

BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU.

WP (C) NO. _____ /2020

C.M. NO. _____ /2020

1. Baridar Sangharsh Committee;

Through Its President;
Sh. Sham Singh; Age 48 Years;
S/o Sh. Gandharv Singh;
R/o Village Chandwa; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9419165451.

2. Vishal Sharma; Age 46 Years;
S/o Late Sh. Girdhari Lal;
R/o Village Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9018888000.

3. Kuldeep Singh; Age 45 Years;
S/o Late Sh. Krishan Lal;
R/o Village Pangal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9622044492.

4. Shankar Dass; Age 75 Years;
S/o Late Sh. Krishan Chand;
R/o Village Nalay; Post Office: katra District;
Tehsil, Katra; District Reasi;
Phone No. 9419164977

5. Romesh Kumar; Age 52 Years;
S/o Sh. Paras Ram;
R/o Garan; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 941910029

6. Bali Ram; Age 58 Years;
S/o Late Sh. Girdhari Lal;

R/o Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9419164303

7. Sudershan Singh; Age 36 Years;
S/o Sh. Shankr Singh;
R/o Pangal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No.9797519727
8. Mohinder Singh; Age 47 Years;
S/o Sh. Sansar Singh;
R/o Garan; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No.9906079500
9. Shankar Singh; Age 67 Years;
S/o Sh. Beli Ram;
R/o Garan; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No.9906131929
10. Manav Sanmotra; Age 35 Years;
S/o Sh. Sristi Raman;
R/o Hansila; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9419164951
11. Rattan Singh; Age 54 Years;
S/o Sh. Khem Chand;
R/o Parthal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9419869105
12. Ranjit Singh; Age 40 Years;
S/o Sh. Balwan Singh;
R/o Pangal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9419165150

13. Pashori Singh; Age 49 Years;
S/o Sh. Vakil Singh;
R/o Sirla; Post Office: Bhaga;
Tehsil, Katra; District Reasi;
Phone No. 9797640776
14. Kuldeep Singh; Age 55 Years;
S/o Sh. Amar Singh;
R/o Kotli Manotrian; Post Office: Bhaga;
Tehsil, Katra; District Reasi;
Phone No. 9596908345
15. Rattan Singh; Age 52 Years;
S/o Sh. Bachitar Singh;
R/o Butan; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9797675900
16. Onkar Singh; Age 57 Years;
S/o Sh. Krishan Chand;
R/o Pungath; Post Office: Aggar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 8082673976
17. Jagdev Singh; Age 47 Years;
S/o Sh. Rattan Singh;
R/o Bhagtha; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9419165079
18. Manohar Lal; Age 43 Years;
S/o Sh. Pathan;
R/o Bhagtha; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9906015306
19. Mohan Singh; Age 43 Years;
S/o Sh. Dharam Singh;
R/o ; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;

Phone No. 9596832397

20. Ravi Kumar; Age 44 Years;
S/o Sh. Kunj Lal;
R/o Saroon; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9419194416
21. Maan Singh; Age 43 Years;
S/o Sh. Krishan Singh;
R/o Parthal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9682632619
22. Balwan Singh; Age 43 Years;
S/o Sh. Veer Singh;
R/o Parthal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9419165953
23. Joginder Singh; Age 52 Years;
S/o Sh. Bodh Raj;
R/o Pruna Daroor; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9469601819
24. Sushil Sharma; Age 39 Years;
S/o Sh. Ram Rattan;
R/o Matyal Ward. No. 13 ; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 7006218131
25. Dilwar Singh; Age 61 Years;
S/o Sh. Ganga Ram;
R/o Chandwa; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9906076373
26. Harvinder Singh; Age 37 Years;
S/o Sh. Naseeb Singh;

R/o Chadwal; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9906231062

27. Balwan Singh; Age 43 Years;
S/o Sh. Hari Saran;
R/o Chandwa; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9858105712

28. Sohan Singh; Age 52 Years;
S/o Sh. Munshi Ram;
R/o Chandwa; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9797676015

29. Ajit Singh; Age 50 Years;
S/o Sh. Mani Ram;
R/o Sundrani; Post Office: Chariyal;
Tehsil, Udhampur; District Udhampur;
Phone No. 9149864355

30. Mohan Singh; Age 55 Years;
S/o Late Sh. Hari Chand;
R/o Ward no. 07 Uppar Bazar; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9858654342

31. Baldev Raj; Age 68 Years;
S/o Sh. Shiv Dass;
R/o Butan; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9906017470

32. Ravi Kumar; Age 56 Years;
S/o Sh. Devi Dass;
R/o Nalay; Post Office: ;
Tehsil, Katra; District Reasi;
Phone No.9469007917

33. Neeraj Kumar; Age 52 Years;
S/o Sh. Sham Lal;
R/o Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 7006924922
34. Pardeep Kumar; Age 49 Years;
S/o Sh. Bansi Lal;
R/o Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9906320393
35. Anil kumar; Age 61 Years;
S/o Sh. Dwarka Dass;
R/o Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 8492947009
36. Puran Singh; Age 63 Years;
S/o Sh. Gopi Chand;
R/o Tot; Post Office: Tot;
Tehsil, Bomang; District Reasi;
Phone No. 9906109285
37. Ramesh Singh; Age 55 Years;
S/o Sh. Dena Nath;
R/o Shari; Post Office: Bugdhar;
Tehsil, Bomang; District Reasi;
Phone No. 7006118753
38. Ramesh Singh; Age 35 Years;
S/o Sh. Kartar Singh;
R/o DeviGar; Post Office: Sukhalgati;
Tehsil, Bhomag; District Reasi;
Phone No. 9697185691
39. Bodh Raj; Age 45 Years;
S/o Sh. Lashu Ram;
R/o Sukhalgati; Post Office: Sukkhalgati;
Tehsil, Bhomag; District Reasi;

Phone No. 9697936651

40. Bed Pujari; Age 75 Years;
S/o Sh. Jagan Nath;
R/o Kadmal; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9596995550

41. Vrinder Kumar; Age 42 Years;
S/o Sh. Hans Raj;
R/o Nalay; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 8803743500

42. Kewal Krishan; Age 42 Years;
S/o Sh. Govind Ram;
R/o Pangath ; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9796238058

43. Pawan Kumar; Age 45 Years;
S/o Sh. Hukam Chand;
R/o Arli; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9859645070

44. Rakesh Singh; Age 36 Years;
S/o Sh. Mohan Singh;
R/o Kun Doarolia; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9419164781

45. Sewa Singh; Age 65 Years;
S/o Sh. Sansar Chand;
R/o Kun Doroian; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9419164781

46. Ashok Kumar; Age 58 Years;
S/o Sh. Des Raj;

R/o Kadmal; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No.9419695877

47. Surinder Kumar; Age 62 Years;
S/o Sh. Shiv Ram;
R/o Hansali; Post Office: Katra;
Tehsil, Katra; District Reasi;
Phone No. 9419164144

48. Sudershan Singh; Age 53 Years;
S/o Sh. Tej Ram;
R/o Sirla; Post Office: Bhaga;
Tehsil, Katra; District Reasi;
Phone No.9906041333

49. Baljit Singh; Age 33 Years;
S/o Sh. Ram Singh;
R/o Kotli Manotrian; Post Office: Bhaga;
Tehsil, Katra; District Reasi;
Phone No. 9419195013

50. Neelam Singh; Age 47 Years;
S/o Sh. Gandharv Singh;
R/o Sirla; Post Office: Bhaga;
Tehsil, Katra; District Reasi;
Phone No. 7889780921

51. Karan Singh; Age 53 Years;
S/o Sh. Rattan singh;
R/o S Pangal; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 9906067648

52. Gushi Ram; Age 50 Years;
S/o Sh. Ishar Dass;
R/o Sukhalgati; Post Office: Sukhalgati;
Tehsil, Bhomang; District Reasi;
Phone No. 9622266514

53. Chain Singh; Age 54 Years;
S/o Sh. Tirth Ram;
R/o Bhagtha; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9797639097.

54. Karan Singh; Age 34 Years;
S/o Sh. Krishan Singh;
R/o Pungath; Post Office: Agar Jitto;
Tehsil, Katra; District Reasi;
Phone No. 7889794516.

55. Angrez Singh; Age 54 Years;
S/o Sh Rattan Singh;
R/o Bhagtha; P.O Panthal
Tehsil Katra; District Reasi;
Phone: 9419164883.



...PETITIONERS

1. The Union Territory of Jammu and Kashmir
Through its Commissioner/Secretary,
Department of Law, Justice & Parliamentary Affairs.
Civil Secretariat Srinagar.

