A STATUTE WAITING TO COMMENCE: ONLINE MEDIATION AND THE ELECTRONIC SIGNATURE GAP IN INDIA

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ABSTRACT

India has increasingly recognised mediation particularly online mediation as an important means of resolving commercial disputes.The Mediation Act,2023 reflects this approach by dedicating a separate chapter to online mediation and providing for the enforceability of mediated settlement agreements in the same manner as court decrees.As of November 2026, the provisions intended to give effect to these promises particularly Sections 27 and 30 have not yet been brought into force.There is also another gap in the Act's approach to online mediation.It does not clearly establish how an online settlement should be signed and authenticated. Instead it leaves these details to future regulations and relies on the Information Technology Act,2000.However,the electronic signature framework under the IT Act was primarily designed around certifying authority infrastructure rather than the practical requirements of platform based dispute resolution.Drawing on recent High Court decisions and international developments,this article examines the lessons India can draw from the Singapore Convention on Mediation,the UNCITRAL Technical Notes on Online Dispute Resolution and the closure of the European Union's ODR platform in 2025.It argues that the Central Government should bring Sections 19,27 and 30 into force together and introduce the necessary regulations.These regulations should adopt a technology neutral and functional approach to electronic signatures and authentication while recognising a presumption of validity for signatures that satisfy the requirements of the Information Technology Act, 2000.

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I. INTRODUCTION

Over the past few years India has increasingly promoted mediation particularly online mediation as a way to address the growing backlog of cases in Indian courts.The Mediation Act, 2023 (hereinafter referred called "Act")forms a central part of this legislative effort.It dedicates a separate chapter to online mediation,recognises settlements reached through this process as mediated settlement agreements and provides for their enforcement in the same manner as decrees of a court.[1]However as of November 2026,the provisions necessary to give effect to these objectives have still not been brought into force.The notification dated October 9, 2023 brought only 21 of the Act's 65 sections into operation namely Sections 1, 3, 26, 31–38, 45–47,50–54 and 56–57.Notably,Sections 27,which deals with the enforcement of mediated settlement agreements, and 30, which governs online mediation,were excluded from the notification.[2] This position was further confirmed in February 2026,when the Minister of State for Law and Justice informed the Lok Sabha that Sections 30, 40, 42 and 44 had not yet been notified.[3]Further,the Mediation Council of India which is responsible for specifying the manner in which online mediation is to be conducted was constituted only on August 27, 2026.[4]

This article advances two main arguments:

The first concerns the present state of the law. Although India has introduced a statutory framework for online mediation,its key operational provisions remain dormant.As a result parties are still dependent on alternative arrangements that often bring back the costs and delays that online mediation is intended to avoid.

The second argument examines the gaps in the Act's framework and considers what needs to be addressed before its provisions become fully operational.Even after the relevant provisions come into force,the Act's approach to online mediation remains incomplete.It requires the parties to sign a mediated settlement agreement and the mediator to authenticate it.It also defines a "secure electronic signature" with reference to Section 15 of the Information Technology Act, 2000(hereinafter referred to as the "IT Act"),while leaving the detailed procedure for conducting

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[1] The Mediation Act, 2023, No. 32 of 2023, §§ 19(5), 27, 30 (India) [hereinafter Mediation Act].
[2] Ministry of Law & Justice (Dep't of Legal Affairs), Notification S.O. 4384(E) (Oct. 9, 2023) (India); *State of Manipur v. Konsam Ningol Khagembam Ongbi Rebina Devi*, 2026 MNHC 260 (Manipur H.C.) (India)
[3] Lok Sabha, Unstarred Question No. 2423 (Feb. 13, 2026) (India).
[4] Ministry of Law & Justice (Dep't of Legal Affairs), Notification S.O. 4781(E) (Aug. 27, 2026) (India) (issued under Mediation Act, *supra* note 1, § 31(1)).

online mediation to regulations.[5]The difficulty is that the IT Act's electronic signature framework is largely structured around certifying authorities and prescribed technical procedures rather than the practical requirements of platform based dispute resolution.In light of these concerns,the article argues that the Central Government should bring Sections 19,27 and 30 into force together and introduce accompanying regulations based on a technology neutral and functional approach to electronic signatures and authentication.

