

Divorce Through Modern Means of Communication and Related Fatāwā of Saudi Arabia

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Abstract

Divorce is the most delicate and critical matter of family law that dissolves the bond of marriage. Regarding divorce people face many problems that they want to solve in the light of al- Qur'ān and Sunnah, but unfortunately, many people do not know how to do it due to having lack of knowledge about Islam and its teachings, so to solve these issues, they go to a learned and knowledgeable person, known as Muftī, who tells them the solution to their problems according to the teachings of al- Qur'ān and Sunnah. As today's era is called modern era and in this modern era there have been many modern inventions due to which the world has become a 'Global Village'. In today's time, such inventions have come into existence with the help of which people can talk with their loved ones in a few minutes and not only can send messages to them but can also see them directly. Some of these inventions are Mobile phone, Instagram, Twitter, WhatsApp, Messenger etc. Modern means of communication is also recognized in Saudi Arabia and its use is also very common there, so people also use these means for divorce. The present study explores divorce through modern means of communication in the context of Fatāwā. The Fatāwā issued by the Muftīs of Saudi Arabia are consulted to know whether divorce through modern means of communication is valid or not and the circumstances under which divorce can take place or not will also be highlighted.

Keywords: Fatāwā, Muftīs, Divorce, Modern means of communication.

Introduction

Family law is the most important branch of Islamic Law. There is a great importance of family in Islam because it is considered as the most important and basic unit of social organization. If its system continuous to function properly, it will bring prosperity and peace to the society but if its system is not going well then it will be harmful for the society. Divorce is one of the most delicate aspects of family law that dissolves the bond of marriage and effects the lives of the people very much. Although it is an act that is permitted in Islam but it is considered the worst action of all the permissible acts in Islam. Regarding divorce people face many problems that they want to solve in the light of al- Qur'ān and Sunnah but having lack of knowledge about Islamic injunctions, the muftīs of the area are mostly consulted to resolve such types of issues. Different ways are used by the people to divorce a wife, some people used to divorce a woman in verbal form, some used to divorce a woman in written form. In the present time, many modern inventions have come into existence including the inventions of modern means of communication such as mobile phone, instagram, messenger, facebook, email and many others which have made this world, a global village. Modern means of communication have been gained a recognized

position in the world because due to these means, people living so far away can communicate with each other. These modern means of communications are also being used by the Muslims for the purpose of divorce in the modern time. Living far away from each other, the husband can divorce his wife by using any of the modern means of communication such as, phone call, voice message, text message, email, instagram, messenger and so on. Modern means of communication is also recognized in Saudi Arabia and its use is also very common there, so people also use these means for divorce. As these are the sources of communication that were not exist at the time of the last prophet Hazrat Muhammad (ﷺ) and there is no evidence regarding the use of these means even during the time of companions, so people get confused about the divorce granted through these means, whether divorce given through these means takes place or not. So, to clear their confusion, they approach muftīs, who clear their confusion by issuing Fatāwā in the light of al- Qur’ān and Sunnah.

Fatāwā is the plural of Fatwā which literally means “to clarify”, “to reveal” and “to answer”.¹ According to Arabic dictionary, al-Ifta, al-futya, al-futwa, and al-fatwā refer to “giving answer, or a reply, stating the decision of the law, respecting a question, or a commonly used, a notification or an explanation of the decision of the law, or in respect to a particular case, given by a faqih”.² Technically the word Fatāwā means, an answer to the inquirer’s question according to the teachings of Islamic law. It is basically a religious process that is performed at the request of a person who has a problem and he wants to solve that problem according to the teachings of Islamic law.³ Fatāwā means a legal judgement by a Muftī about a problem which is presented before him for the solution.⁴ It is also considered as a ruling on religious law based on the Holy Qur’ān, Sunnah and other sources of Islamic law.⁵ According to Qarrafī, Fatāwā refer to informing the people about the obligation and permissibility of an order of the Almighty Allah.⁶

Fatāwā issued by Saudi Arabian Muftīs regarding Divorce Through Modern Means of Communication

Saudi Arabia, the place from where Islam emerged, is the land of great scholars and muftīs. It is a country with rich assets. It has a leading position in the world due to its, geographical, cultural, social and economic benefits. A lot of muftīs are playing their role in the field of Fatāwā in the kingdom of Saudi Arabia. Here various questions asked by the people related to divorce through

¹ Ahmad bin Yousuf ad-Darwesh. *Fatawa kay Ahkam-o-Zawabit*, (Islamabad: Shariah Academy, Islamic International University, 2017), 15.

