



MAINTENANCE (NAFAQA) IN THE WORKS OF AL-ŞADR AL-SHAHĪD AL-BUKHĀRĪ AND ITS RELEVANCE TO CONTEMPORARY FAMILY ISSUES

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Abstract. Maintenance is one of the central institutions of Islamic family law, regulating the financial obligations that arise from marriage and kinship. This article examines the doctrine of maintenance in the works of Husām al-Dīn ‘Umar b. ‘Abd al-‘Azīz al-Şadr al-Shahīd al-Bukhārī (483–536/1090–1141), particularly his commentaries on al-Khaṣṣāf’s Kitāb al-nafaqāt and Adab al-qāḍī and his fatwa collection ‘Umdat al-fatāwā. After defining maintenance in its lexical and technical senses and outlining the structure of al-Şadr al-Shahīd’s commentary, the article analyses his positions on the legal basis of maintenance, the role of the judge, the standard of “what is customary”, maintenance during the waiting period, the rights of a wife whose husband is absent, the effect of imprisonment and disobedience, and the question of whether a wife is obliged to perform housework. It then turns to issues with contemporary relevance: the maintenance of a sick wife on the basis of juristic preference (istiḥsān), the maintenance of students and of adult children without a trade, the maintenance of a non-Muslim wife, the role of local custom and climate in determining clothing, the rights of needy relatives, custody disputes and the mother’s right to relocate with the child, and maintenance obligations regarding jointly owned property and animals. The study argues that al-Şadr al-Shahīd’s approach, which balances the economic circumstances of both spouses, protects the weaker party and adapts rulings to local custom, offers a valuable legal and ethical resource for addressing present-day family disputes.

Keywords: nafaqa, maintenance, Islamic family law, al-Şadr al-Shahīd, al-Khaṣṣāf, Kitāb al-nafaqāt, custody (ḥaḍāna), istiḥsān, custom (‘urf), Hanafi school

INTRODUCTION

Among the rights of others that a Muslim is obliged to fulfil, maintenance holds a particularly important place, since the stability of human life, livelihood and the continuity of generations depend upon it. In Islamic law a person is responsible for the

maintenance of himself, his wife, his children, his parents and needy relatives, as well as for the upkeep of the animals, houses, fields and other property under his care. The first scholar to devote a separate book to this subject was Abū Bakr Aḥmad b. ‘Umar al-Khaṣṣāf al-Baghdādī, a student of the circle of al-Ḥasan b. Ziyād al-Lu’lu’ī. His *Kitāb al-naḥḥ* is short, but it contains questions that are difficult to find elsewhere, and for this reason prominent jurists such as al-Sughdī, al-Jaṣṣāṣ, al-Warrāq, al-Ḥalwānī, al-Sarakhsī and al-Isbījābī wrote commentaries on it. Ḥusām al-Dīn ‘Umar b. Māza, known as al-Ṣadr al-Shahīd, was the last of the major commentators, and his commentary became so closely associated with his name that it eclipsed the others.

Modern research on maintenance in Islamic law is extensive, including comparative studies of spousal maintenance in classical jurisprudence and in contemporary personal status laws (al-Arṭash, 2017:2–3; al-‘Āṣī, 2007:4). However, the specific contribution of the jurists of Transoxiana, and of al-Ṣadr al-Shahīd in particular, has received little attention. The aim of this article is to analyse his doctrine of maintenance on the basis of his *Sharḥ Kitāb al-naḥḥ*, his commentary on *Adab al-qādī* and his fatwas, and to show the relevance of his positions to present-day family problems. The study uses textual, comparative and legal-analytical methods.

MAIN PART

Definition of maintenance and the structure of al-Ṣadr al-Shahīd’s commentary

Lexically, *naḥḥ* derives from the root *n-f-q*, which conveys the sense of perishing or running out; one says *naḥḥat al-dābba* when a riding animal dies, and *infāq* denotes the exhaustion of a person’s wealth, as in the Qur’anic verse “you would have held back for fear of spending” (Q 17:100) (al-Arṭash, 2017:2–3). In technical usage the Ḥanafīs define maintenance in two ways: as the provision necessary for the continued existence of something, meaning the resources spent on preserving the life and health of a wife, children and relatives (al-‘Āṣī, 2007: 4), and more specifically as food, clothing and housing (Ibn al-Humām, n.d.:4/3). The definition found in al-Ṣadr al-Shahīd’s works is broader: it includes all those entitled to maintenance and extends the concept to animals and property, which makes it the most comprehensive among the definitions reviewed.

