

Assessment of the “Shiliuzi” Mediation Mechanism’s Effectiveness and Paths of Optimization

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Abstract

As the People’s Court deepens the process of judicial reform, the construction of the rule of law in ethnic minority areas has always attracted much attention in China, and, as a major indicator of the effectiveness of the judiciary in China, it is a key construction focus and a difficult point to which China needs to pay attention in its judicial reform. Therefore, in the new period, how to solve the disputes in ethnic minority areas, how to deal with the relationship between the traditional ethnic customs and national law formed in ethnic minority areas based on the special geographic environment, historical traditions and economic conditions, has become a problem that needs to be solved in the process of grass-roots governance and rule of law in ethnic minority areas. The Moni People’s Court of Xuyong County has explored the characteristic path of deep integration of grassroots governance and national unity, which has created a new way of thinking for the majority of ethnic minority areas. Therefore, taking the “Shiliuzi” mediation room pioneered by the Moni People’s Court of Xuyong County People’s Court as the object of study, analyze its legal basis, assess the effectiveness of the “Shiliuzi” mediation mechanism in ethnic areas, and propose an optimization path to summarize and promote the model of the “Shiliuzi” mediation mechanism.

Keywords

ADR, Convergence of Customary and Statutory Law, Grass-Roots Governance in Ethnic Areas, Modernization of Social Governance, Legalization

1. Presentation of the Issue

1.1. The Context in Which the “Shiliuzi” Mediation Mechanism Was Born

At present, most of the ethnic areas in China are inhabited by various ethnic

minorities, and while there is a high degree of inter-ethnic exchanges and integration, frictions and collisions often occur, and the corresponding cases involving ethnic minorities in ethnic areas have also increased significantly (Michelson, 2006), so how to prevent and resolve various types of disputes in ethnic areas, and how to appropriately deal with the conflict between the customary law of ethnic minorities and the national law are important issues related to the construction of the national governance system and national unity. How to prevent and resolve various types of disputes in ethnic areas, and how to respond appropriately to conflicts between customary laws of ethnic minorities and national laws are major issues relating to the construction of the national governance system and national unity (Jacobs, 2020).

When a dispute arises, the parties have a variety of settlement options available to them. In practice, these can be broadly categorized into two, one being traditional and the other being modern judicial settlement. Specifically speaking, traditional dispute resolution usually relies on mediation by respected folk, centred on the prestige of the person, and based on the customary laws of the ethnic minorities, with religious and judgemental factors in a few cases, and the dispute resolution process is not fixed and formal. While modern judicial settlement means that the parties have recourse to the judiciary to mediate or adjudicate the dispute, and obtain a legal instrument with the compulsory force of the State. However, due to historical customs, economic and social reasons, the two dispute resolution methods often conflict with each other in reality, and local people mostly choose traditional dispute resolution methods rather than modern judicial methods. Although the traditional way of resolving disputes has played a positive role in maintaining the social order of ethnic minorities, there are also problems, such as the irregularity of the procedure, which leads to a mere formality of the consent between the parties, the lack of comprehensive knowledge of the mediators, which makes it impossible to form an exchange of experience, and the arbitrariness of private mediation, which does not allow for effective cooperation with the courts, procuratorates and other State organs, among other problems. Modern judicial channels are generally not well accepted by the people of ethnic areas, owing to the remoteness of those areas, the lack of resources, the high cost of litigation, and the influence of historical reasons and customs, as well as ethnic culture.

1.2. Current Status of Theoretical Research on Dispute Settlement Mechanisms in Ethnic Areas

For the settlement of disputes in ethnic areas, the research on dispute settlement mechanism in ethnic areas is few and far between¹, the existing literature

¹The author searched in CNKI with the keywords of “grass-roots governance in ethnic areas” and “multi-disciplinary dispute resolution in ethnic areas”, and a total of 163 papers on the theme of “grass-roots governance in ethnic areas” and 46 papers on the theme of “multi-disciplinary dispute resolution in ethnic areas” were retrieved. There are 163 papers on the theme of “grassroots governance in ethnic areas” and 46 papers on the theme of “pluralistic dispute resolution in ethnic areas”. Through the collation and reading of the literature, it is found that there are few studies that directly summarize the model of multi-disputes resolution mechanism in ethnic areas, and carry out doctrinal analysis and test the replicability. Retrieved: 5th December 2023.

shows that ethnic custom and minority customary law is the hot spot and focus of academic attention, a large number of studies and explorations of minority customary law as the background to carry out, but simply the necessity of multi-disputes dispute settlement mechanism analysis and some unsystematic field research and empirical research. In addition, the perspective is mostly based on individual cases, such as land transfer disputes, marital and family disputes, etc., which are highly dispersed and fragmented. Under the current call for forging a strong sense of Chinese national community, grassroots governance in ethnic areas has undoubtedly shown greater value and significance.