2. Shri Mata Vaishno Devi Shrine Board,
Through Its Chief Executive Officer,
Shrine Board Office; Katra (J&K).

...RESPONDENTS

IN THE MATTER OF: -

Writ petition under Article 226 of Constitution of India, for the issuance of an appropriate writ, order or direction:

- i) Declaring that ***The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988*** is ultra-vires the Constitution of India and that all Acts, Deeds and things done pursuant there-to or in consequence there-of, including all SROs, Bye-Laws, Circulars, Notifications, Agreements, Contracts etc. are Null and Void.
- ii) Without any prejudice to Prayer Clause (i) supra, Declaring Sections 2, 4, 5, 6, 7, 9, 10, 14, 15, 17, 18, 20, 21, 22, 23 and 24 of ***The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988*** as null and void being ultra-vires the Constitution of India.
- iii) In the nature of Mandamus Directing conduct of external audit of the Shri Mata Vaishno Devi Ji Shrine Fund since 1986 through a reputed audit firm or an Audit Institution which is Constitutional or Statutory in nature.

iv) Directing the Respondents to handover Management, Administration and Governance of Shri Mata Vaishno Devi Shrine, its Endowments including Land and Buildings attached or appurtenant and to the Shrine beginning from Katra upto the Holy Cave and the adjoining hillocks including other properties to the **Baridars**, the Religious Denomination here-in, in true letter and spirit of Article 26 of the Constitution of India.

Prayer for the grant of any other interim or final relief as may be deemed appropriate in the circumstances of the case.

MAY IT PLEASE YOUR LORDSHIP;

The petitioners most respectfully submit as under:-

1. That the petitioners are permanent Residents of the U.T of Jammu and Kashmir, Citizens of India competent to invoke the extraordinary writ jurisdiction of this Hon'ble Court for the enforcement of their Fundamental Rights as guaranteed under part-III of the Constitution of India.
2. That the petitioners are a Religious Denomination who had established Shri Mata Vaishno Devi Shrine centuries back and had exclusive privilege over it, the facts which were expressly recognised by the State before its take over in the year 1986. The petitioners are filing the

instant writ petition in order to safeguard and restore the rights of Baridars (Religious Denomination) as guaranteed under Article 25 (2)(a), 26, 29 and 31 A (b) of the Constitution of India.

3. That through the instant petition, petitioners are challenging the Constitutional Validity of *The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988* ("**the act**") on the ground that the same is violative of Article 25, 26, 29 and 31A of the Constitution of India. The petitioners are also seeking a declaration to the effect that all Acts, Deeds and things done pursuant to the coming in force of the act impugned or in consequence there-of, including all SROs, Bye-Laws, Circulars, Notifications, Agreements, Contracts etc. be declared as Null and Void. A copy of the impugned ***The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988*** is enclosed here-with and marked as **Annexure-I.**
4. That the petitioners would like to share a piece of information posted by the Shrine Board on its website acknowledging the fact that Baridars used to manage and control Shri Mata Vaishno Devi Shrine before its State take over in 1986. There is also an acknowledgement of the fact that take over was necessitated on account of mismanagement/ maladministration. The petitioners however strongly refute the charges of maladministration or mismanagement. The acknowledgements are available at **<https://www.maavaishnodevi.org/shrine-board.aspx>**; **last seen on 30.07.2020.** It says, "*Prior to the takeover, the management and control of the Shrine was with a private trust called the Dharamarth Trust and a group of traditional local residents called Baridars (so called because they collected their offerings as per their turn-bari). The takeover was necessitated considering the poor state of things and the absence of facilities for the pilgrims. While the offerings were*

pocketed by the Baridars, the other incomes including rentals and royalties were taken by the trust. However, there were very few facilities for the Yatries. The pilgrims who reached the Holy town of Katra from all over India with devotion and faith in their hearts were often met with all kinds of hardships, insensitivity and mismanagement.”

5. That subsequent to the passage of the impugned Act, the State has legislated Shri Mata Vaishno Devi Shrine Board (Advance Bye Laws) 1997; Shri Mata Vaishno Devi Shrine Board (Leave) Bye Laws, 1997; Shri Mata Vaishno Devi Shrine Board (Medical Reimbursement) Bye Laws, 1997; Shri Mata Vaishno Devi Shrine Board (Medical Reimbursement) Rules, 2007; Shri Mata Vaishno Devi Shrine Board Employees (Recruitment and Other Conditions of Service) Bye-Laws 1996 and The Jammu and Kashmir Shri Mata Vaishno Devi University Act, 1999. Copies of all these Bye-Laws and Acts are collectively enclosed here-with and marked as **Annexure-II.**

6. That petitioner No. 1 is the President of the Baridar Sangharsh Committee (*“the committee”*). The committee is un-registered body. It represents the entire Baridar Community and enjoys its unanimous and whole-hearted support. This Committee was formed by the Baridar Community in the year 2014 to fight for the cause of Baridars, the most specific being fighting for the Rights of the Baridars in administering, managing and governing Shri Mata Vaishno Devi Shrine once again strictly in terms of Article 26 of the Constitution of India. Petitioner No. 1 has been authorised by the Baridar Sangharsh Committee to represent the committee as well as the entire Baridar Community in representative capacity in the instant writ petition. The approximate population of the Baridar Community is around 35,000. A resolution to this effect was passed by the committee in its meeting which happened

on 21.07.2020. A copy of the Resolution passed by the Baridar Sangharsh Committee in its meeting dated 21.07.2020 authorising Petitioner No. 1 to represent it and the whole Baridar Community in the instant writ petition is enclosed here-with and marked as **Annexure-III.**

7. That the petitioners 2 to 55 also belong to the Baridar Community. They are also entitled to approach this Hon'ble Court for the enforcement of fundamental rights available to Baridars as a Denomination envisaged under Article 26. The Baridar Sangharsh Committee endorses the right of petitioner Nos. 2 to 55 in approaching this Hon'ble Court for seeking the enforcement of Baridars' *Denominational Rights* enshrined under Article 26 of the Constitution of India.

Brief Background of Temple-State Relations:

8. That the *Court of Directors* of the British East India Company in the year 1833, instructed the Indian Colonial Government that the interference of British Functionaries in the interior management of native temples, in the customs, habits and religious proceedings of their Priests and attendants, in the arrangement of their ceremonies, rites and festivals, and generally in the conduct of their interior economy, shall cease. Prior to this, the East India Company (EIC) was deeply involved in the administration of religious institutions and its officials would even appoint employees in Temples. In 1863, *the Religious Endowment Act (XX of 1863)* was enacted, which made it unlawful for any Government in India or for any officer of any Government **a).** to take over the superintendence of any land or other property belonging to Temple, Mosque or other religious establishment; **b);** to take part in the management or appropriation of any religious endowment; **c);** to

nominate or appoint any trustee in a religious institution or to be in any way concerned there-with.

9. That with the coming into force of Government of India Act, 1919, Indian Legislators came to power at Provinces. In 1926, the Indian Legislators rejecting the Colonial Vision of Secularism enacted the *Madras Hindu Religious Endowments Act, 1926* which virtually took over the management and administration of Hindu Temples in the Province. It established “*Boards*” appointed by the Government which would then manage and administer Hindu Temples. Temples’ surplus funds could be spent by the Boards themselves on any religious, educational or charitable purpose not inconsistent with their objects. That is how seeds of State Take Over of Hindu Temples were sown.

10. That the entanglement of the Government with religious institutions in India is impermissible in the United States of America (**U.S.A**). The First Amendment to the U.S Constitution prohibits Congress from making any law “respecting an establishment of religion.” The wall of separation between Temple and State in India was first constructed by a Colonial Government which wanted to distance itself from religions that it considered heathen and false. The Indian Political Establishment pulled the separation wall down as they erroneously believed and continue to believe that State Take Over of Hindu Temples essential even in a Secular State.

11. That in all the decades that Hindu Religious Institutions in Jammu and Kashmir have been under the thumb of the State, the ability of the Hindu community to administer its own institutions has been systematically clipped and pared down. Despite equally empowered in taking over management, administration and governance of religious

institutions belonging to other religions, the State in brazen violation of Article 14 has exercised its authority only against Hindu Temples.

Article 26; 25 (2) (a) and 31-A (b) of the Constitution:

12. That Article 26 of the Constitution being subject to *Public Order, Morality and Health* confers upon every *Religious Denomination* or any Section there-of: **a).** Right to **Establish & Maintain** Institutions for Religious and Charitable purposes; **b).** to **Manage** its own affairs in matters of religion; **c).** to **own and acquire** movable and **d).** immovable property and to **Administer** that property in accordance with law. Article 26 unlike Article 25 is not subject to other Articles of Part III. Article 26 safeguards and guarantees rights which such a denomination already had. In the instant case, Baridars, a Religious denomination are protected by Article 26 of the Constitution as they are the ones who had established the temple and always exercised/had the right to Manage, Administer and Govern the Shri Mata Vaishno Devi Shrine. The Impugned Act is violative of Article 26.

