

**PARLIAMENT IN CRISIS: INSUFFICIENCY OF REFORMS IN
PARLIAMENTARY RULES FOR INSTITUTIONAL Well-Being**

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Abstract

In recent years, the nation has witnessed a further deterioration in the institutional functioning of parliament. Disruption, poor quality legislation, wobbly parliamentary financial oversight, and weakening of accountability mechanism have been long-standing concerns. This paper discusses some of the suggested reforms in parliamentary Rules that are available in the literature and explores why parliament so far has not brought those changes. It further contends that even if Rules are amended, yet it may not serve the purpose if deeper and structural issues relating to the 'decline of parliament' and the democratic deficit in parties are not addressed. The insufficiency of standalone rules notwithstanding, public discussions on them are nevertheless important for generating civil society pressure on political parties and putting them in the dock to undertake democratic reforms in their organization and functioning.

Keywords: Parliament in crisis, disruption, parliamentary rules, decline of parliament, party system, dynasticism, democratic deficit in political parties

Introduction

The inability or failure to function up to its full responsibility, with attendant fall in its quality of work, prestige, and influence has been discussed as the decline of parliament. (Kashyap, 1989), (Kapur & Mehta, 2006), (Rubinoff, 1998), (Shourie, 2007), (Singh, 2015). Alongside the 'decline of parliament in public perception, public trust in parliament has also taken a beating. (Sethi, 2015). However, we have also heard a few contrarian voices: Shankar and Rodrigues, and Balveer Arora, for instance, question the 'decline' or 'demise' thesis. They adopt a contextual approach arguing that Parliament is deeply embedded in and constrained by Indian politics. (Shankar & Rodrigues, 2011), (Arora, 2003).

In what follows, the paper has three sections: In the first section we bring up the long-standing concerns and some indicators of worry, in section 2, the paper discusses some of the suggested reforms that are available in the literature. In section 3, the paper contends that alterations in the business rules of the houses will not be easily forthcoming and may also be not enough as the problem is deeper and structural relating to the 'decline of parliament' and the democratic deficit in parties. This is followed by a conclusion, that even though rules by themselves do not suffice as a panacea, public discussions on them are nevertheless important for generating civil society pressure on political parties to undertake democratic reforms in their organization and functioning.

1. Long-standing concerns over the functioning of parliament

The decline in parliament's prestige and institutional performance has bothered many, including parliamentarians for long. Parliament convened a Special Forum in 1992 for discussing decorum and discipline in the House, and then again in 1997, passed a unanimous resolution calling for greater discipline within Parliament. (Kapur & Mehta, 2006). In November 2001 a 60-point code of conduct was formulated by an all-India conference of presiding officers and parties, but when PM Vajpayee asked the opposition to maintain democratic values, the then leader of the opposition, Sonia Gandhi, retorted that a 'great deal of disruption' in Parliament was due to the government's reluctance to face the houses on controversial matters (Kapur & Mehta, 2006). Arun Jaitley, a decade later, opined similarly, implicating the government's contributory role to disruptions, and investing legitimacy in acts of disruption as acts of responsibility and representation, but in the rarest of the rare cases. (Jaitley, 2012). Carole Spary has made a legitimizing case for disruption/obstruction as an informal act of representation. But it cannot be a regular feature. (Spary, 2010)

Disruption to be sure affects institutional performance as it wastes away available time for question hours, debates, and deliberations on the government's policy and performance. But there were other factors as well that have pulled down parliament's performance concerning its legislative, representative and accountability-seeking roles. Generally, parliament has been sitting for a lesser number of days and working for a lesser number of hours. In the 1950s the average number of days of sitting was 127, it came down to 71 days in the 1990s, and still further down to an average of 60 days per year in the 2000s. The number of hours per sitting of Parliament has declined from an average sitting of 7 hours 38 minutes in 5th Lok Sabha to an average of 6 hours, 32 minutes in the 12th Lok Sabha. Besides, the number of bills passed by parliament, and time spent on debating the bills on the floor of the House has declined. The percentage of bills referred to the parliamentary committee has also shown a decline. There was also some concern regarding how committees were functioning, such as the high incidence of absenteeism, and partisan attitude of members in the committee work.

