

Land Tenure and Land Registration in Nepal

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Keywords:

SUMMARY

The history of land tenure in Nepal is very old. It is conceptually based on Hindu culture. Land is still considered as the wealth and the prime indicator of social prestige. Land is not only the main source of livelihood but is also full of traditional sentiments. In Nepal, land management and administration has been influenced in this perspective. It is imperative that, one should understand the history and culture of land tenure of the country for proper management of land. In this context, attempt is made to analyze the history of land tenure provisions and put on record the present system of land tenure and land registration in Nepal.

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1. LAND

Land is the basis of human existence. Men and women have established different relationships with nature specifically the relationship with lands have attained the most significant impact that is *Agri-Culture*. It is the land we all get our food from, the material for cloth and shelter, build our landscape around us, our forests, contribution to a natural growth of people and the development of man's identity. Land is limited in extent but is the natural gift that creates natural resources we need, new patterns of life and production. Man being a part of ecosystem, he must protect the threat of sustainable natural outputs seriously which may arise by losses of variety of species, reduction in forests, soil erosion, acidification, deforestation and environmental pollution. This is reflected by reduced harvests, low farm income and a decrease in farmlands leading to enormous economic and social problems of rural population. The production increases in foodstuffs does no longer keep pace with the population growth. The reasons behind these causes are mismanagement of land and its use including improper distribution pattern and traditional thinking on the concept of land and the natural resources. *Land is* interpreted from different viewpoints:

- Land as explained by the Latin Maxim is - *Cujes est solum est usque ad coelum et adinfrmos*” which means whoever owns the soil, his also is that which is above as far as the sky and below it as far as the neither region.
- Land to Lawyers, means the earth and everything attached to the earth, which include vegetation and other man-made features. Also, land as the volumes of space and variety of rights.
- For Geographers, it is landscape – a product of geological and geo-morphological process.
- For Economists, land is the resource with capital and labor to be exploited or conserved in order to achieve economic production and development.
- For many, land as the surface of the earth, the material beneath, the air above and all things fixed to the soil. Land is the space for use.
- According to Sir Bernard Binns (FAO) – The land is man's most valuable resource, it is indeed much more than this: it is the means of life without which he could never have existed, and on which his continued existence and progress depend. The resources of the land are neither inexhaustible nor indestructible

In general, the term **Land** is meant with both aspects of real property; the *abstract* such as rights and values, and the *physical* one such as minerals, crops and buildings attached to the land. It is therefore necessary to take into account on the cultural and economic importance of land, the proper management of land and its administration, and indeed is crucial, not only to the present context but also to the future of every society. In this context, the process of land administration is a necessary tool to underpin land resource management but is not sufficient for sustainable development. The importance of land administration directly relates with the

environment which consists of the four components; namely the land, the related laws, its economics and people. These components are interlinked each other so needed to be mobilized in a balanced way.

1.1 Land Tenure

The word “Land Tenure” is derived from the Latin “Tenere” meaning “to hold a tenant” is simple one who holds. Land tenure has to do with *land-man-and the rights*. It is the nature of legal estate in land such as *freehold, leasehold, mortgage or occupancy*. It may be expressed as the mode of holding the land property and is frequently based on social structure and religious belief. Land tenure often plays a crucial role in the individual’s sense of participation in a society as well as in the investment of labor and capital on any piece of land. The significance of land tenure can be realized not only for the land market, use of land and right over land but also recognized as the major determinant of the land/property tax base. Therefore, the institutions for defining ownership, right and use of land called land tenure are the important concerns of human society.

2. LAND TENURE IN THE NEPALESE PERSPECTIVE

There are many forms of rights over land in practice all over the world. Land tenures are defined according to Hindu, English, Anglo-American, Romanic, African, Islamic concepts, customary concepts and Napoleonic code. But in Nepal, land tenure is based on Hindu and Customary concepts. According to Mahesh Chandra Regmi, *there exists a considerable body of evidence to support the view that state ownership of the land is an institution which has been sanctified both by law and by tradition in Nepal. Sources: Land Tenure and Taxation in Nepal Mahesh Chandra Regmi*

Land tenure and security existed without land registration and cadastral survey in old age. It could often be enjoyed without any evidence of title. The users used to use the land once a year or once in two years, Shifting agricultural system was common. The reason was less population density and less physical developments. Depending on the condition and tradition, land tenure(s) were gradually developed as customary tenure. The customary tenure was converted to case and enacted law. Major customary tenures are *Raikar, Birta, Jagir, Rakam, Guthi and Kipat*.

