

ORIGINAL RESEARCH ARTICLE

Legal barriers and reflections on the use of assisted reproductive technology by single women in China

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Abstract

This study analyzed the legal obstacles on the access to assisted reproductive technology (ART) by single women in mainland China, focusing on the period from 2001 to 2024, and reassessed the Chinese regulatory framework. The study employed legal text data sourced from the PKU Law database, and the case data from the China Judgments Online. Results revealed that the Chinese prevailing legislative framework prohibits single women to use ART and the courts oppose egg freezing for this group too, which creating regulatory obstacles to their reproductive rights. The study finds that the traditional concept of marriage, in which fertility is linked to marriage, and the long-standing family planning policy are at the root of China's ban on single women using ART. Prohibition-type provisions in China are challenging to adapt to changing socio-economic and technological environments and public attitudes, and should be updated to reflect global practices and legislation.. (*Afr J Reprod Health* 2025; 29 [8]: 69-78).

Keywords: assisted reproductive technology; Chinese law; single women; reproductive rights; reproductive limitations

Résumé

Cette étude a analysé les obstacles juridiques à l'accès des femmes célibataires aux techniques de procréation assistée (PMA) en Chine continentale, en se concentrant sur la période allant de 2001 à 2024, et a réévalué le cadre réglementaire chinois. L'étude s'est appuyée sur des textes juridiques provenant de la base de données PKU Law et sur des données de cas provenant de la base de données China Judgments Online. Les résultats ont révélé que le cadre législatif chinois en vigueur interdit aux femmes célibataires de recourir à la procréation assistée et que les tribunaux s'opposent à la congélation d'ovules pour ce groupe également, ce qui crée des obstacles réglementaires à leurs droits en matière de procréation. L'étude montre que le concept traditionnel du mariage, dans lequel la fertilité est liée au mariage, et la politique de planification familiale de longue date sont à l'origine de l'interdiction faite aux femmes célibataires d'utiliser les techniques de procréation assistée. Les dispositions de type prohibition en Chine ont du mal à s'adapter à l'évolution de l'environnement socio-économique et technologique et des attitudes du public, et devraient être mises à jour pour refléter les pratiques et la législation mondiales. (*Afr J Reprod Health* 2025; 29 [8]: 69-78).

Mots-clés: Technologie de reproduction assistée; droit chinois; femmes célibataires; droits reproductifs; limitations reproductives

Introduction

With the development of assisted reproduction technology (ART), it has become possible to artificially perpetuate and modify natural fertility patterns. The implementation of ART, including egg freezing or the use of sperm banks, is the best way for single women to achieve independent fertility. In a broader sense, a single woman is an unmarried, divorced, or widowed woman. Childbearing by a single woman is defined as the process of giving birth to a woman of childbearing age who is not married.¹ Reports show that one-third of women using ART are unmarried.² The

proportion of births occurring out of wedlock in the United States has remained at around 40% since 2010.³ Meanwhile, the fertility rate of single women in European countries such as the United Kingdom and France has been increasing year by year, with the proportion already exceeding 50%.⁴ In South America, Chile is currently the country with the highest single fertility rate, according to statistics, in 2018, Chile's total population numbered 17.91 million, with a total of 241,420 newborns, of which a total of 73.4% were born out of wedlock. Chile has been classified by the Organization for Economic Cooperation and Development (OECD) as the country with the

highest number of children born out of wedlock.⁵ Guaranteeing the reproductive rights of single women through ART has become a social issue that no country in the world has been able to avoid.

However, China's regulations remain conservative about whether women should be allowed to use ART. China's prevailing legal framework explicitly prohibits the use of ART by single women. Concurrently, judicial decisions in China prohibit single women from using ART methods, such as egg freezing. At the level of natural rights logic, single women's right to use ART should be guaranteed. China's dual legislative and judicial prohibitions have effectively blocked single women's access to ART, resulting in de facto technological discrimination against this group.

As the demand for ART among single women in China is increasing.⁶ If the law continues to ignore the reproductive wishes of single women, this group will become a vulnerable group abandoned by the mainstream concept of reproduction, and will not be conducive to the protection of human rights.^{7,6} The enjoyment of reproductive rights by single women is legally justified, and China should make adjustments in the light of global practice and legislative trends. It is therefore the objective of this article, through examining the legislative framework and judicial decisions on the use of ART by single women in China, to analyze and comply the legal obstacles and offer Suggestions for legislative amendments.

