

POST-DIVORCE WOMEN'S RIGHTS IN THE SAUDI JUDICIAL SYSTEM

ALZHRANI SOMIH TALAL¹
SEBGHATULLAH QAZI ZADA²

Women's rights around the world have been an evolving subject which attracts the attention of national and global organisations in defending their rights. Saudi women's rights are no exception; their rights have been the subject of discussions for many years. Saudi Arabia does not have codified regulation on personal status law such as marriage and divorce; it relies on Shari'ah provisions. As a result, many misconception and ambiguity arose claiming women's rights violations or unfairness implemented against women in the Saudi legal system. This paper attempts to provide four fundamental rights of post-divorce in the Saudi legal system. It demonstrates how and when these rights can be obtained and provides case laws where such rights have been obtained through the Saudi judicial system. Those rights are rights to previous outstanding expenses, their rights to accommodation and financial support during Iddah, their rights to child custody and child support, their rights to child visitation in case the mother is not the custodian. This research adopts a qualitative analysis approach to provide suitable and current information on the topic, the approach provides primary sources such as regulations, and case laws, and secondary sources. To have a codified regulation of personal status is a crucial towards dealing with misconceptions and ambiguity regarding women's rights in Saudi Arabia. Although the Saudi judicial system adopted an expeditious process for litigation, however, not having a codified regulation forces the parties to litigate their rights through court, which can result on delaying obtaining them or discourage the parties in claiming them.

INTRODUCTION

The institution of family is the core structure of a society. Islam recognises the importance of this institution and deals with it in a

¹ Lecturer, Majmaah University, Al Majma'ah, Saudi Arabia; PhD Candidate, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia, Email: s.lzahrani@mu.edu.sa

² PhD Candidate, Macquarie Law School, Macquarie University, Australia, Email: seb.qazizada@gmail.com

specific and respected manner to insure its protection and continuous. Islam starts this familial institution by forming a firm marriage contract that must be respected. When it is not wise for the husband and the wife to continue their marriage, it is possible to dissolve it by following a dignified and structured procedure, which ensures the rights of both parties.

The Saudi legal system follows the *Shari'ah* principles and procedures in establishing marriage and its dissolution as Quran and *Sunnah* are the fundamental sources of Saudi's law. After or during the dissolution of marriage, several issues arise such as rights that are either claimed or obtained by each party. These rights include financial rights and rights related to children such as custody, visitation and support. However, since the Saudi legal system does not have codified regulations related to personal status law, those rights can be ambiguous or unclear to many women and this issue created the misconception about unfairness regarding women's rights in Saudi Arabia. Therefore, the paper intends to clarify this misconception and to demonstrate the fundamental post-divorce rights of women in the Saudi legal system.

Saudi Arabia is going under major development in all sections of government ministries and agencies; improvement of women's rights is one focus of such development. The Ministry of Justice has issued many amendments in the legal procedures that serve the rights of women. Such as the Law of Civil Procedures article 33, 39, 57, and 169. (Law of Civil Procedure, 2013) In addition to the Enforcement Law article 74 and 92. (Enforcement Law, 2012). However, in regard of rights related to personal status including post-divorce rights, there are no specific codified regulation for personal status law which resulted in the creation of many misconception and ambiguity regarding these rights for women, and public in general. The paper outlines these rights and clarifies how and when women can obtain or claim such rights. The paper is going to discuss these rights and answer the following questions. Firstly, what are the legal rights of women after divorce in Saudi Arabia? Secondly, how and when those rights are obtained? Thirdly, are there any recommendations and suggestions to

improve obtaining and implementing these rights?

The paper uses a qualitative analysis approach to provide current and realistic information on the topic, the approach focuses on primary sources such as regulations and case laws, also, some secondary sources. These sources contribute in explaining the current status of post-divorce women's rights in theory and practice. In order to answer the research questions, the paper first demonstrates the legal system of Saudi Arabia and fundamental sources of the law. Second, this paper clarifies the methods of separation of Marriage in *Shari'ah* as some of the rights are connected to those methods. Third, it determines and explains the women's rights of post-divorce and last but not least, it provides case laws of each right to illustrates how those rights can be obtained. Demonstrating post-divorce women's rights in the Saudi legal system contributes to the awareness of public towards these rights since personal status laws are not codified under one specific regulation. On the other hand, the paper adds value to English literature, which lacks sources related to Saudi women's rights in general, and post-divorce women's rights in particular.

