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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1346/2015 & CM 35024/2016

COURT ON ITS OWN MOTION (AIR POLLUTION IN DELHI)

..... Petitioner

Through Mr Kailash Vasdev, Sr. Adv. with Mr
Sumer Singh Sandhu, Ms Divija Raj
Khowa & Mr Umrao Singh Rawat, Advs.
for Amicus Curiae.

versus

UNION OF INDIA & ORS

Through

..... Respondents

Mr Peeyoosh Kalra, ASC for GNCTD.
Mr Vivek Goyal, CGSC for UOI with Ms
Namisha Gupta, Adv. for UOI.
Mr Ajay Digpaul, CGSC for UOI with
Ms Mohita, Adv. for UOI.
Mr Sanjeev Ralli, Adv. with Mr Ravin
Kapur, Mr Trinayan Sonowal, Advs. for
DPCC.
Mr Ajjay Aroraa, Adv. with Mr Kapil
Dutta & Ms Diksha Lal, Advs. for MCD.
Mr Asheesh Jain, Adv. with Mr Yudhvir
Singh, Adv. for State of Punjab.
Mr Shiv Mangal Sharma Aag, Adv. with
Mr Saurabh Rajpal, Adv. for State of
Rajasthan.
Mr Avnish Ahlawat, Adv. for DTC.
Mr Anil Mittal, Adv. with Mr Komal
Aggarwal, Adv. for State of UP.
Mr Sanjay Lao, ASC for Delhi Police.
Mr Pawan Mathur, Adv. for DDA.
Mr Alok Kumar, Adv. with Mr Abhishek
Paruthi, Adv. for CPCB.
Mr Akhilesh Mishra, TI/Legal Cell
SI Ram Tirath, Pairvi Officer Traffic.
Mr Dhanesh Relan, Adv. with Ms
Akshita Minocha, Adv. for DDA.
Mr Mukesh Kumar, Adv. for NHAI.
Mr Anil Grover, Adv. with Ms Noopur

Singh, Ms Kanika Singh & Mr Rishi
Vohra, Advs. for State of Haryana &
NDMC.
Mr Rahul Mehra, Standing Counsel for
GNCTD

+ W.P.(C) 2115/2015 & CM 7298/2015

SUDHIR MISHRA

..... Petitioner

Through None.

versus

MINISTRY OF HEALTH & FAMILY WELFARE & ORS.

..... Respondents

Through Mr Dhanesh Relan, Adv. with Ms
Akshita Minocha, Adv. for DDA.
Insp. Akhilesh Mishra, TI/Legal Cell
SI Ram Tirath Pairvi Officer Traffic.
Mr Vivek Goyal, CGSC with Ms
Namisha Gupta, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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10.11.2016

The hearing today has centered around the emergency situation that has arisen in Delhi with regard to the spike in the particulate matter in October-November to much beyond the dangerous levels. We noticed an article titled 'Lower Pollution, Longer Lives' which appeared in the Economic Political weekly on 21.02.2015 which has indicated that the World Health Organization declared air pollution to be world's single largest environmental health risk and attributed around 7 million deaths through air pollution in 2012. The same article notes that air pollution in India is severe and the data from the Central Pollution Control Board revealed that 77% of the Indian Urban Agglomeration exceeded the National Ambient Air Quality Standards (NAAQS) for respirable suspended

particulate matter (PM 10) in 2010-12. Obviously, the position has worsened. The article further notes that the estimates from WHO suggest that 13 out of the 20 cities in the world with the worst fine particulate (PM 2.5) air pollution are in India, including Delhi, which is the worst ranked city. India also has the highest rate of deaths caused by chronic respiratory disease in the world. It is obvious that Delhi would be at the top of the table also on this account. According to Mr Vasdev, ten and a half thousand deaths take place in Delhi every year on account of this.

Apart from the deaths, the said article was an exercise to estimate the effect on the life expectancy on account of particulate matter pollution. Various studies have been noticed in the said article and it has been suggested that taking India as a whole, if PM 2.5 is made compliant according to NAAQS throughout the country, the expected increase in life expectancy would on an average be increased by 3.2 years. The other way to look at it is that as long as particulate matter particularly PM 2.5 is in excess of the prescribed standards, the life expectancy would be 3.2 years less than what it ought to be on an average. Assuming that the population of Delhi is approximately 20 million, it would mean that approximately 60 million life years are robbed from the people of Delhi because of air pollution. Furthermore, assuming that the average life expectancy is around 60 years, this would mean that air pollution would take 1 million lives out of the existing population in Delhi.

