

A Tale of Two Cities

Custodial Death and Police Firing in Ashok Vihar

Second Edition with an Update

आज की रात बड़ी गर्म हवा चलती है
आज की रात न फुटपाथ पे नींद आएगी
कैफी आजभी

**People's Union for Democratic Rights
Delhi
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18-year-old Dilip had come to Delhi from Allahabad to see the Republic Day celebrations in January 1995, and had stayed on to find work. He was staying with some relatives in Shaheed Sukhdev Nagar, a jhuggi-jhompri (JJ) cluster adjoining D block of Ashok Vihar in north-west Delhi. On the morning of 30 January, Dilip was beaten, kicked and forced to run around and squat by constables of Delhi Police. Dilip collapsed and died on the spot.

At around 9:30 a.m., the police returned with heavy reinforcements and attempted to remove the body. Angry residents of the basti refused to let the body be removed until a political leader or senior official arrived. By the time the ACP (north-west) arrived, the atmosphere was tense. As the police continued trying to remove the body, the residents began pelting stones. The police opened fire. 3 people died in the firing. Another person died later because of injuries sustained in the firing. Among the injured was a woman who had given birth to a child a month ago. A bullet had hit her inside her home. The police dragged out people and broke down doors. A total of 123 people were arrested and taken to the Ashok Vihar P.S. Many of them had just returned from their shift duties at the nearby Wazirpur Industrial Area.

17 injured residents were admitted to Hindu Rao Hospital. 7 were discharged on the same day. One person died on 2 February 1995. Ten days later 7 people were still in hospital. The injured policemen, on the other hand, were admitted to a private hospital in Ashok Vihar.

A case of causing death due to rash and negligent action under Section 304(a) IPC was lodged against the constable involved in the killing of Dilip. The 123 people arrested have been released on bail. The government announced an interim relief of Rs.20,000 to Dilip's family. A sum of Rs.10,000 has been granted to the families of each of the other 3 persons killed in the firing, and Rs.2,000 to each of the 7 persons who were grievously injured in the firing. An SDM inquiry has been ordered into the death of Dilip. An enquiry has also been ordered into the entire incident. The Special Executive Magistrate, S.P. Aggarwal is due to submit the report of this inquiry to the Lieutenant Governor. Despite protest and public demand, a judicial enquiry was not ordered.

The Police Dispatch

The Additional Commissioner of Police (Northern range) in an interview to newspapers, simply reiterated the position taken by senior police officials we spoke to at the Ashok Vihar P.S. He defended

the firing as an "inevitable and necessary intervention in a conflict between the 'haves' (the residents of Ashok Vihar) and the 'have-nots' (the jhuggi-dwellers)"—"sooner or later this had to happen." According to him the police fired to prevent the jhuggi-dwellers from attacking and looting the residents of Ashok Vihar.

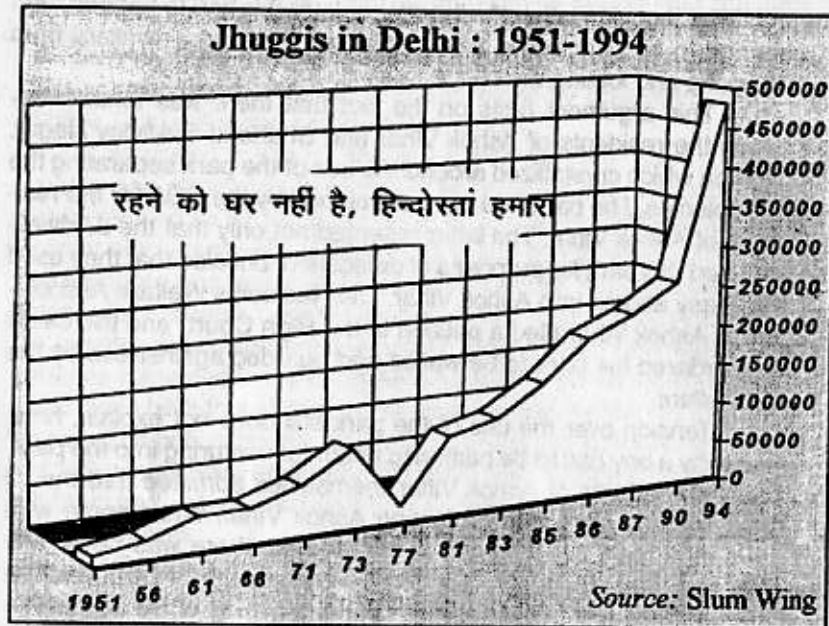
This argument rests on the fact that there was tension between the residents of Ashok Vihar and Shaheed Sukhdev Nagar. Tension which crystallized around the use of the park separating the two colonies. The park had been developed by the DDA for the residents of Ashok Vihar. The latter resented not only that the JJ dwellers used this park for purposes of defecation, but also that they used it for easy access into Ashok Vihar. The Residents Welfare Association of Ashok Vihar filed a petition in the High Court, and the Court then ordered the park to be walled and guarded against use by the JJ dwellers.