LITERATURE REVIEW

There are limited English literatures particularly in relation to post-divorce rights for women in Saudi Arabia. However, there are many Arabic sources that discuss these rights separately. Islamic jurisprudence literatures, on the other hand, have more comprehensive discussions and explanations of these rights but the implementations in the Saudi judicial system fall greatly under the discretion and power of judges.

Alfawzan (2003) wrote an Islamic jurisprudence book titled: "Al-mulakhas Alfighi". It contains 12 chapters in various subjects of *Shari'ah* jurisprudence; one of these chapters is the Chapter of Divorce, which discusses several provisions that occur during and after divorce. The provisions that are related to this paper are child custody and support, and wives' accommodations and maintenance (p. 395). The significance of this source is that Alfawzan provides fundamental *Shari'ah* rules; however, it may differ during the

implementation of legal procedures and court decisions. This paper provides the Saudi regulations regarding this matter and case laws to demonstrate the implementation of *Shari`ah* provisions.

Almuhemeed (2014) has discussed the temporary alimony for divorced women during *Iddah*, he demonstrated the jurisprudence and legal method of approving this alimony and provided case studies for both types. His article titled: "Judicial approval of Alimony for Divorced Women" compared the legal and jurisprudence grounds on proving the amount and the period in which divorced women have the right to accommodations and expenses. In addition, he explained the legal procedures for obtaining such rights (p. 368), however, there are many amendments and improvement occurred in the recent years regarding this matter which will be explored further in this paper. A comprehensive *Shari`ah* Jurisprudence study of Child maintenance in *Shari`ah* written by Nora Almohmadi (2014) who discussed in detail the *Shari`ah* provisions regarding child maintenance in general, with no special reference to whether the parents are divorced or still married. Almohmadi has defined child maintenance and demonstrated what is covered under these expenses such as a residence, services, food, clothes, medical care and protection, and education (p. 20). However, her article only discussed the *Shari`ah* provisions with no mention to the legal procedures or rules.

In regard to child custody's provisions, Albarak (2012) in his article "Child Custody provisions in Islamic Jurisprudence" studied who has the right to children custody and the conditions that must be applied to the custodian. In addition to the cases where custody is forfeited (p. 290). This article, as well, only discuss the matter under *Shari`ah* provisions without demonstrating how these rules are implemented in Saudi legal system.

Most of literatures in relation to post-divorce women's rights in the Saudi legal system are written in Arabic and are discussed separately, and mostly focused on *Shari`ah* rules without reference to its implementations into the Saudi legal system. This paper covers all missing aspects in the existed literature and attempt to

provide a summarised source that includes the *Shari'ah* rules regarding post-divorce rights of women and their implementation in the Saudi legal system.

THE SAUDI LEGAL SYSTEM

Before embarking on the main issues raised in this paper, it is important to discuss the sources of the Saudi law and the procedures of the judicial system. The Saudi system relies on the *Shari'ah* as its fundamental source of regulating and decision making. It is stated in Article 7 of the Basic Law of Governance in Saudi Arabia as: “[T]he Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the *Sunnah* of the Prophet, both of which govern this Law and all the laws of the State”. (Basic Law of Governance in Saudi Arabia, 7). Some regulations and laws have been codified in Saudi Arabia throughout the years such as Anti-Drugs Law, Anti-Bribery law, and Law of Protection from Abuse. However, Personal status laws are not codified, and the rules are extracted from *Shari'ah* sources from essential jurisprudence books.¹

There is a misconception about the availability of court cases to the public. Many sources have reported/// change to // it has been reported that the Saudi legal system does not publish its court report. This was a fact up until 2007 when the Ministry of Justice has started to publish documents containing case laws; the first publication consists of three volumes. Furthermore, in 2014, the Ministry published 30 documents which also contain various cases from different court sectors; the cases contain civil, criminal, and commercial cases, etc. followed by 14 volumes that were published in 2015. Those cases are not considered precedents in which judges are bonded by their rules. However, the main purpose of the documents is to be considered as guidelines for judges and sources for laypeople to be informed of courts procedures and rules. This paper examines three court cases related to child custody, financial support, and accommodation of women during *Iddah*.

