# NATIONAL JUDICIAL ACADEMY

**Programme Report**

## CONFERENCE ON PUBLIC TRUST AND CONFIDENCE IN JUSTICE SYSTEM

**18TH – 20TH SEPTEMBER, 2015**

**Programme Coordinator** - Ms. Paiker Nasir, Research Fellow,

**National Judicial Academy**

The National Judicial Academy organized a three days conference of the High Court Justices on "*Public Trust and Confidence in Justice System*" from 18th September to 20th September 2015. The conference was attended by 18 High Court Justices. The conference aimed to:

- ✓ Reconcile judicial interest in ensuring trust and confidence in the justice system with that of public and civil society member's interest in ensuring high accessibility of the justice system.
- ✓ Explore rationales as to why the judiciary should be concerned about the public trust and confidence in the justice system
- ✓ Determine public trust and confidence in the justice system
- ✓ Recognize the indicators of public trust and confidence in the justice system.
- ✓ Explore the causes for diminishing public trust and confidence
- ✓ Deliberate upon how much procedure and rules of practice are responsible for enhancing or diminishing public trust and confidence in the justice system.
- ✓ Identify the role of media in altering public trust and confidence in the justice system.

# Day 1

**SESSION 1- *Should Judiciary be bothered about Public Trust and Confidence in the Justice System?***

**Speaker –** Professor Upendra Baxi

**Chair –** Hon'ble Justice Ruma Pal

Hon'ble Justice Ruma Pal commenced the programme with a round of self-introduction of the participants and thereafter, the Hon'ble Justice gave a brief introduction of the speakers.

Professor Upendra Baxi, discussed on the various aspects of public trust and confidence in the justice system by deliberating on the following issues:

- Should judges be bothered about what the public thinks?
- Does public trust and confidence depend on mass disaster or individual litigation disappointment?
- How to classify the categories of disappointed litigants?
- Can law ever be a programme of revenge or law must be something else and not the programme of revenge.

In the light of these issues Prof. Baxi discussed some of the landmark cases and their impact on the public trust and confidence in the judiciary. Like- Olga Tellis case, Bhopal gas disaster etc. Thereafter, he also discussed about the Judicial Standards Principles Bill 2010 and 2012.

Subsequently, Hon'ble Justice Ruma Pal, discussed, whether judges should be bothered about what the public thinks and whether trust in the judges means that the public respects the judge and the judicial system. She also talked about the Bangalore Principles with reference to the conduct of the judges and how the conduct of the judges affects the confidence of the public in the justice system. Professor Madhava Menon added another aspect to the discussion by opining that, if the adjudication is in accordance with law, then the public will have confidence in the judiciary and it will respect the system as well.

This was followed by a discussion with the participant justices, who shared their opinions, views and experiences pertaining to the thematic area of the session.

**SESSION *2 - How do we measure Public Trust and Confidence in the Justice System?***

**Speakers –** Justice Prabha Sreedevan and Ms. Naina Kapur

**Chair –** Hon'ble Justice Ruma Pal

The session started with a brief introduction of the speakers by Hon'ble Justice Ruma Pal.

Justice Prabha Sreedevan discussed the following points:

- Public definitely sees the judiciary as the first and last resort to get justice.
- The Transparency in selection quality of the judges and the bench should reflect the society
- The conduct of the judge is crucial in the generating or rescinding public trust in the justice system
- Judge acts as a mediator who is constantly trying to balance the gap between the persons without power and the persons with power.

Ms. Naina Kapur continued the discussion by deliberating, how do we measure public trust and confidence in the justice system depends upon on what is being seek for, whether a damage control mechanism or an alternative mechanism. Following are the points of discussion:

- The attitude of the judges
- Participatory Audit [quality audit of the system, how well both internal and the external demands are being met or not being met with and how to improve and innovate]
- Structured Surveys
- Coordination programmes between the judiciary and the civil society

**SESSION 3-** ***Indicators of Public Trust and Confidence in the Justice System***

- ***Low civil filings***
- ***Drop in Social /Class Action Litigations***

**Speakers –** Professor Madhava Menon, Mr.Anil Gulati and Mr. Harish Narasappa

**Chair –** Hon'ble Justice Ruma Pal

The session started with a brief introduction of the speakers by Hon'ble Justice Ruma Pal.

