

CIVIL SOCIETY AND GOOD GOVERNANCE: EMERGING CHALLENGES

CIVIL SOCIETY plays an essential role for societal development and in enhancing the rule of law. Due to a variety of reasons like corruption, lack of budget, financing and monopolistic approach to regulating society governmental structures are not able to cope with the functions assigned to them. Therefore, there are obvious reasons for an emphasis on the role of civil society in governance. The civil society and the state structures can and should mutually supplement each other. Civil society institutions can resolve a number of vulnerable issues of human development much better than the governments can. They can also help governments in developing better strategies for resolution of issues like ensuring gender equality, protection of rights of people with limited physical opportunities, etc. Apart from contributing to effective governance at national level, civil society institutions can help support establishment of good governance principles at community levels, thus enhancing and creating capacities amongst the communities to govern themselves on modern democratic principles. This would naturally lead to decrease in costs and improvement of governance, allowing the governmental structures to concentrate on priority areas, basic directions of social, economic and political development.

The paper is divided into four parts. In part-I an attempt is made to unravel the meaning and understanding of the term “civil society” from Indian perspective. In part II the effort has been to delineate the concept of good governance. In parts III and IV the focus has been to concentrate on the emerging challenges of good governance with reference to two basic areas in Indian system, *i.e.* the area of local self governance and the area of environmental governance. The latter is important from the point of view of the way in which the idea of good governance has been conceived *i.e.* integrally related to sustainable development in the scheme of things.

Concept of civil society

The concept of civil society connotes a society which has a life of its own which is separate from the state, and largely autonomous from it, which lies beyond the boundaries of the family and the clan, and beyond



and locality.¹ “A viable civil society, a kind of third force between the state and the economy, on the one hand, and the private sphere, on the other, seems to require some effective sense of community and of there actually being a community to which people are committed.”²

Civil society plays an important role in giving voice to the concerns of citizens and rendering services that meet people’s needs. In that sense civil society includes trade unions and employers’ organizations, non-governmental organizations, professional associations, charities, grass roots organizations and the organizations that involve citizens in local and municipal life. In some countries organized civil society groups interact with local governments on issues of interest to them.

The concept of civil society dates back to the days of Plato and Aristotle, where the location of civil society was traced to the Polis, thus fusing the social with the political. In modern period this was differentiated in the scheme of Hobbes and Bodin, who believed that if a society is to be held together at all, it must be through the power of the sovereign. But Locke conceived society as a contract among equals, so that legitimacy of social organization flowed from the autonomous and un-coerced commitments of individuals. The initial social contract does not include a state, but only agreement. A second contract establishes the state as a trustee to society, necessary to achieve those things that cannot be achieved by individuals through voluntary associations alone.

Adam Ferguson envisaged that society is natural to human beings but civil society is a great human achievement, the realm of human self-development, an arena of struggle, uncertainty, energy, creativity, but also a realm of civic virtue, as human beings accept the mutual burdens and blessings of sociable behaviour.

Ferguson’s idea of civil society was further elaborated by Hegel and this gave rise to the Hegelian state. Marx equated civil society with his idea of bourgeois society and in a sense continued with Hegelian tradition. Kant was the first to understand civil society as harboring a public of literate people, communicating and arguing about matters of common concern. Enlightened monarchs, Kant argued, should not only protect this sphere of public criticism, but heed its force. Antonio Gramsci developed a somewhat different although related concept: he used the term civil society to denote the institutions, schools, the church, etc. that provided normative legitimacy and hegemony for the state and capitalist class.

1. E. Shills, “The Virtue of Civility” (revised version of an essay originally published in 1991) in E. Shills, *The Virtue of Civility. Selected Essays on Liberalism, Tradition, and Civil Society* 320-321 (Indianapolis, Liberty Fund, 1997).

2. K. Nielson, “Reconceptualizing Civil Society for Now” in M. Walzer, *Toward a Global Civil Society* 41-67 (Providence, Berghahn Books, 1995).