13. That **Article 25(2)(a)** empowers the State to legislate laws for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Article 25 is subject to public order, morality and health and to the other provisions of Part III of the Constitution of India. The Impugned Act is violative of Article 25 (2) (a) also.

14. That under **Article 31-A(b)**, the laws/legislations violating Articles 14 and 19 of the Constitution are saved/protected from being declared null and void only if the taking over of the management of any property by the State is for a limited period either in the public interest or in order

to secure the proper management of the property. The Impugned Act is doesn't qualify to be protected under Article 31-A (b) and is hence unconstitutional.

Shri Mata Vaishno Devi Ji:

15. That Shri Mata Vaishno Devi is the ***Kula Devi of Baridars***. The faith/doctrines surrounding a Kula Devi, are regarded by Baridars as conducive to their Spiritual Well being. It is one of the most ancient, revered and sacred shrines situated in the Shiwalik range of the outer Himalayas in the Jammu region of the State of Jammu and Kashmir (J&K). Shri Mata Vaishno Devi Ji is the incarnation of Vaishnavi (Shakti) who resided in the cave in petrified rock-form on the Trikuta Mountains. The abode of Shri Mata Vaishno Devi is inside the cave on Trikuta Hill, a three-peaked mountain present in the form of petrified rock formation, the ***Pindis***. She is believed to be all benevolent and fulfils people's wishes (***Ichha Poori Karne Wali***). She calls people herself from far and wide (***Aap Bulati***).

16. That the Pindi to the extreme left is that of ***Maha Saraswati*** (whitish in color), in the centre of ***Maha Lakshmi*** (yellowish tinge) and towards the right is the holy Pindi of ***Maha Kali*** (black in color). The middle Pindi in the Sanatorium is also known as the Pindi of Mata Vaishno Devi. Vaishno Devi is said to be the only shrine in India in which all three forms of the Goddess are present in Svayambhu (self-born) form. She is considered to be the eldest among group of Goddesses, called the Seven Sisters, who are collectively worshipped as aspects of the pan-Indian Maha Devi (Great Goddess) who slew the buffalo demon Mahisasura.

Baridars:

17. That the Baridars (Turn-Holders) are a Religious Denomination having a philosophical belief, distinct cultural and religious practices. Mata Vaishno Devi is their Kula Devi. Baridars had established and owned the Shri Mata Vaishno Devi Temple/Shrine before it was taken over by the State. Baridars are a collection of individuals having a well defined system of belief (Shaktism). Shri Mata Vaishno Devi in the form of Holy Pindis is their Major Deity. It is a common organisation sub castes namely Samnotra Brahmans, Drora Thakkars, Manotra Thakkars and Khas Thakkars having a distinct name i.e. "Baridars".

18. That the Holy Shrine of Vaishno Devi Ji was discovered and established by Baridars under the Spiritual guidance of Pandit Shridhar Ji in the 10th Century A.D. He used to live in village Hansali at the foothill of the Trikuta Mountains. This village is in close proximity to the present town of Katra. However, it is the faith of Baridars that Pandit Shridhar Ji belonged to the Mahabharata Age and discovery and establishment of the Shrine dates back to the age of Mahabharata. There is sufficient anecdotal evidence available in public domain validating the veracity of this fact. The discovery of Holy Cave by members of the Baridars community inhabiting the areas around Trikuta mountain and Katra is a well versed fact. The Management, Administration and Governance of the Holy Shrine including Right of offerings always remained with the Baridars before its take over by the State in 1986. Even when it was being jointly managed by Baridars and Dharmarth which purports to be the Constitution of a Board of Trustees appointed by the State, the exclusive privileges of the Baridars were recognised and protected. The Dharmarth Trust had been setup by Maharaja Sh. Gulab Singh Ji in the year 1846. (1903 Vikram Era).

Baridari System:

19. That in the Baridari System, receiving of offerings was by turn which is known as Bari (Turn) in local language and with the passage of time the four communities' viz. Drora Thakkars, Manotra Thakkars, Khas Thakkara and Sanmotra Brahmans became the BARIDARS of the holy Shrine. The turn of each group would come on every 5th day and the group would be entitled to carry away the offerings of that day. Thus one every 5th day, the turn or Bari of one group would come to collect the offerings of the hold shrine. This arrangement continued to exist for centuries together.

20. That *THAKKARS DARORAS* and the *BRAHMIN SANMOTRA* were entitled to 3 shares and 1 share respectively out of $\frac{2}{3}$ rd of the total offerings. *THAKKAR MANOTRAS* and *KHAS* were entitled to share equally in the rest of $\frac{1}{3}$ rd of the total offerings. *DARORA THAKKARS* are further subdivided into 4 sub-castes namely *Darora Sank*; *Darora Jaga*; *Darora Pai* and *Darora Deoch*. Each one of them had one equal share. *BRAHMIN SAMNOTRAS* also divided their share into 4 shares which were received as: Brahmans from *Darya Branch*- 1 share; Brahmans from *Bairaj Branch*- 1 share; Brahmans from *Gobind Branch*- 1 share; Brahmans from *Ganesh Branch*- 1 share. From *Darora Thakkars*, *Darora Sank* and *Samnotras* from the branch of *Bairaj* had their turn together in one year and they divided the offerings in the proportion of 3:1 ratio (i.e. 3 Shares of *Darora Sank* and 1 share of *Samnotras* from the branch of *Bairaj*). Brahmans from the branch of *Darya* had their turn with *Darora Jaga*; Brahmans from the branch of *Ganesh* with *Daroroa Parath* and Brahmans from the branch of *Ganesh* with *Darora Deoch*, in each case Brahmans receives $\frac{1}{4}$ th share and *Darora Thakkars* receives $\frac{3}{4}$ th share.

Status of Baridars as Religious Denomination

21. That the right to share the offerings (Chadhawa) was restricted to members of the afore-mentioned sub-castes. The State in around 1907 Bikrami decided that each Baridar should pay the rent prescribed by the Maharaja to Dharmarth every year before he would be permitted to carry away his share of the offerings. Certain **obligations** were imposed on the Baridars from the year 1907 Bikrami onwards by the State. Those obligations included: **a)**. A duty to deposit a fixed annual sum with the Dharmarth Trust to be spent on arrangements for lodging and boarding of Sadhus visiting the Shrine; **b)**. To provide 3 Permanent servants, in addition to 6 Peons during the Mela/Yatra Season; **c)**. To pay for the Prasad and to arrange its transport from katra to Vaishno Devi Temple; **d)**. To arrange for the cattle owned by the Dharmarth Trust being taken away from one place to another; **e)**. To arrange for the carriages of the luggage of Government servant visiting the Shrine; **f)**. To keep the temple compound and the compound appurtenant thereto in a state of cleanliness; **g)**. To carry inside the temple the material required for worship by the priest; **h)**. To look after the visitors to the shrine who fall ill and make arrangements for the restoration or their health. These facts form part of earlier Judicial pronouncements, the copies of which are annexed with this petition. Other factual details are taken from a book published in 1998, authored by Ex CEO of the Shri Mata Vaishno Devi Shrine Board Sh. Anil Goswami (IAS) titled Vaishno Devi- The Shrine, an extract of which shall be produced before this Hon'ble Court.

22. That an effective arrangement was made by Baridars to manage the affairs of the Holy Cave which included all the occupation rights from

performing of Holy Puja to the collection of offerings made and the maintenance of the Holy Cave and all endowments.

23. That the revenue record of the State which also includes official documents of the King's Era as late as 1007 A.D clearly establishes that Baridars were the ones who had owned, established, managed, administered and governed the Shrine. A Patta issued by Raja Kirpal Dev in 1064 Chait Bikrami Samvat (1007 A.D) in favour of 4 sub castes the Baridar Community records details about the share which was made available to all the above-mentioned sub-castes constituting the Baridars. A copy of the Patta issued by King Kirpal Dev in 1064 Chait Bikrami Samvat (1007 A.D) establishing the claim of Baridars is enclosed here-with and marked as **Annexure-IV.**

24. That an attested copy of the Rules/Bye Laws dated 21 Chet 2009 and 05 Baishakh 2010 (around 1953 A.D) of Shri Mata Vaishno Devi Sewa Committee, an earlier Committee of Baridars also records in para 1 that Baridars as a community "are serving the Asthan of Shri Mata Vaishno Devi and from the beginning are performing Pooja of the Asthan and are also making other arrangements like Ghoshalas, Wood, Fasts of Sadhus, Construction etc and from the beginning when the Asthan was created/ setup by the predecessors of Baridars and Baridars are getting the donations/offerings of the Asthan and will also get in future which is their right". A copy of the Rules/Bye Laws dated 21 Chet 2009 and 05 Baishakh 2010 (around 1953 A.D) of Shri Mata Vaishno Devi Sewa Committee is enclosed here-with and marked as **Annexure-V.**

