



## WHISTLE BLOWING: AN ANTI-CORRUPTION TOOL

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**Abstract:** *In the present scenario, cut throat competition has lead to more and more frauds, illegitimate practices, and corruption in public as well as in private sector. Many countries, organizations, and professions have rules, guidelines and legislation that set the parameters to deal with the reporting of wrongdoing at the workplace. Whistle blowing comes into existence when companies involve themselves in illegal or unethical practices or wrongdoing in the workplace to gain a competitive edge over the competitors.*

*The paper examines whistle-blowing as a valid concept, the causative factors that encourage it, an unbiased argument to support both sides of this subject by discussing the positive and the negative aspects of whistle blowing in the workplace and the typical responses by the organizations and the consequences to the whistle-blowers. Current whistle blowing laws are presented along with recommendations of what management can do to treat it as a constructive management tool.*

**Keywords:** *Frauds, illegitimate practices, corruption, unethical practices, constructive management tool.*

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## INTRODUCTION

In the present scenario, cut throat competition, extended goals have lead to more and more frauds, illegitimate practices, and corruption in public as well as in private sector. The concept of whistle blowing comes into existence when companies or management involve themselves in illegal or unethical practices or wrongdoing in the workplace to gain a competitive edge over the rival companies.

The term whistle-blowing is a relatively recent entry into the vocabulary of public and corporate affairs, although the phenomenon itself is not new. Recently, whistle-blowing has become common from government agencies to business corporations world over. Whistle blowing has been regarded as a Western idea, being perceived as abandonment of cultural traits and of the norms of social behavior and loyalty. "Whistleblowers", employees who revealed information that they reasonably believed evidenced a violation of law, rule, or regulation, a gross waste of funds, an abuse of authority or a specific and substantial danger to public health or safety." By and large, the wrongdoing is a violation of a law or a direct threat to public or shareholders.

"The term whistleblower has been derived from the practice of English Bobbies i.e. police officers, who would blow their whistle when they noticed any crime. So that blowing of the whistle would alert both law enforcement officers and the general public of danger".

There are many definitions about whistleblowers to make its meaning clearer. As we relate to modern corporate world, few definitions are as:

*"A whistleblower is an employee, former employee, who reports illegal practices or misconduct to people and appropriate authorities that have the power and presumed willingness to take corrective action."*

*"A whistleblower can be defined as a person who reveals any wrongdoings or malpractices that are taking place within an organization. These revelations could be made either to the general public or to those who are in a position of authority."*

According to Boatright (2003), *"Whistle-blowing is the release of information by a member or former member of an organization that is evidence of illegal and/or immoral conduct in the organization that is not in the public interest."*



According to Sekhar (2002) *“Whistle-blowing is an attempt by an employee or a former employee of an organization to disclose what he proclaims to be a wrongdoing in or by that organization.”*

According to Koehn (2003), *“Whistle-blowing occurs when an employee informs the public of inappropriate activities going on inside the organization.”*

R. M. Green (1994) has given a simpler definition of whistle-blowing: *“A whistle-blower is an employee who, perceiving an organizational practice that he believes to be illegal or unethical, seeks to stop this practice by alerting top management, or, failing that, by notifying authorities outside the organization.”*

Whistleblowers that reports about such malpractices can be divided into two categories:

- Internal whistleblowers
- External whistleblowers.

**Internal whistleblowers** are the persons who reports illegal practices or misconduct to a superior, subordinate or fellow employee within the organization. Under these circumstances, where people believe or accept to stop the unaccepted behavior within the organization take the initiative to be a whistleblower so that eradication of such malpractices can take place.

**External whistleblowers** are the persons who report about misconduct to outside entities. These outsiders' entities may be lawyers, the media, law enforcement, or watchdog agencies. They may also report to local, state, or federal agencies depending on the nature of the misconduct.

So as per the content discussed justifies that, Whistle blowing is valid concept the persons who are loyal, blow the whistle because of the need to maintain professional integrity, standards and morale of the organizations. Whistle-blowing plays a vital role in order to bring the transparency and loyal government practices.

