

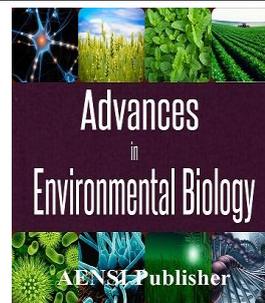


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"Victimology Approaches and Victimization Analysis Process In the Judicial System of Iran"

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ABSTRACT

The study of human history, states the existence of different social reactions, even in primitive and static societies which were free of written and compiled and this indicates and this confirms that the infringement and violation of the customs of society, at all times, follows social denouncing and reaction. These reactions, although in some periods of history, have been great and intense, and in some cases have even exceeded the limit of human capacity and respect, not only have not been effective in the eradication of crime, but also sometimes have increased the diversity and complexity of crime statistics. Inadequacy and failure of social reaction in fighting against criminal phenomenon, has created the context of the emergence of new knowledge about the causes of crime. As a pre-condition of the issues affecting criminal offense, "victim" has drawn the attention of criminologists. It is important since in such a relatively short time, has created a new branch of criminology, called the "Criminology of victimology", victimology, is a new branch of criminology of social reactions that has drawn the attentions to the role of the victim in the criminal act. With the advent of the victimology in recent decades, many scientific studies have been conducted on the victimization and identification of their characteristics and performance on crime. Furthermore, there are problems such as lack of resources, young theories and blurry boundaries, which make every new study of knowledge difficult- studies of the victimology, have special problems that without overcoming them, the value of this branch of modern theories of criminology will be tarnished. Therefore in this paper we will discuss about the explanation of victimology approaches and the victimization process in the judicial system of Iran.

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INTRODUCTION

With the emergence of different schools of social defense which have the wider and more accurate attitude to criminal phenomena, criminal policy has been more active and increased the scope of the investigation and studied various aspects of the criminal event. As a result of this change was that not only crime and criminals were of interest but the victim was also of particular interest, and this leads to a new scientific name called victimology. Scientific understanding of the victim or the victimology is a new branch of criminology that deals with direct victim. Therefore, identification of the victim and whatever is related to the victim is regarded to this new field of knowledge. Accordingly "anything that is related to the victim's character, the character of the biological, psychological, moral and sociological and cultural and his relationship with the criminal and the victim's role and his contribution to the development of science is studied and considered. In primitive societies, before the formation of the government and the public forces the victim was responsible for seeking justice and compensation for damages, at this stage, with all the shortcomings in the administration of justice the victim was very important but then this role was less important and the chieftain and then in the more advanced cases, governments have been involved. Hence paying the fine to the victim is substituted with paying fine to the government and influenced by the classic thinking of the victim is used only as evidence for noticing more

crime than others, because in classic criminal law as a law which only relies on criminals punishment, victim had little role and the government merely relieved the victim, by imposing mental penalties on criminal and sentencing the criminal based on sentencing to pay damages. By the end of dominance of classic criminal law thinking and the emergence of the school of criminals act realization vision is directed to the criminal and one of three branches of the criminal incident is studied and investigated. The other pillar, called the victim continues to be forgotten.

Review of Literature:

Victimology Concept:

Victimology is one of criminology branches and less than a century after the emergence of criminology and has been announced in recent years. In victimology, due to years of neglecting the victim, the researches focused on the victim in order to define the role of his/her personality in the development of crime and this was a profound change in criminal etiology and victimology was formed and reached a stage where the victim should be considered more than ever.

In the first International Symposium of victimology held in 1973 in Jerusalem, the victimology was mentioned as "scientific study of crime victims" [1].

Gaglium Gulte knows victimology as a method or science which aims to study the character, biology, psychology, social and cultural characteristics of the victim and it is the study of relationship between crime and criminals, and clarifying his role in the crime [6].

Mark Ansel in his book of social defense by reviewing new developments in criminal law, and with reference to the origin of the victim writes: "One of the features of new developments in criminal science is that after focusing on crime and criminal character turns its attention to the victim. This development has led to the emergence of modern science in the name of the victimology which examines the victim as much as the criminal [2].

Victim:

Sacrificial act of criminal is called victimization. A criminal act that a person becomes a victim; it can be a murder, theft, rape and many other crimes, a person who is the victim of a criminal act may be man, woman, old or young, in other words, as the crimes are various victims of the crimes are also various and diverse [12].