Professor Madhava Menon started the discussion by referring the earlier two sessions of the conference. He said that, there had been a lot of consensus among the participants and speakers that the justice system is passing through a crisis of public trust and confidence. He also added that it is not that the judges alone who are responsible for such a situation but there is need to discuss

and identify the other participants as well, who have created this crisis. Thereafter, he submitted the following points:

- To identify the indicators responsible for diminishing public trust there is a need to keep a distinction about the role of the executive, the role of the lawyers the role of law makers and the role of litigants themselves.
- The importance of public dimension of the adjudicative process by the judge
- Need for radical restructuring of the systemic defects in the adversarial system.

The session was then addressed by Mr.Anil Gulati. He started by talking about the civil justice system and the criminal justice system in the following terms:

- Who goes for civil litigation in our country?
- Due to the cost of civil litigation it is not possible for the people to have their civil rights enforced through courts
- People involved in the criminal justice system are mostly the poorest of the poor people

The third speaker for the session Mr. Harish Narasappa gave three points of deliberation that were not just centred around the judges but around the system as a whole.

- Is the system doing the job for which it has been set up?
- What is a litigants' perspective and why does he comes to the court?
- Need for the first in and first out principle

**SESSION 4 -** ***Causes for diminishing public trust and confidence in the justice system***

- ***Life cycle of a case in court***
- ***Adjournments per case***
- ***Time taken in execution of decrees /orders of court***

**Speakers –** Justice K. Chandru and Mr. Harish Narasappa

**Chair –** Hon'ble Justice Ruma Pal

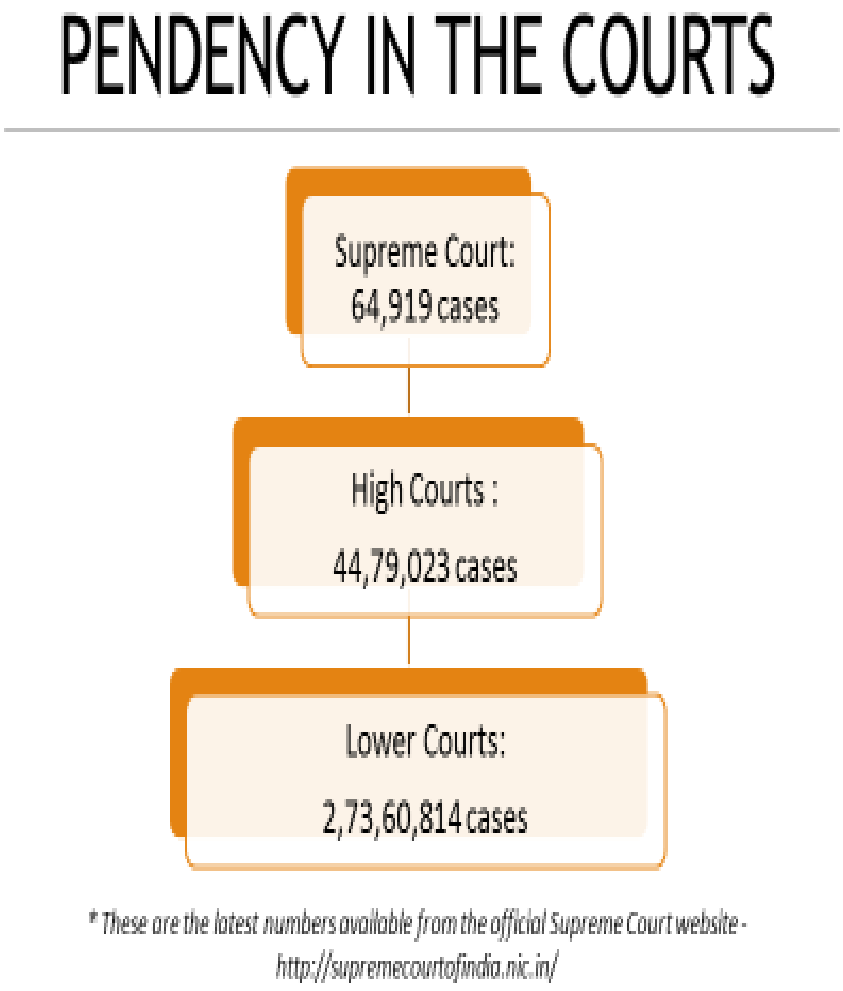
Justice K. Chandru started the session and deliberated upon the following points:

- Why is there a downward trend in civil litigation and an upward trend in criminal litigation
- The role of alternative dispute resolution mechanism
- Role of Suo Moto actions

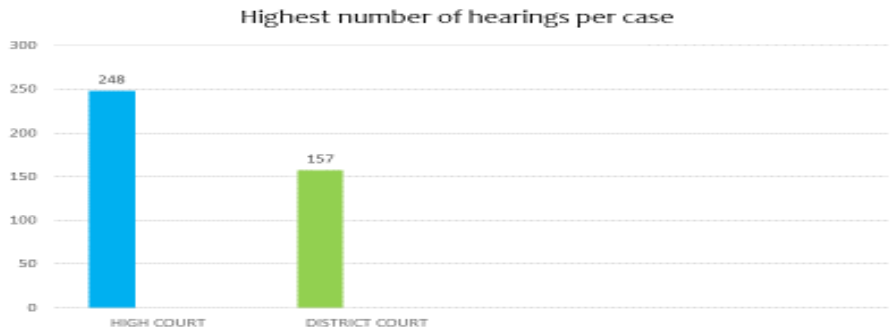
In the light of the above points Justice K. Chandru, shared many examples from Tamil Nadu High Court. He concluded his deliberations by referring to the history of Magna Carta. He said that, about 800 years ago the system was so corrupt that the people were willing to over throw the judges by force and it was then that the king signed the charter. The Magna Carta said - to none we will delay justice, to none we will sale justice, to none he will deny justice. Likewise Justice K. Chandru said that, this is the very point that we should understand what we mean by public trust. We have a written constitution which is well defined and we should all have our own measures.

Subsequently, the next speaker for the session Mr. Harish Narasappa took over. According to Mr. Narasappa, the biggest drawback is that judicial delay has not really been studied that is to say that who knows the numbers or even the reasons for delay? Everyone has perceptions and assumptions,

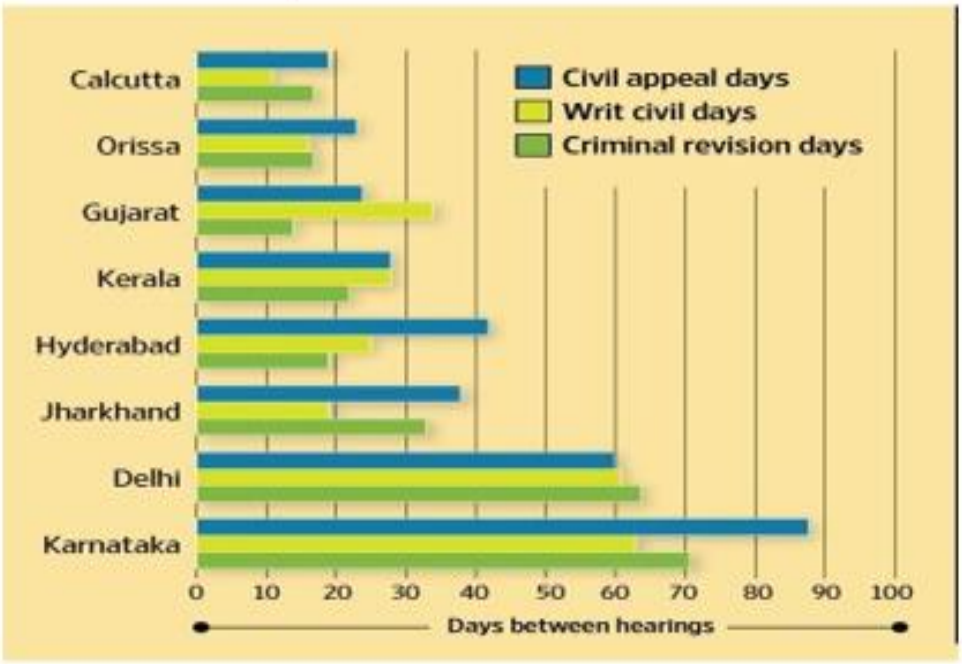
this is not the problem of the judges but it is the problem of the system and there is a need to perceive minute reasons for delays. Then only some structured solutions will be possible. He started with a data sharing presentation which was collected from 10 High Courts and 330 district courts. The data is as follows:



## NUMEROUS HEARINGS OF CASES IN COURTS




## INFREQUENT HEARINGS OF CASES




Source: "How cases move through different high courts" by Kian Ganz , August 26, 2015 on http://www.livemint.com/ using DAKSH data

## EXTREMELY LONG LIFE CYCLE FROM WHEN CASE ENTERS SYSTEM IN LOWER COURTS TO ITS FINAL DISPOSAL

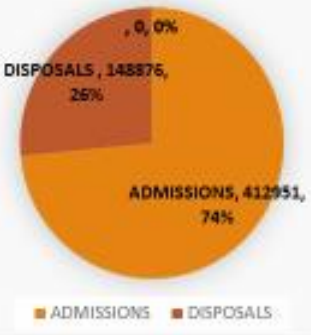
**As per our data, the average number of days a case is pending in the lower courts is 888, High Courts is 1712 – and execution petitions take 662 days.**

**The average life cycle of a case 9 years.**


*All numbers henceforth are from the DAKSH database where we have collected High Court data from January of 2015 and district court data from May of 2015.*

## HUGELY SKEWED RATIO OF ADMISSION AND DISPOSALS

**As per the data we have for district courts in 2014, there were 4,12,591 cases admitted but only 1,48,876 cases disposed**




Administration is key to even out this ratio and ensure efficiency

Thereafter, Mr. Narasappa elaborated on the causes for diminishing public trust in the judicial system.

- Dysfunctionality of judiciary
- Judicial delay is the primary cause for diminishing public trust
- Judicial delay is a societal problem -- not just the problem of the judicial system and its actors
- Problems of judicial administration and management
- Efficient judge performance alone cannot solve the problem
- Is everyone in the judiciary serving their purpose?
- A judge's primary responsibility and desire is to write judgments
- System does not always stick to the rule of 'first in, first out'

Subsequently, the participant justices shared their views in the light of the above points.

# DAY 2

**SESSION 5 : *Suo Moto Actions***

**Speaker:** Justice G. Raghuram

**Chair:** Justice Ruma Pal

The session commenced with a short introduction of the speaker by Hon'ble Justice Ruma Pal. Justice G. Raghuram put forth some of the critical contributors to the high pendency at all levels of adjudication.

- Sub-standard legal education monitored by unequipped bar council

- Applicants to entry levels and often to higher positions in the judicial hierarchy consider the office as aspirational for substantially wrong reasons

- Only a few apply conscious of the awesome demands of the office

- Critical infrastructure and man power and faculty deficits

- Social construction, judicial construction of social reality

Subsequently, Justice G. Raghuram posed a question before the participants as to what does the norm that democracy is a basic feature of our constitution, means in the operative reality, and for *suo moto* actions.

The discussion was joined by the participant judges as well as the other resource persons present in the session. In furtherance to the same Justice Ruma Pal asked the participants that how many of them have taken *Suo Moto* actions and *Suo Moto* contempt proceedings. Later on Professor

Upendra Baxi discussed about the difference and the similarities between *Suo Moto* Actions and Public Interest Litigations.

**SESSION 6 - *Nature of PIL Admitted in different High Courts: Recent Trends***

**Speakers:** Mr. Colin Gonsalves and Ms. Usha Ramanathan

**Chair:** Justice Ruma Pal, Prof. Upendra Baxi and Prof. Madhav Menon

The session commenced with a brief introduction of the speakers by Prof. Upendra Baxi.

Mr. Colin Gonsalves initiate with an indication that conducting a study on public interest litigation will reveal whether a large body of public interest litigations are genuine or not. And that they are comparable to litigations anywhere in the world. This will certainly give a real frontline of public interest litigation today. According to Mr. Gonsalves PIL administration is adversarial to the court which is evident from the nature of litigation particularly nowadays. This is because public interest litigation, separation of powers, national law, international law all these theories have gone through radical transformation in the country. He opined that the governments always disliked public interest litigation, activists judiciaries but the levels have never been so intense as it is now. Thereafter, he discussed about the *Coal Scam* case and the *Nandini Sunder's* case. Subsequently, he asked the participant justices, what are the kind of cases that will test the mettle of the Indian judges. He also said that the public interest litigation is being shut out and that many high courts have actually closed down public interest litigation particularly in the conflict states as per the anecdotal stories he gets from lawyers etc. and therefore, he felt that a study would perhaps reveal

that in many states the filing of public interest litigation is rapidly declining and in some states it flourishing.

