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## The Constitutional Framework for Interim Government in Bangladesh: Problems and Perspective

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### ABSTRACT

The interim government is regarded as a salient feature of the constitutional system of Bangladesh. This paper focus on the caretaker or interim government of Bangladesh to the problems and the legal perspectives. The interim government had been amalgamated in the constitution by the thirteen amendments at the 28<sup>th</sup> March ,1996. It had been provided that there shall be a caretaker government after dissolution of parliament and the duration of the government will be when a new Prime Minister enters upon his office. The caretaker government shall be collectively responsible to the president and shall do the routine work at the emergency period in the state but they cannot make any policy for the state because at that time there are parliament is dissolved. The interim government shall manage a period of transition when state collapse, revolution and civil war. An interim government is an emergency relief but it is not a long-term solution for a state. There are also some challenges of a care taker government which is also burning issues in a democratic state. This paper paved the way to meet the challenge of the caretaker or interim government of Bangladesh in the current situation.

**Keywords:** Caretaker government, Constitutional framework, Democratic government, Excessive intervention, Constitutional limitations

### Introduction

An interim government is formed after dissolution of the Parliament and the parliament is dissolved various reasons like war, internal disturbance and economic disaster etc. The main functions of the interim government are to conduct the parliamentary elections and the time is ninety days. During the 90 days the parliamentary election is held and the new prime minister form a new parliament with his elected parliament member (MPs) and the ministry is also formed with the new ministers. There are no provisions of the formation of an interim government in Bangladesh but Bangladesh met the interim government a several times. The 13th Amendment introduced a non-party caretaker government and the caretaker government was first introduced though constitution. The appointment, qualifications, and functions of the caretaker government was regulated though the constitution. There are also emergency provisions in the constitution of the Bangladesh and that time the parliament also dissolved and that time an interim government may come in a state and this emergency provisions are also found in the other democratic countries. The interim government was formed with a chief adviser headed by a retired chief justice and appointed by the President and the government was responsible to conduct the general elections and also to perform the routine functions of such government. Bangladesh faces three times the caretaker government in the year 1996, 2001 and 2009. Though the caretaker government system was introduced in the constitutionally but the Appellate Division of the Supreme Court declared the 13th Amendment “void and ultra vires” and declared it is undemocratic and contradictory with the

independence of the judiciary at the May 2011. However, the caretaker government has come in Bangladesh again and again as a doctrine of necessity and state safety.

### **Conceptual Framework**

The main objective of the interim government is to conduct free and fair parliament elections. The duty of the government is an electoral procedure and activities which is related to voting and verifying the precision of the voter registries. The caretaker government is inserted in the Constitution through the 13<sup>th</sup> Amendment with 260-0 votes on 26<sup>th</sup> March, 1996 and it became law 28<sup>th</sup> March. The Amendment included in the constitutions as Chapter IIA: Non-party Caretaker Government in Part IV and there are five Article 58A, 58B, 58C, 58D and 58E. It also amended Articles 61, 99, 123, 147, 152 and the Third Schedule of the constitution that can meet with the demand after dissolution of the parliament. Though the High Court declared the 13<sup>th</sup> Amendment constitutional but the Appellate Division declared the thirteen-amendment void and ultra vires which is contradictory of the basic structure of the state (Appellate Division, 2011). The 15<sup>th</sup> Amendment abolished the caretaker government system (The 15<sup>th</sup> Amendment, 2011). The caretaker government conducted the free and fair parliamentary Elections. The Caretaker Government assist the Election Commission of Bangladesh for holding free, fair and neutral election within certain constitutional limitations. The interim government assist the Election Commission holding free and fair elections within 90 days though the government has no power to make policy during the tenure of the caretaker government. The tenure and the executive powers of the current caretaker government may be more than 90 days and can do their routine work (Rafiqul, 2007). There is the criticism that the interim government whether legitimate or not under the current constitutional system of Bangladesh. The non-party caretaker government is unconstitutional as it affected democracy and the people's right. There were filed petitions to restore the caretaker government in the constitution for the people's will. The non-party caretaker government is not a common practice in the parliamentary democracies of the World though the Bangladesh has introduced concept. In Bangladesh the interim government has come again and again for internal disturbance. Bangladesh is a democratic country and all power belong to the people and are exercised on their behalf and by the authority of the constitution. Election makes the government accountable to the people. The caretaker government is formed to support the Election Commission and also conduct a free and fair parliamentary election within the specified time. Election is the fundamental requirement of a parliamentary democracy and ensure the accountability of the government. So, the non-party caretaker government or interim government is very essential and importance of this study.