Good governance

The concept of good governance is the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences.³ Governance includes the state but reaches beyond it by including the private sector and civil society. It has political, economic, and administrative qualities. Each sector plays a different role. Good governance is epitomized by predictable, open and enlightened policy making; a bureaucracy imbued with professional ethos, acting in furtherance of the public good; the rule of law; transparent processes; and a strong civil society participating in public affairs. Poor governance is characterized by arbitrary policy making; unaccountable bureaucracies; un-enforced or unjust legal systems; the abuse of executive power; a civil society unengaged in public life; and widespread corruption. The rule of law does not simply provide yet one more vehicle by which government can wield and abuse its awesome power; to the contrary, it establishes principles that constrain the power of government, oblige it to conduct itself according to a series of prescribed and publicly known rules. Adherence to the rule of law entails far more than the mechanical application of static legal technicalities; it involves an evolutionary search for those institutions and processes that will best facilitate authentic stability through justice.

Moreover, for purposes of good governance, it is important to ensure that all sectors of the population are represented, not just the elite or powerful in civil society. Good governance links governance and development, an especially complex interaction considering the roles of the different sectors. As former Secretary General of United Nations Organization, Kofi Annan observed that it is now widely accepted that country's economic success depends in large measure on the quality of governance it enjoys.⁴ Good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the participation of all citizens in the decisions that affect their lives.

The United Nations Development Programme (UNDP) defines good governance as a participatory, transparent and accountable, effective and equitable, process that promotes the rule of law. It ensures that political, social and economic priorities are based on broad consensus in society and

3. United Nations Development Programme, *Governance for Sustainable Human Development: A UNDP Policy Document* ch.1 (1997).

4. Kofi A. Annan, "We the Peoples: The Role of the United Nations in the 21st Century" G.A. Res. 2000, U.N. GAOR, 54th Sess., at 22, U.N. Doc. A/54/2000.



that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources. Good governance defines the processes and structures that guide political and socio-economic relationships. The UNDP lists nine characteristics of good governance: participation,⁵ rule of law,⁶ transparency,⁷ responsiveness,⁸ consensus orientation,⁹ equity,¹⁰ effectiveness and efficiency,¹¹ accountability,¹² and strategic vision.¹³

UNDP concludes that a proper balancing of factors would necessarily result in a liberal democracy. It states that the state's functions are manifold – among them, being the focus of the social contract that defines citizenship, being the authority that is mandated to control and exert force, having responsibility for public services and creating an enabling environment for sustainable human development. The latter means establishing and maintaining stable, effective and fair legal-regulatory frameworks for public and private activity. It means ensuring stability and equity in the marketplace. It means mediating interests for the public good. And it means providing effective and accountable public services.

States also have a role in empowering their citizens by creating capacities in individuals and civil society associations, providing equal opportunities and ensuring social, economic, and political inclusion and access to resources. For this empowerment to occur, it is imperative that there exists properly functioning legislatures, electoral processes and legal

5. All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

6. Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

7. Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

8. Institutions and processes try to serve all stakeholders.

9. Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures.

10. All men and women have opportunities to improve or maintain their well-being.

11. Processes and institutions produce results that meet needs while making the best use of resources.

12. Decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.

13. Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.



and judicial systems. It must be noted in this context that there are three differentiated spheres of governance in the state systems at the moment: political, economic and social. The political sphere is characterized by high level of organization and legitimate authority; the economic sphere is characterized by compulsive associational values and the third, social sphere engaged in mediatory roles. The private sector is, at least in the theoretical free-market model, the job-generating, income-producing arm of this trinity. It uses the market to better the economic position of the citizenry. States, in the current neo-liberal global market environment, have taken on the role of facilitating private sector development. And, therefore, the role of the social sector, as the main mediatory sphere of civil society organizations assumes much more significance today than ever before.

Good governance is specifically linked to sustainable development, development that meets the needs of the present without compromising the ability of future generations to meet their own needs.¹⁴ The UNDP holds that developing capacity for good governance furthers the four critical elements of sustainable human development: eliminating poverty, creating jobs and sustaining livelihoods, protecting and regenerating the environment, and promoting the advancement of women. In this sense a sensible environmental law and policies in a given system are a necessity and would determine whether a particular system ensures good governance or not.