## **CAUSES OF WHISTLE-BLOWING**

Whistleblowers act barriers to the current economic crisis caused by all sorts of bad behavior in the public and private sector. If a poor communication network exists within an organization, and employees cannot state their concerns internally about potential problems, then there is no way for management to anticipate or find out solution about a problem. So, an employee who is faced by any irregularity, illegal or corrupt activity in the



organization has the power to do the right thing and be a whistleblower. Finally, the origin of the problem lies in management's demand for loyalty, but at the same time giving nothing beyond a paycheck in return.

The decision to blow the whistle is backed by both moral and practical reasons. There are various reasons cited by Researchers (Nader et.al. 1972 and Dandekar1993) for whistle blowing:

- Misuse of official funds for private purposes.
- Official powers used for private gain.
- Discrimination by age, race, or sex.
- Corruption.
- Dumping of industrial pollutants causing harm to public.
- Deceptive advertising.
- Non-enforcement of laws.
- Adulteration.
- Sexual harassment

### **POSITIVE ASPECTS OF WHISTLE-BLOWING**

Whistleblowers are intrepid, brave, courageous people, confident in themselves, responsible, they're willing to speak out, anchored on values and responsibilities, they should be emulated, they are highly idealistic, someone who has the guts to talk about and observe malpractice, idealist, very courageous and they have the guts to really stand up for what they believe in.

Concerned about the wrongdoings in his/her organization, can't stop what's going on in the organization, people who are concerned do not put so much emphasis in his/her relationships but in the belief that he/she has done something good for the organization by putting a stop to the wrong practices.

An individual's principles and sense of morality are strong reasons to convince him that "something has to be done" and that frauds and anomalies should be exposed. It is supposed that Filipinos are innately honest; there are people who will not tolerate wrongdoings and will act to protect the interest of the organization or of society at large.



Whistleblowing is also professed as a means to fulfill one's obligations as a citizen, especially in the case of public servants. Loyalty and a sense of pride in being in public service are compelling reasons to respond to the government's call to report anomalies within its ranks. The decision to blow the whistle becomes easier if their knowledge of support forthcoming, either from one's organization, the government, or from support groups. Support groups assure the whistleblower that "there is strength in numbers".

Finally, individuals choose to blow the whistle for lack of other prescribed procedures for addressing wrongdoings in the organizations.

### **NEGATIVE ASPECTS OF WHISTLE BLOWING**

There are various negative aspects of whistle-blowing:

- It increases the cost of monitoring; it increases the cost of always checking whether you should share the information with your subordinates; whistle blowing can create mistrust within the organization and this affects the output of the organization. It demoralizes employees within the organization; a dominant world of spying and counter-spying; creates an atmosphere of distrust within the agency.
- Respondents from lower income groups are more likely to be deterred from reporting corruption in the absence of encouraging factors, because the majority of cases are very low-profile and receive little or no media attention and because whistleblowers who do report significant misconduct are usually put in some form of danger or maltreatment, the idea of seeking fame and glory may be less commonly believed.
- Cultural constraints could also be present for not blowing the whistle, concern for one's well-being and cultural constraints, on the other hand, are the reasons for deciding not to blow the whistle. It is also said that Filipinos prefer to "shrug it off", to be passive and satisfied, and not to want to be "involved" in exchange for "peace of mind".
- It may be used as tool for harassment. Whistleblower is taken benefit and used for other purposes; whistle blowing is used for revenge; may be used to annoy people and destroy reputation; may be abused for non-public objectives. If unchecked, it will definitely tarnish the reputation of the one being accused considering that the issue will be made public.



## **CONSEQUENCES OF BEING A WHISTLEBLOWER**

It is an unavoidable fact that persons who step up as whistleblowers are often faced with retaliation from their employers. There are many organizations where the punishments to whistleblowers for exposing such wrongdoings take place. Still individual takes risk of being a whistleblower; the risks or punishment may be of any kind as per the extent of involvement of whistleblower. Moreover, the consequences not only faced by the whistleblowers but also their family. The possibility of legitimate whistleblowers being tagged as suspects and unjustifiably suffering consequences such as loss of one's means of livelihood, retaliation, and conviction for a crime, forms an argument against Whistle-blowing.

