

# Evolution of CSR Jurisprudence in India: An Appraisal

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**Abstract-** Corporate Social Responsibility (CSR) is based on the principle of giving back to the society. It has been referred as a continuous commitment made by the business entities to work ethically and make contribution in the socio-economic development of the society. Through CSR, business world considers the legal, ethical and commercial expectations of their stakeholders. It is a process whereby an organisation shows and develops its corporate culture and consciousness towards communities. CSR has also been considered as a commitment made by the business entities to adopt such policies and business lines which are in conformity with the values of the society

In India, the concept of CSR has its presence since time immemorial. In ancient times, it was carried out in the form of charity and philanthropy. With passage of time new developments took place in India and it was crystallised into guidelines and finally legislated under Section 135 of the Companies Act, 2013. Simultaneously, Indian judiciary has also played a dynamic role in highlighting the importance of CSR in business practices of the companies. Judiciary through its judicial decisions adjudicated companies as socio-economic institutions having responsibilities towards their stakeholders and society at large. In this article, author will discuss the evolution of CSR jurisprudence in India.

**Keywords:** CSR, India, Development, Judiciary, Stakeholders

## INTRODUCTION

Social responsibility is an essential element of business and society. Corporate Social Responsibility is guided by the principle of giving back to the society. CSR has been referred as the continuous commitment by the business organisations to work ethically and make contribution in the economic development of the State while enhancing the standard of living of their work force, community and the society at large.<sup>i</sup> In contemporary society, CSR refers to a process whereby an organisation shows and develops its corporate culture and consciousness towards communities. It has become a way by which companies ensure that they are fulfilling their obligations towards their stakeholders and thus stands eligible to have a licence for its business operations. CSR is considered as a resultant to the societal pressure exerted by social issues like human rights and environment protection on the companies. It is more than a charitable and philanthropic activity, it is a responsibility on the shoulders of companies to develop the society on the lines of socio-economic justice and carrying out the welfare of the adjoining communities.<sup>ii</sup> CSR is a responsibility which corporate world owes towards its stakeholders and society for its current and past actions as well as future impacts. Through CSR, business world considers the legal, ethical and commercial expectations of their stakeholders. CSR always aims to incorporate business ethical values, respect relating the rights of the people and take concrete steps towards environment protection.

## 2. Development of CSR in India

Corporate social responsibility in India can be traced from ancient period. Mostly, all religious literature supports the concept of CSR.<sup>iii</sup> In Hinduism, there is a concept of *Dana* which means charity which has been considered as a source of *punya*.<sup>iv</sup> The concept of *Dana* has also been referred in various Hindu literatures like Upanishads, Vedas, Manusmriti and Bhagwad Gita.<sup>v</sup>

The tenets of Hindu religion provide that one should practise *Dana* to attain *punya*, *prayaschita* and *karuna*. *Dana* is a discretionary act of Hindus.<sup>vi</sup> Kautilya's *Arthashastra*, the ancient Indian literature had deep rooted understanding of CSR. *Arthashastra* provides that a King does not have his/her interest, happiness and joys, his happiness and joys lies in the satisfaction and welfare of the people. He stressed upon the welfare of the stakeholders of a businesses.<sup>vii</sup> Buddhism also talks about '*Dana*' which means charity.<sup>viii</sup> Here, charity is not confined to currency or monetary donation it includes food, medicine, knowledge and providing shelter to the needy ones.<sup>ix</sup> In Buddhism, *Dana* is a discretionary act and guided by the free will of the donor.<sup>x</sup> A person can overcome his/her poverty by making donations and carrying out charitable work in his/her life.<sup>xi</sup>

Islam provides a code of conduct for business entities, fair trading and free competition.<sup>xii</sup> Islam adhere to five fundamental tenets, *Zakat* is one among those. The literal meaning of the term '*Zakat*' is purity. *Zakat* as per Islam means an obligatory payment made by Muslims for charitable purposes. It is a voluntary act. Hadith and Quran advocate for the payment of *Zakat* by those who follow Islam. Quran has identified the list of eight categories of beneficiaries who will be benefited by '*Zakat*', they are the poor, the needy, the one who collects the *Zakat*, the person whose hearts are to be reconciled, one who is purchasing the freedom for slaves, the one who is a debtor, the one who temporarily cannot access his money and for the cause of God.<sup>xiii</sup>

