



EMERGENCY ARBITRATION IN INDIA: EVOLUTION, CHALLENGES, AND THE ROAD AHEAD

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Abstract

The pursuit of urgent interim relief in arbitration has given rise to Emergency Arbitration a procedural innovation offering expedited protection before the constitution of the arbitral tribunal. However, in India, the absence of statutory recognition and enforceability of emergency arbitrator orders creates a structural tension within the legal framework. While Sections 9 and 17 of the Arbitration and Conciliation Act, 1996, provide overlapping avenues for interim relief through courts and arbitral tribunals, their concurrent operation frequently disrupts arbitral autonomy and efficiency. Legislative reforms in 2015 and 2019 aimed to bolster tribunal-ordered relief, yet implementation gaps persist.

Against this backdrop, the study investigates the legal and procedural viability of Emergency Arbitration in India, critically analyzing its uncertain enforceability, judicial hesitation, and interpretive inconsistencies. It further explores institutional responses by Indian arbitration centres and juxtaposes them with the established practices of international institutions such as the Singapore International Arbitration Centre, Hong Kong International Arbitration Centre, and International Chamber of Commerce. The analysis highlights the broader question of whether India's arbitration regime can adapt to global standards while maintaining procedural sovereignty. Make it humanized and give keywords as well.

Keywords: Emergency Arbitration, Interim Measures, Indian Arbitration Law, Section 9, Section 17, Enforceability, Arbitration and Conciliation Act 1996, Arbitral Institutions, Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce (ICC), Judicial Intervention, Legislative Reform, International Best Practices.

Emergency Arbitration

In recent years, the global commercial environment has increasingly favored flexible and expedited mechanisms for resolving disputes. Among these, Emergency Arbitration (EA) has emerged as a vital remedy for parties seeking urgent interim relief prior to the constitution of a formal arbitral tribunal. As India continues its efforts to establish itself as an arbitration-friendly jurisdiction, the significance of Emergency Arbitration is gradually rising within the nation's dispute resolution framework. This article explores the concept of Emergency Arbitration, its development in India, the applicable legal framework, the challenges encountered, and its potential trajectory within the Indian arbitration ecosystem.¹

Understanding Emergency Arbitration

Emergency Arbitration refers to a process where a party to an arbitration agreement requests urgent interim relief from an emergency arbitrator, appointed before the formal arbitral tribunal is constituted. Typically appointed under the procedural rules of an arbitral institution chosen by the parties, the emergency arbitrator is empowered to grant interim measures to protect the parties' interests or prevent irreparable harm. This mechanism proves particularly useful in commercial disputes involving time-sensitive matters such as preservation of assets, injunctions, or maintaining the status quo which, if unaddressed, could undermine the effectiveness of any final award by the arbitral tribunal.²

To obtain emergency arbitration, two primary prerequisites must be satisfied:

¹Swarnendu Chatterjee and Dhriti Boleb, 'Enforcement of Achille's Heel in India' (2021) 2 Journal of Constitutional Law and Jurisprudence 546.

²Mr Milind Chopra, 'Evolution of Arbitration In India:- A Study with Reference to Ar-Bitration And Conciliation Act 1996' (2021) 11 International Journal of Scientific and Research Publications (IJSRP) 67.



1. The applicant must demonstrate that they would suffer irreparable harm if urgent interim relief is not granted before the constitution of the arbitral tribunal.

2. The applicant must establish a reasonable likelihood of success on the merits of the case once the arbitral tribunal is finally constituted.

Global Recognition of Emergency Arbitration

Emergency Arbitration has gained international acceptance over the past decade, particularly following its inclusion in the rules of prominent arbitral institutions:

- The **International Chamber of Commerce (ICC)** incorporated Emergency Arbitration provisions in 2012.
- The **Singapore International Arbitration Centre (SIAC)** introduced similar provisions in its 2010 Rules, followed by significant refinements in later versions.
- Other leading institutions, including the **London Court of International Arbitration (LCIA)** and the **Hong Kong International Arbitration Centre (HKIAC)**, also provide for Emergency Arbitration procedures.

