

Medieval Responsa Literature on *Niddah*: Perpetuations of Notions of *Tumah* By Haviva Ner-David

Introduction

In Jewish religious practice, the menstruating woman is referred to as the *niddah*. Until the destruction of the First and Second Temples in 560 B.C.E. and 70 C.E., the *niddah* was restricted in two ways: she was barred from Temple worship and by extension kept apart from all foodstuffs and vessels that were used for Temple worship; and sexual intercourse with her was forbidden (for both man and woman) and punishable by *karet* (to be cut off from the nation). The first of these *niddah* restrictions was related to what is referred to in the Bible as *tumah*, and can be most approximately translated as ritual impurity. Menstrual *tumah*, or *tumat niddah*, was but one form of *tumah* mentioned in a list in Leviticus 15 of such ritual impurities contracted from bodily emissions, including also seminal emissions. The second, sexual, prohibition related to the *niddah* is found in a different section of Leviticus (verses 18:19 and 20:18). These verses are not in the context of ritual *tumah*, which is reversible and which carries consequence of being barred from the Temple; rather, they are found among a list of forbidden sexual unions, all punishable by *karet*, and all of which, if violated, result in another kind of *tumah*, moral *tumah*, which is permanent, and which, if enough is accrued, results in the exile of the nation from the Land of Israel.¹ Once the Second Temple was destroyed, however, while ritual *tumah* did not disappear, it became largely irrelevant, since with no Temple standing, there were no ramifications for the contraction of ritual *tumah*. It is only in the case of the

¹ There is no sexual prohibition attached to men who contract ritual *tumah* from bodily emissions, only to women. It should also be noted that the *niddah*, who is experiencing a normal, menstrual flow, and the *zavah*, who is experiencing an abnormal flow, became conflated into one category by the fourth century. I use *niddah* to refer to both of these categories.

niddah that one's ritual impurity status is still tracked and noted, since it is this status that determines whether the woman is sexually available or not. If a woman has contracted *tumat niddah* through a flow of blood from her uterus, she is also sexually off-limits; and therefore, due to this unique sexual prohibition attached to the *niddah*, menstruation is the only case among those listed in Leviticus 15 where laws relating to *tumah* are still in effect today. The retention of the *niddah* status and the laws and rituals surrounding her status, has resulted in the association of the *niddah*, and women in general, with *tumah*, in contrast to men. This does not reflect the theological and Jewish legal reality. In fact, all Jews today are ritually impure from *tumah* contracted from contact with corpses, since the ashes of the Red Heifer, the only means to reversing this type of *tumah*, are no longer available. Although *tumah* has not disappeared—having merely lost its practical relevance--even most religiously observant Jewish men ignore their *tumah* status. A more accurate description of the current reality is that religiously observant Jewish women today who practice the laws of *niddah* are actually ritually impure from bodily emissions less often than most men, since they rid themselves of this status through monthly immersion in the *mikveh*, the ritual bath.

In general, the status of Jewish women improved in the 900-1200 CE period.

As Jewish men became involved in money lending and commerce, rather than in agriculture alone, Jewish women also became more active in the public sphere and in economic life. Women also began to take a more active role in religious life, mostly as their exposure to the study of Jewish texts and to the performance of ritual subtly increased. Women were also granted more civil rights, as polygamy and unilateral divorce of the woman were outlawed. At the same time, however, we have no record

of significant contribution from women in the religious sphere; in contrast to the Christian and Muslim worlds, this period left no religious writings from Jewish women and no names of female Jewish mystics or scholars. One reason for this may have been the social imperative that women marry. Another reason may be the increase in superstition and belief in magic—in which women (especially menstruating women) were seen as dangerous and connected to witchcraft—as well as negative attitudes about women emerging from the philosophical schools of this time period. These trends, as well as a trend towards increased piety, meant that while in many areas Jewish law was moving towards improving the status of women, in the area of *niddah*, the reverse was true. In this period, the laws of *niddah* became much stricter, and notions of the *niddah* being both physically and spiritually dangerous, as well as a source and cause of sin, proliferated (Grossman 495-507). One of the many reasons for this was the perpetuation of *tumah*-related distancing practices associated with the *niddah*. These distancing practices took two forms: those related to home life and interactions with the husband, and those related to sacred worship and ritual.

