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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

(1) Doctrine of fairness - Held: It is a doctrine developed in the administrative law field to ensure rule of law and to prevent failure of justice where an action is administrative in nature - Where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action - But, it certainly cannot be invoked to amend, alter, or vary an express term of contract between parties - This is so even if contract is governed by a statutory provision - Sub-r.(15) of r.5 of 1974 Rules cannot be struck down on the ground of reasonableness and fairness - Kerala Abkari Shops (Disposal in Auction) Rules, 1974 - r.5(15).

Mary v. State of Kerala and Ors. 1126

(2) Public employment - Non-consideration of claim of candidates on unjust grounds - Damages - Held: Even though appellants cannot get the relief sought, they must get damages for non-consideration on unjust grounds, as Commissioner for Commercial Tax had acted to reduce the zone of consideration, contrary to the rules, and instructions - State Government is directed to pay to appellants the damages and litigation costs, as ordered in the judgment and may recover the amounts from erring officer(s) - Damages.

(Also see under: Indian Administrative Service (Appointment by Selection) Regulations, 1977)

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(2) Letter dated 29.3.2007 issued by Finance Commissioner.

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CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) ss.197 r/w ss.190, 200 and 156(3) CrPC and s.19 of PC Act - Complaint u/s 200 against a public servant - Previous sanction not obtained - Special Judge directing investigation to be conducted by DSP, Lokayukta - Held: Once it is noticed that there was no previous sanction, Magistrate cannot order investigation against a public servant while invoking powers u/s. 156(3) Cr.P.C. - Special Judge has stated no reason for ordering investigation - High Court has rightly quashed order of Special Judge as well as complaint - Prevention of Corruption Act, 1988 - s.14.

(ii) ss.156(3) r/w s.190 - Power of Magistrate to order investigation - Held: A Magistrate, who is otherwise competent to take cognizance, has power to refer a private complaint for police investigation u/s. 156(3) Cr.P.C. - When a Special Judge refers a complaint for investigation u/s. 156(3), obviously, he has not taken cognizance of offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage.

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(2) s.354(2).

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(3) s.357(3).

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(1) Art. 136 - Criminal appeal - Concurrent findings of three courts below - Court declines to reappreciate the evidence.

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(2) Art.14.

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(3) Arts.14 and 16(1).

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(4) Arts. 21, 39(e)(f) and 47.

(i) (See under: Public Health) 1103

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CONTRACT ACT, 1872:

s. 56 - Contract to do act, afterwards becoming impossible - Doctrine of frustration - Statutory contract - Auction purchaser finding impossible to run abkari shops due to resistance by local residents, the area being a holy place - State also found it impossible to re-sell or re-dispose of arrack shops - Held: Doctrine of frustration excludes ordinarily further performance where contract is silent as to position of parties in the event of performance becoming literally impossible - However, in a statutory contract in which party takes absolute responsibility, it cannot escape liability whatever may be the reason - Further, in a case in

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which consequence of non-performance of contract is provided in statutory contract itself, parties shall be bound by that and cannot take shelter behind s. 56 - In the instant case, by reason of sub-r. (15) of r. 5 of 1974 Rules, State was entitled to forfeit the security money - In the face of specific consequences having been provided, appellant shall be bound by it and could not take benefit of s.56 - Kerala Abkari Shops (Disposal in Auction) Rules, 1974 - r. 5(15) - Doctrines/ Principles - Doctrine of frustration - Doctrine of fairness.

(Also see under: Kerala Abkari Shops (Disposal in Auction) Rules, 1974)

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(ii) Doctrine of fairness.

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EVIDENCE:

Agreement to sell - Containing the recital of delivery

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of possession - Held: At the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue - It does not mean that recital in the document shall be conclusive but for the purpose of admissibility it is the terms and conditions incorporated therein which shall hold the field - Deeds and Documents.

