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Notes

## FUNDAMENTAL RIGHTS AND DUTIES

Like other modern Constitutions of most of the democratic countries, the Constitution of India, too, contains a number of Fundamental Rights for its citizens. These Fundamental Rights are not only guaranteed by the Indian Constitution, but also are more elaborate and real than those found in other Constitutions of the world. In this chapter, we will study about vision of Fundamental Rights enshrined upon in part third of the Constitution of India.



### OBJECTIVES

After studying this lesson, you will be able to:

- explain the nature of Fundamental Rights;
- list various freedoms given under the Right to Freedom besides ensuring the liberty of the individual;
- identify the safeguards against deprivation of life and personal liberty;
- appreciate the role of the Right to Freedom of Religion which forms the very basis of secularism in India;
- appreciate that Cultural and Educational Rights which are essential for co-existence in a diverse and plural society, especially for the Minorities;
- classify the 'Writs' given under the Right to Constitutional Remedies as a safeguard against various types of violation of Fundamental Rights;
- evaluate the usefulness of different types of 'Writs';
- justify the limitations imposed on the enjoyment of Fundamental Rights;
- examine the relationship between our rights and duties;
- list the Fundamental Duties given in the Constitution; and
- appreciate the significance of Fundamental Duties.

**Notes****19.1 NEED AND IMPORTANCE**

Looking back at the history of Fundamental Rights, we know that the United States of America was the first country to incorporate these rights in its Constitution. Germany adopted them in 1919 through Weimer Constitution and so did Ireland and Russia in 1922 and 1936 respectively. During our freedom struggle, our national leaders realised the importance of rights for the people. So, there came the proposed bill of rights demanded by the 'Nehru Committee' in the year 1928. When India became independent, the Constituent Assembly did include the rights that would be specially protected and called them 'Fundamental Rights'. The word fundamental emphasises the following points:

- the Constitution of India has separately inserted them;
- the Constitution has made special provisions for their protection;
- these rights are Justiciable; and
- these rights are part of the Constitution and have Constitutional Status.

Let us try to understand how Fundamental Rights are different from ordinary rights given under a Law enacted by the Legislature.

- (a) Unlike Fundamental Rights, the ordinary rights are not protected and guaranteed by the Constitution of the country.
- (b) Fundamental Rights can be changed only by amending the Constitution where as the legislature is empowered to change ordinary laws by an ordinary process of law making.
- (c) Fundamental Rights cannot be violated by any organ of the government.
- (d) In case the Fundamental Rights are violated, judiciary has the power and responsibility to protect them. There is no such guarantee in the case of ordinary laws.

**Characteristics of the Fundamental Rights**

- The Fundamental Rights guaranteed under the Constitution stand higher than ordinary laws.
- The Supreme Court and the High Courts have been given the power to enforce Fundamental Rights through the writs, orders or directions.
- Besides some rights meant only for the citizens, there are rights for the non-citizens also.
- Many restrictions have been placed on the enjoyment of Fundamental Rights. It implies that they are not absolute.
- The courts are free to investigate whether the restrictions imposed by the government are reasonable or not.

- The Fundamental Rights can be restricted or suspended under special circumstances when an emergency is imposed.

**Do you know****Power of the Parliament to Amend Fundamental Rights**

- The Supreme Court of India declared that the Fundamental Rights are outside the amendatory power of the Parliament of India as laid down in Article 368 of the Constitution. This Judgement was given in Golak Nath Case.
- Under Twenty-fourth and Twenty-fifth Amendment of the Constitution, the Parliament was again given the power to amend Fundamental Rights.
- The Supreme Court also conceded that the Parliament has got the right to amend the 'Constitution', in its Judgement in 'Keshavanand Bharti' case.
- The Forty-Second Amendment further asserted the right of the Parliament to amend the Fundamental Rights.
- In its judgement on Minerva Mills case in 1980, the Supreme Court of India declared that anything that destroys the balance between Part-III and Part-IV of the Constitution will be considered as destroying basic structure of the Constitution such as unconstitutional.