Given the theological/Jewish legal reality, why are only women associated with *tumah* today? Why has *niddah* become the receptacle of all *tumah* ideology? There are various answers to this question. The phenomenon is a complex one and relates to attitudes towards menstrual blood and women in general that are not unique to Jewish culture, as well as to Judaism-specific ideologies, traditions, and religious laws. It is my intention in this article to address only one such aspect of this complex phenomenon, one that has received little attention in the literature devoted to *niddah*. I will demonstrate that in the post-Temple period, from about the tenth to the thirteenth century, central Jewish legal authorities reinforced folk customs that reflect the notion

that *tumat niddah* is still relevant, thus broadening the scope of *tumah* as it relates to *niddah* both conceptually and practically, and contributing to the notion that it is the *niddah* alone who is ritually impure in the post-Temple Jewish world. I will examine *responsa* literature, which is the body of writing consisting of recorded questions asked in writing of the leading Jewish legal authorities and the recorded answers sent by these authorities which emerged out of North Africa and Spain (or Sepharad) and Italy, France and Germany (or Ashkenaz).²

Babylonian Geonic Responsa Literature

The tenth-century Babylonian, Sherira ben Hanina Gaon (906-1006), was asked whether in Baghdad they should uphold the custom of not sitting upon the seat or bed of a *niddah*, and of preventing her from baking and cooking for the household.³

Whereas household members would previously have avoided sitting on surfaces upon which a *niddah* sat so as to avoid contracting *tumah*, and where the *niddah* would also have refrained from cooking for the household for this reason and out of concern that she may confer her *tumah* upon foodstuffs that may then be used for Temple worship, with no Temple standing, there is uncertainty whether it is still necessary to restrict the *niddah* in this way. The questioner explained that scholars had told the people that because they cannot be rid of more severe *tumot*, such as corpse *tumah*, and would therefore be ritually impure in any case there was no reason to uphold their restrictive practices. Furthermore, these scholars argued that the Rabbis in the Talmud forbid a *niddah* from performing only three chores for her husband--taking out his bed, mixing

² Jewish religious customs, and in some cases even laws, in Ashkenaz differed from those in Sepharad.

³ *Gaon* was the title conferred upon the Jewish legal authorities between the seventh and eleventh century in Babylonia, which was located in what now is Iraq. This *responsum* was preserved, in part, in a book of response of *geonim* (the plural of *gaon*) of the East and West, (*Teshuvot Geonei* subsect. 44) and also in Shalom and Hanoch Albeck's edition of Avraham ben Yitzhak of Narbonne's *Sefer Haeshkol*. Ginzberg published a manuscript from the Cairo Geniza of this *responsa* in his *She'elot Uteshuvot HaGeonim Min HaGeniza Asher BiMitzrayim*, 206-7.

his wine, and washing his hands and feet--and they did so because these were especially intimate acts and therefore were more likely to sexually arouse the couple and, therefore, were meant as a means to prevent sexual intercourse, not the contraction of *tumah*.⁴ Shriria Gaon's answer was that according to the letter of the law, these scholars are correct: first, there never was a prohibition against contracting *tumah*, even when there was a Temple standing (although Jews probably did try to avoid contracting *tumah* on some level, which is why women in *niddah* would have had separate vessels and sitting furniture), and second, those three restrictions mentioned in the Talmud were meant to prevent sexual intercourse with a *niddah*, not the contraction of *tumah*. He then went on to rule that this community should uphold their strictures out of the fear that introducing any leniencies in the area of *niddah* could lead to couples violating the sexual sin of not having intercourse with a *niddah*. This answer goes to the centre of this crux point of menstrual discourse. The fact that Sherira Gaon endorsed these strictures is striking, especially in light of the fact that he was such a strong advocate of upholding the Babylonian Talmud—in which it is stated that the only three restrictions upon the *niddah* in relation to her household duties are the three mentioned above--as the highest Jewish legal authority. What is fascinating is that he endorsed folk *tumah* practices only as a means to prevent the sexual prohibition from being violated, erecting a fence around the sexual prohibition. Even more than that, he did so knowing that most practitioners would have perceived these rules as being about *tumah* and not about sexual intimacy. This highly authoritative Jewish legal authority even advocated retaining folk *tumah*-related praxis around the *niddah* despite textual objection in the Babylonian Talmud.