Forms of land tenure in Nepal

Looking back to the ancient history and present status on land tenure in Nepal, ownership of land, its control and access emerged from the orders declared over land by the crown or rulers. The traditional form of land tenure in Nepal was state ownership. However, land used by the individuals and the intermediaries between the state and the cultivator have tended to obscure the character of this basic relationship. The crown was the supreme owner of all land or at the apex of land tenure system before 1950. The intermediary owners of land under various arrangements as mentioned above on customary tenure are *Raikar, Birta, Guthi, Kipat* and others. The different forms of land tenure(s) system support the argument that the state

has traditionally considered itself the owner of all the land within its domain. The tenure-wise division of the total cultivated land before 1950 was roughly as follows:

<i>Raikar</i>	963,500 Hectares
<i>Birta</i>	700,080 Hectares
<i>Guthi</i>	40,000 Hectares
<i>Kipat</i>	77,090 Hectares
<i>Rajya, Jagir, Rakam & others</i>	146,3336 Hactares

(Source: Evaluation of land reform in Nepal -1973, M.A.ZamanFAO)

Raikar

The ***Raikar*** is probably derived from the Sanskrit words *Rajya* (state) and *Kara* (tax), thereby denoting land on which the state levies taxes. It means that land on which taxes are payable to the government and is listed in the official records. This distinguishes *Raikar* from the other forms of land tenure, *Birta*, *Guthi*, and *Kipat* which do not necessarily pay taxes and for the most part were not listed in official records. Land system in Nepal was previously determined by primarily by relative abundance of land to the demand of it. Accordingly, law visualized land as a free commodity to be distributed among the local inhabitants on the basis of their need and the availability of land. Thus the Nepal Muluki Ain (legal code) stated as:

“Those who possess inadequate land shall be given a proportionate share of the waste land available in that district, in such a way that each share includes land of both inferior and superior quality. But if land brought under cultivation by the strength of one’s body exceeds this proportionate share, no deduction shall be made there from”. (*Guthi land of Suvam Devi Bramani – bhaktapur Guthi Records 1953 – Sources: Land Tenure and Taxation in Nepal Mahesh Chandra Regmi*)

Rights on *Raikar* land are limited to occupancy rights vis-à-vis the state. Relations between the state and the cultivator are thus essentially similar to those between a landlord and his tenants. Land belonged to the state but let out to “tenants” and regularity in the payment of the land tax or arrears (payment of annual land revenue) is the prime condition for holding land. The land holder is listed as “*Mohi*” (tenants) in the assessment records. Transactions of *Raikar* land involve a transfer of occupancy rights only and not of the land itself. The term used for *Raikar* transactions is “*Rajinama*” literally “resignation” meaning to give up the right on land.

Birta

The term “*Birta*” probably derived from the Sanskrit word “*Britti*” meaning livelihood. In other words, *Birta* means granted land to individuals to enable them to make living. The following Sanskrit lines appear generally in *Birta* grants as: *Anybody who confiscates the land granted by him or by others shall in his next life be a worm living in human excrement for 60,000 years.*

Birta land had no absolute ownership rights. *Birta* land may be utilized according to the terms and conditions prescribed in the grant. Transactions of *Birta* land were called “*Farse*” meaning that the precondition has been broke .The policy for abolition of *Birta* system and

conversion of all *Birta* holdings into *raikar* has been declared since 1951 but it was functional only in 1959, after the formation of the elected Nepali Congress government. The policy was given legislative effect in the form of *Birta* Abolition Act 1959 and Section 3 of the Act provisioned as:

(i) With effect from the date of the commencement of this Act, the *Birta* system existing in the kingdom of Nepal has been terminated and all *Birta* holdings existing up to the day prior to the commencement of this Act have been abolished.

(ii) All *Birta* lands existing in the kingdom of Nepal, which have been abolished under sub-section (i) above, shall be converted into *Raikar*, and land ownership rights therein shall vest in Government of Nepal. Land ownership rights and powers possessed by *Birta* holders on such *birta* lands prior to the commencement of this Act shall be regarded to have *ipso-facto* lapsed.