Tension over the use of the park still does not explain, however, why a boy had to be beaten to death for venturing into the park. Further, residents of Ashok Vihar themselves admitted that the JJ dwellers were not intent on looting Ashok Vihar. While some windows may have been broken in the stoning, there was never any attempt to loot. The humiliating torture and murder of Dilip, and the indiscriminate firing by the police on the morning of 30 January in which 4 others died, were not inevitable.

The police story attempts to shift the focus from the custodial death to tension between two groups of people. Their argument is roughly as follows: 1. slums have grown in Delhi; 2. it is not possible to provide amenities to slum dwellers; 3. therefore tensions are a necessary result; 4. the police is not responsible for such a situation; 5. but they are forced to intervene to preserve law and order. This is an untenable position: the stoning was directed not at Ashok Vihar but at the police, in anger and protest against Dilip's death and the police's subsequent handling of the situation. The emphasis of the police on social tension is only a strategy to deflect attention from the custodial death for which they are responsible.

Social Tension

Government agencies frequently explain social tension in the city as a result of the growth of the city, and therefore contests over access to limited civic amenities. It is true that the city has grown enormously. By the 1991 Census, the population of Delhi was 94.21 lakh. The density of population is 6352 persons per square kilometre, which is the highest in the country. About half of this population lives in substandard living areas: in notified slum areas, JJ clusters, JJ



resettlement colonies, and slum rehabilitation colonies. Which in itself is indicative of the inequitable distribution of resources, because the overwhelming bulk of civic infrastructure is now available for the other half of the city's population. The decennial population growth rate between 1980-81 and 1990-91 was 51.45%. This growth has taken place both in jhuggi clusters and in other colonies. The growth rate in jhuggis however is about eight times the overall growth rate of the city.

Given these statistics, it is obvious that it is this segment of Delhi's population that is growing the most. This growth is related to other factors. The growth of jhuggis from 1977 to 1986, for instance, is indicative of the large influx of construction labour into the city during the construction boom around Asiad '82 and after. In 1987, a survey was conducted on 446 JJ clusters west of the Yamuna. The survey covered literacy levels, occupation patterns and monthly income levels. (See Table) It also revealed that only 1.18% of households had any savings. Another estimate of income levels can be derived from the minimum wages determined by the Delhi Government. The current minimum wages per month (in 1995) for skilled workers is Rs.1919 and for unskilled workers Rs.1495. It is obvious

that the cost of housing and accommodation is external to the calculation of these wages. Further, government agencies themselves admit their powerlessness to enforce even these minimum wages. And many factories and small scale production units operating in Delhi work entirely outside the gamut of the law and the minimal safeguards it provides. It is not the simple fact of migration then, but income levels which decide where a newcomer to the city is to live.

The Wazirpur Industrial Area belongs to the category of Light Industrial Estates under the Delhi Master Plan, in which only Group I industries are permitted: i.e., (a) cotton, wool, silk and synthetic fibres, textile products, and (b) furniture, fixtures, other wood and paper products. It is estimated that over 80% of the factories operating in the area do not belong to the permitted category, and are unauthorized—mostly units manufacturing steel utensils, and some electronic components.