Methods

Textual analysis

This study employed textual analysis to comprehensively examine the provisions on single women's reproductive freedom within the framework of Chinese jurisprudence, and revealed the legislative restrictions on single women's use of ART under China's current laws.

Drawing on the data of legal texts until 2024 in the legal database of *PKULaw*,⁸ the study identified the restrictive clauses implicit in the text of the law (e.g., "ART is prohibited for single women", "must be in accordance with national regulations", etc.) and deconstructed the systematic

exclusion of single women's reproductive rights from the logic of the legislation.

Empirical research

The study adopted an empirical research method to examine the judicial dilemmas faced by single women using ART in China by searching, screening and analyzing judicial cases. The objective is to comprehend the practical implementation and consequences of the law by means of a rigorous examination of particular legal cases.

This study utilized the judicial cases from the China Judgments Online, which is the official repository for disseminating court records throughout China. A cross-search of ("single" OR "unmarried" OR "widowed" OR "divorced") and ("embryo transfer" OR "artificial insemination" OR "egg freezing" OR "assisted reproduction" OR "fertility") was conducted, resulting in the retrieval of over 200 lawsuits as of the end of 2024. After excluding the cases unrelated to the reproductive freedom of single women and cases settled through mediation, and taking into account the completeness of the publicly available court rulings and the need to protect the privacy of the single women involved, this study selected two representative cases, one reflecting the court's support and the other its opposition, for further analysis.

Critical analysis

The study employed critical analysis to highlight the incongruity between China's legislative framework and its judicial practice concerning the utilization of ART by single women. It draws attention to the prevailing economic and social environment, technological conditions, and public attitudes. The study then advanced the argument that the legislation and judicial practice are irrational, thus providing a theoretical foundation for the policy recommendations.

Comparative analysis

Comparative analysis is a method of studying legal issues by comparing legal systems, cultures and practices. It can help researchers understand the

advantages and disadvantages of different legal systems. In this study, the criteria for selection of the main subjects of comparison include legal system representativeness (continental law vs. common law), socio-cultural similarity (East Asian family ethics), and legislative evolution stages. The study selected Sweden, the United Kingdom and Hong Kong, China as the main subjects of comparison. By comparing China's current situation with global legislative trends, the study called on China to "refer to global practices and legislative trends" and proposed a direction for reform.

Results

Legislative prohibitions

The following Table 1 summarizes the legal framework concerning the right of single women to ART in China. In mainland China, the national laws protect reproductive rights as human rights, and have not denied single women's right to use ART. Nevertheless, the Administrative Regulations, Department Specifications and Local Working Papers of Shanghai deny the right of single women to utilize ART.

1. Prohibition of ART for single women

China's existing legislation on ART is Article 3 of the *Measures for the Administration of Assisted Reproductive Technology* (ART Administration Measures), which was issued by the former Ministry of Health by Ministerial Decree No. 14 in February 2001. This article stipulates, "The application of human assisted reproductive technology shall be carried out in medical institutions for medical purposes and in accordance with national family planning policies, ethical principles and relevant laws". In May of the same year, the Ministry also issued the *Code of Assisted Human Reproductive Technology* (ART Code) under the former Health Science and Education, and Article 3, paragraph 13 of which states, "It is prohibited to perform assisted human reproductive technology on couples and single women who do not comply with the provisions of the national population and family planning statutes and regulations."

2. Single women not allowed to freeze their eggs

In addition, Shanghai's local working document explicitly states that egg freezing is not permitted for single women. The 2013 Shanghai Municipal Commission of Health and Family Planning issued the *Notice on Improving the Quality Control of Human Assisted Reproductive Technology Service Programs in the City*, which stipulates that the application of egg freezing services is strictly limited to married women. The term 'married' is understood to signify a state that is distinct from 'infertile due to cancer'.⁹ In contrast, the provisions of the law on sperm freezing for men are more liberal, with the exception of article 2, which states that "if the two parties are separated for a long period of time", indicating that the sperm freezing target must be a married man. However, none of the articles require that the man must be married, and there is no provision throughout the text prohibiting the freezing of sperm by a single man, nor is there a provision throughout the text that disallows the freezing of sperm by a single man. The text makes no mention of the marital status of the male concerned, nor does it exclude single men from freezing their sperm. The effect of such provisions is that sperm freezing for men is not conditional on marriage, while egg freezing for women is conditional not only on marriage but also on temporary inability to bear children for medical reasons.