(iii) Any law, regulation, order or the document providing for the emergence or continuation of ownership rights and powers on *Birta* lands in favor of any individual have been replaced or nullified with effect from the date of commencement of this Act.

Jagir

The term "*Jagir*" is of Persian origin and denotes the emergence of *Jagir* tenure to assign *Raikar* land to government employees and functionaries. This practice was followed by the government until 1951. It was the policy of the government to pay the salaries of civil and military employees in the form of *Jagir* assignments as far as possible. The assignments were made until the death or termination of employment of the employee concerned. The *Jagir* system was finally abolished in 1951 after the downfall of *Rana* regime. All *Jagir* holdings then reverted to the state.

Rakam

This system was originated from the assignment of land as the remuneration for the performance of specific functions, mostly of a manual character. *Jagir* system usually constituted a permanent and inheritable assignment of land of continued nature where as *Rakam* was temporarily assignment and lasted until the death or termination of service. *Rakam* lands has been assigned to carpenters, bricklayers, mail carriers, musicians (*Kusule*), caretakers of religious places and similar categories of manual working. This system of *Rakam* land was abolished in 1955 and converted into *Raikar* lands.

Kipat

Kipat system is essentially a form of communal tenure and certain ethnic groups are permitted to own land. The most prominent groups are from *Limbus of Dhankuta* and *Ilam*. The subgroups are *Yakha*, *the Athapriya*, *the Bhote*, *the Majhiya* and *the Tamangs*. This *Kipat* system is also found in East No. 1 and 2 districts, *Palpa*, *Accham* and *Dailekh*. *Kipat* land can not be alienated to individuals outside the community. If *Kipat* holders settle people of other tribes, the land becomes *Raikar*. *Kipat* system was abolished in 1964 when land reform campaign was launched.

Guthi

The term *Guthi* is probably derived from Sanskrit word “*Gosti*” or council. Land assigned for charitable, religious or philanthropic institutions came under *Guthi* tenure. There are different forms of *Guthi* lands. Majority of cases come under state administration called “*Rajguthi*”. Sometimes *Guthi* lands are privately operated but grants are registered in the official records called *Darta Guthi*, and those not registered and generally used for religious purpose are *Duniya Guthi*. *Guthi* land may also be owned by monasteries. There are different categories of *Guthi* land that still exist. They are: *Guti Tainathi*, *Guthi Adhinastha*, *Raj Guthi*, *Nigi Guthi*

3. IMPROVEMENT OF LAND TENURE SYSTEM AFTER 1964

Most of the customary land tenure(s) have been abolished since 1951. Some of the remaining ones were abolished during systematic and compulsory cadastral surveying and preparation of basic land records or land register called *Moth* locally. The present land tenure system is simple. The type of land tenure(s) are:

- Private land with absolute ownership: This type of land can be hold by the owner himself or may lease or mortgaged.
- Public and Government: Public land belongs to the government but is used by the public or community where as Government land is handled by itself.
- Trust land or *Guthi* land: There are numerous types of *Guthi* land specifically *Rajguthi*, *Nigiguti*, *Chutguthi*, *Guthi Tainati* and *Guthi Adhinastha*.

There are many cases of different customary tenure such as *Birta*, *Ukhada*, *Aankada*, *Bahal Bitauri* etc and *Guthi* lands which are still to be resolved by the Land Revenue and *Guthi* Offices. All these lands shall belong to either the above three categories. The security of land tenure is reliable in Nepal. Security to land has been provided by the Constitution, Acts and Rules. Any changes in the ownership and use can not be done without the consent of owner.

3.1 Legal Base of Land Tenure

It will be relevant to mention the purpose of land registration and its legal basis in Nepalese context. The most fundamental purpose of land registration in Nepal is to establish certainty of ownership, rights to land and collecting revenue (tax). Other important purposes are to facilitate the transfer of land and other land-related activities and to provide easy access to information about land. The legal instruments such as Land register (*Moth*), Restriction Register, Survey Field book, Parcel Map as well as the registration processes are the vital tools to reach these objectives.