25. The Fard Intiqhab Jamabandi Kharif 1971; Rabi 1972, related to Dhar Vaishno Devi, Tehsil Reasi, District Udhampur records that by virtue of Mutation No. 93 u/s 4 of the impugned Act, the land measuring 33,847 Kanalas and 08 Marlas in Khewat No. 1 Khata Nos.1 to 21 was ordered to be cancelled/deleted from the name of Dharmarth and attested in

favour of Shri Vaishno Devi through the Board. Under the “Name of the Tiilers/Tenants” column it is recorded that the “Holy Cave” (7 Marlas) comprised in Khasra No. 166 was in possession of Baridars. The exact words written are, “Department of Dharmartha, C / o Baridars”. A copy of the Fard Intiqhab Jamabandi Kharif 1971; Rabi 1972, related to Dhar Vaishno Devi, Tehsil Reasi, District Udhampur is enclosed here-with and marked as **Annexure-VI.**

26. That in case titled *Badri Nath & Anr. V/s Mst. Punna (Dead) & Ors.* (1979 AIR 1314) the Apex Court held the original plaintiff (*daughter of a Baridar*) entitled to receive a defined share in the offerings made at the Shri Mata Vaishno Devi Holy Shrine under the law of inheritance and by virtue of her father’s will executed in her favour. Her right to a share in the offerings was upheld because her father belonged to the community of Baridars thereby establishing that Baridars are a Denomination as is understood under Article 26 of the Constitution of India. A copy of the judgment passed by the Supreme Court in case titled ***Badri Nath & Anr. V/s Mst. Punna (Dead) & Ors. (1979 AIR (SC) 1314*** in which the Apex Court held *daughter of a Baridar* entitled to receive a defined share in the offerings made at the Shri Mata Vaishno Devi Holy Shrine is enclosed here-with and marked as **Annexure-VII.**

27. That some of the members of the Baridar community had earlier challenged the Constitutionality of the Act impugned here-in. The matter went right upto the Supreme Court and the Apex Court delivered a Judgment in the year 1997. It is pertinent to mention here that the reliefs sought in the instant petition were entirely different from the ones sought in this petition. The Constitutionality of the Act was challenged in a different context seeking absolutely different reliefs. The case was not made out under Article 26 of the Constitution of India. There the petitioners had sought compensation as envisaged under

section 20 of the act. Entitlement to Compensation for deprivation of Baridars' rights to receive offerings was to be adjudicated. In any case, the law as it has evolved on denominational rights under 26 supports the instant petition in particular given the dictum of the Supreme Court in the Chidambaram Temple case. A copy of the Judgment passed by the Apex Court in case title Bhuri Nath and Ors. V/s State of J&K and Ors. AIR 1997 SC 1711 is enclosed here-with and marked as **Annexure-VIII.**

28. That the Advocate of the petitioners filed an application dated 11.07.2020 under Right to Information Act, 2005 before the P.I.O of the Board. The Shrine Board didn't reply as on the date of filing this writ petition. A copy of the RTI application dated 11.07.2020 filed by the Advocate of the petitioners before the PIO of the Board which remains unanswered as on date is enclosed here-with and marked as **Annexure-IX.**

Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988.

29. That the Preamble of the Act manifests that the Act came to be passed "to provide for better management, administration and governance of Shri Mata Vaishno Devi Shrine and its endowments including the lands and buildings attached, or appurtenant, to the Shrine, beginning from Katra up to the holy cave and the adjoining hillocks currently under the management of the Dharmarth Trust". Section 2 gives to the Act overriding effect and envisages that the Act shall have effect, notwithstanding anything to the contrary contained "in any law or in any scheme of management, decree, custom, usage or instrument". The Act consists of, in all, 25 Sections. Section 3(a) defines the "Board" to

mean "the Shri Mata Vaishno Devi Shrine Board constituted under this Act". Section 3(b) defines "Endowment" to mean all property, movable or immovable, including the idols installed therein. Section 4 vests the ownership of the Shrine Fund in the Board envisaging that "the ownership of the Shrine Fund shall from the commencement of this Act vest in the Board and the Board shall be entitled to its possession, administration and use for the purposes of this Act".

30. That the Board gets constituted under Section 5. Sub-section (1) adumbrates that the administration, management and governance of Shri Mata Vaishno Devi Shrine and the Shrine Fund shall vest in the Board comprising a Chairman and not more than ten members. The composition thereof is elaborated with the a mandatory language, viz.. "shall be". Under clause (a) of sub-section (1) thereof, the Governor of the State of Jammu and Kashmir, and if the Governor be not a Hindu, then an eminent person professing Hindu religion and qualified to be a member to be nominated by the Governor, shall be the ex-officio Chairman of the Board. Clause (b) provides that a Governor shall nominate nine members in the manner indicated therein, viz. (i) two persons who, in the opinion of the Governor, have distinguished themselves in the service of Hindu religion or culture; (ii) two women, who in the opinion of the Governor, have distinguished themselves in the service of Hindu religion, culture or social work. especially in regard to advancement of women; (iii) three persons, out of persons who have distinguished themselves in administration, legal affairs or financial matters; and (iv) two eminent Hindus of the State of Jammu and Kashmir. Under the proviso, for a period not exceeding three months from the date the Act came into force, the Governor shall "act as and exercise all the powers of the Board under this Act". Sub-section (2) of Section 5 declares that a person shall not be eligible for being

nominated as a member of the Board, if he suffers or incurs any of the disqualifications specified in Section 8.

31. That Section 19 extinguishes the rights of Baridars. Sub-section (1) thereof reads as under : "(I) All rights of Baridars shall stand extinguished from the date of commencement of this Act. Provided that the Governor may appoint a Tribunal which shall give personal hearing to the Baridars and representatives of the Board, shall recommend compensation to be paid by the Board in lieu of extinction of their rights. While making its recommendation to the Board, the Tribunal shall have due regard to the income which the Baridar had been deriving as Baridars. The Board shall examine the recommendations forwarded to it by the Tribunal and make such decision as it may deem/ appropriate. The decision of the Board should be final. Provided further that where the Baridar surrenders his right to compensation and offers himself for employment to the Board, the Board shall cause his suitability for such employment to be adjudged and may offer him employment in case he is found suitable by the Selection Committee to be appointed for the purpose subject to the Baridar giving an undertaking to the Board to abide by the administration and disciplinary control of the Board in accordance with bye-laws framed by the Board." Under sub-section (2), all existing employees of Dharmarth Trust engaged in any functions connected with the Shrine, unless they opt to the contrary, would be subject to the administration, disciplinary control of the Board. The terms and conditions of service shall be regulated by the bye-laws framed by the Board. By operation of sub-section (3), the tenants or lease-holders who were till the commencement of the Act tenants/licensee of the Dharmarth Trust are transposed to be tenants of the Board.

32. That Section 20 prescribes bar of suits and other proceedings. Section 21 gives power to the Board to make grants in favour of any institution for religious spiritual purposes. Section 22 mandates auditing of the accounts of the Board for every financial year by the Chartered Accountant to be nominated by the Board. Section 23 provides procedure for arbitration of any dispute arising between the Dharmarth Trust and the Board. Section 24 gives power to make bye-laws and Section 25 provides for repeal of the Governors Act No. XXIII of 1986.

33. That Sections 2, 4, 5, 6, 7, 9, 10, 14, 15, 17, 18, 20, 21, 23 and 24 are bad and unconstitutional since they confer unfettered powers on the State appointees to interfere with the religious and administrative affairs of the Hindu community and its religious and charitable institutions. Clause 5 (a) provides that Lt. Governor of the U.T of J&K shall be the Ex-Officio Chairman of the Board. The Impugned Provisions vest unlimited and unbridled powers to appointees/servants of the State, in the day-to-day functioning and administration of Shri Mata Vaishno Devi Ji Shrine, a Hindu religious institution to such an extent that the divide between secular aspects of administration and religious aspects is completely eliminated. All the resources of Hindu religious institutions vest completely in the hands of the Respondent and subject to its control, making it impossible for any religious activity to be carried out without the blessings of the servants/officers of the State.

Instances of Mismanagement by the Shrine Board:-

34. That the construction of a new pathway from Katra to Holy Cave by the Shrine Board despite strong resistance from the Hindu Community, is aimed at destroying the historical significance of the religious landmarks that exist across the traditional route namely Charan

Paduks, Ardha Kunwari etc. The same is a blatant assault by the Shrine Board on the faith of Mata Vaishno Devi's Bhaktas. News items have been published in several newspapers that the Shrine Board funds were squandered for throwing Iftaar parties in favour of members of a different religious group. Funds from the Shrine have been transferred/spent by the Board which are beyond the pale of Section 4 of the impugned Act. The same is not only Financial Mismanagement but a broad day light heist on Hindu sentiments. The Board never clarified on these public utterances. Since Audit reports prepared under the Act were never made public, the petitioners have a reason to believe that a critical review will reveal gross mismanagement by the Board.