Part II traces the development of dispute resolution from traditional Alternative Dispute Resolution (ADR) to Online Dispute Resolution(ODR).Part III examines the difference between what the Mediation Act,2023 provides on paper and the provisions that have actually come into force.Part IV focuses on the gap in the Act's approach to electronic signatures and authentication which forms the central contribution of this article.Part V discusses the additional challenges arising from the existing framework.Part VI considers relevant international and comparative developments while Part VII proposes necessary reforms and addresses the argument that courts can resolve these issues through case by case decisions.

II. FROM ADR TO ODR: A BRIEF BACKGROUND

Indian law has recognised several forms of dispute resolution outside the traditional court system for many years.These include arbitration and conciliation under the Arbitration and Conciliation Act,1996.Lok Adalats under the Legal Services Authorities Act,1987,court referred settlement under Section 89 of the Code of Civil Procedure,1908 and pre institution mediation in commercial disputes under Section 12A of the Commercial Courts Act, 2015.[6] Although these mechanisms differ in their procedures, they have traditionally operated through physical interactions between the parties and the dispute resolution process.Online Dispute Resolution (ODR) however,developed in a different context.Its origins can be traced to the late 1990s,when the growth of e-commerce created disputes between parties who often had no prior personal contact and were located in different geographical regions.This created a need for a dispute resolution mechanism that could address relatively small claims without requiring parties to travel across borders or incur the costs associated with traditional proceedings.[7]

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[5] The Information Technology Act, 2000, No. 21 of 2000, §§ 3A, 4, 5, 10A, 11, 15 (India) [hereinafter *IT Act*]; Mediation Act, 2023, No. 32 of 2023, §§ 3, 19, 30(2) (India).

[6] The Arbitration and Conciliation Act, 1996, No. 26 of 1996, pt. III (India); The Legal Services Authorities Act, 1987, No. 39 of 1987 (India); The Code of Civil Procedure, 1908, No. 5 of 1908, § 89 (India); The Commercial Courts Act, 2015, § 12A (India) (inserted 2018).

[7] Ethan Katsh & Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (2001).

In India,the adoption of ODR gained momentum during the COVID-19 pandemic,when virtual hearings became a regular part of dispute resolution.This development was further supported by policy initiatives including the ODR policy plan prepared by NITI Aayog and Agami.[8]Today,ODR extends beyond mediation to include negotiation,conciliation and arbitration conducted through electronic platforms with different levels of technological involvement and automation.Its main advantages lie in making dispute resolution more accessible, quicker and less expensive.However, conducting these processes online also raises important legal questions.Every stage,from obtaining the parties' consent to the process to signing and authenticating the final settlement,involves electronic transactions whose legal validity depends on the law governing electronic records and signatures.For this reason,the Mediation Act, 2023 cannot be examined in isolation;its provisions must also be understood alongside the Information Technology Act, 2000.

III. THE ACT ON PAPER AND THE ACT IN FORCE

A. What the Act Promises

Section 30 of the Mediation Act,2023 provides for online mediation including pre litigation mediation at any stage of the proceedings,subject to the written consent of the parties.It allows the process to be conducted through electronic means or computer networks including encrypted email,secure chat rooms and audio or video conferencing.However, the Act leaves the specific procedure for conducting online mediation to regulations framed by the Mediation Council.It also requires that the integrity of the proceedings and the confidentiality of the parties be maintained throughout the process.[9]

Section 19 defines a mediated settlement agreement as a written agreement reached between the parties as a result of mediation including online mediation.It further requires the agreement to be signed by the parties and authenticated by the mediator.[10]Section 27 gives legal effect to such agreements by making them final and binding on the parties and enforceable under the Code of Civil Procedure,1908 in the same manner as a decree of a court, provided the prescribed signing and authentication requirements are satisfied. Section 28, in turn, limits the grounds on which a

