

## A CRITICAL ANALYSIS ON GROWING SIGNIFICANCE OF ENVIRONMENTAL RELATED ISSUES IN INDIA

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### ABSTRACT:

The environmental awareness needs to be cultivated in any society to be a amazing society, or rather to be more particular, in other words, a absolutely best society method, the society which has the environmental interest. The dictionary that means of the word 'environmental' is surrounding gadgets, region or instances and the phrase environmental cognizance' will suggest that one ought to be aware of his surrounding in order that this surrounding is not disturbed. This relation of the environment with the human life has in latest years advanced into an unbiased department of scientific inquiry, which is going via the name environmental technology. As in keeping with the literature, the human-environment interplay goes lower back to the remotest feasible instances in the history of humanity. Once in a while, it's miles visible as a manifestation of a war between the two. There have additionally been instances while this relationship took the form of decent coexistence. The important thing-subject matter of that's that the herbal balance among human existence and the environment need to now not be misplaced. this is the simple requirement for any lifestyles to flourish in particular for human life. The major contribution of this paper could be to assist the respective groups inside the authorities in constructing up the environmental attention amongst citizens of India.

**Keywords:** Environment, laws and acts, awareness, punishment, responsibilities.

**INTRODUCTION:**

The earth's increasing human population and commercial boom were recognized to pose serious environmental screw ups. At the give up of 2011, India's populace reached 1.21 billion and its economy is developing at eight.5%, the quickest after china. Because of the population strain, India pushes in advance with competitive industrial improvement. Therefore, thousands of industrial clusters nationwide produce significant quantities of untreated toxic waste that regularly become in rivers, lakes, forests, and landfills. Despite the fact that India has sufficient environmental laws, weak enforcement and the dearth of finances and manpower are most usually the hindrances for the pollution control forums. The troubles of surroundings are the effect from the human's activities that haven't any civic aware and most effective assume the income without challenge about the impact towards the surroundings and their future of life. The long-time impact from the environmental pollutants can be seen whilst the environment is not capable of undergo the pollutants. In keeping with the relevant literature, the most important reason of this ecological crisis is regarding the price and perception in shaping human relation with the encompassing and the lifestyle itself. Gift India is facing many crucial environmental demanding situations which presently threaten each the development of India and the outlook for its future. The kingdom of India's environment is in upset on the palms of uncontrolled human activities, and these ecological ailments are affecting social boom capacity.(Chandrappa & Ravi 2008)

Decrease of land quantity, increasing air pollution, depletion of water assets, lack of indigenous species of vegetation and fauna and the history of overwhelming poverty are depicted in the record to detract from the positive increase of Indian people and the USA as a whole. Hence, India's rapid boom is riding similarly rapid environmental destruction. A controversy frequently positioned forth in developing nations is that it's miles unfair to ask people to make environmental sacrifices during a length of boom and industrialization when western nations did no longer ought to make the same picks. Yet, as we get a glimpse of above, India, as a dense USA . Of one billion humans, faces unique demanding situations that need unique responses. Here arises the need for environmental guidelines and for confirming compliances of these rules. The authorities of India has established an environmental criminal and institutional device to fulfill those challenges within the normal framework of India's development time table and international concepts and norms. Inside the constitution of India it's miles honestly said that it is

the responsibility of the country to 'defend and enhance the environment and to protect the forests and natural world of the country's. It imposes a responsibility on each citizen to protect and enhance the herbal surroundings such as forests, lakes, rivers and flora and fauna. Connection with the surroundings has also been made inside the directive principles of nation policy as well as the fundamental rights. The department of environment become set up in India in 1980 to make sure a wholesome environment for the USA. This later have become the ministry of surroundings and forests in 1985. The constitutional provisions are subsidized through a number of legal guidelines – acts, regulations and notifications. The environment safety act, 1986 came into pressure quickly after the Bhopal gas tragedy which was a primary leak of toxic chemical gases happened from the union carbide chemical plant in the town of Bhopal in 1984 and is considered an umbrella law as it fills many gaps inside the present legal guidelines. Consequently, a large quantity of laws got here into life as the problem started bobbing up. The Bhopal disaster underlines the hassle governments confront in formulating a response to catastrophe situations while poverty stages are high and fitness infrastructures and authorities resources are significantly restrained. This brings into awareness the need for personal multinational (or public) industries to take some duty closer to the environments and populations they're positioned in.(Dasgupta & Maler 2000). This paper aims to study about the legal provisions pertaining to environment and also to analyse the key challenges relating to the environmental pollution.

