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# A CONSTITUTIONAL CONUNDRUM - AN ANALYSIS OF THE GOVERNOR'S POST

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Ashish Mathaly, Mihir N Singh & Tia Sikka, Christ (DEEMED TO BE UNIVERSITY)

## ABSTRACT

The governor is considered the constitutional head of the state and is mandated to further the agenda as a custodian of constitutionalism. Article 157 of the constitution states the qualifications of a governor merely entail the candidate to be an Indian citizen of 35 years age minimum. Owing to the method of appointment, i.e. by the president, an indirect obligation is placed on the governor to abide by the ruling party, which then factors into an unintended bias of the candidate. The same causes misuse of the post for political purposes that defeats the concept of federalism itself. A political tactic employed by the post of the governor, to topple the state-elected government is the capricious application of Article 356. If the state's constitutional machinery fails, only the president of India, receiving a report from the governor, has the authority to declare an emergency. The issue also arises since the post of the governor is the only nominated constitutional post without a fixed tenure and no job security, which places a burden on the candidate to align their decisions with the interest of the ruling party.

This paper through a doctrinal method of study, attempts to highlight the responsibilities attached to the governor's post and the exploit of the same. This research attempts to minimize the existing flaws in the law that uphold the ideals of federalism and reduce arbitrariness.

**Keywords:** Governor, Federalism, Qualifications, Appointment, Arbitrariness

**Introduction:**

*“The governor is a representative, not of a party; he is a representative of the people as a whole of the state.”*

**- B.R Ambedkar**

The Indian Constitution establishes a federal system, meticulously dividing power between the central government and the states. At the helm of each state stands the Governor, envisioned as a neutral head. However, the Governor's role has come under scrutiny for its susceptibility to influence from the central government. Governors are appointed by the President, who is beholden to the ruling party at the centre. This close association raises concerns about the Governor's ability to act as an objective representative of the state and champion its unique interests. This essay delves into the rationale behind empowering state governors and proposes legislative and constitutional reforms to achieve this goal.

Under the constitution of India, Article 153 furnishes each state with a governor who is the **constitutional head** of the state to which he/she is appointed, which states:

*“153. There shall be a Governor for each State. Provided that nothing in this Article shall prevent the appointment of the same person as Governor for two or more States.”<sup>1</sup>*

The governor of each state is appointed by the President of India as stated under Article 155 “by warrant under his hand and seal.” The term of the office of the governor is as per the pleasure of the president and the tenure mentioned in the constitution for the governor’s post is that of five years. However, he/she may by writing to the president resign from their post before the end of the tenure. The qualifications for the governor's appointment entail them to be an Indian citizen and be of a minimum age of 35 years. The governor of each state is appointed by the President of India as stated under Article 155 “by warrant under his hand and seal.” The term of the office of the governor is as per the pleasure of the president and the tenure mentioned in the constitution for the governor’s post is that of five years. However, he/she may by writing to the president resign from their post prior to the end of the tenure.

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<sup>1</sup> India Const. art. 153.

The governor has similar functions and powers to that of the president at a central level and mainly deals with the executive function of the state. A governor's post is relevant to states whereas lieutenant governors and administrators exist in union territories of Delhi. Article 154 of the constitution bestows upon the governor certain executive powers of the state which states that:

*“154. (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.*

*(2) Nothing in this Article shall*

*(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or*

*(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.”<sup>2</sup>*

These powers allow the governor to carry out administrative functions, removal and appointment of ministers, legislative powers within the state as well as powers related to the state legislature, under the state legislative assembly. Vidhan Sabha or state legislative council, Vidhan Parishad. Article 161 of the constitution also vests powers to grant pardons, etc, and to suspend, remit or commute sentences in certain cases at the level of the high court, equivalent to the president's power at the apex level. The article states as follows:

***“161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases: The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.”<sup>3</sup>***

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<sup>2</sup> India Const. art. 154

<sup>3</sup> India Const. art. 161

### **The Corrosive effects of Central Dominance:**

Central influence over governors can have detrimental consequences for India's federal fabric. When governors act as agents of the centre rather than autonomous state leaders, true federalism suffers. While this may not appear to be an issue at large and is barely even noticeable by many, the state seizes to have true autonomy, and the representatives of the people are unable to voice their opinions freely.