Income and Occupation of Jhuggi Residents					
Family Monthly Income	100-200	200-500	500-700	700-1000	above 1000
Delhi	0.3	8.8	50.5	28.9	11.6
C. Azad Colony	0.2	9.3	49.4	31.5	9.6
U. Singh Park	0.1	5.4	44.6	40.6	9.3
Sukhdev Nagar	0.0	6.0	63.4	26.2	4.4

Occupation	Mazdoori	Karigari	Service	Business	Unemployed
Chandra-shekhar Azad Colony	19.0	10.0	29.4	9.5	31.7
Udham Singh Park	20.6	11.2	20.3	8.7	39.1
Sh. Sukhdev	12.1	4.0	33	8.1	40.8

The nature of industrial growth has been such that plots allocated for a certain number of factories have been rebuilt many times over and house far more than the permitted number of industrial units. Which means that the number of workers in the Industrial Area is much higher than envisaged in the Master Plan. The infrastructure of the Industrial Area, electricity, water supply and drainage is stretched to the limit. Sewers from the factories which are normally meant to open out at Azadpur, are perpetually choked. Wastes are

The Vicious Circle

The total amount of civic infrastructure provided in a jhuggi cluster is determined on the basis of the existing policy of the government, and the number of jhuggis in the cluster. Since the number of jhuggis is not constant, periodic assessment is required through surveys. One such survey was conducted in 1987 when the EIJJ scheme was to be implemented. In 1990 the Food and Supplies Department conducted another survey for the issue of permanent ration cards. 929 jhuggi clusters were identified and surveyed. By 1994 the number of such clusters had increased to 1080. The number of such jhuggis in existing clusters has also increased considerably. However no new survey has been conducted.

The absence of a survey is explained by the Slum Wing on the specious argument that every survey in the past has provided some additional benefits for the jhuggi dwellers. Another survey would raise such hopes. Thus, till such policy is evolved which provides new benefits, a survey cannot be conducted. But the government has no new policy for jhuggi dwellers, and hence no new survey is in the offing. In this manner what is achieved is the actual reduction in the per capita availability of amenities in jhuggi clusters.

sometimes disgorged on the land nearby. That land is where most of the labour working in the Wazirpur Industrial Area lives, in JJ clusters. Chandrashekhar Azad Colony, Udhm Singh Park, and Shaheed Sukhdev Nagar where the firing took place, are three such clusters which provide labour for Wazirpur.

Not only are the residents' wages inadequate to get them accommodation anywhere else, there is no living area envisioned at all for workers in Delhi's industries even in the Master Plan. The residents of clusters such as Shaheed Sukhdev Nagar are thus trapped in a situation where the question is not even what basic amenities they have a right to, but more fundamentally, where they are expected to live. The problem is therefore not so much one of population growth and the inability of the government to cope. The lack of room in the planning process for accommodation for Delhi's industrial labour reveals certain fundamental political biases—because the development process itself favours certain sections of society over others.

So, whether they work as labour in Delhi's industries, or elsewhere, that section of the population living near, at or below the minimum wage level, ends up in JJ clusters on public land owned by various government agencies. And both the rising cost of transport within the city, and long working hours force labour to live right next to their factories. So they put up jhuggis on the land available nearby.

In the Wazirpur Industrial Area, for instance, Shaheed Sukhdev Nagar and Chandrashekhar Azad Colony have come up on land which belongs to the Railways. Which makes the JJ dwellers encroachers on public land. So breaking the law becomes the precondition to their survival in the city.

It is in this context that JJ clusters kept coming up and growing in the city, many around industrial areas and construction sites. Upto 1976, government policy on squatter settlements emphasized the relocation of these families by giving them grants of land. The size of the majority of plots was 21 square metres. Between 1961 and 1976, 2.4 lakh families were given plots and resettled in 46 JJ resettlement colonies all around the borders of the city then—Jahangirpuri, Mongolpuri, Dakshinpuri and Seemapuri, and so on. By 1977, only about 20,000 families were left in JJ clusters in Delhi. Resistance to forcible resettlement during the Emergency (again because of the cost of transport and long working hours) brought about a change in the government's policy. Between 1980 and 1985, the emphasis shifted to improving and upgrading existing squatter settlements by providing basic civic amenities to them, with the consent of the land-owning agency. Around 1987, the EIJJ Scheme (Environmental Improvement of JJ clusters) was introduced. The Scheme was meant for those areas where the land-owning agency was not prepared to give up its claims to the land. The unfavourable attitude of the land-owning agency means that even fewer amenities can be provided to these clusters.