**Notes****INTEXT QUESTIONS 19.1**

Write true or false against each of these statements:

- (a) The basic structure of the Constitution cannot be changed by the Parliament. (True/False)
- (b) There is hardly any difference between ordinary rights and the Fundamental Rights. (True/False)
- (c) Nehru Committee demanded fundamental rights in 1928. (True/False)

**19.2 FUNDAMENTAL RIGHTS**

Originally, seven Fundamental Rights were enshrined in Part-III of the Indian Constitution. These included the Right to Property which was removed from the list of Fundamental Rights by the 44<sup>th</sup> Constitutional Amendment. Now there are only six Fundamental Rights. These are:

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- A. Right to Equality;
- B. Right to Freedom;
- C. Right against Exploitation;
- D. Right to Freedom of Religion;
- E. Cultural and Educational Rights;
- F. Right to Constitutional Remedies.

**A. Right to Equality (Articles 14–18)**

- (i) **Equality before the Law** to all persons, citizen and aliens means that the state shall not deny to any body equality before the law or equal protection of the law within the territory of India. It is covered under **Article 14** of the Constitution and prevents discrimination only by the state and not by the individual.
- (ii) **Prohibition of Discrimination** under **Article 15** provides that no discrimination can be made against a citizen on the grounds of race, religion, caste, sex or place of birth. It implies that every citizen has access to shops, public place or the use of wells, tanks or roads etc. This Fundamental Right is necessary to bring about social equality.
- (iii) Equality of opportunity under **Article 16** means that all the citizens have equal opportunities in matters of employment or appointment to any office under the state. It implies that employment will be given only on the basis of merit and qualification.

**Exceptions**

- (a) When residential qualifications are prescribed for certain jobs under the State Governments.
- (b) When certain posts are reserved for scheduled castes, sheduled tribes or other backward classes of citizens.
- (c) For employment to an office in a religious or minority community institutions as to be filled up by a person of that community.
- (iv) Untouchability has been abolished and its practice in any form is prohibited.

It has been made a punishable offence under **Article 17**. Millions of Indians who were ill-treated, discriminated and looked down upon in society are no more untouchables. Efforts are always on for the upliftment of their social status. It was Mahatma Gandhi's utmost desire to root out the evil of untouchability. But it is very unfortunate that this evil is still seen in some parts of the country.

- (v) **Article 18** prohibits the state from awarding any title except a military or academic distinction. Before we attained independence, the Britishers used to award titles to those who were loyal to them and served their interests. Titles like Rai Bahadur, Rai Sahab, Khan Bahadur, Sir etc. not only created social distinction but also divided the Indian society. Therefore, they have been abolished. Instead, the President of India can award national honours like 'Bharat Ratna', 'Padma Vibhushan', 'Padma Bhushan' and 'Padma Shree' to eminent citizens in any field such as public, social, academic or sports.

Similarly, military and bravery awards are also given for service or sacrifice by the military or paramilitary forces.



### INTEXT QUESTIONS 19.2

**Write True or False:**

1. Fundamental Rights are enshrined in Part-III of the Constitution. (True/False)
2. Right to Equality established Equality before Law. (True/False)
3. Article-15 provides that no discrimination can be made against a citizen on the grounds of race, religion, caste or place of birth. (True/False)

### B. Right to Freedom (Articles 19-22)

The Right to Freedom constitutes the core of civil liberty and protects the individual from the repressive acts of the executive.

Article 19 guarantees six freedoms which are essential for the development of one's personality and for the successful working of the democracy.

These freedoms are :

- (i) Freedom of speech and expression. [Art.19(a)]
- (ii) Freedom to assemble peacefully and without arms, [Art.19(b)]
- (iii) Freedom to form associations and unions. [Art.19(c)]
- (iv) Freedom to move freely through out the territory of India. [Art.19(d)]
- (v) Freedom to reside and settle in any part of India. [Art.19(e)]
- (vi) Freedom to practise and profession or to carry on any occupation, trade or business. [Art.19(g)]

Although the framers of the Indian Constitution were strongly committed to various forms of fundamental freedoms which are absolutely necessary in a free



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democracy, yet they believed that all such freedoms should not be absolute or uncontrolled. Therefore, certain reasonable restrictions were imposed so that freedoms may not lead to anarchy, disorder and even disintegration of the country.