3. Human sperm banks are not open to single women

There are currently 26 sperm banks in China, and their directors have indicated that it is prohibited for a single woman to apply to a sperm bank. To apply for use of a sperm bank, a couple must provide their ID cards, marriage certificates, and proof that they have not given birth, and both spouses must apply together in order to be provided with sperm. According to the "Single" Women's Reproductive Rights - A Research Report on Policy and Lived Experience, although *China's Basic Standards and Technical Specifications for Human Sperm Banks* does not explicitly prohibit single women from applying for the use of sperm, in practice, legal sperm banks require women to be married.¹⁰

Table 1: The legal framework of single women's right to use ART in China

The National Laws	2022	Law of the People's Republic of China on Safeguarding the Rights and Interests of Women	Effective
	2021	Civil Code of the People's Republic of China	Effective
	2021	Population and Family Planning Law of the People's Republic of China	Effective
	2019	Basic Healthcare and Health Promotion Law of the People's Republic of China	Effective
Administrative regulations	2001	Measures for the Administration of Assisted Reproductive Technology	Effective
	2022	Regulation on the Administration of Medical Institutions	Effective
Department specification	2001	Code of Assisted Human Reproductive Technology	Effective
Local working papers	2013	Notice on Improving the Quality Control of Human Assisted Reproductive Technology Service Programs in Shanghai	Effective

Conservatism in judicial practice

In China's judicial practice, there is still a conservative attitude as to whether women should be allowed to practice ART such as social egg freezing (SEF). SEF is the term used when eggs or ovarian tissue are frozen for non-medical causes and used later in life, which is different from medical egg freezing in the context of disease treatment.¹¹

1. Dissenting judicial practice

In 2019, a landmark legal case emerged in China, marking the nation's inaugural instance of egg freezing for a single woman. The plaintiff, who had sought to preserve her fertility, initiated legal proceedings against a Beijing hospital for its refusal to offer egg freezing services. The hospital cited the plaintiff's unmarried status and the intended non-medical nature of the procedure as grounds for its refusal. However, the court of first instance rejected the plaintiff's lawsuit on the grounds that the aforementioned regulatory ban had not been lifted, thereby indirectly denying the single woman's claim for egg freezing for the sole purpose of delaying childbearing. On July 22, 2022, the three-year case ended with the plaintiff losing her case.¹²

2. Judicial practice in support

In April 2022, the Kaifu District People's Court in Changsha, Hunan Province, delivered a judgment of first instance, determining that the Defendant, Hunan Provincial Maternal and Child Healthcare

Hospital, was obligated to proceed with the embryo transfer procedure for the Plaintiff, Zou, a female who had lost her husband. Article 3(13) of the ART Code explicitly prohibits medical institutions from performing ART procedures for single women. However, the Kaifu District People's Court ruled that the legal status of widowed women differs from that of single women, as outlined in the aforementioned regulatory documents. The court determined that the performance of embryo transfers by a wife following her husband's death does not contravene his pre-mortem wishes. Furthermore, the court concluded that the continuation of embryo transfers for the plaintiff, Zou, is not inconsistent with his husband's wishes.¹³ This decision aligns, at least in part, with the precedent set by the Beijing Chaoyang District People's Court in May 2019, which had previously upheld the request of a widowed woman to utilize frozen embryos. By expanding the definition of "single" in this way, the court upheld the right of widowed women to use ART.