Shaheed Sukhdev Nagar is one such colony. Here the Railway ministry is averse to any permanent constructions coming up on its land. Infrastructure inside the basti is therefore minimal. There are two primary schools in the Wazirpur Industrial Area, and a Government school in Ashok Vihar, which the children from the basti attend. The nearest dispensaries and hospitals are in Azadpur and Ashok Vihar. The fair price shop is in Ashok Vihar. Cramped living conditions inside the basti are not only unhygienic, but also unsafe. Fires are frequent—on 14 February this year, for instance, 12 jhuggis were gutted and one young girl died.

As unauthorized settlers on government land however, JJ dwellers have little control over the facilities given to them. It is up to the SUR (Squatter Upgradation and Resettlement) Department to decide which of its schemes will apply to a given cluster. And the provision of infrastructure which the Slum Wing provides, is decided by both the availability of funds and the attitude of the landowning agency. Meanwhile, since the emphasis of government policy has now shifted to "environmental improvement" rather than relocation, the JJ dwellers of a cluster which is itself growing, are caught in a cleft-stick, where neither the provision of adequate facilities nor relocation is possible.

The Slum Wing provides one tap for every 100 jhuggis, and one toilet seat for every 25 jhuggis. It admits that one toilet seat ought to be provided for every 7 jhuggis. However, in Shaheed Sukhdev Nagar, there are no toilets, for roughly 5,000 families. The

Slum Wing cites a combination of factors as cause lack of space, and the reluctance of the railways. The nearest latrine complex is in the JJ cluster near the Tool Room Training Centre in Wazirpur, which has 60 toilet seats. A non-governmental organization, Sulabh, provides 3 complexes for the entire area, and also charges basti-dwellers for the use of its facilities. The jhuggi-dwellers are thus of only economically underprivileged, they are also provided the barest minimum of civic amenities, and that too not as their right. Their living conditions constantly declare and reinforce their underprivileged status. And this is the real failure on the part of the state failure to provide the basic living wage, compounded by failure to provide infrastructure.

Since the facilities available inside the basti are thus utterly inadequate, the jhuggi-dwellers simply found it more convenient to use the park nearby for defecation. And since ration-shop, schools and hospital are in Ashok Vihar, they also used the park as thoroughfare for easy access into Ashok Vihar, rather than go around the park, a route longer by about 2 km. They therefore resisted any attempt by the Ashok Vihar residents to have a boundary wall put up around the park, which would bar them from walking through it.

The Park

Ashok Vihar and Shaheed Sukhdev Nagar are separated by a park (more than a kilometre long, roughly 100 yards wide), running along a railway line. On one side of the park lies D Block of Ashok Vihar, and on the other side of the railway line, the JJ cluster. The park was developed more than eight years ago by the DDA for the residents of Ashok Vihar. As Shaheed Sukhdev Nagar grew, the minimal infrastructure proved so totally inadequate that the residents of the basti began using the park for defecation. In 1990 the Residents Welfare Association of Ashok Vihar filed a writ petition in the Delhi High Court, relating to the upkeep and development of the park. They stated that they were prepared to look after and maintain the park at their own cost. The Court ordered the DDA to construct a boundary wall around the park to prevent it from becoming "an open public toilet." What the Court was also denying was the right of the jhuggi-dwellers to go through the park into the colony, to schools, ration-shop and hospital. When the DDA stated that it was facing opposition from the residents of the basti, the Court directed the SHO of the local police station "to render all possible assistance to the DDA and its contractor."

The police were thus directed to ensure not only that the DDA was not prevented from raising a six-foot wall ("with adequate protection on top like embedded broken glass pieces to prevent unauthorized entry into the park"), but also that "unauthorized persons" did not use "the said part of the park as public lavatory." At the same time, the Court directed that some lavatories be constructed for the use of the JJ dwellers. Reasons cited earlier obviously made the carrying out of this order impossible.

The wall was breached in January 1992, months after it had been constructed, and again in November 1992 after the DDA had

repaired the breaches once. By August 1993 however the Court noticed a "marked improvement" in the upkeep of the park, and by August 1994, since the residents of Ashok Vihar had been granted the "relief" they desired, it disposed of the matter. The Residents Welfare Association also admitted that the jhuggi-dwellers no longer used the park for defecation. They were however resentful that the jhuggi-dwellers still used the park for access into the colony.