It has been pointed out that existence of civil society organizations do not guarantee good governance. For that purpose institutional structures are required to be in place to ensure that the civil society has the opportunities to effectively participate in decision making process and thereby ensure good governance. In this respect it is important to lay stress on those institutional structures of local self-governance which ensure the participation of civil society groups, apart from the individual of course, in decision making processes of governance structures.

Panchayati raj and challenges of good governance

Seen in the light of the above discussion it is clear that a democracy works well when all citizens including the most marginalized people have the capability to ask questions, seek accountability from the state and participate in the process of governance. The quality of the democratic process depends on the capability and integrity of the organs of the state, institutions of governance and the extent of people's participation in governance. How can the impact of these factors be increased in India,

14. United Nations Conference on Environment and Development, Johannesburg Summit (2002).



what are the major constraints to better governance and what kind of role the civil society organizations can play in ensuring good governance?

The *panchayati raj* system, introduced through the 73rd constitutional amendment, is the most positive step towards re-energizing democracy in the history of independent India. *Panchayat* traditionally refers to the five elders in a village who mediate to resolve a conflict and speak on behalf of all the residents of a village. The word has been retained by the 73rd amendment to the Constitution, but it now refers to a body elected according to law. The same word is used for the three tiers of local administration brought in by the amendment – the highest being the district or *zilla panchayat*, the lowest the *gram panchayat* that may cover several villages, comprising all citizens of the village constituting the *gram sabha*, the basic unit of democracy.

Panchayati raj institutions (PRI) cover more than 96% of India's rural population, where *gram sabhas* act as platforms for people's participation, to raise demands and to ensure transparency and accountability in the responses of *panchayats*. It can lead to local economic development with social justice – PRIs can be given the power to implement schemes like the *Sarva Shiksha Abhiyan* and Employment Guarantee Scheme (EGS).

However, a number of daunting challenges face PRIs today. Across all states there is a lack of genuine devolution of funds, functions and functionaries in *panchayati raj*. Added to that are social challenges that work against the emergence of leadership from marginalized sections of society, such as women, *dalits* and tribals. Further, there is a lack of role clarity among *gram panchayats*, *block panchayats* and *district panchayats*. Civil society organizations that have played a very positive role in bringing forth this third tier of governance in Indian system now have to ensure that the bottlenecks do not hamper the progress in realization of self governance and good governance in the country. In this context it must be noted that the *panchayati raj* system in the form of 73rd and 74th constitutional amendment was achieved by the political leadership with the help of non-governmental organizations and civil society groups, but after the 73rd/74th constitutional amendment the political society wants the field to be left free by these civil society groups or NGOs, since they are now considered by the political leadership as their rivals in their agenda of building up civil society. Unless this domination of political society is somehow stopped, civil society organizations won't be able to meet their objectives.

Political society will have not only to recognize but also help the development of a civil society where the contributions of independent and collective initiatives are valued and countervailing institutions respected. Ordinary people should be seen as citizens, not clients. Such a shift will help evolve *panchayati raj* as an institution of local self-government. People expect not only development functions but also civic functions to be brought under *panchayati raj*. The social terrain in India today, with a vigilant



public, vigorous press, vibrant voluntary organizations and the unutilized and underutilized energies of younger men and women, willing and waiting, is more than ready. A new paradigm of development politics has to emerge and respond to this social reality.

Further, a problem with local self government institutions is the excessive emphasis on physical and financial accomplishments in the operation of their programmes, and not enough on educating the people into new ways of doing things. Another important target of these institutions, which is not realized, is to educate the masses in order to raise social and political consciousness. The *gram sabhas*, which were specially designed for political participation of the villagers are poorly attended. The main reason is that the structure of *panchayati raj* was introduced without educating the people about its fundamental philosophy, principles, potential and purpose, the very foundation of *panchayati raj*. As people are not enlightened, they define it according to their understanding or expectations. Thus, politicians call them 'vote banks', for officials they are inevitable power-rivals, for *panchayat* committee members they are ladders to political ambition and people see them as extension of government agency. A systematic awareness programme to remove wrong notions and to establish correct values of *panchayati raj* is the need of the day. And here the role of civil society organizations shall be crucial in not only making people aware but sensitizing the bureaucracy and the political leadership about the values of PRIs in India, thus ushering in an era of good governance.