² Ibn Manzur, *Lisan al-Arab*, (Bayrut: Dar Sadir. Lane, 1968).

³ Shahbaz Ahmad Cheema. “Fatawa in Pakistani Courts: An Appraisal”, *SSRN Electronic Journal*, (2016): <https://doi.org/10.2139/ssrn.2814443>

⁴ Naseem Razi. “Fatwa as a Non-State Legal System: A Critical Analysis from the Perspective of Pakistani Society”, *Journal of Islamic Studies and Culture* 2, no. 4 (December 2014): <https://doi.org/10.15640/jisc.v2n4a2>.

⁵ Wan Mohd Khairul Firdaus Wan Khairuldin. “Fatwa Role in Education and Legal Dispute in Malaysia”, *International Journal of Academic Research in Progressive Education and Development* 7, no. 4 (December 2018): <https://doi.org/10.6007/ijarped/v7-i4/4978>.

⁶ Ahmad bin Yousuf ad-Darwesh. *Fatawa kay Ahkam-o-Zawabit*, 15. Also see, Al-Furooq 4, 53; Siffat ul-Fatwa wa al-Mufti wa al-Mustafti, 4.

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modern means of communication and the Fatāwā issued by the muftīs of Saudi Arabia about them are being discussed.

Divorce via Text Message or Email

Asim al-Hakeem was asked about the ruling of divorcing a wife through text message or email in a live program of Ask “Huda”. By responding to this question, he said that it is ambiguous. In explanation, he said that divorce has two types, first, Clear divorce (I divorce you) and second, Probable divorce (saying to his wife, go to your father’s home, I don’t want to see your face anymore or saying now its over between us). So, in probable divorce, the husband has to be asked, whether he wanted to divorce or not. Similarly, in divorcing through text message the husband has to be asked that whether he sent the message or not, maybe the husband says that he was just thinking about it and was writing in a draft and the message is sent by mistake or maybe he say that he was just joking with his wife and whatsoever, so it is clearly not a direct divorce, so he must be asked about it but if the husband confesses that he intentionally divorces his wife, then divorce will take place.⁷

Divorce Through SMS or Mobile Phone

Shaykh Abdullah al-Mutlaq was asked in a live program that is divorce done through phone or SMS. Answering this question, the Shaykh said that we buy or sell mobile phones. Mostly all our work is connected and done with the mobile phones. So, divorce through mobile phone occurs. Talking on the phone is like, two people are talking face to face with each other. Even if someone records on camera and says to his wife that ‘you are divorced’, then the divorce will occur. So, if anybody sends divorce through SMS, over mobile phones or by using any other online source, the divorce will take place because these all are means of communication. But while giving divorce, all the rules regarding it should be kept in mind and should not be given during the time, when it is prohibited to give divorce.⁸ The same question was asked by a woman from Shaykh Suleman al-Ajlan, that his husband divorced her over a mobile phone. He sent a message on mobile phone to his wife and divorced her. Will this divorce take place or not? Shaykh Suleman al-Ajlan replying to this question said that the divorce takes place through message on mobile phone.⁹ So, according to the both muftīs mentioned above, if a man divorces his wife, it doesn’t matter which method he uses, whether he divorces verbally or in writing, the wife will be divorced because if people can use mobile phones to communicate with each other, then they can also use them for the purpose of divorce.