- The State is empowered to impose reasonable restrictions in the interest of the security of the state, friendly relations with foreign countries, public order, or decency or morality or in relation to contempt of court, defamation or incitement to an offence and maintenance of sovereignty and integrity of the country.
- The freedom under Article 19(b) is subject to two reasonable restrictions:
  - (i) Meetings, rallies and procession should be peaceful
  - (ii) The participants should not carry any weapon.
- The freedom, under Article 19(c), to form associations or unions is essential for the successful working of democracies, to have the role of political parties is indispensable. But when some illegal, immoral or conspiratorial associations are formed, the very integrity and sovereignty of the country may face the danger. Therefore, the state can disallow such formations.
- The freedoms under Article 19 (d, e, f ) are also subject to the authority of the state to impose certain reasonable restrictions:
  - (i) in the interest of the general public;
  - (ii) for the protection of the Scheduled Tribes;
  - (iii) to prevent spread of infectious diseases.
- The freedom to practise any profession or to carry on any occupation, trade or business under Article 19(g) does not mean the freedom to take up jobs or trading which are certainly injurious to the society. Gambling, prostitution, trading drugs etc. are not permitted. Similarly, functioning as a doctor without essential qualifications is not permissible.

Constitution of India under Articles 20-22 provides safeguards to individuals against arbitrary action by the State. Therefore, the Right to life and personal liberty is of utmost importance and very essential to the enjoyment of all other rights.

- **Article 20** deals with protection in respect of conviction for offences
  - (1) No person can be convicted for any offence except for violation of a law in force at the time of the commission of the act charged as an offence, none be subjected to a punishment greater than that which might have at the time of the commission of the offence.
  - (2) No person can be prosecuted and punished for the same offence more than once.

- (3) No person accused of any offence can be compelled to witness against himself.
- Usually described as rules of natural justice, Article 20 grants protection against arbitrary arrest, and excessive punishment to any person who commits an offence.
  - **Article 21** lays down that, no person shall be deprived of his life or personal liberty except according to procedure established by law. This Article guarantees freedom of life to every Indian citizen against arbitrary interference by the state. It was during the internal emergency (1975-77) that the state had acquired unprecedented powers to limit the freedom of the people. Therefore, 44<sup>th</sup> Amendment was passed to avoid the recurrence of such a situation. According to this Act, the Fundamental Right to life and personal liberty must continue without any interference even if the emergency is imposed.



### Do you know

#### Right to Education

The long standing demand of having education as a Fundamental Right was met with in 2002 by the 86<sup>th</sup> Amendment of the Indian Constitution and consequently enactment of Right to Education Act 2009. The Article 21A states that the State shall provide free and compulsory education to all children of the age group of 6-14 years in such a manner as the state may, by law, determine. This implies that all children within the said age group can claim compulsory and free education as a matter of Fundamental Right.

**Article 22** grants protection against arbitrary arrest and detention in two ways:

- (i) No one can be arrested without being told the grounds on which he/she has been arrested.
- (ii) The person arrested must be presented before the nearest magistrate within 24 hours of the arrest.
- (iii) The arrested person has the right to defend himself by a lawyer of his/her own choice.

Aliens or citizens arrested under Preventive Detention are not entitled to such safeguards.

- (b) **Preventive Detention** means detention of a person in order to prevent him from committing a crime. If there is an apprehension that a person is likely to engage in some wrongful activity or commit an offence, he/she may be detained for a limited period of time not more than three months. After three months such a case is reviewed by an Advisory Board.



