The Order of Methods for Resolving Conflicts between Legal Texts among Fundamentalists

[1]Dr. Monir Abdalmaged Mohamed Ali, [2]Dr. Saeed Ahmed Saleh Farag, [3]Dr. Ahmed Mohammed Azzab Moussa, [4]Dr. Ahmed Mohammed Hadi Alhabit

[1]Assist. Prof. of Fundamentals of Jurisprudence - College of Shari'ah and Fundamentals of Religion - King Khalid University - Abha - Kingdom of Saudi Arabia

Email: masfna77@gmail.com

[2]Associat Professor of Fundamentals of Jurisprudence at King Khalid University, Saudi Arabia (co-researcher)

Saeed_frg@yahoo.com

[3]Associate Professor of Fundamentals of Jurisprudence, King Khalid University, Kingdom of Saudi Arabia (Lead Researcher)

Ahmedazab1900@gmail.com

[4]Associate Professor of Fundamentals of Jurisprudence - College of Shari`ah and Fundamentals of Religion - King Khalid University - Abha - Kingdom of Saudi Arabia

amhalhabit@kku.edu.sa

Abstract

This paper explains the reality of conflict, its solution, and ways of resolving it, as well as the differences between scholars in the order of methods of resolving conflicts.

Keywords: Conflict, order of defenses.

Introduction:

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon our noble Prophet, Muhammad, and upon his family and companions.

The scholars of Usul al-Fiqh have differed on some topics and rules of jurisprudence, including the order of methods of resolving conflicts between legal texts. We noticed that this topic has not received much attention from contemporary researchers in the science of Usul al-Fiqh, so we chose to write about it to show how the scholars of Usul arranged the methods of resolving conflicts.

Research Problem: This research answers the following questions, which represent the research issue: What is conflict? What is its place? What are the methods of removing it it? Is there a difference in the order in which they are arranged by the scholars?

Importance of the research: The importance of the research is that it deals with an important rule of fundamentalism that is disputed.

Research methodology: The research follows the inductive , analytical method, in accordance with the rules followed in Shari'ah scientific research.

Research objectives:

1- Defining conflict and explaining its place in the Shari'ah texts.

2- Explaining the methods of removing the conflict and how they are arranged by the scholars of the fundamentals of jurisprudence.

Previous studies:

There are many studies on the subject of conflict and weighting; however, the idea of writing on the subject comes from a different perspective that has not been previously written about; this is the result of the difference in the order in which scholars arrange the methods of resolving conflicts between texts, resulting in differences in jurisprudential branches.

Research plan:

The research consists of an introduction, two topics, and a conclusion

Topic one: The definition and reality of conflict between texts

Topic two : Arrangement of the methods of resolving conflicts among the fundamentalists.

Conclusion: The main conclusions and recommendations.

TOPIC ONE

The definition of conflict between texts and its truth, in which there are two requirements:

Requirement one : Definition of conflict

Conflict in language: Conflict in language on the weight of Tafael , and conflict on the weight of Tafael that indicates participation between two or more, and this word in language has several meanings, including: Appearance - reluctance - opposition - - puns - blocking - equivalence and equality. [1]

Conflict in the terminology of fundamentalists:

The definitions of the fundamentalists of conflict revolve around the following meanings: opposition – contradiction – equivalence – contradiction – conflict – incompatibility [2]. Al-Zarkashi said: Conflict is (the opposition of two pieces of evidence in a way that contradicts) [3]. In the book Conflicting Evidences of Legislation, it says: (Conflict is the opposition of two equal pieces of evidence in a way that each of them prevents the requirement of the other) [4]. In the book Conflict and Preference between the legal evidences, it says that conflict is (the opposition between the legal evidence in an absolute way such that one of them requires the absence of what the other requires) [5].

---

[1] See Lisan al-Arab (7/165-187), As-Sihah (3/1082-1091), Mukhtar as-Sihah pp. 424-426

[2] See Taqwim al-Adillah p. 217, Usul al-Bazdawi with Kashf al-Asrar (3/120), Al-Mustasfa (2/476).

[3] Al-Bahr al-Muhit fi Usul al-Fiqh (4/457).

