

Comparative Analysis of the Dissociative and Collective Theories of Qisas in Islamic Jurisprudence and Their Impact on the Iranian Legal System

Abdolnabi. Ghobishavi¹, Younes. Vahedyarijan^{2*}, Roghieh. Shahabi³

¹ PhD student, Department of Jurisprudence and Fundamentals of Islamic Law, North Tehran Branch, Islamic Azad University, Tehran, Iran

² Assistant Professor, Department of Jurisprudence and Fundamentals of Islamic Law, North Tehran Branch, Islamic Azad University, Tehran, Iran

³ Assistant Professor, Law Department, Pishva Varamin Branch, Islamic Azad University, Tehran, Iran

* Corresponding author email address: Y_Yarijan@iau-tnb.ac.ir

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The right of qisas (retributive justice) serves as a fundamental principle of criminal justice in Islamic jurisprudence and plays a central role in the legal systems of Islamic countries, particularly Iran. This right, established based on Quranic verses and the traditions (ahadith) of the Prophet Muhammad (PBUH) and the infallible Imams (AS), is primarily discussed within two key theoretical frameworks: the dissociative theory (nazariyyat al-inhilaliyyah), which recognizes the independent decision-making authority of each legal heir (awliya' al-dam) regarding qisas, forgiveness, or diyyah (blood money), and the collective theory (nazariyyat al-majmuu'iyah), which emphasizes the necessity of consensus among all heirs for the execution of qisas. The divergence between these two theories not only presents various jurisprudential and legal dimensions but also entails significant social implications. This study, employing a comparative analytical method and content analysis of fiqh (Islamic jurisprudence) sources from both Shi'a and Sunni traditions, examines the impact of these two theories on the Iranian legal system and their degree of conformity with divine rulings and the justice of Islamic law. Prominent Shi'a sources, including the works of Sheikh Mufid, Sheikh Tusi, Allama Hilli, the two Shahids (Shahid Awwal and Shahid Thani), and the author of Jawahir al-Kalam, alongside contemporary jurists such as Ayatollah Khoei, form the basis for analyzing the dissociative theory. Conversely, Sunni sources such as al-Umm by al-Shafi'i and al-Mughni by Ibn Qudamah have been examined to assess the collective theory. Furthermore, the study, citing Quranic verses such as verse 178 of Surah Al-Baqarah and verse 33 of Surah Al-Isra', along with authentic traditions, seeks to evaluate the extent to which these theories align with the principles of divine justice. The findings indicate that the dissociative theory is preferred within Shi'a jurisprudence and the Iranian legal system due to its greater consistency with Quranic verses, Shi'a traditions, and the practical requirements of justice implementation. By emphasizing the independence of the legal heirs, this theory facilitates the swift execution of justice and prevents conflicts arising from the necessity of consensus among heirs. In contrast, while the collective theory promotes family and social cohesion and may prevent disputes in certain cases, it can also lead to delays in the administration of justice. Ultimately, the article suggests that the Iranian legal system should integrate the positive aspects of both theories by preserving the autonomy of the legal heirs while establishing mechanisms that encourage consensus in specific circumstances. Such an approach could enhance the alignment of Iran's criminal laws with the divine principles of justice and contemporary social needs.

Keywords: Right of Qisas, Dissociative Theory, Collective Theory, Criminal Justice, Comparative Analysis, Legal Heirs.

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1. Introduction

The right of *qisas* (retributive justice) is one of the fundamental pillars of criminal justice in Islamic jurisprudence and plays a central role in the legal systems of Islamic countries, particularly Iran. This right, established based on Quranic verses such as verse 178 of *Surah Al-Baqarah* and authentic traditions (*ahadith*) from the Prophet Muhammad (PBUH) and the infallible Imams (AS), serves as a mechanism for achieving social justice, restoring public order and security, and preventing serious crimes. The philosophy of *qisas* is not merely about punishing the offender but aims to uphold the sanctity of human life, prevent acts of personal vengeance, and establish moral balance in society. Nevertheless, the manner of enforcing *qisas* and the conditions for decision-making regarding its implementation have always been subjects of scholarly debate among Islamic jurists and legal thinkers.