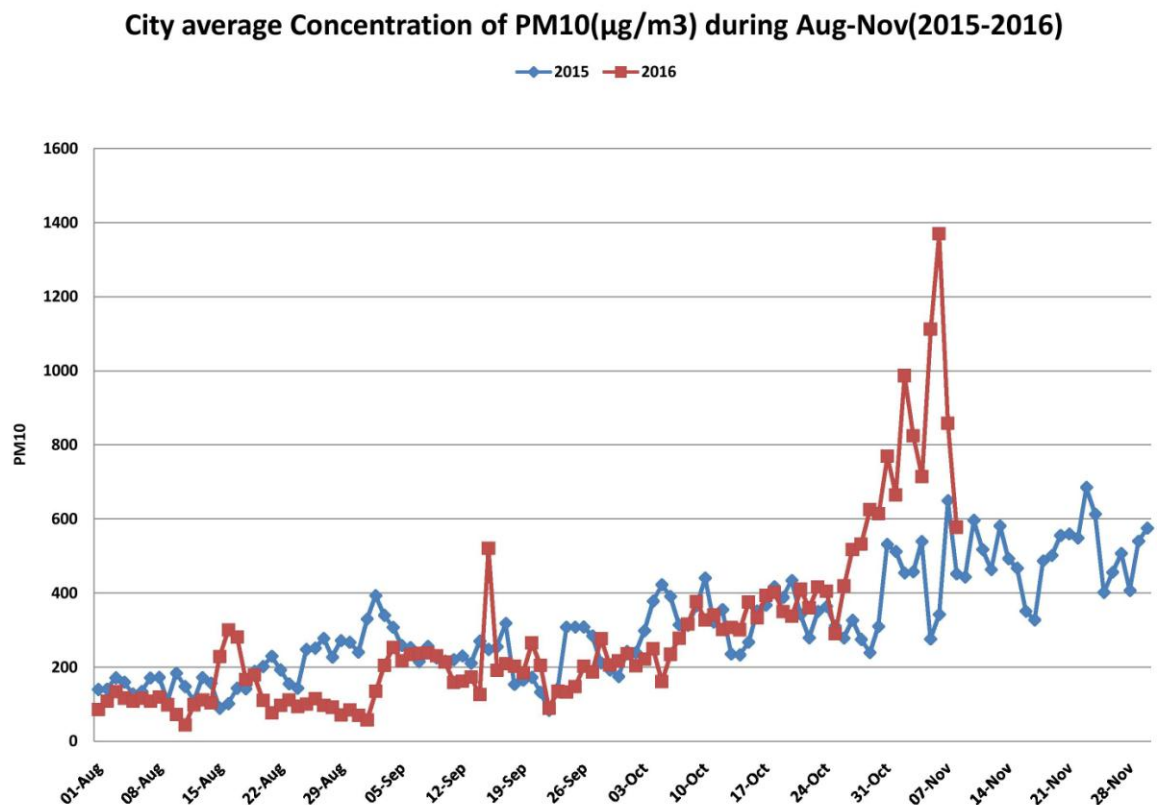
These are startling statistics and the effects of which are visible on the ground and judicial notice can be taken of the same. Serious issues have arisen because this would amount to violation of the fundamental rights enshrined in the Constitution and particularly in Article 21 as pollution is endangering the lives of the people and it is the duty of the Governments to ensure that this danger is removed. Unfortunately, despite repeated orders and directions from this Court and concerns of the public, which are visible from the extensive newspaper

reporting of the grave pollution problem in Delhi, the Governments which are responsible, have not acted in the manner they should have done.