[4] Conflicting Legislative Evidence and the Ways of Preferring Between Them, by Badran Abu al-Ainain Badran, p.21

[5] Conflict and Preferring Between the Legal Evidences, by Abdul Latif Abdullah Aziz al-Barzanji (1/23)

The chosen definition:

Looking at the previous definitions, it appears that they define a real conflict between the evidence, and this is a consideration, because if the conflict does occur, there is no remover for it in any way, and it is better to restrict these definitions to the view of Mujtahid .

The appropriate definition should be for the apparent conflict, since there is no real conflict between the evidence for most scholars;([6]) therefore, the definition we choose for the conflict is: The appearance of an obstacle that prevents the mujtahid from applying the legal evidence initially, which can be removed by consideration and reflection.

Explanation of the definition:

(The appearance of a contradiction), i.e., the appearance of a contradiction and its sudden discovery, this is a gender in the definition that includes real and apparent conflicts. (For Mujtahid) is a restriction in the definition that excludes the real conflict between the legal evidence, as well as the layman who looks at the legal evidence.

(From the realization of the legitimate evidence initially) is intended to define the place of the conflict, thus including the definitive and speculative legitimate evidence, as well as the apparent conflict between them by saying (initially).

(It can be eliminated by consideration and reflection) This refers to the methods that Mujtahid should follow to eliminate the conflict.

Requirement two :The truth of the conflict

Many scholars have stipulated conditions and elements for the occurrence of conflict, most of which revolve around the real conflict, which is in the same matter and its reality.([7])

This type - i.e. the real conflict - most of them agreed that it does not occur in the legal evidence, while some of them allowed it. ([8])

As for the apparent conflict, which is what is in the eyes of Mujtahid, most of them allowed it and prevented the occurrence of it by the few, including Ibn Hazm.([9])

It is more likely that a conflict may occur in the eyes of Mujtahid, which is called an apparent conflict, and prevents the occurrence of a real conflict between the legitimate evidence; because the legitimate evidence does not contradict each other in terms of its rulings, as the Almighty says: (And if it were from anyone other than Allah, they would have found in it a great difference) Surat al-Nisa, verse (82), and the Almighty, in defense of his Prophet (May God bless him and grant him peace): (Nor does he speak from [his own] inclination It is not but a revelation revealed) Surat al-Najm, verses (3-4) and other texts indicating the innocence of the Sharia from contradiction and contradiction.

As for Mujtahids, their ideas and understandings differ in the legal evidence, which may create the illusion of conflict, and even the same Mujtahid may have the illusion of conflict between two legal evidence.

---

[6] See Nihayat al-Sul (4/432), Al-Mahsul fi Ilm al-Usul (4/1308) and Mirat al-Usul fi Sharh Marqat al-Wusul (2/372), Al-Ibhaj fi Sharh al-Minhaj (3/199)

[7] See Usul al-Sarakhsi (2/12), Kashf al-Asrar (3/76), al-Bahr al-Muhit by al-Zarkashi (4/407)

[8] See al-Mahsul (4/1408).

[9] al-Ahkam fi Usul al-Ahkam by Ibn Hazm al-Dhahiri (2/158)

The point is that conflict is what arises in Mujtahid's mind when considering the legal evidence, not the reality of it; there is no real conflict between the legal evidence, although the words of some scholars of the fundamentals of jurisprudence suggest that there is.

TOPIC TWO

Arrangement of the methods of resolving the conflict among the fundamentalists

Requirement one : Methods of resolving the conflict according to Hanafi school

The Hanafi scholars believe that the claim of conflict between the legitimate evidence is between the categorical texts; as for the speculative texts, the claim of conflict in them is not accepted; rather, it is done by weighting the stronger over the weaker, and they stated that the apparent conflict may occur between the two categorical texts, and the way to pay it is in the following order:

1-By combining and reconciling the two texts or (requesting the savior); it is the first to be applied, even if the date of the two texts is known. There are five ways of combining conflicting texts according to Hanafi scholars: - by the same argument, by the judgment, by the situation, by the difference in time explicitly, and by the difference in time implicitly.

2 - By copying; which is: (the speech indicating the rise of the fixed ruling by the previous speech in a way that would otherwise have been fixed with its delay)[10], and it is applicable if the date is known and cannot be combined.

3- Falling away, which is leaving the two conflicting evidence and working with what is inferior to them. It is applied when it is not possible to combine, and the date of the two texts is not known.

