9. Hadith Al-Qadha, An Age Of Jungle Justice VI

Injustice begins the moment a judge begins to show bias towards or against any of the parties before him in any judicial proceedings. He *must* be completely impartial throughout, and this *must* be evident in his ruling. The Qur'an commands:

> يا أيها الذين آمنوا كونوا قوامين بالقسط شهداء لله ولو على أنفسكم أو الوالدين والأقربين إن يكن غنيا أو فقيرا فالله أولى بهما فلا تتبعوا الهوى أن تعدلوا وإن تلووا أو تعرضوا فإن الله كان بما تعملون خبيرا

O you who believe! **Stand up firmly for justice**, as witnesses to Allah, **even though it be against yourselves, or your parents, or your kin, be he rich or poor**, Allah is more entitled to both (than you). **So follow not whims, lest you may avoid justice**. And if you distort your witness or refuse to give it, verily Allah is Ever Well-Acquainted with what you do.[1]

During the rule of 'Umar, a terribly messy case was brought before him involving one of his close friends. Let us see how he handled it. Imam al-Tahawi (d. 321 H) records:

> حدثنا علي بن عبد الرحمن قال ثنا عفان بن مسلم وسعيد بن أبي مريم قالا حدثنا السري بن يحيى قال ثنا عبد الكريم بن رشيد عن أبي عثمان النهدي قال: جاء رجل إلى عمر بن الخطاب رضي الله عنه فشهد على المغيرة بن شعبة فتغير لون عمر ثم جاء آخر فشهد فتغير لون عمر ثم جاء آخر فشهد فتغير لون عمر حتى عرفنا ذلك فيه وأنكر لذلك وجاء آخر يحرك بيديه فقال ما عندك يا سلخ العقاب وصاح أبو عثمان صيحة تشبه بها صيحة عمر حتى كربت أن يغشى علي قال رأيت أمرا قبيحا قال الحمد لله الذي لم يشمت الشيطان بأمة محمد فأمر بأولئك النفر فجلدوا

'Ali b. 'Abd al-Rahman – 'Affan b. Muslim and Sa'id b. Abi Maryam – al-Sari b. Yahya – 'Abd al-Karim b. Rashid – Abu 'Uthman al-Hindi:

A man went to 'Umar b. al-Kha□□ab, may Allah be pleased with him, and testified against al-Mughirah b. Shu'bah. So the colour of 'Umar changed. Then, another man came and testified. Therefore, the colour of 'Umar changed (further). Then, another man came and testified. **As a result the colour of**

‘Umar changed (even further) such that we recognized that in him, and he denied (the charge without investigation) due to that. Lastly, another man came, demonstrating with his hands. So, he (‘Umar) said, “What do you have (to say), O remover of the punishment!” Abu ‘Uthman (the sub-narrator) then shouted to imitate the shout of ‘Umar, such that I (‘Abd al-Karim) was agonized to the point of fainting. He (the fourth man) said, “**I saw a disgusting affair**.” He (‘Umar) said, “All praise be to Allah Who did not allow Shay□an to rejoice at the misfortune of the *Ummah* of Muhammad.” So, he (‘Umar) ordered that those men be whipped (for allegedly lying against al-Mughirah).2

‘Allamah al-Albani (d. 1420 H) has copied it into his *al-Irwa*, and states about it:

> قلت: وإسناد صحيح

I say: Its chain is *sahih*.3

Imam al-Haythami (d. 807 H) records further:

> وعن أبي عثمان النهدي قال : شهد أبو بكرة ونافع وشبل بن معبد على المغيرة بن شعبة أنهم نظروا إليه كما نظروا إلى المرود في المكحلة فجاء زياد فقال عمر : جاء رجل لا يشهد إلا بحق فقال : رأيت منظرا قبيحا وابتهارا قال : فجلدهم عمر الحد

Narrated Abu ‘Uthman al-Hindi:

Abu Bakrah, Nafi’ and Shibl b. Ma’bad testified against al-Mughirah b. Shu’bah, that they saw it (i.e. the adultery), **as they saw the kohl stick (i.e. the male private organ of al-Mughirah) inside the kohl container (i.e. the female private organ of the woman)**. But Ziyad came, and ‘Umar said, “Here comes a man who will not testify except with the truth.” So, he (Ziyad) said, “**I saw a disgusting scene, and a spectacle**.” So, ‘Umar punished them with lashing.4