In the legal and jurisprudential discourse on *qisas*, two main theories have been proposed: the dissociative theory and the collective theory. The dissociative theory, which is predominantly emphasized in Shi'a jurisprudence, recognizes the independent decision-making authority of each legal heir (*wali al-dam*) regarding *qisas*, forgiveness, or the demand for *diyyah* (blood money). This perspective is developed based on certain traditions and the jurisprudential foundations of Shi'a *fiqh*, highlighting the role of individual will in the realization of justice. In contrast, the collective theory, which is more prevalent in Sunni jurisprudence, mandates the consensus of all heirs for the enforcement of *qisas* and emphasizes unity in decision-making and the prevention of conflicts among heirs.

In the Iranian legal system, which is based on Shi'a jurisprudence, the dissociative theory is accepted as the primary basis for implementing *qisas*. However, despite its theoretical foundations, this theory faces several practical challenges. One of the major challenges is the delay in the enforcement of *qisas*, as the independence of legal heirs in decision-making may prolong the legal process. Additionally, disputes among the heirs over whether to enforce *qisas*, grant forgiveness, or accept *diyyah* can lead to legal complications and social tensions. Moreover, the social consequences arising from individual decisions in cases of *qisas* raise concerns

about fairness and uniformity in the administration of justice.

Given these legal and social complexities, the significance of this research lies in its comparative analysis of the dissociative and collective theories. The study examines the legal and social implications of each perspective to determine which of these theories, based on the Quran and authentic traditions, aligns more closely with the true divine ruling (*hukm haqqiqi ilahi*) and the principles of justice in Islamic law. This analysis is particularly important in the context of contemporary Iranian society, where legal and social structures have become increasingly complex, necessitating a reassessment of the implementation of *qisas*.

The methodology of this study is analytical and comparative, relying on primary Shi'a and Sunni *fiqh* sources, Quranic verses such as verse 178 of *Surah Al-Baqarah* and verse 33 of *Surah Al-Isra'*, authentic traditions, and an examination of contemporary Iranian laws. The ultimate goal of this research is to provide solutions for improving the Iranian legal system in the implementation of *qisas*, ensuring a balance between jurisprudential principles, contemporary social needs, and the principles of criminal justice.

2. Theoretical Foundations and Literature Review

In defining key concepts, *qisas* in Islamic jurisprudence refers to the principle of reciprocal punishment for intentional homicide, serving as a key mechanism for the implementation of criminal justice. Unlike modern perspectives that emphasize rehabilitative aspects of punishment, criminal justice in Islam is centered on the realization of individual rights and the restoration of social balance. In Islamic *fiqh*, *qisas* is not only regarded as a punitive measure but also as a deterrent mechanism to prevent the recurrence of crimes. This concept partially overlaps with modern criminal justice, which focuses on victim compensation and reducing social violence.

The dissociative and collective theories offer two distinct interpretations of the implementation of *qisas*. The dissociative theory recognizes the independence of the *wali al-dam* in deciding on *qisas*, forgiveness, or accepting *diyyah*. It finds support in Quranic verses such as "*No bearer of burdens shall bear the burden of another*" (*Surah Al-An'am*, verse 164), which emphasizes individual responsibility in decision-making. On the

other hand, the collective theory requires unanimous agreement among all heirs for a decision on *qisas*. This theory, which is more prevalent in Sunni jurisprudence, is supported by Quranic verses such as "*Then whoever transgresses against you, transgress against him in like manner as he transgressed against you*" (Surah Al-Baqarah, verse 194), which emphasizes collective justice.

The concept of the divine ruling (*hukm haqqiqi ilahi*) plays a crucial role in this discussion, as it reflects the definitive will of God in establishing justice and social order. In Islamic *fiqh*, the divine ruling is considered a superior principle that ensures justice, the protection of rights, and the prevention of disorder. The theoretical framework of this study is based on primary Shi'a and Sunni *fiqh* sources, Quranic verses such as verse 178 of Surah Al-Baqarah and verse 33 of Surah Al-Isra', authentic traditions, and an analysis of contemporary Iranian laws. This framework provides a comparative analysis of the dissociative and collective theories and examines their impact on the Iranian legal system, social justice, and modern societal needs.