The growing reliance on institutional arbitration and the increasing demand for swift interim remedies have fueled the global adoption of EA.

Development of Emergency Arbitration in India

Although Emergency Arbitration remains in an early phase of development in India compared to global standards, its relevance has expanded notably in recent years, especially with the rise of commercial and investment disputes involving Indian parties. Many Indian companies are parties to cross-border agreements governed by institutional rules such as those of SIAC, ICC, and LCIA, which provide for Emergency Arbitration. In contrast, progress in domestic arbitration has been relatively slow.³

A notable milestone was the Mumbai Centre for International Arbitration (MCIA) incorporating Emergency Arbitration into its rules in 2016. This marked one of the first formal recognitions of the procedure by an India-based arbitration institution, reflecting a shift toward institutionalization of Emergency Arbitration in the Indian context.⁴

Legal Framework for Emergency Arbitration in India

Arbitration in India is primarily governed by the Arbitration and Conciliation Act, 1996 (the "Act"), which is largely based on the UNCITRAL Model Law. However, the Act does not explicitly recognize Emergency Arbitration, resulting in legal uncertainty regarding the enforceability of orders passed by emergency arbitrators.⁵

Key Provisions under the Act:

- **Section 17** empowers arbitral tribunals to grant interim measures akin to those available through courts.
- **Section 9** allows parties to directly seek interim relief from Indian courts, either before or during arbitral proceedings.

The absence of express reference to Emergency Arbitrators under Section 17 has given rise to considerable debate over whether orders issued by emergency arbitrators qualify as "interim measures granted by an arbitral tribunal" within the scope of the Act. This legal ambiguity remains a key concern in the practical application of Emergency Arbitration in India.⁶

Arbitration and Conciliation Act, 1996: An Overview

The Arbitration and Conciliation Act, 1996 is the principal legislation governing arbitration and conciliation in India. Enacted to consolidate and modernize the law relating to domestic and international arbitration, it was based largely

³Rajvansh Singh, Saksham Barsaiyan, 'An Emergency Arbitrator Is an Arbitrator...Is There a Need for Statutory Recognition Post-Amazon?' (2023) 5 47.

⁴Prashant Krishan, Dr. Pritam Singh Panwar, 'Emergency Arbitration in India: Current Scenario and Future' (2024) 4 International Journal of Civil Law and Legal Research 92.

⁵Abhinav Gupta and Sriroopa Neogi, 'EMERGENCY ARBITRATION IN INDIA: A CRITICAL APPRAISAL OF THE INSTITUTIONAL FRAMEWORK'.

⁶'The Future Of Emergency Arbitration In India: Proposed Codification and Implementation in the Indian Scenario' <<https://www.mondaq.com/india/arbitration-dispute-resolution/1625630/the-future-of-emergency-arbitration-in-india-proposed-codification-and-implementation-in-the-indian-scenario>> accessed 13 August 2025.



on the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules, 1980, to promote uniformity and international best practices in alternative dispute resolution.⁷

Structure of the Act

The Act is divided into four parts:

Part I – Domestic Arbitration and International Commercial Arbitration (in India):

- Governs arbitration where the seat is in India.
- Key provisions include:
 - **Section 7:** Defines an arbitration agreement.
 - **Section 9:** Allows parties to approach courts for interim measures before or during arbitration.
 - **Section 11:** Deals with the appointment of arbitrators.
 - **Section 17:** Empowers arbitral tribunals to order interim measures.
 - **Section 34:** Provides grounds for setting aside an arbitral award.
 - **Section 36:** Relates to the enforcement of awards.

Part II – Enforcement of Foreign Awards:

- Covers the enforcement of awards under:
 - The New York Convention (1958).
 - The Geneva Convention (1927).
- Applies to international awards made in foreign jurisdictions.

Part III – Conciliation:

- Provides a legal framework for conciliation as an alternative dispute resolution mechanism.
- Based on UNCITRAL Conciliation Rules.

Part IV – Miscellaneous:

- Deals with administrative matters and government powers related to arbitration.