For a long time, the specific geographic environment, historical traditions and economic conditions of the areas inhabited by ethnic minorities in China have given rise to a unique “society of acquaintances”. In this social pattern, interpersonal exchanges focus on “favors” and “face”, and people follow traditional customs to deal with all kinds of affairs. However, against the backdrop of the continuous development and change of China’s society, ethnic minority regions are gradually facing the challenges of modernization and globalization. Therefore, it is worthwhile to pay attention to and explore how to deal with disputes in ethnic minority areas in the new historical stage. Therefore, in order to better resolve civil disputes in ethnic minority areas, more diversified and flexible approaches should be explored.

In this regard, the existing research lacks a more practical research perspective, and some of the empirical analysis of the data lacks updating, this paper adopts an observational research method, through the participation of bystanders, the internal perspective, and in-depth interviews with the judge, mediators, and villagers to conduct in-depth analyses of the “Shiliuzi” mediation system, and the use of the data obtained from the field research, interviews to carry out further research. Further research. As the first dispute resolution mechanism for ethnic minorities in an ethnic region, the “Shiliuzi” mediation room has its own unique value in terms of mechanism construction, and its forward-looking and innovative mechanism construction is worth studying, and it also plays an important role in forging a strong sense of community among the Chinese nation, and there are other issues that need to be examined. At the same time, it is urgent to examine the shortcomings and deficiencies of the “Shiliuzi” mediation mechanism exposed in practice, and try to construct a more mature and perfect system of the mechanism through empirical analyses and summaries, so as to form the “Shiliuzi” experience that can be replicated and promoted in terms of theories, and ultimately to have a system that is applicable to minority dispute resolution in all ethnic regions of the country. It will also try to build a more mature and perfect system through empirical analyses and summaries, so as to form a theoretically replicable and popular “Shiliuzi” experience, which will ultimately have universal value and possibilities for dispute resolution among ethnic minorities in all ethnic regions of the country.

2. Assessment of the Effectiveness of the “Shiliuzi” Mediation Mechanism

2.1. Assessment of the Effectiveness of the “Shiliuzi” Mediation Mechanism’s Speciality System

2.1.1. Case Acceptance and Triage System

1) Criteria for acceptance and diversion of cases need to be clarified urgently

In the conception of the “Shiliuzi” mediation mechanism, the establishment of a mechanism for the identification, control and resolution of local disputes, as well as a system for the assignment and triage of cases, was intended to form a hierarchical structure for the prevention, control and resolution of disputes, and to improve the efficiency of dispute resolution. However, the specific criteria for the scheduling, control and resolution of conflicts and disputes, as well as the acceptance and triage of cases, have not been stipulated accordingly, and the relevant staff members have divergent perceptions of the criteria for the actual operation of the system, and the mediators have their own views on the control of the process of the case after the case has entered into mediation. At the same time, for certain aspects involving standard control, the staff concerned even directly indicated that they did not understand and needed professional guidance from the court.

2) Efficiency of case intake and triage needs to be improved

The emergence of the above problems has greatly reduced the efficiency of local conflict resolution and hindered the further development of the “Shiliuzi” mediation mechanism, which is mainly due to the lack of specific and detailed criteria for the scheduling, control and resolution of conflicts and disputes, as well as the acceptance and triage of cases. Therefore, the current case acceptance and triage system urgently needs to further clarify its case acceptance and triage criteria, so as to maximize its role in the “Shiliuzi” mediation mechanism.