Philosophically and theologically, the dissociative theory is based on the principle of individualism and autonomy of will, whereas the collective theory is rooted in the principle of collectivism and social welfare. These differences in philosophical foundations stem from varying interpretations of the concept of justice in Islam. The relationship between these theories and the objectives of Islamic law (*maqasid al-shari'ah*) is also an essential aspect of this discussion. The dissociative theory prioritizes the protection of individual rights and the swift administration of justice, while the collective theory emphasizes the preservation of social order and the prevention of discord. Both theories seek to align with the broader objectives of Islamic law, but their practical implications necessitate further examination in the context of contemporary legal frameworks.

3. Research Background

3.1. Review of Previous Studies in Shi'a Jurisprudence

Sheikh Mufid (d. 1022) in his book *Al-Muqni'ah* emphasizes the independence of the *wali al-dam* (legal heir) in decision-making and supports the dissociative theory based on the traditions of Imam Ja'far al-Sadiq (AS). This theory particularly asserts that a *wali al-dam*

can decide on the execution of *qisas* without requiring the consensus of other heirs. In *Al-Muqni'ah*, he states: "If a murdered person has two heirs, and one chooses *diyyah* while the other chooses *qisas*, the one opting for *qisas* may kill the murderer and compensate the other heir with half of the *diyyah* from his own wealth. If one chooses to kill and the other forgives, he may proceed with the execution, but he must pay the heirs of the forgiver half of the *diyyah*. If he does not provide this compensation, he is not permitted to execute the murderer against the will of the other heir. Similarly, if one chooses *diyyah* while the other forgives, the murderer must pay half of the *diyyah*, as the other half is waived due to the forgiveness of the second heir" (Katouzian, 2009).

Sheikh Tusi (d. 1067) in *Al-Nihayah* presents the dissociative theory as a practical and jurisprudentially sound approach. He argues that requiring unanimous agreement among heirs for the execution of *qisas* is, in some cases, impractical. Thus, this theory serves as a mechanism to facilitate the implementation of justice in various circumstances. He states: "If the heirs of the murdered person disagree—some demanding *qisas* while others seek *diyyah*—the one who seeks *qisas* may execute the murderer after compensating the *diyyah*-seeking heir from his own wealth. Similarly, if some forgive while others demand *qisas* or *diyyah*, those seeking *qisas* must reimburse the share of those who forgave before proceeding with the execution. If *diyyah* is demanded, the murderer must pay the specified amount accordingly" (*Al-Nihayah*, vol. 1, p. 735).

Shahid Awwal (d. 1385) and Shahid Thani (d. 1558) in *Sharh al-Lum'ah* reinforce the Quranic and jurisprudential foundations of the dissociative theory. Through a detailed analysis of relevant traditions, they argue that this theory aligns with both individual and social justice. They emphasize that when unanimity among heirs is not achieved, the *wali al-dam* has the authority to independently make decisions to ensure swift and effective justice in society. Their position is based on multiple traditions from the Ahl al-Bayt (AS), which grant broader discretionary powers to the *wali al-dam*. In *Al-Rawda al-Bahiyah fi Sharh al-Lum'ah al-Dimashqiyyah*, they write: "If disagreement arises and some heirs demand *qisas* while others seek *diyyah*, the heir opting for *qisas* may proceed after reimbursing the *diyyah*-seeking heirs. Likewise, if some forgive, their

forgiveness must be acknowledged, and the remaining heirs must be compensated accordingly, though in this case, the compensation must be provided by the murderer rather than the forgiving heirs" (Shahid al-Thani, 1992).

Allama Hilli (d. 1325) in *Tahrir al-Ahkam* supports the dissociative theory due to its role in reducing familial conflicts and expediting judicial processes. He argues that "the forgiveness of one heir does not nullify the right of *qisas* for the others. The remaining heirs retain the right to execute *qisas* after reimbursing the murderer for the share of the forgiving heir. No *qisas* shall be enforced if the judge rules against it" (Allama Hilli, 1984).

