

## MITIGATING FACTORS OF NOISE POLLUTION AND PROTECTION OF HUMAN ENVIRONMENTAL RIGHTS – A STUDY

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### **ABSTRACT**

*Human Right is a right which is an inalienable and inherited right by birth as a human being. According to John Lock Human Rights are natural rights, such nature right is a right of instinct of human society. The Human environmental protection and sustainability should be inseparable moreover, in the industrial arena, environmental pollution is indispensable. According to Cocoyam Declaration, 1974 human beings are entitled for certain basic living conditions including peaceful living atmosphere. The United Nations Development Programm(UNDP)categorized seven threats to human security including threat to health security. The state has an obligation to provide clean environment and pollution free environment, in the advancement of science and technology, pollution might be a serious problem. Particularly the noise pollutions are the sources increasing ambient noises such as industrial activity, construction activity, generator sets, public address system, loud speaker, music systems, vehicular horns and other mechanical devices which causes mysterious effects on human health and their psychological imbalances. Right to silence is a human right. Hence the noise nuisance has to be eradicated. The Constitution of India provides that government has to protect and improve a healthy environment to their subjects. Under this article the concept of noise pollution ought to be viewed in a human right perspective. Human rights cannot be protected unless a peaceful environment and its sustainability is provided, and that environmental rights can often be implemented properly only when human rights are respected. The law relating to noise pollution has not only been enacted by the parliament but the apex court of India also contributed more in this context.*

**KEYWORDS:** *Human Right, Noise Pollution, Environmental Protection, United Nations Conventions, Health Hazard, Constitution of India, Law, Rules and Regulations*

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### **INTRODUCTION**

The Human Right jurisprudence exists in all walks of life of living being, by virtue of inherited right to have dignified, peaceful and free from polluted atmospheric nature. The Human rights are the rights relating to liberty, dignity and equality of an individual embodied under the document of International Conventions and recommendations, in the Indian Constitution and verdict of courts of India.<sup>1</sup> When we suppose to travel in the road side we heard horn sound of the engine in near to train track, noise of the aero plane and industrial noise pollution would have cause deafens out ears, if the noise exceeds the limit of normal frequency to hear (50db). The science and technological advancement and new

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<sup>1</sup> Sec.2(d) of Environmental (Protection) Act, 1986 defined the term Human Right

innovation of scientific products produces undesirable noises in which noise pollution might be a major issue to make psychological impact to living beings. Wherever we travel or even in home noise sound intruded causing disturbances in everyday life. In order to regulate such pollution the government has specified areas such as industrial, commercial, residential or silent areas for the purpose of implementation of noise standards.<sup>2</sup> For the purpose of regulating and controlling the ambient noise generated devices<sup>3</sup> are to be within the ambit of such rules. The Supreme Court of India has held in *Subhash Kumar's Case*<sup>4</sup> that under Art.21 of the Constitution of India includes the right to live in a clean and healthy environment. Hence the State has to provide healthy human environment particularly noise free and control management human environment. This paper is exploring mitigating factors on noise pollution and protecting human environmental rights of every citizen in India.

## THE MEANING AND DEFINITION OF NOISE POLLUTION

First of all we must understand the meaning of term sound; **Sound** means a communication and entertainment in the normal life. A low sound may be pleasant whereas loud one might be unpleasant, such loud one may be referred as Noise. Noise pollution is a sound which is unwanted sound as abnormal sound and it irritates human life moreover causes health hazards to the human.