### **Strength of the interim Government**

There are some positive aspects of a caretaker or interim government in the Bangladesh. These are-

- The basis features of a democratic government are election. The free and fair election makes government responsible to the people. If the election is not free and fair, the government cannot be said responsible to the people as a democratic state all power belongs to the people. The free and fair election process gives the people voting right and to elect representatives for the parliament. The most positive aspect of the thirteen amendments had paved the way for making the general elections free and fair from political influence in a state.
- There is a common practice that a political government in power abuse the public officials and properties to get the victory in the election. There are occurred different type of crimes happened when the political government conduct the parliamentary election

like bribery, undue influence, illegal impersonation as well as the manipulation regarding the Election Commission, Voting right, press, media and political party etc. The interim government exercise power during the general election so there remains no scope of manipulation of public purse and properties by the party in power and the crime rates are also increase.

- Every government think that when parliament is dissolved, the public will have the fullest opportunity to choose the competent representatives for the future government. The Caretaker government takes the appropriate measures so that the elections is conducted free and fair and the government may more responsible to the people.

### **Perspectives**

The caretaker government is a common feature in a democratic state though they conduct their routine work for a short time. Generally interim or caretaker government comes after or along with by military coup, national emergency, foreign occupation or multilateral forces. The previous two caretaker governments performed their duties smoothly and presented free and fair elections. There was no complain regarding parliamentary elections and formation of a new government. Though there were questions about the composition, integrity and neutrality of the caretaker government. The conception of the caretaker government developed in Bangladesh from the mistrust of the party in power. The political party can't believe that a neutral election may conducted by party in power. The caretaker government may one of the best solutions to ensure institutionalize electoral neutrality in the parliamentary election. The three-caretaker government has given a concept in the constitution and which shows the necessity for the state though it is not easily get in practiced (Wahiduzzaman,2007). The caretaker government may be supported by the of ruling, opposition, bureaucracy, military, judiciary, media, business, civil society and above all the people as the interim government is a growing system. There may be taken different steps to develop political culture of caretaker government. These are-

- Democratic system should be followed to solve the state's problems. It is not easy for a nation to come a quick solution in a national emergency. The state may observe the caretaker governmental activities to stabilize the democratic culture and the political party have to patience on the caretaker government and on the Election Commission both.
- Though the political culture of caretaker government is not reach in the Bangladesh so the interim government tries to ensure collective responsibility of the government. During the caretaker government's period military gives an important support to the government. The law-and-order situation is maintained strictly during the caretaker government (Economist and Financial Times, 2007).
- Developed political culture may be practiced though the politicians with their co-operation which is the fundamental for the democracy. Without the political co-operation a nation cannot get the effect of the democracy.
- Political party in power may build up their patience regarding the opposite party which is also integral part of the democratic process. But the government is not aware for a cordial parliamentary relationship with the opposition party. As the opposition party does not participate parliamentary session it the major deficiency of the parliamentary form of government.

- The interim government play an important role to establish the political culture of the parliamentary form of government. The opposition party ensure transparency and accountability of the government that serves the people's interest. The opposition party's role and duties in parliament is constructive criticism to the government which create a special role to establish the political culture. The caretaker government gives their efforts to reforms the political environment for parliamentary election. Though the caretaker government do their routine work and cannot make any policy or law and their primary object is to deliver a free and fair election to establish a democratic government.
- The bureaucracy, media, business and civil society also play a vital role in establishing a political culture in a state. There is a relation among the bureaucracy, media, business and civil society and the government which play an important role to run the government machinery and provide service for the people. Media plays an also vital role in a democratic society as there are freedom of expression, speech and political freedom makes the government responsible to the people (UDHR- 1948). There are also need of the fundamental rights like freedom of thought and conscience and the freedom of expression in a democratic state for a responsible government (Article 39).