[8] NITI Aayog & Agami, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2021).
[9] Mediation Act, *supra* note 1, § 30(1)–(4).
[10] *Id.* § 19(1), (3),(5).

mediated settlement agreement can be challenged to fraud,corruption, impersonation or disputes that are excluded under the First Schedule.Such a challenge must be made within ninety days.[11]

The Act also addresses the issue of territorial jurisdiction in online mediation.Under Section 13, an online mediation is deemed to have taken place within the territorial jurisdiction relevant to its enforcement, challenge and registration.This provision is particularly significant because it addresses the difficulties in determining the appropriate territorial jurisdiction when mediation takes place entirely through online platforms.[12]

B. What Is Actually in Force

Despite the provisions discussed above,the key sections governing the actual mediation process, enforcement of settlements and online mediation have not yet come into force. Section 1(3) of the Act provides that its provisions will commence on dates notified by the Central Government.It also allows different provisions to come into force on different dates.[13]

The notification issued in October 2023 brought into force only selected provisions,mainly those dealing with the commencement and definitions of the Act,the institutional framework of the Mediation Council of India and certain transitional and general matters.However,the provisions relating to the mediation process,enforcement of mediated settlement agreements and online mediation were left out.An interesting aspect is that Section 56,which excludes mediation proceedings initiated before the commencement of the Act has already come into force,even though the provisions intended to facilitate and regulate mediation under the Act are yet to become operational.[14]

The practical impact of this delay is also reflected in judicial decisions.In *State of Manipur v. Konsam Ningol Khagembam Ongbi Rebina Devi*,the Manipur High Court observed that,since Section 27 had not yet come into force, a mediated settlement agreement could not be enforced as a court decree under that provision.As a result, parties still needed a judicial order to give the settlement the effect of a decree. The Court also emphasised the need to bring Section 19(1), Section 27 and other important provisions into force at the earliest so that parties who have

[11] *Id.* §§ 27–28.
[12] *Id.* § 13.
[13] *id*
[14] *Id.* § 56; Notification S.O. 4384(E), *supra* note 2.

successfully resolved their disputes through mediation would not have to approach the courts again to secure the enforceability of their settlements.[15]

This concern is particularly relevant to online dispute resolution. One of the main reasons for choosing online mediation is to avoid the expense,delay and procedural requirements associated with court proceedings.However, if parties are required to approach a court once again to make their mediated settlement enforceable much of the convenience and efficiency that online mediation seeks to offer is lost at the final stage itself.

Parties are therefore left to rely on alternative legal mechanisms.Where a suit is pending,the compromise may be recorded as a decree under Order XXIII,Rule 3 of the Code of Civil Procedure.Similarly,where arbitration proceedings are pending, a settlement may be recorded as a consent award under Section 30 of the Arbitration and Conciliation Act, 1996. A settlement reached through conciliation under Part III of the same Act also has the status of an arbitral award under Section 74.[16]In other situations, an online settlement may be treated only as a contract, enforceable through a separate suit. Although these mechanisms provide ways to give legal effect to settlements, none was specifically designed for online mediation. Each also requires the electronic record of the settlement to be proved and its authenticity and attribution established. This leads to the second problem.

IV. THE SIGNATURE AND AUTHENTICATION GAP

A. Two Statutes, One Transaction

An online mediated settlement is a written agreement which, under Section 19 of the Mediation Act, must be signed by the parties and authenticated by the mediator. When mediation takes place online,both requirements have to be fulfilled electronically.The legal validity of these electronic acts including whether they qualify as a ‘signature’ or ‘authentication’ is governed by the Information Technology Act, 2000 (IT Act).Section 5 of the IT Act provides that where the law requires a signature, the requirement is satisfied if an electronic signature is affixed in the manner prescribed by the Central Government. Section 3A recognises electronic signatures and authentication techniques that are reliable and specified in the Second Schedule.Further, under Section 15, an electronic signature is treated as ‘secure’ where the signature creation data was