4- : Determination of origins (going back to the status quo), which is a return to the original innocence. It is followed when the two texts cannot be combined, the date of the two texts is not known, and there is no inferior text to work with.[11]

Some Hanafis have contradicted this order by making copying prior to combination , so they have arranged the methods of resolving conflicts as follows:

Copying if the date is known, combination and reconciliation (seeking the savior), falling and working with the lesser text, and determining the origins, which is working with the original innocence. As for the circumstantial evidence, they do not contradict each other, but rather resort to weighting.[12]

Requirement two : Arrangement of the methods of resolving the conflict among the public

A group of scholars from public school believes that the claim of apparent conflict between Shari'ah texts is in three cases:

1- Categorical evidence among them.

2- Speculative evidence among themselves.

3- Between categorical and circumstantial evidence.

Another team from the public school believes that the claim of apparent conflict between the legitimate texts is only in the first two cases; this is the opinion of the scholars of the combined school of the two methods as well. The following is a breakdown of the most important opinions:

Al-Ghazali's opinion:

---

[10] See Kashf al-Asrar by Ala al-Din al-Bukhari (3/233)

[11] See Taqwim al-Adillah p. 215, Kashf al-Asrar an Usul Fakhr al-Islam al-Bazdawi (3/13 and 17)

[12] See Mirat al-Usul in the explanation of Marqat al-Wusul (2/370-371)

1- When there is a conflict between the two categorical evidence, it is argued that the later should be overruled by the earlier if the date is known, otherwise it is optional.

2-Weighting is only between speculative evidences and not in the categorical ones.

3- If two conclusive texts conflict, there is no way of weighting, but if they are frequent , it is ruled that the latter is Naskh - and one of them must be Naskh - and if it is Al Ahad and we also know the date, we rule the later, and if it is not known, the truthfulness of the narrator is doubtful, so we present the strongest in our minds.

4- (The categorical rules are contradictory and contradictory, so they must be Naskh and Mansukh, so they cannot be combined. Yes, if the date is ambiguous and we are unable to ask for another evidence, we must choose because one is not more important than the other with their contradiction)[13]

5- (And if the conflict - i.e., the conflict - is in two rulings of a command or prohibition, prevention and permission, then the combination is an impossible task, either one of them is a lie, or the later one is a copy, or they can be combined by downloading them in two speculative cases): (And if we are unable to combine and know the earlier and later ones, we prefer and take the stronger one)(([14]).

Opinion of Fakhr al-Din al-Razi:

First conflict resolved by combining if it is not , then it is considered:

1- If two categorical rules - whether they are general or specific - are in conflict, they will be resolved by the following

A - Copying if the earlier and later date is known and the meaning can be copied.

B - Falling away if the meaning is not copied or the date is not known.

C - Choice when the two evidences converge.

2 - If two evidence conflicts - apparently - whether they are general or specific, the following shall be paid as follows:

A - Copying if the date is known.

B - Weighting when they are close together and when the date is not known

C - Choice when the two evidences are equal.

3 -If two evidences conflict, one of which is categorical and the other is speculative, whether they are general or specific, resolving   with the following ;

A - Copying if it is known that the later is the definite one.

B - Adoption of the categorical evidence in case of ignorance of the later one or when the circumstantial one is delayed.

(C) Weighting the categorical evidence over the hypothetical when they compare.

4 / If two categorical evidence conflicts and each of them is general in one way and special in another, it is resolved by the following:

A - Naskh, if the date is known, the latter is Naskh of the earlier, even if the latter is the general, and some of them said that the general is based on the special if the general is later.

---

[13] Al-Mustasfa (2/473)

[14] Ibid (476/2)

B-Weighting when not knowing which is later and which is earlier, and the weighting is by what one of them includes in terms of being prohibited or proving a legal ruling, not weighting by the strength of the attribution, and it can be said that it combines the two evidences in terms of the difference in time.

5 - If two circumstantial evidence conflicts and each of them is general in one way and specific in another, it is resolved as follows:

A - Weighting by the strength of the attribution, and by what is included in the ruling .

B - Choice when it is not possible to choose.

6-If two evidence conflicts, one of which is categorical and the other is speculative, and both are general in one way and specific in another, the following are resolved:

 - Weighting the known over the doubtful.

