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The Urgency of Legislative Measurements Regarding Monitoring of Toshakhana Pakistan



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Abstract: Toshakhana is a government-owned department administered by the cabinet division of Pakistan, has become a contentious issue in the recent decade due to the perception that it is used as a tool for corruption and for making assets by the state functionaries and also having uncertainty in its procedural laws. The masses are unlettered about the concept of Toshakhana which leads to controversies amongst the subjects of the state. The current study looked into its basic concept, regulations and procedural management. It also analyzed defects and misappropriations of valuable items by the state functionaries. Data was collected from secondary sources like existing rules, regulations, E-papers, talk shows and news on different channels and processed through qualitative research analysis. The lack of exclusive procedural laws on this subject and poor implementation of prevailing rules came out as the main conclusion and also led to drawing recommendations for adequate monitoring and management of Toshakhana.

Key Words: Misuse, Procedures, Toshakhana, State Functionaries

Introduction

Toshakhana has been an inconsequential term till 2022. Though established in 1974, toshakhana was not an intimate concept within the country in the past 70 years. With the regime change in 2022, the controversies regarding toshakhana and whatnot have proceeded in consequences. Since it was a matter of public importance and the right to information falls under the sphere of fundamental rights of citizens, as incorporated in the Constitution of the Islamic Republic of Pakistan. Whatever is done by public officials and elected members, the public eventually has a right to be known about the details of such matters. (Bilal, 2023). The details of gifts from 2002

onwards till to date have been made public by the Cabinet division revealing that ever since its establishment, corrupt and ill practices regarding the Toshakhana have always been made by the government officials either through illegitimate ways or even without following the procedural guidelines at all (Ibrahim, 2023).

It is only in 2021 that Toshakhana stole the limelight after the famous case of the former premier popularly known as the Toshakhana reference case which has greatly highlighted the controversies as to toshakhana; the possession of its contents and; legislative lacunas on a political and administrative basis. These controversies consequently have greatly affected state integrity,

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and government transparency around the world, whereas at the domestic level, the lack of awareness about Toshakhana and its regulations gave rise to political chaos and rage amongst the 'subjects' of the states resulting in disturbance of law & order situation within the state. The former rulers reportedly misused their authority and through dishonest and illegal means retained the gifts for their own or family's use during their terms in office or after departure (Jamal, [2022](#)).

The State officials followed the impugned procedures as to the allocation of the public assets, and did not care to uphold the justice, equity, neutrality, and prospects of the general public regarding the sale actions; consequently, being against the basic rights of the nationals of the country and law could be deemed to be dishonest, illegal, and prejudiced (LHC Judgment sheet, 2020). The gifts were retained either by paying a negligible amount or without any payment. By looking into statistics/the amount deposited in the government treasury against the Toshakhana for retaining the gifted items by government functionaries, it is clear that they retained them dirt-cheap. They have taken advantage of their position or authority and have acted deceitfully

Objectives of Study

The objectives of the study are;

- (i) To have a clear conception of what the term Toshakhana means;
- (ii) To get a brief insight into the Toshakhana rules and procedures;
- (iii) To analyze whether the existing rules and procedures on Toshakhana meet the objectives of Toshakhana;
- (iv) To draw a definite conclusion as to whether the institution is fulfilling the utmost useful purpose as is desirable? And, if not, what legislative measures are needed to add to its regulations and implementation procedures?

Significance of Study

There is a lack of academic research on any subject allied with Toshakhana. The study at hand is significant because it adds appropriate content to scholarly literature and will be helpful to create awareness in the public on the term Toshakhana,

its enacted rules, and procedures, etc., and also beneficial to the future researcher as well because there is colossal lack of literature on this particular topic. The study will also suggest exhaustive ways to make Toshakhana a useful institution for the general public's welfare and, its role to uplift the state economy.