### **Powers and Functions of the interim government**

The caretaker or interim government comes during the emergency situation in a state. The government should run by neutral parliamentary election and should run by neutral persons so that no political party can utilize the governmental machinery, resources, monetary or otherwise to influence the Parliamentary election. The caretaker government takes the responsibility to conduct fair election and a co-ordination between the political parties as the primary duty of the Election commission to conduct parliamentary election. The Election Commission is an independent constitutional body in the exercise of its functions only to the Constitution and any other laws (Article 126). The commission is also responsible for the duty of all executive authorities to assist the election as well as in the discharge of its functions. There is the power to require any person or authority to perform such functions or render such assistance for the purpose of election so as the commission think fit for the Parliamentary election. As the care taker government can't take any policy decision which can take the MPs in the parliament as the representative of the people. The caretaker government is an interim government and they are not elected by the people so they are incapable of taking policy decision, they can carry on a routine function if it became necessary for the performance of such function. Before the dissolution of the seventh parliament, the Appellate Division gave certain directions in secretary, Ministry of Finance v Masder Hossain relating to recruitment, control and supervision of the member of the subordinate judiciary and the magistrates exercising judicial functions and fixed the limit for compliance (BLD ,2000). The Appellate Division had taken a policy decision as they are the judicial body and the judiciary is independent (Article -22). However, the caretaker government assist the Election Commission to conduct a free and fair election and perform all executive functions to assist the Election Commission (Article 126). Thus the care taker government is required to take all measures to assist the Election Commission in holding free, fair and peaceful election and in taking such measures that the caretaker government does have the limitation relating to policy decision (Art. 58D) .The provision of holding free ,fair and peaceful election is not any way controlled by the provision of limitation relating to policy decision(13<sup>th</sup> Amendment, Art. 58D).

Transfer of the public servant from one place to another place is a routine function of the government performed in the public interest and on consideration of administrative

exigencies. The government peruses certain policies and issues instructions in this regard. The caretaker government cannot change the policy and the instructions unless such change is necessary for the performance for the routine functions or to assist commission to conduct a free and fair parliamentary election.

The caretaker government constituted on dissolution of the seventh parliament under took a policy of large-scale transfer of the civil servants including those who were not in any way involved in the parliamentary election process. It was contented that the caretaker government transgressed its constitutional limit. No straight answer can be given in this regard without going into the nature of the transfer ordered and without coming into a conclusion as to whether the public interest and administrative exigency or holding of free and fair election necessitated such large-scale transfer, but, at the same time, the criticism against the caretaker government in this regard cannot readily be dismissed and untenable.

Question has also arisen as to whether the president can promulgate an ordinance during this interregnum period amending the law relating to parliamentary election (Article 93). In a writ petition, the power under Article 93 does not extend to making any provisions regarding parliamentary election (Article 124). Article 93 authorizes to promulgate an ordinance the president but the president can't exercise power as there is no prime minister to advise him. The president can promulgate an ordinance and clearly specifies the circumstances when an ordinance can be made by the president. When parliament is dissolved only that time the president can make and promulgate an ordinance and when the new parliament is formed then the ordinance has to place before the parliament within 30 days, if parliament pass the ordinance, then it will become the law otherwise the ordinance becomes void. Thus, the power of the president making law by an ordinance co-extensive with the power of the parliament in making law except as otherwise provided in the provision to art. 93 (Syed Badruddin Hossain v Bangladesh, 2001). The parliament being conscious about of the prime minister requires for of making an ordinance provided in art.58E the president has to act on the advice of the prime minister shall be ineffective. Though promulgation of a policy decision, the limitation, in view of the provisions of art. 58 D (2), cannot apply in case of promulgation of an ordinance to ensure free and fair election. The Adviser is collectively answerable to the president and they are to discharge their duties as desired by the president (Article 58B, 2). The government is also responsible to the people but there are the only elected representative of the people and the caretaker government constituted with persons elected by the people has been made accountable to the president and the collective responsibility of the caretaker government is not affected by the provision of art 58B(3). The executive power of the Republic during this interregnum period shall be exercised by and on the authority of the Chief Adviser and shall be exercised by the Chief Adviser in accordance with the advice of the caretaker government. The Constitution contemplate a parliamentary form of government and the president is a titular head and a presidential form of government during the interregnum period is not contemplated. The Chief adviser and the adviser have been respectively given the status of prime minister in performance of the governmental functions and the caretaker government has been made responsible to the president in the sense that the president may ask for information about their activities. Art.58 E provides that while the president may ask for information about their activities. Art 58 E provides that while the caretaker government is functioning the provisions of art. 48(3),141A (1) and C (1) requiring the president acts on the advice of the prime minister shall remain ineffective. The President shall have to act on the advice of the chief Adviser during the interim period. The caretaker government is accountable to the president seems to be weightier but an authoritative interpretation in this regard is necessary.