1- The primary victimology (scientific):

1-1-Philosophical and moral roots of victimology:

Almost all criminologists or pioneers of criminology agree that emergence of criminology and human birth have been simultaneous and criminology ideas were originally created in the works of scholars and philosophers and they thoughtfully and sophisticatedly viewed the phenomenon of crime. In The Encyclopedia of Criminology the word "Criminology" has come as: "before the emergence of criminology and organizing it as a field of scientific research, there has been a long unscientific term. The history of intellectual criminology in western countries began by philosophers like Plato, Aristotle and Greek tragedy writers like Achilles, Euripides and Sophocles. This intellectual of revelation schools (such as school of pallidus), Christianity (Dante's book of hell), Renaissance (Thomas More) and the classical period (Shakespeare and Resin) continues with the enlightenment philosophers (such as Montesquieu, Voltaire, Rousseau and Beccaria).

As the scientific and philosophical and moral criminology is as old as life of human societies, victimology also has had a long life. The first concepts of victim, not by criminologists and sociologists, but was founded by writers and poets. Although the relationship between the criminal and the victim and his role in crime is not explicitly stated but can implicitly be seen in the stories and poems. In many of these works it is the victim who passes the crime thought to the criminal or the crime is the result of the victims act. The most elegant ideas and tips of criminology can be found in the story of Abel. Abel's modes are full of teachings of the victimology. Another thing that can be seen in works of literature and philosophy is the previous history of friendship, acquaintance and ... between the criminal and the victim and thus victimization is not accidental but has been selectively. They believed that the victim is morally guilty, although from a legal perspective this is the steward who is guilty. However, what is important to examine is the role of the victim in the genesis of crime and is the importance of this subject among old scholars and philosophers and has had criminal law from the emergence. From Hammurabi to, Persia, Greece and Rome laws and ancient civilizations such as Egypt and China and in the great divine religions such as Islam and the Law of Moses and even in the writings of scholars of the medieval church, the role of victim in all of them is not an unfamiliar matter.

1-2-Justice and criminology root of victimology:

The history of emergence of scientific victimology goes back to 1948. However, before that, there were some works close to criminology but victimology was not included in their discussions. Among these judicial works we can name the book of "significant criminal trials narratives" of Feuerbach, which was written in 1846.

In 1941, Von Hentig published a paper entitled "Considerations on the interaction between criminal and victim" and the victim's role and fault in the criminal process evolution was reminded. But the first systematically dealing with victims of crime was emerged in 1948 in Hentig's book entitled "The criminal and his victim" and only two sections of the book is given to the relationship between the criminal and the victim. Hentig believes that victims are divided on the basis of their role in crime victimization but victimology has not been mentioned specifically. Nonetheless, many of criminologists account the code of ethics as victimology.

The terms victimology was enacted in 1949 by an American psychiatrist named "Fredric Wertham". For the first time he used this word in his book entitled "violence". John Pinatel also in 1963 wrote a book called Criminology. Zelig also notes the existence of a victim which makes the crime easy and in some cases becomes a result of a particular crime. Other criminologists also addressed to a victim as a causal factor of crime. In this framework, Mr. Hentig and then Mendelson categorized victims (1956) on the basis of criteria of victim's effectiveness and contribution in the process of committing a crime. In line with this thinking and understanding of crime, since the late 1950s, many studies have examined the victimology in the transition process from idea to sociological of some criminal in America. Studies of Wolfgang Marvin on murder (1985) and Amiron rape in Philadelphia (1967 and 1971) and Fatah on the murder because of theft were done with this vision that the key concept in these studies are the term of affective and accelerator on the victim as a neutral and non-legal concept, which can help to explain the occurrence of criminal acts. In addition, these studies were limited to sexual offenses or offenses against people, researches have also been done in the case of crimes against property in America. In the 1970s, studies of individual victims of crime victimization were overshadowed by general studies and transformed them into grand theories with the aim of determining the volume of victimization, recognition of victims and social characteristics of the population. Although these theories are essential for the study of major trends and patterns of victimization and social class distribution of some types of crime, however, gives us little information about social environment and the individual responsible for the occurrence of crime and in understanding the dynamics and victim selection process and interactions between the victim and the criminal has little value.