⁷ Ask Huda KSA (Jul 25th 2015), accessed 16 June, 2023, <https://www.youtube.com/watch?v=toUEJjQA-8U&t=0s>

⁸ Shaykh Abdullah al-Mutlaq, “When does the divorce take place?”, 16 June, 2023, <https://youtu.be/rV74xolsW6Y>

⁹ Sulayman al-Ajlan, “Divorce Through Message on Mobile Phone”, accessed 17 June, 2023, https://youtu.be/Q_Q6qUgZwXw

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Divorce over Phone

A person asked about the ruling on divorcing his wife through mobile phone or a text message. Does sending a divorce message to the wife through a text message or uttering the divorce words over the mobile phone result in divorce or not? By replying, it is said that if a person says to his wife that, 'you are divorced or I divorce you', so it will consider a single divorce, whether he says it in the presence of his wife or in her absence using the mobile phone. Similarly, if he sends a text message to his wife, in which he wrote that "I divorced you" or he says to anyone else that he has divorced his wife and that he intended to divorce his wife, then divorce takes place in this way.¹⁰ The same question was asked from Shaykh Salih bin Fawzan al-Fawzan about the ruling of divorce over a mobile phone. A man said that he divorced his wife through phone and she heard the oath of divorce.

Now what is the ruling over that, is divorce occurred through this way or not?

By responding to this question, the Shaykh said that yes, if talaq is said, it occurs. Even if the one does not hear it or even it is given over a phone. If the word of 'Talaq' is uttered by the husband to his wife, divorce will take place.¹¹ Similarly, another person asked a question that he divorced his wife over the phone from Saudi Arabia while his wife was in Egypt. This was the first divorce. Then, she came to Saudi Arabia and I repeated the divorce. What is the ruling of giving divorce over the phone. Answering to this question, Al-Fawzan said that divorced has been occurred in this way. He said that, whether the husband divorces his wife over phone, verbally or by writing, divorce will take place.¹² According to the above-mentioned Fatāwā, once the husband pronounced the word of divorce to his wife, the divorce will take place whether the husband uttered the word of divorce in the presence of his wife or in the absence of his wife.

Divorce through Text Message without the Intention of Divorce

A man asked a question about the ruling to divorce his wife via text message without an intention. By answering, it is said that if the husband writes a message to his wife, in which it is written that 'you are divorced', whether the husband sends it through a mobile phone, paper or an email, that depends on his intention at the time of writing. If at the time of writing, the husband intended to divorce his wife, then the divorce will take place but if he wrote the message without intention, then divorce will not take place. In the support of this sayings, the opinions of the other scholars have also been quoted here, such as; According to Ibn Qudama, divorce cannot take place without uttering the words of divorce except in two ways, first, when the husband is unable to speak, he can divorce his wife by gesturing which will be affected and second, divorce can be affected in written form, if the husband intended to divorce his wife. Further the fatwa of Al-Shaykh ibn Baz is also quoted here, in which he was asked that a person was sitting with his wife and sister. The

¹⁰ Islam Question and Answer, "Divorce by Phone", accessed 18 June, 2023, <https://islamqa.info/en/answers/148520/divorce-by-phone>

¹¹ Fatwa Shaykh al-Fawzan, "Divorce over phone", (July 2020), accessed 16 June, 2023, <https://youtu.be/qUiMOFEzg4w>

¹² Fatawa Shaykh al-Fawzan, "Divorce over phone". (7th July 2020), accessed 16 June, 2023, <https://youtu.be/hwzV5RJUTow>

husband told his sister to bring a pen, then he wrote on the paper two times, ‘talaq, talaq’ without mentioning anyone. His sister became angry, she took the paper from her brother and wrote on it three times, ‘talaq, talaq, talaq. Then, the husband threw the paper towards his wife and said to her, “Look, what I have written is correct”? He further said that he did not intend to write these words to his wife. Shaykh ibn Baz replying to this question said that, divorce cannot take place without the intention of husband to divorce his wife, so this divorce does not count as divorce because the husband did not intend to divorce his wife. Rather, he was merely writing or he had intended something other than divorce. Shaykh ibn Baz also quoted a Hadith of the Holy Prophet ﷺ in the support of his opinion in which the Holy Prophet ﷺ said that,

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ

“Actions are but by intentions”.

