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# Mental Harassment against Women at Workplace: “Unmasking the Silent Agony”

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## ABSTRACT

*This article delves into the pervasive issue of mental harassment, with a focus on its occurrence in workplaces, particularly towards women. It explores the evolution of the concept of mental harassment in the Indian legal system, shedding light on the lack of specific provisions to address it effectively. The article highlights the challenges faced by victims of mental harassment, including the lack of support, stigma, and limited legal recourse. It also discusses legal provisions within the Indian Penal Code and relevant acts to combat workplace harassment. Furthermore, the article examines global instances of power harassment in Japan and International conventions like CEDAW. It concludes by emphasizing the importance of proactive measures by organizations and legal recourse options for victims.*

**Keywords:** *Mental harassment, workplace harassment, women empowerment, legal recourse, gender equality.*

## I. INTRODUCTION

Mental harassment or emotional abuse encompasses any form of non-physical conduct or demeanor that instills fear, manipulates, suppresses, penalizes, belittles or secludes another individual through the means of humiliation, intimidation or degradation<sup>2</sup>. The word ‘*Harassment*’ can be considered as a form of discrimination. It includes any unwanted physical or verbal behaviour that offends or humiliates another person. It includes different behaviours which are of offensive nature. It is widely recognized as conduct that belittles, shames, or humiliates an individual and is typically distinguished by its lack of conformity with social and moral norms of reasonableness.<sup>3</sup> Such behaviour affects the physical and mental well-being of a person.

Those behaviours which appears to be disturbing, upsetting or threatening is known as harassment in legal sense. These cause an effect of taking the right from a person or a nullifying effect as it is sometimes discriminatory in nature. The intentional repetitive behaviour is known

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<sup>2</sup> Lawayz (Jan.2, 2023, 10:30 am), <https://lawayz.com/mental-and-physical-abuse-and-harassment-by-my-sister/>.

<sup>3</sup> The Encyclopedia of World Problems and Human Potential, (Jan.2, 2023, 11:07 am), <http://encyclopedia.uia.org/en/problem/142571>.

as bullying in ordinary meaning. The persistent recurrence and the distressing, alarming or threatening quality can set it apart from a simple insult or reprimand.<sup>4</sup>

## **II. CATEGORIZATION OF HARASSMENT**

Harassment manifests in various forms, and among the most prevalent types are:

1. Mental Harassment
2. Physical Harassment
3. Discriminatory Harassment
4. Sexual Harassment
5. Harassment rooted in factors such as race, gender, or religion
6. Emotional or Psychological Harassment
7. Cyberbullying or Online Harassment<sup>5</sup>

This paper shall be discussing about the mental harassment that is happening towards women, at various workplaces and the need for addressing such issues. Even after 74 years of independence, we are not able to say we have achieved women empowerment owing to multifarious issues, the common being addressing the gender inequalities, protection of women at public as well as in the private spaces.

## **III. DEVELOPMENT OF THE CONCEPT OF MENTAL HARASSMENT**

The Indian Legal System underwent a prolonged process of shedding the remnants of the British Colonial System. Some rights are inherent to every human being and are intrinsic from birth. India, as a signatory to numerous International Conventions, incorporated many of their principles into its legal framework. One of these is The Protection of Human Rights Act, which defines human rights as encompassing the rights linked to an individual's life, liberty, equality, and dignity, as guaranteed by the Constitution or enshrined in various International Covenants, which are enforceable in Indian Courts. Human rights also encompass the right to live with human dignity, and any breach of this constitutes a violation of the fundamental values of our nation. Harassment poses a significant threat to living with dignity. The legal system tends to become more attentive in response to serious incidents, protests, and social movements. While certain loopholes persists, these guidelines also apply to institutions, mandating the

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<sup>4</sup> Indialegalive.co, (Jan. 6, 2023, 07:30 am), <https://www.indialegalive.com/the-legal-perspective-of-mental-harassment/>.