However, the Court's narrative does not explicitly recognize the reproductive rights of single women. A study analyzed 19 court rulings related to the reproductive rights of single women, finding that five opposed these efforts while the remaining 14 supported them. The study notes that the number of supportive rulings does not necessarily reflect an open attitude towards single women using ART in Chinese judicial practice, as the 14 rulings set forth four preconditions: (1) The existence of a husband-and-wife relationship, which proves a normal marital relationship. (2)

Consent to the embryo transfer procedure is inferred from the husband's behavior during his lifetime. (3) The husband and wife have entered into a contractual agreement with a medical institution for the purpose of undergoing an embryo transfer for fertilization during the husband's lifetime. (4) As stipulated in the relevant documentation, the embryos intended for transfer are derived from the fusion of the husband's sperm and the wife's egg cells.¹⁴ These four conditions demonstrate that in mainland China, the utilization of ART by a single woman is contingent on the existence of a marital relationship. Furthermore, even a widowed single woman who seeks to employ ART for the purpose of procreation, and in the absence of any relation to her former spouse, the absence of genetic imprinting from her former spouse, consanguinity, or express consent, will not be upheld by the court.¹⁵

Discussion

Historical causes

Banning the use of ART by single women is not conducive to promoting women's development and realizing gender equality. Furthermore, it runs counter to the international trend of comprehensively protecting women's rights and interests, as well as the global trend of liberalizing the use of ART by single women. However, the historical context of China, in particular the cultural and social beliefs that have shaped its policies, provide a context for understanding the decision to prohibit ART for single women.

1. Chinese traditional conception of procreation

The traditional Chinese concept of procreation presupposes the existence of a marital relationship. At the legal level, the *Constitution of the People's Republic of China* (China's Constitution), the *Population and Family Planning Law*, and the *Social Insurance Law* all establish family planning as a legal obligation of husbands and wives, thereby stipulating that legal procreation is bound up with the marriage relationship. Consequently, from an ethical and moral standpoint, the reproductive behavior of unmarried women is challenging to

accept within the confines of traditional Chinese society.

2. Chinese traditional family planning policy

China has historically implemented a family planning policy.¹⁶ As a fundamental national policy, the family planning policy is oriented towards families and couples. Consequently, the reproductive rights of single women are disregarded and constrained. Furthermore, the family planning policy from 1982 to 2016 promoted the concept of families having only one child. At that period, the primary objective of the family planning policy was to promote delayed marriage, delayed childbearing, smaller families, and optimal births, with the aim of controlling population growth in a planned manner. According to this fertility policy, married couples face limitations in their reproductive choices, particularly with regard to the number of children they can have. This policy has particularly significant consequences for single women.

Contemporary controversies

1. Growing calls for the legal recognition of ART for single women

There has been a growing call for the legal recognition of ART for single women. During the 2020 National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) (hereinafter referred to as TwoSessions), a number of members of the National Committee of the Chinese People's Political Consultative Conference submitted proposals. These proposals included the following, "permitting unmarried women with medical indications to preserve their fertility" and "granting the right to implement ART to single women."¹⁷ During the 2022 TwoSessions, several NPC deputies put forth a proposal that highlighted the increasing trend of unmarried older women in China's cities. This demographic, which is poised to grow, already comprises a significant segment of the population. The proposal underscored the capabilities and inclinations of these women to raise their children independently. In response, the National Health Commission and the Women's Federation were called upon to

implement policies that would ensure single women could exercise the same reproductive rights and benefits as their married counterparts. The primary objective of this initiative was to guarantee the welfare of single women and to ensure the rights of children born outside of marriage are safeguarded.¹⁸

In response to this demand, in 2017 the former National Health and Family Planning Commission responded that “in-depth research and demonstration is still needed” on the reproductive rights of single women.¹⁹ In 2020, the National Health Commission of the People's Republic of China issued a public response to a proposal by a member of the CPPCC. The Commission stated that, at present, egg freezing for single women for the purpose of delaying childbearing does not comply with the relevant provisions of Chinese laws and regulations.²⁰

2. Academic debates regarding rationality and legitimacy of ART for single women

Additionally, scholars have engaged in discourse regarding the ethical implications of granting single women the right to engage in ART. In the context of the discourse surrounding SEF, scholars continue to express reservations regarding its perceived rationality and legitimacy.