Literature Review

The constitution is seen as the ultimate source of guidance and governance in every matter within the state. It provides for establishing various institutions under the control of the government's administrative, legislative, and judicial bodies. In Pakistan, Toshakhana; an institution under the executive control of the cabinet division is nowhere mentioned in the constitution or any other instrument of the state till today, ever since its establishment in 1974. Toshakhana runs accordingly/under the enactments which are not exclusive thus leading to ambiguities regarding its affairs. Moreover, State functionaries are self-benefitting from the Toshakhana, resulting in a mess in states' politics and the state's internal and external relations. The government has taken some steps to address the issue, such as the incorporation of new rules and regulations regarding the disclosure of retention, sales, or disposal of Toshakhana. However, these rules are utterly out of touch with practical circumstances. Due to its lack of conception and ambiguous rules, the institution is more recurrently in the public eye. In Diplomacy, it is a norm established amongst the states to exchange diplomatic gifts. Toshakhana is an archive where princely gifts or presents from foreign notables (diplomatic gifts) are displayed as symbols of stature and prestige for the state. These honorary gifts reflected goodwill gestures and developed good strong international relations. Usually, the gift is reciprocated by the host. These Diplomatic gifts exchanged as a goodwill gesture are to be treasured and not for sale (Diplomatic Gifts, [2022](#)).

These gifts are meant to "welcome, honour, and cultivate beneficial diplomatic relationships (Aubert, [2022](#)). In Pakistan, Toshakhana has become a verbal slugfest. Toshakhana has become a point of contention lately throughout the country, particularly since the 2018-2023 regime, Toshakhana is garnering the spotlight in the context of its misuse by key state officials. The

most emerging one that has gathered a great deal of public interest is the case of a former Premier titled Toshakhana reference Case 2022 (Ali, 2022). These honorary gifts are related to the persons who receive them and are given the option to buy them, subject to certain conditions. (2022). There is a huge puzzlement and controversy regarding the possession of contents, management procedures, and powers of state functionaries regarding Toshakhana as well as the extent of such powers and, irregularities in their handling of the Toshakhana. The government showed reluctance in disclosing the information regarding Toshakhana as per the “Right of Access To Information Act of 2017”, the general public is unwitting of the whole thing about Toshakhana which has led to social and political rage amongst different sectors in the Country, including people-to-people and inter-state relations (Asad, 2022).

Brief Concept of Toshakhana

The term “Toshakhana” is a Persian word that later also infiltrated into Sanskrit/Hindi, literally meaning “the treasure house”(British Library 2017). Toshakhana means Treasury or in the present era, "the state depository". It is an archive where princely or state gifts, presents and other valuable commodities are kept that are received from foreign notables and dignitaries by the state officials as honour during their official tenures (Dialogue Pakistan, 2022).

Diplomatic gifts could be anything, in any form and amount from woven straw baskets to expensive stones, precious metals, fabrics & clothing, ornaments and cultural icons and much more are the contents of Toshakhana (National Museum of American Diplomacy, 2022). The Toshakhana of Pakistan has Valuables ranging from Bullet proof cars, hi-tech gadgets, Gold-plated souvenirs, and classy canvases to wristwatches, ornaments, runners, carpets, flooring antiques, emblems of honour swords, jewels or bejewelled items, perfumes, carpets, etc (Raza, 2020).

The honorary gifts are given to the administrative position and designation in their official capacity. Gifts received by any state functionaries are properly catalogued and showcased in Toshakhana. No one is permitted to carry away such gifts without reporting it, if do so then it amounts to misappropriation and Corruption (Khan, 2022). Diplomatic gifts are

considered to be a symbol of prestige for a state as these honorary gifts reflect positive and strong international relations. Diplomatic gifts have the potential to corroborate good international relations but they could also be a diplomatic snub or accidentally send the wrong message, an example could be Taiwan’s rejection of China’s offer of a Panda. Deposited gifts in toshakhana are a considerable way to build diplomatic relationships and respect, facilitate negotiations, and reflect the culture, customary norms, and traditions among the states. Moreover, within a state, on the political field, Toshakhana could be a fuss in the context of its maintenance, retention, and disposal with counter-allegations and mudslinging, between the politicians and their followers. This would undermine the government's integrity and compromise public trust. This is why Toshakhana is important within a state for government-public and, people-to-people relations (Spencer, 2006).

Historical background of Toshakhana

Toshakhana lends its legacy back to the Mughal Emperor, when the depository house of Maharaja Ranjit Singh came under the control of East India Company and when Punjab was seized and declared to be part of the British Realm in United India (MURPHY, 2010). During British rule in Subcontinent, East India Company officials deposit in Toshakhana, the gifts they received from local princes and other dignitaries in the company. They were not permitted to take diplomatic gifts, often arms or ornaments from united Indian or Middle Eastern leaders. They were obliged to deposit the so-received gifts in the company's toshakhana (Ved, 2021).