#### **RESEARCH PROBLEM:**

Whether non – proper implementation of legal provisions is the reason for major degradation of environment?

#### **REVIEW OF LITERATURE:**

Environmental protection is based on the effective environmental compliance and governance. Clarity and coordination between federal and state agencies. Air pollution and its effects on living organisms in the environment (Avinash Kar, 2010). Demand for mitigating measures and also policy implications (Usha Gupta, 2008). Environmental awareness is a very important thing to reduce the various types of pollution arising out (Sivamoorthy, 2013). Environmental jurisprudence is an important consideration for the protection of environment. (Rangam Sharma, 2014). Impacts of air pollution in the system of living organisms mainly in the

respiratory system (Rinki Jain, 2015). For the protection of environment all the levels of the country should work at its best. The power should not only be centralized in the centre but it should also be equally distributed to the state also (Stefanio Lovo, 2014). The main causes of environmental pollution is industrialization and globalization which leads to degradation of natural resources (Swati Tyagi, 2010). Environmental pollution leads to environmental deterioration. This has been a threat for the past five decades (Yogesh Chandra Tripathi, 2003). Environmental pollution affects mainly agriculture in India (Alok Yadav, 2013). Environmental pollution also affects the rights of the people where the people have right to live in a healthy environment (Anish Kothari, 2006). Environment and development required for biological diversity (Dasgupta & Maler 2000) Environmental ethics in India in accordance with ancient philosophy (Dr. G. V. Subramaniam, 2014). India is a developing country where environmental pollution cannot be a threat (Rema Hanna, 2011). Environment is a very important thing that must be safeguarded for the sustainable development (Dr. Vanaja Danthuluri). There are many causes for environmental pollution which degrades the environment (Gurusharan Singh, 2017)

#### **AIM OF THE STUDY:**

1. To study about the legal provisions pertaining to environment.
2. To analyse the key challenges relating to the environmental pollution.

#### **HYPOTHESIS:**

**Alternative:** Environment is safeguarded through legal reforms.

**Null:** Environment is not safeguarded in spite of many legal reforms.

#### **RESEARCH METHODOLOGY:**

In this work, the researcher has followed “Doctrinal research Methodology”. This data is mainly collected through secondary sources of information like books and journals and ample e-sources have also been referred.

#### **ENVIRONMENTAL LAW AND IT’S PROTECTION:**

**Indian Constitution and Environmental Protection:**

The State's obligation in regards to environmental safeguard has been laid down below Article 48-A of the Indian constitution which says that "The state shall endeavour to protect and enhance the environment and to safeguard the forests and flora and fauna of the state".

Environmental protection is a fundamental responsibility of every citizen of this State below Article 51-A (g) of our constitution which reads as follows: "It shall be the obligation of every citizen of India to defend and enhance the natural environment consisting of forests, lakes, rivers and flora and fauna and to have compassion for residing creatures."

Article 21 of the Constitution is a fundamental right which reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." which includes Right to live in a clean environment.

Article 48-A of the constitution comes under directive principles of State policy and Article 51 A(g) of the constitution comes under fundamental duties.

The country's duty with reference to elevating the extent of vitamins and the same old of residing and to enhance public fitness has been laid down underneath Article 47 of the charter which reads as follows: "The country shall regard the elevating of the extent of nutrition and the standard of living of its human beings and the improvement of public health as among its number one duties and, in particular, the country shall endeavour to bring about prohibition of the consumption besides for medicinal functions of intoxicating liquids and of medication that are injurious to fitness."

The forty second modification to the charter become introduced approximately within the year 1974 makes it the duty of the State authorities to defend and improve the surroundings and to guard the forests and natural world of the country. The latter, below essential duties, makes it the fundamental obligation of every citizen to shield and enhance the herbal surroundings in conjunction with forests, lakes, rivers and wildlife and to have compassion for residing creatures.