These sets of indicators present a rather dismal picture of the working of parliament over the years. While such a quantitative method of evaluation may have objections for bypassing qualitative evidence of Parliament's work, but anecdotal accounts are aplenty suggestive of declining standards of deliberation, and quality of legislation. Thus, there is both quantitative and qualitative evidence of the poor functioning of parliament, which has, prompted scholars and constitutional experts to analyse problem areas of the working of parliament and suggest measures to improve parliament's performance.

2. Suggestions for amending parliamentary rules of procedures

From the quantitative metric, the problems to be fixed are fairly straightforward and can be stated as follows – [1] make parliament work more through more sitting days and hours of work in each session; [2] ensure that parliamentarians do not resort to disorderly and disruptive behavior inside the house. If [1] and [2] conditions are present, it will ensure [3], namely, due diligence in parliamentary work relating to legislation, financial oversight, and accountability enforcement. Most of the reform suggestions have come from scholars associated with the think-tank PRS-Legislative, in the form of changes to be brought in business rules of the two houses. Tarunabh Khaitan suggests making obstruction (disruption) costly for the disruptor, as a way to deal with frequent disruptions, which has been so far virtually cost-free and in some cases beneficial due to media coverage. (Khaitan, 2013)

To begin with, let us take up the issue of the declining number of sitting days and hours of work. Among many reasons, some very contingent such as a pandemic, or election campaign pressures, one important reason for lesser days of sittings is the reluctance of the treasury bench to face parliament when controversial matters are being raised by the opposition. As the Business Advisory Committee of the house, which is dominated by the ruling party, decides the dates of sitting, the government gets to influence the number of sittings in a session. A day-long conclave of parliamentarians at the central hall of parliament in 2001 suggested that the number of sittings days should be fixed at 110 days per year. The National Commission on the Working of the Constitution also recommended a fixed minimum number of working days- 120 sittings in a year for Lok Sabha, and 100 sittings in a year for Rajya Sabha (NCRWC, 2002). It has been, further argued that given the Legislature's constitutional responsibility to keep the Executive accountable for its actions, power to convene parliament must also lie with the Parliament rather than solely with the government as is the case now. Should a certain number of MPs ask for convening the Parliament, it should be convened. This would strengthen

the parliamentary exercise of its oversight functions and help Parliament address compelling issues of the day without delay.

Another closely related suggestion is that the calendar of sittings for the whole year be published by the officers of Parliament in advance. Such is the practice in the United Kingdom, and Australia. This will not allow the government to run away when inconvenient issues are to be dealt with in the house. Many democracies sit to work as per the pre-announced calendar.

The second major issue is disruption. Analysis of the malaise reveals many reasons that lead members to disorderly, disruptive behaviour in the house. One important reason is that opposition members are deeply dissatisfied by the fact that they do not get adequate time to air their grievances. Disruption is their way to draw attention to their views, and grievances. Another related reason is the government's unwillingness to discuss matters that opposition regards as very vital in the national interest or crucial for enforcing accountability on the government. When the government appears unresponsive, opposition resorts to obstruction -that is it will not allow other business – until that particular issue is resolved. Third, the fact that members indulging in disruption have been let off lightly by the house, and on balance, the gains of disruption for them have outweighed the potential costs involved has also been a reason for the rise of such behaviour. If we leave aside the third reason, which flows from conditions of the first two reasons, the real material reason for disruption turns out to be disagreement between the treasury bench and opposition over what, when, and under what rules subject-matters/issues can be discussed in the house. Here, the role of the Business Advisory Committee needs attention for a remedy.

Technically speaking, it is the Speaker and Chairman who allow what can be discussed on the floor of the house and under which form. The only exception is concerning the no-confidence motion in Lok Sabha, as rules state that it is obligatory to debate the motion if 50 MPs move the motion. But for all practical purposes, and as per convention, presiding officers go by the advice of the respective Business Advisory Committees. All party Business Advisory Committee decides which issues are to be debated and under what rules. All parties have to agree on the issue/s to be discussed before it is taken up on the floor of the house. This means the government has a veto on the issue (Madhavan, 2017). The treasury bench, generally speaking, has not been accommodative when matters embarrassing to the government were proposed by the opposition for discussion. Sometimes, due to differences between government and opposition over the rules under which discussion should take place, issues raised by the opposition have been shunned from a discussion on the floor of the house. [Here, one may note that there are mainly four kinds of rules in the Lok Sabha under which discussion can take place – rule 193, rule 184, adjournment motion, and no-confidence motion. These rules have different purposes, implications, and symbolic values.] Anyway, the short point is that it is the Business Advisory Committee that effectively decides the rules and agenda of discussion, and herein lies the source of friction between government and opposition and disruptions.

