



**LL.B. IV TERM
GENDER JUSTICE AND
FEMINIST JURISPRUDENCE
PAPER LB-4031**



Course Materials: Selected and Edited By

Prof. Ved Kumari

Prof. Usha Tandon

Ms. Nanditta Batra

**Faculty of Law
University of Delhi, Delhi – 110007
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GENDER JUSTICE AND FEMINIST JURISPRUDENCE

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This course aims at questioning the understanding that law is universal, protects everybody equally and is accessible to all equally. It uses gender, particularly in relation to women and persons with non-heterosexuality as examples to show discrimination perpetuated by law and legal processes. It has long been recognised that law, lawyers and judges are insensitive and unaware of the problems and perspectives of women resulting in grave injustice to them in various ways. Orientation and in-service refresher training programmes for lawyers and judges on these aspects have been suggested by all concerned and indeed such training programmes are being organised too. Law Schools in this scenario have the important obligation to generate awareness of the gender bias operating in society and legal system in India. This course aims to focus on discrimination on the ground of sex and non- heterosexuality in the extant law and judicial decisions. It also explores the jurisprudential explanations for the existing state of affairs. It focuses on the patriarchal nature of state and family and contemporary feminist and queer debates.

It is expected that the students will acquire analytical skills and knowledge to critically analyse functioning of legal provisions and judicial responses from the perspectives of the deprived and powerless groups in society as an outcome of this course. These skills are important not only from the perspective of municipal laws but also in the context of discrimination between the first and third world countries and international law.

Prescribed Readings:

1. Sarla Gopalan, TOWARDS EQUALITY – THE UNFINISHED AGENDA –STATUS OF WOMEN IN INDIA 2001. National Commission for Women.
2. Amita Dhanda, Archana Parashar (ed) ENGENDERING LAW ESSAYS IN HONOUR OF LOTIKA SARKAR (1999). Eastern Book Depot.
3. Ratna Kapur and Brendia Cossman, SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA (1996).
4. TOWARDS EQUALITY Report of the Committee of Status in India Government of India (1974).
5. Kalapana Kannabhiran (ed), WOMEN AND LAW CRITICAL FEMINIST PERSPECTIVES (Sage Publications India 2014)
6. Usha Tandon (ed), Gender Justice: A reality or fragile myth (2015)

CONTENTS

(15 weeks course - Total Classes 45-50)

TOPIC ONE: INTRODUCTION (7 LECTURES)

- What is Gender justice
 - Notions of sex and gender
 - Deconstructing ‘_Man’, ‘_Woman’, ‘_Other’
 - Private-public dichotomy
- Women in ancient, medieval and modern India: An overview
- Current status of women:-
Indicators of status: Difference in - likelihood of survival; female foeticide, assigned human worth; and control over property, valued goods and services, working conditions, knowledge and information, political processes, symbolic representation, one’s body, daily lifestyles, reproductive processes
- Gender Justice in India: An overview

Readings:

1. *National Legal Services Authority v. Union of India*, [(2014) 1 SCC 1] available at <<http://supremecourtindia.nic.in/outtoday/wc40012.pdf>>
2. Moira Gatens, –*A Critique of the Sex/Gender Distinction* in A Phillips ed. *FEMINISM AND SUBJECTIVITY*, pp. 139-154 (*Provided in reading material*)
3. Carol Pateman, –*Feminist Critique of the Public and Private* in A Phillips ed. *Feminism and Equality*, pp. 103-123(*Provided in reading material*)
4. *India Report under CEDAW 2011* available at <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5_en.pdf>
5. Sunita Kishor and Kamla Gupta. 2009. *Gender Equality and Women’s Empowerment in India*. National Family Health Survey (NFHS-3), India, 2005-06. Mumbai: International Institute for Population Sciences; Calverton, Maryland, USA: ICF Macro. Available at <http://rchiips.org/nfhs/a_subject_report_gender_for_website.pdf>
6. Lotika Sarkar, –*Women’s Movement and the Legal Process* Occasional Paper 24, CWDS, Available at <<http://www.cwds.ac.in/wp-content/uploads/2016/09/WomensMovement.pdf>>
7. Nivedita Menon, –*The disappearing body and feminist thought* (2011) available at <<https://criticalencounters.net/2011/02/19/the-disappearing-body-and-feminist-thought/>>
8. Usha Ramanathan, –*Images (1920-1950) Reasonable Man, Reasonable Woman and Reasonable Expectations* in Amita Dhanda, Archana Parashar (ed) *ENGENDERING LAW*,

