



## A Jurisprudential Evaluation of Noncasuistical Questions Mentioned in Kanz-ul-Daqaayeq

Mohibur rehman<sup>1</sup>, Dr. Saleemur Rahman<sup>2</sup>

<sup>1</sup>PhD Scholar Department of Islamic Theology Islamia collage Peshawar KPK, Pakistan

<sup>2</sup>Associate professor Department of Islamic Theology Islamia collage Peshawar KPK, Pakistan

Received: August 7, 2017

Accepted: November 18, 2017

### ABSTRACT

In every age, Ulama, Muhaddiseen and Jurisprudents have provided such a sincere services to the Ummah which is a matter of pride. One of them is Allama Nasafi (May Allah's Mercy be upon him, the author of Kanz-ud-Daqaayeq). The mentioned book is the author's brief and comprehensive work beautifully encompassing and interpreting the Hanfi School of Islamic Jurisprudence. But a common perception about Mathoon is that every issue in it depends upon casuistical (Mufta Biha, on which, fatwa is given) but is not hundred percent correct. Allama Nasafi Sahib, in his book has discussed the same issues which are Zahir-ur-Riwayah and casuistical (MuftaBiha). Keeping in mind, the reputation of the book and the flawlessness of issue that came in my research that aroused an interest in my mind to compare these issues with their sources or origins. Through my efforts and by the Grace of Allah the Almighty got the opportunity to do it. The article below includes all these issues.

**KEYWORDS:** Noncasuistical, Jurisprudence, Evaluation, reciprocal, composition, provision, attitude

### INTRODUCTION

From first Islamic century to the existing world, Islamic scholars have compiled a great jurisprudential collection. This collection consists of such extraordinary and scholarly books which are unexaggeratedly considered as a great treasure for the Muslim community. The best of human brains work for its composition. Among these outstanding brains, one is *Allama Nusfi Mutawaffi (710 Hijri)* who was one of the greatest jurispudent, famous orator, unmatched interpreter and expert of reciprocal knowledge. He remained busy in compilation and composition along with his rhetoric teaching and casuistry and compiled many useful books on multidimensional aspects of knowledge.

He compiled unmatched and famous text of Islamic jurisprudence namely, *Kanzul Daqaayeq* which has recognized as the 3<sup>rd</sup> famous text of *Hanif's* Jurisprudence after *Qudori* and *Waqaya*. *AllamaNusfi's* text is comparatively more brief and comprehensive. There is no parallel of this text regarding its briefness and comprehensiveness in the entire jurisprudential collection.

In respect to grading and importance, *matoon* comes after *ummahaatkutub*. *Matoon* refers to those brief books of science and arts in which the basic and important issues of these doctrines are depicted in an easy way comprehensively. In text, it is usually taken in consideration that all the updated issues regarding the under discussion piece of knowledge are evaluated and the basic principles (on which all the scholars are agreed upon) are depicted in brief and comprehensive composition.

However, a general perception about *matoon* has come into front that every included proposition will be casuistical. But this is not 100% right. Sometimes there are such questions in *matoon* which are not casuistical but are considered commonly as casuistical and people attached to the verdict/decreed are committed to make mistakes in understanding and depicting them.

Now that, text is famous, reciprocal and popular in the authentic *matoon* of *Kanzul Daqaayeq* whereby commonly in Islamic jurisprudence and properly in *Hanfi* jurisprudence it is consulted in every *Madrassa* and learning casuistry. The author of *Kanzul Daqaayeq* has taken provision for two things in his book. First, those questions are described expediently which are obvious amongst Hanafites and second, most of the sayings of Aayema Salasa are those which are casuistical. In the preface of *Kanzul Daqaayeq*, *AllamaNusfi* says:

’وسميته بكنز الدقائق وهو وان خلا عن العويصات والمعضلات فقد تجلى بمسائل الفتاوى والوقعات‘<sup>1</sup>

Translation: “I gave it the name of *Kanzul Daqaayeq*. Though it is free from complicated and perplexed propositions, yet it is adorned with verdicts and the issues of new era. For example, it is adorned with those issues which consist

\*Corresponding Author: Mohibur Rehman, PhD Scholar Department of Islamic Theology Islamia collage Peshawar KPK, Pakistan.

of day today's happenings and incidents because people are in need of such kinds of issues to be solved rather than unique and complex issues. However, some of the issues are invisible and uncasuistical. Keeping the popularity of the book in mind if one inculcates deep into the matter, this proposition becomes more considerable. In the current article, a jurisprudential evaluation of such propositions are cinematographed so that the sphere of this important text would be obvious in casuistry and teaching.