Stamp duty as well as registration fees are set when applications for transfers and mortgages are registered at the Land Revenue Offices. As indicated earlier, land related laws in Nepal are based on old traditions and rules.

The agrarian situation in early days was characterized by a landlord- tenant relationship. The tax records contained only the names of the landlords and not of the actual cultivators. In

addition, most of the landlords were reluctant to provide receipts of rent payment. It has deprived documentary evidence of their rights to the land cultivated by them.

All land in Nepal is defined by land parcels as real property. A property may consist of the land and the fixtures. In short, structures that are attached to the property on a more permanent basis are fixtures according to law. The most common fixtures are trees and buildings. Real property owned by the state (government), local municipalities or any other public body (e.g. temple) is treated in the same way as property owned by a private individual. The property records are open to the government and the public.

3.2 Coverage of Registration

All land in Nepal has been divided into parcel properties. There are around 25 million parcels and all are subject to be registered. Each parcel has a unique identity, which is common to both registers and to the revenue files as well. This means that the registers are based on the parcel designations and not deeds plan and others. A parcel does not exist legally before it has been registered in the land register. All transfers of real property must be registered in the land register. According to Land Revenue Act (1978), the land revenue office should register all categories of lands as:

1. **Government lands** in the name of Nepal Government.
2. **Public lands** in the name of Nepal Government including its use.
3. **Raikar lands** in the name of the owners.
4. **Guthi lands** in the name of concerned *Guthi*
5. **Guthi Raitan Nambari** in the name the owner (Guthi lands converted to Raikar or *Raitan Nambari*)
6. **Land and building on possession** in the name of the user
7. **Birta Lands** in the name of tenants
8. **Haal Aabadi lands** (virgin or unregistered lands) in the name of the tiller (since two decades implementation has been restricted by the government)

3.3 The comprehensiveness

The land revenue Act 1978 explicitly states that all piece of land i.e. land parcels should be registered. Right that have been put on land register are backed by the government but the rightful holder of rights do not receive any compensation if there is any loss of interest due to error or mistake in the register. Land registration is compulsory in Nepal and is based on Deeds Registration System.

3.4 The Updating Procedures

The registers are updated whenever there is a transaction affecting the land data/information. The registration is carried out by the concerned district land revenue office and the changes or division, such as subdivisions are carried out by the concerned district survey offices. The

changes in land register and parcel register entirely depend on the owner upon the signing of the transfer deeds.

3.5 The Relation to Cadastral/Parcel Maps

The land register includes cadastral map/plan. This map is operated at present using traditional techniques. The cadastral map are in different scales such as 1:500, 1:1250, 1:2500 depending the land value, parcel size and population density. The old series of cadastral maps are in the scale of one inch to 200 ft and one inch to 400ft. The cadastral map is updated by the concerned survey offices.

3.6 The Basis for Security of Loans (Mortgages)

Mortgaging is the very old tradition in Nepal. These days land is commonly used for collateral which has rising economic activities in the country. In practice personal mortgaging also exists but almost all mortgages are handled by banks and other credit institutions. This is the legal provision for the security of loans.

3.7 The Basis for Government Revenue

In early days land registration fee and the land revenue (land tax) were the major sources of national treasury. In present time also the amount of money collected from land registration is about 3000 million rupees (about 1.7 % of the total national budget). The registration fee is 2% in the rural areas and 4% in the urban areas of the minimum land value fixed for registration purpose.

3.8 The Basis for Land Use and other Planning and Environmental Policies

Land use planning and zoning has been realized since last four decades but lack proper implementation. Land Use Project has been established in 2001 under the Ministry of Land Reform and Management. The project has been preparing only land use maps yet to function in the local level for land use planning and zoning. This is mainly due to lack of knowledge on one hand, and lack of commitment on the other hand. Land information is the basis for environmental management of natural resources, physical infrastructure and housing which incorporates the demands of environmental protection and sustainability of development agenda at local, regional and national level.