Given such a diagnosis, several remedial measures have been suggested. Some suggestions are based on the practices of other constitutional democracies. For instance, India can follow the example of Britain, where parliament reserves 20% of the mandatory sittings as opposition days. On opposition days the main opposition party sets the agenda. Though the decisions of the house are not binding on the government, the opposition has the satisfaction of highlighting issues and concerns which it construes are of national interest, besides getting an opportunity to critique the government. Canada too has earmarked a certain number of days as opposition days. There is another suggestion, coming from Madhavan that rules be amended to provide for discussion if a certain number of members requisition for a discussion, just in the same way as one-tenth members can requisition a discussion on the no-confidence motion (Madhavan, 2017). If these suggestions are acted upon it will not leave any incentive to opposition members to disrupt the house

The third major concern has been the output and quality of the legislative work of parliament. Output is measurable in terms of the numbers of legislation passed. Over the decades, subsequent Parliament appears to have passed a lesser number of laws. But this is not the main worry. The real concern is with the quality of legislation and this is mainly for two reasons as already mentioned earlier, namely, increasing number of bills being passed without deliberation or with very little discussion, and secondly, increasing tendency to avoid sending a bill to the parliamentary committee for its study, scrutiny, and recommendation. During the 14th and 15th Lok Sabha time spent on legislative business was only 20% of the total time. In the 15th Lok Sabha, 28% of bills did not have any discussion in detail.

In recent years, the number of bills being referred to parliamentary committees has come down sharply.

The working of the committee system has also caught attention due to certain shortcomings. First, the nomination of members to various committees is just for one year. This practice is perhaps to ensure wider rotatory participation of members in committee work. But unfortunately, this practice is most unhelpful in nurturing or conduce members to develop expertise or specialization in any field. Second, committee work is not backed by good/ adequate research support. Third, ministers do not appear before the committees. Only the functionaries- civil servants do. This weakens the accountability mechanism that is designed via a committee system. Fourth, the meetings of the committees are under the camera, which lowers the guard for responsible, and non-partisan conduct of members in the meetings. In several instances, members have not been objective and non-partisan, contrary to what is expected of them for committee work. If more sittings days and number of hours of work are ensured sans any disruption for which measures as above have been suggested then, surely more output and also better quality work would generally be possible. More specific measures have also been suggested for better quality legislation. One such measure suggested is that all ministries must follow the pre-legislative consultations policy that was instituted by the UPA government towards the fag end of its term in 2014.

Another measure that has been suggested by several scholars and even Members of Parliament, pertains to amends in the anti-defection law. The anti-defection law provides for disqualification from membership for violation of party-

whip. This has compelled members to follow the party line on every matter under consideration on the floor of the house. The law has in a major way, therefore, discouraged Members of Parliament from engaging themselves in the study, and scrutiny of bills. The compulsion to follow the party line is hardly conducive to legislative scrutiny by parliamentarians. They do not look into the merits of the bill as they know they have little role in the formulation of law.

It is therefore suggested that the Anti-Defection Act should be amended to restrict the penalty of violation of party -whip to just a few matters- such as no-confidence motion, money bill, adjournment motion, etc. and release legislative participation and voting on legislation from the ambit of party-whip.

Another suggestion for improving better quality legislation pertains to equipping parliamentarians with resources by way of secretarial and technical staff who can help parliamentarians go through numerous bills and reports with their research, analysis, and summaries (Madhavan, 2017). A technically sound staff can help parliamentarians perform significantly, by simply helping them to be better prepared on the subject matter while performing a deliberative function. An MP is given Rupees thirty thousand per month for his secretarial office. It is too meagre to hire good quality professional staff and run his/her office. Other democracies pay significant attention to these aspects of parliamentary needs. In the USA a senator has a budget of 1 million dollars for his staff and in Britain, MP gets around 1 Lakh pounds for his secretarial assistance (Madhavan, 2017).