Allama Nufi has described a question in *Kitab-ul-buyooah*<sup>2</sup> which apparently suggests that this question is incidental and casuistical, though it is not true. The question is

“If a person sells a granary with the scheme that its every gauge would be equal to one *Dirham*, then the barter would be rightful in only one gauge according to *Imam Abu Hanifa*. As it is mentioned in the text, if a clothing stall is sold with the scheme that the price of one meter is one *Dirham*, then the rate will not be legitimate in one meter. According to *Imam Abu Yusuf* and *Imam Muhammad*, the rate in both of the cases is right. A verdict on the saying of *Imam Abu Yusuf* and *Imam Muhammad* is given for easiness over these two above-mentioned questions.<sup>3</sup> ” كما في البحر، وظاهر ما في الهداية ترجيح قولهما لتأخير دليلهما كما هو عادته، وقد صرح في “الخلاصة في نظرية بأن الفتوى على قولهما. وايضاً في فتح القدير؛ قال الفقيه؛ والفتوى على قولهما تيسيراً للأمر على الناس،

Another such question is described in this book. If someone bought 10 yards out of 100 yards of a house, this bargain will be wrong as mentioned in the text but according to the authors, this rate is right and legitimate. The verdict is based on authors' utterances because it is in the hands of authors to eradicate this ignorance to fix the place of bargain.<sup>4</sup> ” لما في الدر المختار : وقد بيع عشرة اذرع من دار او حمام وصحاحا . قال ابن عابدين : والصحيح الجواز عندهما لانها جهالة بيدهما “اي المتبايعين.”

Similarly, Allama Nasafi has uttered a question in *Bab-e-Khayar Alrawi* (*Khayar* is explained as if a person buys a thing without even looking at it and after seeing it, he has the right to keep it or to refuse it)<sup>5</sup> though it is not casuistical. Casuistical quote is of *Imam Zafar*. The question is:

وظاهر الثوب مطوباً وداخل الدار الخ أي كفت رؤية ظاهر الثوب وداخل الدار “

According to *Ayema Salasa*, the appearance of clothing stall or the house is enough to be taken and with it, the appearance of *Khayar* becomes defunct. On the other hand, *Imam Zafar* is not agreed upon. The above-mentioned disagreement is based on behavioral attitude because there was no difference in the houses of *Kofi* but today's houses are quite different and there are a lot of diversities inside them.<sup>6</sup> ” كما في الجوهرة النيرة: وقال زفر لا بد من رؤية داخل “الببوت وهو الصحيح وعليه الفتوى لأن الدور مختلفة“

Moreover, this question has been explained in the chapter of *Khayar-e-Aib* (the thing which is lacking in its originality is different from what is called defect and in the chapter of *Byoo'at*, defect means that defect which is originated with the seller and the buyer has not seen it during its purchase and the seller has not to accept that after once it is disowned by him.)<sup>7</sup> which is stated on the consent of *Imam Zafar*, whereas the verdict in under discussion question is on the consent of *Saahibain*. The question is: “او كان طعاماً فاكل كله او بعضه لم يرجع بشئ الخ:”

Similarly, if edibles are on sale and the buyer eats it fully or some part of it and then he comes to know about its sale, according to *Imam Abu Hanifa*, the seller will not morally claim any reverse of it where's the buyer will have the right to consult according to *Imam Abu Yusuf* and *Imam Muhammad*. The verdict is based on the consent of *Imam Abu Yusuf* and *Imam Muhammad*.

كما في البحر، أن الفتوى على قولهما في الرجوع بالنقصان كما في الخلاصة وردما بقي،<sup>8</sup>”

In the chapter of illegitimate rate, the legitimate rate of honey bees has not been described whereas *Imam Muhammad* has considered it legitimate and this verdict is right.