India inherited the British-era law regarding the reckoning of official gifts received by government functionaries, and Pakistan enacted their respective laws in 1974. Toshakhana Rules, 1974 on maintenance and administration, was the founding document of Toshakhana, which provided for the establishment of Toshakhana. Toshakhana is under the managerial control of the legislative branch of government, the Executive agency, called “the cabinet division Pakistan” since 1974 (The Express Tribune, 2022). Toshakhana is managed mainly under the “Toshakhana (management and Regulation) Act, 2022”.

Regulatory Framework of Toshakhana

Initially, the affairs of Toshakhana were regulated under the Government Servants (Conduct) Rules, (1964). Rules of Business (1973), is another enactment under which affairs of Toshakhana were administered. Schedule II of the respective enactment, item No. 23 provides that the subject of 'Toshakhana' is allotted to CD. The CD is under obligation to organize and regulate the business of Toshakhana. Till 2018, Toshakhana gifts were managed according to the guidelines as provided under the Government Servants (Conduct) Rules, (1964). In 2018, the Pakistan government laid the procedure for accepting and disposing of gifts through an office memorandum of the Cabinet Division titled the "Procedure for the Acceptance and Disposal of Gifts".

Toshakhana (management and Regulation) (TMR) Act, (2022) is another instrument through which, a process has been spelt out to minimize the involvement of public officeholders in the retention, purchase, or disposal of gifts, and to ensure Transparency in Toshakhana. It applies to the constitutional heads of the state and provinces, political heads of the federal and provincial governments, chairmen & Deputy chairmen of the senate and speaker & Deputy speaker of the National Assembly, all state and federal level ministers, parliamentarians Government servants, and also to the workers and staff of self-governing and semi-autonomous bodies, serving in linking with the businesses of the government or while on a delegation with any other body, organization, association or power.

Section 5 of the TMR Act (2022) provides for the establishment of the Toshakhana evaluation committee (TEC). This committee is responsible for depositing, maintaining, and disposal of gifts. The Toshakhana evaluation committee consists of Secretary, Cabinet division chairman/convener), Secretaries of different Ministries like foreign affairs and federal education (Member), Specialized Training, Heritage and Culture (Member), and Additional Secretary CD (Member / Secretary). Section 5(2) of the Toshakhana (Management and Regulation) Act, 2022 confers upon the Toshakhana evaluation committee to make sure that every gift received in Toshakhana is placed and catalogued properly in a transparent manner, and prepare and forward a report annually to the Cabinet Division thereby furnishing the details regarding the management

of Toshakhana gifts. Additionally, it also confers to formulate the terms of reference for the performance of its function. The record of Toshakhana is maintained through two registers; the deposit register and the disposal register. The former register is a comprehensive document that contains a brief description of all the gifts with their prices and the signature of the secretary against each entry, which is also countersigned by the evaluation committee chairman (Raza, 2022).

Restriction on Acceptance of Gifts

There are certain restrictions on the acceptance of foreign gifts as listed below:

Acceptance of Gifts from Foreign Dignitaries

Under Rule 5(1) of the Government Servants (Conduct) Rules, 1964 and/section 4 of O.M. No.8/5/2017-TK of the CD, No government servant is allowed to accept or permit his family to accept gifts from any foreign dignitaries which would put them under any formal compulsion to the giver. However, if a gift could not be returned due to exceptional reasons, then it can be kept for official use thereby mandatorily reporting to Cabinet Division.

Gifts Offered by the Head/representative of a State

Rule (5)(3) stated that if a gifted item is presented by the president or governors, the Government servant should not accept it at first, but if such refusal seems offensive, then he/she shall inform the CD for further instructions as to its retention or disposal.

Gifts Offered by the Foreign Government Servants Stationed in Pakistan

Rule 5(4) of the Government Servants (Conduct) Rules, 1964 & Point 4 of O.M. No.8/5/2017-TK of the CD, expressed that except for the Head of the state and the prime minister, it is proscribed for government/public functionaries to accept any kind of gifts for themselves or their families from ambassadors, diplomats, or other foreign governmental agents stationed in Pakistan, as well as from local public establishments, private industries, or individuals. However, if such a gift

cannot be repudiated, it must inevitably be dropped to Toshakhana.

