



## RESEARCH PAPER

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## Impacts of inheritance law on land common property resources: A case study of union council Thand Koi, Swabi, Pakistan

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### Abstract

Land Common Property Resources (LCPRs) were integral part of the tribal rural community in the study area which were managed effectively for centuries. During last four decades, literacy level and awareness were increased along with technologies to support their management. However, it starts diminishing and almost disappear with their usage and occupancy are changed. The major role played in this tragedy of the commons was inherited law. The Inheritance law was used for illegal occupancy, litigation, delay in civil suits, mediator and as a tool in conflict resolving system. The most marginalized section of the community was suffered while the elite class was enriched. The changed in LCPRs were recorded from revenue records and field survey using Geographic Information System for analysis. The association of Inheritance law with various indicators was test by statistical tools. The results provide a new base for understanding for LCPRs. On the one hand, this study will enhance the knowledge about the management of LCPRs while on the other hand, it is focused on the socioeconomic conditions of women and marginalized sections of the community.

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## Introduction

Globally, the Land Common Properties Resources (LCPRs) are dwindled due to population growth, technological changes, and poor management (Campbell *et al.*, 2001; Hardin, 1968). With the passage of time, the local communities are sensitized about their rights and obligations to maximize the benefits from LCPRs (Ostrom *et al.*, 2002; Sandberg, 1998). LCPRs is locally known as *Shamilat* which could be found in majority settled areas of Pakistan. There is proper legislative support for its existences. (E. A. Khan, 2011). In the study area, the LCPRs started diminishing in 1980s although literacy level, awareness, social freedom and de jure rights was present to adjourn this process. Presently, only graveyard areas of land common property are managed by community while rest of the area is occupied by individuals or public buildings. The present study explores a new aspect of this illegal occupation of LCPRs. The important question is addressed that why LCPRs are occupied so recently and not taken and/or distributed earlier. It is obvious that the culture, traditions, and taboos are not changed so much dramatically to support this phenomenon. The people have same communal rights and obligation as from centuries. With the passage of time, the literacy level is increased and the autocracy of 'Malik' has been finished since long ago (Ahmed, 2013; Lametti, 2003; Naveed & Mohyuddin, 2015).

The Islam gave equal rights to women and man in their social life and fixed the responsibilities of each one. The share of the inheritance was fixed for each and every one. The important feature of this law is division amongst all relatives of deceased. The Muslim inheritance law is ordained in Surah 4 'An-Nisa' (Women), verses 11-12, The Holy Quran (Y. Ali, 1929). An Ordinance in 1959 was implemented to provide for a uniform interpretation of general expressions with regard to disposition of "*Shamilat*" lands in the country which was further modified about share of individual in Land Reforms Regulation, 1972. *Shamilat* can be defined from Revenue laws that land belongs to the communities and derives its name from the concept of 'getting

together'. These lands are used as grazing areas, forests, sites for village public buildings and village graveyards. While in *Malkiat* land is privately owned. Ownership rights are recorded in the revenue register and are validated by it. *Shamilat* has three types of *Shamilat-i-Deh*, *Shamilat-i-Abadi Deh*, and *Shamilat-i-Tal* (E. A. Khan, 2011; Mian, 1979). In the study area, all three types of *Shamilat* are present and managed by common social system.

The relation of society laws and common property in 1968 was described by Garrett Hardin in his well famous article "The Tragedy of the Commons" which was centre of research for decades (Ciriacy-Wantrup & Bishop, 1975; Feeny, Berkes, McCay, & Acheson, 1990; Hardin, 1968). In Pakistan, the World Bank in 1978 started a programme in Azad Kashmir with assumption that common land (*Shamilat*) will be utilized but on ground there was no *Shamilat* present. In 1990, the whole situation was analysed by Michael Cernea (Cernea, 1989, 1990). In most cases, principle community land is operated and used as a private land. The elite class has always a lion share in political and social system which empowered them to manipulate the use of LCPRs. This manipulation was supported by inheritance law and social customs. This de facto arrangement kept its formal status as LCPRs and the revenue records were remained unchanged (Cernea, 1990; Lametti, 2003; McKean, 2000). The exploitation of LCPRs are most common phenomena in developing countries where power is mostly concentrated in elite class of the society (Baland & Platteau, 1996; Campbell *et al.*, 2001; Dietz, Ostrom, & Stern, 2003). In the study area, *Shamilat-i-Deh*, and *Shamilat-i-Abadi Deh*, are fully intact in the forms of graveyards and mosques while *Shamilat-i-Tal* which has larger area proportion are exploited with the characteristics of existing social system.

