The Stumbling of Fatwa and Its Impact On Islamic Societies

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ABSTRACT

The divergence in fatwas is a common matter; the Companions of the Prophet (pbuh) had different views on diverse issues; so had jurists to the extent that the volume of divergence in jurisprudence supersedes that of consensus. This is Allah's fashion in his creature; He endowed humans with disparate abilities and intellects. However, what we witness today in light of the changing events and current manifestations is a discord, never sensed by Muslims before. As a consequence, the expert as well as the common man at large has started to question some fatwas on contemporary matters, as being driven by a political agenda rather than a legal Sharia-compliant principle. Is this type of fatwa of a contradictory nature or within the scope of conventional divergence? The importance of this research lies in exposing the real causes of stumbling in fatwas contemporarily fatwas, as well as the contributing factors of meticulosity it, in addition, Additionally, it aims to identify the concept of stumbling and reveal the fatwa parameters beside of fatwas, as well as the assistive instruments of regulation. The research comprises four chapters and a conclusion.

Keywords: Fatwa, Stumble, Islamic Societies, Jurisprudence, Repercussion Impact

INTRODUCTION

A reflection of the conditions of the Muslim Ummah and what has become of it concerning the many trials and tribulations to the religion of Islam and the lives of Muslims such as the divisions and sectarianism highlights the importance of unifying the Muslims Ummah. The gravity of this issue increases with the rise of disagreement and discord between the heirs of the prophets, namely the scholars who are considered role models of the Ummah and its pilots. The Muslim Ummah can only stand erect with the erudition of its scholars and the quality of scholars depends on the degree to which their teachings stem from light taught by the Prophet Muhammad (PBUH). Perhaps the most important issues that contribute to the unification of the Ummah is the unification of the fatwa, reducing the limits of variation, studying the reasons that hinder such unification, and determining whether the differences are legitimate. It is to these ends that this study is dedicated. The research is organized as follows:

Section One: The concept of fatwa stumbling

Section Two: Determinants of a fatwa.
Section Three: The causes of fatwa stumbling
Section Four: Approaches to regulating the fatwa.

THE CONCEPTS OF STUMBLING AND FATWA

The concept of Stumbling:

Ta'thur means to fall², refers to a situation where a religious authority or scholar is unable to provide a clear and decisive ruling on a particular issue or question.³

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D. Aḥmad Mukhtār, 2008, Mu'jam al-lughah al-'Arabīyah al-mu'āṣirah, Bayrūt, V2, p156.

³ I have not find the Terminology of Ta'thur in Juripudence.

The Concept of Fatwa

Ibn Manzūr defines the linguistic definition of the fatwa is to demonstrate the problem of legal provisions. The word refers to youth who grows into a strong young man. It is, therefore, as of the fatwa strengthens a confusing statement. It refers to the ruling of a jurist.⁴

Ibn Fāris explains that it possesses two elements, one indicates mellowness and seriousness, while the other is to demonstrate a ruling. A jurist has issued his issued a fatwa once he has declared his verdict.⁵

There are numerous definitions of the term fatwa. We mention a selected few below:

- Answering the question as to the constituents of legal provisions.⁶
- Explaining the ruling of Allah in reference to the lived reality in which it occurred.⁷
- Explaining the legal evidence of the ruling of Allah.⁸

These definitions explain that there is a single meaning of fatwa despite slights differences in the technical definitions. It refers to explaining and elucidating the rule of Allah on specific issues.

As for the meaning of *istiftā*', it refers to the act of seeking or asking for a fatwa. The person who provides one is referred to as a mufti, the process of seeking the answer is called iftā' and the resulting ruling is a fatwa.⁹

Determinants of a fatwa:

Differences in fatwas are widespread. There is, therefore, a need to identify the foundations for these differences and how fatwas can be verified for their credibility. This will help minimise and contain the chaos that cab result from conflicting legal opinions. The contemporary era accentuates the importance of such an endeavour wherein the means for the broad dissemination of legal views are unprecedented. The goal is not to arrive at an absolute agreement in legal rulings as this is unlikely, but to possess a working knowledge of the practical processes of reaching a fatwa. If the outcome of the process differs, then that could be advantageous. However, the process should be close to uniform for credibility.