- By reporting experiences or suspicions of wrongdoing they often expose themselves to high personal risk. High personal risk attached to whistle-blowing reporting is not taken lightly, as whistle-blowers become vulnerable to unfavorable actions being taken against them by way of retaliation. Rather than being heard and praised for their courage, they may be ostracized by former friends and colleagues.
- The consequence of whistle blowing is more on the individual. The personal benefit is more distant; it's for the public good but the cost is personal. Threats to life of the whistleblower and his/her family; whistleblower's life is put in danger; you can get killed when you blow the whistle; no sufficient protection.
- The whistleblowers fear that they would not be able to prove that an adverse action taken against them by their employer was indeed retaliation for blowing the whistle. Short of firing, retaliation against a whistle-blower usually takes the form of harassment such as transfer to a dead-end position or reassignment to an unfriendly work environment. They may even face workplace reprisal or dismissal, their employer may sue (or threaten to sue) them for violating of confidentiality, and they may be subject to criminal sanctions.
- Concern about not having enough proof was the most commonly reported deterrent, followed by the absence of legal protection from negative consequences.
- After being a whistleblower, many people lose their relationships at the workplace and also outside work.



- The uncertainty of a whistleblower or would be whistle-blower that the act that he is concerned about, may not actually be illegal. After all, environmental law is a very complex and tricky business, perhaps intentionally so. For example an employee may be observer to the fact that his company is dumping toxic waste into a municipal landfill. His efforts to get the company to stop the practice are fruitless. His management assures him that the waste is not "technically" a harmful waste because of loopholes in the EPA regulations. He doesn't know if that's true, but regardless, he believes that the practice is hazardous. He would like to blow the whistle on the dumping but he doesn't know if he'd be legally protected against retaliation, if the dumping is lawful or if the company can convince the authorities that the dumping is not dangerous.
- They may even be subject to threats or physical harm. In many instances, in spite of their best efforts, they face indifference or mistrust, and their reports are not properly investigated.
- Whistle-blowing channels could be abused as tools for revenge, character assassination, and gaining undue benefits.

For example, in the United States, most whistleblower protection laws provide for limited "make whole" remedies or damages for employment losses if whistleblower retaliation is proven. In many cases whistleblowers have been subjected to criminal prosecution in reprisal for reporting wrongdoing.

If the benefits of whistleblowing accrue to the public, its costs and risks are largely private or borne by individuals - "the personal benefit is remote". The whistleblower is inconvenienced because his routines and daily activities are interrupted. He is exposed to retaliation (e.g. being floated or barred from promotion), harassment. In the end, it is believable for a whistleblower to lose his job either through termination of his services or resignation. Personal and family safety is also paramount concerns of the whistleblower.

## **RESPONSES BY THE ORGANIZATIONS**

There has been heroic whistle-blowers world over. Let us recapitulate a few of the more prominent whistle-blowers as illustrative ones.

**Frank Serpico:** He is the legendary ex-cop of the New York Police Department (NYPD) whose story was the subject of a best-selling book, and a film starring Al Pacino – both titled



'Serpico.' When he became a cop in 1960, payoffs, kickbacks and protection rackets were rampant in NYPD. Refusing to look the other way, Serpico complained to the Police Commissioner and the Mayor, but they ignored him. Frustrated, Serpico revealed NYPD's dirty laundry to the *New York Times* in 1971, after which the cops as well as the criminals started gunning for him. Matters came to a head when he was shot in the face during a raid; his colleagues did not come to his help. Serpico quit NYPD in 1972 but NYPD has become a more honest force since his time.

**Dr. Stephen Bolsin:** He is a former anesthetist at the U.K.'s Bristol Royal Infirmary (1988-95) who blew the whistle on a large number of unnecessary deaths of children occurring during heart surgeries due to the incompetence of the hospital's surgeons. Ostracised by other doctors, Dr. Boslin was forced to emigrate to Australia in 1995. But his disclosure led to enquiries by the General Medical Council and the Government; the department from future practice of two surgeons and the hospital chief in 1989; and also several far-reaching reforms in the National Health Service (NHS). It also acted as a catalyst for the enactment of the U.K.'s *Public Interest Disclosure Act* of 1998.

**Cynthia Cooper** of Worldcom; **Sherron Watkins** of Enrons who exposed corporate financial scandals, and **Coleen Rowley** of the FBI who later outlined the agency's slow action prior to the September 11, 2001 attacks. All three women were selected by the *Time Magazine* as its 'Persons of the Year 2002.' All three lost their lives.

