

Freedom of the Press in India: Constitutional and Legal Framework

Amanollah Tamandehrou

Research Scholar-Department of Sociology

Aligarh Muslim University, Aligarh

Email: amanirani@gmail.com

Introduction

The legal framework of freedom the press in a democracy like India has been inspired by international bodies such as the United Nations, US Constitution and British Constitution. The basic documents of the United Nations and reputed International Bodies recognized the predominant position of freedom of speech and expression as a basic democratic right. The Universal Declaration of Human Rights, 1948 (Art. 19) reads: “Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any medium and regardless of frontiers.”

Article 19 of the International Covenant on Civil and Political Rights, 1966 says:

- 1- Everyone shall have the right to hold opinions without interference.
- 2- Everyone shall have the freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other medium of choice.
- 3- The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for the respect of the rights to reputations of others; (b) for the protection of national security or of public order (order public), or of public health or morals (Sundari, 2013:7).

The Universal Declaration of Human Rights states that in the exercise of the rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and

general welfare in a democratic society (Universal Declaration of Human Rights, 1948, Art. 29(2)).

The US Constitution also recognized the freedom of speech and expression as a basic right in a democratic society. The struggle for freedom of the Press in the United States had its greatest triumph when it came to be guaranteed by a written Constitution, as a fundamental right. The First Amendment (1791) to the United States Constitution says: "Congress shall make no law... abridging the freedom of speech, or press." The American Supreme Court while dealing with many cases explained the primacy of free speech. In *Thornhill v. Alabama (1940)*, it observed: Abridgement of freedom of speech and of the press, however, impairs opportunities for public education that are essential to the effective exercise of the power of correcting errors through the processes of popular government. In *Terminiello v. Chicago (1949)*, the U.S. Supreme Court held that it is only through free debate and free exchange of ideas that the government remains responsive to the will of the people and peaceful change is affected. The American Supreme Court acknowledged in *Speiser v. Randall (1958)* the fundamentals of freedom of speech and press as: Freedom of speech and expression is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities. In many subsequent cases, the American Supreme Court gave a liberal interpretation of the freedom of speech and press. The broader aspect of the freedom of the press has been formulated judicially that the guarantees of free speech and press were not designed to prevent censorship of the press merely, but any action of the government by means of which it might prevent free and general discussion of public matters as seem absolutely essential (Sundari, 2013:8-11).

In Britain, freedom of speech and press is not embodied in a Constitutional document or in any particular rule of Statute or Common Law. Since there is no written Constitution or any guarantee of fundamental rights in Britain, there is no positive status to this freedom. However, the freedom of the press is well secured because of Common Law principle that no one shall be punished except for statements proved to be a breach of law. The press in Britain is marked by two features. First, "The liberty of the press" says Lord Mansfield, Consists in printing without any previous "License, subject to the consequences of law." "The Law of Britain", says Lord Ellenborough, "is a law of liberty, and consistently with this

liberty “we have not what is called an imprimatur; there “is no such preliminary license necessary; but if “a man publish a paper, he is exposed to the “consequences, as he is in every other act, if it be illegal.” Secondly, press offences in so far as the term can be used, with reference to British law, are tried and punished only the ordinary Courts of the country, that is, by a judge and jury (Sundari, 2013:11-12). Therefore, freedom of the press, in Britain, means the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy. The net result is that the freedom of the Press is measured by the freedom to write anything, provided the law is not infringed. Since the constitutionality of any law made by parliament cannot be questioned, eventually, freedom of the Press is nothing but the residue left after Parliamentary regulation. Whether an elected Parliament will enact any law which would deprive the Press of its freedom or substantially encroach upon it, would depend upon the working of the democratic system. Freedom of the Press in Britain is thus the freedom of the Press from prior restraint to pre-censorship. This aspect originated out of the historical fact that there was until 1695, an annual licensing Act (first passed in 1662), which prohibited the printing of any literature without a license from the Crown or its agent. It was against this system of licensing that the doctrine of freedom of the Press was asserted by intellectuals like Milton. As a result of such agitation, Parliament allowed the licensing Act to expire, and since then no further attempt has been made to introduce any previous restraint on the publication of printed matter (except in times of war), and by 1784, it was acknowledged in the Courts that “The liberty of the press consists in printing without any previous license, subject to the consequences of law” (Basu, 1996:16-18).