The 42nd modification to the Indian constitution in 1976 delivered concepts of environmental protection in an express manner into the constitution via articles 48a and 51a(g). Article 48a, a part of the directive standards of state coverage, obligated the nation to protect and improve the surroundings. However, article 51a (g) obligated citizens to undertake the identical duties. As some distance as, legislative energy changed into involved, the modification additionally moved the subjects of "forests" and "protection of untamed animals and birds" from

the kingdom list to the concurrent listing. The Stockholm conference is venerated by way of references within the air act and the surroundings act – a end result of powerful programs of article 253 of the charter, which gives the parliament (India's principal legislature) the strength to make laws enforcing India's worldwide responsibilities, as well as any selection made at a global conference, affiliation or other body. In addition to the constitutional mandate, India has a number of country wide rules governing environmental control, together with the country wide policy on pollution abatement (NPPA, 1992) and the country wide conservation method and policy announcement on environment and development (ncs/psed, 1992). Even as those country wide rules are not judicially enforceable, they serve as guiding concepts for the important and nation governments to follow.<sup>1</sup>

#### **Legal provisions pertaining to environmental protection:**

India has an elaborate legal framework with over two hundred laws relating to environmental protection.<sup>2</sup> Key national laws for the prevention and control of industrial and urban pollution include the following:

#### **Water (Prevention and Control of Pollution) Act, 1974:**

It prohibits the release of pollution into water our bodies past a given well known and lays down penalties for non-compliance. The act was amended in 1988 to conform intently to the provisions of the EPA, 1986. It installation the Central pollution control board which lays down standards for the prevention and manipulate of water pollutants. on the kingdom level, the State pollution control board's characteristic under the direction of the Central pollution control board and the state authorities.

#### **Water (Prevention and Control of Pollution) Cess Act, 1977:**

It presents for a levy and series of a cess on water consumed by industries and local authorities. It objectives at augmenting the resources of the central and state forums for prevention and manage of water pollutants. the water (prevention and manage of pollution) cess

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<sup>1</sup> Environmental Law; S.C. Shastri; II Edition; Edition; Eastern Book Company (2005)

<sup>2</sup> Bajaj R., CITES and the wildlife trade in India, New Delhi: Centre for Environmental Law, WWF – India, 182 (1996)

guidelines have been formulated in 1978 for defining requirements and symptoms for the type of and location of meters that each consumer of water is needed to install.

**Air (Prevention and Control of Pollution) Act, 1981:**

Ambient air fine requirements, method for the control and abatement of air pollutants, prohibits the usage of polluting fuels and substances and regulates appliances that give rise to air pollutants. To empower the valuable and nation pollutants boards to meet grave emergencies, the air (prevention and control of pollution) amendment act, 1987, became enacted. The boards have been legal to take instantaneous measures to address such emergencies and recover the charges incurred from the offenders. The energy to cancel consent for non-fulfilment of the conditions prescribed has additionally been emphasised inside the air act amendment.

**The Air (Prevention and Control of Pollution) Rules, 1982:**

It defines the procedures for conducting meetings of the boards, the powers of the presiding officers, decision-making, the quorum; manner in which the records of the meeting were to be set etc.

**The Wildlife (Protection) Act, 1972: The WPA (Wildlife Protection Act), 1972:**

It provides for protection to listed species of flora and fauna and establishes a network of ecologically-important protected areas. The WPA empowers the central and state governments to declare any area a wildlife sanctuary, national park or closed area.

**The Forest (Conservation) Act, 1980:**

It restricts the powers of the state in respect of de-reservation of forests and use of forestland for non-forest purposes.

**Environment (Protection) Act, 1986 (EPA):**

An Act to offer for the protection and development of surroundings and for topics related therewith. It provides a framework for the co-ordination of principal and nation authorities set up under the water (prevention and manipulate) act, 1974 and air (prevention and control) act, 1981 and the relevant authorities is empowered to take measures essential to protect and improve the

great of the surroundings by means of setting standards for emissions and discharges; regulating the place of industries; management of unsafe wastes, and protection of public health and welfare.