pp. 33-70 (1999). Eastern Book Company. Available at <
<http://www.ielrc.org/content/a9906.pdf>>

TOPIC TWO: PATRIARCHY AND FEMINIST JURISPRUDENCE (8 LECTURES)

- Understanding Patriarchy
 - Issues and contradictions in feminism
 - Sameness and difference debate
 - Liberal feminism
 - Radical feminism
 - Socialist/Marxist feminist approaches
9. Kamla Bhasin, *What is Patriarchy*, Kali/Women Unlimited (2004) (Provided in reading material)
 10. Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* 43-75 (1996).
 11. Alison Jagar –*Introduction : Living with Contradictions: Controversies in Feminist Social Ethics* (1994) Westview Press (Provided in reading material)
 12. Heywood, –*Feminism in Political Ideology: An Introduction* pp. 252-265 (2004) Palgrave MacMillan. (Provided in reading material)

TOPIC THREE: INTERNATIONAL INSTRUMENTS AND WOMEN RIGHTS (4-5 LECTURES)

- UDHR, ICESCR, ICCPR
Available at < <http://www.un.org/en/universal-declaration-human-rights/>>
Available at < <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>
Available at < <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>
 - UN Convention for the Elimination of Discrimination against Women. Available at < <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>>
 - UN Human Rights Council Resolution on Human rights, sexual orientation and gender identity, 2011. Available at < <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>>
13. EXCERPTS: Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (UN Human Rights Office of the High Commissioner) HR/PUB/12/06 (2012)

TOPIC FOUR: SEXUALITY AND MORALITY IN LAW (6 LECTURES)

- Indian Penal Code 1860
 - Rape Laws
 - Adultery
- Immoral Traffic Prevention Act 1956 read with section 370 IPC
- Indecent Representation of Women (Prohibition) Act, 1986

14. Ved Kumari, –*Gender Analyses of Indian Penal Code* in Amita Dhanda, Archana Parashar (ed) *ENGENDERING LAW Essays in Honour of Lotika Sarkar*, pp.139-160 (1999). Eastern Book Company. Available at <http://www.womenstudies.in/elib/crime_ag_women/ca_gender_analysis.pdf>
15. Usha Tandon and Sidharth Luthra, –*Rape: Violation of the Chastity or Dignity of Woman? A Feminist Critique of Indian Law*”, FICHL Policy Brief Series No. 51 (2016) available at <http://www.fichl.org/fileadmin/user_upload/160615_PBS_No._51__2016__Tandon__Luthra_.pdf>
16. Arvind Narrain, –*That despicable specimen of humanity’: Policing of homosexuality in India* in Kalpana Kannabiran (ed), *CHALLENGING THE RULE(S) OF LAW: COLONIALISM, CRIMINOLOGY AND HUMAN RIGHTS IN INDIA* (2008) Sage India (*Provided in reading material*)
17. *Vishal Jeet v. UOI*, 1990 SCR (2) 861 (*Provided in reading material*)
18. *Suresh Kumar Koushal and another v. Naz Foundation*, Civil Appeal No.10972 of 2013 decided by the Supreme Court on 11 December 2013. Available at <<http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070>>

TOPIC FIVE: ECONOMIC EMPOWERMENT AND LAW (8 LECTURES)