Certain controls are needed for the course of reaching a legal ruling. These controls are explained in the following points:

First: A fatwa must be based on the book of Allah and the Sunnah of His Prophet (PBUH). In an opinion agrees with the Qur'an and Sunnah and the indications of their texts along with the higher purposes of Islamic law, it is then regarded as an acceptable opinion. However, if it is contrary to the Qur'an and Sunnah, or is a form of legal deception, then it is not acceptable. ¹⁰

Second: That the fatwa must not contain ambiguity and confusion. Ibn 'Aq $\bar{1}$ l said that it is unanimously held ($ijm\bar{a}$ ') that it is impermissible to use ambiguous words. If one is asked, can one eat and drink during Ramadan after dawn? You must ask, the first or second dawn? Similarly, is one asks if the sale of a pound of dates for a pound of dates is permissible? Then you must say, only if the scales are properly balanced,

⁴ *The Arab Tounge*, 14/147.

⁵ *Lexicon of Linguistic Standards*, p. 805.

⁶ Vocabulary of the Our'an, 2/482.

⁷ Usul a-Sarkhasi, 2/26; Definitions of Jurjani, p. 39.

⁸ Al-Banaani's Footnotes, 2/397.

⁹ Dr. Abdul Karim Zidane, *Usul al-Da'wah*, p. 140.

¹⁰ Imam Ibn Hamdan, Description of the fatwa, mufti and mustafti p. 60.

otherwise it is not.¹¹

Third: That the wording of the fatwa must be clear to avoid confusion. 12

Fourth: For the fatwa to be clear and concise and meet the needs of the person who sought the fatwa (*mustaftī*). The situation demands precision to identify the issue and solution clearly. It is not a case for preaching or elaborate teaching.

Fifth: The mufti must explain the evidence that guided the verdict from the Qur'an, Sunnah or $Ijm\bar{a}$. He should not simply state the evidence but explain it. This is more fitting for acceptance by convincing the $mustaft\bar{\imath}$ with the legal reasoning. Such is a better approach to obedience and compliance.¹³

Sixth: One does not say that this is the rule of God and His Messenger except when referring to the indisputable evidence $(q\bar{a}t\,\bar{t})$. As for matters of judicial reasoning $(ijtih\bar{a}d)$, then they should avoid saying that this is the rule of God and His Messenger. This is based on the hadith, "If the besieged people of a fort wanted to submit to the judgement of God, do not do so as you do not know whether the judgment of God has transpired or not".¹⁴

Seventh: If the fatwa is written, then it should be written in clear print. It should use general language that the public understands yet is not ridiculed by the elite. It should be written with tight spacing so that no additions can be added.¹⁵

Eighth: A mufti should not express his verdict using modern forms of social media and communication programs such as WhatsApp and Viber as that it is prone to error and is not accurate. One could intend to write a word not contained in a device's database resulting in a different term altogether. Doubtless, this could lead to a different meaning than that intended. Moreover, mistakes on this platform can spread widely and rapidly. This presents another problem. The fatwa could have been specific to a person, group, place or time, and may not apply to outside those audiences or environments. This could lead to controversies in the fatwa.

The Causes of Stumbling in Fatwa

The painful reality we are currently witnessing regarding differences in a fatwa and legal opinion has diminished the public's confidence in the credibility of the fatwa institution and have caused them to question its authority in religious and worldly affairs. This does not mean denying the possibility of different legal views as diversity is something assured and desired by Allah among his servants. Allah Almighty said in the Holy Qur'an: "If thy Lord had so willed, He could have made mankind one people: but they will not cease to dispute" [11: 118].

Imam Ibn Hazm said, "The Exalted has explained that differences are not of His making but permitted by His Will as were the case for the creation of the universe and the existence of disbelief and other sins". 16

It is, therefore, necessary to examine the reasons for differences within the framework of the Shari'ah and the limits, when exceeded, result in partisanship, schism and extremism. It is crucial to determine whether the Shari'ah justifies the differences and stem from the implications of the Islamic legal sources, or whether there are additional factors that play a role in determining fatwa. These additional factors are not accepted unless they serve some purpose legitimised by the Shari'ah. To this end, it

¹¹ Encyclopaedia of jurisprudence, Kuwait (Article fatwa).

¹² Ibid.