35. That the Board has also employed several Non-Hindus at various posts in its administrative. Copies of the available Office memorandums dated 03.01.1998; 17.09.1998 and 03.01.1998 are collectively enclosed herewith and marked as **Annexure-X**.

36. That there is rampant corruption, commercialisation and numerous instances of inefficiencies in the day-to-day administration of the Shrine Board. The endowed properties are not properly protected and there is repeated non-realisation of the due income therefrom. The Board has caused irreparable and irreplaceable loss of heritage and antiques in the name of renovation and "development". Several incidents of theft of icons, idols and antique jewels have been brushed under carpet.

37. That it is evident from the above factual premise that the State/Board which is in existence at the expense of Shrine revenues has not exactly covered itself in glory in providing "proper and efficient management" to Shri Mata Vaishno Devi Ji Shrine, which is their statutory pretext for entering the administration of Temples. In light of the above facts and

submissions, apart from patent unconstitutionality, it is evident that the Shri Mata Vaishno Devi Ji Shrine, a religious institution of the Hindu community suffer almost irreparable, irreversible and incalculable degradation at the hands of the Board. Therefore, it imperative that State role is limited to the issue of addressing mismanagement only when it arises and allowing the Baridars, a Religious Denomination to run its own religious institutions with autonomy, transparency and accountability.

38. That the challenge to the impugned Act is independent or without prejudice to the acts of mismanagement of the Shrine Board. It is contended that the very nature and framework of the Act apart from violating Fundamental Rights of the petitioners also enables excessive exercise of discretion by members of the State in relation to a Religious Institution. Even if it is contended that the State role is primarily in relation to Secular activities, it is clear that the States' control is limited to regulation or restriction of secular activities associated with the religious practice but can never lead to entrenchment of the state by complete takeover of the administration. In the facts of the instant petition, it is evident that all members of the Board, including its ex-officio Chairman are State appointees which violates Articles 25(2)(a) and 26 independently and jointly.

39. That in light of the fact that the State records clearly establish and capture the relationship between the Baridar community and the Temple in question, members of the community have heritable rights in relation to the administration of the temple in secular and religious aspects. These heritable rights are again independent of the rights available under Article 26 of the Constitution.

40. That a blanket take-over of a Religious Institution by a Secular State in relation to which members of a certain community have vested heritable rights is also in violation of Article 31-A(b).

41. That members of Baridar Community also enjoy rights in relation to this institution as a section or class of citizens within the meaning of Article 29. Therefore it becomes evident that the Constitutional Validity of the impugned Act in light of these provisions has never been examined by any Court thus far.

42. That the fact that members of Baridar Community and their families have a distinct culture of their own owing to the *sampradaya* they belong to, only strengthens their claim under Article 29, apart from and independent of Article 26.

43. That when the Executive and the Legislature do anything that is arbitrary, or contrary to the Constitutional Provisions, thereby resulting into the violation of the Fundamental Rights of Citizens or of a Religious Denomination; any citizen or that Religious Denomination can approach the Constitutional Court for the issuance of a writ in-order to defend his/their Fundamental Rights.

44. That the petitioners are aggrieved of impugned act/subsequent subordinate legislations and invoke the writ jurisdiction of this Hon'ble Court for seeking issuance of directions to the Respondents as prayed for in the prayer clause on the following grounds:-

GROUND:

- a. Because the petitioners constitute a separate Religious Denomination within **Article 26** as recognised by several revenue documents, judicial interpretations and religious texts. The Fundamental Rights of the Petitioners have been violated as their rights to manage their own religious institution and its properties have been severely abridged by the State through the impugned Act.
- b. Because the impugned Act is violative of **Articles 25 and 26** of the Constitution and specifically 25(2)(a) and 26(d) of the Constitution. It indefinitely takes away the rights of Baridars (Religious Denomination) in Managing, Administering and Governing Shri Mata Vaishno Devi Ji Shrine.
- c. Because the impugned Act is also violative of **Articles 14, 29 and 31-A(b)**. The provisions of the impugned Act and rules has stifled the religious and cultural rights of the petitioners and the Hindu community.
- d. Because as opposed to the limited role envisaged for the State under **Article 25(2)(a)**, which is regulatory in nature, the impugned Act facilitates and strengthens the ability of the State to completely takeover the Shri Mata Vaishno Devi Shrine, a Hindu Religious Institution, which fate no religious institution of any other community has to suffer. Therefore, the framework of the Act is directly at loggerheads with the *dicta* of this Hon'ble Court in **Sri La Sri Subramania Desiga Gnanasambanda Pandara Sannadhi v. State of Madras, 1965 AIR 1683 and Dr. Subramaniam Swamy**

v/s State of TN (2014) 5 SCC 75 (“Chidambaram Temple Case”),

apart from violating Articles 14, 19, 25, 26, 29 and 31A.

- e. Because the Baridars, a Religious Denomination under Article 26 of the Constitution were administering the Shrine since 10th Century A.D, long before the commencement of the Constitution. Even the Monarch recognised their exclusive privilege over the Shrine and never disturbed their status.
- f. Because the Shrine/temple is **owned and established by the Baridars** and the rights of the Religious Denominational Institutions are to be preserved and protected from any invasion of the State.
- g. Because the Baridars maintained the Shrine since its establishment till its take over by the State in 1986. The right to maintain institutions necessarily includes the right to administer them.
- h. Because as envisaged under **Article 31A (b)**, the impugned Act didn't provide the duration for which the scheme would remain in force and there cannot be a supersession of administration in perpetuity. The management must be handed over to the person concerned immediately after the evil stands remedied. Acts like the one impugned in the instant petition are always a temporary measure. Impugned Act is liable to be declared unconstitutional for its failure to prescribe the duration for which it will be in force.
- i. Because the impugned act altogether takes away from the Baridars , a Religious Denomination, their right to administer Shri Mata Vaishno Devi Ji Shrine, and vests it in some other authority. The same is violative of Article 26 (d) of the Constitution. The State through a law cannot divest the administration of a Religious

Institution or Endowment. The impugned act is hence violative of Article 26 (d).

- j. Because being a Religious Denomination, Baridars are entitled to takeover the administration of Shri Mata Vaishno Devi Ji Shrine. It is also because their exclusive privilege has been recognised and established over several centuries.
- k. Because the powers to supersede the functions of a Religious Denomination is regulatory, for a certain purpose and for a limited duration. The impugned Act has long outlived its utility on all the above counts. The existing force of the impugned law is virtually abrogating the Rights of Administration conferred on the Baridars.
- l. Because the permanent State take over of Shri Mata Vaishno Devi shrine offends the basic structure of the constitution as it acts as a pointer to the absence of secular credentials of the State. A State which professes to be secular cannot impose itself through a “service” particularly with respect to religious institutions. The State must maintain at the very least the same degree of distance from Hindu religious institutions as it does with Muslim and Christian institutions. There is no sanction in the Constitution for the State’s imposition on Hindu religious institutions alone.
- m. Because the modern Indian secular State cannot step into the shoes of Rulers of yore or even the Rulers of Princely States since they did not shy away from embracing their Hindu identity nor did they practice secularism in the manner it is currently practiced by the Indian State. Therefore, Hindu religious institutions have a legitimate Constitutional right to expect the State to maintain a safe distance from them so as to avoid being stifled by the bureaucracy of the State and the political and religious machinations of Governments who have vested interests in cultivating vote banks.

