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# Building A Resilient Insolvency Framework for Viksit Bharat: A Comparative Study of Avoidance Transaction Provisions Under the Insolvency and Bankruptcy Code, 2016

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## Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) has transformed India's insolvency regime by establishing a comprehensive framework for time-bound insolvency resolution, value maximisation and protection of stakeholder interests. Among its most significant provisions are the avoidance transaction mechanisms contained in Sections 43–51 and Section 66 of the Code, which seek to prevent preferential, undervalued, extortionate credit and fraudulent transactions that diminish the value of the corporate debtor prior to the commencement of insolvency proceedings. These provisions are intended to preserve the debtor's assets, ensure equitable distribution among creditors and maintain the integrity of the Corporate Insolvency Resolution Process (CIRP).

This paper comparatively analyses India's avoidance transaction framework with the insolvency laws of the United States, the United Kingdom, Singapore and Germany. It evaluates the strengths and limitations of each jurisdiction in terms of legislative design, institutional efficiency, investigative powers and judicial implementation. The study argues that although India's statutory framework is comprehensive, practical challenges such as delays in adjudication, limited forensic capacity, inconsistent judicial interpretation and prolonged litigation reduce its effectiveness in maximising creditor recoveries.

Based on comparative analysis, the paper recommends reforms including specialised insolvency benches, time-bound adjudication of avoidance applications, enhanced investigative powers for Resolution Professionals, AI-assisted forensic analysis and greater harmonisation with international best practices. It concludes that strengthening avoidance transaction provisions is essential for improving creditor confidence, promoting responsible corporate governance and supporting the broader vision of Viksit Bharat 2047, which envisages a resilient, transparent and globally competitive economy.

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## 1. INTRODUCTION

The aspiration of transforming India into a developed nation under the vision of **Viksit Bharat 2047** requires a strong institutional framework capable of supporting sustainable economic growth, financial stability and investor confidence. A modern economy depends upon an effective insolvency regime that promotes responsible corporate behaviour, facilitates business rescue and ensures equitable treatment of creditors. An efficient insolvency system contributes to economic resilience by enabling the timely restructuring of financially distressed enterprises, preserving productive assets and strengthening confidence in the financial system.

Recognising the inadequacies of the earlier fragmented insolvency framework, the Parliament enacted the Insolvency and Bankruptcy Code, 2016 (IBC) to consolidate laws relating to insolvency resolution and bankruptcy into a single comprehensive legislation. The Code introduced a creditor-in-control model, established strict timelines for resolution and sought to maximise the value of corporate assets while balancing the interests of all stakeholders.Since its enactment, the IBC has become one of India's most significant economic reforms and has substantially altered the country's credit and insolvency landscape.

Among the various mechanisms incorporated under the Code, the provisions relating to **avoidance transactions** perform a particularly significant role. These provisions empower the Resolution Professional to examine transactions entered into by the corporate debtor prior to insolvency commencement and seek appropriate orders from the Adjudicating Authority where such transactions have unfairly prejudiced creditors. The legislative objective is to prevent the depletion of the debtor's estate through preferential transfers, undervalued transactions, extortionate credit arrangements and fraudulent or wrongful trading.

Avoidance transaction provisions are indispensable because they preserve the value of the insolvency estate and discourage debtors from transferring assets to related parties or favoured creditors before insolvency proceedings commence. If such transactions remain unchallenged, the available asset pool diminishes, resulting in lower recoveries for creditors and reducing the prospects of successful corporate rescue. Consequently, effective implementation of these provisions directly influences the success of the Corporate Insolvency Resolution Process (CIRP) and the overall credibility of India's insolvency framework.

Despite the comprehensive statutory framework established under Sections 43–51 and Section 66 of the IBC, practical implementation continues to present significant challenges. Avoidance applications frequently remain pending for prolonged periods, often extending beyond the approval of resolution plans. Resolution Professionals encounter difficulties in obtaining financial information, tracing complex related-party transactions and conducting forensic investigations within the prescribed timelines. Furthermore, divergent judicial interpretations have created uncertainty regarding the treatment of recoveries arising from avoidance proceedings and the continuation of such proceedings after approval of resolution plans.