2- *The secondary victimology (ideological and political):*

Victimology which had the first scientific approach and the identity of victimology transformed to a social movement to support and defense victims. Concern about the rights and future victimization, initially emerged as part of the government's plans for the compensation of victims of crimes. Rehabilitation of victims' rights protection occurred by the feminist movement, the movement which strongly supported forcible rape and sexual assault of victims of crimes and victimology studies victims and their role and share in victimization of these crimes and viewed as male-oriented, changes of victimology ideology also caused the emergence of victimization surveys.

Another negative consequence is that the orientation of criminal law and criminal justice is to punish criminals and subsequently concept of modification and treatment of criminals are excluded and the rights of the victim are raised; and in other words, the advocators of this victimology against rights of criminals, have created victim's rights [9].

The process of victimization:

Several theories have been put forward by criminologists which have a sociological and the biological orientation. Unlike criminology theories that had little attention to situational factors that determine the crime, the main purpose of these theories like the theory of rational choice model, lifestyle, ... social processes and psychological events are causes of crime and criminals in the process of rational decision-making and choice.

1- *Rational choice theory:*

Rational choice theory is known mostly due to researches by Cornish and Clarke (1987 and 1986). Rational choice theory explains the motives and reasons for the criminal's crime and believes that the choice of a criminal act mainly relies on the characteristics of the criminal's behavior and also idiosyncrasies of the criminal. In other words, the criminal measures the offense and the likelihood of achieving the aim and considers his/her strengths and weaknesses. From Clark's perspective the criminal must be regarded as an economic decision-maker that his choices subject maximum profit and rationally decides based on the costs and benefits.

So although crime is a reprehensible and irrational action, but is secretly eligible of rationality, however rationality matters are not fully considered in this view. The theory of rational choice explains the motivation of the criminal for the crime as an attempt to meet the ordinary needs and the rationality of decision making process determines opportunities for meeting needs and the potential costs and benefits anticipated action.

2- *Routine activities theory:*

This theory is more connected with Larry Cohen and Marcus Velsen (1979). Routine activity theory is fundamentally committed to the belief that crime and victimization is connected to average human life or otherwise interacts with the natural characteristics of the interactions of communication in social and coincides with the change of this interaction and characteristics, crime rates also change. Accordingly, providers of this theory believe that crime indicates the presence of three factors:

- 1- The excited and motivated criminals who are likely to commit crimes such as unemployed people – derelict youth
 - 2- Appropriate targets and attractions like unprotected houses – unlocked cars
 - 3- Low or no immune protection against targets such as the absence of the home-owners, police – neighbors.
- Thus, this theory substantially highlights the "opportunity crime" element. However, these theorists, in addition to the above three factors, have also considered the changes in society due to social stigma and believe that and believe that coincide with social changes the opportunity of crime also change.

3- *Lifestyle theory:*

The theory of lifestyle was developed by Gattner, Hindlang and Garofalo (1978). According to this view, they believe that crime is not an accidental incident but victimization may vary based on people's life style and performance. People's lifestyle has a key role in their vulnerability, because their lifestyle put them more accessible and vulnerable to invasion of criminals. As much people have a wider lifestyle their risk of victimization also increases. According to this theory irregularly distribution of victimization in place and time are explained according to different lifestyles of victims and others. The theory of lifestyle is influenced by some factors. One of these factors is the role that people play in society and this role, sometimes bring them to victimization. Another factor is people's decisions about the range of behaviors. The choices of activities in specific and dangerous times and places, increase people's risk of victimization. The individual's position in the social structure can also affect the likelihood of victimization since as much as people have higher social status because of the work they are doing and the environments which they are in their risk of victimization decreases [8].

Criminology based on reserving interests and rights of the victim:

In this case, in order to protect the interests and rights of the victims and to transform criminal policy two ways are employed:

1. Confirming the rights of victims and the right to compensate by the government outside of any legal proceedings.
2. Converting the traditional repression model to interviews between criminal and victim to compensate to the victim [10].