Al-Haythami declares:

> رواه الطبراني ورجاله رجال الصحيح

Al-Tabarani records it, **and its narrators are narrators of the *Sahih***.5

Imam Ibn Abi Shaybah (d. 235 H) also records:

> حدثنا أبو بكر قال حدثنا أبو أسامة عن عوف عن قسامة بن زهير قال: لما كان من شأن أبي بكرة والمغيرة بن شعبة الذي كان، قال أبو بكرة: اجتنب أو تنح عن صلاتنا، فإنا لا نصلي خلفك، قال: فكتب إلى عمر في شأنه، قال: فكتب عمر إلىالمغيرة: أما بعد، فإنه قد رقي إلي من حديثك حديثا، فإن يكن مصدوقا عليك فلان يكون مت قبل

اليوم خير لك، قال: فكتب إليه وإلى الشهود أن يقبلوا إليه، فلما انتهوا إليه دعا الشهود، فشهدوا، فشهد أبو بكرة وشبل بن معبد وأبو عبد الله نافع، فقال عمر حين شهد هؤلاء الثلاثة: أود المغيرة أربعة، وشق على عمر شأنه جدا، فلما قام زياد قال: إن تشهد إن شاء الله إلا بحق، ثم شهد قال: أما الزنا فلا أشهد به، ولكني رأيت أمرا قبيحا، فقال عمر: الله أكبر، حدوهم، فجلدوهم، فلما فرغ من جلد أبي بكرة قام أبو بكرة فقال: أشهد أنه زان، فهم عمر أن يعيد عليه الحد، فقال علي: إن جلدته فارجم صاحبك، فتركه فلم يجلد، فما قذف مرتين بعد.

Abu Bakr – Abu Usamah – ‘Awf – Qasamah b. Zuhayr:

When the issue between Abu Bakrah and al-Mughirah b. Shu’bah occurred, Abu Bakrah said, “Desist from or give up concerning our *Salat*, because we will not pray behind you.” So, he (al-Mughirah) wrote to ‘Umar about his affair. Therefore, ‘Umar (too) wrote back to al-Mughirah thus: “To begin, an act of yours has been reported to me. If such-and-such (i.e. Abu Bakrah) is corroborated against you, it would have been better for you to have died before this day.” So, he (‘Umar) wrote to him and the witnesses to come to him. When they got to him, they testified, and Abu Bakrah, Shibl b. Ma’bad, and Abu ‘Abd Allah Nafi’ testified. As such, ‘Umar said when these three people testified, “Four (people) oppressed al-Mughirah.” **His matter was *very* unbearable for ‘Umar**. So, when Ziyad stood to testify, he (‘Umar) said, “You will testify with the truth, Allah willing.” Then he (Ziyad) testified, saying, “As for adultery, I do not testify in favour of it. **However, I saw a disgusting affair**.” As a result, ‘’Umar said, “*Allah Akbar*! Punish them!” So, they (the first three witnesses) were lashed. After Abu Bakrah had been beaten, he stood up and said, “I testify that he (al-Mughirah) committed adultery”. So, ‘Umar was about to repeat the punishment upon him. But, ‘Ali said, “If you lash him (again), then you must stone your companion (i.e. al-Mughirah).” Due to this, he (‘Umar) left him, and did not beat him. Thus, he (Abu Bakrah) did not falsely accuse anyone of adultery again after that.[6]

‘Allamah al-Albani has this comment about this exact report:

أخرجه ابن أبى شيبة وعنه البيهقى (8/334 ـ 335) . قلت: وإسناده صحيح.

It is documented by Ibn Abi Shaybah, and from him bu al-Bayhaqi (8/334-335). I say: **Its chain is *sahih***.[7]

Imam Ibn Abi Shaybah again documents:

حدثنا أبو بكر قال حدثنا ابن علية عن التيمي عن أبي عثمان قال: لما قدم أبو بكرة وصاحباه على المغيرة جاء زياد فقال له عمر: رجل لن يشهد إن شاء الله إلا بحق، قال: رأيت انبهارا ومجلسا سيئا فقال عمر: هل رأيت المرود دخل المكحلة، قال: لا، قال: فأمر بهم فجلدوا.

