

Freedom Of Religion In The View Of The Four Doctrines "Of Jurisprudence A Comparative Analytical Study"

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Abstract

This study dealt with the aspect that was not fully researched, which is: the view of the jurists of the four religious doctrines on the freedom of religion. The problem of the study focuses on the severe criticism, especially from those who have the superficial view as an excuse to say that Islam is a religion of violence and terrorism, and its teachings call for killing and bloodshed, and that is based on their reliance on many evidences in Islamic jurisprudence without a good understanding of the jurisprudential opinions within the framework of *ijtihad*, which increases the problem of the state of turmoil and distortion of the jurisprudential heritage. The study included two topics; the first focuses on the Islamic perception of freedom of religion in the light of Sharia, and the second focuses on freedom of religion in the light of the four doctrines of jurisprudence. The results of study showed that the view of Islamic jurists on freedom of religion did not deviate from the general view of human in the light of Sharia, and preserving it leads to human preservation. The study also recommended that Sharia colleges and universities should develop continuously the academic materials to include the topic of freedom of religion.

Keywords: Freedom, Religion, Belief, Islamic jurisprudence, the four religious doctrines.

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Introduction

Talking about freedom of religious requires that we evoke a group of basic issues in order to discuss its idea, subject, and effect, as judging something is considered a branch of its perception, and that the results we reach are based on a deep understanding and a complete perception. It is necessary when making judgments and taking positions with regard to freedom of religion that we remain within the framework of the theory of freedom in Islam. Besides, freedom of religion is one of the basic principles that came with the Islamic Sharia, which sheds light on the human.

In the principle of freedom of religion, God honors human and respects his will, thought and feelings as well as leaving his command to himself with regard to guidance and misguidance, and making him responsible for his work and reckoning with himself, and this is one of the most specific characteristics of human liberation, as Allah said: "*And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference*), [*Mention, O Muḥammad*], *the Day We will call forth every people with their record [of deeds]. Then whoever is given his record in his right hand - those will read their records, and injustice will not be done to them, [even] as much as a thread [inside the date seed]*" (1).

Thus, Islam guarantees people all the rights and freedoms that achieve them stability in their societies and peace among themselves, and achieve their humanity that God has created people for, as Allah said: "*So direct your face [i.e., self] toward the religion, inclining to truth. [Adhere to] the fiṭrah of Allāh upon which He has created [all] people. No change should there be in the creation of Allāh. That is the correct religion, but most of the people do not know*". (2)

The statement of the study:

This topic is still the focus of many questions and strong criticism, especially from those who have the narrow view and superficial understanding of Islam as an excuse to say that it is a religion of violence and terrorism, and its teachings call for killing and bloodshed. The main problem lies in their understanding for the principle of freedom of religion. The researcher conducted this study to reach results concerning the study's questions. Hence, the study's problem focuses the following main question:

- What is the reality of the Islamic perception for the freedom of religion in the light of jurisprudential opinions?

Many questions are derived from the main question, as follows:

- What is the true view of Islam on the freedom of religion?
- What is the validity of the contradiction between perception and application in the Islamic jurisprudence?
- What is the impact of jurisprudential opinions on the principle of freedom of religion?

The objectives of the Study:

1. Studying the reality of the Islamic perception for the freedom of religion in order to remove confusion between perception and application.
2. Clarification of the reality of the contradiction that is being promoted in the media, that there is a contradiction between what Islamic scholars say about Islam's interest in freedom of religion, and what is found in the books of Islamic jurisprudence regarding their rejection of freedom of religion.
3. Revealing the impact of jurisprudential opinions on the principle of freedom of religion in order to present the general framework which will clarify this topic and remove all ambiguities.

The importance of the Study:

The study sheds light on the jurisprudential opinions in the light of the jurisprudential perception of the issue according to the four doctrines of jurisprudence.