¹³ Ibid

Narrated by Muslim (1731) Book of Jihad.

¹⁵ Imam Ibn Hamdan, Description of the fatwa, mufti and mustafti, p. 61.

Mastering the foundations of law, 5/64.

becomes necessary to examine the factors that contribute to differences in fatwas, which include, among others:

a) Fatwa issued by non-qualified person/s:

The fatwa authority is a critical institution requiring the most pious and non-materialistic persons. It the persons employed to issue fatwas is not properly qualified professionally and ethically, then they have undermined the rights of the public. It is, therefore, imperative that the qualifications for the position are clear and those appointed meet the expected professional and ethical standards. Failure to do this risks realising the words of Allah, "Say: "See ye what things Allah hath sent down to you for sustenance? Yet ye hold forbidden some things thereof and (some things) lawful" [10: 59].

Abū al-Qāsim al-Zamakhsharī said "This verse is a sufficient and eloquent testimony regarding exceeding the limits of issuing rulings. It necessitates care in the process and admonishes people from saying this is permitted or prohibited except when convinced. Whosoever is not certain of the ruling should fear Allah and remain silent on the issue otherwise he risks imposing his views on God's law.¹⁷

Allah has also encouraged people to seek the opinion of experts. "And before thee also the messengers We sent were but men, to whom We granted inspiration: if ye realise this not, ask of those who possess the Message" [16: 43].

The experts (*ahl al-Zikr*) are those scholars and experts of the Qur'an as explained by Ibn 'Abbās (RA).¹⁸

If the mufti is not properly qualified, this creates a dangerous situation, and he is forbidden from issuing fatwas. Allah say: "Say: the things that my Lord hath indeed forbidden are: shameful deeds, whether open or secret; sins and trespasses against truth or reason; assigning of partners to Allah, for which He hath given no authority; and saying things about Allah of which ye have no knowledge" [7: 33] and "But say not for any false thing that your tongues may put forth,- "This is lawful, and this is forbidden," so as to ascribe false things to Allah. For those who ascribe false things to Allah, will never prosper" [16: 116].

The same warning exists in the Sunnah where the Prophet (PBUH) said: (Whosoever fabricates my words can expect a house in Hell, and whosoever issued a fatwa without knowledge has sinned, and whosoever advised his brother knowing that rectitude is in something else has deceived him".¹⁹

Mālik ibn Anas Imam said: that a man visited Rabī 'ah ibn Abī 'Abd al-Raḥmān - the Imam of Madinah - and found him crying. He said to him: What makes you cry, has my entry disturbed you? He said: No, but those without knowledge have been sought for fatwa thereby creating an enormity to appear in Islam. Some of those who issue fatwas are more deserving of incarceration than thieves.²⁰

Imam Abu Hanīifah, despite arguing for the impermissibility of stoning fools out of respect for their humanity, is of the opinion that it is necessary to stone an ignorant mufti who has manipulated and toyed with Islam rulings due to the damage that can cause in the Muslim community.²¹

Imam Mālik said, "I have not issued a fatwa unless seventy [people] testified I am qualified". In another narration, "I do not issue a fatwa until I have asked a person

¹⁷ *Al-Kashaf*, 2/242.

¹⁸ Tafsir Qurtubi, 10/108.

Narrated by the al-Hakim in the Mustadrak, 1/103; and Ahmad in Musnad, 118/16.

Al-Nawawi, Etiquettes of the mufti and mustafti, p. 85.

²¹ A'alam Mugien (Scholarly Luminaries), 4/317.

more knowledgeable than me if I am qualified?" He also said, "It is unbecoming of a person to consider himself qualified for something until after he has asked someone knowledgeable than himself".²²

Ibn Ḥazm said, "There is no greater lesion upon science and scholars more devastating than those not qualified. They are ignorant yet think themselves knowledgeable and they create chaos while believing they are doing good".²³

b) Failure to study the environment of the *mustaftī*:

A mufti should be closely acquainted with the habits and culture of his nation and not issue a fatwa for environments of which he has no knowledge of their culture and habits. For this reason, scholars have approved the rule: Habits preside unless they violate the text of the Our'an and Sunnah.