[15] *State of Manipur v. Konsam Ningol Khagembam Ongbi Rebina Devi*, 2026 MNHC 260, *supra* note 2.
[16] The Code of Civil Procedure, 1908, No. 5 of 1908, Order XXIII, r. 3 (India); Arbitration and Conciliation Act, *supra* note 6, §§ 30, 74.

under the exclusive control of the signatory at the time of signing and was stored and affixed in the prescribed manner.[17]

The Mediation Act adopts the same terminology.Its definitions section defines a 'secure electronic signature', in the context of online mediation, by referring to an electronic signature recognised under Section 15 of the IT Act.[18]This gives rise to two difficulties.

The first is one of interpretation. The term does not appear in the published text of Section 30, and the author has not been able to establish from the Act's operative provisions whether it is intended to operate as a mandatory requirement, a safe harbour, or simply a reference to the IT Act. When a term is defined but its role in the operative provisions is unclear, it can lead to inconsistent interpretations by courts.

The second difficulty concerns its practical application. If the standard under Section 15 is to be followed,it imposes a relatively demanding requirement.It is also unclear whether the methods commonly used by ODR platforms to record a party's consent, such as typed names, click through acceptance,one-time passwords and in platform confirmation buttons would satisfy that standard.

B. Why the Gap Matters:Attribution, Evidence and Impersonation

The significance of this gap goes beyond a mere technical or formal requirement.The first concern is attribution.Section 11 of the IT Act specifies the circumstances in which an electronic record is treated as having been sent by its originator.Where a party disputes a signature,the question of whether the electronic act can be attributed to that party becomes central.[19]

The second concern relates to evidence. Electronic records are proved under the certificate requirements of Section 63 of the Bharatiya Sakshya Adhiniyam, 2023, which replaced Section 65B of the Indian Evidence Act, 1872. The Supreme Court's insistence on compliance with the certificate requirement under the earlier provision in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* demonstrates how procedural requirements can determine the outcome of a case.[20]The earlier Evidence Act also recognised presumptions in relation to secure electronic

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[17] IT Act, *supra* note 5, §§ 3A, 5, 15.
[18] Mediation Act, *supra* note 1, § 3 (defining 'secure electronic signature').
[19] IT Act, *supra* note 5, § 11.
[20] The Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, § 63 (India); *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1 (India).

records and secure electronic signatures.This shows that the classification of a signature as 'secure' is not merely descriptive but can carry significant evidentiary consequences.[21]

The third concern and the one most relevant to this article is impersonation.Section 28 of the Mediation Act permits a mediated settlement agreement to be challenged on the ground of impersonation within ninety days.[22]In face to face mediation,the risk of impersonation is relatively limited because the parties and the mediator are physically present.In online mediation, however, verifying the identity of the person signing the agreement becomes more difficult and may provide a basis for challenging the settlement.The strength of such a challenge will depend,in part, on the method used to sign and authenticate the agreement. If the applicable standards for electronic signatures and authentication are unclear, a party seeking to withdraw from a settlement may argue that the signature was not theirs or was not validly affixed. As a result, the limited grounds of challenge under the Act, which are intended to ensure finality, may be undermined by the very uncertainty surrounding the online process.

C. The Mediator's Authentication

The same uncertainty applies to the mediator's role.Section 19 requires the mediator to authenticate the mediated settlement agreement but neither the Act nor any regulation specifies how this authentication should be carried out in an online setting. It remains unclear whether the mediator must use an electronic signature, whether a platform-generated audit trail would be sufficient or whether some other method may be adopted. Section 30(2) leaves the procedure for online mediation to regulations. Until these regulations are framed, different platforms may follow their own methods of authentication.Consequently,the Act's promise of uniform enforceability will depend on practices that have not yet been tested by courts.

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V. FURTHER CHALLENGES FOR ODR IN INDIA

Contract formation and agreement to the process.

