

THE INSTITUTION OF MARITAL MAINTENANCE (NAFAQAH) IN AL-MARGHINANI'S "AL-HIDAYAH" AS A BASIS FOR WOMEN'S ECONOMIC AGENCY IN ISLAMIC FAMILY LAW**Rashidova Shaxzoda Raimovna**

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Abstract

The article provides a historical and legal analysis of the institution of marital maintenance (nafaqah) based on the fundamental work of Burhanuddin al-Marghinani, "Al-Hidayah". The study aims to reinterpret the classic norms of Hanafi fiqh within the context of contemporary debates on women's rights protection and the prevention of economic abuse within the family. The author argues that in al-Marghinani's doctrine, the husband's maintenance obligations during marriage are treated not as charity, but as an unconditional legal duty arising in exchange for marital status. Special attention is paid to the principle of separation of property, where full financial provision by the husband allows the wife to accumulate personal capital and act as an independent economic agent.

Keywords: Burhanuddin al-Marghinani, Al-Hidayah, Islamic family law, Nafaqah (maintenance), women's rights, economic agency, separation of property, family law of Uzbekistan.

Introduction

Today, in Uzbekistan, the protection of women's rights has become an integral part of a comprehensive state policy. Legal and social mechanisms are being actively developed to safeguard women not only from domestic violence but also from financial dependency. In this regard, our national traditions can offer unexpected and valuable insights, provided they are examined beyond conventional stereotypes.

It is a common misconception that within a classical Muslim family, a woman possesses no economic rights. To dispel this myth, one can look to the scholarly heritage of our great jurist, Burhanuddin al-Marghinani. His foundational 12th-century treatise, Al-Hidayah, composed in Rishtan, served for centuries as the primary legal code for courts throughout the Islamic world and was even studied by European jurists as a model of rigorous legal logic.

Al-Marghinani outlines a remarkably modern paradigm: the assets and budgets of the spouses are strictly segregated. In his interpretation, the husband's obligation to maintain the family (nafaqah نَفَقَة) is absolute. The husband is legally bound to cover all expenses—including food, housing, and clothing—even if his wife is wealthier than he is. Conversely, the woman is under no legal obligation to contribute a single penny of her personal funds toward household expenditures.

Paradoxically, by entirely exempting women from domestic expenses, the ancient norms of Al-Hidayah establish optimal conditions for the accumulation of their personal capital. This structure embodies the very essence of economic autonomy that we strive to achieve in contemporary family law.

To interpret this 12th-century text, this study employs the hermeneutique method, which allows the norms of Al-Hidayah to be analyzed not merely as religious precepts, but as legal constructs possessing internal consistency, logic, and systematic structure. Furthermore, a

formal-legal analysis is applied to determine the juridical nature of nafaqah as an obligation based on consideration (quid pro quo), distinguishing it fundamentally from a gift (hibah هبة) or charity (sadaqah صدقة).

The Legal Nature of Nafaqah in Hanafi Jurisprudence

Central to the economic model of the family in Al-Hidayah is the definition of the legal nature of maintenance (nafaqah - نفقة). Engaging in polemics with representatives of other madhhabs (schools of law), Burhanuddin al-Marghinani draws a sharp distinction between the concept of financial aid provided to the needy and that of marital maintenance.

In al-Marghinani's interpretation, nafaqah possesses the character of mutual consideration within the framework of the marriage contract. The husband's duty to maintain his wife does not arise from her potential incapacity to work or her poverty; rather, it serves as a legal compensation for Ikhtibas (الإختباس) (custody/devotion to the family).

Since the woman restricts her social mobility within the marital union in the interest of the family, the husband, as the beneficiary of this marital status, is legally obligated to fully indemnify her living expenses (nafaqah al-jaza — maintenance as compensation — نفقة الجزاء). It is critical to emphasize that this legal construct does not function to restrict the woman, but rather establishes a firm statutory basis upon which she can demand payments. The obligation to provide nafaqah commences the moment the wife expresses her readiness to move into the husband's home.

Al-Marghinani consistently enforces the principle of the separation of property. According to the norms of Al-Hidayah, even if the wife is wealthy (al-zawjah musirah الزوجة موسرة), owns real estate, or operates her own business, the husband is by no means absolved from his duty to provide her with food, clothing, and shelter.

The text of Al-Hidayah completely lacks the concept of a "joint financial contribution to the household" in the manner it exists within Soviet and post-Soviet legal traditions. This allows us to conclude that Hanafi legal doctrine constructs a model of "guaranteed passive income" for a married woman. Under this framework, her personal earnings and assets are not depleted by current consumption but are instead fully capitalized. It is precisely this mechanism that serves as the economic foundation of her legal subjectivity, enabling a woman to retain financial independence even within a patriarchal social order.

Determination of the Quantum of Maintenance

One of the most complex issues in the theory of family law is determining the exact quantum (amount) of maintenance. In Al-Hidayah, al-Marghinani presents a fundamental legal debate that demonstrates the distinction between formal and socially-oriented approaches.

Al-Marghinani opposes the position of Imam al-Shafi'i, who asserted that the amount of nafaqah depends solely on the financial status of the husband. Al-Shafi'i's logic is built upon the principle of a debt obligation: "The wealthy is obligated according to his wealth, and the poor according to his poverty."

In contrast, Al-Hidayah establishes a differentiated scale of maintenance, which functions as a mechanism to protect a woman from a sharp decline in her standard of living upon marriage. Al-Marghinani identifies three scenarios:

- **Both spouses are wealthy:** The wife is entitled to top-tier maintenance (high-quality food, premium clothing).
- **Both spouses are poor:** Maintenance is determined by the minimum standard necessary for survival, so as not to impose an impossible or inequitable burden on the husband.
- **Mixed status:** If the husband is wealthy and the wife comes from a poor family (or vice versa), al-Marghinani dictates adhering to the standard of "al-wasat" (الوسط) — the middle ground or average value.

An analysis of the text of "Kitab al-Nafaqat" (The Book of Maintenance) allows us to reconstruct the structure of mandatory provision, which, in its level of detail, anticipates modern concepts of the consumer basket:

• **Food Provision:** This includes not only basic staples (bread/wheat) but also the necessary components of a complete diet (seasonings, meat, oil). Moreover, the quality of the food must correspond to the wife's established habits.

• **Seasonal Clothing:** Al-Marghinani emphasizes the mandatory nature of providing clothing twice a year (summer and winter), and the quality of the fabric must match her social status.

• **The Right to Domestic Servants:** This is perhaps the most illustrative element protecting a woman's "economic dignity." If the wife comes from a social background where she did not engage in manual domestic labor (aristocracy or the upper class), the husband is legally required to cover the costs of domestic servants. According to the logic of the faqihs (jurists), forcing such a woman to manage a household independently would constitute a "humiliation and an intolerable hardship."

Al-Marghinani's doctrine forms a standard under which a woman does not merely "survive," but fully maintains her customary social and cultural lifestyle at her husband's expense. This confirms the thesis that Islamic law constructs marriage not as a partnership of equal financial contributions, but as an institution where the economic burden is entirely shifted to the man to ensure the comfort and security of the woman.

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