With the passage of time, population growth, technologies, state interventions and most importantly the customs reshaped the management of LCPRs and widespread socioeconomic benefits are achieved. These practices are not only limited to developed nation but also developing countries in

mountainous environment achieved the same goal (Brouwer & van der Heide, 2012; Campbell *et al.*, 2001; McKean, 2000; Shah, Shah, & Khalid, 2007). The private land has social status which an individual enjoyed through social recognition which is contributed by community. The community may receive benefits inform of wealth or leisure (Dietz *et al.*, 2003; Lametti, 2003). The sustainability can be achieved through changing social behaviours and customs which will pressurize private property to work for common goal, also. In more socialistic approach, modification in the definition of social wealth can changed the nature of private property as well (Lange, Siebert, & Barkmann, 2015; McLeod *et al.*, 2015). The present study has unique aspects of the understanding of the utilization LCPRs as a social asset and transformation of the role of inherited laws and women share from social moderator to tragedy of the commons.

The inheritance law particularly women share play a role of a moderator which resolved all issues of conflicts and ultimately, the tragedy of the common happened in the study area. The important feature of this tragedy was its occurrence in most recent times. The major cause for this tragedy of the commons was the inheritance law effect on the land resources management. On the one hand, inheritance law provides opportunities to major portion of population to share the land resources but on the other hand, it weakens the management system of *Shamilat* which ultimately vanished it from study area. The present study identified the LCPRs based on the revenue records. Attributed the present uses and analyse the history of illegal occupation with each plot of the land. Understanding of the conflict resolving system for LCPRs underpinned the desires of the community and the role played by inherited law in this conflict resolving system.

The study area is inhabited by *Babo Khel* and *Jana Khel*, which were the sub tribes of Yousafzai (O. Caroe, 1960; K. R. Khan, 1985). Historically and from revenue record, the LCPRs has the total area of 21954 sq. yards which were fragmented in three larger and five smaller plots. The smaller plots were almost

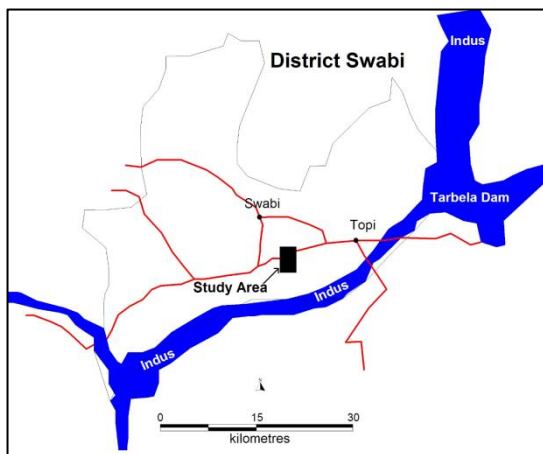
occupied by boundary shareholders except one which boundary was shared by a mosque. The remaining areas is utilized for public institution. The larger three plots were more than half was occupied by boundary share holders' individuals and remaining was allotted for public institution used. In this accord both parties were benefited as one got legal right of their illegal occupation and second got land for public use that manifested their political or social agenda. Based on the nature of data, the interrelationship of land sharing, existing land use, and inheritance law was tested by Phi and Cramer's V which give strong association among selected variables. The results of the study indicate that the marginalized section of the community (least landownership) as well as socially vulnerable group (women) were directly affected. Both groups were suppressed for their vital economic interests on the cost of their social prestige. The study provides a base for understanding of complex interrelationship of social system with common property resources management and the aim of the study is to understand the root causes of the diminishing *Shamilat-i-Tal* in the study area. Although the study area possess enrich Pathan's traditions of the LCPRs management system but it was unable to protect the LCPRs from illegal occupation and disintegration.