**Satyendra Kumar Dubey:** Satyendra Kumar Dubey was a 31-year-old IIT Kanpur civil engineering graduate working with the National Highways Authority of India (NHAI) and assigned to former Prime Minister Vajpayee's pet and ambitious project, the Golden Quadrilateral, to connect the four corners of India. He was posted at Koderma, Jharkhand. On discovering rampant corruption and poor implementation of work in the section where he had been posted, Dubey wrote to the Prime Minister 15 exposing the irregularities. In the letter, received by the Prime Minister's Office (PMO) on 11 November, 2002, he had named some companies. Fearing retribution, he had requested that his name be kept as secret. But the PMO officials circulated his letter along with details of his identity among the bureaucracy. The number of notings on the file bears witness to this (*The IndianExpress*, 30 November, 2003). While the file was making rounds, not one official thought about the threat Dubey was being exposed to. Why officials in the PMO did not heed Dubey's request



for anonymity is not known. But just over a year later, on 27 November, 2003, he was murdered in Gaya, Bihar.

**Shanmugam Manjunath:** S. Munjunath, a 27-year-old IIM-Lucknow graduate working as a sales officer with Indian Oil Corporation paid with his life for attempting to ensure that people did not get adulterated fuel. Munjunath had reportedly started proceedings against the owner of Mittal Automobiles in Gola Gorakhnath in the state of Uttar Pradesh, after the outlet was found committing mass irregularities in supply of fuel. Munjunath's killing in November 2005 is another case of silencing a whistleblower in a large scam of petrol adulteration. He had unearthed gross irregularities being committed in supply of petrol at the filling station during surprise inspection in September and recommended strict penal action against the owner.

**Atul Tirodkar:** Atul Tirodkar was a man who, during the Ketan Parekh scam of 2001, exposed how the Bombay Stock Exchange's high profile President, Anand Rathi, had been assessing sensitive market information from the surveillance department. The BSE immediately suspended him and made enormous efforts to terminate his services. The BSE fabricated charges against him. They accused him of dereliction of duty, 16 absenteeism and even having links with the underworld. These fabricated charges were leaked to CNBC and played every hour as an exclusive report. Later an independent enquiry by a single judge was instituted. The single-judge enquiry exonerated him completely. But some influential BSE directors again prevailed on the judge to give the exchange an exit option by offering him a honorable discharge with compensation. Then the *Joint Parliamentary Committee (JMC)* began to hear the matter and heard his testimony. Stunningly enough, MPs cutting across party lines supported him. They condemned Tirodkar's suspension in the strongest terms and asked that he be reinstated. Unlike other whistle-blowers as mentioned earlier, Tirodkar's story had a unique happy ending.

#### **FEW RECENT EXAMPLES OF WHISTLE-BLOWERS:**

- In August, 2000, 40 members of the Los Angeles Police Department sued in court alleging that their superiors enforced a "code of silence" among police officers by punishing whistle-blowers who reported police misconduct.



- In November, 1998, employees of private health care firms blew the whistle on a scheme by over 200 hospitals to bilk the federal Medicare program out of billions of dollars by filing false expense reports over a 14-year period.
- In 1996, EPA (U.S. Environmental Protection Agency) biologist Dr. David Lewis was silenced by his EPA supervisors when he warned that sewage sludge approved by EPA for use on farm land is a threat to human health because it is contaminated with dangerous pathogens including E. coli, salmonella, and the hepatitis virus.
- In October, 1994, a 20-year career federal safety inspector, Steve Jones, was fired for reporting more than 500 safety violations at a chemical weapons incinerator operated by a private contractor at Utah's Tooele Army Depot. Taylor said the contractor (his employer) had ignored and covered up releases of toxic nerve gas that put workers in immediate danger.

## **LAWS SUPPORTING WHISTLE BLOWING**

The aim is to determine which workplace strategies managers should make a priority when encouraging employees to report workplace corruption. Anyone who has blown the whistle on corporate or government waste fraud or abuse, or is contemplating blowing the whistle or any protester or union organization which encourages or advises whistle-blowers needs to know the laws governing the protection of whistle-blowers. And there are plenty of laws. But there are also plenty of flaws and pitfalls to undo the unprepared.

