

ANALYSIS OF CIC ORDERS RELATED TO LIFE AND LIBERTY ISSUES AND TIME TAKEN BY THE CIC IN CONCLUDING SUCH DISPUTES

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INTRODUCTION

Before discussing the orders of Central Information Commission (CIC) it is necessary to first understand the aim or objective of Right to Information Act, 2005. The aim or objective of the RTI Act is to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission (CIC) and State Information Commissions (SIC) and for matters connected therewith or incidental thereto.¹

The Central Information Commission (CIC) acts upon complaints from those individuals who have not been able to submit information request to a Central Public Information Officer or State Public Information Officer due to either the officer not having being appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information. The Act specifies time limits for replying to the request: - (a) If the request has been made to the Public Information Officer, the reply is to be given within 30 days of receipt, (b) If the request has been made to an Assistant Public Information Officer , the reply is to be given within 35 days of receipt, (c) If the Public Information Officer transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the Public Information Officer of the transferee authority, (d) Information concerning corruption and Human Rights violations by scheduled Security Agencies (those listed

¹ RTI Act, 2005

in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission (CIC), and (e) If life or liberty of any person is involved, the Public Information Officer is expected to reply within 48 hours.²

No doubt the Article 21 of the Constitution enshrines the right to life and personal liberty. The expressions right to life and liberty are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 of the Constitution of India and thus have two sources at the same time.³

THE CENTRAL INFORMATION COMMISSION (CIC)

The Central Government shall, by a notification in the Official Gazette, constitute a body to be known as the Central Information Commission (CIC) to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.⁴ The Central Information Commission (CIC) shall consist of the Chief Information Commissioner and such number of Central Information Commissioners not exceeding ten as may be deemed necessary.⁵ The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of (i) the Prime Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Lok Sabha; and (iii) a Union Cabinet Minister to be nominated by the Prime Minister.⁶ For the purposes of removal of doubts it is hereby declared that where the Leader of Opposition in the House of the People has not been recognized as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.⁷

The general superintendence, direction and management of the affairs of the Central Information Commission (CIC) shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things

² http://en.m.wikipedia.org/wiki/Right_to_Information_Act,-2005

³ <http://www.rtiindia.org/forum/1584-right-life-liberty-clause.html>

⁴ Section 12(1) of the RTI Act, 2005

⁵ Section 12(2) of the RTI Act, 2005

⁶ Section 12(3) of the RTI Act, 2005

⁷ Explanation to Section 12 (3) of the RTI Act, 2005

which may be exercised or done by the Central Information Commission (CIC) autonomously without being subjected to directions by any other authority under this Act.⁸

Section 18 of the Right to Information Act, 2005 deals with powers and functions of Central Information Commission (CIC) and State Information Commission (SIC).

Subject to the provisions of the Right to Information Act, it shall be the duty of the Central Information Commission or the State Information Commission as the case may be to receive and inquire into a complaint from any person, - (a) who has been unable to submit a request to a Central Public Information Officer either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission, (b) who has been refused access to any information requested under this Act, (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act, (d) who has been required to pay an amount of fee which he or she considers unreasonable, (e) who believes that he or she has been given incomplete, misleading or false information under this Act, and (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.⁹ Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.¹⁰

The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this Section, have the same powers as are vested in civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things, (b) requiring the discovery and inspection of documents, (c) receiving evidence on affidavit, (d)

⁸ Section 12(4) of the RTI Act, 2005

⁹ Section 18(1) of the RTI Act, 2005

¹⁰ Section 18(2) of the RTI Act, 2005

requisitioning any public record or copies thereof from any court or office, (e) issuing summons for examination of witnesses or documents, and (f) any other matter which may be prescribed.¹¹

Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.¹²

The decision of the Central Information Commission (CIC) or State Information Commission (SIC), as the case may be, shall be binding.¹³ In its decision, the Central Information Commission (CIC) or State Information Commission (SIC), as the case may be, has the power to,-

- a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including- i) by providing access to information, if so requested, in a particular form; ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; iii) by publishing certain information or categories of information; iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; v) by enhancing the provision of training on the right to information for its officials; vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) Require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) Impose any of the penalties provided under this Act;
- (d) Reject the application.¹⁴

URGENCY CLAUSE 'LIFE AND LIBERTY' WITH CASE LAWS

¹¹ Section 18(3) of the RTI Act, 2005

¹² Section 18(4) of the RTI Act, 2005

¹³ Section 19(7) of the RTI Act, 2005

¹⁴ Section 19(8) of the RTI Act, 2005

Proviso to Section 7(1) of the Right to Information Act, 2005 specifically related to life and liberty provision. It provides that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.¹⁵