Press Freedom in the Indian Constitution

The predominant position of the freedom of the press in a democracy is duly recognized in the International Human Rights documents, in the US Constitution and the British Constitution. It has been included in the freedom of expression in the Indian Constitution. There was a lengthy discussion in the Constituent Assembly about the inclusion of the provision of press freedom in the Indian Constitution. However, the assembly felt that the freedom of the press meant freedom of expression and therefore nothing specific about it should be mentioned. *K.M. Munshi* proscribed in his draft that the freedom of the press along with other freedoms should be guaranteed and subject only to such restrictions imposed by the law of the Union as

might be necessary in the interest of the public order and morality. But opposing *Munshi's* argument *B.R Ambedkar* observed: "The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager, are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression and in my judgment, therefore no special mention is necessary of the freedom of the press at all". Discussing freedom of the press in his draft *Ambedkar* further remarked: "No law shall be made abridging the freedom of speech, of the press, of association and of assembly, except for consideration of public order and morality" (Padhy and Sahu, 2005:119-120).

India has a written Constitution, which guarantees freedom of speech and expression as a fundamental right as specified in Part III. Art.19 (1) (a) relates to freedom of speech and expression, subject to the restrictions which may be imposed by the State under Cl.(2) of this Article, which has to be read along with Cl. (1) (a). It would be profitable to advert to the text of these clauses of Art. 19 at once: "19. (1) All citizens shall have the right (a) to freedom of speech and expression; (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

As has been made clear in the Constituent Assembly debate, there is no separate provision guaranteeing the freedom of the Press, as in countries like the U.S.A. India's Supreme Court has held that there was no need to mention freedom of the Press separately, because it is already included in the guaranteed of "freedom of expression", which comprehends not only the liberty to propagate one's own views but also the right to print matters which have either been borrowed from someone else or are printed under the direction of that person. It also includes the liberty of publication and circulation, through any medium of expression, including printing (Basu, 1996:29).

Freedom of the Press as enshrined in Article 19 (1) of the Constitution cannot be enjoyed without respecting the restrictions imposed on this freedom by Article 19 (2)

(Mehta, 2007:24). Freedom enshrined in Art. 19 (1) (a) is more similar to the British System than of America. The British Constitution does not incorporate freedom of the press as one of its provisions. As in the British Constitution, the Indian Constitution imposes reasonable restrictions on freedom of the press. In the USA, there is no specific provision in the Constitution enables the government to restrict fundamental rights (Sundari, 2013:125). The Indian Constitution empowers the State to impose 'reasonable restrictions' in the countervailing social interests such as security of the State, public order and the like, which are enumerated in Art.19 (2) (Basu, 1996:46). The object of these restrictions is to prevent misuse of the freedom guaranteed and enable the state to impose restrictions in the larger interests of the welfare of people. Justice Sarkaria (1989:1) held that no doubt, the right to freedom of speech and expression is a very important right, but it is a qualified right and it is proper that this right should be subjected to restrictions (Sundari, 2013:16).

Restrictions imposed on freedom of expression by article 19 (2) are as follows (Sundari, 2009:30-58):-

Sovereignty and Integrity of India

The Constitution (Sixteenth Amendment) Act, 1963 introduced this ground of restriction under Art.19 (2). In its original form, Art.19 (2) did not contain this ground of restriction. Anti-national agitations and movements tend to pose serious threats to the maintenance of sovereignty and integrity of India. As India being a plural society with different religions, castes, communities and languages, it is possible that internal problems such as anti-national sentiments and activities may arise. With these issues into view, Committee on National Integration Council recommended that Art. 19 be amended with adequate powers for the preservation and maintenance of the integrity and sovereignty of the Union.