METHODS OF MARRIAGE SEPARATION IN ISLAM

There are various ways for a married couple to end their marriage, and it should be clarified that ending a marriage is a right for both, husband and wife, unlike the common misconception about divorce that Muslim women do not have a right to end their marriage. Ending a marriage has two forms such as by divorce (*Talaq*) and by judicial decree.

First Form

Divorce must occur according to the conditions and based on special circumstances that are demonstrated in the Quran and *Sunnah*. There are two types of divorce, i.e., revocable *Talaq* and irrevocable *Talaq*. The former is when the husband utter *Talaq* once or twice in separate occasions in which he has the right to get back to his wife; the third pronouncement of *Talaq* is the final. The irrevocable *Talaq* is when the husband consumes all three *Talaq* in which there is no way of getting his wife back unless with a new contract and a new dowry. The husband must comply with the following instructions when deciding to divorce. Firstly, he must pronounce the divorce once. Secondly, he must divorce her during a period of purity 'after menstrual period' or while pregnancy. Thirdly, he must not have any intercourse with her during the period of purity. The wife then has to wait for three menstrual cycles in order for this divorce to be finalised. During *Iddah* of revocable *Talaq*, except for the first or second time, the husband has the right to get his wife back.

This waiting period is called '*Iddah*' which according to the Oxford dictionary of Islam "is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man, the waiting period after a divorce is three months, and after the death of a spouse it is four months and ten days. Any pregnancy discovered during this period is assumed to be the responsibility of the former husband" (Esposito, 2003). The purpose of *Iddah* is as follows:

1. Making sure that the separated woman is not pregnant, this method avoids mixing up progeny.

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2. Giving the husband the chance to review his decision in case he regrets divorcing his wife.
3. The *Iddah* shows the high status of marriage contract and its value.²

Those are three significant reasons that *Shari'ah* has demonstrated regarding the waiting period in which women must observe after a divorce. The demonstration above shows that *Talaq* is a method of separation available for men only. However, would a woman be able to use the exact method to separate herself from the husband? The answer is affirmative as a woman can also divorce with the husband delegating his wife to divorce herself.³ She may ask her husband to have the right to divorce herself when she wants. Similarly, all the above mentioned conditions of divorce apply also to the woman when she decides to end the marriage.

Second Form

Ending a marriage is by judicial decree, and it contains two methods. First is the *Khul'* and it can occur by mutual consent or by a judicial verdict. A wife may demand a separation of marriage through the court and this act is called *Khul'*. To obtain *Khul'*, the judge would ask the wife to return to the husband the dowry and any materials he bought her during marriage. Second method is *Faskh* which means annulment. Whenever there is a failure to fulfill the conditions of marriage contracts or the meaning of marriage is no longer existed such as a defect on either spouse, then, marriage can only be annulled by a judicial verdict (Hasbi & Hasbi, 2016, p. 55).

WOMEN'S POST-DIVORCE RIGHTS

It is very important for women to be familiarised with divorce and *Iddah* procedures in order to obtain their post-divorce rights because some of these rights are related to only the time of *Iddah*, and others continue after such period. As mentioned before, there are four rights a woman can obtain when her marriage ends as follows:

1. Previous outstanding maintenance;

2. Accommodation and financial support during *Iddah*;
3. Child custody and child support; and
4. Child visitation in case the mother is not the custodian.

Obtaining some of those rights may differ according to the type of divorce or dissolutions of marriage that occur between the couples. First situation is whether the divorce is revocable or irrevocable. Second situation whether there are children produced by the marriage. In the first case, if the divorce is the revocable type, then she has the right to stay home and to receive all kind of accommodation and financial support, she has the right to receive all benefits because she is still considered a wife. However, if the divorce is irrevocable, then she directly moves to another house of her own “she could move to her family’s house or get one of her own” either way her male relative such as a father, brother, son, or uncle must take care of all her accommodation. This right is a unique one that all Muslim women enjoy and it is not because the woman is unable to take care of herself. However, it is rather a privilege that she possesses which Islam insures for all female in the Muslim society.