Al-Qarāfī approved this saying there is no disagreement among the scholars on this issue. Where there are two different customs in two countries, then the rulings cannot be the same.²⁴ He mentioned elsewhere that if a ruling agreed with the customs of the place and was driven by those customs, then the rulings change with changes in customs. He said, "Whatever in the Shari'ah that agrees with customs, the rulings will change with changes in customs. This is not an ijtihād of the laymen as a condition for credible rulings, but a rule painstakingly developed and unanimously agreed upon by the scholars".²⁵

Ibn Qayyim agreed with al-Qarāfī and said, "Whosoever issues a fatwa to people simply by transferring what is in the Book [Qur'an] irrespective of their customs, times and circumstances have strayed and led [others] astray".²⁶

One of the later jurists composed the couplet: Customs in the Shari'ah have considered. Accordingly the ruling is based.²⁷

Thus it can be concluded from the preceding that the mufti must be knowledgeable of the customs of the people and country in which the fatwa is issued. The credibility of the fatwa depends on this, especially since the legal schools recognise customs as a source of legal evidence.

c) Lack of scruples when issuing fatwa:

Among the things that challenge the faith and world of the learned more so than others is the fatwa that is detached from Islamic evidence or its purposes. Sometimes they are completely dislocated from the environment. Behind such fatwas are personal interests or the interests of specific parties or personal or political inclinations. Sheikh Abū 'Amr Ibn Ṣalāḥ said, "[he] should be like a narrator [of hadith] who is not affected by familial relations, enmity, securing some benefit or dispelling harm because a mufti in [issuing a] ruling is relating the Shari'ah dispassionately and [as such] is like a narrator, not a witness".²⁸

The righteous predecessors (*al-salaf*) are examples in this regard. Imam Mālik refused to approve caliph al-Mansur when they ordered him to enforce the Muwatta on the public. Imam Abū Hanīfah refused to head the judiciary and was punished and imprisoned. Imam Aḥmad refused to accept the creation of the Qur'an and was whipped

Al-Nawawi, Etiquettes of the mufti and mustafti, p. 18.

Abu Muhammad Ali bin Ahmed bin Saeed al-Andalusi, *Ethics and conduct in rehabilitating the self*, p. 67.

²⁴ Differences (al-Furua), 1/46.

²⁵ Discriminating between fatwas, 218/219.

²⁶ A'alam Mugien, 3/66.

²⁷ Deploying customs, p. 4.

Etiquettes of the mufti and mustafti, p. 19.

imprisoned. These things transpired despite their fame and standing among Muslims. They were whipped, imprisoned, tortured yet they never compromised with the law of God and exceeded its limits in search of forbidden tricks or invalid licenses. This problem was accurately diagnosed by the contemporary scholar Abū al Faḍl ʿAbdullah al-Ghumārī who said, "as for those who are quick to legalise the prohibited and issue fatwas to satisfy the heads of some governments, and their fatwas differ in permissibility and prohibition based on differences in purposes and desires, they strive to eradicate religion, strive hard to change [Islam's] legal provisions, and will not escape punishment from God, nor from His severe revenge, and God is not unaware of what they do".²⁹

Imam Nawawī considered that all fatwa based on a corrupt purpose is indulging the reprehensible. He said, "and whosever harbours corrupt purposes and pursues forbidden or objectionable tricks, and adheres to ambiguities in search for a license for those who will benefit him or to burden those who oppose him".³⁰

d) Issuing fatwas individually:

There are many complex contemporary issues. Awareness and knowledge of their ruling require collective fatwa. This can only be achieved by referring to fatwa bodies and councils and jurisprudential academies. It is also possible to refer to a group of subject experts such as medical practitioners for issues regarding medicine and economist for issues regarding finance and the economy. It is also recommended to refer to the heritage of Muslim scholars who meet three characteristics. The first is eligibility. One is not referred to unless the scholars of his time have vouched for his knowledge and ability to issue fatwas. Their witness is tantamount to a license permitting their teaching and issuing fatwas.