Normally sound can be two types

- Ultra sound; and
- Intra sound

The Ultra sound means a sound in which the frequency limit may exceed to 15kHz that is beyond the normal hearing and made excite the sensation of hearing. Whereas the Intra sound is a sound which might be below the lower limit of normal hearing, such frequency is less than 16Hz referred as vibration.<sup>5</sup>**The Ultra sound might be called as a Noise.** **Noise** – a sound; a harsh disagreeable sound, an excessive or annoying degree of noise in a particular area, e.g. from traffic or aero – plane or engines producing sounds. **Noise** is a type of atmospheric pollution in the form of waves (high frequency). It is a shadowy public enemy. It has increased inevitably in the modern age of industrialization and technological advancement. The word Noise is derived from the Latin term '*nausea*'. Pollution is derived from the Latin word '*pollutus*' which means 'defiled' or 'to make dirty'. The Noise Pollution has been defined as unwanted sound, potential hazard to health and communication dumped into the environment with regard to the adverse effect it may have on unwilling ears.

Many Industrial psychologists and environmentalists have defined the term Noise. According to **Blum**, noise is act as a distracter and it interferes with the efficiency of people and causes more psychological impact to public. **J. Tiffin** states that noise is a sound which is disagreeable to the individual and which disturb the normal activities of an individual. **Harrell** defines noise as 'an unwanted sound which increases fatigue and under some industrial conditions it causes deafness'.<sup>6</sup> In 21st century dictionary defines noise has been undergone a change. Noise pollution stands carved out as

<sup>2</sup> The Noise Pollution (Regulation and control) Rules, 2000

<sup>3</sup> Ambient noises such as industrial activity, construction activity, generator sets, public address system, loud speaker, music systems, vehicular horns and other mechanical devices.

<sup>4</sup> *Subhash Kumar v. State of Bihar, AIR 1991 SC 420*

<sup>5</sup> World Health Organisation Report

<sup>6</sup> Mr.Ranjit Singh, *Legal control on Noise Pollution in India- A Critical Evaluation*,

phrase separately from noise.

The *Encyclopedia Britannica* defines noise is an undesired sound. The undesired sound means the sound which hears to vary from one person to another on their *own perspective*, example a church bell sound is music to some person and may be a noise to others.<sup>7</sup> Listening to play music some time may be pleasure, but if it is continued for long it may amount to noise.

According to *E. Gross*, the term 'noise' is any unwanted disturbances within a useful frequency band such as electric wave in any transmission Channel or devices causes harm to health.<sup>8</sup> In 1977, the United Nations Environmental Program (UNEP) and World Health Organization (WHO), Geneva published a report on Noise pollution.<sup>9</sup> According to *Environmental Health Criteria – 12* 'noise is considered as any unwanted sound that may adversely affect the health and well-being of individuals or the populations'.

In Indian perspective the term "Noise pollution" has not been defined in the Central Legislative Acts anywhere. But *The Environment (Protection) Act, 1986* recognizes that noise as an "environmental pollution" and the Central Government empowers to frame the rules which prescribing the maximum permissible limits for noise in different areas.<sup>10</sup> In 1987 by an amendment, the *Air (Prevention and Control of Pollution) Act, 1981* has expanded the definition of "air pollution" and included 'noise pollution' too<sup>11</sup>. Therefore, it is necessary to understand the meaning of "noise" and "pollutant".

## SCALE OF NOISE POLLUTION

The measure of sound is derived as **Decibel(dB)**. The word **Decibel** is made of two words '**deci**' means 10 and '**Bel**' is the name of the scientist **Graham Bell**, who invented it. In logarithmic scale, decibel (dB) is a standard unit for measurement of sound. The permissible decibel scale for different places is as follows:

- The Softest sound that can be heard by human ear is called dB (zero decibel)
- Each tenfold increase in sound intensity is represented by an additional 10dB. Thus a 10dB sound is 10 times as intense as the faintest audible sound (that still is not very much).<sup>12</sup>

A decibel is the standard for measurement of noise. The zero on a decibel scale is the threshold of hearing, the lowest sound pressure that can be heard, on the scale acceleration. To smith 20dB is whisper, 40dB noise in a quiet office. 60dB is normal conversation, 80dB is the level at which sound becomes physically painful. The sound level in a quiet library is about 1000 times as intense as the faintest audible sound. Therefore, sound level in the library is 10 dB + dB or

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International Journal of Research in Humanities and Social Studies Volume 3, Issue 4, April 2016, PP 34-45 also See Singh, K.P and Singha, S: *Noise Pollution Impact and Control in Environmental Management*, 1983

<sup>7</sup> *Ibid.*, also See The Wilson Committee of Britain on the problem of noise in its report in 1963 – Noise (Final Report) p 2056

<sup>8</sup> Peterson and E.Gross: *Hand book of Noise Measurement*, 1965.