The first case has developed a compilation of legal texts concerning the compensation of victims of natural disasters and natural hazards, such as codification of July 8, 1982 under French law can be named under the protection of victims of crime, and on the other hand leads to the formation of committees and congresses in order to protect the rights of the victim which has been effective in the evolution of criminal policy in the interests of the victim. For example, a Congress was formed in November 1982 in Montpellier (France) which endurance of greater losses to the victims of car accidents. Regardless of fault or driver error or damaged by accident, was discussed. During this meeting it was announced that the goal is not removal of the main responsibility, but what is required is that the damage to the pedestrian cyclist, cars passenger, to be offset in case of urgent need, regardless of the error in the phase [3].

Checking the victim's rights in Iran's judicial system:

In the process of discovery and prosecution:

Crimes have been divided into two categories as the role of victim:

- A) Forgivable crimes
- B) Unforgivable crimes

In the first category of crimes, the victim has a significant role in the prosecution of the crime, because without victim's complaint and request, judicial authorities do not detect crime and enforce the criminal action and compensation for damages. Clause 2 of Article 8 of the Code of Criminal Procedure and Article 727 of the Penal Code (suspended) are added to this, in addition, according to Article 63 of the Code of Criminal Procedure judicial authorities in case of a complaint, the victim is required to start researches.

This right of choice of the complaint, is the strength point for the victim that could compromise with the criminal by liability in order not to complain and if the mentioned having these qualifications referred to in Article 332 of the Penal Code of qualification and cannot be required to litigate, attorney (the current Chief Justice Authority) according to Article 66 of the repeatedly guardian law approved 02/16/1316, also appoint a guardian to be appointed guardian when they committed crime.

In the second category of crime, a poor role for the victim is considered and only the victim's absence may be considered an advantage for the criminal to convict him for lack of evidence, in these types of crimes the secret agreement between the victim and the criminal is more often seen and before complaint the criminal tries to obtain the consent of the victim, because he knows that after the complaint and prosecution of consent case and the victim's forgiveness does not lapse and does not cease to pursue the matter, including fraud, although the Supreme Court provides precedent in the vote No. 52-1 / 11/63 : "It requires whether plaintiffs or defendants, private or not wanted to pursue litigation or not, the prosecutor to prosecute and requite perpetrators and this requires that the prosecution and punishment of perpetrators of such a crime based solely on the request is not in their rightful owners or legal surrogate..." despite this duty of the prosecutor's to prosecute the perpetrators of such crimes subject to inform him of committing such crimes and reconciliation between the criminal and the victim is secretly involved and possible prosecution authorities are unaware of its occurrence. Another pursuit of which the legislator respects the victim is Article 12 of the Criminal Procedure Code, which indicates: "when the accused was prosecuted by any way of legal aspects the causes of crime can lose all your documents, whether original or a copy of the attached file will be submitted to the prosecuting officer.

In addition, in the prosecute stage the victim had the right to ensure to receive the supply to the demand damages which in this case, based on Articles 68 and 68 of the Code of Criminal Procedure and the magistrate repeated misdemeanors in the magistrate's authority delegated to the prosecutor's office to issue a garnishment. (Now with the remove of the prosecutor and magistrate of the judicial system has been delegated this authority is delegated to the courts) and the remarkable thing was and is to guarantee the rights of the victim. In unforgivable crimes also the legislator cares about some cases for the role of the victim in the criminal prosecution and suspension. So frequent in Article 40 and Article 22 of the Code of Criminal Procedure Act to amend certain laws of Justice approved in 1356, the condition for issuing the suspension is obligatory chase after private complainant.

Rights of the victim after the sentencing and appeals:

Following the issuance and revised legislation, the legislator considers the rights and interests of the victim and at this stage devotes provisions to this matter.

After the verdict in forgivable crimes, in case of plaintiff withdrawal and mentioned consent annunciation, execution of the sentence is suspended and in unforgivable crimes private plaintiff and the victim, remains discount and the sentenced due to the consent of the victim, by virtue of Article 25 of the Law amending some laws of justice, the court issued the warrant request to make a mitigating actions and also pursuant to Section 3 of Article 38 of the Penal Code after sentencing and imprisonment during the penalty and punishment, if convicted obtain victim's satisfaction with the conditions mentioned matter, from the court issuing the warrant, make application for parole sentencing. However, all these measures are considered to meet the interests and rights of victims.