- n. Because the very existence of various other legislations including the one impugned here-in imposing a top-down structure only on Hindu religious institution to the detriment of the community's management structures is proof of the skewed application of the State's powers under Article 25(2)(a) wherein it chooses to exercise such powers in such a draconian exclusively in relation to the Hindu community. When evidently the State has the power to interfere with the religious institutions of all communities equally, but chooses to do so much more with one particular community and also benefits financially from such interference in the name of ensuring "proper management", it is a textbook instance of discriminatory treatment and arbitrary use of power.
- o. Because **Section 2** of the impugned Act is in direct violation of Article 26. Normally, it is also through a custom or usage that denominational rights are vested in a Religious Denomination.
- p. Because **section 4** of the impugned Act provides that, "*The ownership of the Shrine Fund shall, from the commencement of this Act, vest in the Board and the Board shall be entitled to its possession, administration and use for the purposes of this Act.*" The Board has been bestowed with such a far-reaching power in itself ought to shock the conscience of any reasonable person who believes that a modern Constitutional State must not involve itself in the running of religious institutions. It is not for the State to step in and appropriate the endowments of the religious institution but to allow the Religious Denomination to elect its representatives who can take a decision on their behalf. Section 4 read with **Section 17** is preposterous. Section 17 vests in the Board unbridled and unfettered powers of alienating moveable as well as immovable property of the Shrine. Section 17 of the act is in stark contrast to **Section 43 of the J&K Wakaf's Act,**

2001 which provides for a blanketed prohibition on “*permanent alienation of Wakaf Property*”. Under section 17 of the impugned Act, while alienating moveable property, previous sanction of the Board should suffice. In case where an immovable property is being alienated, a resolution passed by the Board will pave way. It is painful that there are no metrics spelt out whatsoever on the basis of which either the sanction is provided or a resolution is passed. This is all whimsical, capricious, arbitrary and unreasonable. Importantly, even if such a conclusion while giving sanction or passing a resolution is possible, it is not for the State to step in and appropriate the endowments of the institution but to allow the Religious Denomination to elect its representatives who can take a decision on their behalf. Since none of these issues have been remotely addressed by the provision, it is liable to be struck down as being violative of Articles 14, 25, 26, 29 and 31A.

q. Because the concepts of Temple and Deity are integrally intertwined in Dharmic traditions and the concept of Sampradaya (Religious Denomination) flows from the same. What Dharmic traditions call for in order to permit access to anyone into the Temple is faith in the Deity, the Sampradaya and the traditions of the Sampradaya. Temples are dedicated to Deities, which perform the role of personification of characteristics, and therefore conform to the concept of a Saguna form of worship, and opposed to Nirguna (worship of the formless). Clearly, Section 5 and Section 14 of the impugned Act are far removed from Dharmic foundations as possible, thereby rendering it incapable of being applied to Dharmic institutions such as the Temple. Therefore, Section 5 of the impugned Act ought to have called for faith in Shri Mata Vaishno Devi Ji as opposed to an abstract concept called “*person professing Hindu Religion*”. There is more obscenity in **Section 5 (b) (iii)** and

Section 14 as both provisions do not require conformity to either *faith in the deity* or *faith in Hindu Religion*.

r. Because under **section 14** of the impugned Act, the state has unbridled powers to appoint anyone professing any religion as officers and servants of the Board. This includes appointing people even from the Abrahamic Faiths. A proof of such appointments is provided in a preceding para of this writ petition. By not including "*faith in Hindu religion*" as one of the eligibility conditions for appointments under the Board, the impugned provision and therefore the Act betrays its Abrahamic foundations, which is unacceptable in so far as Hindu religious institutions are concerned. The Constitution does not permit imposing the underpinnings and value systems of one faith on institutions and adherents of another. Not only does this amount to discrimination against Hindus and their religious institutions under Article 14, it also violates their rights under Articles 25 and 26 since such a conceptual framework facilitates subterraneous Abrahamisation of the Hindu faith which the Petitioners have every right to resist, object to and protest against under the aegis of the Constitution through Constitutional means by way of the instant Petition.

s. Because **section 5 (a)** provides that "*The Lieutenant Governor of the Union territory of Jammu and Kashmir shall be the ex-officio Chairman of the Board*". This is a blatant State take-over of a denominational temple and another proof of the Government's intent to interfere with the autonomy of the Board to the detriment of the rights of the Hindu community and its religious institutions. The fundamental infirmity in **Section 5** is that as opposed to allowing the community to elect Board Members, the provision empowers the State to nominate/appoint them. This effectively paves way for subservience of the

Board to the Government. The State through LG UT of J&K has been cloaked with untrammelled powers to appoint non-hereditary members to the Board on the ground of "*Better management, administration and governance of Shri Mata Vaishno Devi Shrine and its endowments*". This makes a complete mockery of the rights of the Hindu community to manage its own religious institutions. As long as this provision exists, the fundamental rights of the Hindu community under Articles 14, 25 and 26 shall remain ephemeral and incapable of actual exercise. The entire scheme of the impugned Act goes well beyond the minimalist role envisaged for the State under Article 25(2)(a), which does not by any stretch of imagination permit a State appointee to entrench himself to such an extent where he can constitute and dissolve the Board according to his whims and fancies disguised in euphemism as his "*opinion*". Section 5 read with section 8 of the impugned Act renders Board Members as servants of the State. The State cannot act as a master in so far as Hindu religious institutions are concerned since the State is not in the business of running or managing the affairs of religious institutions. This ground is independent of the ground that the constitution of the board in perpetuity against the interests of the Religious Denomination is itself unconstitutional.

- t. Because **section 8 (a)** of the impugned Act dealing with disqualifications for membership of the Board, suffers from multiple infirmities. First, it is not sufficient for a person to profess Hindu faith in order for the person to be entitled to be appointed a Member of the Board. The person must have faith in Idol Worship of Deities and must also believe in the traditions and practices of the Temple to which he or she is appointed as a Board Member. Therefore, Section 8 (a) is violative of Articles 25 and 26 where applicable. Secondly, no State appointee or Bureaucrat can "supersede" and occupy the

hereditary position of a Baridar since it violates the traditions and practices of the religious institution and is also against all known canons of secularism. Thirdly, section 8 (g) of the impugned Act provides that even a non-Hindu can also become the Chief Executive Officer of the Board. Given the powers conferred upon the CEO, section 8 (g) is a direct assault on the practices, traditions and culture of the Hindu community in general and Baridars in particular.

- u. Because under **section 9** of the impugned Act it is provided that *“Where a Board is dissolved or superseded under this section, the Lieutenant Governor of the Union territory of Jammu and Kashmir shall assume all the powers and perform all the functions and exercise all the powers of the Board for a period not exceeding three months or until the constitution of another Board which ever is earlier”*. This essentially means that even a non-Hindu LG can assume all the powers/functions vested in a Board meant for managing/administering a Hindu Religious institution for a period of 3 months. It is inconceivable as to how such a mechanism is expected to give effect to the rights of the Hindu community to manage and administer its own religious institutions. The discriminatory nature of the mechanism is writ large. Clearly, it violates Articles 14, 25, 26 and 31A.
- v. Because **section 14** of the impugned Act vests the Chairman Shrine Board with powers to **a).** appoint the CEO Shrine Board and **b).** power to transfer, suspend, remove or dismiss any officer or servant of the Board for the breach of discipline, for carelessness, unfitness, neglect of duty or misconduct or for any other sufficient cause. This is coupled with **section 20** of the impugned Act which provides that, *“No suit or other proceedings shall lie in any court against the Board or*

its officers for anything done or purported to be done in good faith by it under this Act.” This is state entrenchment to an extent which is not envisaged under Article 25 (2) (a) which is only regulatory in nature. Section 20 of the impugned Act render Executive, the final arbiter in such issues, and allows it to influence administrative and disciplinary issues in Hindu religious institutions. Instead, an appeal remedy to a Court of law would be much more desirable. Therefore Section 20 violates Article 14, 25, 26 and 31A.

- w. Because **Section 21** provides that, *“the Board may make grants in favour of any institution for religious spiritual purposes”*. This is in stark contrast to **Section 11 (b) and 11 (d) of the J&K Wakaf Act, 2001** which permits the use of Wakaf money only for the purposes for which a Wakaf was created or intended and not for anything else. This is discriminatory and stands in violation of Article 14 of the Constitution of India.
- x. Because it is abundantly evident that despite the Constitution bestowing the Indian State with the power to only regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice, State Governments across the board such as the Respondents go well beyond regulation or restriction and also exercise their legislative and executive powers only in relation to Hindu religious institutions.
- y. Because **Section 22** of the impugned Act provides for the conduct of Audit of the Shrine Fund by a Chartered Accountant nominated by the Board itself. The arrangement suffers with the vice of conflict of interest and is hence arbitrary and unreasonable. When the Board is an interested party in the outcome of the audit, the State ought to delegate the audit to an independent external agency. Section 22 is in also in stark contrast to **section 66 (2) of the J&K Wakaf’s Act,**

2001 which provides that, *“the accounts of the Council and accounts of Tehsil Committee shall be audited annually by such auditor as may be appointed by the Government.”* The Wakaf Council unlike the Shrine Board doesn't have the power to appoint Auditors and hence the arrangement is accountable, fair and transparent. In fact the level of accountability is such that under section 85 of the j&K Wakaf's Act, 2001, the Government is duty bound to lay before each House of the State Legislature a general annual report on the working and administration of the Council and the administration of Wakafs in the State. Shrine Board is unaccountable to the Hindu community in general and the Baridars in particular and operates clandestinely under the cloak of transparency and accountability.