Abu Bakr – Ibn ‘Ilyah – al-Tamimi – Abu ‘Uthman:

After Abu Bakrah and his two companions had testified against al-Mughirah, Ziyad came. So, ‘Umar said, “He is a man who will never testify, Allah willing, except with the truth.” **He (Ziyad) said, “I saw a spectacle and an evil assembly”. So, ‘Umar said, “Did you see the kohl stick (i.e. the male private organ of al-Mughirah) enter the kohl container (i.e. the female private organ of the woman)?” He (Ziyad) replied, “No.”** Therefore, he (‘Umar) ordered that they (Abu Bakr and his two companions) be whipped.[8]

‘Allamah al-Albani again copies the above and says:

قلت: وهذا إسناد صحيح على شرط الشيخين.

I say: **This chain is *sahih*** upon the standard of the two Shaykhs.[9]

So, this is the full picture, as gleaned from the reports:

● Abu Bakrah and some other people filed a criminal complaint of adultery against al-Mughirah b. Shu’bah with ‘Umar.

● Al-Mughirah was a close friend of ‘Umar.

● ‘Umar summoned the accused – who was his friend – and the Abu Bakrah team to his court for the trial.

● As Abu Bakrah and two other people testified, ‘Umar – the judge – increasingly blushed. Convicting and sentencing al-Mughirah was *very* unbearable for him. So, he dismissively denied the reports of Abu Bakrah and his team.

● It was a case of adultery, and four witnesses were required. Ziyad was the fourth to testify. Like others, he came all the way from Basra (where al-Mughirah was governor for ‘Umar prior to the trial) to Madinah to testify *against* al-Mughirah in a case of adultery. But, before he began his testimony, ‘Umar made some direct moves to entice him and to intimidate him.

● First, ‘Umar called him “the remover of the punishment”. This was an obvious suggestion to Ziyad that he *must* contradict his colleagues. He simply had no other choice but to remove the sentence of death still hanging over the neck of al-Mughirah.

● ‘Umar also described him as the one who would testify with the “truth”. This was another clear signal to him to contradict his colleagues. It showed that the *khalifah* had blacklisted Ziyad’s colleagues for testifying against al-Mughirah. If Ziyad wanted to get into the good books of the powerful *khalifah*, he *must* tell only what ‘Umar would accept as the “truth”.

● Finally, ‘Umar shouted at him, with such distressing force that it could cause some people to pass out!

The intention, obviously, was to unsettle and intimidate him. Going against the *khalifah* could have highly devastating consequences. The message was unmistakable.

● So, Ziyad got the signal, and went against his colleagues. He denied having seen a sexual penetration. One wonders why then he had taken all the pain to come to Madinah from Iraq! Was it not to testify against al-Mughirah *for adultery*? Something clearly was not right here. Ziyad was altering his testimony in the light of the new circumstances. In any case, he admitted to seeing "a disgusting affair" and "a disgusting scene", apparently involving al-Mughirah and the accused woman, which involved "an evil assembly" of both accused persons.

● 'Umar – the judge – became joyous, thanking Allah, and ordered Abu Bakrah and his colleagues to be flogged for allegedly lying against al-Mughirah!

● After the lashing, Abu Bakrah stood up, and re-testified to al-Mughirah's adultery – despite the clear dangers.

● 'Umar intended to re-lash him but 'Ali, as usual, saved Abu Bakrah with his knowledge.

To 'Umar, this was fair, impartial hearing!

An interesting side to this discussion is that 'Umar actually did not ordinarily seem to place much value on the Qur'anic requirement for four witnesses in the case of adultery. For instance, he convicted a woman simply for having only a six-month pregnancy! He never asked for *any* four witnesses. Rather, he did not even request for *any* testimony from anyone! However, when his close friend was involved, he became extraordinarily strict with the requirement, and displayed brutal bias in favour of the accused throughout the proceedings.