These implementation challenges have important implications not only for creditor recoveries but also for India's broader economic objectives. A predictable and efficient insolvency framework enhances investor confidence, facilitates access to institutional credit and contributes to improved corporate governance. Conversely, delays and uncertainties reduce the effectiveness of insolvency proceedings and weaken confidence among financial institutions and investors.

Comparative legal analysis provides valuable insights into addressing these concerns. Mature insolvency jurisdictions such as the United States, the United Kingdom, Singapore and Germany have developed sophisticated mechanisms for investigating and reversing harmful pre-insolvency transactions. These jurisdictions provide clearer statutory guidance, stronger investigative powers, specialised insolvency institutions and efficient judicial mechanisms that contribute to higher recovery rates and greater certainty in insolvency administration. Examining these models enables the identification of reforms that may strengthen India's insolvency ecosystem while remaining consistent with its legislative framework and economic priorities.

The present study is therefore limited to two principal objectives. First, it undertakes a comparative examination of India's avoidance transaction framework with corresponding provisions in the United States, the United Kingdom, Singapore and Germany. Secondly, it proposes reforms that can enhance the effectiveness of India's avoidance transaction regime and contribute towards achieving the objectives of **Viksit Bharat 2047**. The paper proceeds on the premise that avoidance transaction provisions should not merely function as legal remedies but as instruments of economic governance capable of improving creditor recoveries, strengthening corporate accountability and promoting sustainable economic development.

As India advances towards becoming a developed economy, insolvency reforms must evolve beyond legislative enactments and focus upon effective implementation, institutional capacity and technological innovation. Strengthening avoidance transaction provisions can contribute significantly to preserving enterprise value, improving recovery rates, encouraging responsible lending and reinforcing confidence in India's financial system. Accordingly, reforming this area of insolvency law constitutes an important component of India's broader strategy to build a resilient, transparent and globally competitive economy under the vision of **Viksit Bharat 2047**.

## 2. RESEARCH OBJECTIVES

The study is based on the following objectives:

1. To compare India's avoidance transaction framework under the Insolvency and Bankruptcy Code, 2016 with the corresponding legal frameworks in the United States, the United Kingdom, Singapore and Germany.
2. To recommend legal, institutional and policy reforms for strengthening India's insolvency ecosystem in furtherance of the vision of Viksit Bharat 2047.

## 3. RESEARCH METHODOLOGY

The study adopts a **qualitative doctrinal and comparative legal research methodology**. Primary sources include the Insolvency and Bankruptcy Code, 2016, the United States Bankruptcy Code, the Insolvency Act 1986 (United Kingdom), the Insolvency, Restructuring and Dissolution Act 2018 (Singapore), and the German Insolvency Code. Judicial decisions of the Supreme Court of India, the National Company Law Appellate Tribunal (NCLAT) and selected foreign courts have also been analysed.

Secondary sources comprise books, peer-reviewed journal articles, reports of the Insolvency and Bankruptcy Board of India (IBBI), the Insolvency Law Committee, UNCITRAL publications, World Bank reports and scholarly commentaries on comparative insolvency law. The comparative method has been employed to identify similarities, differences and best practices that may be adapted to the Indian insolvency framework. The study is analytical in nature and aims to propose policy-oriented reforms that strengthen creditor protection and support India's long-term economic development.

### Comparative Analysis of Avoidance Transaction Provisions: India, United States, United Kingdom, Singapore and Germany

The effectiveness of an insolvency regime is determined not only by its ability to facilitate corporate rescue but also by its capacity to prevent the erosion of the debtor's assets before the commencement of insolvency proceedings. Debtors experiencing financial distress often attempt to transfer assets to related parties, favour particular creditors, dispose of valuable property at undervalue, or enter into transactions intended to defeat the legitimate claims of creditors. Such transactions significantly reduce the insolvency estate and undermine the fundamental objectives of insolvency law.

Recognising these challenges, most developed jurisdictions have incorporated avoidance transaction provisions that enable insolvency administrators or trustees to challenge and reverse prejudicial transactions entered into before the commencement of insolvency proceedings. Although the legislative objective remains substantially similar across jurisdictions, differences exist regarding statutory design, investigative powers, judicial discretion, limitation periods and institutional efficiency. A comparative analysis of these jurisdictions provides valuable insights into international best practices that may strengthen India's insolvency ecosystem and contribute to the vision of Viksit Bharat 2047.