Sahib Jawahir (d. 1849) in *Jawahir al-Kalam* identifies the dissociative theory as the dominant view in Shi'a jurisprudence. He asserts that the independence of the *wali al-dam* is more consistent with Quranic principles and divine rulings, making it the preferable approach for implementing *qisas* in Shi'a *fiqh*. Particularly in cases where unanimity among heirs is unattainable, Sahib Jawahir considers this theory a practical and legally sound solution. He states: "The principle of individual discretion in *qisas* aligns more closely with divine justice and the realities of legal disputes, making it the most appropriate approach in cases where the consensus of heirs is unfeasible" (Sahib al-Jawaher, 1995).

3.2. Review of Previous Studies in Sunni Jurisprudence

Imam al-Shafi'i (d. 820) in *Al-Umm* emphasizes the necessity of unanimous agreement among heirs for the implementation of *qisas*, aligning this view with Quranic verses and fundamental principles of Sunni jurisprudence. He argues that collective decision-making is essential in legal matters, particularly regarding *qisas*, to ensure justice is properly administered within society. Imam al-Shafi'i presents the collective theory as a means of maintaining unity and preventing familial and social discord (Imam Shafi'i, 1993).

Ibn Qudamah (d. 1223) in *Al-Mughni* advocates for the collective theory as a practical approach to *qisas* enforcement. He asserts that to foster social cohesion and minimize familial disputes, decisions regarding *qisas* should be made through the unanimous consent of all heirs. Relying on Sunni jurisprudential principles and prophetic traditions, Ibn Qudamah introduces this theory as a means of preserving social order and preventing injustice. He states: "The necessity of

collective agreement among heirs in *qisas* cases serves to uphold social stability and ensure fairness in the legal system" (Ibn Qudamah, 1993).

Ibn Taymiyyah (d. 1328) and Ibn Qayyim al-Jawziyyah (d. 1350) in their works emphasize the requirement of unanimity in *qisas* decisions as a mechanism for maintaining social order and preventing injustice. In *Majmu' al-Fatawa* and *Al-Turuq al-Salafiyyah*, they argue that the absence of heir consensus can create obstacles to the enforcement of *qisas*, potentially leading to injustice and the denial of the victim's rights. Their perspective is grounded in the belief that enforcing *qisas* without unanimity may disrupt societal harmony and cause prolonged disputes among heirs. Ibn Taymiyyah asserts: "When heirs disagree on *qisas*, the resulting legal complications may hinder justice, necessitating a collective approach to prevent disorder" (*Majmu' al-Fatawa*, vol. 34, pp. 138–140; vol. 28, pp. 325–330). Similarly, Ibn Qayyim al-Jawziyyah, in *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, upholds this principle, emphasizing that "consensus among heirs is vital to ensuring fair retribution and preventing legal uncertainties" (*I'lam al-Muwaqqi'in*, vol. 2, p. 85, Dar al-Jil, 1973).

4. Quranic Analysis

The primary Quranic verses related to *qisas* include verse 178 of Surah Al-Baqarah: "O you who have believed, prescribed for you is *qisas* for those murdered... But if one is granted remission by his brother, then (grant him) a suitable follow-up and payment to him with good conduct..."

From the perspective of the dissociative theory, the phrase "if one is granted remission by his brother" indicates a direct relationship between the *wali al-dam* and the murderer, implying that the *wali al-dam* has independent authority to decide on *qisas* or forgiveness. This interpretation is reinforced by Allama Tabataba'i in *Tafsir al-Mizan*, where he asserts that the *wali al-dam* is considered an autonomous individual with the exclusive right to enforce or forgo *qisas*.

Conversely, proponents of the collective theory, as seen in *Tafsir al-Kabir* by Fakhr al-Din al-Razi, emphasize collective decision-making and the necessity of heir consensus. They argue that the references to "suitable follow-up" and "good conduct" indicate the necessity of coordination among heirs to ensure collective justice.

Another key verse is verse 33 of *Surah Al-Isra'*: "And do not kill the soul which Allah has forbidden, except by right..." Shi'a jurists generally interpret this verse as supporting the independence of the *wali al-dam* in *qisas* decisions. The phrase "by right" explicitly suggests that the *wali al-dam* holds the authority to make such a determination. Sheikh Tusi in *Tafsir al-Tibyan* underscores this view, stating that the verse reaffirms the independent judicial capacity of the *wali al-dam*.