Key Amendments

The Act has undergone several amendments (notably in 2015, 2019, and 2021) to enhance efficiency and clarify procedural aspects:

- **2015 Amendment:** Introduced time limits, defined interim relief mechanisms, and limited court intervention⁸.
- **2019 Amendment:** Established the Arbitration Council of India, promoted institutional arbitration, and provided for qualifications of arbitrators.⁹
- **2021 Amendment:** Allowed for the automatic stay of enforcement of awards in cases involving fraud or corruption.¹⁰

Interim Relief under the Arbitration and Conciliation Act, 1996

Interim relief refers to temporary measures granted to protect the interests of parties during the pendency of arbitration proceedings. These measures are crucial in preserving the subject matter of the dispute, preventing irreparable harm, and ensuring that the final arbitral award remains meaningful and enforceable.¹¹

The Arbitration and Conciliation Act, 1996 provides for interim relief under two key provisions: Section 9 and Section 17.¹²

1. Section 9– Interim Measures by Court

Section 9 allows parties to approach the **civil courts** for interim relief before, during, or after the arbitral proceedings but before enforcement of the award.

⁷Shreya Singh, 'The Emergence of Emergency Arbitrations in India' (2022) 2 International Roughness Index Arb 35.

⁸Rajvansh Singh, Saksham Barsaiyan, 'An Emergency Arbitrator Is an Arbitrator...Is There a Need for Statutory Recognition Post-Amazon?' (2023) 5 Indian arbitration law review.

⁹ibid.

¹⁰ibid.

¹¹Ranjit Shetty, Rahul Dev, 'Recognition and Enforcement of Emergency Arbitration in India: A Comment on the Supreme Court's Ruling in Amazon - Future Dispute' 4 The Indian Arbitration Law Review 75.

¹²Nikhil J. Variyar, 'Tribunal-Ordered Interim Measures and Emergency Arbitrators: Recent Developments Across the World and in India' (2015) 4 The Indian Journal of Arbitration Law 33.



Types of relief courts may grant under Section 9:

- Appointment of a guardian for a minor or person of unsound mind.
- Preservation, interim custody, or sale of goods that are subject to arbitration.
- Securing the amount in dispute.
- Detention, preservation, or inspection of any property or thing related to the dispute.
- Interim injunctions or appointments of receivers.
- Any other interim measure is deemed just and convenient.

Features:

- Parties can invoke Section 9 even before the arbitration tribunal is constituted.
- Once the tribunal is formed, the court may refuse to entertain such an application unless it is shown that the remedy under Section 17 is ineffective.

2. Section 17 – Interim Measures by Arbitral Tribunal

Section 17 empowers the arbitral tribunal itself to grant interim relief once it is constituted and during the pendency of the arbitration proceedings.¹³

Scope of powers:

The tribunal can issue orders similar to those under Section 9, such as:

- Protection or preservation of the subject matter of the dispute.
- Interim injunctions.
- Security for costs or claims.
- Maintenance of status quo.

Enforceability (Post-2015 Amendment):

- Prior to the 2015 Amendment, orders under Section 17 were not enforceable like court orders.
- After the amendment, Section 17(2) provides that such interim orders shall be enforceable as if they were orders of the court, thereby giving teeth to the arbitral tribunal's directions.

Importance of Interim Relief

- Prevents one party from frustrating the arbitration process.
- Ensures fairness and balances power between disputing parties.
- Preserves evidence, assets, or contractual positions crucial to the dispute.
- Provides immediate protection until a final resolution is reached.

Challenges Facing Emergency Arbitration in India

Despite judicial recognition and support, Emergency Arbitration (EA) in India continues to face several impediments that limit its broader adoption:

1. Absence of Statutory Recognition

The Arbitration and Conciliation Act, 1996, does not explicitly recognize Emergency Arbitrators or the enforceability of their orders. While the Supreme Court's progressive stance in the *Amazon* case is commendable, clear legislative backing is necessary to enhance party confidence and ensure uniform application.¹⁴

2. Inconsistent Domestic Utilization

Emergency Arbitration is predominantly used in international arbitrations involving Indian parties but remains underutilized in domestic arbitrations. Although institutions like Mumbai Centre For International Arbitration and Indian Council of Arbitration provide for Emergency Arbitration, parties often still prefer to seek interim relief through Section 9 of the Act, relying on the judiciary rather than arbitral institutions.¹⁵

3. Challenges in Enforcement and Compliance

¹³Rajvansh Singh, Saksham Barsaiyan (n 8).