Like Hinduism, Buddhism and Islam, Sikhism has the concept of '*Daashant*' which means contributing the one-tenth of his/her income for social cause. This contribution is used by Sikhs for the charitable and welfare purposes.<sup>xiv</sup>

Apart from these religious texts, business class and corporate houses also played an active role in carrying out their welfare activities in the field of education, health, invention and environment protection. The development of corporate social responsibility in India can be discussed in four phases. They are as follows:

(a) In first phase, charity and philanthropy was the main drivers of CSR in India. In pre-industrialisation period that lasted till 1850, most of the charitable works were carried out by rich merchants. They make donations for charitable works and construct religious places like temple for Hindus, masjids for Muslims and church for Christians. They provide food, money and shelter to poor and needy ones during famines, droughts, epidemics.<sup>xv</sup> With the advent of Colonial rule, the concept of western industrialisation came in India which changed the concept of CSR from 1850 onwards. That times, the Tata, Birla, Godrej, Mahindra, Shriram, Bajaj, Modi and Naidu were the main leaders of economic and social welfare of the nation. Their CSR activities were mainly based on philanthropy and influenced by religious benefits, caste system and political motives. In this phase, entrepreneurs had no concrete or long term CSR policy. They made irregular donations for carrying out their charitable works. Their CSR activities led to the welfare and development of the community

(b) The second phase of CSR in India existed from (1914-1960), was mainly dominated by the struggle of independence and influenced by the ideas of Gandhian's Trusteeship theory.<sup>xvi</sup> The Gandhian trusteeship theory was a gift to the world as it is against the notion of capitalism, that is, against the concept of private property and competition.<sup>xvii</sup> According to this theory, a rich man should use his surplus wealth for the welfare of the people as trustees.<sup>xviii</sup> Business class under its charitable work set up trusts for educational, training and scientific institutions. During this phase, most of the activities of the corporate sector were in line with the Gandhian reform programmes like abolition of untouchability, women empowerment and development of rural sector.<sup>xix</sup>

(c) The third phase of CSR in India was from (1960-1980). It was dominated by the concept of 'mixed economy'. During this phase, Public sector was the main source of progress and development in the nation. Business sector was under the command and control of the Government of India. High taxing policy, strict rules of industrial licensing and control over the private sector led to corporate malpractices and scams. To avoid such corporate malpractices and scams, government came up with laws pertaining to labour welfare, corporate governance and environment protection. Government was guided by the principle of socialism that is, decentralisation of wealth and filling of the gap between the haves and have nots. To achieve the objective of Socialism as lay down in the Preamble of the Constitution of India, government set up Public Sector Undertakings. Public sector undertakings failed to meet the expectations of the government and their impact was not up to the mark. This shifted the burden of expectations from the public to private sector. Now private sector was also considered as an important tool for the socio-economic development of the nation and emphasis was laid down upon transparency, accountability and participation of stakeholders in corporate practices. Despite these efforts CSR did not get much recognition.<sup>xx</sup>

(d) The fourth phase of CSR in India (1980 onwards) abandoned the traditional way of carrying out CSR activities based on charity and philanthropy. Now, corporate sector started thinking of sustainable development.<sup>xxi</sup> Soon after independence Indian state had a socialistic pattern of governance where industries and enterprises were under the control of the government. State continued this pattern strongly till 1991. In 1991, India faced a financial crisis. To overcome this crisis, the Government of India introduced a major economic reform by adopting the policy of liberalisation, privatisation and globalisation. It helped India to accelerate its rate of development and economic growth and also raised its financial reserves. This reform enlarged the area of the activity of the private sector and also enhanced the foreign investment by relaxing the licensing restrictions for business sector. During this era, CSR moved away from the traditional concept of philanthropy and charity and took a new concept of directly engaging in the development and welfare of the society. With passage of time, the traditional approach of CSR has been crystallised into more strategic and formalised programmes.<sup>xxii</sup> It includes activities and measures taken for the protection of the environment. In this sphere, Government of India formulated number of voluntary CSR guidelines with an intention to guide the Indian corporate sector in incorporating CSR approach in their business operations. With the passage of time and changing role of the corporate entities, governance of the country came up with number of CSR guidelines. In 2009, for the first time the Ministry of Corporate Affairs introduced CSR guidelines in Indian corporate sector. These guidelines were known as 'CORPORATE SOCIAL RESPONSIBILITY GUIDELINES, 2009'. These CSR guidelines were based on the principle that every corporation should formulate a CSR policy to carry out their CSR activities efficiently. CSR policy should be an integral part of the business operations, approved by the Board of the company and consistent to business goals of the entity.<sup>xxiii</sup>