Sunni exegesis, as found in *Al-Jami' li Ahkam al-Quran* by Al-Qurtubi, frames this verse within the broader principle of social justice and collective decision-making. According to this interpretation, ensuring unity among heirs in *qisas* decisions is essential to prevent societal discord and promote equitable justice.

Verse 164 of *Surah Al-An'am*: "No bearer of burdens will bear the burden of another." Shi'a scholars interpret this verse as affirming individual responsibility, which extends to *qisas* decisions. In Shi'a jurisprudence, this verse is frequently cited to support the dissociative theory, arguing that the *wali al-dam* operates independently and that the forgiveness of one heir does not negate the rights of others. Sahib Jawahir in *Jawahir al-Kalam* highlights this verse as a fundamental textual basis for the dissociative theory, asserting that the right to *qisas* is an individual entitlement.

Sunni scholars, on the other hand, apply this verse to the broader principles of individual and communal responsibility. While they may not directly associate it with *qisas*, they emphasize that collective decision-making ensures fairness and mitigates disputes.

4.1. Interpretations by Prominent Exegetes

Sheikh Tusi (d. 1067) in *Al-Tibyan* identifies the independence of the *wali al-dam* as a fundamental principle of Islamic jurisprudence, correlating it with Quranic justice. He maintains that verses such as *Surah Al-Baqarah* 178 explicitly reinforce the individual discretion of the *wali al-dam*.

Allama Tabataba'i (d. 1981) in *Tafsir al-Mizan* regards the Quranic verses on *qisas* as indicators of both individual and social rights within Islamic jurisprudence. He emphasizes that Quranic justice, particularly in the context of *qisas*, is fundamentally rooted in the independent decision-making authority of the *wali al-dam*.

Fakhr al-Din al-Razi (d. 1210) in *Tafsir al-Kabir* advocates for the collective theory, arguing that unanimous agreement among heirs is essential for preventing familial disputes. He asserts that in legal matters such as *qisas*, coordination and consensus are necessary to uphold justice and social order.

5. Hadith-Based Analysis

Shi'a traditions supporting the dissociative theory include a narration from Imam Ja'far al-Sadiq (AS): "I asked Abu Abdullah (AS) about a case where a murdered person had a mother, father, and son as heirs. The son said: 'I want to kill the murderer of my father.' The father said: 'I want to forgive him.' The mother said: 'I want to take the *diyyah*.' Imam al-Sadiq (AS) said: 'The son shall give the mother one-sixth of the *diyyah*, and the heirs of the murderer shall give the father one-sixth of the *diyyah* in exchange for his forgiveness, and then the son may execute the murderer.'" (Al-Hurr al-Amili, 1990). This tradition demonstrates that a *wali al-dam* who chooses *qisas* retains the right to execute it after compensating other heirs for their share of the *diyyah*.

Imam Ali (AS) similarly states: "If the one who did not forgive wishes to execute *qisas*, he may do so after returning half of the *diyyah* to the heirs of the murderer." (Al-Hurr al-Amili, 1990). This narration confirms that a *wali al-dam* can independently enforce *qisas*, provided other heirs receive their *diyyah* entitlement.

Another narration from Imam al-Sadiq (AS) further reinforces this position: "If the heirs of the murdered person gather and some choose *diyyah* while others choose *qisas*, then *qisas* is granted to those who opt for it, after compensating the others for their share of the *diyyah*." (Al-Hurr al-Amili, 1990). This tradition explicitly affirms the dissociative theory, granting the right of *qisas* to those heirs who select it.

Shi'a traditions in favor of the collective theory include a *sahih* (authentic) narration from Abd al-Rahman, which states that if some heirs forgive the murderer, the right to *qisas* is annulled for all, and only the remaining *diyyah* can be claimed. Additionally, a *mursal* (uninterrupted) narration from Al-Saduq affirms that if a single heir forgives, *qisas* is nullified, and only *diyyah* remains enforceable.