⁴ See *Talmud Bavli*, Ketubot 61a.

Isaac ben Jacob Alfasi, a major Talmudic and Jewish legal scholar writing in Morocco and Spain in the eleventh century, was more explicit. The question put to him was whether one may sit on the seat of a *niddah* who has stopped bleeding, but who has not yet immersed in the *mikveh*, since she is still in her seven ‘clean’ days. This refers to the seven days the *niddah* is required, by rabbinic law, to count after the bleeding has stopped before she may immerse in the *mikveh*, thereby reversing her *tumah* status and becoming sexually available to her husband.⁵ His answer was that as long as a *niddah* does not immerse in *mikveh* water, she is still a *niddah*, and all the relevant laws apply to her. However, since the reason one might keep away from her chair or bed is ‘only so that the laws of ritual purity will not be forgotten among Israel,’ (*Sheelot Alfasi* 152) and since she has actually stopped bleeding and has washed in drawn water (that is, non ritual washing), one may sit on a chair she has sat upon or lay upon a bed she has laid on, because, technically speaking, it is permissible to do so even when she is actually bleeding. Alfasi was arguing that the custom of not sitting on the chair or laying on the bed of a *niddah* is a valid custom that is designed to prevent the laws of ritual purity and impurity from being forgotten, but that the custom was not so strong as to say that one who lays on the bed of a woman who is no longer menstruating but has not yet immersed in the *mikveh* is transgressive.⁶ The custom was strong enough to be in effect while she is actually bleeding, but not strong enough to be in effect in the case of a woman who is in her seven ‘clean’ days and therefore has not yet immersed. Like Shriria Gaon, Alfasi admitted to the irrelevance

⁵ According to biblical law, the *niddah*’s *tumah* status is reversed after seven days (the first day being the first day of menstrual bleeding), with no need to count another seven ‘clean’ days after the bleeding has stopped. It is the *zavah* who must count seven ‘clean’ days after her bleeding has stopped. However, according to rabbinic law, women must wait seven ‘clean’ days after the cessation of any flow of blood from the uterus.

⁶ This principle of continuing a practice that has no real halakhic significance so that it won’t be forgotten is found in three places in the Babylonian Talmud (*Talmud Bavli*): T *Eiruvin* 7a and *Bekhorot* 18b and 27a. Two of these cases are related to Temple worship.

of keeping this practice, since the Jewish laws of ritual purity and impurity no longer applied, advocating continuing the practice of not sitting on the bed of a *niddah* only so that these laws not be forgotten. Both of these major Jewish legal authorities reinforced *tumah* notions in relation to the *niddah* through the encouragement of keeping this practice alive, but both also acknowledged the practical irrelevance of *tumah* in post-Temple Jewish life.

Another important *responsa* on this subject was written by Joseph ben Meir ibn Migash, a major spiritual leader and scholar of Spanish Jewry in the twelfth century and a student of Alfasi. He was addressing the issue of a woman without a regular menstrual period and hence, in practice, deemed in constant *niddah* status. The questioner asked if this warranted a divorce in the sense that her husband could avoid paying her the requisite compensation (*ketubah*) that he would normally owe her upon divorce. A *responsum* with complex legal intricacies, two lines of it are crucial. Migash stated that: '[t]his situation prevents her from serving him, since she would forever be prevented from sexual relations and household duties, as is the custom in these parts.' Later, he explicates further that 'in these parts, when the woman is a *niddah*, she refrains from performing all household chores' (*Sefer Shealot Migash*, subsect. 129).

Migash's *responsum* gave evidence of, at least in twelfth-century Spain, a folk custom to keep a woman in *niddah* from going about any of her usual business, despite strong Talmudic argument against it. He did not in any way criticize this practice, but rather mentioned it as a matter of course, and even used it as part of his argument to prove that the woman with an irregular period should be divorced without her *ketubah*

money. He is willing to accept customs with no basis in Talmudic law that would leave this woman destitute. His *responsum* constitutes a reinforcement or even advocacy of this behaviour. This is not especially surprising, considering that he was a student of Alfasi. Nevertheless, it is indicative of the general pattern of reinforcing the continued practice of these *tumah*-related customs despite their irrelevance according to Jewish law and despite the lack of textual basis in the Talmud for their continued practice.