There are many case laws related to life and liberty of a person which are decided by the Central Information Commission (CIC) and some of these cases are discussed below:

In the case of **Rajnish Singh Chaudhary v. Union Public Service Commission (UPSC)**,¹⁶ the Commission held that the process of recruitment of staff for various types and level of jobs is closely related to right to work. It has therefore significant bearing on life and liberty of citizens. The conduct of examinations and interviews has to be therefore duly transparent to allow for proper scrutiny of the process of recruitment by the aspirant candidates so as to strengthen their faith in the procedure of selection and to ensure the credibility of the system. Accordingly, every public authority should adhere to the principle of maximum disclosure and provide a reasonable explanation, under Section 4(1) (d) of the Act, for every action taken by them.

In the case of **Shri Nizamuddin v. Delhi Development Authority, New Delhi**¹⁷, it was observed that on the question of life and liberty, Article 21 of the Indian Constitution reads as “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Similarly proviso to Section 7(1) deals with information sought being described as one that concerns the life or liberty of a person. Whereas matters of an administrative nature may not necessarily be considered a threat to life or liberty, programmes for demolition of inhabited structures must surely be so construed. It is open to the CPIO to rule that since structures are no longer inhabited, the application is of no concern for life and liberty, he or she must satisfy himself/herself of this fact before so ruling, while the applicant can do so by providing substantive evidence of this, as held by us in the above cited case. In the present case, therefore, not taking account of the application under the proviso to Section 7(1) by the PIO and the summary disposal by the Appellate Authority that “present case does not fall in the ambit of the

¹⁵ RTI Act, 2005

¹⁶ Decision No. 231/IC(A)/2006

¹⁷ Appeal No. CIC/WB/A/2006/00128 dated 24/25.2.2006

proviso to Section 7(1) of the RTI Act” without giving reasons as to why it does not do so, cannot be construed as being in consonance with the requirements of the Act.

In the case of **N.N. Kalia v. University of Delhi**,¹⁸ the Central Information Commission (CIC) passed following observation about section 7(1), which might help in understanding the provision better. This proviso has to be applied only in exceptional cases. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of ‘life or liberty’ would result in a substantial diversion of manpower and resources.

The life or liberty provision can be applied only in cases where there is an imminent danger to the life and liberty of a person and non-supply of information may either lead to death or grievous injury to concerned person. Liberty of a person is threatened if he or she is going to be incarcerated and disclosure of the information may change that situation. If disclosure of information would obviate the danger, then it may be considered under the proviso of section 7(1). The imminent danger has to be demonstrably proven. When a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, proviso of section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven.

The Commission, in **Mr. Satish Kumar Gupta v. PIO & AR, University of Delhi**,¹⁹ observed as follows:

“Proviso of Section 7(1) states that ‘where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.’ This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that

¹⁸ CIC/SG/C/2009/001169/4696

¹⁹ CIC/SG/A/2009/001781/4807 dated 15/09/2009

responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved. The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven."

In an order issued on 20 August 2010 in the case of **Mr. Pooran Chand v. Directorate of Health Services, Govt. of NCT of Delhi**,²⁰ the CIC asked a public authority to pay compensation of Rs. 50,000 to a patient suffering from serious illness for not providing information within 48 hours under Section 7(1) of the RTI Act. The Public Information Officer (PIO) is bound to furnish information sought under the RTI Act, within 48 hours if it concerns life or liberty of a person. This was one of the most important decisions given by Shailesh Gandhi, former Central Information Commissioner.

"The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person", the CIC held in this case.

In the case of **Mr. Pratap Kumar Jena v. PIO, Central Institute of Psychiatry, Establishment Section Kanke, Ranchi**.²¹ Commission observed, "Proviso of Section 7(1) of the RTI Act states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has

²⁰ Decision No. CIC/SG/C/2009/001628/9090 Date 20 August 2010

²¹ Appeal No. CIC/SG/A/2012/000814

to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved.

In the cases of **Mr. Anil Kumar Gupta v. Ministry of Agriculture**,²² & **Mr. Sunil Kumar Sabui v. United Bank of India**,²³ the Commission noted the decision of **Mr. Pratap Kumar Jena v. PIO, Central Institute of Psychiatry, Establishment Section Kanke, Ranchi**.²⁴ and held that "Proviso of Section 7(1) of the RTI Act states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved.