Similarly, just like parliamentarians, perhaps in a far greater sense, the parliamentary committees also need to be equipped with more secretarial and technical staff. At the moment each DRSC has five to six generalist staff in its office, most of whom belong to the parliament secretariat. But there are a few ministries, such as finance, industry, commerce, science, and technology, which are technical and only official with sound technical expertise can manage the work well.

Last, but not least important measure which has been suggested for improving the quality of legislation is that bills after their introduction in the House must mandatorily be referred to the relevant parliamentary committee. Under the House rules at the present, the minister doesn't need to refer the bill after the first stage reading to the relevant standing committee. Reference of bills to a standing committee should be made mandatory, as is the case in Britain and some other constitutional democracies.

Besides the mandatory reference of bills to committees, suggestions have also been made for improving the quality of functioning of parliamentary committees. As committees lack adequate secretarial and technical staff, there is an urgent need to arrange for the same. DRSCs if they have to do quality work need adequate research support. At present each DRSC has 5 to 6 secretarial staff, mostly coming from the parliament secretariat. They are not subject area experts. Experts have to be inducted into the committee system. When we compare the logistic support of the committee system in India, with the USA or/and European countries we get a sense of that lack.

Another suggestion for improving the quality of committee- work, is to make the committee- work open to public scrutiny. Many countries have this practice. There are pros and cons for allowing public scrutiny, but on balance, many favour a limited openness -such as instead of telecast of committee meetings, media should be allowed to witness the proceedings. Other measures suggested are: ministers should appear before the committees; the tenure of membership be increased, and last but not least, the committee reports to parliament must necessarily be discussed in Parliament. Presently the practice is that recommendations made by the DRSC to the ministry have to be processed by the ministry and action taken report has to be prepared. Not necessarily the ministry accepts all recommendations. Its reasons can be opaque. Hence, it is suggested that reports and ATR be discussed in the house, and not just left as a reported matter.

3. Exploring problems beyond parliamentary rules of procedure

Thus from the above, it follows that for improving the functioning of Parliament some of the existing rules need to be modified and some new rules would be needed. These ideas for reforms have been doing the rounds for quite some time now. But neither the governments nor various Lok Sabhas of the past have shown any keenness to take initiative in the matter. The current dispensation too would most likely not devote itself to the task of reforms. We need to ask the question, why it is so.

Secondly, this paper contends that the amendments in the existing rules and framing of new rules as suggested above may not be the sure cure, for the malaise lies outside their grasp/embrace. The real reason for the decline of Parliament is not its inadequate business rules. Rules, to be sure, do need to change with time and new situations, and are much needed but the cure for the malaise lies beyond the scope of rules. It is worth exploring that 'beyond the scope of rules' domain, particularly the realm of the party system for the answer why new parliamentary rules have not been attempted as yet, and may not alone suffice or be effective in strengthening the institutional functioning of Parliament. The reasons for the 'decline of Parliament need to be addressed first. Relatedly it also argues that parliamentarians have little incentive for amending parliamentary rules of procedures under the current manner of organization and functioning of political parties.

One explanation of decline argues that decline is to be located in the loss of balance in the relationship between the government and parliament on one hand and the between government and opposition on the other. To drive the argument, it presents the Nehruvian times as 'golden days' of parliament, delineates its feature, and uses that as a framework to mark deviations as decline. The main keel of the argument is that at the root of the imbalance between executive and parliament, and between government and opposition is the lack of intra-party democracy, the vanishing of democratic culture in the Congress post-Nehru. Even outside the Congress, most of the political parties, especially the state parties whose presence increased significantly lack democratic culture. Further, Anti-defection law has contributed unwittingly to the emaciation of democratic culture.

The story of the 'golden days' of Indian parliament is so good that Morris-Jones opined that India's parliament during Nehru's years served as a model for newly independent countries. It functioned well as it was in perfect equilibrium due to fine balance among all its elements-PM held up to standards of collective responsibility and there was a vibrant opposition to the ruling party—congress functioned on the principles of internal democracy, and other parties followed suit.

Such a balance was lost after Nehru. Under Indira Gandhi, the constitutional equilibrium got disturbed as Executive dominance of parliament via party control over ruling party MPs increased on the one hand, (Singh, 2015), and the relationship between government and opposition turned adversarial, mainly because of increasing electoral competition (Rubinoff, 1998).

