later the foundation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. A landmark in Indian legal history, the judgment of Vishaka recognized gender discourses where violence is inflicted in the workplace and provided legal provisions in prohibitions against it.¹⁴

5. CHALLENGES IN THE IMPLEMENTATION OF GENDER JUSTICE LAWS:

Despite the significant advancements in international law regarding gender justice, challenges persist in the effective implementation of these legal frameworks. Probably the most prominent of these barriers is the absence of strong enforcement mechanisms in international law. Without question, the international treaties such as CEDAW and the Rome Statute contain clear standards for gender justice; enforcement often falls short due to lack of binding mechanisms as well as voluntary compliance. Many international courts and tribunals like the International Criminal Court (ICC) provide a possible avenue for prosecuting offenders of gender-based violence; however, states' cooperation and the political will limit that capacity. Many states do not ratify the most critical of those conventions or do it under reservations destroying their real effectiveness. Even in a situation when international bodies have established violations of the principle of gender justice, convincing states to act on the finding by making changes or by

¹³ Justia > U.S. Law > U.S. Case Law > U.S. Supreme Court > Opinions by Volume > Volume 411 > Frontiero v. Richardson

Frontiero v. Richardson, 411 U.S. 677 (1973)

¹⁴ Citation: AIR 1997 SC 3011, Supreme court of India, Indian kanoon.

taking action is, for the most part, impossible. Impunity to gender-based violence and a disincentive to the global movement for equality is what comes with this nonenforcement.

Another part of the structural gaps in the enforcements is the resistance from cultural, religious, and political barriers that usually tend to the enactment of gender justice laws. Many societies in the conservative or patriarchal regions tend to resist reforms that in any way threaten or challenge the established or traditional view on gender roles. For example, notions among cultures regarding women's roles in the family or society do not go hand in hand with those of international law that advocates for women's autonomy and equality. In some instances, religious beliefs become the reason for practices such as child marriage or female genital mutilation. Thus, resistance is created in the society through cultural practices against gender justice laws. At the political level, gender equality movements are often resisted harshly by political elites or regimes that see such reforms as a threat to their existing power structures. Political resistance also includes rollback policies that hinder the frame of mind needed for positive change, as well as loopholes in legal provisions that weaken gender justice provisions. Moreover, the divergence in national legal systems, where domestic laws do not conform to international standards, aggravates the already tough environment. Ratification of international treaties by states does not mean that they also have the political will or adequate institutional capacity needed to harmonize national laws with global standards, which leaves very big loopholes regarding the legal protection of gender rights. This mismatch converts international commitments into an unbalanced legal system at the national level from which women and marginalized groups suffer the most in terms of legal protection. Gender justice laws, therefore, become more ineffective in terms of their results on the ground in terms of legal rights and not actualized.¹⁵ Therefore, to ensure the effective implementation of gender justice laws, it is essential to address both the structural weaknesses in international enforcement and the sociopolitical barriers that hinder the acceptance and application of gender equality principles at the domestic level.

6. EMERGING TRENDS AND FUTURE DIRECTIONS IN INTERNATIONAL ORGANIZATIONS:

While the global community is still grappling with questions of gender justice, there are some encouraging new trends, although challenges do continue. With UN Women, the World Health

¹⁵ UN women. Org, 7 Sep 2023.

Organization (WHO), and the International Labour Organization (ILO) taking increasingly pivotal roles in the advancement of gender justice, international organizations have suddenly come into the limelight. UN Women assumes an especially important global position establishing the rights of women and girls and advocating for gender justice through policy-making and programming while also serving as a catalyst for change. UN Women targets legal reforms and offers technical assistance to dismantling underlying barriers to gender equality with advocacy campaigns worldwide to bring attention to gender-based violence and discrimination against females. WHO has identified the associations between health and gender resulting in a compelling case for a broad perspective on maternal health, sexual violence, and mental health for survivors of gender-based violence. The ILO has taken the lead to ensure gender equality is integrated in the world of work: promotion of women's rights to work and pay, calling for equal remuneration for work of equal value and anti-discrimination measures. There is an enormous shift in the landscape lately, with the digital world starting to play a bigger role in gender justice. The digital environment has created new avenues for gender-based violence, whereby online harassment, cyberstalking, and revenge porn thrives. While in many ways social media sites have become an empowering tool for advocacy and awareness, they have become havens for abuse and exploitation. Women-who stand up to issues of gender equality or occupy public roles-endure even greater levels of onslaught and harassment, which often translate to awful consequences in their private life and public careers. Thus, the emergence of cyber law has become imperative to tackle these ills. Countries are increasingly enacting laws to protect individuals against online violence, such as the General Data Protection Regulation (GDPR) in the European Union that indirectly supports women's rights by the protection of personal data.¹⁶ Another observation is that enforcement of these laws around the globe is uneven and many regions still lag behind in providing adequate protection within the digital environment.

In light of these changing trends, there is an urgent need to strengthen accountability mechanisms for gender crimes brought forth in both the digital and physical worlds. International legal regimes like the International Criminal Court (ICC) have contributed to enforcing accountability for gender violence in trafficking and other situations of conflict; but again, there is a sporadic application of such accountability and many perpetrators are able to melt away in cases because of poor enforcement. The strengthening of these accountability

¹⁶ <https://jguonline.edu.in/future-of-international-relations/>, Nov 28, 2024.

mechanisms would need an enhancement of international cooperation, effective monitoring and reporting systems, and the creation of a gender-specific judicial process that addresses gender crimes in all their ramifications.¹⁷ This entails an expansion of the definitions of gender-based violence to cover atrocities committed in cyberspace and the responsibility of states to act in line with their external treaty obligations. Furthermore, attaining cross-border cooperation in the fight against digital violence, including through the establishment of international cyber laws and co-enforcement, will be of paramount importance in the coming period.