In the second situation, if there are children; in the revocable divorce children would be staying home with their mothers during *Iddah*, therefore, children’s custody is not an issue. When *Iddah* ends and the couple have decided not to reunite and both claiming the right to children’s custody then the issue must be presented to a judge, and the decision will be based on the best interest of the child (Albarak, 2014, p. 291). In regard to child custody, whether *Iddah* ends or the divorce is irrevocable the Saudi judicial system insures the best interest of the child as clarified below. Here are several principles Issued by the Supreme Judicial Committee related to child custody:

1. Minor cannot be in the custody of whom he/she does not protect him/her or care for them.
2. A mother is entitled to be the custodian of a child if she is capable; whether the child is male or female.
3. A mature and adult female has the right to choose between staying in her mother or father’s home.

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4. The best interest of the child is observed in all cases.
5. Child support and visitation are continuously renewed matters and ruling in such matters depends on circumstances, conditions, and customs. (Principles and Decisions Issued by the Supreme Judicial Committee 2017).

Although it has been discussed the child custody as part of the legal rights that a woman can obtain after divorce, but in fact child custody is not a right to either parents, the judge always consider the best interest of the children and decides who is more capable to be committed to such responsibility.

LITIGATION PROCEDURAL RIGHTS

Aside from the four basic post-divorce rights, women also enjoy other privileges during the process of litigation:

1. The case shall be heard in absentia if the defendant does not attend the hearing and the case shall be decided in absentia if the defendant abstained from attending.⁴
2. If the defendant is absent in such cases, he shall be brought by force.⁵
3. The woman has the right to file the lawsuit in her town or that of the defendant.⁶

The followings are case laws from Saudi Personal Status Courts which oversee family matters and previously known as the General Court.

Wife's Maintenance for the Period She Was Married and During 'Iddah'

A woman filed a suit against her husband demanding maintenance beginning from the day he left her in her parents' house until the day she filed the case in addition for future maintenance. She mentioned that after a while he demanded that she comes back home, and he filed a case demanding her return, but she answered that he did not fulfill the condition in the marriage contract for an independent house, therefore, his suit was dismissed. Since the

husband does not have a right to leave his wife without maintenance or force her to live in his family's house, the judge granted the woman her request and decided that the husband pay his wife SAR800 for each month. During the lawsuit, the husband divorced his wife, thus, the maintenance ended the last month of the *Iddah*.⁷ There are two important points can be extracted from this case such as maintenance is considered as a debt, and a husband must pay it to his wife either the past or the future maintenance; and conditions stated in the marriage contract are crucial element to protect married women's rights. In this case, the woman could have lost her right to maintenance if she did not put the condition of an independent house in the marriage contract. Without this condition, the husband would not be obligated to pay her for the period she stayed in her parents' house.

Child Support and House Rent

A mother of two boys and a daughter filed a case against their father demanding child support and payment for a house rent. She claimed that he left them for five years without child support or rent for the house. The defendant was notified to appear in front of the judge, and he did not come the first hearing. Thus, a warrant of his arrest was issued, and he was brought the next date of the court hearing. The defendant approved the wife's claims, but he stated that he does not have any obligation to pay any support claiming that he was threatened with a knife and forced to leave the house and for that he will not pay any amount of child support. The judge asked the plaintiff to bring a reported detail of the expenses she claims, so, she promised to bring all documents in the next hearing. Then, given the age of the parties and the length of their marriage the judge in the next hearing decided to send the case to the reconciliation office to reconcile between the parties in the matter of child support. An attempt was made by the reconciliation office and the parties agreed that the defendant will give the plaintiff a sum of SAR120 thousand that will be inclusive of all expenses, and previous financial payments. For future expenses, he must pay SAR500 for each

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child and 1833 riyals for house rent.⁸ The case demonstrates that:

1. Whatever issues occur between the spouse neither has the right to evade their obligations and responsibilities towards their children.
2. The father is obligated to pay child support and provide a house or pay specific amount for house rent for the children while in their mother's custody.
3. Family courts refer each child support case to the expert committee which study the case by considering the age of the child and looking into the father's total income, then, they would estimate the expenses must be paid to each child.