- z. Because the Shrine Board/State on many occasions has diverted the Shrine Funds to other purposes not envisaged under the relevant provisions of the impugned Act.
- aa. Because the State in the name of mismanagement has altogether taken away from Baridars their fundamental right to manage its own affairs and administer its own property as is understood under Article 26 of the Constitution.
- bb. Because since the Hon'ble Apex Court has repeatedly observed that religion must be kept out of politics, it is fair and reasonable to expect that even the State apparatus is kept out of religious institutions.
- cc. Because where any governmental action fails to satisfy the test of reasonableness and is found to be arbitrary, it would be liable to be struck down as invalid.

17. That the petitioners have not filed any other petition on same facts, in this Hon'ble Court, in the Supreme Court or in any other Court or Tribunal of this Country.

18. That all these grounds have been taken inter-alia without prejudice to each other and other grounds shall be urged at the time of hearing and arguments.

19. That the petitioners are invoking extra ordinary writ jurisdiction of the Hon'ble Court as no other equal efficacious or alternate remedy is available to the petitioner.

An affidavit in support of this writ petition is enclosed herewith.

IN THE PREMISES:-

It is, therefore, most respectfully prayed that keeping in view the submissions made herein-above and those to be urged at the time of hearing, the Hon'ble Court may very kindly be pleased to issue an appropriate writ, direction:

- a. Declaring that ***The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988*** is ultra-vires the Constitution of India and that all Acts, Deeds and things done pursuant there-to or in consequence there-of, including all SROs, Bye-Laws, Circulars, Notifications, Agreements, Contracts etc. are Null and Void.
- b. Without any prejudice to Prayer Clause (a) supra, Declaring Sections 2, 4, 5, 6, 7, 9, 10, 14, 15, 17, 18, 20, 21, 22, 23 and 24 of ***The Jammu &***

Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988 as null and void being ultra-vires the Constitution of India.

- c. In the nature of Mandamus Directing conduct of external audit of the Shri Mata Vaishno Devi Shrine Fund since 1986 through a reputed audit firm or an Audit Institution which is Constitutional or Statutory in nature.
- d. Directing the Respondents to handover Management, Administration and Governance of Shri Mata Vaishno Devi Shrine, its Endowments including Land and Buildings attached or appurtenant and to the Shrine beginning from Katra upto the Holy Cave and the adjoining hillocks including other properties to the ***Baridars***, the Religious Denomination here-in, in true letter and spirit of Article 26 of the Constitution of India.
- e. Prayer for the grant of any other interim or final relief as may be deemed appropriate in the circumstances of the case.

PETITIONER

THROUGH COUNSEL

Dated: 11.08.2020

(ANKUR SHARMA)

Advocate

BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU.

OWP NO. /2020

C.M NO. /2020

Baridar Sangharsh Committee & Ors. V/S State of J&K and ors

IN THE MATTER OF: -

APPLICATION FOR THE GRANT OF INTERIM RELIEF.

MAY IT PLEASE YOUR LORDSHIPS;

The petitioner/applicant most respectfully submits as under: -

1. That the petitioner has filed the above titled writ petition before this Hon'ble Court which is sure to succeed on merits.
2. That the averments made in the writ petition may be read as part and parcel of this application also in order to avoid repetition and for the sake of brevity.
3. That the petitioner has a prima-facie case and the balance of the convenience is also in favour of the petitioner.
4. That in case the relief prayed in the M.P. is not granted in favour of the petitioner, the petitioner shall suffer an irreparable loss and harm which will not be compensated later on by any mode.
5. That it will be in the interest of justice that the relief prayed in this application be granted in favour of the petitioner and against the respondents.

An affidavit in support of the application is enclosed herewith.

IN THE PREMISES: -

It is, therefore, most respectfully prayed that keeping in view the submissions made herein-above and those to be urged at the time of hearing, the Hon'ble Court may very kindly be pleased to

- i. Directing the Respondents to produce copies of the Audit Reports for the last 10 Financial Years prepared by the Shrine Board as are required under section 22 of the Impugned Act.
- ii. Prayer for the grant of any other interim or final relief as may be deemed appropriate in the circumstances of the case.

THE PETITIONERS

THROUGH COUNSEL

(ANKUR SHARMA)

ADVOCATE

DATED: 11.08.2020

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INDIAN LEGAL NEWS

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Baridar Sangharsh Committee & Ors. V/S STATE OF J&K & ORS
(PETITIONERS) (RESPONDENTS)

IN THE MATTER OF: -

AFFIDAVIT IN SUPPORT OF ACCOMPANYING
WRIT PETITION.

I, Sham Singh; Age 48 years, S/o Sh. Gandharv Singh, R/o Chandwa;
Post Office: Panthal Tehsil Katra; District Reasi, do hereby solemnly affirm
and declare that the accompanying writ petition has been read over and
explained to me and the contents of the para No. ____ to ____ of the writ
petition are true and correct as per my personal knowledge and those of
remaining paras ____ to ____ is based on legal advice.

I solemnly swear/affirm that this affidavit is true, no part of this is false
and nothing has been concealed.

Place: - Jammu

Dated: - 11.08.2020

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DEPONENT

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

Baridar Sangharsh Committee & Ors. V/S STATE OF J&K & ORS
(PETITIONERS) (RESPONDENTS)

IN THE MATTER OF: -

AFFIDAVIT IN SUPPORT OF ACCOMPANYING
M.P.

I, Sham Singh; Age 48 years, S/o Sh. Gandharv Singh, R/o Chandwa; Post Office: Panthal Tehsil Katra; District Reasi, do hereby solemnly affirm and declare that the accompanying writ petition has been read over and explained to me and the contents of the para No. ____ to ____ of the writ petition are true and correct as per my personal knowledge and those of remaining paras ____ to ____ is based on legal advice.

I solemnly swear/affirm that this affidavit is true, no part of this is false and nothing has been concealed.

Place: - Jammu

Dated: - 11.08.2020

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INDIAN LEGAL NEWS

DEPONENT

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

OWP No. _____/2020

C.M No. _____/2020

Baridar Sangharsh Committee & Ors. V/S STATE OF J&K & ORS

(PETITIONERS)

(RESPONDENTS)

IN THE MATTER OF: -

I N D E X

S. No.	Particulars	Page No.
1.	Writ petition with Affidavit.	
2.	Annexure-I: A copy of the impugned The Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988.	
3	Annexure-II: Copies of the Shri Mata Vaishno Devi Shrine Board (Leave) Bye Laws, 1997; Shri Mata Vaishno Devi Shrine Board (Medical Reimbursement) Bye Laws, 1997; Shri Mata Vaishno Devi Shrine Board (Medical Reimbursement) Rules, 2007; Shri Mata Vaishno Devi Shrine Board Employees (Recruitment and Other Conditions of Service) Bye-Laws 1996 and The Jammu and Kashmir Shri Mata Vaishno Devi University Act, 1999.	
4	Annexure-III: A copy of the Resolution passed by the Baridar Sangharsh Committee in its meeting dated 21.07.2020 authorising Petitioner No. 1 to represent it and the whole Baridar Community in the instant writ petition.	
5	Annexure-IV: A copy of the Patta issued by King Kirpal Dev in 1064 Chait Bikrami Samvat (1007 A.D) establishing the claim of Baridars.	
6	Annexure-V: A copy of the Rules/Bye Laws dated 21 Chet 2009 and 05 Baishakh 2010 (around 1953 A.D) of Shri Mata Vaishno Devi Sewa Committee.	
7	Annexure-VI: A copy of the Fard Intiqhab Jamabandi Kharif 1971; Rabi 1972, related to Dhar Vaishno Devi, Tehsil Reasi, District Udhampur.	

8	Annexure-VII: A copy of the judgment passed by the Supreme Court in case titled <i>Badri Nath & Anr. V/s Mst. Punna (Dead) & Ors. (1979 AIR (SC) 1314</i> in which the Apex Court held <i>daughter of a Baridar</i> entitled to receive a defined share in the offerings made at the Shri Mata Vaishno Devi Holy Shrine.	
9	Annexure-VIII: A copy of the Judgment passed by the Apex Court in case title Bhuri Nath and Ors. V/s State of J&K and Ors. AIR 1997 SC 1711.	
10	Annexure-IX: A copy of the RTI application dated 11.07.2020 filed by the Advocate of the petitioners before the PIO of the Board which remains unanswered as on date.	
11	Annexure-X: Copies of the available Office memorandums dated 03.01.1998; 17.09.1998 and 03.01.1998 establishing that Non-Hindus have been employed by the Board.	
12	C.M with Affidavit	
13	Vakalatnama	

DATED:- 11.08.2020

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FILED BY: -

(ANKUR SHARMA);

ADVOCATE

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.

OWP No. _____ /2020

C.M No. _____ /2020

Baridar Sangharsh Committee & Ors. V/S
(PETITIONERS)

STATE OF J&K & ORS
(RESPONDENTS)

IN THE MATTER OF:-

Memo of urgency.