<sup>5</sup> Indialegalive.co, (Jan. 6, 2023, 11:30 am), <https://www.indialegalive.com/the-legal-perspective-of-mental-harassment/>.

establishment of mechanisms for addressing grievances on an urgent basis. However, issues like mental harassment within these spaces often leave the legal system grappling with a lack of precise terminology and codes to effectively address them. As a consequence, the legal framework designed to address sexual harassment is extended to encompass instances of mental harassment, even though such cases would typically lie beyond the scope of provisions specifically targeting sexual harassment.<sup>6</sup>

The provisions to address sexual harassment in most work spaces is far from adequate and then, reading the cases of mental harassment through the provisions to address sexual harassment, despite the development in technology and awareness regarding mental health, prevents a separate scrutiny and the setting up of redressal mechanisms that priorities mental harassment. As a result, this allows the perpetrator of mental harassment to escape accountability if there are no grounds for sexual harassment detected.

#### **IV. ISSUES RELATING TO MENTAL HARASSMENT**

Lack of support from colleagues and even women colleagues during legal proceedings is one of the reasons why women step back from choosing the path of our long and frustrating judicial process. Legal cases become part of the public record, potentially accessible to anyone interested, which can pose obstacles for individuals seeking future employment, as prospective employers may be reluctant to hire someone who has been involved in litigation. Ironically, in some instances, female colleagues themselves engage in victim-blaming to gain favour with management or earn positive recognition. Lastly, the lack of information or awareness about relevant laws make it challenging for women to report such incidents, as they often do not know where to turn to seek recourse. Even when she manages to identify the appropriate channel, such as the HR department, the matter becomes a subject of public discussion, when ideally it should have been handles in a confidential manner.<sup>7</sup>

Workplace harassment, particularly directed at female employees, is a prevalent issue on a global scale. Research indicates that upto 50% of women encounter workplace harassment at some point in their careers, yet only a fraction choose to report it. There exist numerous categories within the realm of workplace harassment against women employees, leading to experiences of humiliation and damage to their reputation.

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<sup>6</sup> Feminism in India, ( Jan. 5, 2023, 09:30 am ) , <https://feminisminindia.com/2023/08/11/mental-harassment-in-educational-spaces-the-question-of-redressal/>.

<sup>7</sup> Workplace harassment problems of women in India and how to deal with them, (Jan.6 2023, 12:30 pm), [inkedin.com/pulse/workplace-harassment-problems-women-india-how-deal-them-anjali-sharma?trk=public\\_profile\\_article\\_view](https://www.linkedin.com/pulse/workplace-harassment-problems-women-india-how-deal-them-anjali-sharma?trk=public_profile_article_view).

Many individuals commonly hold the misconception that office harassment primarily pertains to sexual misconduct. However, in reality, workplace harassment can manifest in diverse form, including but not limited to the following:<sup>8</sup>

- Age-based harassment
- Harassment related to disabilities
- Defamation, which involves belittling and damaging the reputation or character of an individual
- Discrimination based on caste
- Harassment linked to sexual orientation and marital status
- Harassment based on factors like race, gender, religion and national origin

Frequently, mental harassment results from hurtful words or emotional pressure, though in severe instances, it can even escalate to physical harm. Fortunately, the Indian Penal Code has enacted rigorous and stringent laws to combat all forms of harassment. Various sections of the law provide avenues to file cases against such mistreatment and abuses. Take refuge in the law, and it will shield you from any type of cruelty or torment you may be enduring in your life.<sup>9</sup>

## **V. LEGAL PROVISIONS WITHIN THE INDIAN PENAL CODE (IPC) ADDRESSING THE ISSUE OF HARASSMENT<sup>10</sup>**

### **1. Section 498A of IPC**

This section addresses any physical or emotional harm inflicted upon a married woman by her husband or in-laws. Such offences are subject to legal punishment, which may include an imprisonment of 3 or more years and fine. Additionally, it is important to note that this offence is considered non-bailable.

### **2. Section 294 of IPC**

Engaging in obscene acts in public or uttering offensive words with the intent to annoy or torment someone in a public setting is a punishable offence under the law. The offender can be charged under Section 294 of the Indian Penal Code and may face penalties that include imprisonment for a period of upto 3 years, a fine or both.