7 / If two categorical evidence conflicts, one of which is general and the other is special, the following are resolved :

A - Copying the general with the later special.

B -Building the general on the special when the date is unknown or when the general is delayed and the special is advanced.

C - Allocating the general to the special if they are mentioned together.

8- If two circumstantial evidence conflicts, one of which is general and the other is specific, the details are as in the case of the two categorical evidence, one of which is general and the other is specific.

9 -If two evidence conflicts, one categorical and the other circumstantial, and one of them is general and the other is special, it is resolved as follows:

The known shall be given precedence over the presumed, unless the known is general and the presumed is special, then it is said that the general is specialized by the special and others are said otherwise.([15])

The opinion of Judge Abu Ya'la: (The conflict is first resolved by combining, and if it is not possible to combine, Mujtahid resorts to weighting).([16])

Abu al-Walid al-Baji's opinion: He mentioned two opinions on the methods of resolving conflicts between texts; the first: "If the two news conflicts in such a way that they cannot be combined, if the date is known, the new of the two will be used, and if the date is unknown, he will refer to the other evidences of the Shari'ah, and if this is known, the beholder is free to take whichever one he wishes."([17]) It is understood from this text that the methods of resolving conflicts are in the following order:

1 – Combining and reconciliation.

2 - Copying if it is not possible to combine and know the date.

3 - Dropping and working with the lowest evidence of the Shari'ah.

4- Choice.

Second Opinion: (That is, if two news reports appear to be in conflict and it is not possible to combine them in any way and the date is not known to make one of them Naskh and the other Mansukh, one of

---

[15] See Al-Mahsul (4/1324-1329).

[16] See Al-Iddah in the Principles of Jurisprudence (1/163).

[17]See Ihkam Al-Fusul, p. 163.

them is preferred over the other by some form of weighting)(([18]) It is understood that the methods of RESOLVING the conflict are in the following order:

1 – Combination 2 – copying 3 - weighting

Opinion of the author of Al-Kawkab Al-Manir explanation : He stated that there is no preponderance between two categorical because there is no real conflict between them, and if there is an apparent conflict, it is ruled by Naskh, so that the latter is Naskh of the earlier. As for the conflict between a categorical and an implicit one, it is inconceivable; if it occurs apparently, the categorical one is presented before the implicit one, but the conflict between the two implicit ones is also unreal, according to the opinion of the public:

1 - Combining if possible, even if the date is known.

2 - Naskh when it is not possible to combine with knowledge of the date, so the later will be Naskh of the earlier if it accepts Nasikh.

3 - Choice when the two evidences compare.

4 - Discarding when the date is unknown and working with the other two, even if it is possible to Nasikh them.

5 - Weighting when it is not possible to work with what is inferior.

6 - Waqf when the weighting is possible.([19])

Requirement three: The order of the methods of resolving against conflicts among the scholars of the Jama'ah school

It is stated in Fawwat al-Rahmut that the conflict is in both categorical and circumstantial evidence - meaning the apparent conflict - and is defended by the following:

- Nasikh if the earlier and later are known and both can be copied.

2 - Weighting when the date is not known.

3 - Combination when weighting is not possible.

4 - Falling out ([20]).

According to Tayssir al-Tahrir, the apparent conflict is between categorical or circumstantial evidence and is resolved by the following:

1 - Nasikh, if the date is known, so the latter is made Nasikh of the earlier.

2 - Weighting.

3 - Combination, if it is not possible to do weighting .

4 - Falling out, when the previous methods are not possible.

5 - Determining the origins. ([21])

Main conclusions and recommendations::

---

[18] See Ihkam Al-Fusul, (646/2)

[19] See Al-Kawkab Al-Manir commentary, p. 634 - 365.

[20] See Fawwat al-Rahmut (2/189).

[21] See Tayssir al-Tahrir (3/137).

- The definition of conflict as used by scholars applies to real conflicts, not apparent ones.

2-That legal texts do not actually conflict, but the conflict is in Mujtahid's understanding of those texts.

3-The most appropriate and optimal definition of apparent conflict is: (the appearance of an obstacle to Mujtahid from applying the legal evidence initially, which can be removed by consideration and reflection).