<sup>9</sup> Mr. Birandra Paul Singh Seghal, *Human Rights in India: problem and perspectives*; See MubassirLatifi Ameer, *Healthy Environment – A Human Right*; The major inter-governmental conference on United Nation Environmental Program (UNEP) was held in October, 1977 the Executive Director of UNEP warned that "Environmental Education is a matter of life and death"

<sup>10</sup> The Noise Pollution (Regulation and Control) Rules, 2000; the Central Pollution Control Board has published rules in the official gazette of India vide S.O.123(E), dated 14.02.2000

<sup>11</sup> Sec.2(a) of the *Air (Prevention and Control of Pollution) Act, 1981*

<sup>12</sup> *Supra* Note 7

30 dB.

In India, Mumbai – 90dB; Kolkata – 85dB; Delhi – 87dB; Chennai – 89dB, and Nagpur are the noisiest cities. The society for clean Environment appropriately names 'so clean'. Usually the people never mind to mitigate the problem of noise pollution they just pass on and get away and Nagpur University submitted a study that the noise levels of these cities are much higher than 45 decibels prescribed by WHO.

### **CAUSES OF NOISE POLLUTION IN THE HUMAN ENVIRONMENT**

Risks are as indicator that today's problems and challenges bound together in human and non-human factors. Natural disasters are rarely just natural. Our daily life relies on a mix of natural ecosystems, technical systems and social and political systems. We face phenomena where human and non-human dynamics are closely interrelated. The usual divisions between social, natural and technical sciences or between scientific and political institutions are now obstacles to a more comprehensive understanding of these dynamics and to having suitable tools to act on them. The Noise impairs the health of people psychologically and physiologically. The psychological and behavioral effects created by excessive noise include annoyance, fatigue, improper speech, psychosomatic disorder, tension related diseases, sleep interference, mental illness, emotional illness etc., while the physiological effects include causing of stomach ulcers, neuroses, allergies, cardiovascular and circulatory diseases, abortion and other congenital defects in unborn children.<sup>13</sup>

The causes of noise pollution is not only causes irritation or annoyance but also constrict the arteries, and increases the flow of adrenaline and forces the heart to work faster, thereby accelerating the rate of cardiac ailment, the reason being that continuous noise causes an increases in the cholesterol level resulting in permanent constriction of blood vessels making one prone to heart attack and strokes. The excessive noise can also lead to neurosis and nervous breakdown.<sup>14</sup> The sound pollution causes lack of concentration different types of horns divert the attention. It causes endanger to cool and peaceful environment in the growth of plants too such noise pollution causes injury to vegetation.<sup>15</sup>

The Geneva Environment Network (GEN) organized a roundtable in March 2004 on Human Rights and the Environment to address important questions and concerns. The linkage between human rights and environmental concerns embrace at least three dimensions:

- The right to a healthy environment is a fundamental part of the right to life and to personal integrity.
- Environmental destruction can result in discrimination and racism.<sup>16</sup> Thus, socially and economically disadvantaged groups seem to live more often than other groups do in areas where environmental problems pose a real threat to human health.
- Procedural human rights such as access to information, access to justice and participation in political decision-

<sup>13</sup>P.S. Seema, Noise Pollution – Human Rights and Constitutional Dimensions, Cochin University Law Review, 2003,p80; See S.C. Shastri, Environmental Law, Eastern Book Company, 2002,p159