Previous studies:

Due to the large number of studies on this topic, I limit them to three opinions, and then clarify the point that was not researched, as follows:

The first opinion:

This opinion defended the Islamic law and presented a lot of evidence to prove innocence and deny the accusation of Islam clarifying that a non-Muslim can declare his religion, sect and belief in any Islamic country and perform his religious rituals, and he may establish temples and schools freely. The supporters of this opinion were affected by suspicions that raised by supporters of Western thought based on the meaning of intellectual freedom for them, which stipulates allowing any individual to think however he wants, believe what he wants, and declare his thoughts and beliefs and call for them as he wants within the framework of freedom. These are the writings of most Muslims who adopted secularism as a political doctrine.

The second opinion:

The supporters of this opinion thought that there is no freedom of religion except within the framework of the Islamic religion, and Islam does not endorse freedom of religion. Islam enjoins good faith, obliges it, imposes it on people and does not make it free for a person to choose whatever religion he wants. Thus, saying that Islam allows freedom of religion is wrong, and this came mostly as fatwas (3).

The third opinion:

This opinion combined the two previous opinions, but his supporters found a problem when applying it, because emphasizing freedom of religion absolutely contradicts saying freedom of religion with some restrictions. These are the writings of most scholars who worked in the Islamic political such as Sheikh Rashid Al-Ghanoushi, Dr. Muhammad Salim Al-Awa and Dr. Yusuf Al-Qaradawi.

The researcher's opinion:

Perhaps the reason behind the contradiction of these aforementioned studies - from my point of view - is that some people were influenced in their opinions on freedom of religion by Western thought and its view of religions, and others based their opinions on a fatwa of eminent scholars, which their fatwa was in response to a question and not in the context of research and extrapolation of all the evidence from the Qur'an and Sunnah. Even worse, these fatwas were adopted as references for killing and slaughtering people, and I claim that our venerable scholars such as Sheikh Ibn Baz and Sheikh Ibn Uthaymeen - may God Almighty have mercy on them - are innocent of all these actions and practices that dishonor Islam and Muslims, so their ijthihad remains within the framework of jurisprudential ijthihad that is subject to what Imam Malik - may God have mercy on him - said: "Everyone's words are taken and rejected, except for the owner of this grave," that is: our Prophet Muhammad (may God bless him and grant him peace).

The approach of the study:

In this study, the researcher used the inductive and comparative approach, by extrapolating all the opinions, data and information related to the study's topic as well as through the comparative approach, comparing them with the doctrines and opinions to reach the most correct opinion.

The theoretical framework

The Islamic perception of freedom of belief in the light of the purposes of Sharia:

Is not possible to separate freedom, human and religion when talking about the Islamic conception of freedom of religion. Human humanity depends on his freedom, and the truth of his freedom depends on his religion. Freedom in the Islamic concept means "trustworthiness, responsibility, awareness of the right, commitment to it, sincerity in its request and sacrifice for it".

Besides, it is not limited to human rights declarations about freedoms within the framework of philosophy materialism and the capitalist doctrine, and they are declarations that are far from the material, spiritual and social elements of life, and the socialist doctrines came only to expose their formalism (4).

Thus, freedom in Western thought stems from the nature of human, while in Islam it stems from human's destiny and status, which distinguishes him from all creatures. Allah did not include in human's composition what compels him to believe, nor did he allow him to compel others to believe. Allah said: "*There shall be no compulsion in [acceptance of] the religion. The right course has become distinct from the wrong*" (5), and a person should realize that there is no way to disengagement and liberation except through the method of servitude to Allah, as He said: "*Those who disbelieved among the People of the Scripture and the polytheists were not to be parted [from misbelief] until there came to them clear evidence*" (6).

Thus, freedom is considered a self-creation, its effects appear in human's actions emanating from realization of his value, his feeling of the value of life and his responsibility to be liberated for his Creator. Since the person who deserves to be free is the believer in God.

In order to realize the importance of freedom in the Islamic conception, the Islamic Sharia has made its aim in achieving the great interests of humanity, which Imam Al-Shatibi classified into necessities, needs and improvements, and these classifications focus on preserving the purposes of the Sharia, which are: religion, life, mind, offspring and money. We notice that placing religion in the first rank because religion came to achieve life and its means (7).