Governors at times are appointed from the same party as the central government and can be prone to prioritizing their agenda over the needs of the state. This may disproportionately disadvantage states ruled by opposition parties, undermining their ability to enact policies tailored to their specific contexts and societal backgrounds. Articles of the Constitution like 356, which enables the imposition of the President's Rule on a state, and discretionary powers regarding assent/withholding assent to state bills, may create opportunities for the centre to exert pressure on state governments.<sup>4</sup> This enables the centre to adopt policies aligned with its interests, hindering the state's autonomy. A Governor's dependence on the centre for appointment and removal allegedly weakens their accountability to the state legislature and ultimately, the people they represent. When the threat of removal may loom, a Governor might be less inclined to take decisions that contradict the central government's wishes, regardless of their merits for the state. These issues are highlighted only when a state is affected to a greater extent. While the central government may not intend to do so, it hinders the concept of federalism and the core of the Constitution itself. While abolishing the post of the governor is an explored option, it cannot be done away with either to maintain the sanctity of the blackletter law. There has been said to be an increased misuse of the post of the governor for political reasons. Chief Justice of India, D.Y. Chandrachud, in an interview mentioned, "We should not reject constitutional morality because it may sometimes be in tension with existing social practices." A similar ideology was given by B.R. Ambedkar on constitutional morality. The attempt was to prevent negative effects on governance and administration, disruption of harmonious relations between the states and centre, uphold federalism, and stabilise the elected government.

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<sup>4</sup> THE ROLE OF THE GOVERNOR UNDER THE CONSTITUTION AND THE WORKING OF COALITION GOVERNMENTS on JSTOR, <https://www.jstor.org/stable/41854247> (last visited Mar 10, 2024).

These factors effectively centralize power, negating the core purpose of a federal structure – ensuring regional representation and responsive governance.

- **Fostering a More Balanced Federation.** Empowering governors holds the potential to revitalize India's federal system. With greater independence, governors can champion state interests, foster stronger state governments, and ultimately, bolster Indian democracy.
- **Stronger States, Equitable Resource Distribution:** Independent Governors can be vocal advocates for their states, ensuring a more equitable distribution of resources from the centre. This would translate into improved infrastructure development, social welfare programs, and economic growth across all states, thereby narrowing regional disparities.
- **Free from undue central pressure,** governors can prioritize issues specific to their states. This leads to more responsive and effective governance, as policies are directly informed by the state's unique socio-economic realities.
- **Empowered governors strengthen the pillars of democracy.** Firstly, they promote genuine federalism by ensuring a balance of power between the center and the states. Secondly, they hold the central government accountable by acting as a counterweight against its potential overreach. Finally, they enhance democratic principles by making state governments more responsive to the will of the state's electorate.

### **The Governor's post and issues regarding the same**

The post of the governor is considered one of the most essential posts in a state government. The governor holds esteemed importance wherein the nominated member enjoys numerous powers. The Governor who is the head of the state and the one who leads the executive body at the state level is an enigmatic post at the ground level. The position in itself has several flaws and shortcomings wherein it violates some of the key constitutional principles and the basic structure doctrine as laid down in the **KESAVANANDA BHARTI vs. UNION OF INDIA**<sup>5</sup>. Article 153 of the constitution mandates the post of governor in every state but the

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<sup>5</sup> Kesavananda BharaV v. State of Kerala, (1973) 4 SCC 225

appointment of the same is one of the pivotal issues being looked upon in this paper.

Article. 155 states that the governor will be appointed by the president who is aided and advised by the Council of Ministers at the Union level. This can lead to a situation wherein the post of the governor is interdependent on the government at the union level. This also implies that the governor is the nominee of the centre or is an officer representing the centre at the state level. The subsequent Article. 156 also states that the governor enjoys the post at the pleasure of the president which indirectly poses a responsibility on the governor to ensure he acts upon the instructions of the President, if not, there is a direct threat to the office that he/she holds.