At the heart of a corporate integrity culture is the notion that doing the right thing is much more important than profit maximization. There will never be an impermeable system to prevent rogues from doing damage, or to stop arrogant CEOs from abusing their high offices. But strategies can be developed to promote a corporate integrity culture that can go a long way to both preventing abuse and strengthening the organization.

Now however, there is no need to worry as the legislatures and courts have created exceptions for those whistleblowers who are at-will employees. Whistleblowers are now protected by statutes and can thus fight any discrimination that an employee might show him in the face of the accusations.

The whistleblower provision of the Civil Service Reform Act of 1978 also marked the approval that disciplinary actions might be commenced against high-level government officials through an administrative process initiated outside an agency's chain of command.



Consequent amendments in federal law strengthened the enforcement of these whistleblower protections for federal employees. These amendments also incorporated a right to disobey illegal orders, a right previously recognized only by some state and federal courts. The right to disobey also stressed the themes of personal responsibility and accountability.

In the last decade, a number of countries, including Australia, New Zealand, Canada, South Africa, and the United Kingdom, enacted whistleblower statutes that protect public employees who reveal various types of misconduct or incompetence. These enactments are striking not only because of their number, but also because they have been adopted in legal and cultural contexts seemingly incoherent with them.

For example, one of the more expansive whistleblower provisions may be found in Great Britain, a country with legal and cultural traditions supporting secrecy. In Britain, one scholar had argued that Whistle-blowing by public employees was inconsistent with Britain's constitutional norms and parliamentary government.

During the same period, a number of international treaties and conventions addressing governmental corruption have included provisions protecting whistleblowers. Some international organizations, such as the World Bank and the European Commission, are developing internal standards and guides to protect employees who disclose corruption or wrongdoing connected with the activities of these organizations.

Whistleblower protection implements several principles and relies upon perspectives that challenge many concepts in public employment law. Whistleblower protection supports views of public employment that are not as fully recognized in public employment law but which amplify the effects of whistleblower protection on public employment law. Moreover, whistleblower protection blurs the distinctions between the regulation of public and private employment. The convergence of public and private sector employment law suggests that similar protections may apply to both, often under analogous justifications. This convergence offers some grounds by which to address a number of current phenomena including, as an example, the delegation of

Whistleblower protection can also be seen as departing substantially from existing provisions in public employment law. The protection of whistleblowers permits individual employees to call to account senior officials within a department or agency. The disclosure of information about misconduct or nonfeasance of others higher in the chain of command



makes it more likely that the concepts of individual responsibility and accountability will be applied to all.

## **RECOMMENDATIONS FOR TREATING FUTURE WHISTLEBLOWERS AS A MANAGEMENT TOOL**

Business Ethics Survey in 2005 found that employees who reported misconduct, 48% received positive feedback, while 52% did not. It also found, that of employees who reported misconduct, 22% experienced retaliation, while 78% did not. So, corporate leaders need to focus on decreasing the fears of employees that their whistle-blowing will damage their own careers.

- **Supporting Structures** - It is important to ensure that government agencies should be tasked with implementing whistle-blowing policies, be given the resources to build their capacity to respond to the demands of an anti-corruption program, and to an institutionalized policy on Whistleblowing in particular. On the other hand, it has been recommended that a body independent of government and with leaders who enjoy good reputations be tasked to handle cases of whistleblowing. Finally, the channel of a Whistleblowing policy is dependent on the support of legislators and the government administration. This support would have to be built up alongside the promotion of accountability and transparency in government.
- **Private firms** - The company code of conduct provides by and large framework for the ethical behavior of its employees. Ethics-minded employees are inclined to adopt a positive view and practice Whistle-blowing. A written internal policy on Whistle-blowing is a complement to the code of conduct. It is also necessary for private firms to establish internal Disciplinary Action Committees to assure prompt and suitable correction in response to proven wrongdoings. Finally, certification requirements for private firms emphasize initiatives towards social accountability.
- **Employees' unions** - Employees' unions could provide support for whistleblowers by helping them access management's interest and by giving moral support. It is important for unions to be adjusted to the concerns of their members and to seek means through which these concerns could be addressed.
- **Support institutions.** In common, support institutions referred to as religious groups, the academe, business groups, and other groups from the private sector and civil



society. The support they provide could come in the form of advocacy work or support in legal and human rights defense.

