

Constitutional and Legal provisions for Women Empowerment in India

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ABSTRACT

The Constitution of India is a basic document which provides for women empowerment within the framework of the plenary provisions of Articles 14, 15 (3), 21, 39 (a), 51A (e) and Preamble. The need for empowerment arose due to centuries of domination and discrimination done by men over women. Empowering women is to make them independent in all aspects from mind, thought, rights, decisions, etc. by leaving all the social and family limitations. To eliminate ill practices and discrimination against women various constitutional and legal rights are there. The govt should empower the women by creation of an environment for enjoyment of all human rights and fundamental freedom by women on equal basis with men in all political, economic, social, cultural and civil spheres.

Keywords: Women, empowerment, constitution, equality.

INTRODUCTION

India's Constitution makers and our founding fathers were very determined to provide equal rights to both women and men. The Constitution of India is one of the finest equality documents in the world. The Constitution of India is a basic document which provides for women empowerment within the framework of the plenary provisions of Articles 14, 15 (3), 21, 39 (a), 51A (e) and Preamble. It provides provisions to secure equality in general and gender equality in particular. Various articles in the constitution safeguard women's rights by putting them at par with men socially, politically and economically. The democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. This socialistic concept ought to be implemented in the true spirit of the constitution. The important process in reaching gender equality, which is understood to mean that the "rights, responsibilities and opportunities of individuals will not depend on whether they are born male or female".

Indian society consists of people belonging to almost all kinds of religious beliefs. In every religion woman are given a special place and every religion teaches us to treat women with respect and dignity. The need for empowerment arose due to centuries of domination and discrimination done by men over women. Women were suppressed lot. They were the target of varied types of violence and discriminatory practices done by men all over the country, such as sati pratha, practice of dowry, pardapratha, female infanticide, wife burning, sexual violence, sexual harassment at work place, domestic violence and other varied kinds of discriminatory practices. All such acts consist of physical as well as mental element of male superiority complex and patriarchal system of society. Raja Ram Mohan Roy influenced by the modern concept of freedom, liberty, equality and justice started to question the prevailing discriminatory practices against women. Women played an important part in India's independence struggle. Some famous freedom fighters include Bhikaji Cama, Dr. Annie Besant, Pritilata Waddedar, Vijayalakshmi Pandit, Rajkumari Amrit Kaur, Aruna Asaf Ali, Sucheta Kriplani and Kasturba Gandhi. Other notable names include Muthulakshmi Reddy and Durgabai Deshmukh. The Rani of Jhansi, regiment of Subhas Chandra Bose's Indian National Army consisted entirely of women, including Captain Lakshmi Sahgal. Sarojini Naidu, a poet and freedom fighter, was the first Indian woman to become president of the Indian National Congress and the first woman to become the governor of the state.

The principle of gender equality is enshrined in the Indian constitution in its preamble, fundamental rights, fundamental duties and directive principles. The constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws,

¹"Fact sheet on Important Concepts underlying Gender Mainstreaming", OSAGI

^{2001.}Http://www.un.org/womenwatch/osagi/pdf/factsheet2.pdf



development policies, plans and programmes have aimed at women's advancement in different spheres. India is a male dominated country where males are dominated in every area and females are forced to be responsible for only family care and live in the home including other many restrictions. So, there is great need for women empowerment that is empowering the women to take their own decisions for their personal independence. Empowering women is to make them independent in all aspects from mind, thought, rights, decisions, etc. by leaving all the social and family limitations. It is to bring equality in the society for both male and female in all areas. Gender role expectations are institutionalized through legislative, educational, political and economic systems. Women need to be empowered in order to narrow the gender gap and to create an equal playing field between women and men before gender equality can be reached and maintained.²

Article 14³ ensures to women the right to equality. Article 15(1)⁴ specifically prohibits discrimination on the basis of sex. Article 15(3)⁵ empowers the state to take affirmative actions in favour of women. Article 16⁶ provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office. These rights being fundamental rights are justiciable in court and the government is obliged to follow the same. Article 39 (a)⁷ provides that the state to direct its policy towards securing for men and women equally the right to an adequate means of livelihood. Article 39 (d)⁸ mandates equal pay for equal work for both men and women. Article 42⁹ provides that the

⁶ARTICLE 16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 1 under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. 2[(4A) Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.] 4[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.] (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

1Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State".

2Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2.

3Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, s. 2, for certain words (w.e.f. 17-6-1995).

4Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

²"Empowering women for sustainable development", Economic Commission for Europe, March 2011. http://www.unece.org/fileadmin/DAM/commission/2011/Informal%20document%20No.%202.pdf

³ARTICLE 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁴ARTICLE 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

⁵ARTICLE 15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.

