

Attorney's Role in the Crime Prevention

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ABSTRACT

Crime is a human-social phenomenon with which communities have always had to deal. For a long time penalization has been the only solution employed against criminal activity, however nowadays with the development of Criminology and Prevention Knowledge, penal repressive practices are assessed to be of low actual impact and merely some sort of a fight with the effect.

Simply put, Crime Prevention constitutes an assortment of proceedings that are taken up to prevent the occurrence of crimes in the future, in order to lower crime rate. As such, Prevention consists of a wide range of penal and non-penal acts, where non-penal Prevention acts are overseen by Situational and Social Prevention. Situational Prevention seeks to make difficult the committing of a crime by changing situations and opportunities for crimes to happen in, or take away the very opportunity from the criminal instead. But the important approach recently opted for by ambitious Criminologists, is Social Prevention. In Social Prevention, many causes and factors behind crimes, including economic, social, cultural factors and so on, are analyzed, the objective of which is to lower criminal potential, or, in other words, prevent criminality.

This article seeks to propose "Family Attorney" as a Social Prevention program. In fact, as Family Doctor helps prevent illnesses and improves society's general health, Family Attorney can perform estimably in a Social Prevention of crime capacity and help improve general security; especially since most persons know little of the Law and their own social rights, and how to get proper legal advice.

On the other hand, a lawyer is noteworthy in an aspect of Restorative Justice in the relationship triangle between the victim, the offender, and all the systems that have something to do with crime; the lawyer can be efficacious in distributing non-penal methods, mediation for instance, to settle claims and disputes. Therefore, the Attorney's functioning directing penal disputes to Restorative Justice indicates another aspect of the preventive purpose of the attorney profession.

KEYWORDS: Crime Prevention, Social Prevention, Family Attorney, Restorative Justice, Mediation.

INTRODUCTION

In the process of evolution of criminal law, we can see the presence and growth of new thoughts that fight with violation of social norms. Simultaneously with the advent of traditional system ineffectiveness of criminal justice (based on retribution) there is more attention to deal with crime through preventative methods. There are lots of limitations and low benefits in Retribution approach, whereas the strategies of crime prevention are more effective. Priority of prevention over treatment is important because prevention play effective role in Keeping healthy individuals and society and it is easier and less costly than treatment. Despite the Penalty can warn Offenders or others, but it never can compensate harmful consequences of crime and restore offender and societies to the conditions before the crime. It seems that the attorney entity has had the role of crime treatment so far; also has a preventive role.

The attorney can undertake new roles in social prevention and development of restorative justice by extension of functions. We can understand its importance when we know that attorney can act as a barrier against criminal mind and motives. In addition, the attorney can lead cases toward restorative justice in the trials and thus provide prevention of crime repetition.

It is because of appearance of crime origins and causes during the restorative justice processes and thus it is possible to treat the offender and this is the main point of crime prevention. This article seeks to clarify social prevention and restorative justice, also analysis the attorney's position and role in these two topics.

A. Attorney's role in social prevention

1. Concepts

1.1. Prevention concept and its kinds

Prevention means, "Hamper, Precautions to prevent unwanted and bad incidents" (Moein, 1992, p933). In addition, the International center of for the prevention of crime defines it as "any scientific action that reduces crime, violence and insecurity through determining and solving any causes of these problems. There are some definitions for crime prevention. Detailed definitions indicated that crime prevention includes wide range of

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penal and non-penal in the purpose of the canceling the effect of crime causes (Shakeri, 2008, p9). Penal prevention includes all of strategies against crime in two kinds of Special prevention (preventing of crime repetition by offender) and General prevention (preventing by threatening and intimidation anyone who is a potential offender) (Mirkhalili, 2009, p34). Non criminal prevention is rooted in Bekaria notion who said: "preventing before committing crime is better than punishing". He allocated last section of his book to crime prevention and the funders of Realism followed his way (Mahdavi, 2011, pp19-20). The narrow concept of crime prevention is any kind of criminal policy that reduces the possibility of crime occurrence or makes crime difficult without using any threat or enforcement of punishment (Gassin, 1991, p133). In this concept, prevention includes only Non-penal measures.