Because of the diversity of these groups, an umbrella organization of entities supporting the constructive practice of Whistleblowing is ideal.

- **Cultural change:** Negative connotations surrounding Whistle-blowing and a lack of political will are vital factors to make whistleblower protection system ineffective. There is a need to raise awareness about the significant role of whistleblowers that can identify wrongdoings in public and private organizations.
- **Comprehensive legal protection:** Effective legal provisions and enforcement mechanisms are necessary to build effective Whistleblowing mechanism.
- **Effective reporting and protection mechanisms in organizations:** Employer leadership is necessary to establish protection mechanism.
- **Data collection:** An independent public organization should systematically collect data about Whistleblowing, such as "the number of cases reported, the reporting channels and mechanisms used, the follow-up procedures and the harm barred through Whistleblowing."
- **A European framework for whistleblower protection:** The whistleblower protection provisions of UNCAC and the Council of Europe Civil and Criminal Law Conventions on Corruption should be implemented.
- Outlining concrete steps to protect whistleblowers, ensure that Whistleblowing procedures are clear and there is a written policy, which will indicate the next steps.
- A defined process on how to blow the whistle; adequate rules; structure or step-by-step procedure on how to go about it should be there.
- Roles of persons involved in handling Whistle-blowing complaints should be defined; investigation of Whistleblowing incidents should be done to ensure responsiveness
- Defining clearly what forms of wrongdoing is covered; distinguish clearly between Whistleblowing from non-Whistleblowing complaints; and to classify the information as protected disclosure.
- Information distribution of the policy is in place; there is publicity effort to make people aware and encourage them to be whistleblowers; a good information



campaign should be created that could inspire people to do it. Put a sense of country back and help people go beyond self-interest.

- Some firms have appeared to grasp this, such as consultancy KPMG, which in December 2006 unveiled a special 24-hour whistle-blowing "ethics line" for its UK forensics' operation that allowed employees to raise concerns about improper conduct in confidence.
- Should create and communicate codes of ethics and anti-retaliation policies, with perhaps managers being required to sign up to it every twelve months so it does not become just another piece of paper that is filed away.
- "Clear procedures, actively and effectively maintained, reduce not only harassment and reliability liability but also the likelihood of disciplinary damages.
- They should also conduct serious training for managers and employees in a similar way in how to handle concerns without retaliation in the workplace.
- Organizations should offer whistle-blowers financial incentives. "Observers of wrongdoing consider the costs and benefits of acting, along with other factors. The simplest interpretation of motivation theory would suggest that providing appreciated employer rewards for internal whistle-blowing would increase its frequency.
- One practical way could be for managers to look at the feasibility of implementing performance review mechanisms that specifically assess employee reporting of questionable activity through appropriate channels, and any rewards or incentives for doing this.
- Adding a monetary reward had the potential of allowing management to show appreciation, similar in a way to that sometimes given to those who come up with a cost-saving idea, and simply went a long way to creating the right sort of culture for this openness to flourish.
- Change in attitude of management before and after employee engaged in protected activity and attitude of supervisors toward whistle-blowers.
- Contradictions in an employer's explanation of the purported reasons for the adverse action drafting of guidelines for internal Whistle-blowing.
- Establishing of Corruption Prevention Units.



- Encouraging awareness campaigns.
- Training of independent prosecutors for graft cases, who will operate outside of the Department of Justice and the fiscal's offices.

## **CONCLUSION**

The fact is that whistle-blowers do an immense service to the society at their own risk and cost; even in some circumstances they lose their lives also. Hence, whistle-blowers need to be protected to make sure the excellent governance of organizations. The fact is that in order to protect whistle-blowers, we are actually trying to protect ourselves. Many employees may have fear to speak the truth even when legal protection exists. So the proper implementation as well as right mechanism of laws will ensure good governance by encouraging the whistleblowers. In present scenario, the chances of enacting legislation for protection to whistle-blowers seem distant. But, due to growing corporate and government scandals in the country, the need to encourage whistleblowers and for legal protection to whistle-blowers is gathering momentum day-by-day. It seems just a matter of time before we shift from our present culture of zero tolerance of whistle-blowing to a culture of zero tolerance of whistle-blower retaliation.

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