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<sup>8</sup> How to file a case for mental harassment, (Jan 2, 2023, 09:45 pm), <https://www.taxolawgy.com/how-to-file-a-case-for-mental-harassment/>.

<sup>9</sup> Id.

<sup>10</sup> Id.

### 3. Section 509 of IPC

This section is enacted with the specific purpose of penalizing individuals who intentionally tarnish a woman's character through either physical or verbal actions. Such persons could face imprisonment for duration of upto 3 years.

In addition to the aforementioned sections of the Indian Penal Code (IPC), there are also specific acts like The Protection of Women from Domestic Violence Act, 2005, and The Dowry Prohibition Act, 1961. These acts empower women to assert their rights and provide support to the female community in their pursuit of a happy, harmonious, and equitable life within society.

## VI. JUDICIAL PRECEDENTS

Few of the cases that the Indian courts have dealt with in regard to Mental Harassment in a professional sphere are as follows:

### 1. Vishaka & Ors. vs. State of Rajasthan<sup>11</sup>

This represents a significant and pivotal judgment in the annals of sexual harassment law, by the Supreme Court of India. Sexual harassment means an uninvited/unwelcome sexual favour, or sexual gestures from one gender towards the other gender. It induces feelings of humiliation, offence, and deep insult in the victim, disrupting their mental peace significantly and subjecting them to extensive mental harassment.

Sexual harassment stands as a prominent social issue affecting the vulnerable segments of society. The court's observations underscore the importance of fundamental rights enshrined in the Indian Constitution, particularly Articles 14(2), 19 (1) (g) and 21. These rights mandate that every profession, trade, or occupation must ensure a safe working environment for its employees. Any violation of these rights compromises the individual's right to life and their entitlement to lead a life with dignity. The core requirement is the provision of a secure working environment within the workplace.

The Supreme Court, in its judgement, affirmed that women possess a fundamental right to be free from sexual harassment in the workplace. Furthermore, it set forth essential guidelines for employees to adhere to, aiming to prevent and address sexual harassment against women within the workplace effectively.

The court also suggested having proper techniques for the implementation of cases where there is sexual harassment at workplace. The main aim/objective of the Supreme Court was to ensure

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<sup>11</sup> AIR 1997 SC 3011.

gender equality among people and also to ensure that there should be no discrimination towards women at their workplace.

## 2. L. Nagaraju vs. Syndicate Bank and Ors.<sup>12</sup>

The Division Bench of Andhra Pradesh High Court further elaborated on the concept of mental harassment. They referenced the Indian Journal of Community Medicine, which is the official publication of preventive and social medicine. In an article title “A Cross-Sectional Study in Coastal South India”, the term “workplace harassment” was defined as follows:

“Harassment in any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person.”<sup>13</sup> Harassment can manifest through spoken or written words, gestures, or actions that have the effect of irritating, alarming, abusing, demeaning, intimidating, diminishing, humiliating, or embarrassing another person. It can also contribute to the creation of an environment at work that is intimidating, hostile, or offensive.

The court continued to elaborate on the matter by adding: “*Finally, we may thus state or define the work place harassment as follows: Workplace harassment ‘is any type of unwelcome action towards an employee by the employer or anybody on his behalf that leads to difficulty in performing assigned tasks or causes the employee to feel he or she is working in a hostile environment. The harassment may be based on such factors as race, gender, culture, age, sexual orientation, or religious preference.’*”<sup>14</sup>

Typically, several criteria must be met for workplace harassment to be acknowledged. Initially, the behaviour in question must be unwelcome and disturbing to the employee. Subsequently, the employees must express their discontent with the conduct, affording the individuals responsible the opportunity to rectify their behaviour in the workplace.<sup>15</sup> Lastly, the conduct must be of such a nature that makes an impact on the ability of the employee to carry out his or her duties in an efficient and responsible manner.