The Thirteenth Amendment has provided expression that when the interim or non-Party Caretaker Government administered by the President during the emergency period there is provision of military service. The caretaker government empowered executive power authority of the state as well as empowered to exercise to use army force to control the internal law and order situation in of the state (Bangladesh Constitution,1996, Art. 58B 3). The military service in the interim government depends on the wish of the president. In a writ petition the Thirteenth Amendment seeking to amend art 56 and 142 (IA) as the procedure for amending any provision of the constitution is required a bill to be passed in Parliament by at least two-thirds of the total members. However, the Fifteenth Amendment inserted Article 7B, which prevents the amendment of the basic structure of the constitution that the preamble and certain articles in Parts I and III cannot be amended. Besides this the Prime Minister and other ministers who were in office before the dissolution are considered to continue in their roles until the next government is formed. The government filing an affidavit-in-opposition, contended that the Amendment did not seek to amend art 56 and at any rate of the fifth Amendment being void, articles 56 and article 142 inserted by Martial law proclamation and validated by the fifth Amendment is also void. The writ petition is pending final adjudication.

### **Caretaker Government in Bangladesh and in Other Countries**

The concept of interim government has been introduced in the politics in the different ways like presumed caretaker Government, caretaker Government in special sense and the Caretaker Government in true sense or non-party caretaker government. There are active interim government in Bangladesh to oversee a transition to democratic elections, which could occur in early to mid-2026. There is active an interim military government Burkina Faso has been in place since a 2022 coup. In the year of 2025 Madagascar also facing two-year transitional period leading to a new presidential election. Myanmar, Sudan, Syria formed an interim government for free and fair elections for the state. Tigray (Ethiopia) establish as a successor to the former transitional government to peace agreement in 2023. When parliament is dissolved or the government has been defeated or advised for its dissolution or of any other reason the existing government continues in office till the new government is formed after election (Article-56,4). After dissolution of parliament the interim government formed executive until an elected government has come, the interim government can't make any policy for the state as the constitution has prohibited. The interim government is recognized in all democratic countries (Halim 2007). There are many countries introduce the interim government during election period such as Australia Canada, Malaysia, Pakistan. In Britain, Canada, New Zealand. There is a conventional practice that where the constitution is written and parliament is dissolved the interim government continues his office until the new elected government entered upon his office. The caretaker or interim government is introduced in many countries where constitutionalism is practiced. The interim government is formed on the basis of national consensus. Where the constitution is written there are found the provision of the interim government to conduct general election. In the year of 1945 Churchill formed the cabinet during the Second World, this government was recognized interim government by Sir Ivor Jennings. This government was formed for conducting post-war election in Britain and participated the Conservative Party, National Liberation party and some non-party members. It was introduced during the of general election of 1945 as the wartime coalition had broken up. The electors had to decide whether they wanted a conservative Government or, a Labour government, and the king's service had to be carried on (Jenning, Cabinet Government, 3rd ed). In the Pakistan Constitution there is also provided the provision of the caretaker government and stated that the president may dissolves the National Assembly and he shall have discretion appoint a date of the general election not later than 90 days from the date of the dissolution of parliament for holding of a general election to

the Assembly (Pakistan Constitution, (1985), article 48,5). The interim government system also found in the Pakistan in the year 1993 and 1997 for the state emergency were the caretaker government in true sense. The interim government of the South Africa is also playing a vital role in the year of 1994 for their national crisis. There is no mandatory provision for an interim government in Bangladesh but the state faces many times the system of interim or caretaker government after the dissolution of parliament, revolt and national crisis which play important role to form the next elected government. The interim or caretaker government was introduced by the 13th Amendment of the Bangladesh Constitution though the caretaker government was abolished by the 15th Amendment in the year of 2011 as well as in the December 2024, the High Court declared the abolition illegal but the final decision awaits for review by the Appellate Division of the Supreme Court. The legal proceedings as well as political discussions will determine that the interim government may be restored or not in the constitutional system.