4-Apparent conflict can occur between all types of legal texts, both categorical and implicit.

5- The scholars of the fundamentalist schools differed in the order of the methods of resolving the conflict.

6- The difference between scholars in understanding conflicting texts is mostly in the methods used to resolve the conflict, not in the order in which the methods are used.

Recommendations:

We recommend researchers to pay more attention to the controversial fundamental rules and their impact on jurisprudential branches.

References

[1] Al-Ibhaj fi Sharh al-Manhaj fi Sharh al-Manhaj al-Manhaj on Minhaj al-Asl, by al-Qadi al-Baydawi, written by Ali bin Abd al-Kafi al-Subki and his son Taj al-Din Abd al-Wahhab bin Ali, printed by Dar al-Kutub al-Alamiya, Beirut, Lebanon (1416 AH - 1995 AD).

[2] Al-Baji's Ihkam al-Fusul fi Ihkam al-Usul, achieved by Dr. Abdullah Muhammad al-Jubouri. Abdullah Muhammad al-Jabouri, Al-Risala Foundation, Beirut, Lebanon, 1st edition (1409 AH - 1989).

[3] Evidences of conflicting legislation and the aspects of weighting between them, by Badran Abu al-'Aynin Badran, University Youth Foundation, Alexandria, 1974 AD.

[4] Usul al-Sarkhsi, by Abu Bakr Muhammad ibn Ahmad ibn Abi Sahl al-Sarkhsi, Dar al-Kutub al-Alamiya, Beirut, Lebanon, 1st edition (1414 AH - 1993 AD).

[5] The Ocean Sea in the Fundamentals of Jurisprudence, by Badr al-Din Muhammad bin Bahadir bin Abdullah al-Zarkashi, Dar al-Kutub al-Salamiya, Beirut, Lebanon, T1 (1421 AH - 2000 AD).

[6] -The Beginning of the Mujtahid and the End of the Muqtasid by Abu al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Ahmad ibn Rushd al-Qurtubi (d. 595 AH), Publisher: Dar Al-Hadith - Cairo, Date of publication: 1425 A.H. - 2004 A.D.

[7] Al-Tahrir fi Usul al-Fiqh al-Jama'at al-Hanafiya wa al-Shafi'iya, by Kamal al-Din Muhammad ibn Abd al-Wahid ibn Abd al-Hamid ibn Mas'ud, alias Ibn Hamam al-Din al-Iskandari, printed with Taysir al-Tahrir by Muhammad Amin, alias Amir Badshah, published by Dar al-Kutub al-Alamiya, no date. The clarification of al-Tanqih, by Sadr al-Shari'ah Ibn Mas'ud, Ali Sabih & Sons Bookstore and Press, Al-Azhar Square.

[8] The Taarid and Tarjih between the legal guides, by Abdul Latif Abdullah Aziz al-Barzanji, Dar al-Kutub al-Alamiya, Beirut, Lebanon (1417 AH - 1996 AD).

[9] Al-Taqreer al-Tahbir, commentary by Allama Ibn Amir al-Hajj al-Halabi on Tahrir al-Kamal ibn al-Hammam, Dar al-Kutub al-Alamiya, Beirut, Lebanon, 2nd edition (1403 AH - 1983 AD).

[10] -The Calendar of Evidence in the Fundamentals of Jurisprudence by Abu Zayd Ubaydallah ibn Umar ibn Issa ibn Dabbousi al-Hanafi, edited by Sheikh Khalil Muhyiddin al-Mays, Dar al-Kutub al-Alamiya Beirut Lebanon, 1st edition (1421 AH - 2001 AD).

[11]   The clarification in solving the ambiguities of al-Tanqih, by Sadr al-Shari'ah Ubaydullah bin Mas'ud al-Mahbubi, printed from al-Talwih by Sa'ad al-Din Mas'ud bin Omar al-Taftazani, Muhammad Ali Sabih Press, without a date.

[12]   Taysir al-Tahrir, the commentary of Allamah Muhammad Amin, known as Amir Badshah al-Hanafi, on the book Tahrir in the fundamentals of jurisprudence, combining the Hanafi and Shafi'i terms by Kamal al-Din Muhammad bin Abd al-Wahid bin Abd al-Hamid bin Masud, known as Ibn Hamam al-Din al-Iskandari al-Hanafi, Dar al-Kutub al-Alamiyya Beirut Lebanon without date.