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Preventive Detention Act had been criticised by several eminent personalities due to its widespread abuse, like for detaining even political opponents. So, it was allowed to lapse at the end of 1969. In December 1971, a new law was passed by the Parliament to deal with anti-national elements at the time of Bangladesh war. This was popularly known as MISA (i.e. the Maintenance of Internal Security Act). In spite of the assurance that MISA would not be used against political opponents, a large number of leader, workers, sympathisers were detained all over the country when a state of emergency was declared in June 1975. So much so, that people were denied even the right to go to the court.

As a result, the provision of regarding preventive detention were amended by the Janta Government and the authority of the state was restricted by the 44<sup>th</sup> Amendment in 1978.

The present situation regarding preventive detention is that no persons can be detained ordinarily for more than two months without references to the Advisory Board.



**INTEXT QUESTIONS 19.3**

Match the following freedoms to their refractive Articles:

- |                                  |           |
|----------------------------------|-----------|
| (i) Freedom to form associations | (a) 19(a) |
| (ii) Freedom of assembly         | (b) 19(g) |
| (iii) Freedom of expression      | (c) 19(d) |
| (iv) Freedom of movement         | (d) 19(c) |
| (v) Freedom of profession        | (e) 19(b) |

**C. Right Against Exploitation (Articles 23-24)**

Articles 23 and 24 of the Indian Constitution deal with the Right against Exploitation. The right aims at preventing exploitation of the weaker, vulnerable and underprivileged sections of the society. This right is in keeping with the objective of ‘dignity of the individual’, mentioned in following articles two of the Indian Constitution.

- (i) **Article 23** places a ban on traffic in human beings, ‘begar’ and similar other forms of forced labour. No person can be compelled to work without payment. But this does not prevent the state from imposing compulsory service for public purposes without any discrimination.
- (ii) **Article 24** prohibits employment of children below the age of 14 years in factories, mines or any other hazardous jobs. Any violation of this provision

is a punishable offence in accordance with the law. It is very unfortunate that employing small children as domestic servants is a common practice in India. This type of exploitation by the rich is not strictly covered by this Article because domestic work is not considered 'work in a factory'. Similarly, employment of children in both the organised and unorganised sectors is so rampant that factories, shops, small hotels or dhabas etc are flooded with the children of tender age.



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#### D. Right to Freedom of Religion (Articles 25–28)

Articles 25-28 of the Indian Constitution guarantee religious freedom to the citizens of India. India being a secular state, allows full freedom to all its citizens to have faith in any religion and to worship the way they like but without interfacing with or offending the religious belief and sentiments of others.

- (i) **Under Article 25**, all people have freedom of conscience and the right to profess, practise and propagate any religion subject to the norms of public order, morality and health. The state has the privilege to restrict any economic social, political or other activity which may be associated with religious practice.
- (ii) **Article 26**, It recognises the right of every religious denomination to manage its own affairs and to own and acquire as well as to administer properties for religious or charitable purposes.
- (iii) **Article 27** lays down that no person shall be compelled to pay any taxes. The proceeds of which are to be appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.
- (iv) **Article 28** deals with freedom as to attendance at religious instruction or religious worship in certain educational institutions. According to this Article:
  - (1) no religious instruction shall be imparted in any educational institution wholly maintained out of state funds.
  - (2) the above restriction mentioned in clause (i) does not apply to an educational institution which is administered by the state but has been established denominational trusts or organisations which require that religious instruction shall be imparted in such institutions.
  - (3) religious instructions can be imparted in those institutions which are not wholly maintained out of the state funds. But even in these institutions, no child can be compelled to receive religious instruction.

All the above mentioned provisions given in the Constitution of India aim at full religious freedom without any interface by the state, or by any other community. India, therefore, is a secular state.



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**INTEXT QUESTIONS 19.4**

Write true or false against each of these statements:

- (i) **Article-24 of the Constitution** prohibits employment of Children below the Age of 14 years in factories. (True/False)
- (ii) Indian Consitution does not quantee religious freedom to all its Citizens. (True/False)
- (iii) Every Indian citizen is free to change his/her religion if he/she so desires. (True/False)

**E. Cultural and Educational Right (Articles 29 and 30)**

Article 29 and 30 of the Indian Constitution assure every citizen of India, especially the minorities, to conserve their culture, language and script.