### **Problems of Caretaker Government**

There are a lot of problems in the interim government like legitimacy, controversial appointment, erosion of trust, limited and undefined authority, policy vacuum, excessive intervention, potential for abuse and manipulation etc.

- The interim government is not elected by the people and the government exercise powers for a short period so their powers and functions are not constitutionally settled. The selection of a Chief Adviser and other advisers are selective method so the government can only exercise limited powers and functions.
- The interim government cannot make policy decisions so there are not possible to maintain long-term development program and reform of the national laws and policies. The interim government has faced difficulties, challenges, political unrest, economic crisis, disagreements with other political actor to conduct their regular routine work. There are limitations and gaps among the power of the president, the prime minister and the chief adviser of the government. The status of the Chief Adviser of the interim government equivalent to a Prime Minister but the adviser exercise limited power during the transitional period. During the interim government the President is not bound to act in accordance with the advice of the Chief Adviser (Bangladesh Constitution, 1996, Art.58E). The interim government shall be collectively responsible to the president and the President can cancel any decision of the caretaker government during the interim period. The Chief Adviser along with all advisers of the caretaker government is non-political person and he will exercise his powers only for three months to conduct a general election.
- The interim government is formed beyond the constitutional framework so the Supreme Court of Bangladesh interpreted the interim government to the doctrine of necessity. The president is the administrative head as well as the supreme command of the defense is vested on the President so the president can exercise his power only in accordance with the advice of the Prime Minister. But there is no clear interpretation regarding the President and the Chief Adviser's functions during the interim period.
- The interim government takes the executive responsibility for a short time and they have no any policy formulating functions. The government exercise powers without any prior experience of governance functioning so the government faces various difficulties to make policies and amendments. The constitutionalism of the interim government is

against the principle of institutionalization of democracy and may create manipulation of election process.

- Though the Election commission is a constitutional institution but the institutional structure is so weak that cannot be made in a position to be institutionalized for controlling conducting election process smoothly. As the bureaucracy plays an important role and the administrative process mostly depends on their governmental functions. The interim government takes responsibilities only to conduct fair election but an independent Election Commission is essential to conduct the whole process. The independent Election Commission may conduct free and fair election if they have adequate logistic support.

### **Why Caretaker Government Where There is Election Commission**

The Election Commission is constitutionally independent body to control and conduct election process to administering election process and an independent Election Commission is recognized in many democratic counties. There are provisions have been provided for in the constitution regarding independent Election Commission. The Election Commission exercises its functions according to this constitution and any other laws of the state (Bangladesh Constitution, 1972, Art.118 ,4). The Election Commission is lacks of the necessary autonomy and credibility to hold a genuinely free and fair election when the political party exist in power. There are some criticisms regarding the Election Commission's appointments of the election commissioner. There are a lot of complain regarding corruption and financial irregularities against commissioners. The commission doesn't take any effective investigation to these allegations of election irregularities. Beside these the ruling party's control over the state administration and police is also questionable. Though the superintendence, direction, control and preparation of the electoral roll for elections are vested to the Election Commission but the executive assist the Election Commission in the discharge of its functions (Bangladesh Constitution, Art. 119,126). The constitution has ensured the powers and functions of the Election Commissioner but the problem lies with the statutory independence with various laws which regulate the Election Commission and electoral process. There are some reasons behind it. These are-

- The Election Commission's Secretariat is attached to the Prime Minister's Secretariat so the chief Election Commission cannot exercise his effectiveness over the secretariat of the Election Commission.
- The constitutional rule is the members of the Election Commission are appointed in consultation with the chief Election Commissioner but the practical aspect is different as the appointment of the election commissioner.
- The security and tenure of the commissioners is as like as of the judges of the Supreme Court and the constitution provides the Election Commission all control of the election process independently and effectively but the Election Commission shall simply arrange the election and the real control remains at the hand of the Returning Officers (Bangladesh Constitution, Art.119). The Returning Officers pronounce the result of election from different districts and they are easily controlled by the government and if they declare a candidate winner who has not secured the highest Votes to elect, the Election Commission has no authority to punish them (Representation of the People Order, 1972. Sec. 39).