Opponents of the SEF say it should not be recognized legally. The following rationales have been given for this: (1) The SEF is not a form of medical treatment. Thus, medical institutions and personnel are not obligated to perform corresponding medical duties.²¹ (2) It is imperative to acknowledge the inherent limitations of SEF, particularly with regard to its safety and efficacy.²²⁻²³ (3) Once SEF has undergone full liberalization within society, it may result in the objectification of women, the commodification of fertility, the black-market trading of eggs, and further associated consequences. These developments have the potential to compromise social justice and erode personal dignity.²⁴ (4) It could also be contended that it ultimately reinforces gender ideologies concerning (genetic) motherhood, the reproductive imperative, and the stigma associated with infertility and voluntary childlessness.²⁵

In contrast to the opposition, scholars who advocate for the SEF posit that in a society

characterized by an increase in both the average age at which women become mothers and the prevalence of involuntary childlessness, the SEF provides a valuable option for women seeking to preserve their reproductive potential in cases where spontaneous conception is not feasible.²⁶ Moreover, it confers upon women the autonomy to defer childbearing until they are psychologically, financially and occupationally prepared for parenthood.²⁷ It is the result of individuals exercising their legitimate rights, specifically those who possess a legitimate claim to advocate for SEF and whose ethical risks remain manageable.²⁸⁻³⁰

In sum, the feared dangerous consequences of SEF should be considered in the context of liability regulation and consequentialism, which cannot justify the constraints on the realization of the legal and legitimate rights of individuals. By using technology to delay childbearing, women gain equal participation in employment, time to find a partner and become psychologically active.²⁷ Importantly, international follow-up of children born after oocyte vitrification has shown no increased risk of adverse obstetric outcomes or increased risk of birth defects.³¹

Reflections and global lessons learned

1. Reevaluation of China's ART regulations

The ongoing societal discourse surrounding this matter, coupled with the profound scholarly debates it has ignited, underscores the need for reevaluation of China's long-standing policies that prohibit single women from utilizing ART. These regulations, once deemed necessary to address social norms and ethical concerns, may no longer align with the evolving needs and expectations of the population. The question of whether to grant single women access to ART constitutes a significant challenge to traditional Chinese ethics and social order.^{7,4}

(1) The primary argument of this study is that the right to procreate is an inherent fundamental human right that exists independently of the State and legal frameworks.

Firstly, it is posited that this right should not be subject to any conditions or limitations in its realization. Reproduction can be defined as a combination of personal and social behaviors, a link

between the physical and emotional needs of natural persons, and is also closely related to population reproduction and the survival of human society. However, under China's family planning policy, procreation is more often linked to the obligation to fulfill the national population policy. This results in the neglect of its status as a natural right and a basic human right.

Secondly, procreation is directly related to human dignity, and individuals are free to make decisions about matters related to their reproductive choices. These include the right to make decisions about procreation, the right to be informed about procreation, and the right to reproductive security.²⁸ The right to reproductive freedom is a negative right that excludes state interference in reproductive choices. Decisions about reproduction are at the core of "personal identity, dignity, and the meaning of life."³² This also means that the traditional concept of marriage and parenthood in China, where marriage is considered by most to be a prerequisite for legal childbearing, is in fact a denial of the right to individual reproductive freedom of single women. Therefore, it cannot be a sufficient reason to overrule the reproductive autonomy of single women.

Thirdly, if ART is to be used as a means of exercising reproductive rights, then allowing men to freeze their sperm while prohibiting women from freezing their eggs is a clear departure from the concept of equal protection for the subjects of reproductive rights.

(2) In addition, the China's Constitution, *Civil Code of the People's Republic of China* and other laws do not explicitly prohibit the use of ART by single women, either as a basic human right or as a personality right. The foundational principles enshrined in Articles 33 and 37 of the China's Constitution serve as the cornerstone of the right to reproduce. Article 33 stipulates that "the State respects and safeguards human rights," while Article 37 asserts that "personal freedom shall be inviolable." Article 47 of *Law of the People's Republic of China on Safeguarding the Rights and Interests of Women* explicitly provides that "women have the right to bear children in accordance with the relevant provisions of the State, and the freedom not to bear children". Article 17 of *Population and Family Planning Law of the People's Republic of*

China stipulates that "citizens have the right to procreate". This can be summarized as follows: there is a right to procreate, and in particular, women have the freedom to procreate. In the context of Chinese judicial practice, the right to procreate is also a subject of discussion as a fundamental human right. The right to procreate is recognized as a natural right that belongs to citizens, as well as a right granted by law that falls within the category of personal freedom.