So, from these opinions, it is proven that divorce cannot take place without the intention of divorce. The intention of the husband is essential for the effectiveness of divorce.¹³ So, according to the muftīs of Saudi Arabia, divorce cannot take place without the intention of divorce but when this question was asked from Muftī Muhammad Taqī Uthmani (Pakistani muftī) that if a person utters the word talaq in jest to his wife, does divorce take place, in the reply of which, Muftī Taqī Uthmani said that, by giving divorce in jest, divorce takes place. If a person utters the word of divorce to his wife that “I divorce you” or “you are divorced” or say to someone else that “his wife is divorced’ whether said in anger or jest, divorce will take place. To support his opinion, he has taken this Hadith as proof;

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“There are three matters in which seriousness is serious and joking is serious: marriage, divorce and taking back (one’s wife)”.¹⁴ So, if someone divorces his wife even in jest, the divorce will take place. Muftī Muhammad Akmal (Pakistani muftī) has also given verdict that if someone utters the words of divorce to his wife, the divorce will take place whether the husband has uttered the word of talaq with the intention of divorce or not.

Divorce via Text Message several Times, during the Wife’s Menstruation

A man said that he got married three years ago and is very ignorant about divorce. He asked someone about it that how many times he should say talaq, and that person explained to him that he had to say divorce three times to divorce someone and he thought that maybe he should say divorce three times in one sitting to separate from his spouse. He then said that he sent a text message to his wife in which he divorced her twice but he did not remember whether he intended to divorce his wife or not. The wife’s brother asked a hafiz who told him that divorce is not done by text message. The husband messaged his wife two different times. The first time, he divorced

¹³ Islam Question & Answer, “Divorce in Writing”, (1 December, 2005), accessed 17 June, 2023, <https://islamqa.info/en/answers/72291/divorce-in-writing>

¹⁴ Sunan Ibn Majah, *The Book of Divorce*, Chapter 13, Hadith 2039, vol.3.

her twice and the second time, he divorced her once. He also asked about the ruling on divorce during the menstruation. Another thing which he mentioned was that, he and his wife always had sexual relation with each other in each menstruation and he also saw a video of a scholar in which he said that, a husband cannot divorce his wife after having had intercourse with her because still he has feelings for her. He further said that his wife told him that they are still married because she did not hear him divorcing her in a state of anger and they need witnesses for the effectiveness of divorce. So, the husband asked about the ruling regarding divorce in this way, whether they have been divorced or not.

By answering, it is said that, divorce given in writing or by email or text message is deemed valid as long as there is an intention to divorce or is accompanied by signs that indicate an intention to divorce. But if it is written only to check one's hand writing or if it is written with the intention of teasing the wife and not with the intention of divorce, then it will not result in divorce. Then, it is said to the inquirer that, if you are not sure that what was your intention while writing the message of divorce or you forgot, then divorce occurs in this way. And for the validity of divorce, neither the hearing of the wife nor the presence of witnesses is necessary. According to many authentic opinions, divorce during the period of wife's menses or during the period of her purity in which the husband has had intercourse with her does not take place. And divorce is also not occurred in intense anger. And according to many of the opinions, when a person gives divorce three times in one sitting to his wife, it will count as one. For example, the husband says that, "you are divorced, you are divorced, you are divorced, or he says, you are thrice divorced" in one sitting, so it will count as one divorce.

For the support of this view, the opinions of the other scholars are also mentioned here. Shaykh ibn Uthaymin said that, the more authentic view in this matter is that, there is no triple divorce at all, unless the one give divorce and take his wife back or contract a new marriage, otherwise three divorces are not counted. Shaykh al-Islam, Ibn Taimiyah has also the same opinion. So, according to the discussion mentioned above, you (inquirer) can determine the number of divorces you issue.¹⁵ According to the majority of scholars including the four imams, Imam Abu Hanifa, Imam Malik, Imam Shafi and Imam Ahmad Ibn Hanbal, if the husband divorces his wife while she is menstruating, the divorce takes place. But at the same time, the husband is ordered to take his wife back and not to touch her until she becomes free from menstruation and then gets menses for the second time. Then, when she becomes pure from menstruation for the second time, then it depends on the husband, whether he keeps her or divorces her. But the muftis of Saudi Arabia have firmly held to the opinion of Shaykh al-Islam, Ibn Taymiyah, who said that there is no legal status of divorce during menstruation and a wife cannot be divorced while she is

¹⁵ Islam Question and Answer, "He divorced her via text message several times, and when she was menstruating, and when he was angry", (13 October, 2012), accessed 18 June, 2023, <https://islamqa.info/en/answers/183616/he-divorced-her-via-text-message-several-times-and-when-she-was-menstruating-and-when-he-was-angry>

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in the state of menstruation because it is against the commands of the Almighty Allah and His Messenger ﷺ.