In the current case, while the Hon’ble Court did not find sufficient evidence to substantiate the allegations of office bullying or mental harassment against the respondent, it is noteworthy that the Hon’ble court provided a clear and comprehensive explanation of what constitutes mental

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<sup>12</sup> AIR 1991 SC 1507.

<sup>13</sup> UN Women | UN System Coordination - Anti-harassment (Jan 3, 2023, 09:24 am), [www.un.org/womenwatch/uncoordination](http://www.un.org/womenwatch/uncoordination).

<sup>14</sup> The Legal perspective of Mental Harassment, / (Jan.2, 2023, 09:13 am), <https://www.rightsofemployees.com/the-legal-perspective-of-mental-harassment-2>.

<sup>15</sup> Id.

harassment.

*Consumer Education and Research Centre v. Union of India*<sup>16</sup>

The right to life includes ensuring the health and vitality of an employee as an essential conditions for a life characterized by human dignity. This includes essential human rights such as the right to human dignity, personal development, social protection, rest, and leisure, all of which are guaranteed to workers by the Charter of Human Rights, as articulated in the preamble and Articles 38 and 39 of the Constitution.

## **VII. GLOBAL SCENARIO CONCERNING MENTAL HARASSMENT**

### **(A) Power Harassment in Japan**<sup>17</sup>

“Power harassment”, also known as “pawa hara” in Japan refers to abusive, discriminatory, or exploitative conduct aimed at employees by their superiors. While harassment is a global concern, Japan’s structured hierarchy, along with a culture of excessive supervision and subservience, has given rise to a pervasive environment of power harassment in the workplace. In fact, reports of workplace harassment and bullying reached an all-time during the 2018 fiscal year. Numerous other countries, such as France and the USA, have implemented stringent policies to combat workplace harassment.

### **(B) Convention on the elimination of all forms of discrimination against women (cedaw)**

CEDAW, an international treaty established in 1979 and often referred to as the Internal Bill of Rights for Women, officially came into force on September 3, 1981, and has since been ratified by 189 member states.

Article 2 of this treaty lays out specific directives to address gender-based discrimination. All signatory nations are obligated to commit to a policy of eradicating discrimination against women through every suitable avenue and promptly. To achieve this objective, they shall undertake:

- a) To incorporate the principle of gender equality within their national constitutions or, where not yet enshrined, within other relevant legislation, and to guarantee, through legal measures and other suitable methods, the effective implementation of this principle in practice
- b) To abstain from participating in any actions or practices that discriminate against

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<sup>16</sup> 1995 SCC (3)42.

<sup>17</sup> New Anti-Harassment Law introduced in Japan, (Jan 10, 2023, 01:15pm) , <https://www.humanrightspulse.com/mastercontentblog/new-anti-harassment-law-introduced-in-japan>.



women and to guarantee that public authorities and institutions consistently adhere to this duty;

- c) To implement all necessary measures to eradicate discrimination against women, irrespective of whether it is carried out by individuals, organizations, or enterprises
- d) To revoke any domestic penal statutes that constitute discrimination against women<sup>18</sup>

Workplace harassment can manifest through biased comments or inappropriate jokes targeting an individual's personal beliefs, age, or sexual orientation. Although this type of harassment is prevalent in numerous workplaces, employers are increasingly adopting a stricter approach to combat slurs, derogatory names, and veiled threats aimed at employees based on these factors. Furthermore, an increasing number of countries are broadening their harassment regulations to encompass irresponsible remarks and diverse forms of intimidation related to age, religion, and sexual orientation.”

## VIII. CONCLUSION

The government has established specific regulations and acts to oversee various aspects aimed at safeguarding the welfare and rights of employees and workers across a wide spectrum of industries.<sup>19</sup>In India, a worker has the option to seek redressal through various provisions outlined in the Constitution of India, the Indian Penal Code (IPC), and the Code of Civil Procedure (CPC). The Indian Constitution, through various articles, enshrines labour rights and protection to ensure the well-being of workers.<sup>20</sup>Indeed, various articles in the Indian Constitution indirectly safeguard labour rights. For example, Article 14 establishes the principle of equality before law, which contributes to the broader framework of protecting the rights and interests of workers and ensuring fairness and justice in labour-related matters.