Indira-Rajiv's legislative majority strengthened their proclivity to manipulate and dominate parliament for running the government, which triggered opposition's non-cooperation and obstructionism. Opposition MPs progressively boycotted more sessions, devoted more time to zero hour than question hour, and often took extra-parliamentary methods to raise objections (Surya Prakash,1995).

After Rajiv, the decline of the Congress did not 'rejuvenate Parliament'. During the long period of hung parliaments, and right until the establishment of the Modi regime, if the executive was weak, so was the parliament by its internal fragmentation. As a result, the minority governments proved less responsive and accountable than earlier government-backed by 2/3 majorities.

The autonomy of parliament remained a chimera, and the inter-governmental balance could not get restored. In place of one political party, now there were coalitions of political parties influencing the work of parliament. According to Bimal Jalan what parliament could do or not depend on 'behind the scene settlements among party leaders within and outside the government'. As long as the government had the backing of these different leaders and enjoyed a majority in the House, it could act supreme and can get the parliament to do what it wished (Jalan, 2007). This also included the bizarre disruption of the house, if that helped the government of the day.

Under Modi, one-party rule is back, and once again the dominance of the executive over parliament, something akin to what India saw during the Indira-Rajiv phase, is being witnessed. But this dominance during the 16th Lok Sabha was not quite the same because BJP lacked a majority in the Rajya Sabha. But post-2019, there is a much greater executive assertion, proclivity to the ordinance -route, rush through legislations, and avoidance of opposition demanded discussions. The opposition quite predictably has taken to disruption in the most cavalier fashion.

Another line of explanation for the slide down in parliaments performance emphasizes the increasing presence of state parties in parliament (Verma, R & Tripathi, 2013). In this explanation the increasing democratization of parliament read in as the changing social composition of parliament is linked with the decline in the institutional performance of parliament. As Balveer Arora opines, "Signs of disorder that India's parliamentary system frequently displays are in fact the consequence of its progressive democratization" (Arora, 2003). The state parties are viewed as harbingers of democratization. The argument, with questionable validity, however, is that state parties have little interest in parliament's functional well-being as they are primarily motivated by prospects of sharing spoils of power, and exacting concessions from coalition-making national parties. Their politics is all about patronage based on a narrow/parochial electoral agenda and their support for ensuring the smooth functioning of parliament or their support/opposition on legislative bills/motions is often coloured by partisan consideration. These parties exhibit narrow/parochial vision, which can be understood by referring to the internal structure of these parties. Most of the state-level parties are 'family parties', depending on the 'leader' to set agenda for their party members. Since these leaders are safely ensconced at the state level with unfettered access to huge political resources, organization, money, votes, they do not have much stake in ensuring the effectiveness of parliament. Coalition-making parties do not hesitate in undermining the authority of parliament when it suits them especially when they are in power.

Yet, another line of exploration found in literature is to examine the effect of how the house is composed, on the internal functioning of parliament. Kapur and Mehta (2006) take this line and have argued that campaign finances and the role of criminals leave an impact on the working of parliament. Secondly, as the elections are more for choosing the government than the legislature, a candidate's suitability for legislative/ parliamentary work is never a consideration in ticket distribution. This has implications for the quality of legislative work. Further, the candidates also do not see themselves as or position themselves as worthy of being a good lawmaker at the time of ticket distribution or even when they are seeking votes in the election. Members of Parliament (MPs) consider their primary function as a go-between government and constituents, and not as lawmakers. And if that is the kind of view the MPs have internalized, then it will surely affect parliamentary legislation (Kapur & Mehta, 2006).

Thus, if in the distribution of party tickets premium is on 'winnability quotient of the candidates, and after elections, the constituents do not view their representatives as lawmakers, but majorly as a go-between, the constituents and the government, and the representatives, want to endear themselves by being useful to the constituents by providing different kinds of help and favors, and further, if the constituents assess their representatives, not in terms of their contribution to parliamentary work as legislators, but in terms of their resourcefulness and utilitarian services, then under such the overall situation, where neither the party at the time of ticket distribution puts a premium on legislative suitability of the candidate nor the constituents show any regard to or appreciation of his representative's parliamentary roles/contribution, it is idle to think that parties and MPs will have any real incentives to work out a new set of rules that improves institutional functioning of parliament.

