

A JURISPRUDENTIAL APPRAISAL OF CONFLICTING ISLAMIC LEGAL TEXTS

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ABSTRACT

This research aims to analyse the concept of contradiction in Islamic legal texts in the substantive sources of Islamic law. It adopts different approaches in striking a balance between the legal texts (nuṣūṣ shar‘iyyah). The study adopts doctrinal legal research by using primary and secondary sources of Islamic law such as Qur’an, Sunnah. The study also relies on textbook, journals. The study reveals that legal texts (nuṣūṣ shar‘iyyah) are free from inconsistencies.

Keywords: *usuliyyūn, legal texts, conflict, harmonisation, definitive, speculative*

INTRODUCTION

Muslim jurists (*uṣuliyyūn*) place great emphasis on the sacredness of Islamic legal texts (*al-nuṣūṣ shar‘iyyah*). The texts are sacred because they are the product of inspiration, and their sources are infallible. Importantly, from these texts are derived. The infallibility of the Lawgiver is derived from His saying, “Allah says, “Nor does he speak of his own whims.” “It is only a revelation sent down ‘to him” (Surah al-Najm: 3-4). In another verse, “Do they not then reflect on the Quran? Had it been from anyone other than Allah, they would

have certainly found in it many inconsistencies". Thus, Quran and Sunnah are free from contradictions. However, some legal texts appear contradictory in the substantive sources of Islamic law that requires a jurisprudential appraisal. Classical and modern jurists have made efforts to strike a balance between those seemingly conflicting texts through the methods of harmonisation, preponderance of text and other jurisprudential mechanisms. However, most of these efforts are less systematic and structured. Thus, this research is unique from the previous in terms of arrangement and comprehensiveness.

CONCEPT OF CONFLICTING LEGAL TEXTS

Conflict (*ta'arud*) occurs when two legal texts of equal authority appear contradictory, and harmonising them becomes impossible (al-Sarakhsi Muhammad, 1952: 12). Thus, when two or more legal texts are unequal, it becomes imperative to give precedence to the more convincing text. For example, when recurrent *ḥadīth* (*mutawātir*)¹ appears contradictory with *ḥadīth aḥād*,² preference is given to the former (Ibn Jamā'ah Muḥammad. 1986: 55). Therefore, a contradiction occurs when legal texts have different implications, which consequently result in having conflicting rulings. For example, Muslim reported from Maimunah (RA) herself that, "The Prophet (PBUH) married her when he was not in the state of pilgrimage." In another *ḥadīth*, Muslim reported from Maimunah (RA) herself, "*The Prophet (PBUH) married her when he was not in the state of pilgrimage.*"

These two *ḥadīths* appear contradictory in respect of the ruling of marriage while in the state of pilgrimage. There is no indisputable proof that one preceded another where abrogation (*naskh*) could be easily determined. Similarly, it is implausible to have two contradictory rulings over the same case, particularly when one is permissible while the other is not (al-Shawkanī, 1999: 113).

Muslim jurists (*uṣūliyyūn*) agree that Islamic legal texts are free from contradiction. Thus, two Qur'anic verses or *ḥadīths* of the Prophet cannot be

¹ *Mutawātir* is an Arabic word that is derived from the word *tawātur*, which means succession, one after the other. What this means in Shariah terminology is a report which was narrated by a group who could not possibly have agreed upon a lie, from a similar group, and which is based on what they saw or heard.

² *Ḥadīth Aḥād* refers to the *ḥadīth* that has an indication with a measure of uncertainty or a Hadeeth that reached us from one, two or more narrations but not numerous enough to make it impossible for all the narrators to have conspired in falsehood - whether intentionally or unintentionally.

at variance with each other regarding their indication (*dilālah*) (Al-Amidi al ibn Muhammad, 1984: 246).

It is, therefore, beyond the realm of possibility to have conflicting legal.

*Allah says to the effect, "Nor does he speak of his own whims."
"It is only a revelation sent down to him."*

(Surah al-Najm, 53: 3-4).

The verses indicate that the existence of inconsistencies of legal texts is inconceivable in that they are revelations from Allah. Allah says to the effect:

"Had it been from anyone other than Allah, they would have certainly found in it many inconsistencies."

(Surah al-Nisa', 4: 82).