On appeal the sentence, and the rights of the victim at this stage, it should be noted that under the Code of Criminal Procedure, the right of appeal to private claims in respect of losses was predicted before which by replacing it with an appeal and determining appeals from judgments of the Courts Act, adopted on 14.07.1367, such a right to complain was not included for private claims, until the adoption of Article 34 of Act 1 and 2 constitute a criminal court in June 1368, he could appeal the sentence if there are ways to appeal regulation of law. This article has decreed that: "plaintiff or private claims to the charges against the accused if there are ways to appeal the determination of the appeal provisions in the law courts and how they handle the Act 14/7/11367."

Obviously, the right to assert the law only applies to the sentencing of the acquitted accused, not in other cases and vote precedents No. 563-28 / 3/1370 General Assembly of the Supreme Court also refers to this, such is the theme of this opinion, the plaintiff in the appeal, has the right to appeal the innocence of the accused. But if he was convicted, the right will be taken away from him. Thus, according to written material and precedents for such private claims in respect of loss or damage which he has no right to appeal, this problem has been noticed by the legislator, and the revised law, enacted in 1993, the private complainant or his legal representative of the innocence of the accused or losses in respect have the right to appeal. Legal Department of Justice's advisory opinion No. 5362-5 / 9/1373 in response to the inquiry whether the decisions issued by the courts followed the acquittal and endowments are objectionable or not, the answer is: "Document to paragraph 2 of Article 26 of the Law on Public and Revolutionary Courts Act of 1994 established decisions of the Court to establish the innocence of the defendants, the private plaintiff and his legal representative are objectionable.

In the formation of the Public and Revolutionary Courts, the legislator in order to protect the rights of the victim, goes beyond and in Article 26, paragraph (b) in the second part of the court's rulings appeal in the case of criminal sentences, the private complainant or his legal representative have the right to appeal the acquittal verdicts or losses have not been noted. So it seems that, according to this agent, the victim has the right to appeal against all orders, including the presumption of innocence and the conviction and losses, and otherwise in compliance with the conditions specified in the law.

The deadline to appeal to people living in Iran under Article 27 of the Act states, from the date of notification of the vote, is 20 days, finally, if the victim has a reasonable excuse, fails to submit the appeal deadline, legislator in order to protect his rights and other people's that appeal has noted in Note 2 of Article 28:" whenever the Court of Appeal confirmed that the force, take advantage of the renewal survey has not been in deadlines, the start date will be the date of the removal force. Rights of the victim in the sentence:

In the sentence of forgivable crimes documented the Paragraph 1 of Article 8 of the Code of Criminal Procedure, after the final verdict and sentencing phase that is ready to run, in the case of forgiveness announcement and the complainant's satisfaction over the execution of the sentence will be suspended and enforcement officers to run away and will be issued a final ruling. It is obvious that at this stage the victim could also compromise with the sentenced to achieve his rights and the sentenced condemns the execution of the penalty and its application to rid him. Because in many forgivable crimes the legislators predicted offense punishable by flogging or imprisonment and then after issue a final decision with regard to the execution of the sentence of the accused and before that in terms of being able to appeal the verdict, hoping to escape from punishment, but at this stage should be to acquire the consent of the victim or of the execution of his sentence.

Among forgivable crimes the only crime that the legislature (for considerations of expediency and to maintain order and prevent a repetition of the crime) after the issuance of the final decision and with the consent of the victim, the criminal does not immediately released on bail, the crime is overdraw under Article 11 of the Law on the overdraw in the case of consent of the complainant the final sentence of imprisonment and the fine imposed is suspended however, criminals are required to pay a third of the sentenced imposed fines.

And about unforgivable crime, according to the criminal policy that tries to protect the rights and interests of the victim, in such crimes also the victim's consent and forgiveness are respectful and the sentenced person is granted an opportunity which in the execution of the sentenced person is also thought to consent the victim and be possible to study the victim's consent in order to reduced punishment. Article 25 of the Judiciary Act of 1356, An Act to amend certain laws in this regard, provides: "If a plaintiff or private defendant in unforgivable crime after the final decision regardless of the complaint the sentenced According to extradition appeal of the final decision of Tribunal can request that the sentence be revised. In this case the Court of Appeal sentenced in extra time with the prosecutor (the current provisions of the Chief Justice or his representative) will be formed and punishment will be discounted if possible within the law. This is the final vote.