The above two cases have proved that the right of women after divorce such as women have the right to stay home after divorce until *Iddah* is finished; they have the right to alimony until the last day of *Iddah*; if they have children, they have the right to child support and house rent even after *Iddah*. The remaining right considering children is the child custody and the following cases demonstrate this right in more details.

Child Custody

A mother filed a case in the city of Hail requesting the custody of her children; she has five children, 4 boys in the age of 15, 11, 9, and 5 years old, and a 14-year-old daughter. The older boy already lives with his mother and she request that all of her children be in her custody. Since the father reside in another city, the judge sent a copy of the case to the General Court in Hafr al-Batin to summon the defendant and present the plaintiff's case and hear his answer. The next hearing, both parties appeared before the judge, the defendant did not agree that the daughter be in her mother's custody because the mother lives alone, and it is more secure and suitable for his daughter to be in his custody. However, he agreed that the youngest should be with his mother and to let the rest of the boys decide where they want to live. Insert a note number for this reference "Collection of Judicial Decisions for the Year of 2013

(Majmooat Alahkam AlQadaeyyah), 2015, Vol. 11, p. 159, reference case number: 3356681.”.

The judge ordered that the children attend the next hearing. They were all presented before the judge along with their parents. After some discussion between the parties, the judge decided to refer the case to the reconciliation office. In 3 months, the case was brought back to the judge and the same issue persisted regarding the daughter, both parents want her in their custody. In this hearing, the mother claimed that the daughter has been abused and threatened by her father and that the daughter has filed a complaint against her father to the police. After reviewing the case that was filed to the police station, the judge made his final decision. All children will have the right to choose where they want to live, however, the youngest will be with his mother until he reaches the age of 7-year-old, then, he can choose to be with his mother or his father. The judge informed the father that he can appeal the decision within 30 days, and if he did not, then, the decision is final. The father appealed, however, the appeal court have approved the general court’s judgment.⁹

Granting the Custody of Children to their Married Mother

A man filed a suit against his previous wife, who is now married to another man, demanding the custody of his 12-year-old daughter. The respondent refused to give up the custody of her daughter claiming that she was not receiving the proper care when she was in the custody of her father. According to her, the daughter has been diagnosed with diabetes as a result of poor care and attention in her father’s house, in addition to her father’s absence most of the time because of his work in another city. The judge asked the father how long he stays away outside the house and where the daughter would stay when he leaves. The father responded that he would leave for work a week or two each month and his daughter would stay with his current wife in his house or his mother. After reviewing their statements, the judge decided that the daughter’s best interest is to be with her mother as a result of the father’s long absence from the house.¹⁰

Child Visitation

A woman filed a suit her ex-husband demanding visitation of her two sons who are in the custody of their father. They are in the age of two and one year old at the time of case hearing. Although the defendant was informed of the date of the hearing he did not attend, and the case was heard in absentia. The court, then, referred the case to the "Review Committee" to investigate the issue and the relationships of the plaintiff to the children and the defendant and to set the proper visitation dates and time. The next hearing, the review committee's report confirms the relationships of the parties and set the visitation date to be from Friday 10am to Saturday 6pm. The plaintiff demanded two days of visitation every week as it the precedents in visitation cases. The judge agreed to the plaintiff's request and granted the mother the right of 2 days visitation to be effective immediately. The defendant was informed of the decision and he appealed the decision which was then certified by the appellate court.¹¹

In this case, the right to visitation has been granted to the mother, and the case was heard in absentia because the father was informed but he did not attend, and the most important matter is that the decision was an "expeditious execution" order. This order is mentioned in Article 169/b of the Law of the Civil Procedures which states that: "The judgment shall be subject to expeditious execution, with or without bail as the judge may deem fit, in the following circumstances: the judgment involves alimony, breastfeeding cost, accommodation, child visitation, surrender of a child to his custodian, returning a woman to her *Mahrabm* or dissolution of marriage".¹²