[13]   -Sunan al-Nisa'i with commentary by al-Hafiz Jalal al-Din al-Suyuti and Hashiya al-Sindi, Dar al-Marifa Beirut Lebanon, 6th edition (1422 AH - 2001 AD).

[14]   -Sharh al-Kawkab al-Munir, also called Mukhtasir al-Tahrir and also called Mukhtasir al-Mubtakir al-Mubtakir Sharh al-Mukhtasir fi Usul al-Fiqh al-Sadat al-Hanbali, authored by Shaykh al-Islam Taqi al-Din Abi al-Baqa Muhammad bin Qadi al-Masriya Shihab al-Din Abi al-Abbas Ahmad bin Abd al-Aziz bin Ali bin Ibrahim al-Futuhi al-Hanbali, edited by Mohammed Hamed al-Faqi, Maktaba al-Sunnah Muhammadiyya, 1 (1372 - 1953)

[15]   Sharh Tanqih al-Fusul fi Akhtar al-Mahsul by Shihab al-Din Abu al-Abbas Ahmad bin Idris al-Qarafi, Dar al-Fikr, Beirut, Lebanon, 1st edition (1393 AH - 1973 AD), Library of the Azharite Colleges, Cairo, Egypt.

[16]   Al-Udah in Usul al-Fiqh by al-Qadi Abi Ya'la al-Hanbali, achieved by Dr. Ahmad bin Ali Sir al-Mubaraki, Al-Risala Foundation, Beirut, Lebanon, 1st edition (1400 AH -1989 AD).

[17]   Fawwat al-Rahmut by Abd al-Ali Muhammad ibn Nizam al-Din al-Ansari with the commentary of Muslim al-Thubut by Muhabbullah ibn Abd al-Shakoor, printed with al-Mustasafa of the Science of Fundamentals by Imam Abu Hamed Muhammad ibn Muhammad ibn Muhammad al-Ghazali, Dar al-Ulum al-Hadith, Beirut, Lebanon, without date

[18]   - Lisan al-Arab by Muhammad bin Makram bin Ali, Abu al-Fadl, Jamal al-Din Ibn Manzoor al-Ansari al-Ruwayfi al-Ifriqi (d. 711 AH), Publisher: Dar Sadr - Beirut, 3rd edition - 1414 AH.

[19]   Al-Mabsut by Muhammad ibn Ahmad ibn Abi Sahl ibn Abi Sahl, Shams al-Aimah al-Sarkhsi (d. 483 AH), Publisher: Al-Sa'ada Press, Egypt.

[20]   Al-Mahsoul in the Science of Fundamentals of Jurisprudence by Fakhr al-Din Muhammad ibn Omar al-Razi, edited by Adel Ahmad Abdul Mawjood and Ali Muhammad Mawad, Nizar Mustafa al-Baz Library, Makkah, Saudi Arabia, 1st edition (1417 AH - 1997 AD).

[21]   -Mukhtar al-Sahahih, by Imam Muhammad ibn Abi Bakr ibn Abd al-Qadir al-Razi, arranged by Mahmoud Khater, published by Dar al-Hadith next to the Al-Azhar administration.

[22]   The Mirror of Fundamentals in the Commentary of Marqaat al-Aqsa in the Fundamentals of Jurisprudence by Allama Mala Khusro, with an Azmiri footnote, Al-Azhar Heritage Library, 2002 AD.

[23]   -Al-Mustasafa from the Science of Fundamentals by Imam Abu Hamed Muhammad ibn Muhammad ibn Muhammad ibn Muhammad ibn Muhammad al-Ghazali al-Tusi. Muhammad Suleiman al-Ashqar, Al-Risala Foundation, 1st edition (1417-1997 AD).

[24]   Muslim by Sharh al-Nawawi, printed by Manahil al-Irfan Foundation, Beirut, and Al-Ghazali Library, Damascus.

[25]   Al-Mahdhib in the Jurisprudence of Imam Shafi'i by Abu Ishaq Ibrahim ibn Ali ibn Yusuf al-Shirazi (d. 476 AH)

[26]   Publisher: Dar al-Kutub al-Alamiya