Besides, the existence of inconsistencies in the legal texts would inevitably lead to invalidity of religious obligations, which would result in enjoining legally commissioned people (*mukallafūn*) to comply with impossible obligations (*Ibid.*). Therefore, any contradiction found in two verses concerning their indication (*dilālah*) or between *mutawātir ḥadīth* and *aḥād* is a seeming contradiction, which could be averted through construing unrestricted texts (*muṭlaq*) with the restricted (*muqayyad*), the general (*al-āmm*) with the specific (*al-khāss*), and the unclear (*mubham*) with the clarified (*mubayyan*) or through other means of averting conflicting texts (al-Shātibi Ibrahim, ۱۹۹۷: 118-119). Thus, conflict of Islamic legal texts cannot be determined unless there are two contradictory rules, which simultaneously indicate permissibility and prohibition of an action. The contradiction of legal texts is also determined when there is Simultaneity (*ithād al-waqt*), i.e., the occurrence of contradictory rulings at the same time.

Furthermore, there cannot exist contradiction where there are two equal texts in strength. Besides, equality of texts in strength can only occur in definitive texts (*nuṣūṣ qaṭ'iyah*) and their significations, not between *mutawātir* and *aḥād*.

METHODS OF PREVENTING SEEMINGLY CONTRADICTORY LEGAL TEXTS

Muslim jurists have employed different methods in striking a balance when legal texts appear contradictory, one of which is harmonisation of conflicting legal texts (*al-jam' and al-tawfiq*).

Prevention through the Harmonisation of Conflicting Legal Texts (*al-Jam‘ wa al-Tawfiq*)

al-Jam‘ and al-tawfiq, in the terminology of jurists, is the harmonisation of legal texts and demonstration that the conflict does not exist. (‘Abd al-Karīm ‘Alī al-Namlah, 1999: 2419). This is the first mechanism that a jurist should employ in that applying all available proofs is given precedence over their disregard in that the basic principle is the application of the proof, not disregard. Classical jurists have employed the harmonisation mechanism, as they believed that the contradiction does not exist in the authentic legal texts (al-Shirazi Ibrahim, 1985: 37).

METHODS OF HARMONISING SEEMINGLY CONTRADICTORY LEGAL TEXTS

When the rulings in the two texts are multiple, and some are established by the first text and others for the second text as indicated in the previous *hadīths* where the first *hadīth* is interpreted as negation of perfection (*nafy al-kamāl*) and the second one as negation of validity (*nafy al-ṣihhah*). Interpreting each of the two opposing texts according to its indication (*dilālah*) in a way that does not contradict the other. For example, Allah SWT says to the effect in Surah Tawbah:

“O believers! Know that the polytheists are unclean; therefore, do not let them come near the Masjid-al-Haram after this year’s pilgrimage. If you fear poverty, soon Allah - if He so wills - enrich you out of His bounty. Allah is All-Knowledgeable, All-Wise.”

(Surah al-Tawbah, 9: 28)

This appears conflicting with another verse in Surah Ma’idah:

“Today all good clean things have been made lawful for you, and the food of the People of the Book is also made lawful for you and your food is made lawful for them. Likewise, marriage with chaste free believing women and also chaste women among the People who were given the Book before you is made lawful for you...”

(Surah al-Ma’idah, 5: 5)

The first verse indicates the impurity of the polytheists, while the other verse permits consuming their food and marrying their women. Apparently, the

two verses are contradictory. Harmonising this seeming contradiction, Jurists have interpreted the first verse as spiritual impurity. This is established in the deed of the Prophet (PBUH). ‘Imran bin Hussain (may Allah be pleased with him) narrated: The Prophet (PBUH) and his Companions performed Wudu (ablution) from a skin water container belonging to a polytheist woman (al-‘Asqalānī, Ibn Ḥajar, 2008: 10).

Another method of harmonising conflicting legal texts is by interpreting the unrestricted by the restricted (*haml al-mutlaq ‘ala al-muqayyad*). *Mutlaq* is a word having a specific meaning that does not have a restrictive clause attached to it. It differs from the *āmm* in that it applies to all members that are included in its meanings simultaneously without exception, whereas the *mutlaq* can only apply to one member of its meaning.