Sunni traditions supporting the collective theory include a narration from the Prophet Muhammad (PBUH): "No execution of *qisas* shall take place except with the consent

of all heirs.". This hadith directly supports the necessity of unanimous heir agreement for enforcing *qisas*. Another hadith states: "Retaliation (execution) prevents further killings.". While generally affirming the deterrent effect of *qisas*, this hadith is interpreted by Sunni scholars as implying the requirement of heir consensus in its application.

5.1. Evaluation of Hadith Authenticity

Shi'a traditions, sourced from reliable Shi'a texts such as *Al-Kafi* and *Wasa'il al-Shi'a*, are considered valid within Shi'a jurisprudence and accepted by Shi'a jurists (Al-Hurr al-Amili, 1990; Al-Kulayni, 2009). Sunni traditions, found in sources such as *Sahih al-Bukhari* and *Musnad Ahmad*, hold strong credibility in Sunni jurisprudence but may be subject to scrutiny within Shi'a *fiqh*. Consequently, Sunni narrations on *qisas* require careful assessment when applied in a Shi'a legal context.

6. Conclusion

This study has examined the dissociative and collective theories of *qisas* within Islamic jurisprudence, evaluating their legal, social, and theological foundations through Quranic exegesis, hadith analysis, and the perspectives of prominent Shi'a and Sunni jurists. The findings indicate that the dissociative theory, which grants independent decision-making authority to the *wali al-dam*, is the predominant view in Shi'a jurisprudence. This theory is supported by key Quranic verses such as *Surah Al-Baqarah* 178 and *Surah Al-Isra'* 33, which emphasize individual autonomy in executing or forgiving *qisas*. Shi'a hadith sources further reinforce this view, illustrating that a *wali al-dam* retains the right to enforce *qisas* after compensating other heirs who opt for *diyyah* or forgiveness. Prominent Shi'a jurists, including Sheikh Tusi, Allama Hilli, and Sahib Jawahir, have consistently upheld this theory, arguing that it aligns more closely with divine justice and ensures the swift and effective administration of criminal law.

On the other hand, the collective theory, predominantly upheld in Sunni jurisprudence, emphasizes unanimous agreement among heirs before *qisas* can be enforced. This perspective is rooted in Quranic exegeses such as *Tafsir al-Kabir* by Fakhr al-Din al-Razi (Fakhr al-Razi, 1998) and *Al-Jami' li Ahkam al-Quran* by Al-Qurtubi, which stress the importance of social cohesion and

collective decision-making. Sunni hadith sources, including narrations from *Musnad Ahmad* and *Sahih al-Bukhari*, further affirm the necessity of heir consensus to prevent potential disputes and ensure justice is administered equitably. Prominent Sunni jurists such as Imam al-Shafi'i, Ibn Qudamah, and Ibn Taymiyyah have argued that the collective approach prevents familial conflicts and fosters social harmony.

From a legal standpoint, the dissociative theory has been incorporated into the Iranian legal system, which is based on Shi'a *fiqh*. However, practical challenges remain, including potential conflicts among heirs, delays in judicial processes, and the broader societal impact of individual decision-making in cases of *qisas*. The collective theory, while less prevalent in Iran, presents certain advantages in promoting familial and societal unity but may also lead to delays in justice and hinder the rights of individual heirs who wish to enforce *qisas*.

Considering the complexities of contemporary legal systems, this study suggests that the Iranian legal framework could benefit from integrating certain aspects of both theories. While maintaining the foundational principle of *wali al-dam* autonomy, a structured mechanism could be introduced to encourage heir consensus in specific cases, thereby minimizing disputes and ensuring a more balanced approach to justice. By adopting a flexible legal model that respects both individual rights and collective interests, the Iranian legal system can enhance its alignment with Quranic principles, Islamic jurisprudence, and modern societal needs.

Ultimately, both the dissociative and collective theories present strong jurisprudential foundations, each reflecting different interpretations of justice within Islamic law. The dissociative approach prioritizes legal autonomy and the swift execution of justice, while the collective approach emphasizes social harmony and familial unity. The ongoing discourse between these perspectives highlights the dynamic nature of Islamic jurisprudence and the necessity of continuous legal adaptation to address evolving societal and legal challenges.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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