**Power of Central Government to take measures to protect and improve environment:**

Subject to the provisions of this act, the central government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

In particular, and without prejudice to the generality of the provisions of subsection (1), such measures may include measures with respect to all or any of the following matters, namely: - co-ordination of actions by the state governments, officers and other authorities-

i. under this act, or the rules made there under, or

ii. under some other law in the meantime in pressure that's relatable to the objects of this act; making plans and execution of a state-extensive programmed for the prevention, manage and abatement of environmental pollution; laying down requirements for the best of surroundings in its diverse components; laying down requirements for emission or discharge of environmental pollutants from numerous assets in any respect: furnished that distinct standards for emission or discharge can be laid down underneath this clause from extraordinary assets having regard to the great or composition of the emission or discharge of environmental pollutants from such sources; restrict of areas wherein any industries, operations or approaches or elegance of industries, operations or processes shall not be completed or will be executed challenge to sure safeguards; laying down strategies and safeguards for the prevention of injuries which may additionally reason environmental pollution and remedial measures for such accidents; laying down processes and safeguards for the dealing with of dangerous materials; exam of such production methods, substances and materials as are probably to purpose environmental pollutants; wearing out and sponsoring investigations and research referring to issues of environmental pollutants; inspection of any premises, plant, system, equipment, production or other tactics, substances or materials and giving, by means of order, of such instructions to such government, officers or persons as it could keep in mind vital to take steps for the prevention, manage and abatement of environmental pollutants; established order or popularity of environmental laboratories and institutes to perform the functions entrusted to such environmental laboratories and institutes below this Act; series and dissemination of facts in admire of topics regarding environmental



pollution; instruction of manuals, codes or guides referring to the prevention, manage and abatement of environmental pollutants; such different matters as the relevant government deems essential or expedient for the motive of securing the powerful implementation of the provisions of this act.

The imperative government may, if it considers it essential or expedient with the intention to do for the purpose of this act, by using order, posted inside the reliable Gazette, represent an authority or government by way of such call or names as can be detailed in the order for the reason of workout and performing such of the powers and functions (which include the strength to issue directions beneath segment five) of the important authorities beneath this act and for taking measures with respect to such of the matters mentioned in sub-phase (2) as may be mentioned within the order and concern to the supervision and manage of the imperative government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so cited inside the order as though such authority or government were empowered under this Act to exercising those powers or perform those capabilities or take such measures.

#### **The National Environment Appellate Authority Act, 1997:**

Status quo of a national surroundings appellate authority to hear appeals with admire to restriction of regions wherein any industry operation or system or class of industries, operations or procedures could not perform or would be allowed to carry out concern to sure safeguards under the surroundings (protection) Act, 1986.

#### **Factories Act, 1948 and its Amendment in 1987:**

The Act includes a complete list of 29 classes of industries concerning risky techniques, which can be described as a manner or pastime in which unless unique care is taken, uncooked substances used therein or the intermediate or the finished merchandise, by way of-merchandise, wastes or effluents might: i. reason material impairment to health of the folks engaged. ii. bring about the pollutants of the general surroundings.

**Public Liability Insurance Act (PLIA), 1991:**

The PLIA became amended in 1992, and the central authorities changed into legal to establish the environmental comfort fund, for making comfort payments.

**National Environment Tribunal Act, 1995:**

The act furnished strict liability for damages springing up out of any twist of fate going on whilst coping with any dangerous substance and for the status quo of a national environment tribunal for effective and expeditious disposal of instances springing up from such accident, with a view to provide remedy and reimbursement for damages to folks, property and the surroundings and for the topics related therewith or incidental thereto. The number one institutions responsible for the system and enforcement of environmental acts and policies encompass the Ministry of surroundings and Forests (MOEF), CPCB (Central pollution control board), state Departments of environment, SPCB (State pollution control boards) and Municipal organizations.<sup>3</sup>(Dasgupta & Maler 2000; Anon n.d.)