The testimony of Ziyad itself embarrassingly reveals the direct influence of 'Umar's intimidation and enticement over the former. Al-Hafiz Ibn Hajar al-'Asqalani explains the circumstances of al-Mughirah's alleged adultery:

> وساق قصة المغيرة هذه من طرق كثيرة محصلها أن المغيرة بن شعبة كان أمير البصرة لعمر فأتهمه أبو بكرة وهو نفيع الثقفي الصحابي المشهور وكان أبو بكرة ونافع بن الحرث بن كلدة الثقفي وهو معدود في الصحابة وشبل بكسر المعجمة وسكون الموحدة ابن معبد بن عتيبة بن الحرث البجلي وهو معدود في المخضرمين وزياد بن عبيد الذي كان بعد ذلك يقال له زياد بن أبي سفيان أخوه من أم أمهم سمية مولاة الحرث بن كلدة فاجتمعوا جميعا فرأوا المغيرة متبطن المرأة وكان يقال لها الرقطاء أم جميل بنت عمرو بن الأفقم الهلالية وزوجها الحجاج بن عتيك بن الحرث بن عوف الجشمي

The story of al-Mughirah has been transmitted THROUGH SEVERAL CHAINS. Its summary is that al-Mughirah b. Shu'bah was the governor of Basra for 'Umar. Abu Bakrah, whose real name was Nafi' al-Thaqafi, accused him (of adultery). He (Abu Bakrah) is a well-known Sahabi. There was Abu Bakrah.

There was (also) Nafi' b. al-Harith b. Kildah al-Thaqafi, who is counted among the Sahabah.

There was Shibl b. Ma'bad b. 'Utaybah b. al-Harith al-Bajali (as well), and he was considered to be among those (Sahabah) who witnessed both the Jahiliyyah and the Prophetic era. (Finally), there was Ziyad b. 'Ubayd – who was later called Ziyad b. Abi Sufyan – (and he was) his (Abu Bakrah's) brother from their grandmother, Sumayyah freed maid of al-Harith b. Kildah.

THEY ALL HAD GATHERED TOGETHER and had seen al-Mughirah in a secret affair with the woman called al-Riqah Umm Jamil bint 'Amr al-Afqam al-Hilaliyyah, **and her husband was al-Hajjaj b. 'Utaybah b. al-Harith b. 'Awf al-Jashmi**.[10]

There were four of them together, including Ziyad. They all together saw al-Mughirah having a secret affair with Umm Jamil, whose husband was al-Hajjaj. The other three witnesses saw al-Mughirah's male organ entering Umm Jamil's female organ, and all of these three were totally trustworthy Sahabah of the Messenger, by Sunni standards. How then on earth did Ziyad miss that?! It seems fair to conclude that he was deliberately concealing the most crucial part of his testimony. It was simply impossible for him not to have seen what the others saw, especially as he was not described as suffering from any eye problems.

Moreover, what really did Ziyad mean by having seen "a *disgusting* affair" between the couple? Was he not actually implying the adultery of al-Mughirah and Umm Jamil? From the look of things, Ziyad saw what the three Sahabah saw, but decided to be ambiguous and to double-speak after 'Umar enticed and intimidated him. If the *khalifah* had not intervened, he most probably would have only corroborated his co-witnesses.

Anyway, there are some damning consequences in this particular case for Sunni Islam. Abu Bakrah, Shibl and Nafi' b. al-Harith were Sahabah. Abu Bakrah in particular was a prominent Sahabi, whose *ahadith* are documented in the two *Sahihs*, and in all other authoritative Sunni books, *in abundance*. Of special interest is the fact that Abu Bakrah was the main complainant against al-Mughirah, and he never repented from it. After being lashed by 'Umar, he still reiterated his claim that al-Mughirah was an adulterer. 'Allamah al-Albani copies a further report in this regard:

> ثم أخرج من طريق عيينة بن عبد الرحمن عن أبيه عن أبى بكرة , فذكر قصة المغيرة قال: " فقدمنا على عمر رضى الله عنه , فشهد أبو بكر ونافع , وشبل بن معبد , فلما دعا زيادا قال: رأيت منكرا , فكبر عمر رضى الله عنه ودعا بأبى بكرة , وصاحبيه , فضربهم , قال: فقال أبو بكرة يعنى بعدما حده: والله إنى لصادق , وهو فعل ما شهد به , فهم بضربه , فقال على: لئن ضربت هذا فارجم هذا ".
>
> وإسناده صحيح أيضا. وعيينة بن عبد الرحمن هو ابن جوشن الغطفانى وهو ثقة كأبيه.