<sup>14</sup>MrLubna Yusuf, Noise Pollution is violative of Art.21 of the Constitution of India, Lawyers Club India; [www.lawyersclubindia.com](http://www.lawyersclubindia.com) last visited on 12.11.2017

<sup>15</sup>Laws related to sound pollution in India; [www.ipleader.in](http://www.ipleader.in) last visited on 18.11.2017

<sup>16</sup>Infra note 14; Concerning environmental discrimination, see e.g: GÜNTHER BAECHLE, VIOLENCE THROUGH ENVIRONMENTAL DISCRIMINATION (1999); P. Mohai and B. Bryant, Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards, 63 U. COLO. L. REV. 921-32 (1992).

making are often crucial for ensuring policies that respect environmental concerns.<sup>17</sup>

## CONSTITUTIONAL PERSPECTIVE ON NOISE ENVIRONMENT POLLUTION

In India, the state has a duty to protect and preserve the human environment. It is a part of Directive Principle of State Policy (DPSP) and not a fundamental right in the Constitution.<sup>18</sup> But right to life has been applied in a diversified manner in India, in order to incorporate the right to a healthy environment includes the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood.<sup>19</sup> The Supreme Court of India interpreted the right to life guaranteed by Article 21 of the Constitution to include the right to a wholesome environment.<sup>20</sup> The Supreme Court also made several decisions which indicate a new trend of human environmental right with accommodate novel remedies;

The Indian Constitution is the supreme document of our country. The 42<sup>nd</sup> Amendment of the Constitution, 1976, has inserted Arts.48A and 51- A<sup>21</sup> in which these Articles the Central government has an obligation to protect and improve the environment for the good of the society as a whole.<sup>22</sup> There is a question that whether State legislation shall have an obligation to protect and control the noise pollution and to take necessary steps to punish the violator.<sup>23</sup> Such question has been put forth before the Supreme Court of India in *G. Chawla (Respondent) case* the court held that right to use public address system is not an absolute right there must be a reasonable restriction.<sup>24</sup> Hence, the State obligation has come under such restriction enumerated in the DPSP of the Constitution to be imposed in the interest of public order.<sup>25</sup>

Under Art.25 of the Constitution of India guaranteed minority right by and these rights minorities using loudspeaker, was challenged before the Supreme Court of India in *Mulan MufliSyud and Others Case*<sup>26</sup> the court held that restriction on use of microphone or loudspeaker between 9am to 7pm which is not violative in nature. In 1981, in the Indian Science Congress, was held prior to the enactment of the Environmental (Protection) Act, 1986, Prof.A.K. Sharma addressed that the noise pollution exists in the absence of any preventive measures; Indian towns are noisier than those in the west. Public health is an ultimate moto in a Democratic country. In our Constitution the public health and sanitation has been included in Second List<sup>27</sup> in the Seventh Schedule.

*Kinkari Devi's Case*<sup>28</sup> the Himachal Pradesh High Court has held that any failure or neglect on the part of State to protect environment will amount the violation of fundamental rights under Art.14 and 21 of the Constitution. *L.K. Koolwal*

<sup>17</sup> Human Rights and the Environment Proceedings of a Geneva Environment Network roundtable report Published in July 2004 by the United Nations Environment Programme for the Geneva Environment Network, pp 5

<sup>18</sup> Article 48A and article 51A (g) impose responsibility on every citizen to protect, safeguard and improve the environment. See: the Constitution (Forty Second Amendment) Act 1976

<sup>19</sup> *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480; *M.C. Mehta v. Union of India* (1998) 9 SCC 589; *Kirloskar Bros. Ltd v. ESI Corporation* (1996) 2 SCC 682.