In the case of **Mr. J.K. Mittal v. Gncd**,²⁵ the CIC held that the objective of provision of RTI Act [Section 7(1) Proviso] that life and liberty related information shall be given in 48 hours is to inculcate responsive attitude in the Police Authority. It is pathetic to note that Home Department

²² CIC/SH/A/2014/000091

²³ CIC/SH/C/2015/000454, CIC/MP/C/2015/000226/SH

²⁴ Appeal No. CIC/SG/A/2012/000814

²⁵ CIC/SA/C/2015/000030

did not exhibit any concern and remained unresponsive. They simply passed on the back to the Police Authority.

In the case of **Mr. Lalit Yadav v. Delhi Development Authority**,²⁶ it was held that in case of failure, in providing the complete and categorical information, issue-wise, by the respondents, within the same time frame, appellant will be at liberty to move this Commission under Section 18 read with Section 20 of the RTI Act, 2005 for imposing maximum penalty and even recommending for disciplinary proceeding against the erring officers of the DDA.

Whether priority hearing is given in case of Section 18 (Life and liberty: urgency matters), by the CIC? Section 18 of the RTI Act, 2005 empowers Central Information Commission (CIC) to enquire into complaints against Public Authority, Public Information Officer (PIO) and First Appellate Authority. The Section has provided for enquiring and taking corrective steps by the respective commissions in respect of majority of problems that the applicant/appellant may face in getting information to which he is entitled to under this Act. In case of information pertaining to life and liberty, the complaint should be conspicuously branded as “Life & Liberty-Urgent” so that priority is accorded for its disposal before it is too late.²⁷ In the case of **Dr. Jeet Singh Mann v. Guru Gobind Singh Indraprastha University**,²⁸ it was held that priority should be given in case of “Life and liberty: urgency matters”.

It is pertinent to note the decision of the case of **Chief Information Commissioner and Another v. State of Manipur and Another**.²⁹ The Supreme Court in this case has held that Information Commissioners do not have the power to direct the public Authority if the petition is filed under Section 18 of the RTI Act.

Besides above case laws it is important to note that what conditions satisfy the “life and liberty” criteria?... I have a criminal case running and I need the information in time, to be produced in the Court of Law and this can make difference in the judgments received due to lack of evidence.... Will this reason suffice for the Section 7(1) provision?- It is advisable that you

²⁶ CIC/KY/C/2015/000158

²⁷ <http://www.lexvidhi.com/article-details/complaint-under-section-18-of-rti-act-295.html>

²⁸ CIC/SA/C/2014/000268

²⁹ Civil Appeal No. 10787-10788 of 2011

should provide the details of your criminal case such as name and address of Court, copy of complaint, next date of hearing etc. in the shape of affidavit along with your RTI application.³⁰

ANALYSIS OF CENTRAL INFORMATION COMMISSION (CIC) ORDERS RELATED TO LIFE AND LIBERTY OF A PERSON

After discussing the case laws related to life and liberty of a person under the RTI Act, 2005 it can be said that the purport of Section 7(1) of the RTI Act, 2005 is to provide for obtaining an emergency response (as against the normal time limit of 30 days) where the life and liberty of a person are in imminent danger of being curtailed. Therefore the onus rests on the applicant to prove that without the information being made available in 48 hours, there is a serious threat to his life and liberty. No doubt the Article 21 of the Constitution of India enshrines the right to life and personal liberty. The expressions right to life and personal liberty are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time. The term 'liberty' has been debated widely to connote an expanded meaning. It has been argued that 'the expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. As a result of this liberal interpretation of the term liberty, we have with us today the RTI Act. But for the invoking the emergency provision under Section 7(1), unless you are able to prove that there is an imminent danger or threat to sustain your liberal interpretation of the term liberty, it is better to seek the information under the normal channel.³¹

The proviso to Section 7(1) of the RTI Act has to be applied only in exceptional cases. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources. The life or liberty provision can be applied only in cases where

³⁰ <http://www.rtiindia.org/forum/6536-48-hours-life-liberty-rti-clause-7-a.html>

³¹ <http://www.rtiindia.org/forum/1584-right-life-liberty-clause.html>

there is an imminent danger to the life and liberty of a person and non-supply of information may either lead to death or grievous injury to concerned person. Liberty of a person is threatened if he or she is going to be incarcerated and disclosure of the information may change that situation. If disclosure of information would obviate the danger, then it may be considered under the proviso of section 7(1). The imminent danger has to be demonstrably proven. When a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, proviso of section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven.³²

It can also be said that for an application to be treated as one concerning life and liberty under Section 7(1), it must be accompanied with substantive evidence that a threat to life and liberty exists.³³

Whereas matters of an administrative nature may not necessarily be considered a threat to life or liberty, programmes for demolition of inhabited structures must surely be so construed. It is open to the CPIO to rule that since structures are no longer inhabited, the application is of no concern for life and liberty, he or she must satisfy himself/herself of this fact before so ruling, while the applicant can do so by providing substantive evidence of this.