The second trait is to consult scholars and is called collective fatwas. Al-Sh'abī and Hasan and Abī Ḥaṣīn describe the outcome of the fatwa in their time and the cause of its demise as, "If any of you issue a fatwa for a matter and even if you narrated Umar bin al-Khattab (RA), the people of Badr would support it".³¹

The third trait is piety. If a person has established himself in knowledge and climbed the ranks of the judiciary except that he has no shame and refuses to say I do not know to a question, then such a person is not fit to issue fatwas. 'Abd al-Raḥmān ibn Mahdī says of Imam Mālik that we were once with Mālik whereupon a person entered and asked him a question to which he replied 'I do not know'. The person asked, 'what should I say upon returning to my country?' Mālik ibn Anas said, 'I do not know'.³²

A person should avoid issuing a fatwa when he is aware that there is a person more knowledgeable than he residing in the country. 'Abd al-Raḥmān ibn Abī Layla said, "I knew 120 companions of the Messenger of Allah (PBUH). If one were to ask regarding an issue, he would be referred to another and so on until it wold eventually return to the first person. In another narration, none of them would narrate a hadith except that he would consider his brother more qualified, and none would issue a fatwa except that he would wish that his brother would issue the fatwa".³³

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²⁹ Ibn Sidiq al-Ghumari, *Religious thoughts and research*, p. 161.

Etiquettes of the mufti and mustafti, p. 37.

³¹ Ibid. p. 15.

Mohammad Abu Zahra, *Malik*, p. 47.

Etiquettes of the mufti and mustafti. p 14.

e) Seeking easiness in fatwas:

Among the issues that have spread in the Islamic society is to seek fatwas from those known for easy going fatwas under the pretext of ease and lifting hardship. The scholars believe this to be prohibited unless it is based on legal evidence. Imam al-Shaf $\bar{1}$ said "It is not permissible for a lenient person to be a governor or a mufti and to judge except binding evidence...which is the Qur'an and Sunnah or the views of scholars for which there is no disagreement, or to engage in analogous reasoning based on what he thinks is best (al-istihs $\bar{a}n$)".³⁴

The impermissibility of unjustified leniency in legal opinions refers to the mufti whereby it is impermissible for him to be lenient in his ruling without legal evidence. It also refers to the *mustaftī* whereby it is impermissible for him/her to seek a legal opinion from those who are careless and unduly lenient.

Imam Nawawī says, "It is forbidden to be [unduly] lenient in fatwas and whoever is known for such is not allowed to be sought for their legal opinion".³⁵

Closing the door of undue leniency in legal opinions closes the door to intolerance and conflict resulting from differences in the verdicts of the muftis who rule with permissibility and prohibition.

f) Seeking legal licence in fatwas:

The absolute permissibility of legal licenses leads to manipulation and undue leniency in religion, especially among non-specialists in Islamic legal sciences. This is because the spread of such a notion among the general public may confuse their religion and may expose them to conflict and discord. For this reason, many scholars are of the view that is impermissible to seek a legal licence as reported of Ibn 'Abd al-Barr,³⁶ and Ibn Ḥazm narrates of an Ijmā' of the illegitimacy of a person who does so.³⁷ Imams Mālik and Nawawī considered it an act of pursuing one's whims. He says, "If one may follow any [legal] school he wished it would lead to selecting the legal licenses of the schools based on whims, leaving him to select between permissibility and prohibition, obligatory and optional and this leads to a detachment from the yoke of obligation [taklīf]".³⁸

From the preceding it can be concluded that the legal licence in and of itself does not seek something bad, rather, the scholars are referring to a constant pursuit of legal licence that is tantamount to following one's whims and without proper recourse to legal evidence. This is supported by Imam al-Shāṭibī who argued that *talfīq* [choosing between different legal opinions] lead to searching for a legal license without relying on legal evidence.³⁹ Perhaps the best support for a legal licence in what Sufyān al-Thawrī said that for us, knowledge of legal licence is only from a trustworthy [source/person], whereas *tashdīd* (strictness) is mastered by all.⁴⁰ Ibn Qayyim said that legal licence in '*ibādāt* (ritual worship) is better than severity.⁴¹

METHODS TO REGULATE THE FATWA

Unifying the fatwas in the Islamic world is the aim of every believer because it is the best way to unite the Ummah. It is a source of strength, cohesion and prosperity. Allah

³⁴ Al-Um, 7/298.

Etiquettes of the mufti and mustafti, p. 37.

³⁶ *Inclusive statement of science and virtues*, 2/112.

³⁷ Al-Muwafaqat, 4/74.