In 2011, Ministry of Corporate Affairs, GOI issued another set of CSR guidelines known as 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business'. These guidelines were a refined version of the CSR Guidelines of 2009 and urged the businesses to follow the triple bottom line to harmonize their financial performance with the welfare of the society and protection of the environment. Both 2009 and 2011 CSR guidelines urged the corporate sector to make CSR activities as an integral part of their business activities. These guidelines are voluntary in nature and do not carry any mandatory adoption.

In 2015, the Ministry of Corporate Affairs started reviewing the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business of 2011. The main rationale behind the review of 2011 guidelines was to make them in accordance with the Sustainable Development Goals (SDGs) and the United Nations Guiding Principles for Business and Human Rights. After revision in March 2019, the Ministry of Corporate affairs came up with new guidelines known as the 'National Guidelines on Responsible Business Conduct, 2019'. These guidelines are voluntary in nature and applicable to all the business entities irrespective of their ownership, size, sector, structure or location. The adoption and implementation of these guidelines are in the hands of the owners, partners or any other structural organisation having the power to take the decisions in the business.<sup>xxiv</sup>

In June 2011, the United Nations Human Rights Council came up with United Nations Guiding Principles on Business and Human Rights. In June 2014, the UNHRC sent a call to its member States to formulate an action plan for the effective implementation of the United Nations Guiding Principles on Business and Human Rights pursuant to which Ministry of Corporate

affairs, GOI asked the relevant ministries and statutory bodies to formulate India's National Action Plan in conformity with the United Nations Guiding Principles on Business and Human rights.

On the basis of deliberations, consultations and discussions, GOI drafted a zero draft which started the process of preparation of the National action Plan. In furtherance of this a working group has been constituted which consists of representatives from various relevant ministries and government departments, NHRC and SEBI which will undertake a comprehensive study relating to the implementation of United Nations Guiding Principles on Business and Human Rights in India with reference to relevant provisions of the Indian laws and will frame a time bound policy to achieve the set objectives.<sup>xxv</sup> Ministry of Corporate Affairs is also undertaking the deliberations and consultations with stakeholders to finalise the National Action Plan.<sup>xxvi</sup> In addition, Ministry of Corporate Affairs came up with a new Company Act in 2013 with a mandatory provision of CSR for Indian Companies. Section 135 of the Companies Act, 2013 provides that every company having net worth of Rs. 500 Crore or more or turnover of Rs. 1,000 Crore or more or net profit of Rs. Five Crore or more during the immediate financial year shall constitute CSR Committee to formulate CSR policy for the company constituting such activities which are consistent to the activities enshrined under items provided under Schedule VII of the Companies Act of 2013.<sup>xxvii</sup>

Thus, Section 135 of the Companies Act of 2013 made CSR as a mandatory activity for the companies who qualify the criteria laid down by the said section.

### 1. Shift from Shareholder Centric Approach to Stakeholder Approach through Judicial Interpretation:

Prior to Companies Act, 1956, the decisions of the Indian courts were basically based on the principle that directors are the agents of shareholders or creditors of the company. In *New Fleming Spinning and Weaving Company Ltd. v. Kessowji Naik and Others*<sup>xxviii</sup>, J. Scott of the Bombay High Court while discussing the liability of directors for a negligent act, stated that directors are invested with a duty to safeguard the interests of the shareholders and creditors from any negligent act or misconduct. So, duties of the directors should not be made so inconvenient or overburdened that a prudent or a reasonable man refuses to accept such position.