There have been commissions that have been set up in the past to review the post of the governor. The Sarkaria Commission was set up in the year 1983 that aimed to investigate and analyse how the current agreements between the Union and States are operating in terms of powers, functions, and responsibilities in all domains and recommend any necessary changes or additional measures. Some of the commission's key findings suggested the need for revamping the powers and the obligations vested with the governor of the state.

The qualifications for a governor are the same as for a member of the parliament i.e. being a citizen of India and should be 35 years and above to qualify to be a governor. The governor has no minimum educational qualification specified in the constitution of India. The governor has no set criteria to hold the esteemed post but merely needs to be in the good books of the central government. There have been instances wherein the independence of the judiciary and executive has been an issue across the nation. There have been allegations against retired judges of the Supreme Court of India who have held the office as a governor that while they were acting as the judges of the esteemed court, they've passed judgments in favor of the government that was in power to gain clout with the government. These allegations may not be true but these instances ought to be looked upon as this issue may arise in the future and the basic structure of the Indian constitution is at stake. The executive on the other hand, such as top cops and esteemed diplomats have been appointed as a governor, post-retirement. This position again poses another challenge wherein these officials and the esteemed judges may act in favor of the party in power in order to ensure their post-retirement life is secured.

The said criteria to be a governor has not been established in the constitution which grants power to the central government to appoint anyone and everyone aligned to them. The position

of the governor needs to be revamped and ensure that the person who is holding or ought to hold the post should be limited. There should be said restrictions and qualifications especially educational qualifications to set a seal on the post of the governor. The governor also faces backlash in case his views are not in accordance with the central government. All these issues are of immense importance and needs attention to the earliest in order to have a smooth functioning of all the organs of the government.<sup>6</sup>

In one of the judgments of the supreme court of India it was held that the governor has to consult and seek the advice of the council of ministers on every decision the he/she takes. The governor is not entitled to take any individual's decision until and unless it has been expressly mentioned in the Constitution of India.

Article 164 of the Indian Constitution provides the appointment of the Council of Ministers by the governor on the aid and advice of the chief minister who's tenure is at the pleasure of the Governor. In instances wherein the ministers are charged with the allegations that do not befit the post he/she is holding then this power of dismissal comes into play. But the catch in this specific power is that the dismissal of a minister should be done with the aid and advice of the council of ministers. There again imposes an obligation on the governor to act according to the aid and advice of the chief ministers. This in itself raises multiple questions as to what input/ the role that the governor plays as a whole. The post of the governor has many obligations that are imposed that are to be complied with. Merely referring to the constitution of India that the ministers enjoy their position at the pleasure of the governor does not imply that the governor can act individually but has to abide by the aid and advice of the chief minister. In reality, most of the time the chief minister or the leaders of the party in the majority ask the ministers who are under controversy to resign from the esteemed post.<sup>7</sup>

The tenure of the governor of the state is for 5 years as guaranteed under Article 156 of the Constitution wherein the position that the member holds is at the pleasure of the President of India. The position of governor is indeed a post that holds immense power but the appointment by the president on the aid and advice of the council of ministers and the power that vests with the President to remove the governor without any valid reasoning is to be given implies that the

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<sup>6</sup> ARE THE GOVERNORS AGENT OF THE CENTRE ? on JSTOR, [h:ps://www.jstor.org/stable/41856402](https://www.jstor.org/stable/41856402) (last visited Mar 10, 2024).

<sup>7</sup> THE GOVERNOR: CONSTITUTIONAL POSITION AND POLITICAL REALITY on JSTOR, [h:ps://www.jstor.org/stable/41855632](https://www.jstor.org/stable/41855632) (last visited Mar 10, 2024).

post of governor acts as a nominee of the Centre. In 2010, in the case of **B.P. SINGHAL v. UNION OF INDIA**<sup>8</sup>, the Supreme Court held that the governor cannot be removed by the President arbitrarily or unreasonably as the governor's ideologies were not inconsistent with that of the union ministers is not a sufficient ground for removal of the governor. Even the Sarkaria commission held that the governor's position is to be upheld and the removal of the same should be rare and reasonable. Even then there have been many instances wherein the governor has been removed arbitrarily and no such actions have been taken therein. The governor's post has been controversial in itself wherein there have been articles that state that the governor is a mere rubber stamp post.