2.1.2. Mediation System of the “One Room, Two Deliberations” Platform

1) Criteria for determining the specific person in charge to be clarified

The “one-room-two-negotiations” platform mediation system uses professional judges or village sages as the main body responsible for the mediation of a specific case. The system was originally designed so that, depending on the circumstances of the case, the professional judge or the village sage would be responsible for the case and would be the main person responsible for promoting the mediation of the case. Professional judges are mainly responsible for the more complex cases, so the township people share a considerable number of cases, to a certain extent, reducing the work pressure of professional judges and improving the efficiency of dispute resolution.

However, in its implementation, the system’s criteria for determining the specific lead person remain to be clarified. In most cases, the “determination of the person in charge on the basis of the circumstances of the case” is often left in limbo due to the vagueness of the criteria. For the determination of the person in charge of either too much reliance on the township people, and the township

people due to their limited legal expertise, so in some complex cases there are greater difficulties in their work; or too much reliance on the professional judges, which greatly increased the professional judge's work pressure and intensity of the work, but also weakened the township people in the mediation of the work of the autonomy of the township people. Therefore, the criteria for determining the person in charge of a specific case in the "one room, two deliberations" platform mediation system remain to be clarified.

2) The mechanism for the transfer of complaints has not yet been put in place

As a special feature of the "Shiliuzi" mediation mechanism, the "One Room, Two Deliberations" platform mediation system has become the main operating procedure for its mediation work, but the interface with litigation is still not fully implemented in this system. The mediation office employs a large number of ethnic minority representatives as non-litigious mediators, and at the same time adopts the principle of direct mediation or "territorial management", diverting some mediable cases to the appropriate mediator; if no mediation agreement is reached, the case is transferred to the appropriate functional department or court for mediation. The research found that most cases under the system were resolved by mediation, and few or almost no cases were referred to the courts for litigation. Therefore, the "Shiliuzi" mediation mechanism has not been fully implemented in the "one room, two deliberations" platform mediation system, and the interface of this mechanism still needs to be explored.

2.2. Assessment of the Effectiveness of the Organic Integration of the "Shiliuzi" Mediation Room and the Interpretation of the Law by Judges

2.2.1. The Predominance of Judges Interpreting the Law

In the overall process of the organic integration of the "Shiliuzi" mediation room and the judge's interpretation of the law, the judge's interpretation of the law dominated because of the mediator's team's general lack of legal knowledge. While increasing the workload of judges, it greatly reduces the efficiency of mediation. In addition, the dominant position of the judge's interpretation of the law also leads to the national customary law and national law in the process of coordinating the application of the national law is still the main application of the national law, greatly limiting the space for the application of national customary law. In sum, the dominance of judges in interpreting the law limits, to some extent, the effectiveness of the "Shiliuzi" mediation room and judges' interpretation of the law joint mechanism.

2.2.2. The Urgent Need for Guidance and Regulation of the Application of Ethnic Customary Law

The customs of ethnic minorities in China's ethnic regions play an important and indispensable role in resolving local disputes, but due to subjective and objective constraints, there is a certain collision between the customs of ethnic minorities and national law in the process of application. Specifically, in this study, many disputes were not cases under traditional national law, but were mostly

due to ethnic customs.

This type of case poses great difficulties for the courts, since they are not covered by the rules; at the same time, they are an obstacle to mediation, since judges, in their professional guidance, are not well equipped to deal with such disputes, since the national legal system often differs considerably from the customs of the people in terms of concepts and values. As a result, it seems that such cases can only be dealt with through mediation. Despite the participation of village sages familiar with national customs in mediation, their lack of legal expertise has led to a lack of clarity about the boundaries between the application of national customary law and national law. Therefore, in the mediation process, the village sage or very easy to listen to the judge's "professional guidance" and ignore the application of national customary law, or very easy to overly obedient to the party's independent will and violate certain provisions of national law. As a result, the application of national customary law in practice is still in urgent need of guidance and regulation.

2.3. Evaluation of the Effectiveness of the Team-Building and Staff Development Programme of the "Shiliuzi" Mediation Mechanism

2.3.1. The Structure of the Mediator Team Needs to Be Optimized

According to field research, the gender ratio of mediators is extremely unbalanced, with women accounting for less than 20%. In terms of ethnic structure, Moni Town is a multi-ethnic area with a large number of ethnic minorities, but the mediators have not yet fully covered the local ethnic minority groups, and the largest number of mediators is from the Yi ethnic group. In terms of age structure, the age structure of the team members is roughly inverted pyramid shape, with a very high proportion of elderly people, of course, the respected people in the village are mostly elderly people, and the older they are, the more honored their status is. In addition, the lack of professionalism of the mediators makes the mediation itself somewhat closed and does not allow for a modernized mediation with an equal, inclusive and open perspective.