¹⁴An Emergency Arbitrator Is an Arbitrator...Is There a Need for Statutory Recognition Post-Amazon? (n 3).

¹⁵Shashank Chaddha, 'Emergency Arbitration: Indian Prospects' (2017) 4.2 IRGNUL FINANCIAL & MERCANTILE LAW REVIEWS 35.



Despite the reinforcement of EA orders in the *Amazon-Future Group* ruling, practical enforcement often necessitates court intervention, particularly when the opposing party resists compliance. This undermines the expedited and independent nature of Emergency Arbitration. Section 17 of the Arbitration and Conciliation Act empowers tribunals to grant interim relief, but its effectiveness is weakened by the lack of direct enforceability and applicability only after tribunal constitution. This procedural gap often forces parties to approach courts under Section 9. In the author's opinion, adopting Emergency Arbitration and implementing the 246th Law Commission's recommendations would strengthen tribunal authority, reduce judicial burden, and align Indian arbitration with international standards.¹⁶

4. Continued Judicial Involvement

One of the primary objectives of Emergency Arbitration (EA) is to reduce parties' reliance on conventional court systems by providing swift, cost-effective interim relief through a neutral arbitral forum. However, in India, the enforcement of emergency awards still requires judicial intervention under Section 9 or Section 17(2) of the Arbitration and Conciliation Act, 1996. This reliance on courts significantly undermines the autonomy and efficiency that EA is intended to promote. It creates a paradox where parties, despite opting for arbitration to avoid litigation delays, are compelled to approach the judiciary, thereby compromising the very purpose of the emergency arbitration mechanism.¹⁷

Advantages of Emergency Arbitration

Despite these challenges, Emergency Arbitration offers several compelling benefits:

- **Expedited Relief:** Interim protection can be secured within days, in contrast to the often-lengthy court process. Speed is a critical factor in the context of interim relief, as parties often seek immediate protection to prevent irreparable harm. Emergency arbitration mechanisms are designed to respond swiftly. For instance, the ICC reports an average duration of sixteen days for emergency arbitrations, the ICDR approximately fourteen days, and the SCC between five to eight days. Thus, interim relief through emergency arbitrators is typically granted within one to two weeks. However, parties must also account for the additional time that may be required to enforce such interim awards through national courts in case of non-compliance by the opposing party.¹⁸
- **Procedural Flexibility:** Emergency arbitration stands as a testament to the procedural flexibility and evolving nature of modern dispute resolution. This mechanism allows parties to seek urgent interim relief to prevent irreparable harm, effectively bridging the procedural gap between the filing of a request for arbitration and the formal constitution of the full arbitral tribunal¹⁹. By enabling the swift appointment of a sole emergency arbitrator for an expedited proceeding, it ensures that parties are not left without a remedy during a critical initial phase of their dispute. This flexibility is not merely a procedural innovation but has been judicially validated, as exemplified by the Supreme Court's landmark ruling in *Amazon v. Future Retail*. The recognition of the enforceability of emergency awards underscores a pro-arbitration stance, reinforcing the principle of party autonomy and solidifying arbitration's role as a responsive and effective alternative to traditional litigation.²⁰
- **Confidentiality:** Confidentiality is one of the key advantages of emergency arbitration. It helps protect sensitive commercial information from public disclosure, which is often critical in business disputes. Maintaining privacy also prevents any prejudgment on the merits of the case by ensuring that details are not exposed prematurely. Unlike public court proceedings, arbitration remains private, making it a preferred route for parties seeking discretion. This confidentiality also safeguards legal strategies and internal documents from being accessed by competitors, thus offering a significant strategic benefit.²¹

¹⁶Indian Council Rules 2021'.

¹⁷'Recognition and Enforcement of Emergency Arbitration in India: A Comment on the Supreme Court's Ruling in *Amazon - Future Dispute*' (n 11).