Features of these policies:

- Indicate on causes or processes of crime occurrence
- They are before crime occurrence.
- They do not include any kind of criminal because Oppressive actions are after committing of crime. (Gassin, 1991, p126)

Most of thinkers and International organizations follow this narrow concept of crime prevention. Narrow concept of prevention has two parts: Prevent a situation and Social prevention. "Prevent a situation" seeks to change criminal situations and opportunities to make it difficult to commit or prevent the criminal motivation (Mirkhalili, 2009, p35). The aim of prevention a situation is changing the conditions before delinquency or acting in delinquency situation. These actions have two main approaches: reducing conditions that cause crime; and raising the cost of crime (Najafiabrandabadi, 2004, p751). However, the social prevention of crime analyzes the causes of crime including economic, social, cultural, and genetic and so on. The goal of social prevention is to avoid criminal thinking and decision (Mirkhalili, 2009, p35).

1.2. Social prevention

Throughout the history of life, societies have had different reaction dealing with violation of social norms. Binding behaviors -that are strongly supported by community- usually are responded by penalty. Despite the severe penalties, delinquency rates are relatively high. Criminal system has been failed. It couldn't reduce crime. Therefore, prevention of crime must be followed by other institutions. On the other hand, the penalty is very costly and criminal system consumes a large amount of budget; but the important matter is that the costs of this system do not fit with inefficiency. Sever penalty has been failed to reduce the number of criminals and punish them and control their behavior (Najafiabrandabadi, 2004, p1235). Therefore, the government intended to non-criminal prevention strategies. Non-criminal prevention strategies are consistent with humanitarian views those are considered in recent decades. Social prevention ideas are rooted in the last quarter of nineteenth century thinkers who were the funders of Realism. Enrico Ferri argued that general prevention cannot be achieved by threatening of punishment and social programs as an alternative for punishments should be entered in criminal policy. Social prevention is divided into types: "developmental prevention of crime" and "Community prevention of crime". Community prevention of crime includes social, economic and cultural preventive measures appropriate with conditions that individual work or live in. In other words, various factors of crime environment are identified in order to cancel or reduce the effects of them. Indeed this kind of prevention, affects criminal behavior directly by improving life conditions in a certain environment. So Community prevention of crime is proposed when the aim is influencing environment-surrounding human. Developmental prevention of crime that is also called as early prevention indicates on recognition of dangers causes, reinforce supportive causes, early measures and prevents the individuals resistance on crime situations. Social prevention suppose that social deviations-in a total view- or crime as the violation of law -in a special view- are rooted in social environment of deviant and then the first step is analyzing the social causes of deviation. In this view, crime is a social phenomenon that is rooted in other social phenomena. Social prevention is based on identifying of causes and seeks to delete or cancel the effects of the causes of crime existence. Therefore, social prevention aims to prevent crimes through some kind of social, cultural or economical plans and social dysfunction treatment and by upgrading social and ethical values. It is important to know Social prevention needs more expertise and proficiency in its analyses. It's because of complexity and extent of related topics. Despite large investments, Complex situation may prevent achieving desired results.

2. The Role of Attorney in Social Prevention

Social awareness has an important role in reducing social harms. The methods of preventing crimes and social inelegances are numerous. On this way, informing and increasing awareness of the people is of great importance. Most of the victims and offenders are caused by unawareness on the part of the public on the ways of performing legal rituals and relations. One of the institutions that have proved to be effective in reducing this unawareness is attorney ship. The attorney induce positive effects in this way using various methods like family attorney, legal clinics and other procedures like teaching legal problems and in more specialized situation by acting its clients.

People, using attorneys, learn about preserving their rights and belongings and the legal method of using their rights and also learn how to appropriately manage their contracts and other legal procedures, be safe against dangers of illegal activities of others and protect themselves against them.

If using an attorney becomes a common habit in a society, people would be able to undertake their daily legal activities with more confidence. In fact, just the people go to doctors and psychologists to prevent diseases, in order for them to prevent crimes and treat for their legal and retributive problems they need to visit attorneys. This article would continue investigating the role of attorneys in social prevention on this track that an attorney is able to limit crime or inducing elements.