³⁸ Al-Muhadhab sharh al-Majmu', 1/5.

³⁹ *Al-Muwafaqat*, 4/72.

Etiquettes of the mufti and mustafti, p. 37.

⁴¹ Sharh al-Umdah, 2/541.

Almighty said: "And be not like those who started from their homes insolently and to be seen of men, and to hinder (men) from the path of Allah: For Allah compasseth round about all that they do." [8: 47].

The means to achieve this is to forge a bond with scholars. Imam Ben Badis said, "Muslims will not become virtuous until their scholars are virtuous. The place of scholars in the Ummah is that of the heart, when righteous, the entire body is righteous, and when corrupt, the entire body becomes corrupt. The virtue of Muslims is via their understanding of Islam and due action. This is achieved via the scholars. If the scholars are stagnant or innovative, then such will be the condition of the Muslims. If we desired Muslims to become virtuous, then we must begin with the reform of their scholars".⁴²

Based on this, the following are certain points that may help regular the fatwa:

- Concern for the unification of the fatwa in the Islamic world. This is by reducing the differences and conflicts within the Ummah as such conflicts are gateways to fanaticism, partisanship, sectarianism, and conflict.
- To have collective fatwas. Seeking fatwas from figh councils will help avoid ambiguities and reduce differences.
- Revising individual fatwas. This is achieved by communicating and coordinating between the fatwa bodies in the Islamic world for the latest developments.
- For the science of fatwas to be an independent science taught in colleges and institutes⁴³ so that the student receives proper training. This should not be limited to fatwas but should include training in *ijtihād*.
- To create awareness among Muslims of the importance of the fatwa in regulating affairs. 44 This is achieved by facilitating access to muftis and fatwas. Fatwa centres should be established in cities throughout the Muslim world and Muslim communities in non-Islamic countries.
- Translating the verdicts of figh councils⁴⁵ for new and old issues. This should also include the fatwas used in each country and disseminating them through various means of communication.
- Establishing workshops for muftis and those seeking qualification in *iftā*.
- For the fatwa body to be neutral so that the imam can reach verdicts independent of external factors or influences.

Abū al-Fadl 'Abd Allāh al-Ghumarī says, "as for those who are quick to legalise the prohibited and issue fatwas to satisfy the heads of some governments, and their fatwas differ in permissibility and prohibition based on differences in purposes and desires, they strive to eradicate religion, strive hard to change [Islam's] legal provisions, and will not escape punishment from God, nor from His severe revenge, and God is not unaware of what they do".46

CONCLUSION

It is essential to revive the spirit of tolerance in the Ummah to avoid hatred and to spread the spirit of brotherhood and friendship among Muslims around the world.

The following are concluding points that summarise the most important findings of this research followed by recommendations:

45

The Heritage of Imam Ibn Badis, 4/78.

⁴³ The Islamic Figh Council, No. 153 (2/17) on the terms and etiquette of Ifta.

⁴⁴ Ibid.

Ibn Sidiq al-Ghumari, Religious thoughts and research p. 161.

- Differences are inevitable and are desired by God out of His infinite wisdom.
- The most important regulatory controls for fatwa is to be based on the texts of the Qur'an and Sunnah and other legitimate legal evidence.

We found that the greatest reasons for the stumble of fatwa are:

- a) A lack of capacity.
- b) Individual fatwas and lack of consultation.
- c) Undue leniency in fatwa contrary to the preferred legal opinion under the pretext of ease and legal license.
- d) Political or social pressures that make it difficult to take a stance.
- e) Fear of backlash or criticism from the public or other religious authorities
 - That collective fatwas are the best way to reduce the differences and conflicts in a fatwa, and is a major factor in uniting the Ummah and resolving/avoiding sectarian conflicts.
 - To educate Muslims about the importance of the fatwa and the wider dissemination of fatwa centres physically and electronically to facilitate access to muftis and fatwas.
 - For muftis to be characterised with knowledge and action and not to recourse to ambiguities and whims is among the most essential foundations for the acceptance of fatwas.

Among the recommendations are the following:

To introduce a major in fatwa and *ijtihād* for imams and students of Islamic law at the university level. A student should reside a minimum of two to three years studying legal issues under the supervision of specialists.

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