3.9 Classification of Land (Grading)

According to Land (survey and measurement) Act 1963, while surveying and measuring lands, the prescribed authority shall determine the grade of lands in the region in the following manner:

- (i) Dhanahar or irrigated lands in the Terai Region: (a) *Abal* (b) *Doyam* (c) *Sim*, and (d) *Chahar*
- (ii) Bhit or non-irrigated lands in the Terai Region: (a) *Abal* (b) *Doyam* (c) *Sim*, and (d) *Chahar*
- (iii) Khet or rice lands in Other Regions: (a) *Abal* (b) *Doyam* (c) *Sim*, and (d) *Chahar*
- (iv) Pakho or non-irrigated lands in other Regions: (a) *Abal* (b) *Doyam* (c) *Sim*, and (d) *Bhith* or *Chahar* (e) *Fifth grade* (altitudes of above 8,000 ft)

The eighth amendment of Land (survey and measurement) Act 1963 in 2001 and Land (survey and measurement) Rules 2002 has improved the grading system of lands as follows: The grading is based on the land use and classified in two areas as:

- (a) Agricultural Area
- (b) Commercial and Residential Areas

Ranking in the Agricultural Area: Land is ranked according to the indicators. Each indicator has different full marks for ranking and total full mark is 50. The indicators are provisioned as – (1) irrigation facility (2) Road access (3) Crops (4) Soil type (5) Altitude from the mean sea level (6) Agricultural market facility (7) Landscape. Thus the Agricultural land is graded as follows:

- 1 Class A ----- 46 marks to 50 marks
- 1 Class B -----36 marks to 45 marks
- 1 Class C -----26 marks to 35 marks
- 1 Class D ----- 16 marks to 25 marks
- 1 Class E -----1 mark to 15 marks

Ranking of Commercial and Residential Area: Land is ranked according to the indicators. Each indicator has different marks for ranking and the total full mark is 50. The indicators are provisioned as – (1) Access to road (e.g. main road, subsidiary road etc.) (2) Water facility (3) Electricity facility (4) Location (5) Transportation (6) Communication (7) Sewerage (8) Temporary settlement. Thus the commercial and Residential land is graded as follows:

- 2 Class A ----- 41 marks to 50 marks
- 2 Class B -----31 marks to 40 marks
- 2 Class C -----21 marks to 30 marks
- 2 Class D ----- 11 marks to 20 marks
- 2 Class E ----- 1 mark to 10 marks

4. LEGISLATION CONCERNING LAND

There are several Acts, rules and regulations pertaining to land tenure and land registration.

4.1 The Old Legal Provisions of Land Tenure System

- Civil Code 1853 (1910 Nepalese Bikram Sambat)
- Nepal Tenancy Rights and Security Act of 1951
- Madesh Mal-Sawal
- Pahad Mal-Sawal
- Land and preparation of records of cultivators, Land Act 1956
- Land Related Act 1957
- Land Related Rules 1960
- Land Revenue (Malpot) Special Provision Act 1958
- Agriculture Related (new provision) Act 1959
- Agricultural Re-organization Act 1963

4.2 Existing Land Related Legislative Provisions (Acts & Rules)

- Immovable Property Acquisition Act 1956
- Civil Code 1963
- Contract Act 1970 and Contract Service Rules 1970
- Trust Corporation Act 1976
- Land and Building Tax Act 1963 and land and Building Rules 1963
- Land Measurement Act 1963 and Land Measurement Rules 2001
- Land Acquisition Act 1978 and
- Jhora Area Land Related Act 1972 and Rules 1972
- Forest Act 1993 and Forest Rules 1995
- Birta Abolition Act 1959 and Birta Abolition Rules 1960 BS
- Land Related Act 1965 and Rules 1965
- Ukhada Land related Act 1965 and rules 1965
- Kharka (grazing land) Land Nationalize Act 1975 and Rules 1976
- Land and Building Tax Act 1963
- Land and Building Rent Tax Act 1967
- Soil Conservation and Protection Act 1982
- Ownership Related United Housing Company Act 1998 and Rules 2004 BS
- Local Governance Act 2000 and Rules 2000

A coordinated Land Act and regulations has been felt.

5. OWNERSHIP

The ownership of land has been established by the following means:

(a) Primary Registration: Land recorded in the official register by land related laws from the customary tenure such as *Raikar*, *Birta*, *Guthi* and other categories.

(b) Judicial decisions Sometime conflicts or differences arises the ownership of different kinds of land. The cases may be filed to the court and the court order establishes the status of ownership of the particular land by its judicial decisions.