(Also see under: Stamp Act, 1899)

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FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) REGULATIONS, 2011:

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(1) (See under: Public Health) 1103

(2) (See under: Public Interest Litigation) 1126

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INDIAN ADMINISTRATIVE SERVICE (APPOINTMENT BY SELECTION) REGULATIONS, 1997:

Regulation 4 r/w Regulation 3 - Selection to I.A.S. under non-State Civil Services category for the year 2011 - State Government to send proposals for consideration of Committee - Held: Names of officers from the cadre of Assistant Commissioner of Commercial Taxes and above, who were of outstanding merit and were eligible, were to be forwarded, but names which were sent for consideration were, only of Joint Commissioners and Additional Commissioners and not Assistant Commissioners - When there is a criteria laid down

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for selection, Administration has to confine to the same, and it cannot impose an additional criterion, as it will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Arts. 14 and 16(1) of the Constitution - The decision of respondents not to consider appellants for selection was violative of Arts. 14 and Art. 16(1) of the Constitution, since it was arrived at on the basis of a criterion which was not laid down - Indian Administrative Service (Promotion by Appointment) Regulations, 1955 - Constitution of India, 1950 - Arts.14 and 16(1). (Also see under: Judgment; and Administrative Law)

B. Amrutha Lakshmi v. State of Andhra Pradesh and Ors. 1083

INDIAN ADMINISTRATIVE SERVICE (PROMOTION BY APPOINTMENT) REGULATIONS, 1955:

(See under: Indian Administrative Service (Appointment by Selection) Regulations, 1977) 1083

INTERPRETATION OF STATUTES:

(i) Construing of a provision - Held: While interpreting any provision of a statute the plain meaning has to be given effect and if language is simple and unambiguous, there is no need to traverse beyond the same.

(ii) Headings and marginal notes - Held: Heading of a Section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent - When the Section is clear and unambiguous, there is no need to traverse beyond those words -

Therefore, headings or marginal notes cannot control the meaning of body of the section.

(Also see under: Persons With Disability (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995)

Union of India & Anr. v. National Federation of the Blind & Ors. 1023

JUDGMENTS:

Prospective operation of judgment - Names of appellants not sent by department for selection to IAS - Held: Since the selection for the year 2011 had been over even before the interim application in CAT was decided, setting aside the selection conducted two years back, and asking the respondents to re-do the exercise after considering the appellants and other similarly situated candidates, would create lot of uncertainty, in as much as appellants and such other similarly situated candidates might or might not finally succeed in the selection process - Though the declaration is being granted that the appellants and persons situated like them were entitled to be considered by the Committee, no further relief in that behalf can be granted to them - The opinion rendered by Court will have to operate prospectively in the matter of application of relevant rules, for future selections.

(Also see under: Indian Administrative Service (Appointment by Selection) Regulations, 1977)

B. Amrutha Lakshmi v. State of Andhra Pradesh and Ors. 1083

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KERALA ABKARI SHOPS (DISPOSAL IN AUCTION) RULES, 1974:

rr. 5 (10), (15) and (19) - Auction purchaser failing to execute the agreement - Forfeiture of deposit - Held: In terms of sub-r. (15) of r. 5, security money deposited by auction purchaser is liable to be forfeited.

(Also see under: Contract Act, 1872; and Administrative Law)

Mary v. State of Kerala and Ors. 1126

LEGISLATION:

(See under: Motor Vehicles Act, 1988) 882

MINIMUM WAGES ACT, 1923:

s. 3.

(See under: Motor Vehicles Act, 1988) 882

MOTOR VEHICLES ACT, 1988:

(i) s. 166 - Fatal motor accident - Compensation - Annual income of deceased - Polisher - Addition towards future prospects - Multiplier - Claim petition filed u/s. 166, taking notional income of deceased - Just and reasonable compensation - Held: Deceased was working as a polisher, which is a skilled job - Income reckoned accordingly - Since deceased was self-employed and about 25 years of age, there must be an addition of 50% to his actual income - There being 5 dependents, 1/5th amount is to be deducted towards personal expenses - Keeping in view life expectancy of deceased, multiplier of 20 must be applied - Besides, compensation also awarded towards loss of consortium and under the head loss of care and guidance of minor children.

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(ii) s. 166 - Fatal motor accident - Compensation - Held: The finding of fact recorded by Tribunal in the absence of any evidence in rebuttal to show that deceased was not working as a polisher and it is not a skilled work, is an erroneous finding for the reason that both Tribunal and High Court have not assigned reason for not accepting the evidence on record with regard to the nature of work that was being performed by deceased - State Government in exercise of its statutory power u/s. 3 of Minimum Wages Act, 1948 must issue a notification for fixing the wages of a polisher - Minimum Wages Act, 1923 - s. 3 - Legislation.