According to *Imam Abu Hanifa* and *Imam Abu Yusuf*, the sale of honey bees is not legitimate and *Imam Muhammad* has said that if honey bees are in the protection of someone, then its sale is legitimate. The verdict of *Imam Muhammad* is casuistical.<sup>9</sup>

Similarly, Allama Nasafi has mentioned the question in the chapter of *Tolia* (means that there is no difference in the selling and buying price of the item)<sup>10</sup> and *Murabiha* (means the selling price is higher than the buying price of the item)<sup>11</sup> whereas the verdict is against it. The question is:

”كما في البحر الرائق: أن الفتوى على قول محمد ايضاً في بيع التحل كما في الذخيرة والخلاصة.“

If someone has borrowed an item with the price of one thousand rupees and then sold it with a profit of one hundred rupees and the buyer cancelled the sale, then after bargain he came to know that the seller has borrowed it with one thousand rupees, so he has to pay eleven hundred rupees because actually the price is not time bound as mentioned in the text. Whereas jurisprudent *Abu Jafar* says that a comparison must be made between cash and loan. The buyer must prefer the return in such case.<sup>12</sup> ”فان اتلف فعلم لزمه بالف ومائة الخ“

It is not legitimate to count the bread and to borrow as mentioned in *Bab-ur-Riba*. Whereas according to *Imam Muhammad*, it is right and a verdict is also there over this question. ....Arabic.....

The author has said that borrowing the bread in terms of weight is legitimate which the consent of *Imam Yusuf* is but borrowing by counting is not legitimate. However, *Imam Abu Hanifa* is strictly against it, whereas *Imam*

Muhammad is of the opinion that borrowing bread by counting or in terms of weight due to people's intensive need is legitimate in both of the cases and the verdict is on it<sup>13</sup>

” كما في البحر: قال الفقيه أبو جعفر المختار الفتوى الرجوع بفضل ما بينهما.

The affair of meat is considered illegitimate in Bab-us-salam<sup>14</sup>. Whereas according to Imam Yusuf and Imam Muhammad it is legitimate under some conditions. The question is:

”واللحم اى لا يصح السلم فى اللحم“

According to Imam Abu Hanifa, advance payment for meat is not legitimate. Imam Abu Yusuf and Imam Muhammad say that if kind, place, efficacy, quality and quantity are described then the advance payment will be legitimate. The verdict is on the consent of Imam Abu Yusuf and Imam Muhammad.<sup>15</sup> ” كما في البحر: وفي الحقائق والعيون “

Similarly, the question described in the chapter of Masayel-e-Mutafarriqa is also noncasuistical. Casuistical consent is that of Imam Yusuf. The question has been described thus:

Impure Darhams are given instead of pure Darhams and the borrower did not know about it and he lost or spent those Darhams, it will be considered payment by the borrower according to the scholars. Imam Abu Yusuf says that it is to change the impure ones into the pure ones which is undoubtedly illegitimate. This consent of Imam Abu Yusuf is preferred.<sup>16</sup> ” وان قضى زيفاً عن جيد وهو لا يعلم وتلف فهو قضاء الخ “

Similarly, the question of customary money is described in Kitab-u-Saraf<sup>17</sup> which is based on the consent of Imam Abu Hanifa and it is noncasuistical, whereas the verdict is on the consent of Imam Yusuf and Imam Muhammad. The question is. ” ولو اشتري به او بفلوس نافقة شيئاً وكسد قبل دفعه بطل البيع الخ “

If something is bought with customary money and the time is over before its payment, the rate will be considered invalid according to Imam Abu Hanifa. Whereas according to Imam Abu Yusuf and Imam Muhammad, it will not be invalid and the borrower will have to pay it. Though both of the parties have disagreement over the specified day, yet the verdict is on the consent of Imam Abu Yusuf and Imam Muhammad rather than the consent of Imam Abu Hanifa.<sup>18</sup> ” كما في الدر المختار وصحاحه بقيمته المبيع وبه يفتى رفقا بالناس بحر وحقائق “

The decision over false witnesses is enacted both internally and externally in Kitab-ul-QadhiElalQadhi (means correspondence between two judges will be considered reliable only when there is a distance between the two which should take a complete day and night while corresponding completes and the verdict is on it)<sup>19</sup> whereas the decision will be enacted outside and it will not be enacted inside and the verdict is on it. ” وينفذ القضاء بشهادة الزور فى العقود النسوخ “