The *responsum* written by Maimonides, Moses ben Maimon, in the twelfth century was a reply to a question sent by Yosef ben Jaber in Baghdad, criticising Maimonides' stated position stated in an earlier *responsum* (*Sheelot Uteshuvot HaRambam subsect. 114, 197-8*). In this first *responsum*, Maimonides had allowed women to retain their custom of refraining from regular household chores in general during menstruation even though household chores were formally permitted, and then to return to these duties during their seven 'clean' days, refraining only from those interactions between husband and wife forbidden by Jewish law during *niddah*. Maimonides wrote that if the questioner is asking whether a woman counting her seven clean days cannot cook and knead dough, touch clothing, or walk on a mat or pathway before others, these are all allowed even during the days she actually sees blood, since the laws of *tumah* are no longer in force. He added that this is the accepted custom in most places, although in Egypt some have adopted much stricter Karaite restrictions upon a *niddah*.⁷

⁷ The Kairites denied the authority of the Oral Law and hence of the Talmud and were regarded as heretics by the mainstream 'Rabbanites'.

But whoever wants to be lenient can be lenient, and whoever is revolted by this because of pollution, or out of a desire to add a fence in order to distance himself from the *niddah*, he should do so. But if he understands this prohibition to touch foodstuffs or drink that which a *niddah* touched, and if he distances himself from them because he thinks it is forbidden, he has stepped outside the boundaries of Rabbinic Judaism and denied the Oral Law. (*Sheelot Uteshuvot HaRambam* 588-9)

Maimonides clearly distinguished between the *tumah* aspect of *niddah* and the sexual prohibition related to *niddah*. He was clear that there is no prohibition related to contracting *tumat niddah*, and he stated explicitly that in the rabbinic laws of *niddah*, the issue of ritual impurity had been replaced with the issue of preventing sexual intercourse. In fact, he even called one who thinks there is an actual prohibition related to touching food or drink which a *niddah* touches a heretic, probably because they are adopting Karaite customs. By allowing these customs to continue in the name of pollution, Maimonides allowed for the idea of *tumah* to remain in the consciousnesses of practitioners, acknowledging that *tumah* as far as it relates to entering the Temple is no longer a problem. He also reinforced the negative associations that were concomitant with *tumah*. In fact, he introduced the notion of polluted menstruate woman as a viable model with which to replace ritual *tumah*. This is really not that far from the biblical idea of *tumah* since, even if Maimonides did, the majority of practitioners would not have recognized the fine line between *tumah* and pollution.

Rashi, Rabbi Shlomoh ben Yitzhak, in eleventh-century France, when faced with the question of whether or not vessels a woman touches are considered *t'meim* (ritually impure) for her husband, answers that

vessels that a *niddah* touches today are ritually pure as per her husband, since people today are ritually impure from graves, and tents that contain corpses, and from rodents, and dead animals, and corpse *tumah*... however, we are stringent upon ourselves, and we don't eat from the same plate, and we don't eat from her leftovers, and we don't sit upon things she has sat upon, [and we don't touch her clothing] and we don't take anything from her hand, [but rather only from an intermediary]. [And to the best of our ability we distance ourselves from her]. And we give her separate vessels and plates, handkerchiefs and sheets, pillows and pillowcases, for her to use during her *niddah* period because of the concern that the couple may be lead to sin out of habit. But there is no prohibition on grounds of *tumah*. (*Machzor Vitri* 605-6)⁸

This *responsum* is revealing of the customs of the times, suggesting that, in eleventh- to twelfth-century France, Jews broadened the prohibitions laid out in the Talmud, so that women were effectively isolated from their husbands and households. No less fascinating in this *responsum* is Rashi's wording. On the one hand, he was insistent that there is no *tumah* prohibition; hence, technically, as far as *tumah* is concerned, her husband may touch vessels she has touched. However, he added that the custom is to be stricter and completely separate from a *niddah*, which means giving her separate vessels, not sitting on her seat or bed, not passing objects to her, and so on, in order to prevent the kind of temptation that can lead to sexual intercourse. Rashi himself would avoid the passing of keys between himself and his wife when she was in