In the case of *Mewa Ram v. A.I.I. Medical Science*<sup>21</sup>, the Supreme Court, held that “*the doctrine of ‘equal pay for equal work’ is not an abstract doctrine. Equality must be among equals, unequal people cannot claim equality.*”

Indian constitution through various Article 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 provides an idea of what conditions should be provided by the employers. However, some of

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<sup>18</sup> CEDAW, (Jan. 4, 2023, 11:20 pm), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

<sup>19</sup> Facing Mental Harassment from boss at workplace (Jan. 6, 2023, 12:30 pm), <https://www.rightsofemployees.com/facing-mental-harassment-from-boss-at-workplace>.

<sup>20</sup> Id.

<sup>21</sup> 1989 SCR (1) 957.

these articles are not enforceable. Part IV of the Constitution assigns the state the responsibility of advancing social welfare and implementing effective measures to ensure the right of employment, access to education, and public assistance in employment-related matters. However, these provisions are subject to the constraints of the state's economic capacity. Additionally, it mandates the state to enact special provisions to establish fair and humane working conditions and to provide relief in cases of maternity, among other welfare measures.

### ***Maintaining a Healthy Corporate Environment***

To prevent harassment within the workplace, management should take proactive measures to eliminate or minimize the occurrence of the following actions:

1. **Implementing Strict Anti-Harassment Policies** – Establish comprehensive anti-harassment policies and ensure that all employees are aware of them. These policies should clearly define what constitutes harassment and the consequences for engaging in such behaviour.
2. **Promoting a respectful work environment** – Foster a culture of respect and inclusivity within the workplace. Encourage employees to treat one another with dignity and respect, regardless of their background or identity
3. **Regular Training and Awareness Programs** – Conduct regular training sessions to educate employees about the different forms of harassment, their impact, and how to prevent it. Make sure all staff members understand their rights and responsibilities.
4. **Reporting mechanisms** – Create a safe and confidential system for employees to report harassment incidents. Ensure that employees feel comfortable coming forward with complaints, and establish a process for investigating and addressing these reports promptly and impartially
5. **Promote Diversity and Inclusion** – Encourage diversity in the workplace and create an inclusive environment where all employees feel valued and included. Celebrate differences and actively promote diversity initiatives.
6. **Leadership Commitment** – Top management should lead by example in adhering to anti-harassment policies and demonstrating a commitment to a harassment-free workplace. When leaders set the tone, it can positively influence the entire organization.
7. **Regular Monitoring and Audits** – Periodically assess the workplace environment through surveys, audits and feedback mechanisms to identify potential harassment issues. Utilize this information as a foundation for implementing essential

enhancements.

8. **Consequences for Harassment** – Clearly communicate the consequences of engaging in harassment, which may include disciplinary action, upto and including termination, in accordance with company policies and applicable laws.
9. **Support for Victims** – Offer support services for victims of harassment, such as counselling or employees assistance programs. Leverage this information as the groundwork for instituting vital improvements
10. **Review and Adapt Policies** – Continuously review and update anti-harassment policies and practices to address emerging issues and changes in laws and societal norms

By taking these proactive steps, management can create a safer and more respectful workplace, minimizing the occurrence of harassment and fostering a positive and inclusive work environment for all employees. Besides the above the corporate should have an active, impartial and easy to approach grievance redressal mechanism for employees and statutorily mandated committee under the POSH Act and Rules for redressal of sexual harassment complaints.