**? Do you know**

Articles 29 and 30 do not promise Right to Education which is separately provided by 86<sup>th</sup> Amendment of the Indian Constitutions. These two articles take care of cultural and educational interests of the religious and linguistic minorities.

- (i) **Articles 29** lays down that any section of the citizen residing in the territory of India having a distinct language, script or culture of its own shall have the right to conserve the same.

No citizen shall be denied admission into any educational institution maintained by the state or funded by the state on grounds only of religion, race, caste, language or any of them.

- (ii) **Article 30** guarantees the minorities their right to establish and administer educational institutions. While granting aid to educational institutions, the state shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**F. Right to Constitutions Remedies (Art.32)**

It is this right which was considered to be the heart and soul' of the Constitution of India by Dr. B.R Ambedkar, the chairman of the Drafting Committee. In order to be effective, the Fundamental Rights require a judicial sanction behind them. Besides listing Fundamental Rights, the constitution makers have also presented remedies against the violation of these rights. It is under Article 32 that the

Constitution has guaranteed the people to move to the High Court and the Supreme Court for the enforcement of Fundamental Rights. These Courts can issue order and give directive to the government for the enforcement of rights. Such directives or special orders are known as Writs. Writs are of five types:

- (i) **Habeas Corpus:** A Writ of Habeas Corpus means that the arrested person should be presented before the court so that the court may examine whether the arrest made is lawful or not. In case the arrest made is unlawful, the court can order to set free the arrested person. This writ is regarded as the most valuable right for the protection of personal liberty.
- (ii) **Mandamus:** This Writ is issued when the court finds that a particular official is ignoring to perform his/her legal duty and thereby infringing upon the right of some other individuals or individual.
- (iii) **Prohibition:** The Writ of prohibition is issued by a higher court asking a lower court not to proceed in a case which is beyond its jurisdiction.
- (iv) **Quo Warranto:** If the court finds that a person is holding an office for which he/she is not entitled or to a person who is performing a function for which he/she is not lawfully entitled to, the court may stop that person from holding that office and exercising that function.
- (v) **Certiorari:** This Writ is issued asking a lower court to transfer a matter pending before it to the higher court so that it may be able to deal with the case more effectively.



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**Do you know**

The difference between the Writ of Prohibition and the Writ of Certiorari is that in the case of former a lower court is asked to stop dealing with the case, where as is the case of later writ, the superior court requires the lower court to supply it with some information, records or the whole proceedings for further hearing.

Although our Fundamental Rights are justiciable, yet they can be suspended during the state of Emergency. As soon as the state of Emergency is declared under Article 352 (war or internal armed rebellion), all the freedoms under Articles 19 automatically stand suspended

Besides this, Articles 359 authorises the Parliament to issue a separate order during emergency to suspend even the Right to Constitutional Remedies. It implies that no one can move to the court for any remedy and all Fundamental Rights except right to life and personal liberty are virtually stand suspended.

**INTEXT QUESTIONS 19.5**

Answer the following question:

- (a) Which Writ can protect a detained person from an unlawful arrest ?
- (b) Which writ authorises a higher Court to stop from further proceeding in a particular case ?
- (c) The transfer of a case from a lower court to a higher court is enforced under which writ ?
- (d) Name the writ which can help a candidate declared pass by the university but being denied his/her pass certificate.
- (e) Mr. A has been promoted as well as transferred to replace Mr. B. But Mr. B. uses delaying tactics and does not vacate the post to join somewhere else. Identify the writ which may help Mr. A to join his new post.