In another case, *Dikshit and Company Ltd. v. Mathura Prasad*<sup>xxix</sup>, the Allahabad High Court while discussing the matter relating to remuneration of the directors, the court emphasised on agent and principle theory and stated that directors are the agents of the shareholders of the company.<sup>xxx</sup> This theory of agent and principle continued even after the passing of the Companies Act of 1956. In *Albet Judah v. Rampada Gupta and Aur*<sup>xxxi</sup>, J. P. Mallick referred number of English cases and stated that directors carries out their functions and manages the company's affairs only for securing benefits to the shareholders of the company. This conception was followed by the courts while interpreting the provisions of the Companies Act, 1956. With the passage of time some cases came up as an exception to this conception. For instance, in *Harish Bansal et al. v Moti Films (P) Ltd.*<sup>xxxii</sup>, Delhi High Court while hearing creditors and the contributors of the company in its winding up petition, quoted the following passage from the committee report relating to the Monopolies and Restrictive Trade Practices Act<sup>xxxiii</sup> :

*"In the development of the corporate ethics, we have reached a stage where the question of social responsibility of business to the community can no longer be scoffed at or taken lightly,... the companies can no longer be accepted as a private domain, the working of which would be of no concern to the society. On the contrary, the very impact of the corporate sector in terms of finance and employment shows that the well being of the corporate sector is of considerable significance to the society.....It has vital effect on the employment and economy of the community and health of the society. In the environment of modern economic development corporate sector no longer functions in isolation."*

In the above case court highlighted the importance of social responsibility of the corporate sector and it bears great importance even though the case was relating to the winding up petition of the company and is the obiter dicta.

In *Amarjit Singh v. Punjab National Bank and others*<sup>xxxiv</sup>, the Delhi High Court explained at length that private sectors are not meant to develop the economy of the nation. J. Anand very clearly differentiated the role and motivation assigned to private and public sector of the Indian economy. While explaining the fact he said that the private sector is only concerned with profit making and least interested in the development of the nation and it is the public sector which must perform activities to boost and accelerate the economy of the nation.

In *T.S. Arumugham v. Lakshmi Vilas Bank Ltd.*<sup>xxxv</sup>, which was related to employee's representation in the board, it was contended that earlier company was considered as a property of the shareholders, but now it has been taken as a social organism with a deep connection with the community in which it operates its business. The Court agreed that the concept of a company has changed with time and stated that it is the responsibility on the legislature to legislate a relevant law. Court also highlighted the provisions of the Companies Act, 1956 with respect to shareholders and held that a resolution passed by shareholders is final and board had nothing to do with the matter.

In *Shoe Speciality Ltd. et al. v Tracstar Investment Ltd. et al.*,<sup>xxxvi</sup> the High Court of Madras cited a paragraph from Palmer's company Law and stated that directors owe their duties primarily to the Company and their duties can be enforceable by the company and not by an individual shareholder. A company is always referenced in context to its shareholders as a whole and is not a distinct entity from its members.

In *Rotta India Ltd. et al v. Venire Industries Ltd. et al*<sup>xxxvii</sup>, a question was raised as to whether directors can contract out of their fiduciary duties, the court held that directors can take all such acts which enhances the value of shareholders even in the case of takeover and leads to company's progress.

In *re:Indian Petrochemicals Corporation Limited Workers*<sup>xxxviii</sup>, employee and shareholders challenged the merger of a private company with a public company on a ground of public interest. In this case, Reliance Industries, a private company through the process of merger wanted to have an access to assets of a public company situated in a strategic sector. This sector is only open for public companies and not for private companies because of its importance in national economy. Through this merger, a private

company wanted to have an access to strategic sector without any social responsibility. The court held that during merger companies not only take care of interests of their shareholders and employees but also consider the societal interest.

In *Union of India v. Satyam Computer Services Ltd. et al.*,<sup>xxxix</sup> a petition was filed by the Central Government of India before the Company Law Board, where the promoter directors of Satyam Computer Companies confessed that they had falsified the account books of the companies. The Central Government contended that the existing board of the company should be dismissed and with due permission of the Company Law Board fresh appointments should be made in their place. The Company Law Board through its judgment recognised that such falsification of company's accounts have had bad consequences not only on shareholders but also on stakeholders. This fraud had shaken the confidence of the stakeholders and society at large in the corporate world which is evident from the fall of share value of the company's share from 188 to 38.40 rupees. This software company was the fourth largest Indian IT company having clients over 60 countries of the world. The company had near about fifty three thousand employees and three hundred thousand shareholders. After going through these facts, Company Law Board stated that the interest of these employees, shareholders and the company needed to be protected. The fraud was so big that it generated a negative impact on corporate world. To have a change in the scenario and impart confidence in the market, the Company Law Board further stated that it is the need of the hour to create confidence in the mind of stakeholders of the company. Finally, the Company Law Board granted ex-parte interim relief to protect the interests of the employees, members, customers, company and society.