”ظاهراً وباطناً الخ“

If the judge announced the decision regarding some affairs with the help of false witnesses, it will be enacted both outside and inside simultaneously. According to Imam Abu Yusuf and Imam Muhammad, it will be enacted outside but not inside and the verdict is on it.<sup>20</sup> ” كما في البحر ، قال الفقيه ابو الليث الفتوى على قولهما “

In the questions of Kitab-u-Shahda<sup>21</sup>, it is mentioned that the witness, the judge and the reporter should not act upon their own letter if they don't remember the incident. Whereas Imam Muhammad has considered it legitimate. The question is. ” ولا يعمل شاهد وقاض وراو بالخط ان لم يتذكروا الخ “

According to Imam Muhammad, the witness, the judge and the reporter should not act upon their own letter if they don't remember the incident whereas it is legitimate according to Sahibain. Imam Muhammad further says that it is legitimate for every above-mentioned person if the incident has not been remembered. According to Imam Yusuf, it is legitimate for the judge and the reporter only and not for the witness. Shams-ul-AyemaHalwani says that the verdict is on the consent of Imam Muhammad and in Bazazeyya, it is also punctuated<sup>22</sup>. ” كما فى البحر الرائق ، قال شمس “

”الائمه الحلوانى ينبغى ان يفتى بقول محمد وجزم فى البزازية بانه يفتى بقوله.“

In the chapter of advocacy, the question of Wakeel Bilkhasoomat is described which is actually controversial. Noncasuistical consent is written in the text whereas the verdict is on the consent of Imam Abu Yusuf and Imam Muhammad.

According to Imam Abu Hanifa, it is not legitimate to make Wakeel Bilkhasoomat without the will of the opponent whereas Wakeel Bilkhasoomat can be made without the will of the opponent according to Imam Yusuf and Imam Muhammad. Actually this controversy is necessity. The consent of Imam Abu Yusuf and Imam Muhammad is casuistical.

Similarly, Allam Nasafi has declared clearly in Kitab-u-Dawa that the oath of defendant regarding wife's divorce and freedom of the slave is undoubtedly illegitimate whereas religious scholars have declared this type of oath as legitimate in some cases.

The oath of divorce will not be taken from the defendant unless the defendant himself insists to do so as mentioned in the text. But some of the jurisprudents are of the opinion that if the defendant is proved to be quarrelsome and shameless in this era of life and the oath is being insisted upon, then it is legitimate for the judge to take an oath from him because in this era, people have no fear over oath taken over the name of Allah but they really fear over

the act of divorce. Therefore, oath of divorce is considered as legitimate.<sup>23</sup> “ كما في مجمع الانهار- وقيل ان الح الخصم صح في ” “ زماننا لكن لا يقضى عليه بالنكول وفي البحر الفتوى على عدم التحليف بالطلاق والعناق وهو ظاهر الرواية.

The questions of deposits are also brought under discussion and in some cases Mooda is considered as guarantor whereas the verdict is opposite as Imam Muhammd says: if Mooda hands over the property to other than his family and if there is some loss in the property, the fixation will be on Mooda. Imam Muhammad says in this connection that if he gives the property in the protection of a person who is reliable, then fixation will not be on Mooda. The verdict is on the consent of Imam Muhammad.<sup>24</sup>

وفي مجمع الأنهر: لكن روى عن محمد المودع إذا دفع الوديعة الى وكيله، وليس في عياله أو دفع الى أمين من أمنائه ممن يثق به في مالهم، وليس في “ عياله لا يضمن، وفي النهاية وعليه الفتوى.

Similarly, the question has been written on the consent of Imam Abu Hanifa over the questions of holding which is non casuistical whereas the verdict in this question is over the consent of Imam Abu Yusuf and Imam Muhammad. That question is: .....Arabic.....

According to Imam Abu Hanifa, when a brick-maker makes the bricks and become dry, he will be rightful to be paid whereas according to Sahibain, when the brick-maker only sequences the bricks, he will be rightful to be paid. The verdict is on the consent of Sahibain.<sup>25</sup>

” وفي رد المحتار ؛ قولهما استحسان زيلعي ولعله سبب كونه المفتى بـ“

Similarly, another question about holding has been made a part of the text which is noncasuistical and casuistical consent is against it. The question is:, If the holder gave his house on rent for some months and the months were mentioned, the treaty will be right. And the beholder even rested for some days in a month, the holdings will be legitimate in this case as well. Therefore, the holder cannot displace the beholder at the end of the month. But the verdict is that at the beginning of the month, one day and one night can be considered for displacement.