And since freedom is a natural right for a person to be able to carry out his work and functions; It is not only a human right, but also it is obligatory upon him and God's greatest grant to him. Furthermore, Allah characterized the human by gifting him the honesty that the heavens and the earth rejected it, as Allah said: "*Indeed, We offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant*" (8). Allah honored humanity and granted all the children of Adam this status, as He said: "*And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference*" (9), and also said: "*O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allāh is the most righteous of you. Indeed, Allāh is Knowing and Aware*" (10).

The relationship between freedom and honoring human shows that freedom in Islam is one of the essential ingredients for honoring him, which is clear in many evidence in the Quran, as Allah said: "*We have certainly created man in the best of stature*" (11), then Allah breathed into human of His Spirit, made His angels prostrate to him, and taught him all the names, as He said: "*And [mention, O Muhammad], when your Lord said to the angels, "I will create a human being out of clay from an altered black mud *And when I have proportioned him and breathed into him of My [created] soul, then fall down to him in prostration"*" (12). And also said: "*And He taught Adam the names - all of them. Then He showed them to the angels and said, "Inform Me of the names of these, if you are truthful"*" (13). Thus, human deserved to be God's successor on earth to carry the message of the universe and life in building the earth.

In the Islamic conception, human is a distinguished and honored being who bears the responsibility of leading humanity, as Allah said: "*And [mention, O Muhammad], when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority. "They said, "Will You place upon it one who causes corruption therein and sheds blood, while we exalt You with praise and declare Your perfection?" He [Allāh] said, "Indeed, I know that which you do not know"*" (14).

Freedom and its strongest element (honoring the human) are the origin and basis of belief, and freedom of religion is the first of the "human" rights by which the description of a human being is established for him. Whoever robs a freedom of religion from a person, he robs him of his humanity from. It is known that Islam is considered the highest conception of existence and life, as it calls for no compulsion in practicing religion, and prevents its companions, before anyone else, from forced people to be in this religion (Islam), as Allah said: "*There shall be no compulsion in [acceptance of] the religion. The right course has become distinct from the wrong*" (15).

Scholars' opinion on the ayah "There shall be no compulsion in [acceptance of] the religion":

By extrapolating the interpretation of scholars regarding this previous ayah, we notice that they have made it a major rule of Islam, and a strong proof of his Eminence (16); Islam does not allow forcing anyone to practice it, nor does it allow its supporters to exert pressure and coercion on non-Muslims to practice Islam.

Ibn Hazm's opinion and response to it:

The supporters of the speech "there is no freedom of religion in Islam" have relied on Ibn Hazm's statement which mentioned that there is no compulsion in religion abrogated by some hadiths of the Prophet, but their saying is weak as the scholars said in response to Ibn Hazm that this ayah is abrogated because he has no evidence to prove the abrogation as well as it is not correct for us to abrogate the Qur'an with the Sunnah, as stated by Al-Shafi'i (17). In addition, the ayahs that spoke about human freedom exceeded a hundred, and Sheikh Muhammad Al-Ghazali - may God have mercy on him - said that I counted more than a hundred ayahs that include freedom of religion and establish the bases of faith on self-persuasion, and eliminate coercion, and that is clear in the ayah which spoke about non-Muslims which is "*But if they turn away, [O Muhammad], say, "Sufficient for me is Allāh; there is no deity except Him. On Him I have relied, and He is the Lord of the Great Throne"* (18).

In contrast to this, another group claimed that the ayahs that dealt with the discussion of freedom of religion were abrogated by the ayahs of jihad, but the contemporary investigation proved to be invalid, as Sheikh Rashid Al-Ghanoushi said (19).

So, the saying is established that no one can pressure people, or force them to believe, even if the Messenger - may God bless him and grant him peace -, as Allah said: "*And had your Lord willed, those on earth would have believed - all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?* (20) The principle of coercion is rejected, and no one who understands the message of Islam is expected to practice it, because it contradicts the nature of the call, and contradicts the goals of the message.

The evidence for this is that God did not build the matter of faith on coercion, rather He built it on empowerment and choice, because oppression and coercion of religion delete the meaning of affliction and examination, as Allah said: "*[He] who created death and life to test you [as to] which of you is best in deed - and He is the Exalted in Might, the Forgiving"*(21), and also said: "*The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve"* (22).