There is a clear lack of political will in the implementation of the mandate of 73rd and 74th constitutional amendments and this is reflected in the fact that the number of centrally sponsored schemes (CSS) has increased since the 73rd amendment was passed. There are more than 200 such schemes currently. The share of CSS as a proportion of total number of schemes has shot up to 70 per cent compared with less than 30 per cent in 1980s. These schemes are framed by the centre and implemented by the *panchayati raj* bodies. The institutions of self-government are forced to accept them because of the centre's financial clout. It is certainly a deplorable situation and the civil society organizations have to take care that only those schemes are accepted which really benefit the local population.

Another important area of concern of civil society organizations is the Panchayats Extension to the Scheduled Areas (PESA) Act of 1996 which is one of the most potent legislative measures in recent times. It recognizes tribal people's modes of living, aspirations, their culture and traditions. But, more than a decade after the Act was adopted, the enabling rules are still not in place. This clearly shows that state governments are reluctant to operationalize the PESA mandate.



Environmental management and challenges before civil society

The whole of environmental management movement in India can be said to be a construct of civil society movement. From the very beginning it has been emphasized that the participation of the communities would help in better management of environment and environmental resources. After all community participation pools resources and diverse skills and working strategies from within the community which are indispensable in execution of long term environmental strategies. Pooling resources and diverse skills particularly makes a complex issue such as management of the local environment, comparatively easier to handle, and checking and corrective action through monitoring/evaluation can be done by and for the community itself. The importance of the local communities in environmental resource management cannot be over-emphasized. It must be noted that choices and preferences on quality of life and lifestyles are made at the community, household and individual levels and since these choices and preferences relate to consumption of environmental resources, they have a direct impact on the local environment, as well as long-term indirect impacts, sometimes far beyond the physical boundaries of the communities.

The style of centralized decision-making in natural resource management has picked up momentum after 1976, (coinciding with the civil society movement for environmental conservation picking up momentum) and thereafter the subject of forest was brought under the concurrent list¹⁵ enabling the central government to intervene in forest resource management as and when it thought fit. In 1980, Forest Conservation Act (Central Legislation) was brought in with the avowed purpose of conserving forests and matters connected therewith.¹⁶ The Act prohibited state governments from allowing the use of any forest land for non-forestry purposes without the prior approval of the central government. The end result is the concentration of more powers in the hands of the central government and more reliance on top-down modeling of law making, as if the centralization would cure the ills of forest administration.

National Forest Policy, 1988 has in principle accepted the role of local people and civil society and has accepted that the needs of the local people shall be taken care of on priority basis. However, the legal frame does not allow the policy pronouncement to be brought into action. And in fact the goals that have been emphasized in the 1988 policy on environment

15. Vide s. 57 of 42nd Constitutional Amendment Act, 1977.

16. Act 69 of 1980.



has not been translated into legislative provisions. Contrary to the policy approach, an amendment in Forest Conservation Act, was brought in 1988 (section 2 (iii) providing for an embargo on assignment, lease to any body, authority, organization which is not owned by the state government. Meaning thereby that whatever little spaces of community and civil society participation in forests and natural resources management were there, that too, would be foreclosed now. How can one in such a situation expect that the state purpose of obtaining participation of the local communities would be achieved?

Common citizens and civil society groups as claimants of environmental information are the most affected group of stakeholders. They are the consumers of environment which is a trust in the hands of the incumbent governments¹⁷ and, therefore, just as consumers have a clear cut right to demand the right to know the ingredients used in food products, and the composition of medicines, similarly the consumers of environment have a right to know the kind of air that they are breathing, the composition of water that they are drinking and the kind of land upon which they live. As the process of awareness grows amongst these consumers, they shall be asking more complete accounting as to what chemicals are being shipped along their roads, placed in their landfills, or stored in for future use. It is only by being informed with basic facts about the quality of their environment, citizens and civil society groups can become active participants in identifying and resolving issues at both local and national levels.