Security of State

Art. 19 (2) enable the state to impose restrictions on the exercise of the right of freedom of the press in the interests of security of the state. The phrase 'Security of the state' is significant in this context. Art. 352 of the Indian Constitution described that the security of the state may be threatened not only by an external aggression, but also by armed rebellion or violent revolution or anarchy within the state. It refers to both internal as well as external security.

Friendly Relations with Foreign States

It was the Constitution (First Amendment) Act, 1951, which enables the State to regulate freedom of speech and expression so that there will not be any hurdles in foreign relations. No other or major country's Constitution in the world places restrictions on the freedom of speech and expression in relation to the matter of friendly relations with other countries. The object of this provision is to maintain good relations between India and its foreign friendly states. For that purpose, Art. 19(2) permits the state to restrict the right of its citizens to exercise their fundamental freedom of speech and expression leading to propaganda in favour of foreign enemy state, libel of foreign dignitaries, and inducement of foreign enlistment.

Public Order

This ground of restriction was not enumerated in the original Clause (2) of Art.19 of the Constitution. This was added by the Constitution (First Amendment) Act, 1951. According to Supreme Court decision, public disorders and disturbances of public tranquility do undermine the security of the state and if an act of law aimed at preventing such disorders, it fulfils the requirement of the Constitution.

Decency or Morality

Art. 19 (2) authorizes the imposition of restrictions on freedom of speech and expression in the interest of decency or morality. The terms decency and morality are equivocal and wider relative concepts. The Constitution did not define the term 'obscenity' nor laid down the parameters to determine obscenity. The Cambridge Dictionary defines 'decency' as a behaviour that is good, moral, and acceptable in society, and 'morality' as a set of personal or social standards for good or bad behaviour and character. Thus the Constitution imposes restrictions on the freedom of expression if there is propagation of bad behaviour.

Contempt of Court

The Contempt of Court is classified in two categories, namely Criminal Contempt and Civil Contempt. Art. 19 (2) refers only to Criminal Contempt, as Civil Contempt has no connection with the freedom of speech and expression. As far as the press is concerned, it is more involved in criminal contempt rather than the civil contempt.

Defamation

An inquiry to a man's reputation or social status is referred to as 'defamation'. Reputation is considered as his property. Defamation is an injury to one's self-respect and esteem. In the words of Winfield (1979): "defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the

estimation of right thinking members of society generally or tends to make them shun or avoid him". Art. 19 (2) of the Indian Constitution authorizes the state to restrict freedom of speech and expression guaranteed under Art.19 (1) (a) in the interest of 'defamation'. People, in such a way, to violate the law of defamation, should not exercise freedom of speech and expression.

Incitement to an Offence

This ground was added by the Constitution (First Amendment) Act, 1951. Accordingly, Art. 19 (2) of the Indian Constitution empowers the state to impose reasonable restrictions on the exercise of the freedom of speech and expression on the ground of "incitement to an offence."

In a democratic state, unrestricted rights cannot exist. There must be a compromise between individual rights and societal responsibilities and obligations. Absolute individual rights may lead to authoritarian rule. Basu (1991) in his Commentary on the Constitution of India views that there cannot be any such thing as absolute or uncontrolled liberty, for that would lead to disorder. Though freedom of speech is recognized as a valuable fundamental right in a democratic state, there is sufficient reason to restrict it. There is reason to restrict the freedom of speech and expression, so that it is not misused by the people of the land (Sundari, 2013:29).

Article 358 suspends the operation of Art.19 during the operation of a Proclamation of Emergency made under Art.352 on the ground of war or external aggression. The effect of Art. 358 is that it suspends the restrictions on the powers of the State to make any law in contravention of the provisions of Art. 19 only during the *pendency* of the Proclamation (Basu, 1996:35).