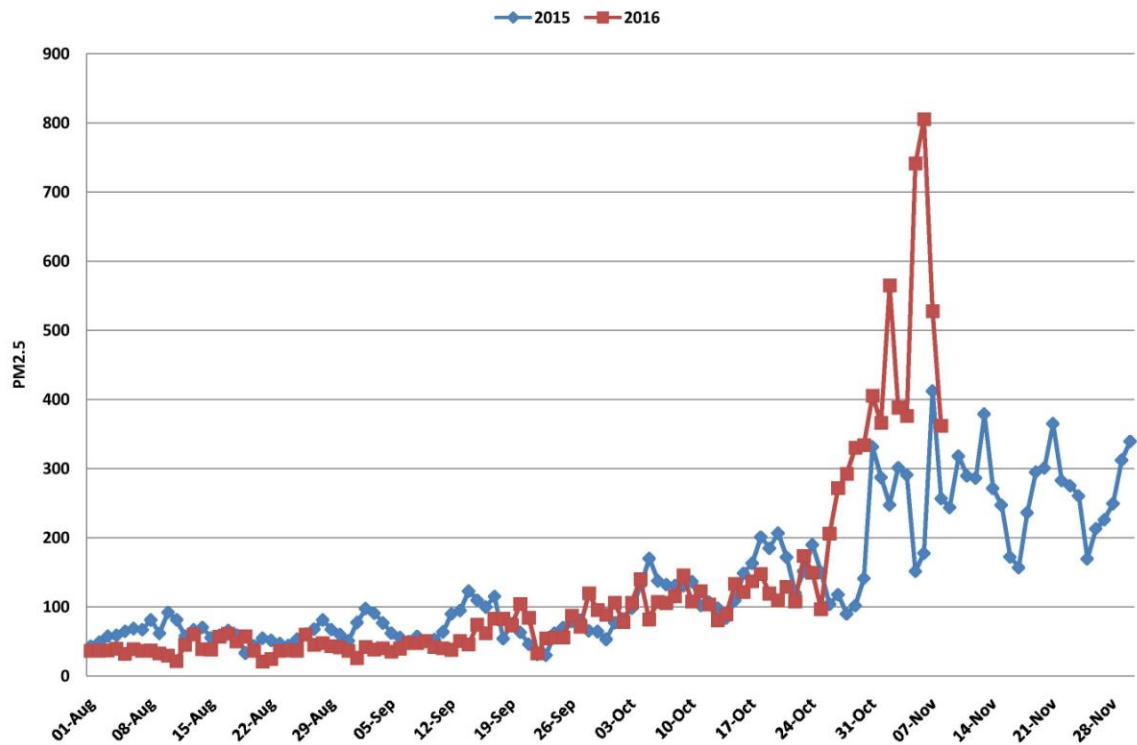
Anticipating the problem of stubble burning and biomass burning which takes place towards the end of October and till the middle of November in the Northern Indian region and particularly in the State of Punjab, we had made it clear by our order dated 04.10.2016 that if the same is not prevented, then the Chief Secretaries of the concerned states would be held responsible.

Not to lose sight of the factual basis, we had asked the Delhi Pollution Control Committee to give us data with regard to the pollution levels in Delhi.

Dr M.P. George, Scientist 'D' with the DPCC has presented satellite images as well as charts indicating the day-to-day concentration of PM 10 and PM 2.5 amongst the other pollutants. It is evident from the charts that PM 10 as well as PM 2.5 have peaked during the first week of November and the peak was noticed around 6-7 November.