(iii) s. 166 - Claim petition - Enhancement of compensation in appeal - Held: Legal representatives of deceased are entitled to compensation as mentioned under various heads in the table as provided in the judgment - Even though certain claims were not preferred by them, they are legally and legitimately entitled for the said claims - Accordingly, compensation awarded more than what was claimed by dependants as it is the statutory duty of Tribunal and appellate court to award just and reasonable compensation to legal representatives of deceased to mitigate their hardship and agony, as they filed application u/s. 166.

Sanobanu Nazirbhai Mirza & Ors. v. Ahmedabad Municipal Transport Service 882

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

s. 67 - Power to call for information etc. - Questions: (i) whether the officer investigating the matter under NDPS Act would qualify as police officer or not and (ii) whether the statement recorded by investigating officer u/s. 67 can be

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treated as confessional statement or not, even if the officer is not treated as police officer - Referred to larger Bench - Further, sentence suspended till the disposal of appeal by the larger Bench - Appellant released on bail.

Tofan Singh v. State of Tamil Nadu 962

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) (i) s.138 of N.I. Act r/w s.357(3) CrPC - Dishonour of cheque - Conviction - Sentence of six months simple imprisonment and to pay compensation to complainant, affirmed by Sessions Judge - High Court in revision filed by accused, substituting six months sentence by imposing a further sum equivalent to cheque amount - Held: High Court was competent to impose a sentence of fine only upon accused - However, as the amount of fine imposed by High Court over and above the amount of compensation exceeds double the cheque amount, it would violate s.138 N.I. Act - Complainant has received compensation as per adjudication of trial court - Accused sentenced to pay further a fine - Code of Criminal Procedure, 1973 - s.357(3).

(ii) s.138 - Power of court to levy fine - Held: Is circumscribed to twice the cheque amount - Even in a case where court may be taking a lenient view in favour of accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount - That statutory limit is inviolable and must be respected -- High Court has, in the case at hand, overlooked the statutory limitation on its power to levy a fine.

(iii) s. 138 of N.I. Act and s. 357, CrPC - Held: Power to award compensation is not available u/ s 138 of N.I. Act - It is only when court has determined the amount of fine that the question of

paying compensation out of the same would arise.

Somnath Sarkar v. Utpal Basu Mallick & Anr. 935

(2) s. 141 r/w s. 138 - Complaint against a company, its Chairman, Managing Directors and Directors - Petitions by two directors seeking to quash the proceedings against them - Held: In case of offence by company for dishonour of cheque, culpability of Directors has to be decided with reference to s. 141 - To bring the Directors within the mischief of s. 138, it shall be necessary to allege that at the relevant time they were in charge of and responsible to the conduct of business of the Company - In the instant case, necessary averment in the complaints is lacking - Therefore, prosecution of two Directors concerned cannot be allowed to continue and their prosecution in all the cases, is quashed.

A.K. Singhania v. Gujarat State Fertilizer Co. Ltd. & Anr. 1069

PENAL CODE, 1860:

(1) s.304-B - Dowry death - Appropriate sentence - Sentence of life imprisonment awarded by courts below - Held: The principles of sentencing evolved by Supreme Court though largely in the context of death penalty will be applicable to all lesser sentences so long as sentencing judge is vested with discretion to award a lesser or a higher sentence resembling the swing of pendulum from minimum to maximum - In the instant case, facts do not disclose any extraordinary, perverse or diabolic act on the part of accused to take an extreme view - It is not a case where maximum punishment of life imprisonment ought to have been awarded - At the same time, from the order of trial court, it is clear that some of injuries on deceased, though obviously not fatal injuries, are attributable

to accused-appellant and, as such, minimum sentence prescribed i.e. seven years would also not meet the ends of justice - Rather a sentence of ten years RI would be appropriate - Ordered accordingly - Sentence/Sentencing - Code of Criminal Procedure, 1973 - s.354(2).