**CHALLENGES IN THE PROTECTION OF ENVIRONMENT:**

All polluting facilities are legally required to gain from a respective State pollution control board a consent (permits) to set up (CTE) and a consent to function (CTO). According with a notification issued by using the (MOEF) in September 2006, positive new business initiatives/activities or those planning major notifications also require a prior environmental clearance (from the Central pollution control board for class a or from a State pollution control board for class b) primarily based on an environmental impact assessment (EIA) report. Monitoring and inspection are a key function of State pollution control board's. The frequency of on-website visits to verify compliance is determined by the pollution ability (pink/orange/green) and length (primarily based at the cost of capital funding) of the enterprise. In line with the countrywide environmental (protection) regulations of 1986, each polluting facility need to post an environmental announcement at the cease of every financial year.<sup>4</sup> The place-based method to

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<sup>3</sup> Environmental Law and Policy in India; II Edition; cases, materials and statutes; ShyamDivan Armin Rosencrantz; Oxford India

<sup>4</sup> "India's Forests", Ministry of Environment and Forests, Government of India (2009)

environmental regulation has been attempted in India considering that 1991 through distinct Central pollution control board and State pollution control board packages. Whilst pollutants manipulate boards may additionally close an offending facility or order the withdrawal of its energy or water supply, it can simplest impose penalties by way of submitting cases underneath the water and air acts and the EPA, which may additionally include fines and/or imprisonment. Pursuing instances thru trial and appellate courts, however, has proven to be an ineffective enforcement reaction, because courts are overburdened, techniques are cumbersome, and resources of state forums are overstretched.<sup>5</sup> To help industry obtain compliance, Pollution control boards adopt quite a number activity, along with:

- i. Organizing schooling and technical assistance;
  - ii. Growing industry-particular reviews outlining troubles,
  - iii. Compliance popularity and,
  - iv. Preventive/manage alternatives; disseminating the charter on corporate obligation for environmental protection inside the categories of exceptionally polluting industries, which are searching for voluntary compliance past the prescribed requirements; and awareness campaigns.
- Currently, financial units play a supplemental position in promoting environmental compliance in India. Primary financial instruments encompass rebate on the water cess, bank ensures, subsidies for pollution manage system, and different fiscal incentives.(Yadav 2011)

Through these cases the courts have evolved the following doctrines for enforcing mandatory compliance of environmental regulations:

1. Public Trust Doctrine: M.C.Mehta v. Kamal Nath.<sup>6</sup>
2. MI Builders Pvt. Ltd. v. Radhey Shyam Sahu.<sup>7</sup>
3. Precautionary Principle: i. Vellore Citizens Welfare Forum v. UOI.<sup>8</sup>  
ii. Narmada Bachao Andolan v. UOI.<sup>9</sup>
4. Polluter Pays Principle: Vellore Citizens Welfare Forum v. UOI.<sup>10</sup>
5. Absolute Liability Principle: i. M. C. Mehta v. UOI.<sup>11</sup>

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<sup>5</sup> Environmental Issues, Law and Technology - An Indian Perspective. Ramesha Chandrappa and Ravi D.R., Research India Publication, Delhi, ISBN 978-81-904362-5-0 (2009)