Social crime prevention programs cover a large number of activities and programs performed by various sections of the society and no specific organization is able to claim its mastery in its all dimensions. Therefore, a type of cooperation among the official organizations of the society on one hand and cooperation of public organizations on the other is inevitable. (Fahimi, 2010, p87) As a result, the role of attorney retains its meaning in relation with social crime prevention programs with other state or private organizations. On this way, institutionalizing the culture of using attorneys in legal matters, increasing legal information through public education in schools and placing legal subjects on student books and showing the practical and caring face of attorneys specially in the media- instead of a servile and uncanny face who is abusing the law for his selfish needs- providing the opportunity of using attorneys with small wages for less fortunate people among other facts can play an important role in social prevention role of attorneys.

We continue the role of attorney in crime prevention on two subjects of “Family attorney” and “Legal clinics”.

2.1. Family Attorney

Families, as the bases of each society, were the main formers of cultures and civilizations. Guiding and supporting the family would result in development and elevation of the society.

Development of civil institutions, including the attorneyship institution, and guiding the tendencies of the families towards that, would certainly play a remarkable part in legal support and guidance of each family member.

“Family attorney” would result in development of couple’s and children’s legal awareness in fields of mutual rights and obligations, matrimony laws and adjusting family relations.

Apart from this awareness, which is one of the most basic needs of every member of the family, in developing relations and legal bonds that is an inseparable part of social life, family attorney can play an effective role and help the stability and health of legal relations and power of the family. Family attorneys would obviously prevent false assumptions induced by unawareness of legal matters and mutual rights of people towards each other and with increasing awareness and forming the spirit of respecting the law we can reduce visitation of courts and therefore reduce the inflation of legal cases.

At presence of family attorney, family members would benefit his consults on legal matters and would carry on their errands with more information, awareness and confidence, and in times of discrepancies, due to quick accessibility of the attorney, quarrels caused by unawareness of law and violent activities would reduce to the minimum and the disagreement would be solved on the right and legal path.

Therefore, along with developing awareness of people towards legal matters, the culture of using attorneys and appropriate behaviors in courts would be formed and of course applying the media and public education in this matter could be helpful. Furthermore, forming a separate major in attorney ship training with “family attorney” approach for attorneys could be one of the fitting and basic endeavors in training expert attorneys.

Recently In Iran, a plan called “Family attorney”, which is based on 212th act of Fifth Development Plan is placed on the agenda of juridical system for resolution. One of the officials states that, according to this plan, a family would be able to be connected to an attorney through a public treaty and be benefitted in all its legal matters. It seems that this plan, if actualizes the aims mentioned, would be able to play an important role in preventing crimes and legal problems and also reducing the inflation of legal cases in courts, and therefore results in social development and elevation.

2.2. Legal Clinics

Preventing crimes and other legal problems needs increasing legal knowledge, managing legal matters in different fields and undertaking different legal advises.

Legal clinics is a name for institutions which are trying to provide free or cheap legal services for people with low amount of income or the needy (who have no other way of accessing their legal rights). Therefore, they could be considered as good devices for achieving public and social justice and an advantageous method for gaining knowledge about legal rights and obligations of citizens.

People would be able to go to attorneys and legal experts in clinics first handed to prevent legal problems and impart their legal consults which would be effective against criminality and being a victim, on the other hand, if a legal problem happens (which can sometimes induce crimes) they would be able to use the scientific and expert services of these clinics.

Activities that could be performed by these clinics include:

- Providing free legal consults and services
- Developing bills, petitions, complaints etc. for clients gratuitously
- Providing assistant attorney for less fortunate people who are in need of an attorney to defend their rights
- Resolving struggles of citizens peacefully
- Providing legal training workshops in various fields, like family law, citizen law, etc.

B. Clarifying the Role of Attorney in Expanding Restorative Justice

1. Definition of Restorative Justice

To explain what Restorative Justice is, stating a few notes is inevitable. Restorative Justice is a theory of retributive justice, and retributive justice is well-known term in temporary legal terminology in the world. Emergence of Restorative Justice was resulted by one of the most important evolutions in approach towards retributive justice and criminology and generally, towards the thought governing the concept of crime in the past decades. According to some scholars, Restorative Justice could be considered as a paradigm against punitive justice and it is one of the most significant paradigms of retributive justice.

John Stown believes that the punitive paradigm of retributive justice is a frame which covers morals, aims, approaches and theories that form the bases of punitive justice sections in western countries, this means focusing in punishment and its negative faces. The punisher justice focuses on the fact that the criminal is deserved to be punished, therefore s/he should be treated the way s/he treated the victims.