MAY IT PLEASE YOUR LORDSHIPS

The petitioner above named respectfully submits as under:-

1. That the petitioner has filed the above titled writ petition along-with application for grant of interim relief in this Hon'ble Court which is sure to succeed on merits.

2. That the matter involved in the writ petition as also in the application for grant of interim relief is of emergent nature and in case the writ petition along-with application for interim relief is not taken up for consideration at an earliest, the very purpose of filing the petition shall become infructuous and the petitioner shall suffer an irreparable loss and injury.

In view of the submissions made herein-above, it is, therefore, prayed that the writ petition along with application for interim relief may kindly be taken up for consideration at the earliest in the interest of the justice.

PETITIONER
THROUGH COUNSEL

DATED: 11.08.2020

(ANKUR SHARMA)
ADVOCATE

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

**Baridar Sangharsh Committee V/S Union Territory OF J&K &ORS
(PETITIONERS) (RESPONDENTS)**

LIST OF DATES AND EVENTS.

S.No	Date	Events
1	10th Century A.D	The Holy Shrine of Vaishno Devi Ji (kula Devi of Baridars) was discovered and established by Baridars under the Spiritual guidance of Pandit Shridhar Ji. However, it is the faith of Baridars that Pandit Shridhar Ji belonged to the Mahabharata Age and discovery and establishment of the Shrine dates back to the age of Mahabharata.
2	1007 A.D (1064 Chait Bikrami Samvat)	A copy of the Patta issued by King Kirpal Dev in 1064 Chait Bikrami Samvat (1007 A.D) establishing the claim of Baridars that the temple was established by Baridars was issued.
3	21 Chet 2009 & 05 Baisakh 2010 (1953 A.D)	Document containing Rules/Bye Laws of the Shri Mata Vaishno Devi Sewa Committee which records that Baridars are serving the Sthan (Vaishno Devi Shrine) from the very beginning (right since its establishment by the Baridars) was attested and registered.
4	1971/72	Fard Intiqhab Jamabandi Kharif 1971; Rabi 1972, related to Dhar Vaishno Devi, Tehsil Reasi, District Udhampur recorded under the Tenants/Tillers column that the "Holy Cave" (7 Marlas) comprised in Khasra No. 166 was in possession of Baridars. The exact words are "Department of Dharmartha C / o Baridars".
4	1979	The Supreme Court in its judgment in a case titled <i>Badri Nath & Anr. V/s Mst. Punna (Dead) & Ors. (1979 AIR (SC) 1314)</i> recognised inheritable rights of Baridars in the offerings of Shri Mata Vaishno Devi Ji Shrine.
5	1986	Through the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1986 (Governor's Act No. (XXIII of 1986) the State in totality took over the Administration, Governance and Management of Shri Mata Vaishno Devi Shrine.

6	1988	The impugned Jammu & Kashmir Shri Mata Vaishno Devi Shrine Board Act, 1988 replacing the temporary Governor's Act (Supra) came into force.
7	2014	Baridar Sangharsh Committee was formed by the Baridar Community to fight for the cause of Baridars, the most specific being fighting for the Rights of the Baridars in administering, managing and governing Shri Mata Vaishno Devi Shrine.
8	11.07.2005	The Advocate of the petitioners filed an application under Right to Information Act, 2005 before the P.I.O of the Board. The Shrine Board didn't reply as on the date of filing this writ petition..
9	21.07.2020	A Resolution was passed by the Baridar Sangharsh Committee in its meeting authorising Petitioner No. 1 to represent it and the whole Baridar Community in the instant writ petition.
10	07.08.2020	Hence, the present writ petition.

DATED: 11.08.2020
PLACE: JAMMU

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THE PETITIONERS
THROUGH COUNSEL

(ANKUR SHARMA)
ADVOCATE

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR

ATJAMMU

Baridar Sangharsh Committee V/S U.T OF J&K & ORS

IN THE MATTER OF: - An application seeking extension of time in submitting Affidavits, Court fees and other requisite documents (Hard File).

MAY IT PLEASE YOUR LORDSHIPS :

The applicants most respectfully submits as under :

1. That the matter is of emergent in nature if the matter is not listed the applicants will suffer irreparable loss which cannot be compensated later by any means.
2. That due to prevalent lockdown arising out of Covid- 19, the petitioner/ applicant herein is disabled to collect and deposit the requisite court fees, Affidavits, hard copy and other attested documents along with the accompanying Writ petition.
3. That the applicants undertake that as soon as the normality is restored and the lockdown is uplifted, the applicants will deposit the hardcopy of the petition along with the requisite court fees, affidavits and other necessary documents in accordance with the rules.

An affidavit in support is enclosed herewith.

PRAYER

It is therefore most respectfully prayed that this hon'ble court may be pleased to allow the applicant to file the present writ petition and dispense with the requisite court fees along with other procedures in the interest of justice.

Applicants

Through Counsel

Place : Jammu

Ankur Sharma

Dated : 11.08.2010

Advocate

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
ATJAMMU

Baridar Sangharsh Committee V/S U.T OF J&K & ORS

IN THE MATTER OF: -

AFFIDAVIT IN SUPPORT OF APPLICATION.

I, Sham Singh; Age 48 Years; S/o Sh. Gandharv Singh R/o Village Chandwa; Post Office: Panthal Tehsil, Katra; District Reasi, do hereby state on oath/solemn affirmation that I have read the application and that the contents of paras No.____ to ____ of the application are true to my personal knowledge and those of paras _____ to _____ are true upon legal advice received by me which I believe to be true.

I solemnly swear/affirm that this affidavit is true, no part of this is false and nothing has been concealed.

Place:- Jammu
Dated :- 11.08.2020

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INDIAN LEGAL NEWS

DEPONENT

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

C.M NO. _____ /2020

IN WP (C) No. _____ /2020

Baridar Sangharsh Committee;

Through Its President;
Sh. Sham Singh; Age 48 Years;
S/o Sh. Gandharv Singh;
R/o Village Chandwa; Post Office: Panthal;
Tehsil, Katra; District Reasi;
Phone No. 9419165451.

...Applicants

VERSUS

1. The Union Territory of Jammu and Kashmir
Through its Commissioner/Secretary,
Department of Law, Justice & Parliamentary Affairs.
Civil Secretariat Srinagar.
2. Shri Mata Vaishno Devi Shrine Board,
Through Its Chief Executive Officer,
Shrine Board Office; Katra (J&K).

...NON-APPLICANTS

IN THE MATTER OF:-

Application seeking permission/leave of this Hon'ble Court in filing the above titled writ petition in representative capacity as per Order 1 Rule 8 of the Code of Civil Procedure.

Any other order or relief which this Hon'ble Court deems fit under the facts and circumstances of the case may also be passed in favour of the applicants.

MAY IT PLEASE YOYR LORDSHIPS;

The applicants most respectfully submit as under:-

1. That the petitioner is filing the above titled fresh writ petition before this Hon'ble Court in representative capacity.
2. That the cause/grievances projected and the relief sought in the instant writ petition is common i.e. common to the entire Baridar Community (*the class*). Therefore the petition is being filed in representative capacity through a member of the Class having common interest and common grievance against the Respondents.
3. That the Baridar Community convened a meeting on 21.07.2020 at Katra regarding the issue and authorised Sh. Sham Singh; Age 48 Years S/o Sh. Gandharv Singh, R/o Village Chandwa; Post Office: Panthal, Tehsil, Katra; District Reasi as representative of the whole Baridar Community for the purposes of filing the instant writ petition before this Hon'ble Court. Original Copy of the Community Resolution dated: 21.07.2020 has been annexed with the captioned matter. Although, a copy of the Resolution dated: 21.07.2020 passed by the Baridar Committee authorising the petitioner to file the instant writ petition in representative capacity is enclosed here-with and marked as **ANNEXURE-I.**
4. That on account of above-mentioned facts and circumstances, the petitioner is approaching this Hon'ble Court for filing the instant petition in representative capacity. The petition seeks permission/leave of this Hon'ble Court in filing the writ petition in representative capacity as per Order 1 Rule 8 of the Code of Civil Procedure.

An affidavit in support of the instant C.M is attached along-with.

IN THE PREMISES:-

It is, therefore, respectfully prayed that keeping in view the submissions made herein above and those to be urged at the time of hearing, this Hon'ble Court may be pleased to grant permission/leave to the petitioner in filing the instant writ petition in representative capacity in terms of Order 1 Rule 8 of the Code of Civil Procedure.

Any other relief which this Hon'ble Court deem fit and proper in the present set of circumstances and in the interest of justice.

PETITIONER

Baridar Sangharsh Committee;

Through Its President;

Sh. Sham Singh; Age 48 Years;

S/o Sh. Gandharv Singh;

R/o Village Chandwa; Post Office: Panthal;

Tehsil, Katra; District Reasi;

Phone No. 9419165451.

Dated:

Place:

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and
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