- Labour Laws:
 - Gender protective laws
 - Gender neutral laws
 - Gender corrective laws
 - Law Protecting Women against Sexual Harassment at Work Place
 - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
 - Property Rights of Women
19. Flavia Agnes, –*Conjugality, Property, Morality and Maintenance* 32-58 in Kalpana Kannabhiran (ed), *WOMEN AND LAW CRITICAL FEMINIST PERSPECTIVES* (Sage Publications India 2014) (*Provided in reading material*)
 20. Usha Tandon, *Gender Bias in the Property Rights of Women under Hindu Law*, XXII *DLR*, 163 (2000)
 21. *C.B. Muthamma v. Union of India*, 1979(4)SCC 260 (*Provided in reading material*)
 22. *Air India and others v. Nergesh Meerza*, 1982 SCR (1) 438 (*Provided in reading material*)
 23. *Sujata Sharma v. Manu Gupta*, 2015 SCC OnLine Del 14424, decided on 22-12-2015(*Provided in reading material*)
 24. *Richa Mishra v. State of Chhattisgarh*, (2016) 4 SCC 179, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=43378>

25. *Charu Khurana v. UOI*, WRIT PETITION (CIVIL) NO.78 OF 2013 decided by SC on November 10, 2014 available at < <http://supremecourtindia.nic.in/outtoday/wc7813C.pdf>>
26. D Nagasaila, *Gender Equality at Workplace: A Frozen Agenda*, in Kalpana Kannabhiran (ed), *Women and Law Critical Feminist Perspectives* (Sage Publications India 2014)

TOPIC SIX: REPRODUCTIVE RIGHTS (6 LECTURES)

- Indian Penal Code, 1860
 - Medical Termination of Pregnancy Act, 1971
 - Maternity Benefits Act, 1964
 - PC & PNDT Act 1994
27. *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another*, (2000) 3 SCC 224. (Provided in reading material)
28. *Sabu Mathew George v. Union Of India & Ors.*, Writ Petition(s)(Civil) No(s).341/2008 in Supreme Court of India (Provided in reading material)
29. *Vinod Soni v. UOI*, 2005 Bombay High Court (Provided in reading material)

TOPIC SEVEN: LAW PROTECTING WOMEN AGAINST VIOLENCE AT HOME: DOMESTIC VIOLENCE, DOWRY HARASSMENT, SATI. (5 LECTURES)

- Protection of Women against Domestic Violence Act 2005
 - Dowry Prohibition Act 1961
 - Commission of Sati (Prevention) Act 1987
30. *S.R. Batra and Anr v. Taruna Batra*, (SC 2006) (Provided in reading material)
31. *D Velusamy v. D Patchaiammal*, decided by SC on 21 December 2010 (Provided in reading material)
32. *Hiral P. Harsora And Ors v. Kusum Narottamdas Harsora*, 2016 SCC OnLine SC 1118, decided on 06.10.2016 (Provided in reading material)
33. *All India Democratic Women's Association And Janwadi Samiti v. Union of India & Ors.*, 1989 SCR (2) 66. (Provided in reading material)
34. Indira Jaisingh, -Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence in Kalpana Kannabhiran (ed), *WOMEN AND LAW CRITICAL FEMINIST PERSPECTIVES* (Sage Publications India 2014) (Provided in reading material)

TOPIC EIGHT: GENDER JUSTICE AND JUDICIARY (2-3 LECTURES)

35. Kalpana Kannabhiran, -*Judicial Meanderings in Patriarchal Thickets: Litigating Sex Discrimination in India*” in Kalpana Kannabhiran (ed), *WOMEN AND LAW CRITICAL FEMINIST PERSPECTIVES* (Sage Publications India 2014) (Provided in reading material)

It may be noted that the list of reading prescribed and suggested is subject to revision with new publications and developments.