A new dimension in the working of parliament is noticeable, namely the deterioration in the relationship between government and the opposition, especially post the 12th Lok Sabha. This is also the phase when, according to Verma and

Tripathi, 'parliamentary decline in terms of sitting days, disruptions, legislations passed and discussion of bills was sharper...' (Verma, R & Tripathi, 2013). We can see a correlation between deterioration in government--opposition relation and parliamentary decline. As a result, the dictum that in a parliamentary democracy, the establishment should have its way, whereas the opposition has its say, has been observed in breach. Since then that fine balance, based on differentiating opposition from hostility, is now not being observed on either side. Congress-led opposition, perhaps basing itself on vote-seat disproportionality and deriving legitimacy for its acts within parliament from there have been generally obstructionists. On the other hand, BJP has been dismissive of the opposition as it believes it has a very strong mandate of people to govern. The mutual respect and consideration are no longer there, because of ideological contestation between Hindutva and non-Hindutva ideological streams in civil society, which is fundamentally irreconcilable. The inter-party relation between the two major polity-wide political parties has turned from being electoral competitors to hostile gladiators engaged in a battle of attrition. The differentiation between opposition and hostility has all been but lost.

If parliament's functioning has been deplored for a long time, large blame for that rests on the doors of political parties – for their failure to develop democratic political culture and institutional practices. It is well known, as Arun Shourie (2007) and others have pointed out, that policy matters are decided by a few in the party as intra-party democracy is generally absent, and those are then taken up by the party-government and taken to the Parliament for its mechanical approval. Shourie writes, "the decisions regarding action and policies to be adopted in parliament are taken by a small coterie, which controls the political party and the average legislator learns about what is to happen only after he enters the House" (Shourie, 2007).

The more power centralization is in the governing party, the greater are the chances of mechanical passage of the bill in Lok Sabha. The UPA coalition government under Manmohan Singh was a weak executive. The regime referred a large number of bills to parliamentary committees, as it was an exercise in maintaining political coalition, whereas under Modi's dominance of party and government, the instances of bills being straightway turned into laws by parliament have grown significantly. Laws have been passed in a very cavalier fashion often without referring the bills to a parliamentary committee or adhering any to the pre-legislative consultative process. There are many instances of lawmaking without the three-stage reading of bills. Numbers in the house is all that matters and stand between a successful passage or defeat of a bill in parliament.

The short point thus is that parliamentary functioning will not improve if the political parties, which is the axis on which parliament functions remain a prisoner to 'dynasticism' or 'family interest' or personality-based politics and or lacks intraparty democratic functioning. In the absence of intra-party democracy, ruling party MPs do not perform inquiring and deliberative roles. The party whip will always blunt the institutional mechanism of accountability (Singh, 2015), and bosses of national parties can unleash stormtroopers to disrupt the functioning of the house to put party interest above all else.

Conclusion

On either side within parliament, there is little incentive to amend rules. Treasury bench is not interested in debate as it gets the laws it wants to be passed even amidst the din, and walkout by the opposition. The opposition reckons that amended rules will still enable /allow the treasury bench to get the bills passed on strength of its numerical strength and without regard to positive helpful refining criticism emerging from the debate. Even compulsory reference of bills to the parliamentary committee may not be helpful, if MPs openly adopt party line in their conduct, and suspend their judgment. By walk-outs and disruption, the opposition is keeping the option open for opposing the passed bills later outside parliament. Moreover, disruption is in their reading, performance of representation, the act of responsibility when the government has become undemocratic, authoritarian, and devalues parliament. The treasury bench, on the other hand, has only toughened its position on disruption as it wants disciplinary action against the disruptors. There is little consideration to accommodate opposition within existing rules. Until balances are restored between the executive and parliament and between the government and opposition, the institutional functioning of parliament will not improve. For that to happen, the imperative democratic reforms in party organization and functioning are indispensable.

Still, the new suggested rules are important and needed because rules must evolve with change in times. Even though they are by themselves insufficient, they have enormous value as public discussion on remedies proposed can fire the imagination of civil society to generate pressure on parties to reform themselves and act for improving the institutional functioning of parliament. The solution is in the 'longue duree,' but public deliberation and civic activism towards it is the first necessary step in the present.

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