In *K.K. Baskaran v. State rep. by its Secretary, Tamil Nadu and Others*,<sup>xl</sup> the validity of the law relating protection of depositors from the financial institutions were raised. While deciding the case, the Supreme Court held that being a Welfare State, it cannot sit silent without finding a workable solution for the problem. Financial institutions are not more than cheaters, their main intention is to do business earn profits and do false attractive promises with their investors without any social responsibility. The Court further added that State should react strongly against such fraudulent financial activities and impose responsibility on financial institutions.

## 2. Judicial Interpretation of the Concept of CSR:

With shifting of shareholder centric approach to stakeholder approach, Judiciary also started explicitly recognising the concept of CSR. In *National Textile Workers' Union v. P.R. Ramakrishnam*<sup>xli</sup>, the Supreme Court of India stated that traditionally a company was considered as a convenient mechanical device to carry out business and a legal entity to use and hold the powers of the company's management. The State was a police state having function of maintenance of law and order only. With the passage of time, new social values evolved in the society and a new active role was assigned to the State. State started taking interest in the social and economic matters of the society, with an aim to do societal welfare. Now State wanted to have a socialistic pattern of the society where interest of every individual is secured and have an equal distribution of resources among the people with no concentration of wealth and power in few hands. This concept of welfare State discarded the traditional definition of a company being only a legal entity formed by group of persons to do business and earn profits. Now a company is taken as a socio-economic institution having an economic power and power to change the lives of the people. Through these judgments Supreme Court tried to explain the dynamic role a corporation can play in bringing the social transformation in the country.

In *M.C Mehta v. Union of India*<sup>xlii</sup>, (*Oleum Leakage Case*), the Supreme Court of India laid down an important principle of 'Absolute Liability'. The accident took place in Shriram Foods and Fertilizers Industries which belonged to Delhi Cloth Mills Limited. Due to leakage of oleum gas, a practising advocate of Tis Hazari Court died and many others got affected. A writ petition was filed by the way of Public Interest Litigation. The Court stated that the law of land should be changed as per the changing conditions and circumstances of the society. It is common that new situations will arise in the society and to tackle such situations new rules and laws should be formulated. New legislations should be formed to deal with problems that will arise from the business activities of the companies. Bhagwati J. stated that a daring step has to be taken to evolve a new rule of liability as per the changing necessities of the society. He further stated that the rule of strict liability as propounded in *Rylands v. Fletcher*<sup>xliii</sup> is not sufficient to deal with today's industrial accidents and disasters. There is need to develop a strict rule of liability to regulate the working of the enterprises dealing with hazardous or inherently dangerous substance.<sup>xliv</sup>

In this case the honourable court propounded the rule of 'Absolute Liability' which states the following

*...if an industry or business entity is engaged with a hazardous or inherently dangerous work and if any harm is caused due to accident occurred during carrying out such hazardous or inherently dangerous work. Than enterprises or an industry carrying out such activity shall be strictly and absolutely liable to compensate all which will be affected by the accident. The enterprises cannot defend its negligent act by stating the defences like that of act of God, inevitable circumstances or has taken all the safety measures.*<sup>xlv</sup>

In *Commissioner of income Tax v. Modi Industries Ltd.*,<sup>xlvi</sup> case relating to the tax treatment of the company buildings providing flats to the employees having low income, the Court after examining the importance of employee's interest stated that consideration of employee's interest by the companies should be treated an important constituent of the corporate social responsibility.

In *Tata Power Company ltd. (Transmission) v. Maharashtra Electricity Regulatory State Commission*,<sup>xlvii</sup> the issue related to the tax treatment of Company expenses. The Court held that it is the responsibility of the company to do expenditure for carrying out its corporate social responsibility activities and the burden of such expenditure could not be passed on the shoulders of the consumers.