(Shiri, 2010, pp214-215)

In contrast with this model, Restorative Justice is presented which is resulted from criticisms focused on the traditional retributive justice and asking for a change in it to have a “better society”. (Zehr, 2004, p9) Among these criticisms where the incompetence and insufficiency of traditional retributive justice and at the center of it the punitive justice, that holds a special place in tendency towards Restorative Justice as a substituting alternative. As a result, supporters of Restorative Justice believe that punitive retributive justice has failed to face crimes and their prevention and the need for new ideas in retributive law is inevitable in the future. This new idea is known as “Restorative Justice” today.

The term “Restorative Justice” is created describes and clarifies a phenomenon that has a vast a multi-dimensional concept. Although there is a general agreement about the bases of Restorative Justice, but people working in this field had not yet came up with a united definition.

Howard Zehr describe Restorative Justice this way: “Restorative Justice is a process of entangling –as much as possible- those who have a part in a certain crime, so that publicly they become aware of the harms and damages, necessities and obligations of justifying and fixing the matters as much as possible”(Zehr, 2004, p62).

This definition is extracted from the definition of English criminologist Tony Marshall that is used vastly at international level. According to this definition: “Restorative Justice is a process in which all the parties taking part in a certain crime gather together to publicly decide on method of facing consequences and outcomes of crimes in the future” (Gholami, 2003, p189). This is a useful and helping definition in describing the process of Restorative Justice.

2. Plans or process of Restorative Justice

The process of Restorative Justice that is being discussed these days in most countries of the world is a process that is started when a crime has taken place is continued with discussions and talks and is ended with a decision on the method of facing the crime(Shafie. 2007, p95). Various plans describe Restorative Justice wholly or partly. However, there are no exact and pure models to show the ideal pattern of Restorative Justice. The most important methods that have immerged in the past few years were not imaginable even for the founders of Restorative Justice. This fact would certainly result in presentation of newer ideas through discussion and exchanging experiences. In fact, as Howard Zehr clarifies: “Restorative Justice is not a map, but the principle of Restorative Justice is a campus that shows the way”(Zehr, 2004, p27).

In other words, the processes of Restorative Justice, as the dominating dimension of informal justice is prevailing today in most countries of the world and sufficient reasons to believe in this matter are at hand which show that these kinds of plans reduce the amount of crimes. (Zehr, 2004, p26) The most important plans among them are:

- Family Group Conferencing
- Circles
- Mediation

It could be said that despite some disagreements among these elements, all of them are now combining together and in action, the differences among them is not that significant. In a way that “encountering” and “conferencing” are main elements in most of these processes and in sittings the process “circling” is often applied.

3. Clarification of the Role of Attorney in Restorative Justice Plans

In Restorative Justice Plans, the family conferencing model shows a sample of public criminal cooperation in retributive justice system. In these sittings, not only offender and the victim, but also other people like relatives, families and attorneys of both sides would attend. Actually, this model gathers a selection of people who are mostly offended by the crime. This group is formed at presence of representatives of civil society and authorities of retributive justice system, under control of a trained individual, and through this sitting, people speak of the crime and its effects of their personal life and the feelings induces by it, they present their opinions and suggestions about the ways of repairing this situation.

Circles are like those family sittings; but they expand the level of cooperation to a level further than the offender and the victim. In these circles, along with retributive justice personnel, family members and supporters of the criminal and the victim may be present. In addition, any member of local society who is interested in the subject can attend too. This way, the term "circle" in definition could be called to parties, which have a right, part, gain or interest in the crime.

It could be claimed that the most important process of Restorative Justice in current time is retributive mediation between the offender and the criminal. The place of this process in informal justice field would vary concerning the method of its reception in different systems and applying it in different levels of trial, which could be applied as a flexible process at different levels of judgment. Postponing persecution, at the time before trial, applying alternative punishments in the process of trial and slaking the punishment after the trial are among the successful outcomes of this alternative organization.