Press Commission of India

While the Constitution laid down the legal framework for the press in India, it was soon found that objectionable material was being published which could not be checked legally and so there was a need for a Press Commission. It was the formation of the Press Commission in Britain in 1947 that led to the establishment of the Press Commission in India. There was a similarity between the terms of the British and the Indian commissions, though the state of the industry in India, with newspapers having pitifully small circulations, was far different from conditions in industrially advanced countries like Britain (Raghavan, 1994:144).

The first Press Commission, in its survey of the functioning of the Indian Press, found that a large section of the press was behaving irresponsibly, and came across a great

deal of “scurrilous writing” of ‘indecent and vulgarity’ and ‘Personal attacks on individuals’. In the competition for increased circulation, many newspapers abdicated their responsibility and appealed to the base instincts of their readers. As a result, the image of the press as an institution had greatly suffered. The Commission remarked that “Whatever the law relating to the press may be, there would still be a large quantum of objectionable journalism, which, though not falling within the purview of the law would still require to be checked.” It was of the view that the best way of maintaining professional standards would be to bring into existence a body of people principally connected with the industry whose responsibility it would be to attribute on doubtful points and to censure any one guilty of infraction of the code of journalistic ethics. The Commission recommended the setting up of a Press Council to safeguard the freedom of the press and to encourage the growth of the sense of responsibility and public service among all those engaged in the profession of journalism (Padhy and Sahu, 2005:182).

The Indian body followed the mandate from the British Press Commission, which was: “The Press Commission shall enquire into the state of the Press in India, its present and future lines of development and shall in particular examine”:

- (i) the control, management and ownership and financial structure of newspapers, large and small, the periodical press and news agencies and future syndicates;
- (ii) the working of monopolies and chains and their effect on the presentation of accurate news and fair views;
- (iii) the effect of holding companies, the distribution of advertisements and such other forms of external influence as may have a bearing on the development of healthy journalism;
- (iv) the method of recruitment, training, scales of remuneration, benefits and other conditions of employment of working journalists, settlement of disputes affecting them and factors which influence the establishment and maintenance of high professional standards;
- (v) the adequacy of newsprint supplies and their distribution among all classes of newspapers and the possibilities of promoting indigenous manufacture of (a) newsprint and (b) printing and composing machinery;

- (vi) machinery for (a) ensuring high standards of journalism and (b) liaison between Government and the Press; the functioning of Press Advisory Committees and organizations of editors and working journalists; and
- (vii) freedom of the Press and repeal or amendment of laws not in consonance with it.”

After two years of public hearings, investigations and in-depth study, on July 14, 1954 the Press Commission, released its long awaited report. Perhaps the most comprehensive treatment of various aspects of the press in India, this three volume report made a number of recommendations to the Government which were to some extent instrumental in the development of the press in contemporary India. Following are some of the most important recommendations and suggestions of the mission:

- (1) It recommended the appointment of a Press Registrar at the centre and counterparts in the states to maintain all records and statistics relating to newspapers and magazines.
- (2) It recommended the establishment of a Press Council under the chairmanship of a High Court judge or ex-judge nominated by the Chief Justice of India composed representative editors, journalists and proprietors to deal with all matters concerning the press and journalists. The role of the council which would be to take an active interest in the growth and development of a healthy and responsible press. The council had to be independent enough to resist executive encroachments and strong enough to carry weight with the journalistic profession. It was also hoped that the council would encourage the recruitment, education and training of journalists.
- (3) It favoured emergency legislation for preventing press excesses rather than the incorporation of the provision of the Press (Objectionable Matters) Act into the Indian Penal Code and the Criminal Procedure Code.
- (4) It supported a price-page schedule with the view that it would effect an increase in the number of newspapers in the country.
- (5) It recommended, in order to correct the abuses in the profession, the adoption of legislation relating to working conditions, salaries and benefits enjoyed by journalists, and
- (6) It recommended that the editor be vested with administrative control over his staff, that appointments in the editorial department be made in consultation with him, and that all members of the staff be made to realize that they are

working towards a common goal under the leadership of the editor (Karkhanis, 1981:94-95).