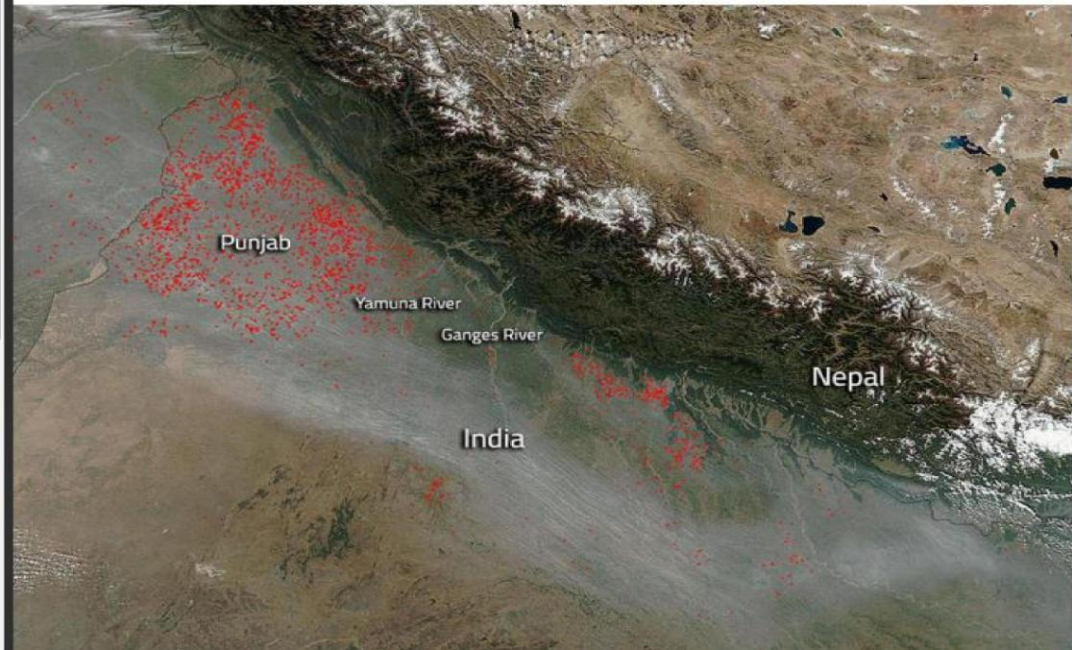
City average Concentration of PM_{2.5} (µg/m³) during Aug-Nov(2015-2016)



Of course, it is suggested by the State of Punjab that this was in part due to the fireworks during the Diwali period. But, that is, according to us, a very small part of the problem. This is so because the satellite images that have been placed before us by the DPCC clearly indicate that crop burning or biomass burning in the Punjab is the main culprit for the pollution spike in the levels of PM 10 and PM 2.5. This is clearly evident from the following satellite images.