### Potential solutions

India's federal structure hinges on a delicate balance between the central government and the states. The Governor, occupying a unique position, is entrusted with upholding this balance. However, the current system of appointment and the discretionary powers vested in the Governor raise concerns about potential central influence, potentially undermining federalism. This essay argues that the Supreme Court of India can play a vital role in addressing this issue by intervening either through suo moto cognizance (taking up a case on its own motion) or Public Interest Litigation (PIL).

The Governor's position embodies a duality. Articles 153 and 154 of the Constitution empower the President (acting on the advice of the central government) to appoint the Governor. This appointment process raises concerns about the Governor's neutrality, potentially making them beholden to the centre. However, Article 163 mandates the Governor to act based on the "aid and advice" of the Council of Ministers (state government). This creates a situation where the Governor is both an agent of the centre and the guardian of the state's interests.

The potential for central influence arises from two key aspects of the current system. Firstly, the selection process lacks transparency. The center's control over Governor appointments can lead to individuals politically aligned with them being chosen. This can create a situation where the Governor prioritizes central interests over those of the state. Secondly, Articles 163(2) and 366(2) grant the Governor discretionary powers in specific situations, such as assenting to bills passed by the state legislature. While intended for exceptional circumstances, these powers can

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<sup>8</sup> B.P. Singhal v. Union of India, (2010) 6 SCC 331



be misused to stall or veto legislation that the center disapproves of, hindering the state's legislative autonomy.<sup>9</sup>

Undue central influence weakens federalism in several ways. It disrupts the intended balance of power between the centre and the states, hindering state governments from pursuing policies tailored to their specific needs. This erodes state autonomy and undermines the cooperative spirit envisaged by the Constitution.

The Supreme Court, as the guardian of the Constitution, has a crucial role to play in ensuring that the Governor's position adheres to federal principles. There are two potential avenues for intervention:

- **Suo Moto Cognizance:** The Court can take suo moto cognizance of this issue, recognizing its far-reaching impact on the federal structure. This would allow them to initiate proceedings without waiting for a formal petition. The Court can justify suo moto action based on several arguments. Firstly, the pervasive nature of the issue, impacting multiple states, creates a systemic problem requiring the Court's attention.<sup>10</sup> Secondly, undue central influence weakens federalism, a core principle enshrined in the Constitution. The Court has a duty to uphold these principles. Finally, a strong federal structure ensures healthy governance at both the centre and state levels. Suo moto action protects this public interest.

By taking Suo moto cognizance, the Court can set a strong precedent and send a clear message about the importance of adhering to federal principles. This can lead to broader discussions and potential legislative reforms to address the issue.

- **Public Interest Litigation (PIL)** provides an alternative pathway for addressing the issue. Citizens or organizations concerned about central influence on Governors can file PILs urging the Court to intervene. PILs are beneficial because they:
  - **Empower Public Participation:** PILs allow citizens to raise crucial issues impacting

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<sup>9</sup> THE POSITION OF A STATE GOVERNOR IN INDIA on JSTOR, <https://www.jstor.org/stable/41853885> (last visited Mar 10, 2024).

<sup>10</sup> Marc Galanter, *Snakes and Ladders: Suo Moto Intervention and the Indian Judiciary*, 10 LAWREVIEW (2014), <https://collections.law.fiu.edu/lawreview/vol10/iss1/8> (last visited Mar 10, 2024).

governance. This facilitates a bottom-up approach to strengthening federalism.

- Highlight Specific Instances: PILs can present specific examples of central interference, drawing the Court's attention to concrete cases that violate federal principles.
- Bring Diverse Perspectives: PILs can be filed from various viewpoints, enriching the Court's understanding of the issue and its societal impact.