Gender justice looks to the future-in the nexus of these emerging trends-armed by a diverse set of actors. Building on the premise of international cooperation, strong legal regimes, and innovative paths to digital governance, gender justice has entered a period of rapid change. As we go forward, continuous advocacy, strong international cooperation, and a firm commitment to the enforcement of the basic human rights of all, irrespective of gender, will be the guiding principles. Only by working toward the elimination of both the traditional as well as the new forms of gender-based violence, coupled with the strengthening of the accountability and legal mechanisms, can we begin to envision a world where gender justice will no longer remain an ideal, but will instead become a reality.¹⁸

7. THE ROLE OF INTERNATIONAL ORGANIZATIONS AND NGOs IN PROMOTING GENDER JUSTICE:

Gender justice can be exercised at the international level through intergovernmental, non-governmental, and grassroots efforts. The United Nations (UN), as well as its attached specialized agencies like UN Women and the Office of the High Commissioner for Human Rights (OHCHR), buttress the need for establishing international standards, advocating for amendments in policies, and holding states accountable on gender-based injustices.¹⁹ It acts as a global champion for gender equality and provides technical assistance to governments for legal reform and financing programs to remove gender-based violence and economic inequality. It is one body that spearheads initiatives such as the Beijing Platform for Action

¹⁷ Damian Grimshaw

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International organisations and the future of work.

¹⁸ <https://gdpr-info.eu/>

¹⁹ <https://www.undp.org/rolhr/justice/gender-justice>.

(1995) and UN Security Council Resolution 1325, which emphasizes women's participation in peace and security efforts. Meanwhile, OHCHR ensures that gender justice remains part of the more extensive human rights framework, including monitoring violations and advocating for more stringent international legal protection against gender-based violence and discrimination. These organizations also work hand-in-hand toward making the recognition of women's rights as social issues as much as fundamental human rights that must be acted upon globally.

Then there are NGOs. Of course, none of these intergovernmental bodies has much meaning if they do not rely on the capacity of NGOs, such as Human Rights Watch (HRW), Amnesty International, and the International Women's Rights Action Watch (IWRAW). Of course, these NGOs engage in critical research and expose human rights violations. These also pressure governments to pass laws or enact amendments to such laws to effect compliance with gender-sensitive legal provisions. Since NGOs are good at filling out the disjuncture between global policy and local implementation, they provide legal aid, shelter, and educational programs for communities left behind. They act as footloose organizations that ensure that states fulfil their three obligations, which include CEDAW such as any other legal instruments. Furthermore, NGOs play a key role in strategic litigation, where they bring landmark cases of gender justice within the international arena, priming courts and tribunals towards establishing legal precedents in favour of women around the world.

Yet it is at the grassroots level that local women, often, organize themselves into movements²⁰ and advocacy groups as key drivers of international gender justice campaigns. The #MeToo Movement has mobilized unprecedented grassroots activism for accountability and legal reform. Other such movements from Latin America include Ni Una Menos and One Billion Rising. These movements give voice to survivors, strengthen legal frameworks, and challenge societal norms that sustain gender inequities.²¹ Most importantly, they partner with international organizations and NGOs to turn activism into action with regard to legal and policy reforms. The synergy between international bodies, NGOs, and grassroots movements is essential for creating a world where gender justice is not just an aspiration, but a lived reality.

²⁰ Oct 1, 2024, Disha Gupta, <https://ngofeed.com/blog/role-of-ngos-in-gender-equality/>.

²¹ <https://give.do/blog/how-ngos-are-promoting-womens-rights-in-india/>

CONCLUSION:

THE UNFINISHED STRUGGLE FOR GENDER JUSTICE

The struggle for gender justice is still a long one. There are millions of women and people from marginalized communities who live under violence, discrimination, and other systemic barriers to equality in the face of stunning work done by international organizations, non-governmental organizations (NGOs), and grassroots movements. The little progress we have seen—more women in leadership positions, better legal protection, and newfound awareness globally—is not something we can take for granted. It is, instead, in fragile hands, challenged every day by political resistance, cultural stigma, and the changing dynamics of gender-based violence, especially in cyberspace.

Gender justice does not represent merely a legal or political matter; it is an intensely human struggle. It is a struggle that occupies the entire expanse of a woman's journey: for a girl-child, it begins when she walks home alone at night; for a single mother, her sojourn ends as she walks down a street demanding fair pay. It encompasses liberation of so-called "civilization" from the grip of centuries of oppression in all its forms and rewriting a continuous narrative that has rendered survivors mute for far too long. Justice should not, therefore, be the privilege of a few; rather, the most vulnerable should have access to it—refugee women fleeing from conflict, or LGBTQI.

Real transformation does not lie in institutions alone but in a united struggle. When survivors go against the tides of injustice, activists challenging oppressive systems, and communities demanding accountability, it rattles the very foundations of the injustice. The world cannot afford being complacent. Gender justice is no less a goal to achieve—or a goal that must be achieved. These two provide the bedrock for the construction of equitable, socially-principled, and environmentally sustainable societies. The question is no longer whether change can happen; it is about whether we want to get down to guaranteeing it. Now is the time!

“NO ONE CAN MAKE YOU FEEL INFERIOR WITHOUT YOUR CONSENT”

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