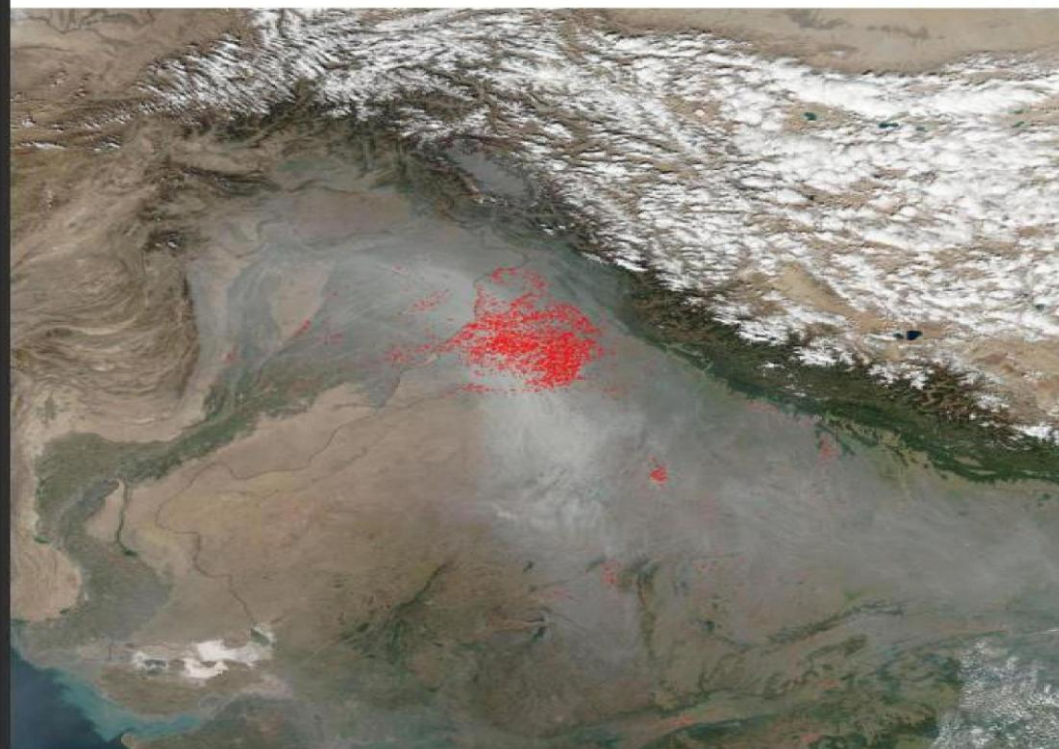
Oct. 25, 2016

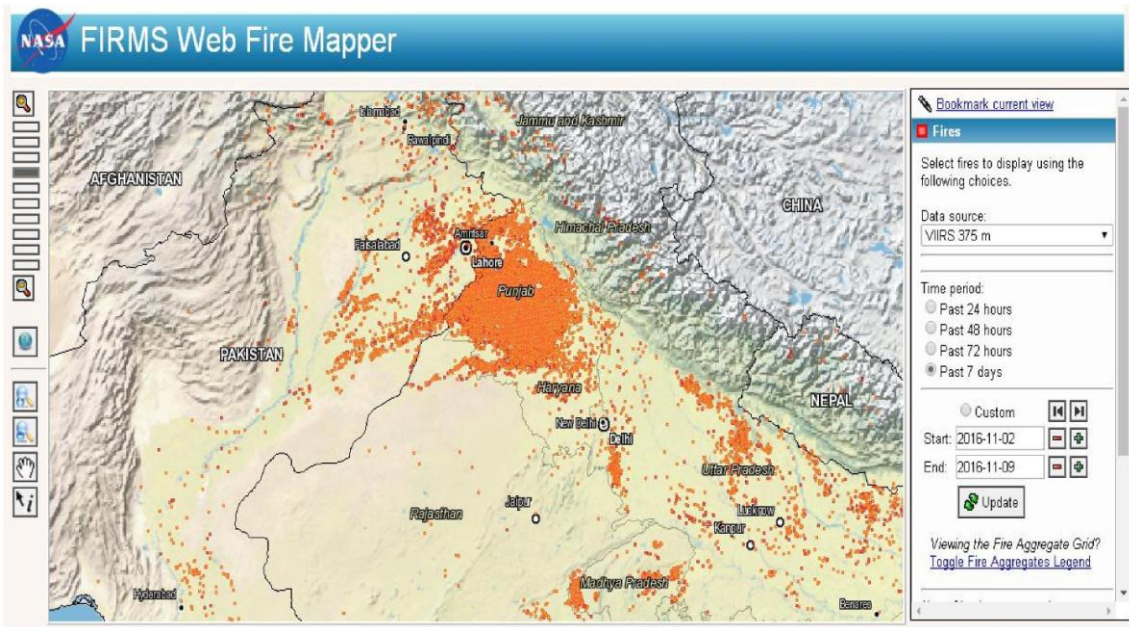
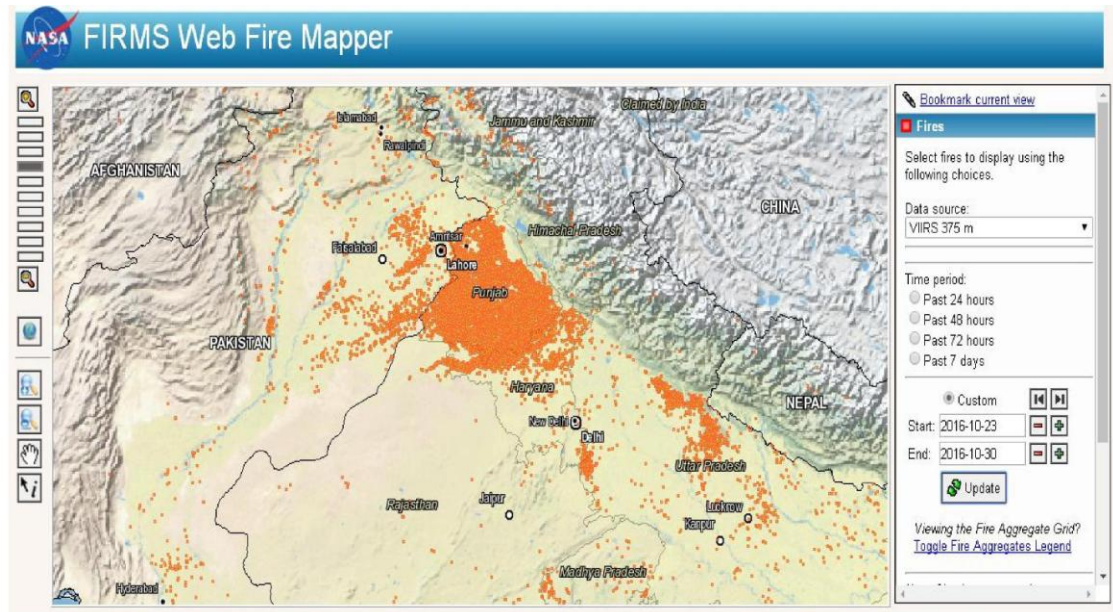
NASA's Suomi NPP Satellite Shows Agricultural Fires in India