In the case of mediation, the mediators' thinking, which is influenced by their own characteristics, plays an important role in determining the direction in which the case will be resolved (Ojelabi & Noone, 2020). It is for this reason that a balanced team of mediators is a safeguard to protect the interests of all parties. In addition, due to the remoteness of Xuyong County, the imbalance in the number of ethnic minorities living in the county as well as the long-term disadvantaged position of women, the mediation process is exacerbated by the mediator's team of low professionalism and the limitations caused by the aging of the mediator team (Dai & Tan, 2006). In conclusion, the author believes that the "Shiliuzi" team of mediators has not been set up with the relevant rules and criteria, and that its staffing structure needs to be optimized.

2.3.2. Mechanisms for Training Mediators Need to Be Improved

The Pomegranate Seeds Mediation Office adopts a "one-to-one" service model

with a team of judges. In practice, the instructing judge of the mediation room serves in the court system and is also required to guide the work of the “Shiliuzi” mediation room and to conduct on-site mediation when necessary. The mismatch between a judge and a village with many cases makes the judge’s workload extremely heavy, which increases the judge’s work pressure and, in turn, adversely affects the efficiency of case resolution. Secondly, the local courts regularly organize “Shiliuzi” mediators to carry out legal knowledge learning, mediation skills training and mediation experience exchange, and the implementation of the typical cases regularly “back to the furnace”. However, in terms of concrete implementation, the current practice still relies mainly on the oral teaching of judges and “Shiliuzi” mediators, and has not yet resulted in the formation of a model or systematic training manual. To sum up, the formation of a systematic and complete training programme for mediators has become an important issue that needs to be resolved in the process of building the “Shiliuzi” mediation mechanism.

3. Optimizing the Path of the “Shiliuzi” Mediation Mechanism

3.1. Clarify the Criteria for Accepting and Triaging Mediation Cases

3.1.1. Impact Factors: Ethnicity, Number of Persons Involved and Scope of Impact

When the “Shiliuzi” Mediation Workshop mediates a case, when the case involves a large number of ethnic groups, a large number of people, a wide range of impacts, or when the case is more complex, the ethnic composition, number of people, and male/female composition of the mediators should be subject to a certain degree of rationalization and restriction; in the mediation of cases, there should be a corresponding direct link between the mediator’s findings of fact, the conduct of the mediation, and the number of people involved (Tanaka, 2006). When mediating cases, there should be a direct link between the mediator’s findings of fact, the conduct of the mediation and the number of people involved, and the role of the judge in the mediation should be institutionalized. As a result, the role of the mediation committee should also be made visible. If mediation fails, it can be directly converted into litigation. In addition, cases with wide-ranging consequences should be publicized in the courts and in the mediation offices as typical cases.

3.1.2. Formation of a System of Conciliation Procedures That Is Segmentable and Efficient

With regard to the procedure for mediation of cases by the Pomegranate Seeds Mediation Office, the courts should make clear provisions, including specific procedures and court confirmation, for example, when a case requires mediation, the mediator and the judge will mediate in accordance with the law, the place and procedure of mediation will be stipulated in the law, and a mediation certificate will be produced when the mediation is successful, or a lawsuit will be

filed when the mediation is unsuccessful. If the mediation is unsuccessful, the case is referred to litigation.

3.2. Strengthening of the “Shiliuzi” Mediators

3.2.1. Balancing the Ratio of Mediator Personnel Structure

1) Gender ratio

Research at the University of Chicago has shown that women are better at communicating and listening than men, because women speak with both brains and the corpus callosum that connects the two brains is thicker than men's, resulting in better intuitive responses, and women are more thorough and meticulous in their consideration of issues and prudent and secure in their handling of them. Therefore, women play an indispensable role in dispute mediation. At present, it is necessary to establish the ideological basis of equality between men and women among villagers.