## Materials and methods

### Study Area

The study area situated on historical Topi – Hund – Jehangira alignment and possesses a rich cultural and archaeological heritage, beginning with the fifth century BC when Greek historian Herodotus mentioned Caspapyros in this region (A. Ali, Malik, Jan, Fatima, & Khan, 2018; I. Ali, 2000; Mahdi, 1986). The Indus River flows along the southern boundary of the district Swabi and at a distance of six kilometres in south of the study area (Fig. 1). It has area of 2190 Acre, population of 18094 with 3.6% annual growth rate, and 45% literacy ratio ([GOP], 2018). The topography is alluvial with fertile land and drainage pattern is southward toward Indus. The climate of the study area is arid subtropical. The principal population of the Swabi belongs to

Yousufzai tribe who towards the end of the fifteenth century AD, migrated from Jalalabad in Afghanistan. The study area is inhabited by Mir Ahmad Khel a sub tribe of Yousufzai. Ancestor tree of Mir Ahmad is Mir Ahmad bin Sadu bin Uttman bin Mannu bin Mandar bin Umer bin Mandi bin Ghashi. Ghashi was the ancestor of Yousufzai tribe (O. Caroe, 1960; O. K. Caroe, 1965; K. R. Khan, 1985). Common property resource management was one of its integral part of cultural heritage (Ahmed, 2013; K. R. Khan, 1985). The study area located at remnant of palaeochannel of River Indus along with oxbow lakes (A. Ali *et al.*, 2018). Most of these areas were allocated to common land which made it distinctive in this region due to larger LCPRs. The present study provides the information about the *Shamilat* management as well as the cultural values.



**Fig. 1.** Location Map of the Study Area.

*Assessment of LCPRs*

The research study has been divided into two major stages i.e. identification & calculation of LCPRs areas; and assessment of the impacts of inheritance laws on the distribution of LCPRs. In first section, the data about the *Shajra-nasb* and division of land among Yousafzai sub tribes by Sheikh Milli an advisor of Malik Ahmad Khan was collected from the books i.e. *Yousufzai Qom Ki Sirguzishat* and *The Pathans*. From Revenue and Estate Collector Office Swabi, the present division of land and *Shajra-nasb* was collected. The area and indexed number of LCPRs were collected from revenue records. To locate and calculate the area of LCPRs a base map of study area

was prepared in ArcGIS 10. Imageries of revenue maps were collected from Revenue and Estate Collector Office Swabi which were geo-referred with the help of Google Earth and topographic map of No. 43 B/12. These imageries were mosaicked and LCPRs were marked. In the field survey, the name of occupant, nature of occupancy, date, and relative location of each plot with surrounding land owners were recorded.

All these data were attributed with each plot of LCPRs on a map in ArcGIS. The spatio-temporal changes in the area of LCPRs were calculated.

*Interrelationship of Social System and LCPRs*

In the second stage of research study, a questionnaire survey was conducted for assessment of LCPRs occupancy, method of allotment and role of inheritance law. Based on the nature of study, a snowball sampling method was used for questionnaire survey in which 50 stakeholders of the LCPRs were targeted for survey. Based on history of *Shajra-nasb*, the present occupancy of LCPRs was assessed. The nature of occupancy was public building, shared among families, individuals, and shared with women, also. Four types of methods of allotment of the LCPRs were clan head, arbitration, litigation and mediation. The method of allotment of each plot was assessed from the respondents. The role of inheritance law during this whole process was assessed. The inheritance law was used as nominative, impaneled, flouted, or as executed.

*Data Analysis*

The nature of the respondents' data was nominal. The inter-relationship and association of occupancy, allotment, and role of inheritance law was studied through phi coefficient ( $\phi_r$ ) and Cramér's V ( $\phi_c$ ) (Equation 1 & 2)

$$\phi_r = \frac{x^2}{n} \dots \text{(Equation 1)}$$

$$x^2 = \sum_{i,j} \frac{(n_{ij} - \frac{n_i \cdot n_j}{n})^2}{\frac{n_i \cdot n_j}{n}}$$

Cramér's V is computed as

$$\phi_c = \sqrt{\frac{\phi^2}{\min(k-1, r-1)}} \dots \text{(Equation 2)}$$

Whereas,

$\phi$  is the phi coefficient

$\chi^2$  is derived from Pearson's chi-squared test

$n$  is the grand total of observations

$k$  being the number of columns

$r$  and being the number of rows

The values of ranges between 0.00 to 1.00 (no relationship to perfect relationship)

On the basis of these relationships, the impacts of inheritance law on the LCPRs were assessed. The inter-relationship between the occupancy and method of allotment shows how the social system resolved the conflicts. The relationship between inheritance laws and level of conflict solving system highlighted the importance of the inheritance law for all illegal occupancies.