Final aim of compromising methods like mediation is to prevent traditional persecutions and to actualize the process of dejurisdiction. This process is the best opportunity to enjoy civil society's participation (civil authorities) and therefore is a remarkable sample of criminal participation policy. (Ashoori, 2003, p287)

In mediation parties involved (the offender and victim) aided by mediator would try to find a way of resolving the versatility. The best situation is the time when the offender and the victim reach the agreement that the mediation involves compensation of financial losses, resolving sentimental problems and offenses, and all the problems of the case. In the process of resolving the problem and supporting these processes the aid of consultants and attorneys are also used. (Ashoori, 2003, p276) In fact, the role of mediator in successful execution of a mediation process could not be sunk into oblivion. What seems important in the first place is that the mediator should be chosen among specialists like jurists or attorneys, social service providers, psychologists, sociologists or specialists in pedagogical sciences. (Ashoori, 2003, p288) Plans executed in Germany had shown that the success of processes in which a specialist has played the role of mediator is much higher. (Ashoori, 2003, p268) On the account of what has been discussed, an attorney can play the role of a mediator in one of the plans undertaken in process of Restorative Justice System. However, about the fact that what Restorative Justice and the role of attorneys as one of its plans can do to prevent crimes this could be said that, one of the aims of retributive mediation in relation to the society is crime prevention. Retributive mediation does not claim that it can solve crime problems of societies entirely and can prevent crime in the future. But in practice it has shown that it has been able to prevent repetition of the crime to some levels and if the crime is repeated, a much more lighter crime has been committed by a culprit who had been subject to mediation programs and this is the result of potentials and functionalities that is within this process. (Abbasi, 2003, p103)

When it's talked about retributive mediation, mentally, picture of a disagreement between the offender and the victim is visualized; but in some cases, the mediator meddles in situations before crimes and with seeing symptoms of probable disagreement between potential victims and offenders, would undertake mediation. (Abbasi, 2003, p149)

Of course, this mediation does not necessarily involve all probable situations, but by witnessing dangerous manners and criminalist potential, the mediation will be under taken. As an example, in situation where two individuals prepare for an impending quarrel with threatening on another, a preventing mediation could be helpful. These kinds of mediation are often presented in informal manner and have no legal regulation. Here the role of family attorney could be noted, that with mediation in these situations and noting the consequences of committing a crime, could be able to prevent it.

In criminalist activities, criminals (mostly teenage criminals) usually need to learn to control their behaviors, so that they do not jeopardize themselves and others. Therefore, it is necessary for them to understand their actions and its consequences. The mediator can support and induct this process by asking some questions. (Ashoori, 2003, P274) it is obvious that an attorney, who is aware of the consequences of a criminalist activity can play the role of a mediator and with noting the outcomes of criminalist activity control the actions of a potential criminal.

In the process of retributive mediating, the offender and victim talk about the process of committing crime and its impacts and this could provide an understanding about the hidden roots of the disagreement and the parties can shun future clashes.

Dr. Ashoori concerning this matter states, "Functionality of mediating methods, compared to other juridical processes, is much better because it causes changes in the behavior of criminals." In addition, from

retributive philosophy point of view, reminding this fact is essential that retributive laws traditionally punish the criminal for committing a crime and have no concern about the hidden bases of criminality. In contrary, the compromising methods outside the court are based on the fact that to apply a united, cohesive and dynamic method in face of crimes and with regard to hidden roots of the disagreement, deepen the understandings and knowledge of this criminalist phenomenon (Ashoori, 2003, pp259-260). This is because knowing the criminalist phenomenon and its causes would ease the process of rehabilitation and reformation of criminal and resultantly prevents repetition of crime by the criminal in the future. Here, too, the role of attorney in form of "family attorney" and as a person who have undertaken all the legal activities of a family and is aware of family problems can present the hidden angels of the disagreement which have caused the crime better than anybody else and lend a helpful hand in solving the problems and accordingly preventing the repetition of that disagreement.

Of course, this fact must be noted that, a very important matter in compromising sittings of mediation process is the unbiased role of mediator. The role of mediator is limited to managing the process compromising and easing the debates and discussions of parties involved and to assure that they come to real understanding and agreement. (Ashoori, 2003, p282) And the attorney should not step any further than this.

Another point worth mentioning is that, in the process of mediation, on one hand it is needed that some of legal terms are explained for the parties in a simple way and on the other hand, the concerns and worries of parties are translated into legal language. (Ashoori, 2003, p271) And here too, the role of family attorney as a mediator is important who can perform this service relying on his legal knowledge.