Accordingly the criminal and the sentenced of unforgivable crimes in order to benefit from this opportunity and leniency try to satisfy the private complainant. In addition, in the punishment and execution stage, when the sentenced is undergoing the sentenced punishment, legislator in order to protect the victim's consent also had convicted him of knowingly and if convicted obtained the victim's consent and paid him the compensation or promise to pay will be conditionally exempted and released of the punishment (imprisonment). The legislator in Article 38 of the Penal Code to grant parole to convict is subjected to approval including the conditions of Article states that require: "Whenever as far as affordability is the loss of what court sentenced or agreed to pay or claim to pay the private defendant."

Also on clemency in all cases where different occasions for amnesty or commutation of sentence convicts to rules and regulations adopted by the Supreme Leader's approval without exception condition to the satisfaction of the complainant or private prosecutor has been convicted of unforgivable crimes from amnesty. According to past levels, we can see that our criminal law, in the process of criminal justice for victims and victim are known to have an active role in the process.

Conclusion:

The findings of this study suggest that the victim has a tangible and undeniable role in crime and determining role of the victim in forming criminal act is illuminated and specified because the victim is in fact an essential component of the pre-criminal offense or crime is one of the sides, it can even be argued that the victim's choice is not an accident owed game. The victim can contribute in crime in various ways for example; the victim can incite or encourage the criminal by expressing some words or acts.

Sometimes the victim strengthens the motivation of criminal because of some special features; the most important of these features can be proximity or closeness, attracting the victim, accessibility and availability, and etc. However, it should be kept in mind that different factors are involved in crime and all members of society do not commit a crime, or at least do not make a major crime; education, hatred of harassing others, respect for others, respect for the human kind, fear of punishment, prohibit the majority of people of committing a crime. Therefore, the criminal is the one who these moral and social barriers have not been effective on him and have not been able to stop him from committing crime. The items that can be named alongside the victim of crime are poverty, social and economic inequality, unemployment, education, immigration, past experiences and mental states of a person, the police and security abilities and ...

Assistance and support to victims and helping them should be part of the basic values of society and obligations towards each victim should be ethical and ideological deep in the overall system of ideological and moral society towards the victim must have deep roots spread of the overall system, thus the predictions of the

law that are established has important influence the interests and rights of the victims. In our country which the law is derived from Islam's rights, both in formal and substantive terms, rules and regulations have been applied in order to ensure the adoption, from the prosecution of the police officials, former prosecutor in the judicial system, to the sentencing phase of the trial and the appeal and enforcement of our criminal policy, is the story of the role of the victim in the criminal justice and the protection of his rights. Legal and judicial opinions and judgments of the courts, as the literature review, it can be concluded that the victims, have a strong legal base.

However, it appears that many innovations and initiatives in the field of victims' rights and interests and their legal position in the various penal systems are insufficient and still victims, have not found the actual and real base and position in the criminal justice process because the most important and most basic duty of the judicial system in each country, is to provide justice and this will not occur by only punishing the criminal and the other side of the crime which is the victim and the damages should be cared and noticed yet it still has a long way before the end of the line and realization.

Therefore, it is essential that measures be essential in addressing these shortcomings, these measures could include the following: establishing funds to help the victims, and allocating sequences of annual budget to repair the damages and losses caused to the victim same way as damages of victims of disasters and calamities that the natural hazards such as floods and earthquakes are predicted, work or create a group that is made up of volunteers in order to assist the victim in various areas, remove red tape hearing the claim for damages and losses resulting from the crime strengthening the criminal justice system in terms of financial and human resources professionals, in order to measure the rapid detection of crime and prosecute and punish criminals, preparation and forecasting programs for the prevention of crime, crime is a certain risk of social and treat common pests, establishing of Justice and Legal Guidance (As predicted in Article 10 of the Law on Public and Revolutionary Courts formation), to legally advice and guide victims, raising public awareness of the judicial system and the necessary training to individuals, not to simply be the victim of a crime, eventually creating a fundamental change in the criminal policy requires the fact that a criminal retribution, to repair damages to the victim, and restorative justice in the criminal justice becomes support for victims of repression.

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