**Results and discussions**

*Land Common Property Management System*

In 16th century (A. D.), Sheikh Milli an advisor of Malik Ahmad Khan distributed the land among the Yousufzai tribe. The village Murghuz, Thand Koi, Ghar, half of Saleem Khan and surrounding areas were allotted to Mir Ahmad Khel. Mir Ahamd had five sons i.e. Babo, Jana, Aaka, Shah Khan, and Yara Khan. The present principal tribe of the study area are Babo and Jana Khel. In past, most of the LCPRs was consisted of old oxbow lakes which were no use in agriculture-based economy except one that was *Dheri-sar*. *Dheri-sar* belonged to Kushan Period and was considered as common property because it was initial settlement site of their forefathers (I. Ali, 2000; K. R. Khan, 1985). In old times, all plots of lands were intensively used for digging the soil for house construction. The land settlement in study area was conducted in 1873, 1885, and 1928 by British and last time after partition in 1967. In all land settlement, the common land was kept under the same authority and

management. The *Malik* and *Jirga* of each major tribe regulated the use and watched the management of these lands up to 1960s. The government never took interest in their management. With the passage of time, the use of sites for housing construction material was declined. Therefore, their management was also loosed particularly after 1970s. Slowly and gradually, most of the LCPRs were surrounded by built up area. Now it was the time when people started the inverse process and filled the common land for houses with illegal occupation.

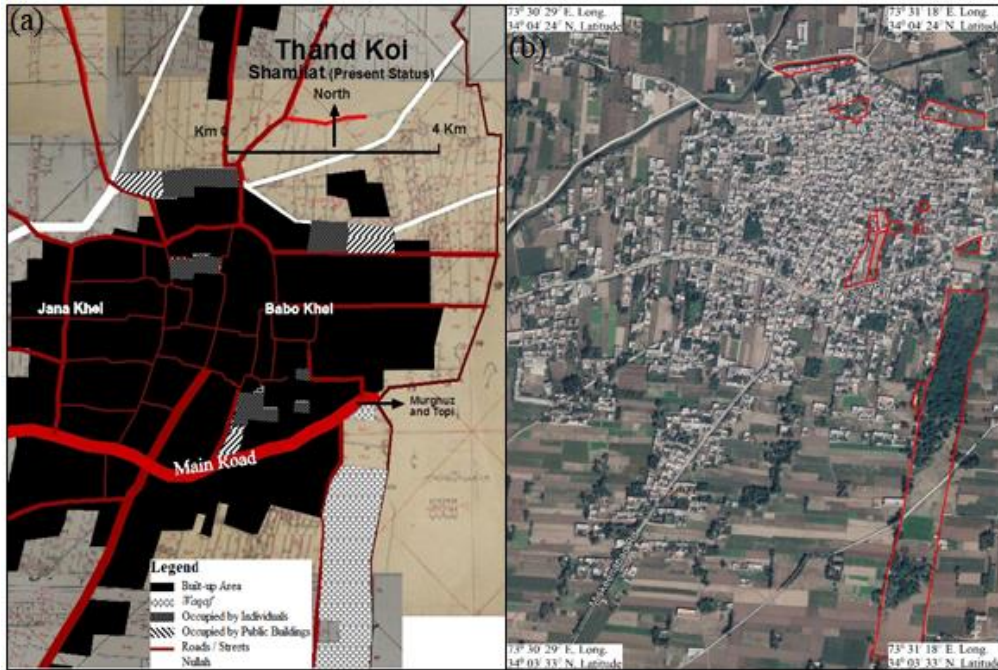
According to Revenue and Estate Collector Office Swabi four types of command were present in the study area i.e. *Shamilat-i-Deh*, *Shamilat-i-Abadi Deh*, *Shamilat-i-Tal* and *Waqaf*. In *Shamilat-i-Deh* all villagers had their ancestral share while *Shamilat-i-Abadi Deh* means the land of common use like road, street, nullah, and mosques etc. The *Shamilat-i-Tal* give right to particular tribe for their usage. The *Waqaf* was land originally donated by all villagers for the graveyard at the time of land settlement. The Babo Khel and Jana Khel with equal share and their total area of LCPRs was 21.43 Acre. The Dado Khel has their own separate land and also *Waqaf*, which has area of 0.34 acre. The LCPRs of *Babo Khel* was present in five different plots with total area of 14911.2 Sq. Yards. Presently, smaller three plots were occupied by individuals while two has mixed used. One is contiguous with mosque and second is used for public building. The LCPRs of Jana Khel has the area of 13881.6 Sq. Yards was present in three different locations with same story as two plots were occupied by individual and the third one is used for public building. The Dado Khel has same fate as it has 5382 Sq. Yards area and almost half was occupied by individuals and remaining area was used for Public buildings (Table 1 and Fig. 2 & 3).