In *Mohammad Ahmed (Minor) v. Union of India and Others*,<sup>xlviii</sup> case, the issue was relating to the health facilities. Delhi High Court held that government should attract more and more donations either in cash or kind for upgrading the health sector of the country. Drugs, medicines and health treatment are so costly that a common man cannot afford it. Court further stated that it cannot shift the entire burden of strengthening and providing health care facilities on private sector, government should allocate a higher portion of its budgetary expenditure in health sector for the enforcement of Article 14 and 21 of the Constitution of India in

reality. The Court suggested that the Government of India should give extra credit to the companies carrying out CSR activities in providing health care facilities to the people. In order to grant relief court concluded that CSR is at very nascent stage and presently there is no such mechanism available in the country which can enhance the donations. So State is solely responsible to provide better and necessary health care facilities to all.

In *Aam Janta v. State of M.P and others*,<sup>xlix</sup> a suit was filed by the residents of five villages through their village leaders, where they requested the Court to ask the Prim Cement Limited, a public limited company having a cement plant to stop polluting the village environment and improve sanitation of the area. The Court after going through the reports submitted by the State Pollution Control Board, ordered the cement company to build a healthy relationship with its all stakeholders, especially with the local villagers where it has its business units. The Court further stated that company should carry out CSR initiatives for welfare and common good of the villagers. Company cannot escape from its social responsibility of maintaining the quality and cleanliness of the environment and protecting the villagers from any inconvenience or disturbance caused by its business activities, which in turn cause a threat to their right to life.<sup>1</sup>

### 3. Conclusion

The concept of CSR is not new to Indian society. It has its presence in religious scriptures in the form of charity or philanthropy. Before independence, big corporate power houses like Tata and Birla did charity and donations for building religious places, educational institutions, public places and helping poor and needy at times of epidemics, droughts and famines. After independence, in the initial years CSR concept was guided by the Gandhian's trusteeship theory, which states that these companies are only the trustees to the resources of the state and they should use it for the benefits of the beneficiaries that is, for the welfare of the public. Business entities were carrying out their charitable activities in conformity with Gandhian reforms like abolition of untouchability, empowerment of women and development of rural sector. In the year 1991, India adopted the policy of liberalisation, privatisation and globalisation, where Government of India expanded the private sector to boost the country's economy and development. Privatisation policy initiated a thinking process in corporate sector relating to their responsibility towards stakeholders and society. Conferences and workshops were carried out in India where academicians, politicians, businessmen emphasised on inclusion of transparency, accountability and stakeholder's participation in companies business practices.

Finally, in 2009 the Ministry of Corporate Affairs, GOI came up with CSR guidelines these were known as 'Corporate Social Responsibility Voluntary Guidelines 2009.' These guidelines were voluntary in nature and were enacted to make the business entities responsible towards the society for their business practices. In 2011, Subsequently, these guidelines were revised and a new version was presented by the Ministry of Corporate affairs, GOI known as 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011.' Again, in the year 2019, a revised version of 2011 CSR guidelines were framed which was titled as 'National Guidelines on Responsible Business Conduct, 2019'.

As far as legal architecture is concerned, in 2013, the Ministry of Corporate Affairs enacted the Companies Act of 2013, with a provision called 'Corporate Social Responsibility' under Section 135. To complement and supplement Section 135 of the Companies Act, 2013, GOI came up with Companies (Corporate Social Responsibility Policy) Rules, 2014. To have an effective implementation of CSR provision and making CSR as a tool for development of underprivileged sections of the society, GOI amended Section 135 of the Companies Act, 2013 several times. The recent amendment was made in 2020 and 2021 during COVID-19 pandemic.

In addition to that, to impart sense of responsibility in the business activities of the companies, Indian Judiciary has played a dynamic role. From time to time, Indian Courts through their interpretative power has moulded the concept of CSR with a new dimensions. It has realised the corporate world about their responsibilities towards their stakeholders, communities and environment. Judiciary through their decisions shifted the shareholder centric approach of the companies to stakeholder centric. Judicial decisions of the Court has widen the ambit of CSR in India and asked the companies being an institution of the State to act responsibly for the development and upliftment of the disadvantaged sections of the society through their CSR initiatives.

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