LL.B. V Term

Paper – LB - 603- Environmental Law

Prescribed Legislations:

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Air (Prevention and Control of Pollution) Act, 1981
3. The Environment (Protection) Act, 1986
4. The Public Liability Insurance Act, 1991
5. The National Green Tribunal Act, 2010

6. The Biological Diversity Act, 2002 (18 of 2003)
7. The Wildlife (Protection) Act, 1972
8. The Forest (Conservation) Act, 1980
9. The Indian Forest Act, 1927
10. The Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006.

Prescribed Books:

1. Shyam Diwan and Armin Rosencranz, *Environmental Law and Policy in India – Cases, Materials and Statutes* (2nd ed., 2001)
2. P. Leelakrishnan, *Environmental Law Case Book* (2nd ed., 2006)
3. Gurdip Singh, *Environmental Law in India* (2005)
4. P. Leelakrishnan, *Environmental Law in India* (3rd ed., 2008)
5. Stuart Bell & Donald Mc Gillivray, *Environmental Law* (7th ed., 2008)

Recommended Readings:

1. The National Environment Policy, 2006
2. The National Forest Policy, 1988
3. The National Water Policy, 2002
4. The Wildlife Conservation Strategy, 2002
5. The World Commission on Environment and Development, *Our Common Future*, 1987
6. IPCC Fourth Assessment Report (AR4). “Climate Change 2007”.

Chapter 1 : Environment and Pollution (2 Lectures)

Environment – Meaning and Scope; Pollution – Air, Water, Environmental - Meaning, Causes and Effects; Dimensions and Magnitude of the Problem of Environmental Degradation; Need for Legal Control of Pollution.

Chapter 2 : International Environmental Law (3 Lectures)

1. U.N. Conference on Human Environment, 1972 – Stockholm Principles, Establishment of Environmental Institutions like UNEP.
2. World Charter for Nature, 1982
3. Ozone Protection – Montreal Protocol for the Protection of Ozone Layer, 1987 as amended
4. U.N. Conference on Environment and Development, 1992 - Rio Principles; U.N. Convention on Biological Diversity, 1992; Cartagena Protocol on Biosafety, 2000; U.N. Convention on Climate Change 1992, Kyoto Protocol, 1997; Forest Principles; Agenda 21
5. Human Right to Healthy Environment; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998 (Aarhus Convention)
6. Johannesburg Conference, 2002
7. Rio+20-United Nations Conference on Sustainable Development

Chapter 3 : Fundamental Principles of Environmental Protection (3-5 Lectures)

Development v. Environment; Sustainable Development –Inter-generational and Intra-generational Equity; Precautionary Principle; Polluter Pays Principle; Public Trust Doctrine

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|---|----|
| 1. <i>Indian Council for Enviro-Legal Action v. Union of India</i> ,
AIR 1996 SC 1446 (Bichhri Village case) | 1 |
| 2. <i>Indian Council for Enviro-Legal Action v. Union of India</i> ,
(2011) 12 SCC 768 | 15 |
| 3. <i>Vellore Citizens' Welfare Forum v. Union of India</i> , AIR 1996 SC 2715 | 18 |
| 4. <i>A.P. Pollution Control Board v. M.V. Nayudu</i> , AIR 1999 SC 812 | 26 |
| 5. <i>Narmada Bachao Andolan v. Union of India</i> , AIR 2000 SC 3751 | 38 |
| 6. <i>Goa Foundation, Goa v. Diksha Holding Pvt. Ltd.</i> (AIR 2001 SC 184) | 59 |
| 7. <i>M.C. Mehta v. Union of India</i> , AIR 2002 SC 1696 (CNG Vehicles case) | 65 |
| 8. <i>T.N. Godavarman Thirumulkpad v. Union of India</i> , AIR 2005 SC 4256 | 75 |
| 9. <i>Intellectuals Forum, Tirupathi v. State of A.P.</i> , AIR 2006 SC 1350 | 85 |
| 10. <i>Ms. Susetha v. State of Tamil Nadu</i> , AIR 2006 SC 2893 | 96 |