The residents of Ashok Vihar through the High Court and the residents of Shaheed Sukhdev Nagar through breaching a wall, were fighting for an improvement in the quality of their lives. All similarities end there. At stake for the residents of Ashok Vihar was a park. For the residents of Shaheed Sukhdev Nagar, it was a question of basic living space. And as unauthorized settlers on public land, they have no right even to these. The Residents Welfare Association could file a writ petition in the High Court to safeguard their rights. The residents of JJ clusters have to rely on the intervention of local politicians and the benevolence of the government for whatever minimal facilities are provided.

When the High Court intervened in this process, it simply emphasized that JJ dwellers cannot be guaranteed basic amenities. JJ-dwellers were seen as "law-breakers, unauthorized occupants of public land." The Court expressed the view that the provision of adequate infrastructure or relocation would "send out wrong signals, and will be an invitation to more persons to migrate to Delhi, occupy land unauthorisedly and then be rewarded with land at state expense." When the DDA submitted a scheme for the development of this area, complete with the cost of relocating the JJ-dwellers, the Court went on to observe, "there seems to be little justification for taxpayers' money being spent in favour of law-breakers — and even less justification for transferring the title of 18 square metres of land to each one of the families." This logic forgets that there are people not only below the taxable level in this country, but even below the minimum wage level. The argument that taxpayers have the sole right on the outcome of public expenditure and hence to civic amenities is therefore peculiar, to say the least. It is also sad to observe how susceptible the court is to illusory arguments forgetting that direct taxes constitute barely a tenth of the total taxes and the rest is borne by every resident of this country, where the poor in fact pay a larger proportion of their earnings. The court's distinction between legal and illegal is purely a juridical distinction that only reinforces the real disparities between the residents of these two colonies, and rationalizes the discrimination against the residents of the JJ cluster.

An overwhelming proportion of the migrants to the city work as manual labour or unskilled workers. The statutory minimum wage that is guaranteed to them by law does not include the cost for their accommodation. The non payment of this minimum wage and the indifference of the labour department in ensuring its payment ensure that workers are unable to travel long distances to their place of work. The planners do not contemplate a residence for workers of an industrial area in the Master Plan.

Thus vacant lands are used by residents to erect their dwellings. The size of such settlements is determined by the requirements of the industrial area. The proliferation of unauthorized industrial units, with the implicit approval of the government agencies, compounds this problem. Thus the jhuggi dwellers are integral to the production and profits that emerge in the factories, that profits that sustain the colonies like Ashok Vihar.

But once a jhuggi cluster comes up, its residents become illegal settlers, law breakers. Whereas Ashok Vihar residents repeatedly block roads to ensure uninterrupted power supply, jhuggi dwellers are dependent on the charity and the benevolence of the government. And when the government faces a resource crisis it is these benevolent acts—the welfare measures—that are most immediately affected. Such is the genesis of this social tension. The court then gives tacit sanction and explicit orders to the police to uphold the law by controlling the law-breakers. This tension is then assumed to be "normal," as was seen in various newspaper articles on the firing incident, and the role of the police is assumed to be a "neutral" enforcement of the law. Thus the police, in enforcing that law, beat up a boy who happened to be ignorant of any court order, and he happened to die. Such is the value of a "law-breaker's" life. And such is the story of the first custodial death in Delhi this year (1995).

This, then, is the history of Shaheed Sukhdev Nagar where the question of basic needs of people is disarticulated as a question of law and order. The High Court then orders a wall to be built to keep the JJ dwellers out. The police enter to enforce that order. Any person from the other side entering the park can now be hauled up. Beaten up a little. Unfortunately he may just die. The custodial death is therefore utterly consistent with the same logic which governs the lives of the JJ dwellers and the status of their colony.

Khamosh! Adalat Jari Hai

Now the guilty policemen are to be punished. Not for beating a man to death, but for causing death due to "negligence." Dilip was humiliated and beaten to death, and the state perceives that as mere negligence. It can be established beyond doubt that the death of Dilip was due to beating by the police. The post mortem report, which shows a large number of external injuries caused by blows to the body, would perhaps prove this. Despite such clear evidence, the inquiry into the death has not come out with its findings. It is likely therefore that it has been subordinated to the larger enquiry into the incident.