Allama Nasafi has mentioned another question in the text but the question seems to be incidental. Whereas that question is controversial according to Ayema Salasa and the casuistical consent is that of Imam Muhammad whereas the question is written over the consent of Imam Abu Hanifa. The question is:

If the lord says that you have worked for me gratuitously and the worker says that he worked for wage, according to Imam Abu Hanifa, the consent of the lord will be preferred. Imam Abu Yusuf says that if the dealing between the two was on wage in the past, then the worker is rightful to be paid. Imam Muhammad says that if the worker is famous for wages, then he deserves to be paid. The verdict is on the consent of Imam Muhammad.

A question has been described about the control of an insane man in Hajar (means stop and in Shariah, to stop forceful implementation is called Hajar) on the consent of Imam Abu Hanifa whereas the verdict is on the consent of Sahibain which is described by other jurisprudents. The question is:

According to Imam abu Hanifa, an insane man is legitimate to have occupancy in his own property when he is free, clever and adult even he may be lavish and villainous. According to Sahibain, such an insane should be stopped and he is not legitimate to control his property. The verdict is on the consent of sahibain.<sup>26</sup>

Another question about Hajar has been described that the borrower will not be “Mehdhoor” due to loan whereas he will be “Mehdhoor” according to Imam Yusuf and Imam Muhammad and the verdict is on it. The question is:” ودين ” According to Imam Abu Hanifa, no one will be “Mehjoor” due to the loan because he is clever and adult, therefore his occupancies are legitimate. According to Sahibain, the borrower will be “Mehjoor”. The verdict is on the consent of Sahibain<sup>27</sup>. ” وذكر البحر الرائق؛ وعندهما يجوز عليه بسبب الدين وعلى قولهما الفتوى.

It is said about the borrower that the property of borrower will not be sold in the question of debt whereas according to Imam Abu Yusuf and Imam Muhammad, the judge has this authority and the verdict is also on it. The question is:” ولم يبيع عرضه وعقاره”

If the debtor has goods and property, according to Imam Abu Hanifa, the judge should not sell it for the payment of debt but he has to send the debtor into jail. Sahibain say that if the debtor does not sell the goods and property by himself, then the judge will have to sell it for payment of debt. The consent of Sahibain is casuistical.<sup>28</sup> “ كما في البحر

”الرائق؛ وعندهما يبيع القاضي ذلك وعليه الفتوى كذا في البزازية-

## REFERENCES

<sup>1</sup>Kanzuldaqiq, university of mishigan america. no:840,11.

<sup>2</sup>Kitabul Al taarifaf, 1/48, darulkutub al Elmia Beirut Lebnon.

<sup>3</sup>Al bahr al raiq /5, 3, nashirdaar al kitab al islami, fatah al qadeer, kitab al bayuh, 680, nashir dar al fikar.