Cash Awards Offered by Foreign Dignitaries

Rule 5(5) of the Government servants act 1964 & section 6(5) of the Toshakhana (management and Regulation) Act 2022 provides that the Federal or provincial government servants, except those in BPS 1 to BPS 4 are forbidden from getting Money gifts presented by visiting foreign VIPs. Such gifted items may be courteously refused. However, if such gifts cannot be refused then such sum shall immediately be transferred to the treasure of the state and a copy of the deposit receipt shall be submitted to Toshakhana in charge. Point 4 of O.M. No.8/5/2017-TK of the CD provides an exception to the above procedures and instructions regarding the acceptance of Political gifts. This exception implies that the Rules and procedures regarding accepting gifts are not applicable to items and gift contributions made to establishments by the ambassadors, consular, and other foreign government agents posted in Pakistan or from any public association or private individuals and firms inside of the state territory.

Procedural Guidelines for Retention of Gifts from Toshakhana

Section 6 of the Toshakhana (management and Regulation) Act, 2022 provides that no Public Officials or their relatives are permitted to acquire any sort of gifts upon payment of the retention fee. Similarly, they are not allowed to buy gifts from Toshakhana. Section 6 of O.M. No.8/5/2017-TK of the CD, provides for the pecuniary limits up to which the items can be taken by the beneficiaries. 6(1) clearly expressed that if the Gifts are of a value less than the minimum amount set by the Government i.e., mere rupees thirty thousand, then such gifts can be taken. Whereas 6(2) provides that Gifts valued at an amount more than the prescribed limit may be allowed to be obtained but on fifty per cent paid amount of the price beyond the basic exception of rupees thirty thousand. This exception is though not obtainable in the case of antiqued items and gifted items having historic worth. The beneficiary may acquire items upon payment of the retaining cost within 4 months. It

will convert the assets of the Toshakhana, in case he/she fails to deposit the price for that items and will be dealt with in accordance with Section 8 of the Toshakhana (Management and Regulation) Act, 2022.

Valuation of Toshakhana Contents

The Cabinet Division is accountable for the valuation of Toshakhana items under Section 7 of the TMR Act (2022) & Sec (5) of O.M. No.8/5/2017-TK of the CD, The cabinet will receive the worth of the items evaluated;

1. From a Government sector expert in FBR (Federal Board of Revenue).
2. From the private appraisers (a person whose job is to assess the monetary value of something) carried on its authorized board. If the difference in the price of gifts estimated by two groups of evaluators (i.e., one from the government sector, and one from the private sector) is below twenty-five per cent, then the high worth will be considered. However, if the change in value is twenty-five per cent or more, in this situation, a board is to be set up by the Cabinet Secretary to determine the last value. Evaluators who are members of the CD's approved panel will pay two per cent % of the appraisal rate of every item or rupees two hundred, whichever is less.

Procedural Guidelines for Disposal of Gifts and Gifts Fit for Display

Section 8 of the TMR Act (2022) & Sections 8, 9, 10, 11, and 12 of O.M. No.8/5/2017-TK of the Cabinet Division, provide the procedural instructions for the disposal of Toshakhana gifted items. Gifts are disposed of as per their categories i.e., gifts fit for display, gifts fit for sale, antique items, vehicles, and gifts of intrinsic historical value.

As per Section 8(1) of the TMR Act (2022) & section 8 of the O.M. No.8/5/2017-TK of the CD, Gifts which are suitable to showcase shall be well categorized and then exhibited in the suitable pavilion either in occupation of the Government officials. Such items shall be appropriately maintained in the record book of Toshakhana. An authorized official of the Cabinet Division is duty-bound to conduct verification of each gifted article in the first quarter of each calendar year

Guidelines for Gifts are Not Fit for Retention or Display/fall in the Category of Sale

As per Section 8(3) of the TMR Act (2022) & section 10 of the O.M. No.8/5/2017-TK of the Cabinet Division, Gifts that are not appropriate to be reserved or showcased, or that fall into the category of sale are disposed of through public auction (Public government auctions refer to auctions in which the government sells surplus goods, seized property, or other items to the highest bidder and these auctions are open to the general public.). On this behalf, Quarterly sales are to be decided by the CD, Government of Pakistan. The items to be auctioned shall be notified to officials of the Armed forces and central government. The items not obtained in the two following auctions by the Government servants should be relinquished to the public through tenders.