<sup>20</sup> *Subhash Kumar v. State of Bihar* (AIR 1991 SC 420/ 1991 (1) SCC 598: 'Right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life

<sup>21</sup> Under Art.51 – A of the Constitution of India imposed duty to every citizen of India, to protect and improve the natural environment

<sup>22</sup> M.P. Jain, The Indian Constitution

<sup>23</sup> *In Re, Ajmer (sound amplified control) Act, 1952*

<sup>24</sup> Art.19(1) (a) of Constitution of India

<sup>25</sup> Supra Note 23

<sup>26</sup> *Mulan MufliSyud and Others v. State of West Bengal*

<sup>27</sup> Entry 8, List II in the VII Schedule of the Constitution of India

<sup>28</sup> *Kinkari Devi v. State of Himachal Pradesh*; AIR 1988 H P 4

*v. State of Rajasthan*<sup>29</sup>, the High Court held that preservation of sanitation and environment falls on Art.21 of the Constitution of India.

The Andhra Pradesh High Court has held in *Domodor Rao v. Municipal Corporation, Hyderabad*<sup>30</sup> case observed that the enjoyment of life and its attainment fulfils only by pollution free environment guaranteed by the Art.21 of the Constitution.

### **LEGAL CONTROL ON NOISE POLLUTION**

The Central government has issued an order as follows the rules and regulations are:

- The Ambient Air Quality Standards (AAQS) in respect of Noise different areas/ zones shall be such as specified in the Schedule.
- The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas. In the Industrial area on day time between 6am to 10pm the limits of AAQS of Noise is 75 dB(A) Leq<sup>31</sup>
- The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.
- An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.
- The noise levels in any area/zone shall not exceed the ambient air quality standards in, respect of noise as specified in the Schedule.
- The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

### **Restrictions on the use of Loud Speakers/Public Address System**

- A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.
- A loud speaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, conference rooms, community halls and banquet halls.

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<sup>29</sup> AIR 1988 Rajasthan 2

<sup>30</sup> AIR 1987 AP 171

<sup>31</sup> dB(A) Leq denotes the frequency weighting in the measurement of noise and corresponds to frequency responds character of the human ear and Leq is an energy mean of the noise level over a specified period

The pollution caused by the explosion in the number of automobiles in cities can be reduced by upgrading the quality of Indian fuel, enforcing higher emission standards and regulating traffic, write DILIP BISWAS, Chairman, and S.A. DUTTA, Scientist, of the Central Pollution Control Board.<sup>32</sup>

**Noise due to Loud Speakers:** Extensive and common use of loud speakers whether for political meetings, marriages, religious functions, musical nights, advertising, etc., are most disturbing source of noise to the urban dwellers in particular. Though the use of loud speakers is governed by administrative restrictions and some laws but their widespread use remains continuing, as the restrictions and the laws are not seriously imposed. If loud horns are used near hospital zones, they disturb the patients and also doctors at serious operations. Loud horn noises in school zones, create disturbance in teaching work.

#### **Statutory Control on Loud Speakers**

- The permitted strength of the power amplifier should be adjusted to cover the audience, and noise level beyond the boundary limit of the noise source premises should not be increased by more than 5 dB above the ambient noise level.
- Licence must be obtained by all parties intending to use loud speakers or public system for any other occasion.
- Public address system and loud speakers should not be used at night between 9.00 p.m. to 6.00 a.m. except in closed premises.
- Loud speakers should be directed at the audience and not away from audience (i.e., not towards the neighborhood).
- Loud speakers should not be allowed for advertisement and commercial activities.

#### **Noise due to Bursting of Crackers**

- Manufacture and sale of crackers having an impulsive noise of more than 90 dB at 5 meters distance from the site of bursting should be banned.
- Manufacture and bursting, of joined crackers should be banned.
- Bursting of crackers during night between 9.00 p.m. to 6.00 a.m. should be banned.
- Bursting of crackers should be permitted only during public festivals.<sup>33</sup>

**Noise due to Vehicles:** The noises from individual vehicles includes

- Noise from engine, transmission.
- (ii) Exhaust noise.

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<sup>32</sup> Vide the Hindu Survey of the Environment, 1994, pp .41, 42, 43 and 44.

<sup>33</sup> Source: Annual Report of Central Pollution Control Board (1989-90) at p. 47-48.