Whether through *Suo moto* cognizance or PILs, the Supreme Court's intervention is critical to ensure the Governor acts as a true bridge between the centre and the states, upholding the spirit of federalism enshrined in the Constitution. Both approaches offer distinct advantages and can potentially work in tandem. *Suo moto* cognizance can set a strong precedent, while PILs enable citizen participation and highlight specific instances of concern. By utilizing these tools strategically, the Court can ensure a healthy balance of power between the centre and the states, strengthening Indian democracy.

The office of the Governor in India occupies a unique space within the federal structure. As the constitutional head of a state, the Governor is envisioned as a neutral arbiter, ensuring smooth governance and upholding the Constitution. However, the lack of a central law regulating this office creates a conundrum – a potential clash between vested political interests and the Governor's constitutional duty.

Political parties often view gubernatorial positions as an extension of their power, particularly in states ruled by parties different from the one in power at the centre. Governors appointed from the ruling party's ranks can be seen as a tool for exerting influence, potentially exceeding the boundaries of the Constitution. A central law with stricter regulations might restrict such practices, limiting the ability of parties to use this office for political gain.

Furthermore, Governors are endowed with certain discretionary powers. These include appointing Chief Ministers in hung assemblies, dissolving assemblies in case of political instability, and recommending the President's rule in states facing breakdown of constitutional machinery. Existing political parties might be hesitant to relinquish control over these powers through a central law, fearing a potential weakening of their influence.

However, landmark judgements by the Supreme Court of India highlight the need for greater regulation. The 1994 case of **S.R. Bommai vs. Union of India**<sup>11</sup> emphasized the paramount importance of Governors acting in accordance with the Constitution, not on partisan lines. The court stressed the need for clear guidelines to ensure this.

Adding to these, the recent judgment in *State of Punjab vs Principal Secretary to the Governor of Punjab and Another* (2023) further underscores the limitations of a Governor's discretionary power. In this case, the Supreme Court emphasized that the Governor, as an appointee of the President, acts on the "aid and advice" of the Council of Ministers, except in specific areas. The court clarified that the Governor cannot hold onto bills passed by the state legislature indefinitely, highlighting the need for a more accountable and transparent system.

These judgments provide a strong legal argument for a central law regulating the office of the Governor. Such a law could establish clear parameters for gubernatorial conduct, ensuring that discretionary powers are exercised objectively and in the state's best interests, not for partisan gains.

Efforts to enact such legislation have been made in the past but haven't materialized. The entrenched political interests discussed earlier could be a major hurdle in its passage. However, public interest litigation (PILs) citing the aforementioned judgments might pave the way for a more robust and transparent framework for Governors.

### **Suggestions that the Supreme Court may inculcate:**

The Indian Constitution vests significant power in the hands of state governors, acting as crucial guardians of the Constitution and ensuring smooth governance within states. However, concerns have been raised regarding the potential for arbitrariness in gubernatorial decisions, particularly in recommending the dissolution of elected assemblies, dismissing governments, and approving/rejecting bills. This essay delves into the existing concerns, explores potential solutions, and evaluates their effectiveness in mitigating arbitrariness and strengthening democratic principles.

The crux of the issue lies in the governor's nomination, tenure, and removal as well as the qualifications under the Constitution. While these powers aim to ensure checks and balances,

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<sup>11</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1

their vague nature and subjective interpretation can lead to arbitrary decisions influenced by political considerations, personal biases, or central government pressure. This can undermine the democratic process, erode public trust, and destabilize state governments.

The potential solutions that can revamp and better the structural aspect of this post entail the following and are to be looked at collectively, not as a single measure:

- **Qualifications of the governor:** The post of the governor as aforementioned in the paper only inculcates the bare minimum that is to be an Indian citizen and of 35 years of age. The same causes a bias towards the centre due to the method of nomination of the governor and requires the addition of some extra qualifications as well, which can be as follows:

**A) Addition of a basic educational qualification:** The suggestion for such an issue is to add a few educational qualifications or an exam with a similar structure to that of an IPS exam. The primary qualification shall entail a “school level certificate or its equivalent, which means a certificate of passing from a school in 10<sup>th</sup> and 12<sup>th</sup> grade.