According to Mr. Gonsalves, there are so many people with genuine PILs on right to education, right to health care, the right to food etc but they are terrified to file PIL in the high courts because of the costs imposed, undertakings asked for, and other details of their organization etc asked by the courts. And he said that, if public interest litigation is closed down then the independence of the judiciary as well as of the public comes under threat.

Dr. Usha Ramanathan started by endorsing what Professor Baxi has been saying for years now that one of the problems in PIL jurisdiction is calling it public interest litigation. She said that it should have been called social action litigation because on looking at why this jurisdiction was created for. And that - indigence, illiteracy and ignorance usually of the law and people who are unable to reach the courts or who through powerlessness are unable to reach the courts. Dr. Ramanathan also said that, social action litigation was supposed to help people realize citizenship and it was not about the power of the court alone. She also said that the problem with the idea of public interest litigation is that the idea of the public keeps getting constituted and reconstituted. According to Dr. Ramanathan there is a dehumanizing and decitizening of people which happens all the time which the idea of public interest litigation has somewhat fostered. She supported this by discussing the beggary law. At the same time Dr. Ramanathan, talked about another element to PIL and that was about controlling the nature of state power through law and how sometimes PIL can be used as an emergency weapon. She also said that, social action litigations is an aspiration for justice and that is what judges will have to deal with. Subsequently, she stated that there has to be an understanding what justice means to different constituents of the society.

**SESSION 7 - *Role of Electronic Media in measuring Public Trust and Confidence in the Justice System***

**Speakers:** Prof. Upendra Baxi and Mr. Kian Ganz

**Chair:** Justice Ruma Pal and Prof. Madhava Menon

Professor Madhava Menon commenced the session with the brief introduction of the speakers.

Prof. Upendra Baxi was the first speaker for the session. He started by a talking about legal consciousness and legal alienation. The first thing which he pointed out was that the print media is the backbone of the social action litigation. Further, he said that films are older than television in India and they have undoubtedly created an image of law and justice in popular culture. While electronic media according to him is distinguished by the fact that it is ungovernable particularly social media which is twitter and facebook etc. and how to govern this new technology is the main problem. Thereafter, Prof. Baxi also mentioned and discussed the judgement of *Shreya Singhal v. Union of India* case, where the Supreme Court declared Section 66A of Information Technology Act as unconstitutional and struck it down. According to Prof. Baxi, the electronic media is very strong and they try to force their judgments through media trials but at the same time they have a defense of an old style, they fall back upon freedom of speech. But if the technology is a new they cannot rely upon the old doctrines of law like, freedom of speech etc. The last point that Prof. Baxi left for discussion before the participants was, how do we fashion a socially responsible, critique of judges?

Mr. Kian Gainz initiated by saying that all traditional media is turning into electronic media nowadays. All the traditional media groups have their online arms. According to him in this digital age anybody can be media. Thereafter, he focused on the following points:

- Modern media is a strange new beast which is faster, more diverse, more competitive and also increasingly important in holding power to account and playing its part in democracy.
- Modern media's relationship with the judiciary
- Reporting about judiciary
- Media and the courts worldwide

**SESSION 8 - *Role of films in enhancing/diminishing trust and confidence of the litigants in the court system***

***Speakers:*** Justice K. Chandru and Dr. Shoma A. Chatterji

***Chair:*** Justice Sujata V. Manohar, Prof. Upendra Baxi and Prof. Madhava Menon

Justice Sujata V. Manohar introduced the speakers for the session.

Justice K. Chandru was the first speaker. According to him role of film in enhancing and diminishing the trust and confident to the litigant and court system needs to be analyzed deeply. Judges have a very symbiotic relationship with movie world and it is something that compliments. In fact there was a time when judges of the court had multiplier role not only judging but also their decisions, writing novels, and they were stage artist and there were also vice chancellor of university so judges had different roles and it was never taught that it affects the role of judge. But

now the question that frequently comes to light is whether films influence the real life situations? How much movies have influenced the judges.