In other words, *āmm* applies to all members of a specific set, whereas *mutlaq* only applies to members of that set. *Mutlaq* denotes a word that is neither qualified nor limited in its application. It is unspecified and unqualified. When *Mutlaq* word is qualified by another word/words, it becomes *Muqayyad*. Al-Amidi Ali bn Muhammad, (al-Amidi, 1983: 162).

Muqayyad differs from the *Khash* in that the former is a word which implies an unspecified individual/s that is merely distinguished by certain attributes and qualifications.” (Ismail, A., 2010)

If a text is used unrestrictedly, the basic rule is to interpret it as it is, except if there is another restricted text. However, some injunctions are issued unrestrictedly, and some are unrestricted, which could appear contradictory to a jurist (al-Taftāzānī, Sa‘ad al-Dīn Mas‘ūd, 1996: 118).

Thus, jurists have formulated principles guiding the interpretation of the unrestricted by the restricted for better harmonisation (al-Zarkashī, Badr al-Dīn Muḥammad, 2000: 415). Upon this, jurists agree that interpreting the unrestricted by the restricted is permissible provided they both possess the same judgement and cause (Zaydān, ‘Abd al-Karīm, 1979: 286).

An example of this is the prohibition of blood. Allah says to the effect:

“You are forbidden to eat the meat of any animal that dies by itself (dead body), blood, the flesh of swine (pork)...”

(Surah al-Ma’idah, 5: 3).

Blood is prohibited unrestrictedly in the verse. However, it is mentioned with restriction in another verse:

“O Muhammad tell them: I did not find in what has been revealed to me anything forbidden to be eaten by one who wishes to eat it, except the meat of an already dead animal, or running blood or the flesh of swine (pork)...”

(Surah al-An‘ām, 6: 145).

The word ‘running blood’ (*daman masfūhan*) interprets the first verse for the existence of the same ruling (prohibition) and same cause (blood). Another example can be found in the following verse: “...the distribution in all cases shall be after fulfilling the terms of the last will and the payment of debts...” the word will’ is unrestricted in the verse. However, another text restricts the will to one-third: “One-third, and one-third is much or large.” (*Ibid.*).

Interpreting the general by the specification of the general (*binā al-khaṣṣ ‘ala al-āmm*) is another method of harmonising seemingly contradictory texts to make the two conflicting texts applicable. *Āmm* is a word that has a single meaning, which applies to many things, not limited in number, and it includes everything to which it is applicable (Jackson Sherman, 1993: 71-90).

Khaṣṣ is a word that is applied to a limited number of things but applies to everything to which it can be applied (Hasan al-‘Attār, 1999: 31). An example of where the general (*āmm*) is interpreted by *khaṣṣ* (the specific) to avoid external conflict of legal texts could be found in the following verses:

“As for those of you who die and leave widows behind, let them abstain from marriage for four months and ten days...”

(Surah al-Baqarah, 2: 234).

The general signification of the verse indicates the waiting period for all women whose husbands are dead is four months and ten days without exception. Apparently, this is in conflict with another verse. However, another verse specifies the general ruling. Allah says:

“...as for those who are pregnant, their waiting period will end with delivery. Allah will ease the hardship of those who fear Him.”

(Surah al-Talaq, 65: 4).

The last verse indicates that *‘idda* (waiting period after divorce or death of a husband) of a pregnant woman ends immediately after giving birth, whether she is widowed or divorced, provided the foetus is fully or partially formed. Another example where a general text is interpreted by the specific is the verse: “Forbidden to you are carrion...” (Maidah: 3). The general specification

of the verse forbids all carrions without exception (Al-Baji Sulyman, 2000: 62). However, the word ‘*maitatu*’ (carrion) has been specified by another legal text, which is *ḥadīth*: Allah’s Messenger (PBUH) said regarding the sea, “its water is purifying and its dead (animals) are lawful (to eat).”

Preponderance Approach (*Tarjīh*)

Tarjīh is granting preponderance to one of two contradicting texts for having a privilege. This is the second approach adopted when legal texts appear contradictory. The existence of conflicting texts is an impetus to resort to giving preponderance. *Tarjīh* is not applicable to unequal legal texts, as the appropriate approach to that is harmonisation. Therefore, it is employed in equal texts with respect to textual implication and transmission. Thus, when two legal texts appear contradictory, one of them is given precedence over the other for the existence of uniqueness. This approach is not applicable between definitive and speculative texts for the impossibility of contradiction (‘Alī al-Bazdawī, 1997: 290).