In the face of these evolving rights of the common citizenry, what is the structure of governance that is provided in the pollution control laws of our country? We know that there are pollution control boards exclusively meant for the prevention and control of water and air pollution and regulation of industrial activity that results in pollution of air and water. These boards are exclusively nominated bodies which have the representatives from the governments, (central, states and union territories) industries, and a very small amount of representation from agriculture and fisheries as well.¹⁸ They have been empowered to advise the governments on environmental matters concerning the prevention, control and abatement of pollution of air, water and land, conducting training programmes of the personnel involved in environmental administration, inspecting sewage or trade effluents and emissions, works and plants for the treatment of sewage etc, laying down or modifying various standards of effluents and emissions and most important of them all to administer the consent procedure for regulation of industrial activity in a given jurisdiction.¹⁹

17. *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

18. Water Act, 1974, ch. II and III, ss 3-15 and Air Act, 1981, ch. II, ss.3-15.

19. Water Act, 1974, ch. IV, ss 6-18, and Air Act, 1981, ch. III, ss. 16-18.



Under the Environment Protection Act, 1986, which was passed in the wake of Bhopal disaster, the central government has assumed upon itself, very comprehensive and sweeping powers: “subject to the provisions of this Act, the central government shall have power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating the environmental pollution.”²⁰ This is a sweeping power, perhaps found only in wartime regulations.²¹ Obviously, this legislative move meant business. The power to protect and improve the quality of the environment is a constitutional commitment which is coupled with duty.²² This makes it necessary to take up environmental protection measures on a war footing.²³

But what about the citizens’ rights? Section 19²⁴ provides for citizens’ suit provisions, which have also been introduced later in Air and Water Act, by way of an amendment in 1988.²⁵ The section bars the cognizance of any offence under these Acts except on a complaint made by central or state government or any officer authorized by it, or by central or state pollution control boards or any officer authorized by it. At the same time a citizen has been authorized to make a complaint after giving 60 days notice to the central government or the pollution control board concerned, for the purpose of furnishing to him any statistics, accounts, and such other information. However, it has been provided that the board or such officer who has been authorized to provide such information may refuse to make any such report or information available to such citizen, if the same is, in his opinion, against the public interest.²⁶

Further the period of 60 days that is provided to the board and consequently to the industry concerned against whom certain information may have been sought for, may mend the ways and remove the traces of violation of any of the provisions of the stipulated law or rules. This makes the right of the citizen to obtain information from the stipulated authority a farce, since the same is not exercisable and is a mere show of citizens’ power. It is for this reason that these laws have been described by critics as

20. Environmental (Protection) Act, 1986, s.3 (1).

21. The Essential Commodities Act, 1955 giving such power (u/s 3) is an illustration of a peace time legislation which had its origin in the post world war II period.

22. At a meeting of experts in August 1986 in Ahmedabad, just after the Environment (Protection) Act was passed, it was made clear that this power is one coupled with duty and a *mandamus* would lie if nothing was done. See Indian Law Institute, *Environmental Protection Act : An Agenda for Implementation* 13 (1987).

23. *Supra* note 20, s. 3(2).

24. *Supra* note 20.

25. Water Act, 1974, s. 49 and Air Act, 1981, s. 43.

26. Water Act, 1974, s. 49(2) and Air Act, 1981, s. 43(2).



toothless tigers, which seldom punish the offending industry or authority for not providing information to the empowered citizen.²⁷