Indian courts have recognised that contracts can be formed through electronic exchanges.The Supreme Court has also accepted that an exchange of communications may be sufficient to establish an arbitration agreement.[23]Therefore,obtaining consent to participate in online mediation

[21] The Indian Evidence Act, 1872, No. 1 of 1872, § 85B (India) (repealed by The Bharatiya Sakshya Adhiniyam, 2023).
[22] Mediation Act, *supra* note 1, § 28.
[23] *Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 S.C.C. 1 (India); *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.*, (2009) 2 S.C.C. 134 (India); IT Act, *supra* note 5, § 10A.

is relatively less problematic than ensuring the valid signing and authentication of the final settlement agreement.For this reason, this article focuses primarily on the latter issue.

Data protection and confidentiality

Sections 30(3) and 30(4) of the Mediation Act require confidentiality and integrity in online mediation.However, the platforms used for this purpose may process sensitive commercial information through third-party service providers,sometimes involving the transfer of data across national borders.The processing of personal data belonging to parties and witnesses also brings the Digital Personal Data Protection Act, 2023 into consideration.However, how the data protection requirements under that Act interact with the confidentiality obligations governing mediation has not yet been clearly addressed.[24]

Neutrality and automation.

Online mediation platforms may be controlled by, or depend on services provided by, one of the parties to the dispute.Further, automated tools used by these platforms may influence the settlement process by generating or suggesting settlement proposals. In August 2026,the Chief Justice of India cautioned that online mediation should not be left entirely to artificial intelligence emphasising the continued need for human involvement in the process.[25]These concerns make it necessary to establish appropriate safeguards.Once fully operational,the Mediation Council could address them by introducing accreditation requirements and disclosure obligations for online mediation platforms.

VI. COMPARATIVE LESSONS

Three international developments offer useful lessons for India:

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The first is the Singapore Convention on Mediation. Article 4 requires a settlement agreement to be signed by the parties. However, where electronic communications are involved it follows a functional approach rather than requiring a particular form of electronic signature.The requirement is satisfied if the method used identifies the party and indicates their intention regarding the information contained in the communication.The method must also be either sufficiently reliable for that purpose or proven, in fact to have performed those functions.[26]This

[24] The Digital Personal Data Protection Act, 2023, No. 22 of 2023 (India); Mediation Act, *supra* note 1, § 30(3)–(4).
[25] *CJI Surya Kant Cautions Against Leaving Online Mediation Entirely to AI*, ETV Bharat (Aug. 1, 2026) (reporting remarks at the Commonwealth Peace Mediation Conference, Jaipur).

approach avoids restricting the validity of electronic signatures to any particular technology. Although India has signed the Convention,not yey ratified it.[27]

The second reference point is the UNCITRAL Technical Notes on Online Dispute Resolution. Although these Notes are non-binding, they identify important principles for conducting ODR, including fairness, transparency and accountability on the part of ODR administrators and platforms.[28]

The third example highlights the difficulties that can arise when an ODR framework fails to achieve practical acceptance. The European Union's ODR platform for consumer disputes was discontinued following the adoption of Regulation (EU) 2024/3228, which repealed Regulation (EU) No 524/2013 with effect from July 20, 2025.The platform stopped accepting new complaints from March 20, 2025, partly because of its limited use.[29]This experience offers an important lesson for India:establishing a statutory framework for ODR does not by itself ensure that parties will use it.If the framework remains incomplete or difficult to apply in practice, parties may simply turn to other methods of dispute resolution.

VII. RECOMMENDATIONS AND A RESPONSE TO THE OBJECTION

The above analysis leads to five recommendations.

First, the Central Government should bring Sections 19, 27, 28, 29 and 30 into force together rather than notifying them separately. Bringing only the enforcement provisions into force without the rules governing the mediation process or activating the process provisions without providing for enforcement would leave parties facing the same difficulties highlighted by the Manipur High Court.

Second,the regulations framed under Section 30(2) should clearly explain how an online mediated settlement agreement is to be signed and authenticated.A functional approach based on Article 4(2) of the Singapore Convention would be appropriate.Under this approach,any method that identifies the signatory,indicates their intention to agree and is sufficiently reliable for that purpose should be accepted.