(Also see under: Sentence/Sentencing)

Sunil Dutt Sharma v. State (Govt. of NCT of Delhi) 1000

(2) s. 354 - Criminal force to outrage modesty of woman - Accused convicted and sentenced to six months simple imprisonment with fine - Held: Provisions of s.354 have been enacted to safeguard public morality and decent behaviour - Courts cannot take lenient view in awarding sentence on the ground of sympathy or delay - Appellant has committed a heinous crime and with the social condition prevailing, modesty of a woman has to be strongly guarded - It is not a fit case so as to give benefit of 1958 Act to appellant - As appellant had been awarded only six months imprisonment, considering the matter under the JJ Act, 2000 would not serve any purpose at such a belated stage - Juvenile Justice (Care and Protection of Children) Act, 2000 - Probation of Offenders Act, 1958 - Delay.

Ajaha Ali v. State of West Bengal 911

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

(i) s.33 - Reservation of posts for persons with disabilities - Held: Section 33 lays down that every appropriate Government has to appoint on a minimum of 3% vacancies in an establishment, persons with disabilities - View of High Court that computation of reservation must be on the basis of

total cadre strength is clearly erroneous - Reservation of 3% for persons with disability has to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts.

(ii) s. 33 - Reservation of posts for persons with disabilities - Held: The Section does not distinguish the manner of computation of reservation between Group A and B posts or Group C and D posts, respectively - Computation of reservation for persons with disabilities has to be done in case of Group A, B, C and D, posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" - Accordingly, certain clauses in OM dated 29.12.2005, which are contrary to scheme of reservation, are struck down and appropriate Government is directed to issue new Office Memorandum(s) consistent with the decision rendered by the Court - In order to ensure proper implementation of reservation policy for disabled and to protect their rights, further directions given - Government of India, Department of Personnel and training O. M. dated 29.12.2005.

Union of India & Anr. v. National Federation of the Blind & Ors. 1023

PREVENTION OF FOOD ADULTERATION ACT, 1954:

(1) (See under: Public Health) 1103

(2) (See under: Public Interest Litigation) 1126

PROBATION OF OFFENDERS ACT, 1958:

(See under: Penal Code, 1860) 911

PROSPECTIVE OPERATION:

(See under: Judgments) 1083

PUBLIC HEALTH:

Food articles injurious to public health - Held: A

paramount duty is cast on the State and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Art. 21 r/w Art. 39(e) and (f) and Art. 47 of the Constitution - Therefore, provisions of FSS Act and PFA Act and the rules and regulations framed thereunder have to be interpreted and applied in the light of the Constitutional principles, and endeavour has to be made to achieve an appropriate level of protection of human life and health - Considerable responsibility is cast on the Authorities as well as the other officers functioning under the Acts to achieve the desired results - Constitution of India, 1950 - Arts. 21, 39(e)(f) and 47 - Food Supply and Standards Act, 2006 - Prevention of Food Adulteration Act, 1954.

(Also see under: Public Interest Litigation)

Centre for Public Interest Litigation v. Union of India and Ors. 1103

PUBLIC INTEREST LITIGATION:

Writ petition before Supreme Court - For constituting a Committee of Experts to evaluate harmful effects of soft drinks on human health, particularly on health of children, and to take regulatory measures - Held: Adequate provisions have already been made in various Acts, Rules and Regulations - By and large, the various grievances raised by the petitioner are covered by the legislations - Their enforcement has to be ensured by the authorities concerned - Expert Scientific Panel on Labelling and Claims/ Advertising, after examining the various grievances raised by the petitioner and giving an opportunity of being heard, has passed an order on 12.9.2012 - Further directions given - Constitution of India, 1950 - Arts.21, 39(e), (f) and 47 - Food Supply

and Standards Act, 2006 - Prevention of Food Adulteration Act, 1954, Food Safety and the Standards (Food Products Standards and Food Additives) Regulations, 2011 -- Food Safety and Standards (Packaging and Labelling) Regulations, 2011 - Fruit Products Order, 1955.