To strengthen their verdict, they hold the Hadith in which the Holy Prophet ﷺ ordered Ibn Umar to take her wife back because he had divorced her while she was menstruating.¹⁶ The muftis of Darul Uloom Haqqania (Pakistan) were also asked, referring to the same incident of Abdullah Ibn Umar, whether divorce takes place during menstruation or not. In the reply of which, the muftis of Darul Uloom Haqqania said that menstruation is not an obstacle for the divorce to take place. If a husband divorces his wife in the state of her menses, so the divorce will take place. But they also do not consider it as a good action to divorce a woman while she is menstruating because in the state of menses, there is a temporary distance between the husband and the wife, lest this temporary distance led to divorce and destroy the family. In the incident of Ibn Umar, he was ordered to take his wife back for the same reason. Otherwise, by ordering Hazrat Ibn Umar to take his wife back, it can be inferred that the divorce had already taken place, but the Messenger of Allah, ordered him to return to his wife.¹⁷

Divorce Through Indirect Communication

A question was asked that the husband called his mother-in-law through a mobile phone and said to her that tell to your daughter that she is divorced from my side. He pronounced the word of divorce three times. Will the woman be divorced in this way or not? In response to this question, Shaykh Abu Hassan Sawati said that the wife has been divorced by the husband because the husband told his mother-in-law in clear words that she is divorced from my side, now, whether the mother has conveyed this message to her daughter or not, she is divorced because it is not a condition to convey this message to the daughter for the divorce to take place. He further said that as the husband has given three divorces at the same time, so the wife is divorced only once because three divorces given in one sitting are considered as single divorce.¹⁸

Giving three divorces at the same time is against the Sunnah and is not considered a good practice, but mostly people give three divorces at the same time in a state of anger. A large number of scholars are in favor of the fact that when the husband divorces his wife three times in one sitting, it will be counted as three divorces and in such situation, the wife will be forbidden for the husband. They can no longer reconcile or marry each other. But if the woman marries another man and he divorces her for some reason or if he dies after consummating the marriage, then she can remarry her first husband after performing the iddah. The scholars who consider three divorces as three at a time argue that Hazrat Umar bin Al-Khattab validated it for the people. The opinions of different schools of thought are also present regarding divorcing a woman three times in one sitting. According to Imam Malik, “No, matter how the husband gives three divorces, all

¹⁶ Sahih Al-Bukhari, *The Book of Divorce*, Chapter 1, Hadith 5251, vol.7. 117.

¹⁷ Maulana Abdul Haq et.al, *Fatawa Haqqania*, vol.4. 449-450

¹⁸ Shaykh Abu Hassan Sawati Sawal Jawab, “Mobile par Talaq Dayna”, accessed 18 June, 2023, <https://www.youtube.com/watch?v=Ppk6v825STA&t=1s>

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three will be valid and binding”.¹⁹ “Hazrat Imam Shafi, Imam Abu Hanifa, Imam Ahmad ibn Hanbal and the majority of scholars also believe that in the case of three talaqs in one sitting, the talaqs will take place”.²⁰

The scholars who consider three divorces granted in one sitting as three, also hold this Hadith in the support of their opinion;

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Makhramah narrated that his father said, I heard Mahmud bin Labid say: “The Messenger of Allah ﷺ was told about a man who has divorced his wife with three simultaneous divorces. He stood up angrily and said: Is the book of Allah being toyed with while I am still among you? Then a man stood up and said: O! Messenger of Allah ﷺ, shall I kill him?”²¹

In this tradition, The Holy Prophet ﷺ expressed His anger but did not declare three divorces as one divorce, but enforced all three.