- (iii) Noise due to slamming of car doors.
- (iv) Use of horns.

The noises from Engine and transmission depend upon the support used for moving parts. Good quality has more efficient and elaborate system for dampening noises. Considerable improvements are being made to improve the mounting systems even in chapter vehicle. Exhaust noises have been brought under control to maximum extent by using efficient silencing system, which also do not effect the power out put of the engine. Prosecution, in Great for excessive noise from exhaust system does occur but seem somewhat illogical, as it being only the subjective judgment of the policeman.

The noise due to closures of car doors is intense, but intermittent. This noise disturbs the sleep. This problem can only be solved at the design stage. This is only possible by enforcing legislation on motor manufactures to produce noiseless door shutting devices. The motor cars are fitted with horns, to attract the attention of other movers. These horns when not used in proper way produce appreciable nuisance.

The table shows the relative noise of vehicle type. The tests are carried by the Motor Industry Research Association, using Test procedure as prescribed in BS 3425 (1965).

### **Precautions in Construction Activities**

- Acoustic barriers should be placed near construction sites.
- The maximum noise levels near the construction site should be limited to 75 dB (A) Leg (5 min) in industrial areas and to 65 dB (A) Leg (5 min) in other areas.
- There should be fencing around the construction site to prevent people coming near the site.
- Materials need to be stockpiled and unused equipment to be placed between noisy operating equipments and other areas.
- (c) Constructing temporary earth and around the site using soil etc., which normally is hauled away from the construction site.

### **Indian Penal Code and Noise Control**

- Provisions under Sec. 268 of the Indian Penal Code, 1860, noise is actionable as “public nuisance”. The section reads : “A person is guilty of Public nuisances who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right”. People who by any offensive means corrupt the air or by any means cause loud and continued noise- and thereby cause injury or annoyance to those dwelling in the neighborhood in respect of their health or comfort and convenience or living are liable to prosecution for causing public nuisance.
- Noise nuisance can also be punishable under the provisions of Sec. 290 of the code, which prescribes a punishment, which may extend to two hundred rupees, for those cases of nuisance not specifically covered under the Code. Neither the right to make noise can be acquired by prescription nor it can be accepted as a defence to a charge of nuisance.



In spite of the serious consequences of noise, nuisance by noise has not been accorded its proper place under the Indian Penal Code. It is till date relegated to the residuary provision in Sec. 290 which prescribes just nominal punishment. The provisions of the Code, in view of the recent scientific and industrial developments, is inadequate to cope with increasing menace of noise pollution.

The provisions of the Code also do not lead us to uniform and certain rules for application to the criminal cases of noise nuisance. There have been very rare prosecutions for nuisance by noise as the offence of public nuisance under Sec. 290 is non-cognizable.

Nuisance action under the penal code is a poor remedy as it is nominally punitive rather than preventive or compensatory.

### **Criminal Procedure Code and Noise Control**

Provisions under the Sec. 133 of the Criminal Procedure Code, 1973 the Magistrate has the power to make conditional order requiring the person causing nuisance including that of noise to remove such nuisance.

### **CONCLUSIONS**

The level of environmental literacy is very low in the society, especially amongst decision makers that is legislators are unaware of the environmental issues, and there is a gross under-valuation of the economic and material values of the environment. The programmes and policies of the Central and State Governments have not been incorporated with the application of environmental principles and ideology; moreover the change of regime the new regime changes the earlier policy with the result that many development projects have been conceived for short-term gains without considering their long-term ecological and social impacts. The growing populations are making increasing demands on natural resources resulting in the exploitation of resources in an unsustainable manner particularly the noise pollution concern Industrial, commercial, vehicular and other transport modes are creating more noises. The general indifference of the industrial sectors on aspects of environmental safety and protection has led to the spread of avoidable air, water and soil and noise pollution. In order to mitigate the noise pollution we can control the level of noises rather than eradicate the event. The law is only an instrument to control and punish the violator.

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