**Table 1.** Common Land Property in the Study Area (Sq. Yards).

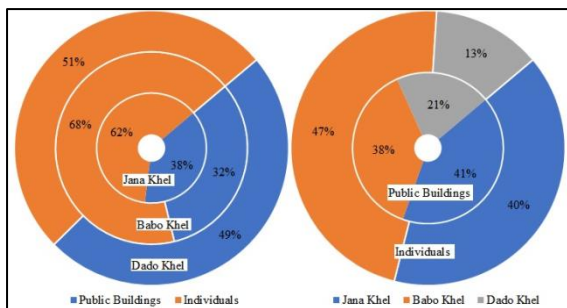
Category	Revenue Record	Public Buildings	Individuals
<i>Jana Khel</i>	13,881.60	5,283.60	8,598.00
<i>Babo Khel</i>	14,911.20	4,815.24	10,095.96
<i>Dado Khel</i>	5,382.00	2,760.00	
Total	34,174.80	12,720.84	21,453.96

Source: Revenue and Estate Collector Office Swabi, 2016 and Field Data, 2016.





**Fig. 2.** Land Common Property in the Study Area (a) based on Revenue Records (b) Google Earth based existing Land Use. Source: Revenue and Estate Collector Office Swabi, 2016; Field Data, 2016; and Google Erath, 2018.



**Fig. 3.** Land Common Property in the Study Area. Source: Revenue and Estate Collector Office Swabi, 2016 and Field Data, 2016.

*Land Allotment and Conflict Resolving System*

Earlier, when tribal system was well established and population was small enough for the share of LCPRs, it played a vital role in agriculture-based economy of the poor community. It was managed properly and its misuse was pointed out in *jirgas*. With time when population increases and inter *Khels* marriages occurred, the situation of claims on common property was changed, dramatically. The crossed marriages in high class lose the control of any particular Tal on shamilat in case of objection. With time women shares were mixed and the land was more fragmented. The small land holders almost neglect their share in LCPRs and number of stakeholders in

management decreased rather than increase. People whose direct interest was not involved lesser care of its use or misuse and thus weaken the bond of management. With high population growth rate (3.6 % annually) of the study area, decreases the average share of each person to 0.16 acre which was economically unsustainable for agriculture purposes. In 1970s, the foreign employment opportunity changed the economic status of community. The gap between richer and poorer in community was based on remittances rather than agriculture land. The land prices were shouted up and tremendous pressure on common property was developed for the construction of houses.

In all cases, the method of occupation and fate of LCPRs was the same. In first stage, through arbitration, the larger portion was occupied by its neighbour and encourages another neighbour to get smaller portion. In case of objection through court or *jirga*, the politician and clan head utilized this is an opportunity for their political and social manifesto. Interestingly, the remaining area were mostly donated to public institutions. The plots which had smaller area were occupied by individuals with any objections from any part. In case of litigation, the legislation process was never completed and always

end in settlements. The important feature of this occupancy was the time which was most recent as all buildings including schools, tube well, union council or private were constructed in 1990s and afterward. Recently, very few cases were resolved through mediation in which women share was also honoured (Table 2). The type of occupancy has very close association with the method of allotments. The Cramer's V value of this association is 0.92 and Contingency Coefficient is 0.847 which show very high association. This is the basic indicator how this whole system work for the allotment of land and resolving the conflicts associated with this occupation.