The following points should be noted in relation to analysis of CIC orders related to life and liberty of a person:-

- 1) If the RTI application mentions Section 7(1) of the RTI Act, will the PIO honor it (If appropriate reason and justification is provided)? - Yes he/she will have to honor the same subject to appropriate reason and justification is provided/enclosed.
- 2) Can he reject the application on this ground, since he does not find the justification correct? And asks to submit a normal RTI application. - Yes, he can do so.
- 3) Will the PIO be responsible of the delay if the justification is valid and can he be penalized?- Yes in case the requisite information is not provided within stipulated time as mandatory under Section 7(1) of the RTI Act, 2005 then Second Appellate Authority has

³² N.N. Kalia v. University of Delhi, CIC/SG/C/2009/001169/4696

³³ Shekhar Singh and Others v. Prime Minister's Office, CIC/WB/C/2006/00066, dated 19/04/2006

power to penalize him/her. But you cannot file second appeal directly you will have to file first appeal then subsequently second appeal.

- 4) Will the RTI application mentioning Section 7(1) of the RTI Act get a reply at least in 30 days? Let go the 48 hours he initially sought for?- Yes in case the PIO/CPIO is not satisfied with the submission made by the applicant for considering the application under Section 7 of the RTI Act, then he/she is duty bound to provide the information under Section 6 of the RTI Act in the specified time frame.
- 5) What conditions satisfy the “life and liberty” criteria?... I have a criminal case running and I need the information in time, to be produced in the Court of Law and this can make difference in the judgments received due to lack of evidence.... Will this reason suffice for the Section 7(1) provision?- It is advisable that you should provide the details of your criminal case such as name and address of Court, copy of complaint, next date of hearing etc. in the shape of affidavit along with your RTI application.³⁴

In case the Public Information Officer does not supply the information within 48 hours, you may file first appeal after 48 hours with the First Appellate Authority. Please mention that the limitation for supply of information was 48 hours and each day of delay thereafter shall accrue penalty of Rs. 250/- per day and thereafter request to decide the first appeal immediately. First appeal has time limit of 30+15+5 days to decide the appeal. After 50 days, if you don't get any response from First Appellate Authority, please file second appeal before the Central Information Commission (CIC).³⁵

Information Commissioners do not have the power to direct the public Authority if the petition is filed under Section 18 of the RTI Act. At last it can be said that priority should be given in case of life and liberty issues other than any other issues because Article 21 of the Constitution itself contains a provision regarding right to life and personal liberty. It states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” And it is also significant to note that in case of information pertaining to life and liberty, the complaint should be conspicuously branded as “Life & Liberty-Urgent” so that priority is accorded for its disposal before it is too late.

³⁴ <http://www.rtiindia.org/forum/6536-48-hours-life-liberty-rti-clause-7-a.html>

³⁵ <http://www.rtiindia.org/forum/128727-life-liberty-under-rti-act.html>

It is pertinent to note that in case of failure, in providing the complete and categorical information, issue-wise, by the respondents, within the same time frame, appellant will be at liberty to move this Commission under Section 18 read with Section 20 of the RTI Act, 2005 for imposing maximum penalty and even recommending for disciplinary proceeding against the erring officers of the DDA.

CONCLUSION

After analyzing the case laws related with life or liberty of a person under RTI Act, 2005 I concluded that the Central Information Commission has played an important role in deciding the disputes related to the life or liberty of a person. Where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. The life or liberty provision can be applied only in cases where there is an imminent danger to the life and liberty of a person and non-supply of information may either lead to death or grievous injury to concerned person. Liberty of a person is threatened if he or she is going to be incarcerated and disclosure of the information may change that situation. If disclosure of information would obviate the danger, then it may be considered under the proviso of section 7(1). The imminent danger has to be demonstrably proven. When a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, proviso of section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven. It can also be said that for an application to be treated as one concerning life and liberty under Section 7(1), it must be accompanied with substantive evidence that a threat to life and liberty exists.

The right to know is part and parcel of the right to freedom of speech and expression under Article 19 of the Constitution, but the judiciary has given it more importance than the other freedoms provided by Article 19, therefore, in some of the cases the Court has emphasis on right by interpreting it as part of right to life under Article 21 of the Constitution.³⁶ The decision of the Central Information Commission shall be binding. In its decision, the Central Information

³⁶ Malik K.P. Dr., Right to Information (1st Ed., 2011, Reprint 2013) Allahabad Law Agency, Delhi, p.24

Commission has power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act.

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