niddah.⁹ He was not articulating a complete separation between sexual prohibition and ritual purity practices; rather, he was approving the application of *tumah* practices in order to prevent the violation of the sexual prohibition. Unlike the Talmud, which clearly forbids only those relations that have an overlay of sexual intimacy, Rashi is including such clearly *tumah*-related practices as sitting on a chair she has sat on, or using the same vessels she has used. Despite his belief that as regards the requirements of ritual law in relation to *tumah* there was no reason for the continuation of these folk customs, he encouraged them as an aid to the sexual prohibition. In the thirteenth century, Isaac ben Moses of Vienna quoted from this *responsum* of Rashi, saying that Rashi gives no reason as to the practice of these stringencies. He then suggested that the reason is that the *niddah* is dangerous, although he used the word *t'meah* to describe the *niddah*'s status.¹⁰ He then added that despite the fact that these are mere stringencies, it is praiseworthy of the women to keep them, and all stringencies that a person keeps in the area of *niddah* will bring him/her a blessing (subsect. 360). Despite the lack of basis for these practices in the Talmud and mainstream Jewish law, he displayed no reservations about encouraging their continued practice.

Yedidyah Dinari¹¹ correlates extreme twelfth-century and thirteenth-century distancing practices during *niddah* to the medieval notion that the *niddah* is

⁹ The version of Ehrenrich's *Sefer Ha'orah of Rabbeinu Shlomo B'Rabi Yitzchak* contains some significant differences. One is that he specifies that it is the husband who is permitted to touch vessels his *niddah* wife has touched; another is that he says that it is the vessels that she used, rather than sat upon, that she must wash in water. Ehrenreich's *Sefer HaPardes* has more differences, including a warning not to touch the *niddah*'s clothing and to generally try to distance oneself from her. Another significant difference is the inclusion of the word *viyihater* when referring to the washing of the clothing, implying that the clothing will not only become clean by washing them, but will also be ritually purified.

¹⁰ See Tosafot BT *Mesechet Shabbat* 13b, "*Biyimei Libuneich*".

¹¹ Nahmanides, or Ramban, also connects *niddah* to danger. See his Commentary on the Torah, trans. Charles B. Chavel, [New York: Shiloh Publishing, 1974], pp. 255-6 and 387-8.

dangerous. He concludes that '[i]t is not surprising that the danger of causing harm is expressed in the terminology of *tumah*. The expression, *t'meah*, relating to a menstruate woman, was very accepted, and therefore they used a known term, although it received a new meaning.' (321). Dinari draws a complete distinction between *tumah* and danger, stating that the danger associated with the *niddah* and not her *tumah* is the reason for these distancing practices, despite the fact that it is the language of *tumah* that is used to express these feelings of fear. Similarly, Charlotte Fonrobert addresses the issue of *tumah* terminology in Tractate *Niddah* of the Babylonian Talmud. Like Dinari, she claims that the use of *tumah* terminology in relation to *niddah* in this Tractate is a 'halakhic [Jewish legal] and conceptual misnomer, since the relevant laws of *niddah* do not concern ritual purity or impurity'. Furthermore, she refers to the use of this terminology as a 'linguistic slippage' on the part of the Rabbis that really refers to the sexual prohibition, and that this 'linguistic slippage introduced by the rabbis obscures what biblically and halakhically are two different conceptual frameworks for discussing menstruation.' (29) I would argue that, in fact, we should give more weight to the choice of words by the Rabbis in the Talmud and the medieval Jewish legal scholars in order to reach a deeper understanding of why specifically this *tumah* terminology is used in the place of the language of sexual prohibition. Moreover, whereas Fonrobert's model understands the two conceptual frameworks of *niddah* (the *tumah* framework and the sexual prohibition framework) as separate, my model understands these two conceptual frameworks to be intertwined.

The use of *tumah* terminology in relation to *niddah* even after the destruction of the Temple would not represent a mistake, but rather a meaningful act. These legal