Tarjīh is resorted to according to most Muslim jurists when harmonisation of contradictory texts becomes impossible. The two texts must be equal with respect to authority (*hujjiyyah*) in that the comparison between the authentically established texts and the unestablished texts is illogical. In addition, the preponderated text (*murajjah*) must be more convincing.

There are many ways of giving preponderance in Islamic legal theory. The methods include examining *sanad* (chain of narration), *matn* (*ḥadīth* text), the judgement that is attached to legal texts and external factors.

PRINCIPLES THAT ARE ATTACHED TO THE CHAIN OF NARRATION (*SANAD*)

The term “*sanad*,” means the chain of narration; it is the chain of narration of men leading back to a text, and that text is referred to as “*matn*” - i.e., the narration or report (Ibn Jama’ah Muhammad, 1996: 29). Therefore, the *matn* is where the *sanad* ends (Sirāj al-Dīn ‘Umar, 1992: 110).

1. Giving preponderance to the narrator with proximity to the Prophet

The precedence is given to a narrator with proximity to the Prophet for the probability that he would have a better understanding of the text when two

ḥadīths appear contradictory. An example of this is the narration of Ibn Umar and Anas ibn Malik regarding the pilgrimage of the Prophet (PBUH). Ibn Umar narrated that Allah's Messenger (PBUH) entered the state of Ihram (with the intention) of Hajj alone (*mufrad*). On the contrary, Anas reported that the Prophet entered into the state of Ihram (with the intention) of *ḥajj* and *'umrah* together (*qirān*). Ibn Umar's narration is preferred because of his proximity to the Prophet at that time.

2. Considering the age of an elderly narrator

An old narrator is given precedence over the younger because the elders were more conversant with the Prophetic teachings than the young were.

3. Considering the period of embracing Islam

The narration of the companion whose Islam postdated has precedence over whose acceptance is earlier when two *ḥadīths* appear contradictory because it indicates the latter witnessed the latest and most recent narration (Mansur Muhammad, 1999: 1996). This is evident in what Ibn 'Abbas said, 'we used to follow up and apply the most recent orders of the Prophet'. The earlier narration might have several probabilities; it might have been abrogated with the later narration. Moreover, when legal texts are affected by supposition, adopting it as evidence becomes invalid (Al-Qarrafī, Muḥammad Idrīs, 1998: 158). For this reason, legal theorists prefer the narration of Abu Hurayrah 'that touching one's penis necessitates performing wudu' (ablution)' to others that sees nothing wrong in touching it.

4. Giving preponderance to the narration of who is directly involved

A narrator with direct involvement in the event would be more cognizant of the full facts. Given this, Maimunah's narration has precedence on the Ibn 'Abbas's with respect to her marriage. She said The Apostle of Allah (PBUH) married me when we were not in the sacred state at *Sarif*. Her report is contradictory with Ibn 'Abbas's as he narrated that the Prophet married Maimunah when he was in the state of *Ihrām* (during pilgrimage). However, Hanafis give precedence to the narration of Ibn Abbas because he is more versed in knowledge and endowed with a prodigious memory (al-Nawawī, Muḥy al-Dīn Ibn Sharf, 1989: 254).

5. Giving preponderance to a more versed narrator

When two *ḥadīths* appear contradictory, the more knowledgeable narrator in rulings and Islamic objectiveness has precedence.

PRINCIPLES THAT ARE ATTACHED TO THE *ḤADĪTH* TEXT (*MATN*) AND RULING

1. Giving precedence to the indication of prohibition over the permissibility

The evidence of prohibition establishes a new ruling, while the evidence of permissibility confirms freedom from liability (*barā'ah al-dhimmah*). Besides, the established principle is, “if the permitted and the forbidden coincide, prohibition prevails” (Al-Bayhaqī Abubakr, 1922: 345). Considering giving precedence to the forbidden over the permitted when they coincide is in line with *maqāsid al-Shari'ah* (Islamic objectives). For example, Uthman was once asked concerning the combination of two sisters by means of *milk al-yamin* (ownership of female slaves), and he said, ‘it is permitted by a verse and prohibited by another verse, but the prohibition prevails (al-Jassas Aḥmad Ibn ‘Alī, 1985: 298).