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[26] United Nations Convention on International Settlement Agreements Resulting from Mediation art. 4, Dec. 20, 2018 (entered into force Sept. 12, 2020).
[27] U.N. Comm'n on Int'l Trade L., *Status: United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)*.
[28] U.N. Comm'n on Int'l Trade L., *Technical Notes on Online Dispute Resolution* (2017).
[29] Regulation 2024/3228 of the European Parliament and of the Council of 19 December 2024 Repealing Regulation (EU) No 524/2013, arts. 1–2, 2024 O.J. (L 3228).

Third,the regulations should provide that an electronic signature satisfying the requirements of Section 3A or Section 15 of the IT Act is presumed to be valid for the purposes of Section 19. This would retain the option of using a higher assurance form of electronic signature while providing greater certainty to parties.At the same time,it would avoid requiring every consumer or small business to obtain a digital signature certificate.

Fourth,the regulations should require online mediation platforms to maintain a secure and verifiable audit trail documenting identity verification,consent and the signing of the settlement agreement.This record should be capable of being produced along with the evidentiary certificate required under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023.Such a requirement would help establish the authenticity of the settlement and reduce the scope for challenges based on impersonation under Section 28.

Fifth,the Mediation Council should introduce accreditation and disclosure requirements for online mediation platforms.These rules should address platform neutrality, data protection and the use of automated tools taking guidance from the principles set out in the UNCITRAL Technical Notes on Online Dispute Resolution.

The objection. One possible argument is that courts can resolve these issues on a case by case basis, as they have done in matters involving electronic contracts and electronic evidence. From this perspective, detailed legislative or regulatory provisions may not be necessary. However, relying entirely on judicial decisions would make the process slow and expensive. This is particularly problematic because the main advantages of ODR are its speed, accessibility and lower cost. The observations of the Manipur High Court already demonstrate that parties may have to approach courts even after successfully resolving their disputes through mediation. A further dispute over whether a click on an online platform amounts to a valid signature on a settlement agreement would only add to the time and expense involved.More importantly,the finality that Section 28 seeks to provide depends on clarity about what constitutes a valid electronic signature in online mediation.Such clarity is better achieved through clear and uniform regulations than through a series of individual judicial decisions.

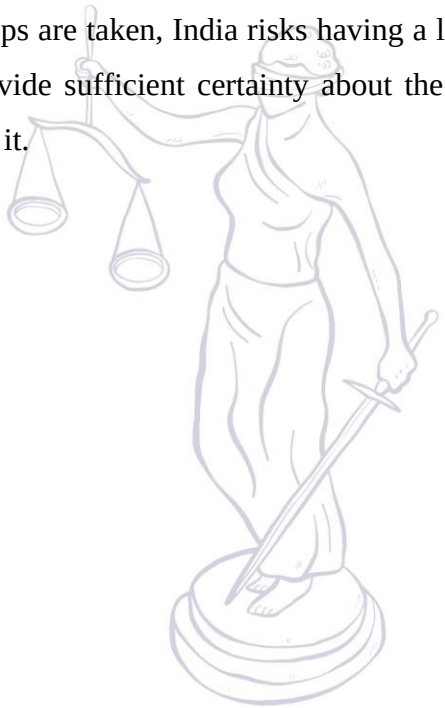
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VIII. CONCLUSION

The Mediation Act, 2023 was introduced to provide online mediation in India with a statutory foundation.However, its key provisions relating to enforcement and online mediation have not yet

come into force.Further, the Act does not fully address the practical requirements of online mediation particularly how an electronic settlement agreement should be signed and authenticated.Instead, it leaves these details to regulations that have not yet been framed and relies on an electronic signature framework under the IT Act that was developed for a different purpose.

Bringing the relevant provisions into force together and introducing regulations based on a functional and technology-neutral approach to electronic signatures and authentication would help address these shortcomings without requiring significant changes to the existing legal framework. Unless these steps are taken, India risks having a law that formally recognises online mediation but does not provide sufficient certainty about the validity and enforceability of the settlements reached through it.



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