Then he (al-Bayhaqi)[11] recorded through the route of 'Uyaynah b. 'Abd al-Rahman from his father from Abu Bakrah, and he mentioned the story of al-Mughirah, and (then) said:

We got to 'Umar, may Allah be pleased with him, and Abu Bakrah testified, as well as Nafi' and Shibl b. Ma'bad. When Ziyad was called, he said, "**I saw a disgusting act**." Therefore, 'Umar, may Allah be pleased with him, said *Allah Akbar*, and thereby summoned Abu Bakrah and his two companions and beat them. So, Abu Bakrah said, that is, after he had been punished, "**I SWEAR BY ALLAH, I am saying the truth. He (al-Mughirah) did what we have testified against him about**." Therefore, he ('Umar) intended to beat him (again). But, 'Ali said, "If you beat this one, then you must stone that one."

Its chain is *sahih* too. 'Uyaynah b. 'Abd al-Rahman is Ibn Jawshan al-Ghafani and he is *thiqah* (trustworthy), like his father.[12]

By all accounts therefore, all *ahadith* by Abu Bakrah must be thrown away by the Ahl al-Sunnah wa al-Jama'ah as fairytales of a "liar". It is the Order of Allah, *as long as* he is believed to have failed to prove his charge against al-Mughirah. This is where the great dilemma hides for our Sunni brothers. Allah has stated:

> والذين يرمون المحصنات ثم لم يأتوا بأربعة شهداء فاجلدوهم ثمانين جلدة ولا تقبلوا لهم شهادة أبدا وأولئك هم الفاسقون إلا الذين تابوا من بعد ذلك وأصلحوا فإن الله غفور رحيم

Those who accuse chaste women, **and do not produce four witnesses**, flog them with eighty stripes, **and reject their testimony FOREVER. THEY INDEED ARE THE LIARS, EXCEPT THOSE WHO REPENT thereafter and make corrections.** Verily, Allah is Oft-Forgiving, Most Merciful.[13]

He also proclaims:

> لولا جاءوا عليه بأربعة شهداء فإذ لم يأتوا بالشهداء فأولئك عند الله هم الكاذبون

Why did they not produce four witnesses? Since they have not produced the witnesses, **THEN IN THE SIGHT OF ALLAH, THEY ARE THE LIARS.**[14]

Imam 'Abd al-Razzaq (d. 211 H) reiterates the fact which connects Abu Bakrah to the above verses:

> عبد الرزاق عن معمر عن الزهري عن ابن المسيب قال: شهد على المغيرة بن شعبة ثلاثا بالزنا، ونكل زياد، فحد عمر الثلاثة، وقال لهم: توبوا تقبل شهادتكم، فتاب رجلان ولم يتب أبو بكرة، فكان لا يقبل شهادته، وأبو بكرة أخو زياد لامه، فلما كان من أمر زياد ما كان، حلف أبو بكرة أن لا يكلم زيادا أبدا، فلم يكلمه حتى مات

'Abd al-Razzaq – Ma'mar – al-Zuhri – Ibn al-Musayyab:

Three people testified against al-Mughirah b. Shu'bah for adultery. **But Ziyad recoiled**. So, 'Umar punished the three (with lashing), and said to them, "Repent, and your (future) testimonies will be accepted." So, two of the men repented **but Abu Bakrah did not repent. Therefore, his testimonies were no longer accepted**. Abu Bakrah was a maternal brother of Ziyad. When what happened in the case of Ziyad occurred, Abu Bakrah swore that he would never again speak to Ziyad. As such, he never again spoke to him till his death.[15]

The chain is *sahih*, and has been so declared by the top *muhadithun* of the Ahl al-Sunnah. Imam Muslim (d. 261 H), for instance, has relied upon this chain in his *Sahih*:

> حدثنا عبد بن حميد أخبرنا عبدالرزاق أخبرنا معمر عن الزهري عن ابن المسيب عن أبي هريرة

'Abd b. Hamid – **'Abd al-Razzaq** – **Ma'mar** – **al-Zuhri** – **Ibn al-Musayyab** – Abu Hurayrah[16]

Imam al-Tirmidhi (d. 279 H) also records:

> حدثنا محمود بن غيلان حدثنا عبد الرزاق أخبرنا معمر عن الزهري عن ابن المسيب عن أبي هريرة