There are more than one such provisions under the environmental statutes which make simply a show of empowered citizen, providing nothing in substance. Another such example that can be given is of section 21 of the Water Act and section 26 of the Air Act, which provide for sampling provisions. These provisions read with citizens' suit provisions²⁸ may appear to be empowering citizens to initiate an action against the offending industry or authority in a court of law. But that is not the case. Section 21(2) of the Water Act and section 26(2) of the Air Act, provide that the result of any analysis of a sample of effluent or emission taken shall be admissible in evidence, only if the same has been taken in compliance with the provisions of subsections 3 and 4 or the aforesaid two sections. These sub sections provide a particular procedure that can be undertaken only by an officer or person authorized by the board, meaning thereby that the common citizen though may take sample and get it analyzed, but the result of such analysis shall not be admissible in evidence in the proceedings that the citizen might initiate. This simply means that the citizen has the right to initiate an action against an offending industry or authority, but no right to pursue his case in a court of law. This makes a mockery of citizens' rights or community initiative as some environmentalist would like to euphemistically put it, for without providing a right to furnish evidence to support the case, providing a right to initiate an action is nothing less than a fraud on the citizens' rights.

Further, it has been noted above that the pollution control boards that have been constituted to administer the consent procedure to regulate industrial pollution are exclusively nominated bodies with very heavy representation of governments and a very thin representation of interest groups like, industries, agriculture and fishery and no representation of the common citizenry.²⁹ It may be argued that in the ultimate analysis the members nominated by the central and state government are the representatives of the people themselves, because it is the people who elect these governments. But when the government run industries have their representatives as well in the board there appears to be a very thin line dividing the role of the government as an industrial entrepreneur and the representative of the people. This may perfectly create the confusion of roles and objectives for the government representatives in the board.

27. Shyam Diwan and Armin Rosencranz, *Environmental Law and Policy In India* (Oxford University Press, 2004).

28. *Supra* note 20, Water Act, 1974, ss. 19 and 49 and Air Act, 1981 s. 43.

29. Water Act, 1974, ch II and III, ss. 3-15 and Air Act, 1981, ch. II ss. 3-15.



The last point that needs to be taken note of is that of consent administration in pollution control laws. The consent administration as it has been provided under the Water and Air Act, is not at all transparent.³⁰ Consent orders very often impose conditions of volume, nature, composition, temperature, rate of discharge or effluent or emission and as per the procedure laid down they are required to be noted down in a register. Incidentally this register is not open for public scrutiny. As such even here the right to obtain information about so many things that affect the rights of common citizens are not made available to them. Without access to the basic information, how can a citizen be expected to participate in the decision making processes on environmental matters that affect his rights and the rights of coming generations so closely and comprehensively? Further, there is no role assigned to the common citizen in consent administration at all. After 1997 some kind of public hearing process was introduced by way of notification,³¹ making it compulsory to hold public hearing before sanctioning a project having a bearing on the local environmental resources and environmental cleanliness. Another important initiative was a compulsory environmental impact assessment.³² However, the way these processes are administered leave little scope for affecting the granting of consent in any substantial manner. For example, environmental impact assessment is to be done by the project promoter and at his own cost. How can one expect the expert, who is involved in preparing an environmental impact assessment report to prepare a report which goes against the interests of the person who is paying for the preparation of such report.³³ This once again appears to be a chimera of public participation and civil society initiatives in the processes that affect the common citizen so closely and comprehensively.

Conclusion

By way of summing up it would be in the fitness of things to say that we have a vibrant civil society that exists in India, and also the structures in terms of *panchayati raj* institutions which can be used by civil society organizations to make effective interventions and meaningful contributions in the process of governance. We have a very encouraging social terrain, with vigilant public opinion, vigorous press and vibrant non-governmental organization sector, which can be used for making good governance a reality. We also have unutilized and under utilized potential of millions of youth which can be used for making effective improvements in the developmental administration. However, what we lack is the political will to make use of

30. Water Act, 1974, ss. 24-28 and Air Act, 1981, s.21.

31. S.O. 318(E) dt. 10 April 1997.

32. S.O. 85 (E) dt. 29 Jan 1992.

33. Para 4(III) of EIA notification, dt. 29 Jan. 1992.



opportunities available. The environment laws truly reflect the state of affairs – giving with one hand and taking back with the other. So what is needed is a kind of new dynamic of developmental politics to grow in this country and there we have the challenge well chalked out for civil society organizations to make use of and improve governance process at all levels.

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