<sup>6</sup> (1996) 1 SCC 38

<sup>7</sup> AIR 1996 SC 2468

<sup>8</sup> AIR 1996 SC 2718

<sup>9</sup> AIR 2000 SC 375

<sup>10</sup> AIR 1996 SC 2718

ii. Narmada Bacho Andolan v. UOI.<sup>12</sup>

6. Sustainable Development: i. M.C. Mehta v. UOI.<sup>13</sup>

ii. State of Himachal Pradesh v. Ganesh Wood Products.<sup>14</sup>

### **SUGGESTIONS:**

In India, environmental statute even though awesome in range and insurance are extra regularly discovered in breach than exercise. Environmental regulation enforcement, being a exceptionally specialized area of implementation, entrusted to extraordinary agencies under one-of-a-kind laws, provides a none-too-happy-a-picture. Lack or inadequacy of talent; much less than pleasant infrastructural facilities; negative and unimaginative information of the regulation; jurisdictional conflicts and lack of coordination, amongst different organizations of implementation, seem to contribute to poor and in effective implementation of the laws. Capacity of some of the greater creative industries in both camouflaging their violations and non-compliance and in exerting undue stress on the enforcement companies, additionally has contributed to the inefficiency of the enforcement equipment. The deterrent theory of punishment hired underneath strict and absolute liability precept has completed some decree of fulfillment. However, the search for higher alternative principles of legal responsibility hardly needs an elaboration. Therefore, it's time to harmonize the developmental activities with surroundings due to the fact development is also a completely crucial thing of life. For which the environmental regime needs to be accounted and beef up with more expert mechanism to deal with the longer spectrum of problems hither to unattended by using the regulation. Normally supposed as guiding principle for the administrative process to save you unfavorable outcomes on the surroundings, the precautionary technique warrants formula of professional environmental agencies at the initial selection making in addition to at the appellate and reviewing ranges. Such a step will be undoubtedly a bounce forwards toward sustainable improvement and augmentation of a strong environmental regime.

In view of the involvement of complex clinical and specialized issues referring to environment, there's a want to have separate 'surroundings courts' manned handiest by way of the folks having judicial or legal revel in and assisted through folks having clinical qualification

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<sup>11</sup> AIR 1987 SC 1086

<sup>12</sup> AIR 2000 SC 375

<sup>13</sup> AIR 1997 SC 734

<sup>14</sup> AIR 1996 SC 149

and revel in within the subject of surroundings. For you to achieve the goals of on hand, quick and rapid justice, those 'environment courts' need to be installed and constituted via the union authorities in every kingdom. However, in case of smaller states and union territories, one court for multiple state or union territory may serve the cause. Organizing a gadget of administrative fines and streamline the machine of criminal best, overcoming legal obstacles on the use of self-tracking data as evidence in court or other proceedings, establishing and disseminating comprehensive popular compliance monitoring and enforcement guidelines and methods, and expand and deliver associated schooling programs, growth the emphasis on compliance monitoring and enforcement and prioritize inspection efforts based on environmental chance, setting up a public statistics disclosure program and developing performance management structures and nationwide overall performance indicators also will help to overcome the modern problems faced in compliance management of environmental regulations.

#### **CONCLUSION:**

India - the land of spirituality and philosophy-is also the land of rivers as it harbors 14 massive, forty-four medium, and fifty-five minor rivers. From the Ganges inside the north to the Cauvery within the south, maximum religious Hindu pilgrims keep in mind the waterways sacred since the religious texts keep that Ganges purifies the bather of sins - simply catching the sight of Narmada is stated to do the equal. But, India's rivers are an increasing number of turning into the unload websites for domestic, industrial, and agricultural wastes. Polluted environment endangers the human race through threatening its survival on planet earth. Boundaries of any kingdom cannot restrict those environmental troubles to a particular united states and place, but its effect is global one. This big scale environmental degradation has prompted a international subject about the conservation and safety of the earth's environment. Subsequently, efforts are being made for inculcating environmental focus or awareness among the masses. It's far training that can make the human being aware and knowledgeable approximately surroundings and environmental troubles. The present standards, legal guidelines, case regulation, rules, standards, resolutions and so forth, already represent a giant and complex apparatus of paper and of powers conferred upon positive bodies or individuals. Whilst it's far considered that the present regulation is, but, additionally reputedly pretty inadequate to the problem and that rather more may be needed, one is certain to invite questions on how much of the India's assets, wealth,

energy and intellect is to be spent on this assignment of regulation and manage. Pollution on account of an extra of the complication and sheer range of legal guidelines, rules and officers is by no means the least of the threats to our living environment. Any other count of situation is the want to hold laws and policies on this location reasonably flexible and open whilst necessary to changes of route. Excellent legal guidelines at the surroundings are driven, or have to be driven, by way of the instructions to be found out from the natural sciences and from generation. But scientists are not by way of any manner always in settlement. It's far affordable to count on, furthermore, that the vast sums spent upon similarly medical and technological research imply that the scene of clinical 'fact' is susceptible to trade importantly or even abruptly; for, if no longer, it's miles hard to peer what this pricey endeavor is ready. Consciousness of environmental laws in society plays a important position in prevention and control of pollutants in commercial as well as at community levels. Furthermore, consciousness is essential for the movement. Hence, the hypothesis is not proved. Environment is not safeguarded to a great extent even though there are various protection laws.

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