2. The affirmative has precedence over the negative

This is based on the famous legal maxim ‘the affirmative supersedes the negative (*al-muthbit muqaddam ‘alā al-nāfi*)’ (Ibn al-Najjār Muḥammad, 1997: 113). Besides, the affirmative usually contains additional information that the negative may lack (Ibn Qudāmāh, 1967: 390).

3. Giving precedence to the specified narration over the generalised

The specified narration is stronger than the general in that the latter is regarded as definitive (*qat'iyah*) (al-Shawkanī, 1999: 463).

GIVING PREPONDERANCE THROUGH EXTERNAL FACTORS

The effective cause of preponderance might not be related to the text of a *ḥadīth* or the ruling that clarifies it. An external proof may have a distinguishing feature that can favour one of the two texts. The following are the methods of *tarjīh* through external factors:

Consensus is given priority over the text in that the latter is liable to abrogation; its implication might be presumptive or subject of controversy. Contrarily, the consensus is usually based on the Quran and Sunnah or the objectiveness of Shariah.

Giving precedence to the expressed signification (*dilālah al-mantūq*) over the implied signification (*dilālah al-mafhūm*): An Example of *dilālah al-mantūq* is the verse that which proclaims usury:

“O believers! Do not consume interest, multiplying it many times over. And be mindful of Allah, so you may prosper.”

(Surah al-Baqarah, 2: 130).

The apparent meaning of this verse indicates the impermissibility of multiple usury while a small amount of it is lawful. This verse appears contradictory with another verse that clearly speaks of the legality of sale and prohibition of usury:

“...But Allah has permitted trading and forbidden interest.”

(Surah al-Baqarah, 2: 275).

By giving precedence to the expressed signification (*dilālah al-mantūq*) over the implied signification (*dilālah al-mafhūm*), usury becomes unlawful, be it small or multiple.

Giving precedence to the unequivocal (*mufassar*) over the explicit (*al-Nass*): *Mufassar* is a word or text whose meaning is obvious and in harmony with the context. Because of this, there is no need for recourse to *ta'wil* (Naim, Asmadi Mohamed, 2019: 27). When a word conveys a clear meaning that is also in harmony with the context in which it appears and yet is still open to interpretation (*ta'wil*), it is classified as *nass*.

Giving precedence to the rule established by the explicit meaning (*ibārah al-nass*) over the one established by the alluded (*ishārah al-Nass*): This is the immediate meaning of the text derived from its apparent words. It represents the principal theme and purpose of the text. To illustrate, Allah says:

“O believers! Retaliation is prescribed for you in the cases of murder: a free man for a free man, a slave for a slave, and a female for a female...”

(Surah al-Baqarah, 2: 178)

This verse indicates the necessity of retributive penalty based on the explicit meaning (*ibārah al-nass*), which appears contradictory with another

verse: “But whoever deliberately slays another believer, his requital shall be hell, therein to abide; and God will condemn him, and will reject him, and will prepare for him awesome suffering.” (An-Nisa: 93). This verse indicates by allusion non-retribution against a deliberate murderer, as the reward of such a heinous crime attracts eternity in Hell.

CONCLUSION

Having discussed the principles of harmonisation and preponderant approaches, it is evident that the Islamic legal texts (*al-nusūs al-shar’iyyah*) are free from contradictions. This is the reason it has become the tradition of legal theorists to use the term ‘apparent or seeming contradiction’. Besides, the existence of inconsistencies would inevitably lead to the invalidity of religious obligations, which would result in order to comply with impossible obligations.

The research finds that harmonisation of conflicting legal texts is the first mechanism that legal theorists employ in that applying all available proofs is given precedence over their disregard. When harmonisation becomes impracticable, jurists usually resort to searching for the date at which texts are revealed, couched as ‘abrogation’. Once the period of the conflicting texts is known, the previous text would become abrogated, and the latter text would be in force.

It further finds that when harmonisation of conflicting legal texts becomes inapplicable and jurists cannot determine the period of abrogating and abrogated texts, they are to resort to Preponderant Approach.

The research explains methods of harmonisation such as interpreting the unrestricted by the restricted (*haml al-mutlaq ‘ala al-muqayyad*), Specification of the general (*binā al-khass ‘ala al-āmm*), Principles that are attached to the chain of narration (*sanad*), Principles that are attached to the *ḥadīth* text (*matn*) etc.

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