Mahmud b. Ghilan – **'Abd al-Razzaq** – **Ma'mar** – **al-Zuhri** – **Ibn al-Musayyab** – Abu Hurayrah[17]

Al-Tirmidhi comments:

> هذا حديث حسن صحيح

This *hadith* is *hasan sahih*[18]

'Allamah al-Albani also says:

> صحيح

Sahih[19]

Imam Ibn Khuzaymah (d. 311 H) has included the chain in his *Sahih* as well:

> ثنا أحمد بن منصور الرمادي ثنا عبد الرزاق أخبرني معمر عن الزهري عن ابن المسيب عن أبي هريرة

Ahmad b. Mansur al-Ramadi – **'Abd al-Razzaq** – **Ma'mar** – **al-Zuhri** – **Ibn al-Musayyab** – Abu Hurayrah[20]

Dr. Al-A'zami has this simple verdict:

إسناده صحيح

Its chain is *sahih*[21]

Everything therefore boils down to this insoluble Sunni maze:

Anyone who accuses another of adultery *must* present four witnesses.

If he is unable to do so, then he must be whipped by the authorities.

He must be asked to repent. If he does, his future testimonies are accepted.

If he refuses to repent, then he becomes a liar in the Sight of Allah, and his testimonies *must* be rejected till the Hour.

Abu Bakrah accused al-Mughirah, 'Umar's close friend and governor over Basra, of adultery, and presented four eye-witnesses (including himself).

All four witnesses came all the way from Iraq to modern-day Saudi Arabia to testify against al-Mughirah *in a case of adultery*.

However, 'Umar enticed and intimidated the fourth of them, just as he was about to give his testimony. He (the fourth witness) thereby "recoiled" and made ambiguous, ambivalent statements instead.

So, the case against al-Mughirah failed due to the fourth witness's action.

Abu Bakrah and the other two witnesses therefore were whipped by 'Umar. They were thereafter asked by him to repent *so that their future testimonies became acceptable*. The other two repented (most probably from pressure), while Abu Bakrah *swore by Allah* that he was truthful in his testimony against al-Mughirah. He preferred to be branded "a liar" by the state, and that his future testimonies be rejected, rather than to falsify what he knew to be the truth.

Abu Bakrah also believed that Ziyad (his maternal brother), who "recoiled", had wronged him terribly. So, he stopped speaking to Ziyad from that moment till his death!

Whoever believes that Abu Bakrah was wrong in his testimony *must* also accept that he was "a liar" in the Sight of Allah, *due to his refusal to repent*. The Qur'an is very explicit in this regard, and gives no exception. As a result, such a person must reject all of Abu Bakrah's *ahadith*.

However, the Ahl al-Sunnah consider Abu Bakrah to be perfectly trustworthy in everything he said, before and after the incident! Yet, they maintain that 'Umar was correct to have whipped him!

But, it was either ‘Umar treated Abu Bakrah unjustly, or Abu Bakrah was truly a liar in the Sight of Allah. There is no third option to it.

Our Sunni brothers want to eat their cake and still have it. However, they can only do one of both. Their position on Abu Bakrah is a strategic do-or-die affair, which they can never let go. This, in reality, merely deepens their dilemma. If they accepted that Abu Bakrah, a prominent Sahabi, was a liar in the Sight of Allah, then they would have opened a door that could only lead to the complete collapse of their entire religion in no time! Yet, their pro-Abu Bakrah stance only fuels the theory that al-Mughirah was truly guilty of adultery, but that ‘Umar deliberately manipulated the judicial system to shield his dear friend from justice. Moreover, in the course of doing that, the *khalifah* inflicted immense injustice upon Abu Bakrah for telling the truth.

1. Qur’an 4:135
2. Abu Ja’far Ahmad b. Muhammad b. Salamah b. ‘Abd al-Malik b. Salamah, Sharh Ma’ani al-Athar (Beirut: Dar al-Kutub al-‘Ilmiyyah; 1st edition, 1399 H) [annotator: Muhammad Zuhri al-Najjar], vol. 4, p. 153, # 5677
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[annotators: Muhammad Nasir al-Din al-Albani and Dr. Muhammad Mustafa al-A'zami], vol. 4, p. 362, # 3078

21. Ibid

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