(c) Decisions by the Commissions or Committees: Several times the Government formed the Committees based on Land Revenue Act and sometimes cabinet decisions for Commissions to provide land right to the landless, squatters, bonded labor, displaced from natural disaster, political victims and like others. The government sometime decides to transfer its land right to others.

After the enactment of the Land Related Act 1964, tenure or right on land existed on both the owner and tenant. The fourth amendment of this Act in 1996 has abolished dual tenure on land as:

1. No tenure shall exist after 1996. Absolute owner did exist.
2. The registered tenants will have ownership share on that land and will be subdivided fifty-fifty according to Land Related Act 1964 (fourth amendment). The tenant will be the owner to the *Githi* land converted to *Guti Raitan Nambari land (as Raikar)*.

6. CONTROL

Reform of the land tenure system in Nepal was carried forward a step by Land Act and Rules enacted in 1964. The Act has made provision to:

- (i) impose a ceiling on land ownership, acquire land in excess of ceiling and allot such land to others
- (ii) abolish *Jimindary* System
- (iii) give security to tenants-farmer and to regulate the rent payable by them, and collect savings compulsorily and make arrangements for loans and credit operations.

The land act 1964 has fixed an overall national ceiling per family as follows: *A family has been defined as husband and wife, their sons below 16 and unmarried daughters under 35.*

	Agricultural land + Homestead (!964)	Agricultural land + Homestead (2002)
(i) Terai and Inner Terai	16.4 ha + 2.0 ha (25 Bighas + 3 Bighas)	6.77 ha + 0.68 ha (10 Bighas + 1Bigha)
(ii) Kathmandu Valley	2.7 ha + 0.4 ha (50 Ropani + 8 ropani)	1.27 ha + 0.25 ha (25 Ropani + 5 Ropani)
(iii) Hill region other than (ii)	4.1 ha + 0.8 ha (80 Ropani + 16 ropani)	3.56 ha + 0.25 ha (70 Ropani + 5 Ropani)

However, these provisions are not applicable in the case of Government land, land in possession of medical, educational, religious organizations and lands used for industrial and specific agricultural purposes and for co-operative farming.

- The tenant could transfer tenancy right, but the second amendment of the Act in 1969 has provisioned the restriction on transferring tenancy right. But it was not applicable for the mutual agreement between owner and the tenant, and the *Pakki* building (zinced or stone roofed house) before the enactment of Land Related Act 1964.
- The tenant could lose his right on land if he does not pay rent on prescribed time except affected from natural disaster.
- There is land ceiling to the tenants also, but land belonged to any owner, any area and any where could be acquired by the Government according to Land Acquisition Act (1978).
- The Government could acquire land for the public welfare only giving compensation according to Land Acquisition Act 1978.
- Land that has been sold may be claimed by the nearest relation (*Hakdar*) within the 35 days of transaction.

7. CONCLUDING REMARKS: NEPALESE CONTEXT OF CADASTRE

Primarily, land was recorded as private, Public, government and *Guthi* lands although the ownership might have established from various sources. Before 1964, when land records were not based on cadastral maps, lands were recorded by local heads like *Jimindars*, *Talukdars*, *Mukhyas* and *Patawaris*. The Deeds or the transactions were not compulsory to be registered. Written informal documents were sufficient for transactions and were valid until 1978 only. Land (measurement) Act 1963 has established ***Adjudication of land*** (ascertaining existing right on land) resulting absolute ownership to private lands.

- Land Registration is based on Deeds Registration System with some improvements in the system such as issuing ownership certificate based on parcel plan/map.
- Land Transfer could be private conveyance until 1978. Land may be transferred through buy/sell, inheritance, gift and others, and ownership may be established from judicial decision as well as by the government decisions.
- Cadastral surveying has been completed systematically and prepared cadastral plans/maps by ***graphical method based on general boundary principle***. The free parcel numbering system has been adopted for parcel identification on the map of scale 1:500, 1:1250 and 1:2500.
- Cadastral maps, plot register and land register are continually updated for mutation and changes on parcel boundaries and ownership. Not only the provision of subdivision of the land parcel exists but also amalgamation of the parcel has been allowed.
- Maintenance of land register, valuation register, restrictions/encumbrances, mortgage register, registration for collateral, cadastral plan/map and parcel register is the vital function of Land revenue and Survey Offices.

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