### India

The Insolvency and Bankruptcy Code, 2016 introduced a comprehensive statutory framework governing avoidance transaction through Sections 43 to 51 and Section 66. These provisions empower the Resolution Professional to investigate transactions entered into by the Corporate Debtor during specified look-back periods and apply before the National Company Law Tribunal (NCLT) for appropriate relief.

- The Code classifies avoidance transactions into four categories:
- Preferential Transactions (Section 43)
- Undervalued Transactions (Sections 45–48)
- Extortionate Credit Transactions (Section 50)
- Fraudulent or Wrongful Trading (Section 66).[1]

Unlike the previous insolvency regime, the IBC provides statutory definitions and prescribes separate legal consequences for each category of avoidance transaction. The Resolution Professional is required to examine the affairs of the Corporate Debtor and identify transactions that have unfairly prejudiced creditors before filing an application before the Adjudicating Authority.

The Supreme Court, in **Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.**, clarified the scope of preferential transactions and emphasised that the objective of Section 43 is to restore equality among creditors by avoiding transactions that provide an undue advantage to one creditor over others.[2] The Court observed that avoidance provisions constitute an important mechanism for preserving the value of the insolvency estate and ensuring equitable treatment of similarly situated creditors.

Despite its comprehensive legislative framework, India's avoidance transaction regime continues to face practical difficulties. The most significant challenge is the considerable delay in adjudication of avoidance applications. In many cases, such applications remain pending long after the approval of the resolution plan, thereby reducing their practical significance in improving creditor recoveries. Resolution Professionals also face difficulties in obtaining financial information, tracing related-party transactions and conducting forensic investigations within the limited timelines prescribed under the Code.

Furthermore, judicial uncertainty regarding the continuation of avoidance proceedings after approval of the resolution plan has created inconsistencies in implementation. These practical challenges indicate that while India's statutory framework is robust, greater institutional efficiency and procedural clarity are necessary to realise its full potential.

### United States

The United States possesses one of the most developed insolvency systems in the world. The Bankruptcy Code confers extensive avoidance powers upon the bankruptcy trustee under Sections 547 and 548.

Section 547 authorises the trustee to avoid preferential transfers made within ninety days before the filing of bankruptcy or one year in the case of insider transactions.The principal objective is to prevent debtors from favouring selected creditors immediately before bankruptcy and to ensure equitable distribution among all creditors.

Section 548 empowers the trustee to avoid fraudulent transfers made with actual intent to hinder, delay or defraud creditors or transfers made for less than reasonably equivalent value while the debtor was insolvent The provision allows recovery of assets improperly transferred prior to bankruptcy, thereby increasing the value of the bankruptcy estate.

A distinguishing feature of the American system is the extensive investigative authority vested in the bankruptcy trustee. Trustees possess broad powers to obtain financial records, examine witnesses, investigate related-party transactions and initiate avoidance litigation. The specialised Bankruptcy Courts further ensure speedy adjudication and consistency in judicial interpretation.

Compared to India, the United States demonstrates greater institutional efficiency due to specialised courts, experienced trustees and well-developed jurisprudence. Although India has adopted a comprehensive statutory framework, Resolution Professionals presently possess comparatively limited investigative powers and continue to depend upon multiple agencies for obtaining financial information.

**United Kingdom**

The avoidance transaction framework in the United Kingdom is principally governed by the Insolvency Act 1986. Sections 238 and 239 respectively deal with transactions at an undervalue and preferences.

A transaction at an undervalue occurs where a company disposes of assets for significantly less than their market value or transfers property without adequate consideration. Preference provisions enable the court to reverse transactions that place one creditor in a more favourable position than others shortly before insolvency.

The UK insolvency regime places significant emphasis upon professional insolvency practitioners. Licensed Insolvency Practitioners enjoy substantial autonomy in investigating corporate affairs, collecting evidence and initiating court proceedings. Judicial intervention generally occurs after comprehensive investigation by the insolvency practitioner, resulting in greater efficiency and stronger enforcement.