Protection of Islamic Sharia for freedom of religion:

Thus, Islamic Sharia, in the light of its purposes, is a protector of freedom of religion, and it guaranteed to the people of every religion to practice the rituals within the limits of the care of society, and the Sharia also allowed freedom of expression for people in defense of their religion. The Islamic Sharia also did not suffice with announcing this freedom, but it took two ways to protect it: (23).

The first method:

Obliging people to respect the right of others to believe whatever they want and to let them practice in accordance with their belief. Whoever opposes another in his belief must convince him in a good way, and show him the wrong side of what he believes. If he accepts to change his belief out of conviction, then there is no blame on them, and if he does not accept, then it is not permissible to coerce him or put pressure on him.

And if there is a fear for the Muslims' religion, Muslims only have to deepen their understanding of their religion through their studies or asking questions to their scholars. Moreover, with the modern progress of the means of communication, it will not be possible to hide and isolate; The other religions will reach all over the world, and there is no way to protect them except by discussing them and establishing the argument against its adherents through great knowledge and understanding of the issues of the Islamic religion.

Perhaps the clearest evidence of the correctness of this approach - from my point of view - is that the Prophet - may God bless him and grant him peace - did not prevent the Companions, neither in Mecca nor Medina, from discussing the infidels or the Jews, and even those who are among the people of hypocrisy from responding with evidence to every question or suspicion raised. And if this were not the case, then the Prophet's order would have been to kill everyone who opposes the Islamic religion, and their existence would not have been in the community of Medina, so the one who opposes the religion will not be killed for his faith, but rather he will be killed by declaring war on Muslims and by instigating and sabotaging the peaceful security of the community.

Furthermore, it makes no difference whether he is inside the community or outside it, and if non-Muslim is committed to preserving the security and interests of society, he has what Muslims have and he has what Muslims have to do. Perhaps the wisdom of Islam allowing non-Muslims to coexist with Muslims is that they are influenced by Islam and its people, so they join the Islamic religion because they understood the evidence and proofs that prove the falsity of their religions.

The second method:

Obliging the believer of other religions not to take a negative attitude towards the Muslim society in which he lives, but he has to protect his religion by respecting his society in which he lives.

Freedom of religion in the Islamic jurisprudence:

By examining the opinions of the jurists on everything related to the freedom of religion, a strong conviction becomes established among every fair-minded person that Islam aspires to freedom, not to oppression and bloodshed, and that the non-Muslim finds in their opinions an abundance and mercy that he does not find in the opinions of those who follow his religion. It came in the Hanafi books as follows: "But we were commanded not to oppose them in what they worship, just as we do not oppose them in worshipping the cross, and selling wine and pork among themselves" (24).

Allah said: "And were it not that Allāh checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allāh is much mentioned [i.e., praised]" (25), this ayah states protection for places of worship, and the matter is not limited to Muslims, but rather includes others, because the protection of places of worship requires permission to practice their rituals in them, and in particular when the Islam allowed a Muslim to marry a non-Muslim woman, it guaranteed her right to practice the rituals of her religion.

Imam Ahmed - may God have mercy on him - was asked about a Muslim man who married a Christian woman, and this Muslim would prevent her from drinking alcohol. He said: this man should order her, and if she will not be accepted from him, he should not prevent her. Likewise, Al-Awza'i - May God have mercy on him - said: "I do not see anything wrong with him allowing her to go to church, and he should not prevent her (26).

And Ibn al-Qayyim - may God have mercy on him - stated that the Muslim does not have the right to prevent his non-Muslim wife from fasting, such as Sabbath fasting, which is obligatory in her religion" (27).

And in a second statement by Ibn Qudamah: "Muslim may prevent his non-Muslim wife from getting drunk because the alcohol missed her mind and makes her unsafe".

Likewise, Ibn al-Qayyim said: Muslim may prevent his non-Muslim wife from getting drunk because he is harmed by it" (28). There is no contradiction among the jurists in allowing or preventing the issue because the principle is the freedom to practice rituals, but when the wife is harmed or causes harm to him, he must prevent her to drink in order to preserve the continuity of marital life.