In this regard, it is necessary for the government and relevant departments to carry out a wide range of social propaganda and mobilization in order to promote the consensus of equality between men and women in the whole village. Secondly, the relevant departments should, on this basis, popularize the gender advantages of women among villagers, so as to enhance the self-confidence of the female community and the villagers' overall understanding of women (Griffin, 2016). In addition, organizations should focus on the gender factor when recommending mediators, and in terms of the overall development of the mediation team, the ratio of men to women in the team should at least not be lower than the standard ratio of men to women in the village.

2) Ethnic ratio

The town of Moni is a town inhabited by ethnic minorities, and most of the conflicts and disputes show strong ethnic characteristics, including the parties' use of ethnic languages and the application of ethnic customs, so it is very necessary to select appropriate ethnic mediators to participate in the mediation process. To solve this problem, the relevant departments should focus on cultivating bilingual talents who are proficient in both minority languages and Chinese, and make this requirement an important criterion for the election of mediators, thus making the structure of the mediator team more rationalized. In addition, when organizing and recommending mediators, more attention should be paid not only to the fluency of Han mediators in Putonghua and their knowledge of the law, but also to their mastery of minority languages and customs.

3) Age ratio

In the current context of increasing social conflicts and the growing importance of mediation, how to optimize the structure of the mediator team and improve the efficiency of mediation has become an urgent issue. First of all, it is crucial to avoid serious ageing of the mediator team. As mediators grow older, their physical strength and energy are affected, which may lead to unsatisfactory results in mediation work. This problem can be effectively mitigated by incorporating younger forces into the mediation team. In addition, young mediators

have high learning and innovation abilities and can adapt to changes in social development, thus making mediation work more targeted and effective. Secondly, the old-meets-new approach is a better way for young mediators to grow. Old mediators have rich experience and profound professional knowledge, and they can pass on their experience to young mediators through teaching by example. In this process, young mediators can not only learn practical mediation skills, but also understand the root causes of social conflicts and how to solve them. At the same time, the new thinking and vigour of young mediators can also bring new insights to veteran mediators, thus promoting the progress of the entire mediation team.

3.2.2. Establishment of a Scientific and Systematic Training Mechanism for Mediators

1) Improvement of training programmes

At the present stage, it is crucial to strengthen diversified training and education, focusing on the two core points of training content and training methods, and building a multilevel training system in an all-round manner. Specifically, the content of the training should comprehensively cover the basic theories and mediation skills required of mediators and, in the current context, increase the cultivation of legal awareness (Hou, 2008). In addition, for conflicts and disputes with common characteristics in different industries and fields, mediators can be given special knowledge training to adapt to the new types of disputes that keep emerging. In terms of training modalities, in addition to adhering to the regular modes of pre-service training and on-the-job rotation, online training can be introduced to provide flexible options for learning time; at the same time, observation training, in which regular arrangements are made for people's mediators to sit in on court hearings, is also being implemented to enrich the diversity of training modalities.

2) Establishment of a system for monitoring mediators

In constructing a system for monitoring mediators, it is necessary to follow the principle of combining internal and external monitoring in order to ensure the impartiality and fairness of mediation work (Hu, 2012). Internal oversight mainly involves the establishment of a special oversight body within the mediation organization to regulate and constrain the behaviour of mediators. This can ensure that during the mediation process, mediators can work in strict accordance with laws and regulations and mediation procedures, thereby enhancing the effectiveness of mediation. Because of the extensive nature of grass-roots mediation organizations, the mediation committees of the various courts can be responsible for carrying out specific supervisory work. The court mediation committees not only have an in-depth understanding of the mediators' operational capabilities, but can also effectively guarantee the smooth running of the mediation process. External monitoring involves a wider range of subjects, including the relevant authorities, the news media and citizens. These subjects can supervise the work of mediators in all aspects and ensure that mediators comply with

laws and regulations in their work. This kind of external supervision helps to raise the mediators' awareness of self-discipline and makes them more cautious in their work.

In terms of the content of the implementation of mediator supervision, the main concern is whether the mediator's behaviour is legal and compliant. This includes the mediator's behaviour during the mediation process, the signing of the mediation agreement, and the storage of mediation materials. Once a mediator is found to have violated the law, he or she should be corrected in a timely manner and the relevant responsible person should be held accountable. At the same time, outstanding mediators should be honoured and rewarded to stimulate their work.