**B) A secondary educational qualification:** The secondary qualification, however, has more relevance to the removal of bias in a two-fold manner. This is because the addition of an exam with a similar syllabus

to that of the IPS exam, encompassing logical reasoning, general knowledge, and political and civics knowledge, will strain out candidates who are qualified for the said post. Thus, restricting the president’s pleasure to choose a candidate more politically aligned towards the centre.

The current discretionary selection process can often be influenced by political affiliations. Establishing clear, objective criteria for governor selection could be a viable solution. These criteria could involve legal expertise, proven administrative experience, and a demonstrated understanding of the state's needs.

- **Appointment of the governor in consultation with the state:** The governor is appointed by the president with the advice of the council of ministers which directly points to the bias it may cause the governors of the state to have. This is relevant to the

fact that the appointment of the governor is solely in the hands of the centre and no consultation of the state is required. While the post of the governor is an “independent” post it still is influenced by the centre. The appointment of the governor should take place, as mentioned in the recommendations of the Sakaria Commission, in consultation with the Chief Minister of the state, the speaker of Lok Sabha, and the president. A more radical shift would be to enact legislation establishing direct elections for governors, mirroring the US model. This would significantly enhance their democratic legitimacy and ensure an unwavering focus on accountability to the state's electorate, rather than the central party leadership

- **Tenure of the governor:** Currently, the tenure of the governor is placed at the pleasure of the president. The article states that the Governor of a State is appointed by the President for a term of five years and holds office at his pleasure. The phrase, “holds office during his pleasure” should be removed and the governor shall be allowed to complete his tenure. This creates more job security and reduces the issue of arbitrary removal of the governors in case they do not align their actions to the centre’s action. The Venkatachaliah Commission and Punchhi Commission stated that the governor has to be allowed to complete their five-year term as the governor and shouldn’t be removed unreasonably. The case of B.P. Singhal v. Union of India also stated the same wherein the pleasure of the president does not give power to the president to remove the governor arbitrarily and unreasonably.

Removal of the governor through an impeachment process or at the will of the state (chief minister of the state or state legislative assembly): The removal of the governor may be done through an impeachment process either by a commission incorporated for the removal that would ideally encompass of the chief minister of the state, elected members of the state assembly, The President and The Vice President. Various commissions suggest the governor has to be removed only through a resolution passed by the state legislature. This should be used in order to ensure the smooth functioning of the government.

Addition of a Code of Conduct for the Governors: A structural ‘code of conduct’ should be given by the Supreme Court for the smooth functioning of the governor’s post. It shall incorporate all general principles for the exercise of the governor's powers and shall play as a guide. Any breach of the same may attract penalties.

**Strengthening Judicial Scrutiny:** A robust judicial system plays a vital role in safeguarding federalism. Empowering the judiciary to scrutinize central government actions related to governors (e.g., imposition of President's Rule) could act as a crucial safeguard against any attempts to misuse central control.

**Enhancing Financial Autonomy:** Financial dependence on the center weakens state governments. Increasing the state's share of central taxes and reducing central control over centrally sponsored schemes would grant governors greater financial autonomy. This would empower them to pursue state priorities with a sense of self-reliance and accountability.

### **Conclusion:**

The governor's post is a fairly flawed one and while it is suggested to be an independent post, the bias always tends to be toward the central government, potentially causing a conflict between the centre and the state. Various commissions have deliberated on the same and provided varied solutions but the resolution failed to make it into the parliament. Courts have observed that there is an urgent need for intervention but all of which has gone into vain, hence requiring some action to be taken by the public through a PIL and formation of guidelines by the judicial system, deriving its powers from other precedents. In conclusion, the parliament may not take the required action but as a federal state, and following the principles of basic structure doctrine and separation of powers, they must be taken.

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