Rules on Antique Items and Vehicles or Other Gifts

Under Section 11 of the O.M. No.8/5/2017-TK of the Cabinet Division & Section 8(4) of the TMR Act (2022) recipients are not allowed to buy Antique items and vehicles from toshakhana. Antiqued items shall be retained in exhibition halls, museums or showcased in some pavilion occupied by government officials. As per the rules, the Vehicles received as gifts, shall first be deposited in Toshakhana for subsequent transfer to the transport/protocol pool of the Cabinet Division.

Under Section 12 of the O.M. No.8/5/2017-TK of the Cabinet Division, Gifts aside from antiqued items or items having historic worth given to but not kept by the president, the prime minister, and the constitutional head of the province will be sold at auction publicly.

Liability to Deposit Gifts and Receipts of Gifts in Toshakhana

According to Section 6(3) of the TMR Act (2022) & Rule 5(6) of the Government Servants (Conduct) Rules, 1964, the responsibility to report receipt of the gifts to the Cabinet Division responds with the beneficiary. All items obtained by the Government/Public representatives irrespective of their values must be transported

and deposited directly in Toshakhana of the CD, however, if any beneficiary has not duly observed rule 5(6) as mentioned aforesaid, then legal action will be initiated against him.

Section 6(4) of the TMR Act (2022) states that, if the head of Protocol, Ministry of Foreign Affairs, or his representative has been attached to a visiting dignitary or a foreign delegation, it shall be his duty to provide detailed of items received, along with names list of the beneficiaries, to the CD. If the head of Protocol, Ministry of Foreign Affairs, or his representative has been escorting a foreign delegation or visiting VIPs, he is duty bound to furnish the Cabinet Division with a list of the items received, together with the beneficiaries' description. In the case of retiring delegations or visits overseas of Pakistani VIPs, the Diplomats and/or Head of the Pakistan embassy or a consulate in the country concerned is liable to report the details of gifts (receipt & recipient) received during a such visit to the CD through Ministry of foreign affairs.

Flaws in procedures of Toshakhana

In the preview of Procedural guidelines as elaborated above, Toshakhana has certain loopholes and lacunas in its management rules and procedures causing a hindrance in its efficiency. Following are the prominent defects in Toshakhana laws.

Permit of Retention of Gifts

As per the procedure, gifts valued an amount less than thirty thousand are permitted to be kept by the receiver without any resistance making it easy to retain gifts even valued more than an amount of 30,000/-.

Purchase of Gifts at Discount

Gifted items worth more than thirty thousand may be permitted to be taken by the beneficiary by money paying of fifty per cent of the price beyond the basic exception of rupees thirty thousand. Sanctioning government officials to purchase gifts at a discount price, with the value assessed by FBR government experts, is an undeniable sign of exploitation.

Non-recording of Gifts Received Otherwise than by Protocol Officer

An investigative journalist stated an important fact about Toshakhana; only such gifts are maintained under toshakhana which are given to the Premier via his Protocol officer. Gifts that are given directly to the Prime minister while the protocol officer cannot be maintained in the record book of toshakhana. (Manzoor, 2018). There have been instances where gifts have quietly been pocketed without being declared in the official record. This kind of loophole in the policy of Toshakhana is nothing other than solely intended to serve the interests of the ruling class.