Second Press Commission

The government of India constituted the Second Press Commission on May 29, 1978. The second press commission wanted the press to be neither a mindless adversary nor an unquestioning ally. The commission wanted the press to play a responsible role in the development process. The press should be widely accessible to the people if it is to reflect their aspirations and problems.

The question of urban bias too has received the attention of the commission. The commission said that for development to take place, internal stability was as important as safeguarding national security. The commission also highlighted the role (and, therefore, responsibility) of the press in preventing and deflating communal conflict.

Both press commissions of India included several respectable members from the press. The recommendation of the first press commission for the first time provides an idea of what a responsible press should be. The second press commission formulated in a clear manner that development should be the central focus of the press in a country, which is building itself to become a self-reliant and prosperous society. The commission declared that a responsible press could also be a free press and vice versa. Freedom and responsibility are complimentary, but not contradictory terms. The main recommendations can be briefed as follows:

- An attempt should be made to establish a cordial relation between the government and the press.
- For the development of small and medium newspaper, there should be the establishment of the newspaper Development Commission.
- Newspaper industries should be separated from industries and commercial interests.
- There should be appointment of Board of Trustees between editors and proprietors of the newspaper.
- Price-page schedule should be introduced.
- There should be a fixed proportion of news and advertisements in small, medium and big newspaper.
- Newspaper industries should be relieved from the impact of foreign capital.
- No predictions should be published in newspapers and magazines.
- The misuse of the image of the advertisement should be discontinued.

- The government should prepare a stable Advertisement Policy.
- The Press Information Bureau should be reconstituted.

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The first Press Council came into existence on the recommendation of the first press commission.

Press Council of India

The Press Commission in Britain recommended the formation of the Press Council of Britain, which was set up in 1953. In India, the Press Council is a statutory body. It was first established by the Press Council Act 1965, on the lines recommended by the Press Commission of India in 1954. In the main, its functions followed the British precedent, to include:-

- (a) The preservation of the freedom of the Press.
- (b) To maintain and improve the standards of newspapers in India.
- (c) To form a code of conduct to prevent writings which were not legally punishable, but were yet 'objectionable'.

The Press Council apparently and outwardly appeared like a body which may be similar in constitution and functions to a Medical or Bar Council or other such professional disciplinary bodies. However, the conferment of similar powers on the Press Council had been rejected outright in democratic countries where there is freedom of the press. The reason was obvious. Imposition of any such discipline as is enforced by these institutions would erode the independence of the press and media could be abused for political ends (Padhy and Sahu, 2005: 185).

The need for an institution to ensure a high standard of responsibility on the part of the press arises from the fact that the freedom of the press is likely to be abused by what is called 'yellow journalism', i.e., the publication of matters which debase public taste or indulge in intrusion into public lives even though such publication may not be punishable under the provisions of the existing law. Almost every modern country has therefore set up a body which could serve as a watchdog over the standards of journalism and at the same time maintains the freedom of the Press against unwarranted governmental intrusion (Basu, 1996:73).

The chairman of the PCI in the forward to his annual report (2010-2011) writes: "The Press Council of India has been entrusted, with the principal objective of ensuring the freedom of speech and expression of the Print Media of the country and to help in improving the quality of functioning of the print media and to ensure that the Print

Media really acts with accountability and responsibility in the true spirit of a fourth estate”.