¹⁸Kanishk Srinivas, 'Protective Preliminary Orders under the 2025 Siac Rules: Analysing Enforceability in Indian Courts' (2025) 7 *The Indian Arbitration Law Review* 155.

¹⁹'Indian Council Rules 2021' (n 16).

²⁰Shashank Chaddha, 'Emergency Arbitration: Indian Prospects' (2017) 4 *RGNUL Financial and Mercantile Law Review* 1.

²¹Rajvansh Singh, Saksham Barsaiyan (n 8).



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- **Order against third party:**Sometimes, during a dispute, one party may need urgent help (interim relief) against someone who is not part of the arbitration agreement. This person is called a third party. For example, in company-related disputes, such as shareholder cases, it may be necessary to prevent a third party from taking harmful actions that could impact the case.²²However, an arbitral tribunal can only give orders to the parties who signed the arbitration agreement. It does not have the power to pass orders that legally bind outsiders or third parties. Therefore, if a party requires protection or action against a third party, they typically must resort to court, as courts have the authority to issue orders even to those who are not parties to the original agreement.²³
- **Ex-parte decision:**In certain urgent situations, if the respondent becomes aware of pending legal action, they may attempt to hide or transfer assets to avoid the impact of any order. To prevent such actions, courts have the power to grant ex-parte interim orders—temporary relief passed without informing the other party, to preserve the status quo. In contrast, emergency arbitrators cannot issue ex-parte orders, as arbitration requires both parties to be treated fairly and given an equal opportunity to present their case. Therefore, in cases requiring immediate, confidential intervention, courts remain the preferred forum.²⁴
- **Emergency Arbitration under Indian Institutional Rules**

Indian arbitral institutions have increasingly embraced Emergency Arbitration in their procedural frameworks:

Mumbai Centre for International Arbitration (MCIA)

The MCIA Rules (2016) explicitly provide for Emergency Arbitration in Schedule 1, enabling parties to seek urgent interim relief before tribunal constitution²⁵.

Indian Council of Arbitration (ICA)

The ICA Rules (2021) include provisions relating to Emergency Arbitration, signalling a growing recognition of EA in the domestic arbitration space.²⁶

Delhi International Arbitration Centre (DIAC)

Currently, DIAC Rules do not include EA provisions. However, there is active discourse surrounding the revision of its rules to align with global best practices.

The Way Forward: Strengthening Emergency Arbitration in India

To fully integrate Emergency Arbitration into India’s arbitration framework, the following steps are recommended:

1. Legislative Reform

Amending the Arbitration and Conciliation Act, 1996, to expressly recognize Emergency Arbitrators and their powers would provide essential legal clarity and enforceability.

2. Promotion of Domestic Arbitral Institutions

Encouraging parties to utilize Indian arbitration institutions such as MCIA and ICA, which already provide for Emergency Arbitration, will help institutionalize its use in domestic disputes.

3. Judicial Consistency

In line with the Supreme Court’s guidance in the *Amazon* case, lower courts should consistently recognize and enforce EA orders, thereby strengthening their authority and reliability.

4. Awareness and Capacity Building

Educational programs, workshops, and legal publications can help raise awareness about Emergency Arbitration among businesses, legal professionals, and arbitration users.

5. Harmonization with International Standards

²²‘Recognition and Enforcement of Emergency Arbitration in India: A Comment on the Supreme Court’s Ruling in Amazon - Future Dispute’ (n 11).

²³‘Tribunal-Ordered Interim Measures and Emergency Arbitrators: Recent Developments Across the World and in India’ (n 12).

²⁴‘Emergency Arbitration: Indian Prospects’ (n 15).

²⁵‘Indian Council Rules 2021’ (n 16).

²⁶ibid.



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Aligning India's arbitration practices with international norms will enhance the country's standing as a preferred arbitration seat in the Asia-Pacific region.