The UK system also benefits from decades of judicial precedent, which has produced relatively consistent interpretation of avoidance provisions. In contrast, India's jurisprudence is still evolving, leading to uncertainty on several procedural issues including treatment of recoveries after approval of the resolution plan.

The United Kingdom therefore demonstrates the importance of professional autonomy, specialised expertise and judicial consistency in improving the effectiveness of avoidance transaction litigation.

**Singapore**

Singapore has emerged as one of Asia's leading restructuring jurisdictions following the enactment of the Insolvency, Restructuring and Dissolution Act, 2018 (IRDA). Sections 224 to 227 of the Act govern unfair preferences and transactions at an undervalue.

Singapore's insolvency regime seeks to balance creditor protection with corporate rescue by encouraging restructuring while simultaneously preventing abuse through avoidance transactions.

One of the defining characteristics of Singapore's insolvency system is its emphasis on institutional efficiency. The judiciary actively promotes expedited hearings, digital filing systems and specialised insolvency practice. Insolvency practitioners are supported by sophisticated forensic accounting and electronic case management systems that facilitate timely investigation of suspicious transactions.

Unlike India, where avoidance applications frequently remain pending before the NCLT for extended periods, Singapore's institutional framework substantially reduces procedural delay through technology and specialised commercial courts.

The Singaporean model demonstrates how digital transformation and institutional capacity can significantly improve the effectiveness of avoidance transaction litigation.

**Germany**

Germany's Insolvency Code provides one of the most structured approaches to avoidance transactions. Sections 129 to 146 comprehensively regulate the contestability of transactions that prejudice creditors.

The German framework distinguishes between several categories of avoidable transactions based upon the debtor's intention, timing and effect upon creditors. Different limitation periods and evidentiary standards apply depending upon the nature of the transaction.

The Insolvency Administrator possesses broad investigative powers to obtain financial records, challenge suspicious transfers and recover assets transferred before insolvency. German courts have developed a consistent body of jurisprudence that provides greater predictability in avoidance litigation.

Another distinguishing feature is Germany's strong emphasis on creditor protection. The legal framework seeks to maximise recoveries by restoring improperly transferred assets to the insolvency estate while discouraging fraudulent depletion of corporate assets.

India may draw valuable lessons from Germany by adopting clearer statutory classifications, improving investigative mechanisms and strengthening institutional capacity for handling complex avoidance litigation.

**Critical Comparative Observations**

A comparison of the five jurisdictions reveals that India possesses a modern statutory framework comparable to advanced insolvency systems. However, its implementation remains constrained by institutional challenges. The United States provides stronger investigative powers to trustees, enabling more effective recovery of assets. The United Kingdom benefits from highly regulated insolvency practitioners and consistent judicial interpretation. Singapore demonstrates how digitalisation and specialised commercial courts can improve efficiency, while Germany illustrates the value of structured statutory classification and creditor-oriented enforcement.

Unlike these jurisdictions, India's principal challenge does not lie in legislative inadequacy but in enforcement. Delays before the NCLT, limited forensic capacity, lack of specialised infrastructure and procedural uncertainty reduce the practical effectiveness of avoidance transaction provisions. Consequently, future insolvency reforms should prioritise institutional strengthening rather than merely legislative amendments.

**Critical Evaluation and Reform Roadmap for Strengthening India's Insolvency Ecosystem towards Viksit Bharat 2047**

The comparative analysis demonstrates that although India's avoidance transaction framework is legislatively comprehensive, its practical effectiveness remains constrained by institutional, procedural and administrative challenges. Unlike mature insolvency jurisdictions such as the United States, the United Kingdom, Singapore and Germany, where avoidance litigation is supported by specialised courts, well-developed insolvency professionals, digital infrastructure and consistent judicial precedents, India's insolvency regime continues to experience delays in adjudication, inconsistent implementation and limited investigative capacity.

The success of avoidance transaction provisions should not be measured merely by the number of applications filed before the National Company Law Tribunal (NCLT), but by their ability to maximise creditor recoveries, preserve enterprise value and discourage fraudulent depletion of corporate assets. As India advances towards the vision of **Viksit Bharat 2047**, insolvency law must evolve beyond statutory reforms and focus on strengthening institutions, improving technology adoption and ensuring efficient enforcement.