⁷ARTICLE 39. The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

⁸ARTICLE 39. The State shall, in particular, direct its policy towards securing— (d) that there is equal pay for equal work for both men and women;



state to make provision for securing just and humane conditions of work and for maternity relief. Article 46¹⁰ provides the state to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. Article 47¹¹ states the state to raise the level of nutrition and the standard of living of its people. Article 51 (A) (e)¹² expects from the citizen of the country to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women. Through 73rd and 74th Constitutional Amendment of 1993, a very important political right has been given to women which is a landmark in the direction of women empowerment in India. With this amendment women were given 33.33 percent reservation in seats at different levels of elections in local governance i.e. at Panchayat, Block and Municipality elections. Not less than one-third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a panchayat (Article 243 D(3))¹³ Not less than one- third of the total number of offices of Chairpersons in the panchayats at each level to be reserved for women (Article 243 D(4))¹⁴. Not less than one-third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a municipality (Article 243 T (3))¹⁵. Reservation of offices of chairpersons in municipalities for the scheduled castes, the scheduled tribes and women in such manner as the legislature of a state may by law provide (Article 243 T (4)¹⁶.To uphold the Constitutional mandate, the state has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as Murder, Robbery, Cheating etc, the crimes which are directed specifically against women are characterized as crime against women. These are broadly

⁹ARTICLE 42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

¹⁰ARTICLE 46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

¹¹ARTICLE 47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

¹²ARTICLE 51A. It shall be the duty of every citizen of India

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

¹³ARTICLE 243(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

¹⁴ARTICLE 243(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

¹⁵ARTICLE 243 T (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

¹⁶ARTICLE 243 T (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.



classified under two categories. The crimes identified under the Indian Penal Code are rape (Sec. 376 IPC)¹⁷, kidnapping &abduction for different purposes (Sec. 363-373)¹⁸, homicide for dowry, dowry deaths or their attempts (Sec. 302/304-B IPC)¹⁹, torture, both mental and physical(Sec. 498-A IPC)²⁰, molestation (Sec. 354 IPC)²¹, sexual

¹⁷Section 376. Punishment for rape 1[376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever, (a) being a police officer, commits rape (i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be pregnant; or (i) commits rape on a woman when she is under sixteen years of age; Or (j) commits rape, on a woman incapable of giving consent; or (k) being in a position of control or dominance over a woman, commits rape on such woman; or (1) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. Niolnpx Etaa .—For the purposes of this subsection, (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government; (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation; (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.] -1. Inserted by Section 9 of 'The Criminal Law (Amendment) Act, 2013'.

¹⁸Section 366. Kidnapping, abducting or inducing woman to compel her marriage, etc. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person shall be punished as aforesaid].

¹⁹Section 302. Punishment for murder Whoever commits murder shall be punished with death, or 1[imprisonment for life] and shall also be liable to fine.

Section 304. Punishment for culpable homicide not amounting to murder Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

²⁰Section 498A. Husband or relative of husband of a woman subjecting her to cruelty 1[498A. Husband or relative of husband of a woman subjecting her to cruelty. —Whoever, being the husband or the relative of the husband of a



harassment (Sec. 509 IPC)²², importation of girls(up to 21 years of age). The crimes identified under the Special Laws (SLL) Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Here is the some specific laws which were enacted by the Parliament in order to fulfil constitutional obligation of women empowerment .Some acts have special provisions to safeguard women and their interests like The Family Courts Act, 1954, The Special Marriage Act, 1954, The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956 with amendment in 2005, Immoral Traffic (Prevention) Act, 1956, The Maternity Benefit Act, 1961 (Amended in 1995), Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, The Contract Labour (Regulation and Abolition) Act, 1976, The Equal Remuneration Act, 1976, The Prohibition of Child Marriage Act, 2006, The Criminal Law (Amendment)Act, 1983, Indecent Representation of Women (Prohibition) Act, 1986, Commission of Sati (Prevention)Act, 1987 and The Protection of Women from Domestic Violence Act, 2005. Though to eliminate these ill practices and discrimination against women various constitutional and legal rights are there, but in reality, there are a lot to be done. Several self-help groups and NGOs are working in this direction. Women also themselves are breaking the societal barriers and achieving great heights in all dimensions; political, social and economic. But society as a whole has still not accepted women as being equal to men and crimes or abuses against women are still on the rise. For that to change, the society's age-old deep-rooted mind set needs to be changed through social conditioning and sensitization programmes.

The 73rd Constitutional Amendment Act has given a new dimension to the process of women's empowerment, with women panchayat members emerging in many settings as change leaders. Now progressively, many states are earmarking 50% reservation for women in panchayati raj institutions. The new panchayatiraj is the part of the effort to empower women at least at the village level. The most positive development during the last few years has been the growing involvement of women in the panchayatiraj institutions. There are many elected women representatives at the village council level. Today we have seen women chief ministers, women president, different political parties' leader, well establish businesswomen etc. Women are also involving in human development issues of child rearing, education, health, and gender parity. Many of them have gone into the making and marketing of a range of cottage products as pickles, tailoring, embroidery etc. The economic empowerment of women is being regarded in these days as a sine-quo-no of progress for a country. Hence, the issue of economic empowerment of women is of paramount importance to political thinkers, social thinkers and reformers. In fact, according to UN World Survey on the Role of Women in Development 2014, there are proven synergies between women's empowerment and economic, social and environmental sustainability.²³

The Ministry of Women and Child Development is the nodal agency for all matters pertaining to welfare, development and empowerment of women. It has evolved schemes and programmes for their benefit. These schemes are spread

woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation For the purpose of this section, "cruelty" means (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

²¹Section 354. Assault or criminal force to woman with intent to outrage her modesty Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, 1[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]

²²Section 509. Word, gesture or act intended to insult the modesty of a woman Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, 1[shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.]