Chapter 4 : Constitutional Perspective (3-5 Lectures)

Fundamental Rights - Article 14 (Right to equality, non-arbitrary and non-discriminatory treatment), Article 19(1)(g) (Freedom to carry on trade or business), Article 21 (Right to life, livelihood and wholesome environment) and Article 32 (Right to Constitutional remedies); Directive Principles of State Policy – Article 47, 48-A; Fundamental Duty – Article 51-A(g); Article 226 (Powers of High Courts); Public Interest Litigation - Nature – Non-Adversarial, Collaborative, Co-operative and Investigative; *Locus Standi - Pro Bono Publico*; Representative Standing; Citizens' Standing

11.	<i>Subash Kumar v. State of Bihar</i> , AIR 1991 SC 420	100
12.	<i>T.N. Godavarman Thirumulkpad v. Union of India</i> , AIR 2006 SC 177	
13.	<i>Rural Litigation and Entitlement Kendra v. State of U.P.</i> , AIR 1982 SC 652 (Dehradun-Mussorie Hills quarrying case)	104
14.	<i>M.C. Mehta v. Union of India</i> , AIR 1997 SC 734 (Taj Trapezium case)	108
14A	<i>M.C. Mehta v. Kamal Nath</i> (1997) 1 SCC 388	121
14B	<i>M.C. Mehta v. Kamal Nath</i> , AIR 2000 SC 1997	132
15.	<i>M.C. Mehta v. Kamal Nath</i> , 2002 (2) SCALE 654	135
16.	<i>Sachidanand Pandey v. State of West Bengal</i> , AIR 1987 SC 1109	139
17.	<i>Tarun Bharat Sangh v. Union of India</i> , AIR 1992 SC 514 (Sariska Case)	
18.	<i>M/s. Abhilash Textiles v. Rajkot Municipal Corpn.</i> , AIR 1988 Guj. 57	153
19.	<i>M.C. Mehta v. Union of India</i> , (2006) 3 SCC 399 (Closure of industries in Delhi)	
20.	<i>Forum, Prevention of Env'n. & Sound Pollution v. Union of India</i> AIR 2006 SC 348	157
21.	<i>Karnataka Industrial Areas Development Board v. C. Kenchappa</i> , AIR 2006 SC 2038	160

Chapter 5 : Prevention and Control of Water and Air Pollution (5 Lectures)

The Water (Prevention and Control of Pollution) Act, 1974 – Water Pollution – Meaning; Central and State Pollution Control Boards –Constitution, Powers and Functions; Water Pollution Control Areas; Samples of Effluents – Procedure; Consent Requirement – Procedure, Grant/Refusal, Withdrawal, Review, Appeals, Revision; Restraint Order; Citizen Suit Provision; Offences and Penalties; The Water Cess (Prevention and Control of Pollution) Act, 1977

The Air (Prevention and Control of Pollution) Act, 1981- Air Pollution – Meaning, Causes and Effects; Central and State Pollution Control Boards - Functions; Air Pollution Control Area; Consent Requirement - Procedure, Grant/Refusal, Withdrawal; Restraint Orders; Citizen Suits; Noise Pollution (Regulation and Control) Rules, 2000; Offences/Penalties; Vehicular pollution

22.	<i>M.C. Mehta v. Union of India</i> , AIR 1988 SC 1037 (Kanpur Tanneries case)	170
23.	<i>M.C. Mehta v. Union of India</i> , AIR 1988 SC 1115 (Municipalities case)	179
24.	<i>M/s. Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Water Pollution</i> , AIR 1986 Del. 152	186
25.	<i>Municipal Council, Ratlam v. Vardichand</i> , AIR 1980 SC 1622	189
26.	<i>State of M.P. v. Kedia Leather & Liquor Ltd.</i> , AIR 2003 SC 3236	197
27.	<i>M.C. Mehta v. Union of India</i> , AIR 1997 SC 734 (Taj Trapezium case)	
28.	<i>Murli S. Deora v. Union of India</i> , AIR 2002 SC 40	201
29.	<i>Forum, Prevention of Environmental & Sound Pollution v. Union of India</i> , AIR 2005 SC 3136	203 209
30.	<i>Orissa State Prevention and Control of Pollution Board v. M/s. Orient Paper Mills</i> , AIR 2003 SC 1966	216
31.	<i>Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association</i> , AIR 2000 SC 2773	