**Comparative Evaluation of Major Jurisdictions**

**Table 1:** Comparative Evaluation of Avoidance Transaction Frameworks

| Parameters | India | United States | United Kingdom | Singapore | Germany |
|---|---|---|---|---|---|
| Governing Law | IBC, 2016 | Bankruptcy Code | Insolvency Act, 1986 | IRDA, 2018 | Insolvency Code |
| Types of Avoidance Transactions | Four categories | Preference & Fraudulent Transfers | Preference & Transactions at Undervalue | Preference & undervalue | Multiple categories |
| Investigative Authority | Resolution Professional | Bankruptcy Trustee | Insolvency Practitioner | Judicial Manager/ Liquidator | Insolvency Administrator |
| Investigative Powers | Moderate | Very Strong | Strong | Strong | Strong |
| Specialised Courts | NCLT | Bankruptcy Courts | Insolvency Courts | Commercial Courts | Insolvency Courts |
| Technology Integration | Moderate | High | High | Very High | High |
| Judicial Consistency | Moderate | High | High | High | High |
| Speed of Disposal | Slow | Fast | Moderate | Fast | Moderate |
| Creditor Protection | Good | Excellent | Excellent | Excellent | Excellent |
| Recovery Efficiency | Moderate | High | High | High | High |

The comparison indicates that India's legislative framework is broadly aligned with international standards. However, unlike other jurisdictions, India continues to face implementation-related challenges that reduce the effectiveness of avoidance transaction provisions. The problem, therefore, lies not in the absence of legal provisions but in the institutional capacity to enforce them effectively.

**Critical Issues in India's Avoidance Transaction Framework**

**A. Delay in Adjudication**

One of the most significant weaknesses of India's insolvency framework is the prolonged pendency of avoidance applications before the NCLT. In many cases, resolution plans are approved before avoidance applications are finally adjudicated, thereby reducing their practical impact on creditor recoveries.

Such delays undermine the fundamental objective of value maximisation under the IBC. Delayed recovery of diverted assets also affects the confidence of financial creditors and resolution applicants, who are unable to accurately assess the financial position of the corporate debtor during the resolution process.

**Critical Observation**

Unlike Singapore and the United States, India does not have specialised procedural mechanisms exclusively for avoidance litigation. Consequently, applications compete with other insolvency matters, contributing to judicial backlog.

**Limited Investigative Powers of Resolution Professionals**

Resolution Professionals play a central role in identifying avoidance transactions. However, unlike bankruptcy trustees in the United States, they possess comparatively limited investigative powers and often depend upon cooperation from suspended management, banks, statutory authorities and forensic auditors.

Tracing complex financial transactions involving shell companies, related-party entities and layered corporate structures requires advanced forensic expertise and access to real-time financial information. In the absence of such powers, suspicious transactions frequently remain undetected.

**Critical Observation**

India should consider strengthening statutory powers of Resolution Professionals by providing direct access to banking databases, corporate filings, tax records and digital financial information, subject to appropriate safeguards.

**Absence of Digital Forensic Infrastructure**

Modern financial fraud frequently involves digital transactions, cryptocurrency, layered corporate entities and cross-border asset transfers. While jurisdictions such as Singapore extensively utilise digital case management and forensic accounting technologies, India's insolvency framework remains largely dependent upon conventional investigation techniques.

Artificial Intelligence and blockchain analytics are increasingly being used internationally to detect suspicious financial transactions. Their adoption can substantially improve the efficiency of avoidance transaction investigations in India.

**Inconsistent Judicial Interpretation**

Although the Supreme Court has clarified several aspects of avoidance transactions in *Anuj Jain* and subsequent decisions, important issues continue to generate conflicting judicial opinions. These include:

- continuation of avoidance applications after approval of the resolution plan;
- treatment of recovered assets;
- rights of successful resolution applicants;
- interaction between avoidance proceedings and liquidation.

The absence of uniform jurisprudence creates uncertainty for creditors, investors and insolvency professionals.