The basic concept of self-regulation in which the Press Councils and similar media bodies world over are founded, was articulated by Mahatma Gandhi, who was an eminent journalist in his own right, thus: "The sole aim of a journalist should be service. The newspaper press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than wanting of control. It can be profitable only when exercised from within."The PCI report of (2010-2011:20) declares: Where the norms are breached and the freedom is defiled by unprofessional conduct, a way must exist to check and control it. But, control of the Government or official authorities may prove destructive of this freedom. Therefore, the best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Hence, the Press Council.

The Press Council is composed of a Chairman and 26 other members. The Chairman is nominated by a Committee (known as the Nominating Committee) consisting of the Chairman of Rajya Sabha, the Chief Justice of India, and the Speaker of Lok Sabha. From amongst the other members, the Nomination Committee was empowered to nominate 13 from the working journalists, 6 from the management section and 1 from the news agencies. On the basis of having special knowledge or practical experience in respect of education, science, law, literature and culture, three persons, of whom one each are nominated respectively by the University Grants Commission, Bar Council of India and the Sahitya Academy. And from the other three members of the Parliament, two are nominated by the Speaker from members of the Lok Sabha and one is nominated by the Chairman from the Rajya Sabha (Saxena, 2004: 190).

The list of functions of the Press Council is as follows:

- (1) The Objects of the Council shall be to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.
- (2) The Council may, in furtherance of its objects, perform the following functions, namely:
 - (a) To help newspapers and news agencies to maintain their independence;

- (b) To build up a code of conduct of newspapers, news agencies and journalists in accordance with high professional standards;
- (c) To ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a sense of both the rights and responsibilities of citizenship;
- (d) To ensure the growth a sense of responsibility and public service among all those engaged in the profession of journalism;
- (e) To keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;
- (f) To keep under review cases, assistance received by any newspaper or news agency in India from any foreign source, including such cases as referred to it by the Central Government or are brought to its notice by an individual, association of persons or any other organization;
Provided that nothing in this clause shall preclude the Central Government from dealing with any case of assistance received by a newspaper or news agency in India from any foreign source in any other manner it thinks fit;
- (g) To undertake studies of foreign newspapers, including those brought out by any embassy or other representative in India of a foreign State, their circulation and impact;
- (h) To promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or news agencies;
- (i) To concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press;
- (j) To undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by the Central Government;
- (k) To do such other acts as may be identical or conducive to the discharge of the above functions (Padhy and Sahu, 2005:192).

Conversely, the Council has to ensure a high standard of public taste and responsibility in journalism, and, for this purpose, it is empowered to build up a '*code of conduct*' for newspapers, news agencies and journalists 'in accordance with high professional standards'. In spite of making many efforts to formulate such a code of conduct, the Press Council failed in this effort.

The Press Council Act, was repealed during Mrs. Gandhi's regime, by enacting the Press Council (Repeal) Act, 1976. The Press Council was, therefore, abolished with effect from January 1976, on the following grounds offered by the Government while bringing the Ordinance, which later became the Act:

- (i) The Press Council has failed to set out and enforce any code of conduct, as envisaged by the Act of 1965.
- (ii) It also failed to build up any respectable body of case-law because only complaints of comparatively minor importance were dealt with by the council.

In the post-emergency period under Janata Government the Press Council Act 1978 brought some change, thereby increasing the strength from 26 to 28 (Padhy and Sahu, 2005: 190).

The Press Council of India has been criticized by many for not having the power to enforce its decisions and realizing this, the chairman has recommended amendments to the Press Council Act. In the forward to his annual report (2010-2011) he writes: "Unfortunately, the Press Council of India the only statutory, regulatory authority for the Print Media does not possess the teeth necessary to enforce its adjudicatory directions to correct the aberrations in media functioning noticed by it while deciding the complaints made to it by the journalists or media houses or by governmental authorities, public sector undertakings and members of civil society. The proposed amendments in the Press Council of India Act have been pending for long. It is high time that such amendments be effected without any further delay". The confidence in Press Council of India's adjudicatory function is, however, bound to be eroded very soon if it is not vested with suitable power to make its adjudications effective and binding.

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