- 
- <sup>4</sup>Rad al muhtar, matlabmahm fi ahkaam. alnaqoodazakasratalakh 6/565,nashir dar al fikar, berut, t:al saniaah:1616,al bahar al raiq, baih al shaih, 5/315, nashir dair al kitab al islami.
- <sup>5</sup>Kitabul Al taarifaf, 1/37, darulkutub al Elmia Beruit Lebnon.
- <sup>6</sup>al joharata al niira ,baabkhiyar al rooyah 1/195,nashir al mutbaataalkhiira t:ala wali ,1366 hijri. fatah
- <sup>7</sup>AneesulFuqaha, 1/74, Darulkutub al elmia Beruitlebnon.
- <sup>8</sup>Al bahr al raiqbabkhiyar al rooyah g/59, anshir dar al kitab al islami, rad al muhtaar, babkhiyar al aaib,g5/, nashirdar al fikar, berut, t:alsaaniah 1996, 1616 hijri.
- <sup>9</sup>Ramzul Haqaiq, Aini, 2/31, Idara al Quran walUloom Islamia Karachi Pakistan.
- <sup>10</sup>Al bahr al raiqbabkhiyar al rooyah 6/106,anshir dar al kitab al islami, rad al muhtaar, babkhiyar al aaib,g5/, nashirdar al fikar, berut, t:alsaaniah 1996, 1616 hijri.
- <sup>11</sup>Ramzul Haqaiq, Aini,2/49, Idara al Quran walUloom Islamia Karachi Pakistan.
- <sup>12</sup>Ramzul Haqaiq, Aini,2/49,Idara al Quran walUloomIslamia Karachi Pakistan.
- <sup>13</sup>Al bahr al raiqbabkhiyar al rooyah 4/125,anshir dar al kitab al islami, rad al muhtaar, babkhiyar al aaib,g5/, nashirdar al fikar, berut, t:alsaaniah 1996, 1616 hijri.
- <sup>14</sup> Al ikhtiyaarlataaleel al mukhtar ,baab alsalm,6/36,naar mutbata al halbi,kahirata,tareekh alnashar;135 hijri,1938,fatah alqadeer,baab al raba ,38/8,nashir daar al fikar.
- <sup>15</sup> Al-Ghayatsharh Al Hidaia, 7/69, Darul Fikar Birueit Lebnon.
- <sup>16</sup>Al bahar al raiq: alsalam fiiallham, nashirdaar al kitab al islami .186, waiiyadaa, albaniyatasharah al hadayta, alsalmfiiallham,nashirdaaralkitabalislamiwayadaa,albaniyatasharahalhadiyata, alsalmfiiallham,nshirdaar al kitab,alaalmya,berut lebnan,t:alaawali,166 hijri,8/132
- <sup>17</sup> Rad al muhtaarmatlabmsaailfiialmakaasa, nshirdaaralfikar, berut, alsaniyaah.albahr al raiqbaahdarhameenwadinahrabadham wadinareen,619,nashir darralkitabalislami.
- <sup>18</sup> Rad al muhtaarkitabulqazidaaralfikar,berut ,alsaniyaah.albahr al raiqbaahdarhameenwadinahrabadham wadinareen,619,nashir darralkitabalislami.
- <sup>19</sup> Al bahar al raiq,kitab al shadata ,8/28,:nashir :daar al kitab,alsilami,radalmuhtaar, kitaab ,alqaadi ,ala qadii5/238,nahir daar alkitab,1212 hijri/1996.
- <sup>20</sup>Al aqood al darretafitanqeeh al fattavi al haamdiya,kitab aldavai,2/38,nashir daaralmarafa, majma ala nahaar, kitab al dava,355,nashir daar al hayaaltaraas al arabi.
- <sup>21</sup> Majma ala nahar, kitabaldyata, 2/339, nashir; daaralhayaaltaraasalarabi. rad al muhtaar, kitab al yadaa,5/, daaralfikarberutt; al saniaah1212,1994.
- <sup>22</sup>Al bahar al raiq, kitab al shadata ,8/28,:nashir :daar al kitab, alsilami, rad almuhtaar, kitaab,al qaadi ,ala qadii5/238,nahir daar alkitab,1212 hijri/1996.
- <sup>23</sup> Majma ala nahar, kitabaldyata ,2/339,nashir; daaralhayaaltaraasalarabi. rad al muhtaar, kitab al Yadaa,5/, daaralfikarberutt; al saniaah1212,1994.
- <sup>24</sup>Rad almuhtaaralialdar al muhtaar, sharoot alajarata,128/8,nashir daar al fikar, berut alsaniaah,1616,1996.
- <sup>25</sup>Rad almuhtaarali al daralmukhtar, kitab alhajara,,128,nasshir daaaralfikarberut, alsaniaah 1616,1996.
- <sup>26</sup>Rad almuhtaarali al daralmukhtar, kitab majnoon,,127/6,nasshir daaaralfikarberut, alsaniaah 1616,1996.
- <sup>27</sup>Rad almuhtaarali al daralmukhtar,kitab majnoon,,96/7,nasshir daaaralfikarberut, alsaniaah 1616,1996.
- <sup>28</sup>Rad almuhtaarali al daralmukhtar, kitab majnoon,,95/7,nasshir daaaralfikarberut, alsaniaah 1616,1996.