Judicial approach:

Judicial Recognition of Emergency Arbitration in India: An Analysis of Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)

The Supreme Court's decision in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021) SCC Online SC 557 represents a significant advancement in Indian arbitration jurisprudence, particularly with respect to the enforceability of emergency arbitrator decisions. Delivered by a bench comprising Justices R.F. Nariman and B.R. Gavai, the judgment affirmed the binding nature of interim relief granted by an emergency arbitrator appointed under the Singapore International Arbitration Centre (SIAC) Rules.²⁷

The Court's ruling turned on two critical issues:

(a) Enforceability of Emergency Arbitrator's Orders under Indian Law

At the heart of the dispute was the question of whether an emergency arbitrator's interim order qualifies as an "order of the arbitral tribunal" under Section 17(1) of the Arbitration and Conciliation Act, 1996. The Court answered in the affirmative, relying heavily on the principle of party autonomy, a cornerstone of arbitration law. It reasoned that in the absence of any express prohibition in the Arbitration Act against emergency arbitration and given that the parties had voluntarily submitted themselves to the SIAC Rules (which expressly provide for emergency arbitration), such an order fell squarely within the ambit of "arbitral proceedings." Accordingly, an emergency arbitrator's award was deemed enforceable in India under Section 17(2) of the Act.

This interpretation marked a significant development by expanding the scope of what constitutes an "arbitral tribunal" under the Act. It placed institutional arbitration and its procedural mechanisms including emergency relief on par with regular arbitral processes recognized under Indian law.

(b) Non-Appealability of Enforcement Orders

The Court further examined whether an enforcement order passed by a single judge under Section 17(2) could be appealed under Section 37 of the Arbitration Act. It held that no such appeal was maintainable. Section 37, in the Court's view, is a self-contained provision governing the limited instances where an appeal may be entertained. Since enforcement of interim measures granted by emergency arbitrators was not explicitly included within its ambit, such orders were deemed non-appealable. This interpretation was intended to curtail dilatory tactics and promote procedural efficiency, reinforcing the finality of interim relief granted in arbitrations²⁸.

Effectiveness of Emergency Arbitrator Decisions in India

The effectiveness of Emergency Arbitrator (EA) decisions in India was significantly reinforced by the Supreme Court's ruling in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021). This judgment resolved longstanding ambiguities by affirming that EA decisions, though not expressly recognized under the Arbitration and Conciliation Act,²⁹ 1996, are enforceable under Sections 17(1) and 17(2) when parties have agreed to institutional rules such as those of the Singapore International Arbitration Centre (SIAC).

The ruling enhances the efficacy of arbitration by allowing parties to obtain urgent interim relief without waiting for the formal constitution of the tribunal or resorting to conventional court proceedings. By holding that enforcement of EA decisions is not appealable under Section 37, the Court eliminated a major avenue for delay, thus promoting procedural efficiency and preserving the value of emergency relief.

²⁷ Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. and Ors, (2021) SCC Online SC 557.

Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (August 2014).
Mumbai Centre for International Arbitration (MCIA) Rules, 2016 - Schedule 1: Emergency Arbitration.

²⁸ 'Recognition and Enforcement of Emergency Arbitration in India: A Comment on the Supreme Court's Ruling in Amazon - Future Dispute' (n 11).

²⁹{Citation}



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The Court’s emphasis on party autonomy as a foundational principle of arbitration further strengthens the legitimacy of EA proceedings. Parties who have voluntarily agreed to institutional rules are estopped from later challenging the validity of relief granted under those very rules. Additionally, the Court’s purposive interpretation, choosing not to view the legislature’s silence as rejection, aligns India’s arbitration regime with global best practices. In effect, the Amazon judgment has not only clarified the legal standing of EA decisions but also significantly enhanced their enforceability and practical utility, making India a more reliable and arbitration-friendly jurisdiction for commercial dispute resolution.

Conclusion

Emergency Arbitration represents a dynamic and efficient mechanism designed to address urgent disputes requiring immediate relief. While India has made significant progress particularly following the *Amazon-Future Group* decision, its full potential remains untapped due to legislative gaps and enforcement hurdles. For India to realize its goal of becoming a global arbitration hub, it must prioritize formal statutory recognition, promote institutional arbitration, and ensure judicial consistency. Strengthening Emergency Arbitration will not only bolster investor confidence but also solidify India’s position as a reliable venue for resolving high-stakes commercial disputes.

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