- District Election Officers is under the direct control of the Election Commission but he has been made subordinate to executive officers. Most of the logistics support of the Polls- regulated by the local bodies and they are controlled by the Deputy commissioners (DC) as well as the DCs enjoy the power of magistracy which is very important for conducting polls. The status of the District Election Officer is lower than that of Thana Nirbahi Officer (TNO) and there are no controls and logistics support in the district (CAC, 1994).
- There is a provision for Election Tribunal if any laws and irregularities are happened in the election (Representation of the People Order, 1972) the tribunal may take adequate measures. The tribunal can call in question if any candidate files a petition regarding election. In most of the cases petitions are not decided until the new parliament formed or ends its term thus all the rights of the petitioner are frustrated (Halim,2007). In this connection it is important to mention that till 24th November, 1995, 194 election petitions were filed but only 26 petitions were decided and that too very lately. The following table will make the position clear:

Parliament	No. of Election Petition	Petitions Decided
First March 3, 1973 to August 15, 1975	4	Nil
Second February 18, 1979 to March 24, 1982	40	3
Third May 7, 1986 to December 6, 1990	106	3
Fourth March 3, 1988 to December 6, 1990	13	1
Fifth February 27, 1991 to November 24, 1995	31	19

- The Election Commission has been overburdened to function effectively. The primary function of the Election Commission is to control the Parliamentary elections but local bodies election has to conduct the Election Commission as their additional duty. The Commission is engaged with abnormal load of 50 thousand elective offices of the local bodies. There are not found this peculiar system in the South Asian Countries like India and Sri Lanka. There are the legal and institutional shortcomings made the Election Commission so weak to administrate and control the electoral process. As a result, these shortcomings have lastly paved the way for the caretaker government.

### **The caretaker Government and the independence of the Election Commission**

Though the 13th Amendment had paved the way of making only general elections free and fair but the question of ensuring free and fair atmosphere for other elections like city corporation election, local bodies election etc. But the main responsibility lies on the election commission to conduct the election free and fair. The election commission may ensure free and fair election in the parliamentary elections of Bangladesh. There are also election relating laws in Bangladesh which are strengthening the electoral process to ensure free and fair election. The election commission has to depend on the government and the commission is not enough independent and effective to conduct their functions. The commission has no power to recruit and control their own staff as the commission depends on the Ministry of

Finance. Besides this the current laws related to election in Bangladesh are not adequate and effective. As a result, there are happened occupations of vote centers, the vote rigging, extortion of ballot papers and boxes, false voting, assaulting the election officers, intimidation, insufficient security, deprivation of voting right as well as false voting are common practices. The election commission cannot take necessary steps in this regard. As a result, the provisions for caretaker government had been introduced with a view to ensuring free and fair general election. There are also works the Representation of the people Order, 1972 which is also abused by the personal interest of the political party. As the Election Commission are not independent enough to conduct free and fair elections and can't take appropriate measure to ensure free and fair election so an interim government has come and has given support to institute a free and fair general election. There is no alternative to making the Election Commission fully independent and the defects of the election laws should be corrected and the Election Commission should be invested with full authority to announce and conduct the elections.

### **Conclusion**

Bangladesh has conducted three successful elections with the caretaker government. The caretaker or interim government system introduced in Bangladesh to conduct free and fair elections to ensure credible elections in the electoral process with public confidence. The main purpose of the interim government is to restores public trust and reduces political instability, violence above all surrounding unrest during the transition period. Though the interim government is constitutionally barred from making major policy decisions but can perform routine work in the administration. The interim government barred from long-term policy changes. There are some negative aspects of the appointment process for the Chief Adviser and other advisers has been a manipulation by political parties. In 2006, a dispute over the appointment of the Chief Adviser led to a major political crisis and lead to the military-backed interim government which is undemocratic rule led to criticism of constitutional challenges as the Supreme Court annulled the 13th Amendment, which established the caretaker system and in the year of 2011 the caretaker government deeming it unconstitutional though the system has recently been revived and the newly established Commission is working on electoral and constitutional reforms, including the structure of the interim government. However, there are some challenges of the formation, powers and functions of the interim government to ensuring genuine political reform.

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