**Table 2.** Method of Allotment of Land Common Property.

Ownership	Clan Head	Arbitration	Litigation	Mediation	Total
Public Building	7	0	0	0	7
Shared among Families	0	16	0	2	18
Shared by Individuals	0	0	12	0	12
Shared with Women	0	2	0	11	13
Total	7	18	12	13	50

Source: Field Data, 2016.

*Inheritance Law and Land Common Property*

The Islamic law of inheritance play a key role in this whole process. This role was complex and compound in nature but its effects are visible. Although, Islamic inheritance law divided the land and property among decedents with fix ratio and every one could take his share legally. According to inheritance law the land divided and transferred to all descendants but on ground reality, occupancy shifted only to male. This complex situation along with fragmentation of land was the root cause of all processes responsible for the present situation common land. In Pathan community in general and specifically in the study area, the women were discouraged to take their share in land and play any decision-making role in the community. It was rather symbol of shame for the whole family whose woman took their share from her brothers. It was only allowed in case of enmity. Currently, the share in LCPRs was so negligible that hardly any woman would dare to risk her last place of safety by claiming her share from her brothers. It was non-written general agreement by male dominant

community that everyone compromise his wife's share on his sister's share with him. In study area, only in three cases of the occupation of LCPRs was challenged in the courts. For persuasion of case, a lot of time and money was required as civil cases take decades not years.

Here inheritance law played a complex and compound role as encouraging the intervention, disputes, prolongation, and motivator for resolving a dispute. At a present, shares of land were so complex that anyone could claim anywhere if some land property in surrounding was present. In the study area, this role of inheritance law could be easily traced out in all cases. In most cases, the objectionable occupation was settled down by acquiring the remaining land for public institutions. Only once a shareholder had taken stay on the construction of school to challenge the accord between politician and second party.

In these cases, the inheritance law was used as nominal as decision only favour the clan head. In case of division of common property in families, the inheritance law was impanelled for only male members of the family. The illegal occupation treated inheritance law as flouted. The litigation never ends in decision. Recently, in few cases in which women were directly involved and area of the plot was too small, the inheritance law was executed.

All stakeholders got their share based on inheritance law (Table 3). This interrelationship between the method of allotment and status of inheritance law in occupancy of LCPRs was strongly support by statistical analysis. The Cramer's V value of this association is 0. 0.918 and Contingency Coefficient is 0.846 which show very high association.

**Table 3.** Status of Inheritance Law in Occupancy of Common Land.

Method of Allotment	Nominative	Impaneled	Flouted	Executed	Total
Clan Head	7	0	0	0	7
Arbitration	0	18	0	0	18
Litigation	0	2	10	0	12
Mediation	0	2	0	11	13
Total	7	22	10	11	50

Source: Field Data, 2016.

## Conclusions

The study revealed that the Islamic inheritance Law play a complex and compound role in the diminishing process of LCPRs in the study area. As a result of this law the, land was divided in many parts and ultimately this division fragmented the common land also. The majority of people share decreased to negligible level and at same time the women share made it more complicated which weaken the management system of LCPRs. The ancestors started this system to support the tribal system and agro-based economy. With the passage of time, population, technological advancement, and remittances triggers the rise in land values in the study area. This situation started pressure on the LCPRs as it was situated in built-up areas or at the edge of built-up areas. Reverse process started, once it was used for digging soil now filled back for residential purposes. The study further revealed that inheritance law was used a tool for resettlement among all parties and method of occupations. It always encouraged the disputes, intervention, delay in civil cases in courts, and role as mediators. The inheritance laws resolve all disputes and provide a mechanism which ultimately vanished LCPRs in the study area.

In nutshell, the inheritance law encouraged and facilitated the tragedy of the commons. This study also highlighted the role and rights of women in Pathan's community. There was a greater need on community level to understand their common problems and solve it for sustainable development rather than individual interests. The overall socio-economic development of vulnerable groups in the community was a prominent appealing issue for government and research scholars. The law of common property offers more freedom rather than obligations. The new land settlement in study area is needed which will compensate the present problem of fragmented land and complex share of women.

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