(Also see under: Public Health)

Centre for Public Interest Litigation v. Union of India and Ors. 1103

REFERENCE TO LARGER BENCH:

(See under: Narcotics Drugs and Psychotropic Act, 1985) 962

REGISTRATION ACT, 1908:

s. 17(1)(c) - Registration of instrument creating interest - Mortgage by deposit of title deeds - Held: When debtor deposits with creditor title-deeds of property for the purpose of security, it becomes mortgage in terms of s. 58(f) of Transfer of Property Act and no registered instrument is required u/s. 59 thereof, as in other classes of mortgage - However, parties may choose to have a memorandum prepared only showing deposit of title-deeds - In such a case also registration is not required and, therefore, payment of registration fee and stamp duty is not required - Letter of Finance Commissioner would apply in cases where instrument of deposit of title-deeds incorporates terms and conditions in addition to what flows from the mortgage by deposit of title-deeds - Transfer of Property Act, 1872 - ss. 58(f) and 59 - Letter dated 29.3.2007 issued by Finance Commissioner.

State of Haryana & Others v. Navir Singh and Anr. 949

SENTENCE/SENTENCING:

Sentence for offence punishable u/s 304-B IPC -

Held: In a situation where commission of an offence is held to be proved by means of a legal presumption, the circumstances surrounding the crime to determine the presence of aggravating circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing the direct involvement of accused with crime, to enable the court to come to specific conclusions with regard to barbarous or depraved nature of the crime committed - Necessity to combat the menace of demand for dowry or to prevent atrocities on women and like social evils as well as necessity to maintain purity of social conscience cannot be determinative of quantum of sentence inasmuch as the said parameters would be common to all offences u/s. 304-B IPC - It, therefore, cannot be elevated to the status of acceptable jurisprudential principles to act as a rational basis for awarding varying degrees of punishment on a case to case basis - Factors to be taken into account while imposing the sentence u/s 304 IPC, discussed - Penal Code, 1860 - s.304-B.

(Also see under: Penal Code, 1860)

Sunil Dutt Sharma v. State (Govt. of NCT of Delhi) 1000

SERVICE LAW:

(i) Misconduct - Dismissal from service - Appellant, in drunken state, forcibly entering into office of Principal - High Court substituting the order of dismissal by withholding of two increments without cumulative effect - Held: When the charge is proved, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed - Where it is found that punishment is disproportionate to the nature of charge, court can only refer matter back to

disciplinary authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty - Judgment of High Court is set aside and that of Tribunal restored, upholding the punishment of removal of respondent from service.

(ii) Punishment - Judicial review - Held: Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts - In exercise of power of judicial review, court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic - Entering the school premises in working hours in an inebriated condition and thereafter forcibly entering into Principal's room would constitute a serious misconduct - Penalty of removal for such a misconduct cannot be treated as disproportionate - Constitution of India, 1950 - Art.14 - Judicial Review.

Deputy Commissioner, KVS & Ors. v. J. Hussain

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SOCIAL JUSTICE:

Reservation in employment for persons with disabilities - Held: Employment is a key factor in the empowerment and inclusion of people with disabilities - It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce - Therefore, bringing them in the society based on their capabilities is the need of the hour - State has a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons

in particular, to protect the rights of disabled persons - Directions issued to ensure proper implementation of reservation policy for persons with disability and to protect their rights.

(Also see under: Persons With Disability (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995)

Union of India & Anr. v. National Federation of the Blind & Ors.

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STAMP ACT, 1899:

s.35 r/w s.2(10), Schedule 1-A, Art. 23, as substituted by s. 6 of Act 22 of 1990 - Instrument not duly stamped, inadmissible in evidence - "Conveyance" - Agreement to sell containing recital that possession had been handed over to purchaser - Held: The agreement to sell with possession is an instrument which requires payment of stamp duty applicable to a deed of conveyance - Duty as required, has not been paid and, therefore, trial court rightly held the same to be inadmissible in evidence.

Om Prakash v. Laxminarayan & Ors.

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TRANSFER OF PROPERTY ACT, 1872:

(1) ss. 58(f) and 59 - Letter dated 29.3.2007 issued by Finance Commissioner.

(See under: Registration Act, 1908)

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(2) (i) ss.59 and 58(f) - Mortgage and mortgage by deposit of title deeds - Discussed.

(ii) s.58(f) - Mortgage by deposit of title deeds - Held: Charge of mortgage can be entered into revenue record in respect of mortgage by deposit of title-deeds and for that, instrument of mortgage is not necessary.

State of Haryana & Others v. Navir Singh and Anr.

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