CONCLUSION

To have a codified regulation of personal status is a crucial towards dealing with misconceptions and ambiguity regarding women's rights in Saudi Arabia. It must be clarified that the above discussed rights are obtained consensually without the need of litigation through courts. However, in case of disputing these rights, the paper presents those four fundamental post-divorce women's rights and demonstrated

the method of obtaining these rights through several case laws. Previous outstanding maintenance which women could not obtain during marriage can be litigated through court, and case laws have provided clear evidence of the possibility of obtaining such right. Accommodation and financial support during *Iddah* are limited to specific period after divorce and case laws also have proven the ability for women to receive this special right. The Saudi legal system has insured the post-divorce rights for both parties, and the court system adopts an expeditious process in enforcing such rights. It is the responsibility of each woman to be aware of these rights, the ministry of justice has publicised these regulations in paper and on their official website and social media's accounts as part of educating the public.

Specific procedures must be followed in order to enforce these rights and the Saudi legal system has been improving these processes to facilitate the implementation of these rights and smooth the transitions of children support and children custody from one parent to another, and the mother has the utmost rights to children's custody when the children are under the age of seven years old. The most significant matter of these rights is that only the father is responsible for child support. The mother can financially support her children if she desires but she is not obligated to do so. The best interest of the child is applied to all cases that involve children such as child support and custody. On the other hand, child visitation, previous outstanding maintenance and living accommodation are privileges that are solely for women after divorce. To conclude, despite the fact that the Saudi judicial system adopted an expeditious process for litigation, not having a codified regulation forces the parties to litigate their rights through the court of law which can result delay in obtaining these rights or discourage the parties in claiming as such.

Notes

- 1 Refer to the following source for list of Saudi Legal regulations: "Saudi Laws, Bureau of Experts at the Council of Ministries, Saudi Arabia", <<https://laws.boe.gov.sa/BoeLaws/Laws/Folders/1>> (accessed 30 July, 2019).
- 2 AlFawzan, 2010, p. 415.

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- 3 Al-Buhuti, 2010, pp. 1–561.
- 4 The Law of Civil Procedures. Royal decree No. (M/1), 2013, Article 57/1.
- 5 *Ibid*, Article 57/4.
- 6 *Ibid*, Article 39/2.
- 7 Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), 2015, Vol. 12, p. 78, reference case number: 3315262.
- 8 Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), 2015, Vol. 12, p. 320, reference case number: 307161127.
- 9 Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), 2015, Vol. 11, p. 159, reference case number: 3356681.
- 10 Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), 2015, Vol. 11, p. 267, reference case number: 3475176.
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- 12 The Law of Civil Procedures. Royal decree No. (M/1), 2013, Article: 169/b.
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- 24 Saudi Laws, Bureau of Experts at the Council of Ministries, Saudi Arabia. (n.d.). Retrieved July 30, 2019, from <https://laws.boe.gov.sa/BoeLaws/Laws/Folders/1>
- 25 Yarki, M. (2012). Procedures in the Dissolution of the Three Divorces. *Al-Adl Journal*, 55.
- 26 Principles and Decisions Issued by the Supreme Judicial Committee & the Permanent and General Committee of the Supreme Judicial Council & the Supreme Court between the Years of 1971 to 2016, First (Riyadh: Research Center of the Ministry of Justice, 2017), 197–98.
- 27 Codification of Judicial Rulings (Modawanat Alahkam AlQadaeyyah), (Ministry of Justice: The General Administration to Codify and Publish the Judicial Decisions, 2007).
- 28 Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), (Riyadh-SA: Documentation Center - the Ministry of Justice, 2015).
- 29 (Collection of Judicial Decisions for the Year of 2014 (Majmooat Alahkam AlQadaeyyah), 2017) Vol.9, p.420, reference case number: 34343062
- 30 (Collection of Judicial Decisions for the Year of 2013 (Majmooat Alahkam AlQadaeyyah), 2015) Vol. 12, p. 78, reference case number: 3315262.
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