Actually, it could be said briefly that attorneys can play a part in moving towards Restorative Justice through retributive mediation and based on what discussed so far, this retributive mediation can prevent repetition of committing crimes. It should be noted that, article 31 of reconciliation of some of juridical laws states that: "in cases of litigation or penal lawsuits which are stopped by remission of the complainant, before the litigation attorneys are bond to attempt in compromising parties involved and clarify this duty in the petition or during defense, also after litigation and during the process of attendance provide their help in this matter." This article had forecasted an important process in compromising outside the juridical system by a member of civil society organization i.e. attorneys. (Shiri, 2012, p368) and it can provide a great potential for expanding plans of Restorative Justice in organizations outside juridical system. (Shiri, 1391, p368)

RESULTS

It is obvious that traditional retributive system is now fed up and although its presence is essential, it has limited and temporary advantages. This system, in its best form, reacts against crimes, but it cannot prevent them. Preventing crimes through social development, despite its short history, is a well-harbingered complement for current retribution system. Furthermore, preventing crimes through social guidance contains many potential advantages. Actually, this is a fact that complexity of human behavior and expansion and development of societies has caused the crimes and criminals to build a more complex form, in a way that, as statistics indicate, punitive actions can no longer reduce committing crimes. Therefore, it is essential to know the causes and providing elements of committing crimes and stand against them, so that no crime is formed to be in need of punishing to prevent its repetition.

Resultantly, with influencing the causes and effecting elements of forming a crime, like social elements, it is possible to prevent forming them. Such efforts are done before a crime is committed, therefore it has no punitive and harsh dimension.

One of the elements that cause crimes is lack of knowledge and cultural poverty. Family is known as the base of reformation and development of every society and people spend a very important part of their life in that, so it possesses a remarkable role in forming the personality and future of people. Family's cultural, mental and social development can be an effective step in developing people and elevating the society. One of the elements of cultural and mental development is expanding their juridical and legal knowledge of family members. If families are aware of their rights and obligations towards one another and also other members of society, we would witness a decrease in legal clashes and committing crimes.

Attorneys had a remedial role before, and were visited after the crimes were formed, and were merely defended their client. But with expanding functionalities, they would be able to have a preventing role in crimes. In other words, with guiding the attorney towards families, family members would visit him in legal matters and in disagreements and benefit; his consult and under take their legal activities with confidence.

Family attorney plays a role in living situation of families by expanding their legal knowledge, and he can directly prevent criminalist behavior, and on the other hand can effectively prevent victimizing family members.

Accordingly, attorneys and legal specialists can provide free legal services to the poor and needy by forming legal clinics. Due to the fact that committers of a big part of crimes are poor and less fortunate members of society, having knowledge on consequences of their actions may have an effective role in crime reduction; also, due to their financial poverty, these people are in need of legal support which legal clinics can cover these

needs by developing bills, petitions, complaints etc. for clients gratuitously and providing assistant attorneys for them.

It may be said that one of the most important aims of Restorative Justice is crime prevention. Restorative Justice and its processes with no claim of vanishing crimes in societies and certain prevention of its committing in the future, have actually shown that it have reduced the probability of criminalist behavior.

Restorative Justice and its practical plans holds the idea that the criminal commits crime with certaing elements and motives, and believes that better and more expanded devices are needed to face crimes and reducing its harmful consequences and compensating wrongdoings. On this path retributive mediation, as the most important practical plan of Restorative Justice , through forming responsibility in criminals, repairing his human personality, voluntarily involving accompanying people with guaranteeing rights of the offender and victim, successfully returning his in the society without labeling and other such actions, provides the ground for crime prevention better than other plans.

In this situation, attorneys at the role of mediators, through guiding the trial process towards mediation or even other programs of Restorative Justice like circling, play an important part in preventing repetition of crimes; because in the process of these programs, the main and sometimes hidden causes of committing crimes are identified and knowing these causes and trying to conquer them can become a way of preventing probable crimes in the future. On the other hand,withapplying these methods, the criminal understands the consequences of his actions and through guidance and consultation, the opportunity of reforming him would be provided, which itself prevents repetition of crimes.

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