The mentioned above opinion is supported by the following jurists:

- 1- The words of Imam al-Shafi'i: "He may prevent her from drinking alcohol, because it takes her mind away, and he forbids her to eat pork if it is filthy with it as well as he forbids her to eat what is lawful if it is harmed by its smell such as garlic and onions, if it is not necessary to eat them" (29).
- 2- The jurists support Ibn al-Qayyim's opinion on a narration by Imam Ahmad that the husband does not prevent his non-Muslim wife to drink alcohol, so he commented by saying: "The apparent meaning of this is that he should not prevent her, but he can force her to wash her mouth from the wine, because it is unclean (30).

The opinions of these jurists and others are summaries, as follows:

First: It is not permissible for a Muslim to oppress a non-Muslim, prevent him from practicing the rituals of his religion, force him to join Islam, or to expel him from his home and land; If Islam commanded us to do this, then why does it approve them to live among Muslims. Besides, the Prophet - may God's prayers and peace be upon him - approved the document of Medina, as well as Omar Ibn Al-Khattab - may God be pleased with him - made the Omari covenant which is the most honorable document that guaranteed the rights of non-Muslims before international covenants. Moreover, the jurists determined the relationship between a Muslim husband and his non-Muslim wife and approved her freedom to practice her religious rites. All of these evidences give us a strong and practical proof that Islam guarantees freedom of religion.

Second: It came in the biography of Ibn Taymiyyah, Sheikh of Islam - may God Almighty have mercy on him - that in the day he went to demand Muslim and Christian prisoners from the Tatar leader, who agreed to liberate the Muslim prisoners and refused to liberate the Christian prisoners. However, Ibn Taymiyyah insisted to bring them all back. So, if the West countries were fair to Islam, they would have taken it as a law that would increase their strength.

Third: Some people may ask some questions about the issue of non-Muslims. Does the freedom of religion include a person moving from one religion to another? And some people ask about the punishment for apostasy in Islam. If a Muslim abandons Islam can face the punishment for apostasy, meaning that he is killed. Or is the matter flexible? this issue concludes the following question:

Fourth: What is the opinion of the jurists on the punishment for apostasy?

This issue has a great attention from the jurists of Islam. It is the most important issue among the issues of freedom of religion, where explanations, inferences and comments are very numerous, and this makes the reader loses the correct opinion (31). Thus, we find that the point of treatment and judgment on any issue in terms of Islam's opinion on begins with understanding it through the sources of Islamic legislation.

❖ The Holy Quran:

It did not explicitly stipulate that a Muslim should be killed by the sword if he left Islam by describing that the reason for his killing is his abandonment of Islam, but the Qur'an included him with infidels, and Islam's position on him becomes its position on every unbeliever, as Allah said: "*And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally*" (32), also Allah said: "*Indeed, those who disbelieve [i.e., reject the message] after their belief and then increase in disbelief - never will their [claimed] repentance be accepted, and they are the ones astray*" (33).

By understanding the two ayahs, we find that the expression is either by apostasy from the religion, or by disbelief after faith without mentioning a worldly punishment incurred by the apostate, but it came in the context of disbelief and the severe threat and painful chastisement of the unbeliever (34).

This calls us to the need to differentiate between apostasy and its punishment. The matter is that the apostate becomes an infidel that does not accept denial or interpretation. As for the punishment of death due to the sin of apostasy, this is not explicitly mentioned by the Qur'an. Thus, the dispute occurred between those who established the punishment of death based on the fact that the Qur'an established the description of infidelity for the apostate, and the Sunnah came with its punishment, and between those who established the sin of apostasy, but they denied the punishment of death, and their evidence is that the Qur'an does not mention it.