The World Survey on the Role of Women in Development 2014: Gender Equality and Sustainable development", UN Women 2014(E.14.IV.6). http://www.unwomen.org/~/media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf



across a very wide spectrum such as women's need for shelter, security, safety, legal aid, justice, information, maternal health, food, nutrition etc. as well as their need for economic sustenance through skill development, education and access to credit and marketing. Various schemes of the ministry are like Swashakti, Swayamsidha, STEP and Swawlamban which enable economic empowerment. Working women hostels and creches provide support services. Swadhar and short stay homes provide protection and rehabilitation to women in difficult circumstances. The ministry also supports autonomous bodies like National Commission, Central Social Welfare Board and Rashtriya MahilaKosh which work for the welfare and development of women. Economic sustenance of women through skill development, education and access to credit and marketing is also one of the areas where the ministry has special focus. A major thrust for economic empowerment has been through the formation of thrift and credit-based self-help groups (SHGs) formed by women with states such as Andhra Pradesh demonstrating effective ways of making this a mass movement. Increased support for women SHGs in the National Rural Livelihood Mission and in MGNREGA with women has been positive developments. Successful linkages between SHGs and Micro-Finance institutions such as RMK, NABARD, and SIDBI besides private microfinance institutions have helped in generating additional income, jobs and in creating small enterprises for women.

Women empowerment is very necessary to make the bright future of the family, society and country. Progress is also hampered by the low levels of participation and leadership of women in decision-making, at all levels – household, local, regional and national governments, the management of environmental resources²⁴, national planning and development structures, national parliaments and global governance. Women empowerment needs to take a high speed in this country to equalize the value of both genders. Uplifting of women in all means should be the utmost priority of the nation. Inequalities between men and women in the society generate lots of problems which become a big obstruction in the way to success of nation. Women empowerment refers to increasing and improving the social, economic, political and legal strength of the women, to ensure equal-right to women, to make them confident enough to claim their rights such as freely live their life with a sense of self-worth, respect and dignity, have complete control of their life, both within and outside of their home and work place to make their own choices and decisions, right to choose, have equal rights to participate in social, religious and public activities, have equal social status in the society, have equal rights for social and economic justice, determine financial and economic choices, get equal opportunity for education, get equal employment opportunity without any gender bias, get safe and comfortable working environment and have the rights to get their voices heard.

Women and children constitute around 70 % of India's people and are the critical foundation for national development at present and in the future. More inclusive growth must begin with children and women breaking an intergenerational cycle of inequity and multiple deprivations faced by women and girls, as related to poverty, social exclusion, gender discrimination and under nutrition. India is poised to emerge as one of the most developed nations by 2020, more literate, knowledgeable and economically at the forefront. No doubt, women will play a vital role in contributing to the country's development. Women power is crucial to the economic growth of any country. The government should give 100% focus on improving literacy rate of girls. More and more educational institutions should be open in rural areas as well. Educational loans to be given to girls till they qualify 12th standard. More job opportunities should be given to girls both in rural, as well as, urban areas. Several campaigns should be started to bring an attitudinal change in society towards girls. Women have to stand against domestic violence. Empowerment should not be seen as a zero-sum game where gains for women automatically imply losses for men.²⁵Women can be empowered by having a significant percentage of women in leadership and political positions. Having laws and legislation that advocate against genderbased violence is also a way of empowering girls. Having training centres in the community where women can be taught on how they can start small businesses that will help them earn money. Having mentors in our communities will also give girls and women a role model in the society who will inspire them to become better and hence raising their confidence. We can also empower women and girls by advocating and campaigning against vices like early marriages, dowry system, etc. This will create a friendlier environment for our girls and women.

Though, economic and social condition of women has improved in a significant way but the change is especially visible only in metro cities or in urban areas. The situation is not much improved in semi-urban areas and villages. The govt should empower the women by creation of an environment for enjoyment of all human rights and fundamental

²⁴See in more detail the in-depth analysis "The Gender Dimension of Climate Justice", European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Women's Rights & Gender Equality, author: Anne Bonewit, 2015. http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536478/IPOL_IDA(2015)536478_EN.pdf

²⁵"Fact sheet on Important Concepts underlying Gender Mainstreaming", OSAGI 2001. http://www.un.org/womenwatch/osagi/pdf/factsheet2.pdf



freedom by women on equal basis with men in all political, economic, social, cultural and civil spheres, Strengthening legal systems aimed at elimination of all forms of discrimination against women, by elimination of discrimination and all forms of violence against women and the girl child, by providing equal access to participation and decision making of women in social political and economic life of the nation, by mainstreaming a gender perspective in the development process, by providing equal access to women to health care, giving quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, by providing social security and public life etc, building and strengthening partnerships with civil society and changing societal attitudes and community practices by active participation and involvement of both men and women.

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