**Roadmap for Strengthening India's Insolvency Framework**

**Legislative Reforms**

The first step should be strengthening the statutory framework governing avoidance transactions. Parliament should consider prescribing a dedicated timeline for disposal of avoidance applications, independent of the Corporate Insolvency Resolution Process.

Further, the Code should clarify the legal consequences of successful avoidance applications after approval of a resolution plan. Legislative certainty will reduce litigation and enhance predictability for stakeholders.

**Institutional Reforms**

Specialised NCLT benches dealing exclusively with avoidance transaction litigation should be established in major commercial centres.

Judicial officers dealing with complex insolvency disputes should receive continuous training in forensic accounting, financial fraud investigation and international insolvency practices.

The Insolvency and Bankruptcy Board of India (IBBI) should also develop specialised certification programmes in forensic investigation for Resolution Professionals.

**Technological Reforms**

India's insolvency ecosystem should embrace digital transformation through:

- Artificial Intelligence-based transaction screening;
- Blockchain-enabled asset tracing;
- Digital forensic accounting;
- Integrated electronic case management;
- Centralised insolvency information systems.

Technology can substantially reduce investigation time while improving the accuracy of identifying fraudulent and preferential transactions.

**International Cooperation**

As corporate transactions increasingly involve multinational entities, avoidance litigation often requires cross-border cooperation.

India should strengthen cooperation with foreign insolvency authorities through:

- adoption of international best practices;
- enhanced information-sharing mechanisms;
- implementation of the UNCITRAL Model Law on Cross-Border Insolvency;
- bilateral cooperation agreements.

Such reforms will improve recovery of overseas assets and strengthen India's position in international insolvency practice.

**Contribution towards Viksit Bharat 2047**

The Government of India's vision of **Viksit Bharat 2047** seeks to transform India into a developed nation characterised by sustainable economic growth, strong institutions, technological innovation and globally competitive industries. A modern insolvency framework forms an essential component of this vision because economic development depends upon efficient allocation of financial resources and effective protection of creditor rights.

Strengthening avoidance transaction provisions contributes directly to this national vision in several ways.

**(i) Improving Investor Confidence**

Investors are more likely to invest in jurisdictions where insolvency laws effectively protect creditor interests. Strong avoidance provisions assure lenders that fraudulent diversion of corporate assets can be reversed through legal mechanisms, thereby reducing investment risk.

**(ii) Enhancing Ease of Doing Business**

An efficient insolvency framework improves India's business environment by ensuring predictable commercial outcomes. Faster disposal of avoidance applications reduces uncertainty and encourages domestic as well as foreign investment.

**(iii) Strengthening Financial Stability**

Recovery of diverted corporate assets reduces losses suffered by banks and financial institutions. Improved creditor recoveries strengthen credit discipline and contribute to a healthier banking system.

**(iv) Promoting Good Corporate Governance**

Avoidance transaction provisions discourage insider abuse, related-party preferences and fraudulent asset transfers. Consequently, they promote transparency, accountability and ethical corporate conduct.

**(v) Supporting Sustainable Economic Development**

Efficient insolvency resolution preserves economically viable enterprises, protects employment, encourages entrepreneurship and improves resource allocation. These outcomes align closely with the objectives of sustainable and inclusive economic growth envisioned under Viksit Bharat 2047.

## CONCLUSION

The comparative study demonstrates that India's avoidance transaction framework is broadly comparable with those of leading insolvency jurisdictions. Nevertheless, its practical effectiveness continues to be constrained by procedural delays, limited investigative powers, technological deficiencies and institutional challenges.

The experiences of the United States, the United Kingdom, Singapore and Germany indicate that successful avoidance litigation depends not merely upon statutory provisions but also upon specialised institutions, judicial consistency, professional expertise and digital infrastructure. India can significantly enhance creditor recoveries by adopting these best practices while adapting them to its domestic legal framework.

Ultimately, strengthening avoidance transaction provisions is not merely an exercise in insolvency reform; it is an important component of India's broader economic transformation. An efficient insolvency ecosystem promotes financial discipline, investor confidence, corporate accountability and sustainable economic growth. These objectives are central to achieving the vision of **Viksit Bharat 2047**, making insolvency reform an essential pillar of India's journey towards becoming a resilient and globally competitive economy.

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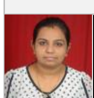

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