Then, the Fatāwā issued by the companions regarding the granting of three divorces in one sitting are also present, such as; “Whenever any person was brought to Hazrat Umar who divorced his wife three times in one assembly, Hazrat Umar would punish him and also separate the husband and wife.”²² There are also some scholars, according to whom, triple divorce in one sitting is considered only one and the spouses can reunite as long as the woman is in her waiting period. And if she completed her iddah period, then they can marry with a new contract. As proof, they cited a proven Hadith from Ibn Abbas in Sahih Muslim, in which he said that, during the time of the Holy Prophet ﷺ and during the time of Abu Bakr and during the caliphate of Hazrat Umar for a period of two years, three divorces granted at a time were considered as one. Hazrat Umar said, that “The people have become impatient in a matter, in which they should be patient, so if we carry it out upon the people (it would be better). So, he carried it out upon them”.

They also cited another narration, in which Abu Sahba asked Ibn Abbas that “Were not three taken as one at the time of the Holy Prophet ﷺ and at the time of Hazrat Abu Bakr and during the caliphate of Hazrat Umar for a period of two years”. He replied, “yes”. They also cited proof in the narration of Imam Ahmad in his Musnad on the authority of Ibn Abbas, in which it is

¹⁹ Muhammad Taqi Uthmani, *Fatawa Uthmani*, 418. Also see Darul Fikr, Bairut.
²⁰ Muhammad Taqi Uthmani, *Fatawa Uthmani*, 418. See also Qadeemi Kutab Khana.
²¹ Sunan An-Nasai, *The Book of Divorce*, Chapter 6, Hadith 3430, Translated by Nasiruddin al-Khattab (Riyadh: Maktaba Darussalam, 2007), vol.4. 217.
²² Muhammad Taqi Uthmani, *Fatawa Uthmani*, vol. 2. 417. See also *Musannaf Ibn Abi Shaybah*, (Idarat ul-Quran wal Uloom al-Islamiyah), vol. 5. 11.

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stated that, Abu Rukanah divorced his wife three times and after this, he was very distressed by it. The Holy Prophet ﷺ returned his wife to him and said that,

إنها واحدة

“It is only one (divorce)”.

The scholars who counted triple divorce as one are, Hazrat Ali, Abdur-Rahman bin Awf and Az-Zubair bin Al-Awwam. There were also many scholars among the Taba'een who considered the triple divorce as one. Muhammad bin Ishaq, the author of Al-Sirah was also among those people who counted the triple divorce as one. Shaykh al-Islam, Ibn Taymiyah and his student Ibn Qayyim were also in favor of considering three divorces at a time as one.²³ So, the muftīs of Saudi Arabia have firmly held to the opinion of Shaykh al-Islam, Ibn Taymiyah and his student, Ibn Qayyim and they also consider three divorces granted in one sitting as one.

Conclusion

Islam accepts the validity of divorce through modern means of communication. The effectiveness of divorce through modern means of communication is also reinforced by the fact that the books of Fiqh also contain such incidents in which the divorce is given through the messengers. Then, with the passage of time, the process of giving divorce by post also continued and now in modern time modern means of communication have taken its place. Since modern means is also a medium of communication, the divorce given by it will also be effective which has also been proven from the context of Fatāwā issued by the muftīs of Saudi Arabia. But it is necessary for the effectiveness of divorce that the writing or voice is from the husband and no one else has sent a divorce message to a woman by using her husband's name. While giving divorce, one should also consider the situations in which it is prohibited to give divorce such as divorce in menstruation, triple divorce in one sitting etc. If divorce is being given also through modern means of communication, then these situations have also been taken into consideration. Even if the husband divorces his wife using any modern means of communication, whether he divorces his wife by phone, email or text message, it must be seen that how many times he has used the word of divorce, is the divorce given during the wife's menstruation or during purity, at the time of divorce he had the intension of divorce or not. Because if he pronounced the word of divorce three times in one sitting then, according to the Saudi Arabian muftīs, it will be considered as one and if he divorced his wife in her menstruation or without intension, then according to the muftīs of Saudi Arabia, divorce in these situations cannot take place.

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²³ Muhammad bin Abdul Aziz al-Musnad, Fatawa Islamiyah (Riyadh: Darussalam, 2002), vol. 6. 33-35.

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