(3) Furthermore, the prevailing consensus among the international community has come to underscore the fundamental importance of respect for reproductive freedom. It is evident that documents such as the *Universal Declaration of Human Rights*,³³ the *Convention on the Elimination of all forms of Discrimination Against Women*,³⁴ and the *Tehran Declaration*³⁵ collectively ensure that reproductive freedom is recognized as an inalienable human right.

Consequently, the explicit allowance for single women to utilize ART, coupled with the provision of the right to self-selection in determining their marital status and childbearing aspirations, is not merely a trend within the international community but also a fundamental tenet of China's legal framework. It is imperative that China promptly implement the requisite amendments to the ART Measures, the ART Code, and other pertinent documentation.

2. Suggestions for legislative amendments

In terms of the potential for legislative amendments, China stands to benefit from the advanced legislation and practical experience of other nations. At present, the global legislative landscape regarding the utilization of ART by single women can be categorized into three primary models: fully permissive, partially restrictive, and prohibitive. The legislation under discussion permits single women to decide whether to freeze their eggs or not, and also to exercise their reproductive rights by adopting ART such as artificial insemination in the case of singleness. Statistically, Belgium, Bulgaria, Denmark, Finland, Greece, Hungary, Latvia, Russia, Spain, the United Kingdom, India, the United States, and Sweden are among the countries that have adopted this model

of legislation.³⁶ In nations or regions that have adopted restrictive legislation, single women are prohibited from engaging in ART, such as artificial insemination. However, these nations or regions indirectly safeguard the reproductive rights of single women by allowing them to freeze their eggs, such as Hong Kong, China.³⁷

Prohibitive legislation encompasses countries that not only prohibit egg freezing for single women but also permit artificial insemination, as well as countries that impose a universal ban on single women's access to both egg freezing and artificial insemination, such as China.

A review of relevant legislation reveals that, even in countries where the use of ART by single women is fully permitted, legislation has evolved from prohibition to restriction to liberalization. In Sweden, for instance, the 1984 Act on Artificial Insemination stipulates that the subject of artificial insemination must be a woman in a married or de facto union, and that the consent of the partner is required. By contrast, the 2000 Act on Medical Care in Assisted Reproduction restricts the use of artificial reproduction to married couples. It was only in 2016 that single women were permitted to have a child through ART. The legislative framework in the United Kingdom has evolved from a prohibition-type regime under the Family Law Reform Regulations 1987, to a more restrictive framework under the Artificial Insemination and Embryology Act 1990, and finally to a permissive and refined framework under the Artificial Insemination and Embryology Act 2008. This process of legislative evolution is indicative of the corresponding adjustments made by states to their legislation in the light of their socio-economic environment, changes in medical technology, and other circumstances.

In recent years, as China has experienced significant transformations in its socio-economic environment, medical technology conditions, and social attitudes, the legal aspects of ART have become a subject of extensive discourse. China's legal documents prohibiting single women from practicing ART were enacted more than 20 years ago, and are no longer compatible with those current changes in China. It is evident that the utilization of such documents in the administration of justice is no longer appropriate in the

contemporary era. In consideration of the legislative experience of other countries, it is recommended that China consider a gradual implementation of ART for single women.

Conclusion

Concomitant with the shift in reproductive policy, the demand for ART by single women has emerged as a matter that cannot be disregarded. The safeguarding of single women's right to ART is not only consistent with the promotion of human rights and gender equality, but also aligns with the fundamental principles of China's contemporary reproductive policy. While this approach may give rise to numerous ethical dilemmas, it is indeed feasible to achieve effective control of ART behavior through the reshaping of ethical norms and the revision of legal regulations. This phenomenon is particularly evident in the context of legislation, where specific regulations pertaining to limited openness of ART are progressively emerging. It is imperative to acknowledge the rights and obligations of the subjects of the right, medical institutions, family members, and society in the process of protecting the right to ART. This necessitates a comprehensive consideration and enhancement of these elements to ensure the safeguarding of the right of single women to use ART. This approach will facilitate the harmonization of bioethics, the protection of the right, and social interests.

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Authors contribution

Dr Shenjie Gao conceptualized the paper and completed the first draft. The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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