❖ The Sunnah:

The hadiths in the Prophet's Sunnah, which is the second source after the Qur'an, bear more than one meaning, and they are discussed as follows:

The first hadith: On the authority of Ibn Masood (may Allah be pleased with him) who said: "The Messenger of Allah (peace and blessings of Allah be upon him) said, "It is not permissible to spill the blood of a Muslim except in three [instances]: the married person who commits adultery, a life for a life, and the one who forsakes his religion and separates from the community" (35). Besides, Ibn 'Abbas (RAA) narrated that The Messenger of Allah said, "He who changes his religion (i.e. apostates) kill him" (36).

The jurists' opinion on this hadith:

Referring to what the jurists of the four doctrines said about killing the apostate, I can present a summary of what they said without elaboration that takes us away from the matter, in that they stipulated the punishment of death, but they differed in his repentance; Few of them said that he should be killed directly, and many of them said that he should be asked to repent, and they differed in the duration of his repentance. Moreover, they differed regarding the apostate woman. Should she be killed like a man, or should the apostate be man, as stipulated by the Hanafis, or not be killed as stated by Al-Shafi'i - may God have mercy on him - (37).

It is noted from the mentioned above:

- 1- The punishment of the apostate according to the jurists is the punishment of death, but they differed in the considerations of its implementation. In my opinion, the punishment of death for apostate was approved for preserving Islam; The benefit of the survival of the authority of the state is one of the most obligatory duties, and you may find this through their stipulation to give apostate a period for repentance, and they did not set the punishment for apostasy on him except they knew with certainty that he was opponent and wanted to endanger the Muslim community.
- 2- Some contemporary jurists supported the opinions of jurists of the four doctrines such as the scholars of the Arabian Peninsula, and some of them considered the punishment of death for apostasy a political crime. Sheikh Rashid Al-Ghanoushi said: "Apostasy is a crime that is irrelevant to the freedom of religion approved by Islam, but it is a political issue" (38). Besides, the hadiths are not firm that the penalty for killing an apostate is for every apostate from Islam, and for this reason they made it a political crime, so they distinguished between those who apostate alone or apostate with the intention of turning against society and its people.

Conclusion from the researcher's point of view:

First: All jurists have agreed that apostasy is a crime, and the apostate loses his faith and exits from Islam.

Second: All jurists agreed on the punishment of the apostate, but they differed in its severity, as whether it includes every apostate, or is it only for those who harmed society and endangered its security and interests. Besides, in the event that the punishment is decided, the dispute also remains in deciding punishment of death or not.

Third: Imposing punishments that affect the public interest on both levels, the rights of God and the rights of people, are the responsibility of the ruler or the state, because it was not agreed that it is a punishment of death in all cases, just as the saying that it is a political crime introduces us to the problem of the multiplicity of political points of view, and the saying of its denial is very far away.

The results of the study:

1. Islamic jurists dealt with the principle of freedom of religion through a comprehensive view of all aspects of the faith, societal and ritual subject, so their rulings came in harmony with the spirit and purposes of the Sharia, and they did not deal with it by deducting it from the general context of Islam's view of its violators, as some secularists do today when attacking Islam and defamation of Islamic jurists.
2. The lack of space of disagreement in the past and its recent expansion in the issue of freedom of religion, is due to the fact that in the past, the issue was viewed as religious freedom, provided that it did not deviate from the sultan. However, in the contemporary time; It is seen as a personal freedom without the authority of religion and sultan.
3. The Islamic jurists' view for the freedom of religion did not deviate from the general view of human in the light of the purposes of Islamic Sharia, and preserving it is at the core of human preservation.

The recommendations of the study:

1. The study recommends the contemporary jurisprudence agencies to study the topic to resolve the ongoing dispute, and there is no objection to texting it within the contemporary jurisprudence by defining what is meant by freedom of religion.
2. Shari'ah colleges and universities that teach the course of Islamic belief, Islamic systems or contemporary doctrines should include in the academic content some contemporary studies related to this issue so that the student comes out with a perception that combines opinion with its opponent. This concludes with a correct conclusion that makes Muslim deals with the non-Muslims with a correct mediating view. Perhaps this study will be the base of an academic material.
3. The Ministries of Awqaf and Religious Affairs and the Islamic Call Colleges should qualify preachers to deal with this issue in a manner that does not harm Islam and its scholars.

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