The Secretary (General Administration) and Special Executive Magistrate, S.P. Aggarwal is conducting a magisterial enquiry into "the incident of violence, pelting of stones, damage to public property, etc." in Wazirpur Industrial Area. Neither the custodial death nor the subsequent firing by the police are directly mentioned in the public notice inviting testimony. Instead, the notice states euphemistically that Delhi Police "had to use force." When the emphasis is on the violence and pelting of stones, it is reasonable to expect that the police firing will be justified as a necessary response. Further, the

public notice mentions injuries sustained by "many others (including policemen)" but is sceptical about the death of three persons in the firing. Language such as this clearly points to the nature of the inquiry. It is not very difficult then to guess at the conclusions the inquiry will reach on both the firing and the custodial death. And the SDM report on the custodial death has not been submitted independently. Thus the attempts of Delhi Police to sidestep the issue have been successful. As the government is now investigating social tension, and neither a custodial death nor subsequent police firing on protestors. The conclusion of the inquiry has therefore been determined by the terms of the inquiry.

In the light of these developments, PUDR demands that:

1. The report of the SDM inquiry be submitted independently to the government, and be made public;
2. The report of the magisterial enquiry submitted to the Lieutenant Governor be made public as well;
3. Criminal cases be registered against those policemen who exceeded their authority;
4. Adequate compensation be paid to the families of those killed, those injured, and those whose houses and household goods were damaged in the police action.

August 1996: 18 Months Later

The report of the Special Executive Magistrate S.P. Aggarwal was submitted in June 1995. The Lt. Governor sent it back to the Delhi Administration with some objections. Since the Special Executive Magistrate was subsequently transferred, the PUDR team met the Deputy Secretary, who is now part of the Committee which is examining the report. The Committee's report awaits completion, pending clarifications from two departments concerned, the DDA and the Railways. The final report will be made public only after it is accepted by the Lt. Governor. Reports of the Special Executive Magistrate's findings had however appeared in the press. According to these, the Committee has absolved the police of all responsibility for the firing. As was expected from the terms of reference of the enquiry, the firing was found to be inevitable and justified. The DDA, Slum Wing of the MCD and the Railways have been found responsible for the incident.

It may be recalled that four persons had died in the firing. It would appear therefore that there will be neither compensation nor prosecution in connection with these four deaths. And there can hardly be any hope for compensation for damage done by the police to the jhuggis and the household goods of the dwellers of Shahid Sukhdev

Nagar.

Apart from this, the S.P. Aggarwal enquiry did not even find any evidence to implicate the police in the beating and custodial death of Dilip. The enquiry under S.176 (Cr.PC) into the death of Dilip by the SDM (Kotwali) was completed and submitted independently. A police enquiry is being conducted by the Crime Branch of the Delhi Police into the events of 30 January 1995. According to the ACP (Crime Branch) at Police Headquarters, the indicted constable who was initially suspended, has been arrested. However prosecution of the constable is delayed because the SDM has submitted only an 'interim' report. The ACP further stated that a three-doctor team conducted the post-mortem examination but that all three have not yet submitted their reports.

However, the PUDR team was told categorically by both the SDM and by one of the doctors, that the reports had been duly submitted soon after the post-mortem was conducted in February 1995. Further, on the basis of the post-mortem and other evidence, the SDM has held Dilip's death to be clearly due to beating by the police. It may be noted that in February 1995 an FIR (No.42/95) was registered and the policeman charged under S.304(a) of the IPC. No fresh charges have been added despite the SDM report.

As reported earlier, more than a hundred people alleged to have been involved in the protests and rioting following Dilip's death had been arrested and then released on bail. The police has already charge-sheeted some of them. This is in sharp contrast to the inaction with regard to the prosecution of the constable indicted for the custodial death.

In the past eighteen months the incident no doubt has faded from the public memory. But for the basti dwellers who suffered in these traumatic events there is little hope of justice. Worse, they could face the threat of imminent eviction under the Delhi Government's recently-launched demolition drive.

Epilogue : As we were going to press, the Lt. Governor ordered compensation of Rs. 50,000 to be paid to Dilip's family. A magisterial enquiry ordered by the Lt. Governor into Dilip's death also held one constable guilty and charges were filed against him. No compensation has been paid, still to the victims of the police firing.

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