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**19.6 FUNDAMENTAL DUTIES**

Right become meaningless if there are no duties to perform, If we do not perform our duties as a citizen in whatever capacity we are, other cannot enjoy their rights, Not only this, even the state will not be able to properly discharge its duties in protecting us and fulfilling our needs like education, health, housing, water etc. Therefore, it was realised that Fundamental Duties be included in the Constitution of India.

The 42nd Constitutional Amendment Act adopted in 1976 provided for eleven important Fundamental Duties. They are listed in Part IV-A of the Constitution under Article 51-A. Unlike Fundamental Rights these duties are non-justiciable. Even then they are significant in many respects. It would have made Indian citizens more responsible and wide awaked as part of the largest democracy of the world.

The following duties have been listed in Article 51(A) of the Constitution:

**Fundamental Duties** – It shall be the duty of every citizen of India–

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to Cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;

- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and to improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- (k) who is a parent or guardian to provide opportunities for education to his/her child or, as the case may be, ward between the age of six and fourteen years.

Initially, there were ten Fundamental Duties which were introduced in 1976. But, now they are eleven. The last one was added in 2002 by the 86<sup>th</sup> Amendment of the Constitution along with the Right to Education Act under Article 21-A. As such the duty mentioned as (k) is complimentary to the Right to Education. Therefore, it is now the duty of the parents to make best use of the Right to Education.

**INTEXT QUESTIONS 19.6**

1. How many Fundamental Duties have been mentioned in Article 51-A of the Constitution of India?
2. List any three Duties enshrined in the constitution of India.

**WHAT YOU HAVE LEARNT**

Part Three of the Indian Constitution contains some basic rights which are essential for the development of the personality and make life worth-living. Since these rights have been guaranteed by the Constitution, they are called Fundamental Rights. They are protected and enforced by the Courts.

The Fundamental Rights enshrined in the Indian Constitution are:

- (i) Right to Equality;
- (ii) Right to Freedom;

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- (iii) Right against Exploitation;
- (iv) Right to Freedom of Religion;
- (v) Cultural and Educational Right; and
- (vi) Right to Constitutional Remedies.

The Fundamental Rights are justiciable but not absolute. Many reasonable restrictions have been imposed on their enjoyment in the interest of security, health, public order etc. But sometimes the restrictions are misused by the government due to political reason. In such circumstances, the Supreme Court and the High Courts have been given the power to check the violation of Fundamental Rights by the State or by the individual. Under the Right to Constitutional Remedies, the Court can protect or restore Fundamental Rights of individual.

Rights without duties have no meaning. Therefore, the Constitution lays down some Fundamental Duties in Part IV-A of the Constitution under Article 51-A. They are eleven in number. The eleventh duty which was added later in 2002 is related for the fulfillment of Right to Education. So, it is for the parents or guardians to provide opportunities of education to their children between the age group of 6-14 years.

**TERMINAL QUESTIONS**

1. List the Fundamental Right enshrined in Part III of the Indian Constitution.
2. Mention one restriction each imposed on any four freedoms given under the Right to Freedom.
3. What is the importance of Fundamental Rights ?
4. Explain the Right to Equality. How far has it succeeded in bringing about equality and unity in the country?
5. Under what circumstances can the Fundamental Rights be suspended? How far is the suspension of Fundamental Rights justified?
6. What is a writ?
7. Fundamental Rights are justiciable but not absolute. Briefly explain the statement.
8. “Judiciary is the protector and guardian of our Fundamental Rights” Explain.



ANSWER TO INTEXT QUESTIONS

19.1

- (a) True
- (b) False
- (c) True

19.2

- 1. True
- 2. True
- 3. True

19.3

- (i) 19(c)
- (ii) 19(b)
- (iii) 19(a)
- (iv) 19(d)
- (v) 19(g)

19.4

- (i) True
- (ii) False
- (iii) True

19.5

- (a) Habeas Corpus
- (b) Prohibition
- (c) Certiorary
- (d) Mandamus
- (e) Quo Warranto

19.6

- 1. Eleven
- 2. (i) To defend the country and render national service when called upon to do so; and  
(ii) To safeguard public property and adjure violence.



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