The second speaker for the session, Dr. Shoma Chatterji, discussed the following points:

- Whether cinematic practices and imperatives create a 'reel world' view of the law and
- Whether there are some films that replicate the real world of the court system in and through cinema.
- How close or distant are the celluloid representations of litigants in the court system to the real world of litigants and courts as observed and experienced in real life situations
- Educative Value of Cinema
- Visual Misrepresentations of the courtroom, the legal and the police fraternity
- Violation of Censorship Laws – Overt and Covert
- A Few Case Studies of Fiction films
- Films based on real life stories

# DAY 3

**SESSION 9 - *How the rules of the courts regarding procedures, diminishes /enhances participation of citizens in the Justice System***

**Speakers:** Mr. Arvind P. Datar and Prof. Madhava Menon

**Chair :** Justice Kurian Joseph and Justice Sujata V. Manohar

Justice Sujata V. Manohar introduced the speakers for the session.

Prof. Madhava Menon was the first speaker. He started by discussing the research paper of Mr. Yogesh Pratap Singh on how the Supreme Court rules constraints the rights of litigants to access the apex court. Prof. Menon, reproduced some of the points of the research paper mentioned above. They are:

- Payment of court fees by the parties seems to be an obstacle in access to justice which are contrary to aa the demands of Article 32, Article 14, Article 39A, Article 145
- Rules relating to the cost of litigation
- Rules relating to relating to limitation

Thereafter Prof. Menon, discussed the following points:

- Backlogs and long pendency is because of the systemic defects which are the creation of judges and lawyers
- Procedural factors contributing to inhabiting access to justice

- Discontinuity, repetition and fragmentation of the legal process without early or accountable judicial interventions such as court administration in peace management mechanisms
- Limited opportunity or incentive for consensual settlements, including limited avenues for ADRs

Mr. Arvind P. Datar, the other speaker for the session discussed the following points :

- Massive change in various sectors but no change in the judicial system
- Need for survey amongst clients and trial court lawyers
- Procedures are well drafted but there is non-implementation of various procedures
- Discussed many provisions of CPC, like:
    - O.VIII, RULE 10
    - O.VIII, RULE 10
    - O XLIII, RULE 1(b)
    - O.IX, RULE 13
    - O.X, RULE 1 – NEVER IMPLEMENTED
    - O.X, RULE 1A – ADR – NO DATA
    - O.XI, RULE 21
    - O.XII, RULE 6

- Doubling and trebling of judicial productivity
- How to increase judicial output

**SESSION 10-** ***Instruments to improve feedback on Public Trust and Confidence***

- ***Academic Criticism***
- ***Reducing contempt actions***
- ***In house surveys***
- ***Allowing video recording of court proceedings***

**Speakers:** Justice Kurian Joseph and Prof. Upendra Baxi

**Chair:** Justice Sujata V. Manohar and Prof. Madhava Menon

Justice Kurian Joseph started the session and discussed the following points:

- The three individual values applicable to judges, advocates, ministerial staff, executive functionaries which are essential for the effective functioning of any court are - integrity, competence, and propriety
- A judge should have confidence in his judgment
- A judge should have confidence in what he handles with utmost moral conviction
- Independence, equality, fairness, impartiality and certainty are the five judicial making values applicable to judges
- Need for institutional approach in terms of certainty or in terms of consistency
- Whether the confidence of the public in courts has been shaken due to the way in which the courts handle contempt jurisdiction

The session was then addressed by Prof. Upendra Baxi. He deliberated on the following points:

- Importance of institutionality of the court

- Difference between social responsible critique of judges and social responsible criticism of judges
- Lack of studies on high court jurisprudence
- Whether the high court should follow very purposely every decision of the Supreme Court under Article 141
- Is the high court bound by manifestly wrong decision, when the Supreme Court violates its own rules and its own judgments
- How public trust weakens when the courts act against their own rules
- Whether the high courts are bound to follow a manifest violation of the Supreme Court rules under the doctrine of precedents.
- Does a manifestly illegal decision or a pervert decision bounds the high courts under Article 141
- The academics are Brahmanical in approach, and they indulge in criticism but not in critique of the judges or judiciary
- Distinction between episodic and structural issues before the judiciary
- Difference between a political state and a constitutional state

The conference concluded with a vote of thanks by Dr. Geeta Oberoi to all the resource persons.

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