scholars consciously applied *tumah* language, and it is important to note that by doing so, they were not misrepresenting the Jewish legal reality. The *niddah* today still is ritually impure, even if the only consequence of this *tumah* is her sexual status. Where these major religious authorities could have used the language of sexual prohibition, why did they choose not to? Dinari and Fonrobert argue that *tumah* terminology of the Talmud and later *responsa* lost all of its *tumah* meaning in this context, and that the rabbis who implemented these terms did so only because these were terms that were already in the Jewish legal lexicon, or, on the case of the medieval scholars, perhaps, because they are following in the footsteps of the talmudic Sages who also used this terminology loosely.¹² But *tumah* terminology cannot be separated from *tumah* ideology. It makes sense to assume that rabbinic scholars as well-versed in Jewish law as those quoted above used their language carefully, especially in this case, where there is no reason to assume they did not, since, as I explained above, *tumah* did not disappear with the Temple, but rather lost its practical application, except in the case of the *niddah*, where her *tumah* has the added ramification of causing her to be sexually off-limits as well as barred from the Temple, which was a characteristic all ritual impurities shared.¹³ Why assume, then, that these rabbis had no intention of evoking *tumah* by using that word, especially since they were using it in the context of the one case where *tumah* was still practically relevant (even if only as an indication of her sexual stats) – that of the *niddah*?

¹² Ullman points out that a binary relationship—meaning one name and one sense—is not always the case in language: ‘More often than not, several semantic relations are telescoped, with the result that more than one name is attached to one sense, and more than one sense to one name, within the synchronous system’ (106). He calls this ‘multiple meaning’, writing that ‘a word may retain its previous sense or senses and at the same time acquire one or several new ones’ (107). This, I argue, is the case with the term *tumah*.

¹³ The verse in the Bible (Lev. 18:19) warns against drawing near a woman who is in the state of *niddat tumatah* in order to have sexual intercourse. I am proposing a reading of this verse that presents her *tumah* as the reason for the sexual prohibition.

Dinari may be correct when he suggests that an impetus for many of these distancing laws may have been the fear of the *niddah*. But fear of the *niddah* and *tumah* are not necessarily incompatible ideas. With a range of possible interpretations of the *tumah* laws of the Bible, and it is likely that fear played a part in the formulation of these laws. Therefore, it is not necessary to make a total separation between *tumah* and fear of danger. *Niddah* being the only case where two types of *tumah*—ritual and moral—converge, one may even have expected notions of the *niddah* as dangerous to emerge, since the exile which results from moral *tumah* is a frightening prospect. Thus, even if many of the distancing practices mentioned in these *responsa* were a result of fear of the *niddah*, this does not mean that the *niddah* was seen as ritually pure. On the contrary, she was seen as ritually impure, a concept which included the notion that she was dangerous. All of the *responsa* examined here suggest a perpetuation of the notion of *tumah*. If those scholars using the language did not see ritual *tumah* as relevant to the *niddah*, their use of *tumah* language perpetuated notion of the *niddah* as ritually impure, even if contemporary cultural connotations and perceptions were that of danger or pollution. If their intention was to prevent sexual arousal and not the contraction of *tumah*, the result was the perpetuation of associations between the *niddah* and *tumah* in Jewish consciousness. Moreover, even if the experience of *tumah* among most practitioners of this ritual came to be about danger and pollution, not technical ritual *tumah*, this did not detract from the problem. In fact, it may even have made it worse, since what these authorities did was perpetuate already existing negative attitudes about the *niddah* and give them a legitimate religious framework and channel. Either way, the woman was seen as being the locus of *tumah*, even if this was reinterpretation of *tumah*.

The steps taken by these scholars in their *responsa* have had long-lasting effects. Menstruating women, and even women in general, are still perceived in the religious Jewish world to be at best more ritually impure than men, and at worst the embodiment of *tumah* itself. While the phenomenon I discuss above is not the only factor contributing to this, it is a major factor. While most *tumah*-related distancing practices determining the husband-wife relationship and the conduct of household chores are no longer part of *niddah* praxis, some do remain, among which are the practice of avoiding sitting on the bed, bench or couch of one's wife when she is in *niddah* and not eating from her dish or leftovers. I propose a careful use of *tumah* language in relation to *niddah*. Adhering to the language of sexual prohibition may of course not be a better choice, since this language also has negative connotations of sin and improper sexuality, and is just as likely to encourage misogynist attitudes as *tumah* language. This is why alongside change in praxis must go a change in ideology. It is now in the hands of women to reverse what was put in play centuries ago by refusing to abide by those few still remaining restrictions that hark back to *tumah* avoidance in order to reinterpret *tumah* so as to create a positive understanding of what it means to be a *niddah* and to replace medieval interpretations of *tumah* that include notions of pollution, danger and filth.

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