Chapter 6 : Environment (Protection) Act, 1986 (3-5 Lectures)

The Environment (Protection) Act, 1986 – Aims and Objects; Meaning of “Environment” and “Environmental Pollutant”; Powers and Functions of the Central Government; Environment Authority - Constitution; Delegation Powers; Offences/Penalties; Effectiveness of the Act; Environmental Impact Assessment, 2006; Environmental Audit

32. *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715
33. *S. Jagannath v. Union of India*, AIR 1997 SC 811 (Shrimp Culture case) 220
34. *M.C. Mehta v. Union of India*, AIR 2002 SC 1696 (CNG vehicles case)
35. *F.B. Taraporawala v. Bayer India Ltd.*, AIR 1997 SC 1846
36. *A.P. Pollution Control Board v. M.V. Nayudu*, AIR 1999 SC 812

Chapter 7 : The National Green Tribunal Act, 2010

The National Green Tribunal Act, 2010- Aims and Objects; Jurisdiction, Establishment of the Tribunal; Powers and Proceedings of the Tribunal; Penalty; Miscellaneous

37. *Aditya N. Prasad vs. Union of India & ors.*, Application No. 82 of 2013 228

Chapter 8 : Handling of Hazardous Substances – Legal Controls

Legal Control of Hazardous Waste, Bio-Medical Waste,; Industrial Accidents –Principle of ‘No fault ‘ and ‘Absolute’ Liability; Public Liability Insurance – The Public Liability Insurance Act, 1991

38. *M.C. Mehta v. Union of India*, AIR 1987 SC 965 (Oleum Gas Leakage)
39. *M.C. Mehta v. Union of India*, AIR 1987 SC 982
40. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086 230
41. *M.C. Mehta v. Union of India*, AIR 1996 SC 2231
(Re-location of Industries in Delhi)
42. *Union of India v. Union Carbide Corporation*,
AIR 1990 SC 273; AIR 1992 SC 248
43. *Charan Lal Sahu v. Union of India*, AIR 1991 SC 1480
44. *Research Foundation for Science v. Union of India*, 2007 (10) SCALE 594. 240

Chapter 9 : Protection and Conservation of Forests, Biodiversity and Wildlife

The Indian Forest Act, 1927; The Forest (Conservation) Act, 1980; Kinds of Forest Land - Private, Reserved, Village, Protected; Dereservation of Forests - Use of Forest Land for Non-Forest purposes; Rights of Tribals, Forest Dwellers; The Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006; Use of Forest Land - Mining, Eco-Tourism, Mega Projects.

The Biological Diversity Act, 2002; Regulation of genetically modified organisms; The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms Genetically Engineered Organisms or Cells Rules, 1989.

Protection of Wildlife - The Wildlife (Protection) Act, 1972; Sanctuaries and National Parks; Licensing of Zoos and Parks.

45. *Union of India v. Kamath Holiday Resorts*, AIR 1996 SC 1040 248
46. *Tarun Bharat Sangh v. Union of India*, AIR 1992 SC 514 (Sariska Case)
47. *T.N. Godavarman Thirumulkpad v. Union of India*, AIR 1998 SC 769;
AIR 2005 SC 4256

Important Note:

1. The topics, legislations and cases mentioned above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/legislations/cases.
2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
3. The question paper shall include eight questions and students are expected to attempt any five. The question papers set for the examinations held during 2012-13.

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