#### **(A) Legal Recourse to be Adopted**

When individuals experience harassment in the workplace, they may consider various legal recourse options to address the issue and seek justice. The specific legal remedies available can vary depending on the jurisdiction, the nature of the harassment, and the applicable laws and regulations. Here are some common legal recourse options for workplace harassment:

1. **Internal Reporting and Resolution:** Many organizations have established internal procedures for reporting and addressing harassment. Employees can typically report harassment incidents to their HR department or a designated person within the organization. The company is then responsible for conducting an investigation and taking appropriate action.
2. **File a Complaint with a Government Agency:** In many countries, there are government agencies responsible for enforcing anti-discrimination and anti-harassment laws in the workplace. For example, in the United States, the Equal Employment Opportunity Commission (EEOC) handles complaints related to workplace harassment and discrimination. Filing a complaint with such an agency can lead an investigation and potential legal action against the employer.
3. **Retain Legal Counsel:** Employees who believe they have been subjected to workplace harassment may consult with an attorney who specializes in employment law. An

attorney can provide guidance on their legal rights, assist in gathering evidence, and help determine the most appropriate legal recourse

4. **Mediation and Settlement:** In some cases, parties involved in workplace harassment disputes may choose to engage in mediation to resolve the issue without going to court. Mediation involves a neutral third party facilitating discussions between the parties to reach a settlement agreement.
5. **Filing a Lawsuit:** If other avenues for resolution are unsuccessful, an employee may choose to file a lawsuit against the employer and, in some cases, the alleged harasser. The lawsuit may seek damages for emotional distress, lost wages, and other remedies allowed under the law.
6. **Whistle-blower Protections:** In certain situations, employees who report workplace harassment may be protected by whistle-blower laws. These laws prohibit retaliation against employees who report illegal activities within the organization.
7. **Union Grievance Procedures:** If an employee is a member of a labour union, they may have access to grievance procedures outlined in their union contract. These procedures can provide a mechanism for addressing workplace harassment issues.
8. **Review Employment Contracts and Company Policies:** Employees should review their employment contracts and company policies to understand their rights and any dispute resolution mechanisms outlined in these documents.
9. **Person with Disabilities or Other form of Discrimination:** Mental harassment encompasses a wide range of behaviours and can also be applicable to pregnant individuals and those with disabilities. In such instances, pregnant women are safeguarded by the Maternity Benefits Act of 1961, which prohibits discrimination against them. Additionally, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 offers protection against discrimination for individuals with disabilities.<sup>22</sup>
10. **Sexual Harassment:** Gender discrimination and sexual harassment at work workplace is one of the most common forms of harassment faced especially by women at work place. Indian Penal Code and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provide remedies for victims and also impose obligations on organizations to ensure safe working environment for women.

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<sup>22</sup> Id. At 18.

It's important for individuals facing workplace harassment to consult with legal counsel or seek guidance from relevant government agencies to understand their specific legal options and rights. The appropriate course of action will depend on the circumstances of the harassment and the applicable laws in their jurisdiction.

### **(B) Suggestions**

This issue can be prevented at different levels, government, organizational and individual level

1. Including a new chapter of “Mental Harassment” in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
2. At the Organizational level the employer can provide a safe and harassment-free environment through provisions and regulations framed within the organization. The assurance through provisions and regulations framed within the organization. The assurance of security provided by this organizational policy can contribute to working effectively and efficiently, ultimately leading to a more productive outcome. The entity can give training programmes, workshops, educational programmes relating to harassment at workplaces etc.
3. The organization must show commitment to this matter. Every matter must be taken into consideration very seriously and investigated promptly. This will set an example to all employees that the employer is interested in protecting the interests of women employees and also trying to bring a good working environment. Surveillance methods is a preventive measure,
4. Employers must conduct monthly meetings with employees to know their problems. So that they will provide a safe working environment.
5. From the angle of Government, a tremendous job has been enacted a law to eliminate this social problem of Mental Harassment. The crucial aspect to focus on is the process of implementation. There is a need to bring empowerment of women through educational programs and knowledge, and basic rights. Government must ensure gender equality. Above all these there should be social acceptability. Women should be encouraged to voice their concerns and grievances without fear. They should feel empowered to speak up for themselves. There must be greater involvement of public in awareness programs.

“A workplace should be a space where dreams are nurtured, not where spirits are broken”. Remember, by fostering a culture of respect, empathy, and support, we can create workplaces

where mental harassment has no place, and individual thrive both personally and professionally.

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