3.3. Guaranteeing the Concrete Implementation of the Integration of National Customary Law and National Law

3.3.1. Legislative Guarantees

The codification of distinctive provisions is one of the important legislative guarantees. In order to ensure better integration of national customary law and national law, the courts should hold regular meetings on the collection and identification of national customs, with a view to analyzing efficiently the national customary law that has been acquired. At the same time, the courts should make arrangements to ensure that they have sufficient human, material and professional capacity to collect customs and codify the corresponding "customary law" in order to achieve better results.

3.3.2. Law Enforcement Safeguards

In the case of disputes involving ethnic minorities, mediation is carried out strictly on the basis of national law, supplemented by customary ethnic law. At the same time, in the absence of clear national legal provisions, mediation should be conducted in accordance with the relevant elements of customary ethnic law (Chai, 2003). The use of traditional methods, such as the use of the Degu Guaranteed Wine and ethnic rituals, is used to encourage the parties concerned to reach a settlement agreement. The lawful rights and interests of ethnic minorities are fully protected and safeguarded. If a case fails in mediation and is turned into litigation, the courts should not ignore the role of ethnic customary law in the process of hearing the case. When national customary law differs from the provisions of national law, a "one-size-fits-all" approach should not be adopted, whereby national laws and regulations alone are used as the basis, but rather, due consideration should be given to incorporating national customs into the decision-making process as a factor in the decision-making process.

In general, to improve the efficiency of dispute resolution, the following aspects need to be reached. First, by improving the pomegranate seed mediation mechanism, mediation can be run more efficiently; second, by improving the quality of mediators, not only can the purpose of resolving disputes be achieved quickly, but also the rule of law can be taught to the parties concerned while re-

solving the disputes, so that their legal literacy can be improved (Fan, 2005). In addition, taking into account the customary laws of ethnic minorities in various regions, they are more relevant to the settlement of disputes and more in line with local folk culture and people's way of life (Fei, 1989). In order to balance the relationship between minority customary law and national law, minority customary law needs to be taken as a supplement to national law. Only through a better integration of the two laws, and good publicity of the rule of law by the courts and other State organs, can the concept of the rule of law penetrate deeply into the hearts of the people and convince them of the law (Lou, 2017), so that mediation can be made more efficient.

4. Concluding Remarks

The "Shiliuzi" mediation mechanism of the Moni Tribunal is the first of its kind in the country, and is rooted in the special mediation mechanism of the ethnic areas, which, through exploration, has come out of a development path of deep integration of grass-roots governance and ethnic characteristics. It is an excellent model for the reform of diversified mediation mechanism to promote in the ethnic areas, and also a characteristic path to promote the rule of law to forge a strong sense of Chinese national community. The "Shiliuzi" mediation mechanism establishes mediation rooms with ethnic characteristics, hires reputable ethnic minority representatives as "Shiliuzi" non-litigious mediators, and takes "professional judges + village sages" as the main body of mediation, and "professional judges + village sages" as the main body of mediation. With "professional judges + village sages" as the main mediators, and national laws + customary laws of ethnic minorities as the basis for mediation, grassroots mass self-governance organizations and government departments are linked to form a joint force to jointly resolve disputes. During the research process, the project team conducted a comprehensive assessment of the current operation of the "Shiliuzi" mediation mechanism and found some problems with this mechanism, including the criteria for applying mediation to cases that need to be clarified, and the implementation of national law and customary law of ethnic minorities in mediation is not yet clear. The mechanism for selecting and training mediators needs to be improved.

The reform of the diversified dispute resolution mechanism is being carried out steadily and has achieved remarkable results, and the work of forging a strong sense of community among the Chinese nation is also being pushed forward vigorously. The author hopes that through the study of the innovative mechanism of "Shiliuzi" mediation mechanism, it can provide constructive suggestions for the implementation of the diversified dispute resolution mechanism in the nationalities areas. The author hopes that through the study of the "Shiliuzi" mediation mechanism, which is an innovative mechanism, the author can provide constructive suggestions for the implementation of diversified dispute resolution mechanism in ethnic areas, and provide innovative ideas for the promotion of the work of forging a strong sense of community among the Chinese nation, so as to contribute to the construction of the rule of law.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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