Statistics of Gifts Retained by State Functionaries in the Past Decades

According to the Cabinet Division document, during the 33 years from 1980 to 2013, 12 presidents of the country and prime ministers took 2,714 gifts with them from Toshakhana (Hussain, 2022). According to the facts and figures, during the year 2011-12, a sum of 3,322,050 was deposited to the treasury stock. A deposit of Rs1.856 million was made during the financial year 2012-2013. Data indicate that in the financial year 2013-2014, a sum of Rs13 million was deposited against an auction of Toshakhana gifts, and a sum of Rs1.989 million was paid for the retention cost of gifts proclaimed by the officials. In the year 2014-2015, 3.2 million rupees were deposited to the government's funds by beneficiaries as a retention cost of Toshakhana gifts. In the year 2014-2015, an amount of Rupees 3.2 million was deposited in the government treasury as a retention cost of gifts declared by the recipients (Abbasi, 2022). In 2015-2016, no money at all was deposited for gift retention. In the fiscal year 2017-2018, Rs. 3.7 million each year was deposited for the retention of gifts. The sum deposited in 2018-19 is 34 million, which is higher than the total amounts paid over the last past 10 years and is around 10 times the average amount (The Friday Times, 2022).

Conclusion

Toshakhana is a government-run office (under the control of the Cabinet Division) in Pakistan that is responsible for accepting and managing gifts given to government functionaries. The rules and

procedures for the management of this office are intended to ensure that gifts are not used for personal gain or to influence official decisions, rather they should be serving the purpose of strengthening the state honour and international relations. However, these rules and procedures have many lacunas and loopholes leading to the use of toshakhana for personal gains. Overall, it is safe to conclude that the Toshakhana department in Pakistan leaves much to be desired. Far from being a state's honorary resort, Toshakhana is currently seen as a means of making personal assets for the state functionaries. There have been instances of abuse and misuse of the rules and procedures in the past, such as officials accepting gifts that are above the value limit, or using gifts for personal gain, which is known as "Graft", and eats away at the integrity of public service and is harmful to society. Strict measures must be in place to ensure that officials are held accountable for any abuse or misuse of the rules and procedures and to promote transparency and integrity in government. The purpose of the research paper was to elaborate on the governing rules and regulations of Toshakhana and shed light on various junctures in the same at which Toshakhana is being discussed and self-benefitted by the state functionaries. Building upon the discussion, it highlights where a plethora of measures can be implemented to enhance the efficacy and transparency of the toshakhana system.

Recommendations

The study concluded with the following recommendations

1. Toshakhana and its respective rules are immensely required to be incorporated into the Constitution of Pakistan. Constitutional provisions are more authentic, mandatory in nature, and not reversible which could help ensure transparency and accountability in the handling of Toshakhana. This could also potentially reduce the risk of corruption and conflicts of interest.
2. There must be an independent accountability commission over Toshakhana on behalf of the public, containing representation from civil society to ensure that the entity does not operate illegally and unethically.

3. The public does not necessarily need to be informed about the specifics of the acceptance of gifts by state officials. However, they must know about the retention of such gifts. On this behalf, a watchdog could be an independent agency or an internal audit team must be constituted for monitoring the activities of the toshakhana and ensuring compliance with regulations and laws. It would also conduct regular audits and prepare and provide reports to the relevant authorities regularly, and prosecute cases of corruption involving high-ranking government officials and members of the ruling party.
4. The current Toshakhana laws lack binding forces, such as strict and honorary penalties to deter the violations of the rules and maintain the integrity of the toshakhana system. It would be wary to institute punitive measures, such as heavy fines and disciplinary action, or loss of privileges for any officials found to violate established protocols, it would help to ensure compliance with the established guidelines and regulations
5. The utilization of a toshakhana, as a repository for gifts and other resources, can potentially play a role in the economic upliftment of a state. The toshakhana can be used as a catalyst for economic development. For instance, the Toshakhana Contents can be tailored to projects and initiatives that are deemed to have a high potential for stimulating economic growth, such as Gifts received in the form of funds or investments that can be used to create jobs in the state, industrialization, and investment promotion. By showcasing gifts from different regions and cultures, the toshakhana can attract tourists to the state, which can boost the economy through increased tourism and related businesses and can be used to generate state revenue through sales or auctions.
6. The contents of Toshakhana could be auctioned off directly to generate cash to pay off debt and other financial obligations. Lease the contents to museums or other organizations for temporary exhibitions, which would generate revenue for the state without permanently disposing of the assets.
7. Gifts in Toshakhana other than intrinsic historical value or antiques can be deposited in Bait-ul-Mal, a charity and social welfare organization managed by Federal Government to help the poor and needy people in Pakistan. It significantly contributes to poverty alleviation and improves the living standards of the poor class of the state.

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