Nov. 1, 2016

Agricultural Season In Full Swing in India





Unfortunately, the State of Punjab is in denial mode and they contest any allegations that Punjab is responsible for the air pollution in Delhi. But the facts are clear both in the form of recorded pollution levels and the satellite images.

At this juncture we may point out that the States of Haryana and Rajasthan have also submitted their status reports and we have gone through them and we find that these states are moving in the right direction and that is the reason why, there has not been any significant contribution to the air pollution from these

states. Unfortunately, the State of Punjab has not taken the actions which the other states have. This is despite our warning which we clearly gave on 04.10.2016. We had made it clear that the Chief Secretaries of the concerned states would be responsible. Before we issue any contempt notice to the Chief Secretary, we would require an affidavit from the Chief Secretary of the State of Punjab indicating as to why he did not carry out the direction and what prevented him from doing so. The said affidavit be filed on or before the next date of hearing. In any event, the learned counsel for the State of Punjab submitted that they would immediately take emergency measures to stop any further stubble burning or bio mass burning in the State of Punjab. The results of the same would be indicated to us before the next date of hearing.

The other problem which faces Delhi is the issue of landfill sites. These landfill sites are also a source of pollution inasmuch as there are simmering fires in the landfill sites and they also expel noxious gases such as Carbon Dioxide, Methane and Sulphur Dioxide. We have already noted earlier in our orders which were pointed out by Mr Vasdev that Delhi produces about 8000 MTs of solid waste/garbage every day. Mr Rahul Mehra interjected by saying that the figure perhaps has gone up about 10000 MTs nowadays. This would mean that the 'annual production', if we can use that term, of garbage has gone up far beyond 3.5 or even 4 million MTs. All this is dumped in the landfill sites at Ghazipur, Bhalswa and Okhla which are, in any event, far beyond their capacities.

The only solution, as we have pointed out earlier, is of taking immediate measures for segregation of garbage at the source. This requires that the municipal authorities and other concerned authorities should provide receptacles for placing the segregated garbage (bio-degradable and non bio-degradable such as plastic and metal). It is a worldwide phenomena that landfill sites are not encouraged but recycling of garbage in an environmental friendly manner is promoted. That is why we have waste-to-energy plants sprouting in different parts of the world. In this regard, Mr Rahul Mehra appearing for the Government of NCT of Delhi, has

suggested that Government of Delhi has a thermal power plant at Rajghat, which is not functional at present, which can be converted into a waste to energy facility. We think that this ought to be done at the earliest. According to him, the entire project from planning to execution would take about 18 months. They should undertake this project with due expedition.

There is a further proposal with regard to the Badarpur Power Plant but we cannot give any direction in the absence of the National Thermal Power Corporation and for this purpose we add the National Thermal Power Corporation (NTPC) as respondent No.28. Mr Vasdev shall ensure that amended memo of parties is filed. Notice shall go to the Standing Counsel/nominated counsel of the NTPC so that he is present on the next date of hearing. The counsel for the concerned North Delhi Municipal Corporation shall also indicate as to how they can increase the capacities of the Waste-to-Energy Plants at Narela-Bawana and Bhalswa. The learned counsel for the State of U.P. shall also file its status report within two days.

Renotify on 18.11.2016 at 2:15 p.m.

A copy of this order be given dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

NOVEMBER 10, 2016
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