Al-Ṣadr al-Shahīd’s *Sharḥ Kitāb al-naḥḥ* is written in a clear style, sets out the evidence and causes of rulings in detail, and enriches al-Khaṣṣāf’s text with the fatwas

of jurists such as Abū Bakr al-Faḍlī and Abū al-Layth al-Samarqandī. It avoids repetition by abbreviating matters that the author had discussed at length elsewhere, for example in his commentaries on *Adab al-qāḍī* and *al-Jāmi‘ al-ṣaghīr*. The commentary covers the following main topics: the maintenance of infants whose mother has been divorced; the wife’s right to maintenance and its amount; the maintenance of the needy children and relatives of a poor woman; the maintenance of a woman in her waiting period; the maintenance of relatives within the prohibited degrees; maintenance between Muslims and non-Muslims; the maintenance of missing persons and captives; a wife’s petition to the judge when her husband is absent; the right of custody after divorce or death; and the ruling on a divorced mother who wishes to move to another town with her child (al-Ṣadr al-Shahīd, 1946:115–116).

Legal basis of maintenance and the role of the judge

In his commentary on *Adab al-qāḍī*, al-Ṣadr al-Shahīd establishes the obligation of maintenance on the basis of the Qur’an and the Sunna (al-Ṣadr al-Shahīd, 1977: 4/199). He cites the verses “Men are the protectors of women... because they spend of their wealth” (Q 4:34) and “upon the father is their provision and their clothing according to what is customary” (Q 2:233), explaining that the phrase *al-mawlūd lahu* in the second verse refers to the father. He also cites the hadith of Hind bt. ‘Utba, who complained that her husband Abū Sufyān did not give her and her child enough, and whom the Prophet permitted to take “what suffices you and your child according to what is customary”.

A key element of his analysis is the distinction between the maintenance of the wife and children and that of other relatives. The former is obligatory even before any judicial decision, since its cause is the marriage contract and lineage; the judge’s order does not create a new obligation but assists in enforcing an existing right. A husband who withholds maintenance is therefore in the position of a wrongdoer, and the judge is appointed to remove this wrong. The maintenance of other relatives, by contrast, is subject to disagreement among jurists and becomes obligatory only through a judicial decision, which in this case creates the obligation *ab initio*. The amount of maintenance, in his view, must avoid both extravagance and stinginess; it must be neither more than the law permits nor less than need requires, which corresponds to the Qur’anic ideal of those who, “when they spend, are neither extravagant nor miserly, but hold a just balance between the two” (Q 25:67).

Maintenance during the waiting period, absence and imprisonment

Al-Ṣadr al-Shahīd sets out the Ḥanafī position on maintenance during the waiting period (*‘idda*) in comparison with the Shāfi‘ī school. In the case of a revocable divorce both schools grant maintenance, since the marriage is still in effect. In the case of an irrevocable divorce the Ḥanafīs grant maintenance while the Shāfi‘īs do not. The Ḥanafī argument is that the right established during marriage continues until the end of the waiting period; however, a woman who was not entitled to maintenance during the marriage, such as a disobedient wife, is not entitled to it during the waiting period either (al-Ṣadr al-Shahīd, 1977:4/204). Because maintenance is intended to meet need, a woman who does not claim it during her waiting period loses the right once the period ends or if she dies, just as the heirs of a judge or state official cannot claim his salary from the treasury after his death.

The rights of a wife whose husband is absent receive detailed treatment. If the husband has no property, the judge does not fix maintenance according to the three leading Ḥanafī imams, while Zufar holds that he does. If the husband has property, the judge makes the wife swear that she has not received maintenance and fixes it from the husband’s property after taking a guarantor from her. Where the marriage itself must be proved in the husband’s absence, Abū Ḥanīfa’s final opinion is that the judge does not fix maintenance, whereas Abū Yūsuf holds that he fixes it without issuing a definitive judgement on the marriage. Al-Ṣadr al-Shahīd notes that the judges of his own time, in response to people’s needs, accepted testimony on the marriage against the absent husband and fixed maintenance, and he describes this as an exercise of independent judgement in the public interest (al-Ṣadr al-Shahīd, 1977:4/208).

If the wife borrows money for her living in her husband’s absence without the judge’s permission, the debt is her own; if she borrows by order of the judge, it becomes a debt of the husband, who must repay it on his return, since the judge has authority to impose obligations on an absent person. If maintenance was fixed at a low rate during a period of low prices and prices subsequently rise, the wife may ask the judge to increase it. As to guarantees, Abū Ḥanīfa holds that a departing husband cannot be compelled to provide a guarantor for future maintenance, since guaranteeing what is not yet due is a voluntary act, while the two companions hold that he may be compelled to provide a guarantor for one month’s maintenance.

Al-Ṣadr al-Shahīd analyses imprisonment according to its cause. If the wife is imprisoned for a debt she could have paid, she is not entitled to maintenance, since the obstacle arises from her own choice. If she is imprisoned for a debt she cannot pay, or unjustly, the jurists disagree: al-Khaṣṣāf holds that maintenance lapses, because it depends on the husband's ability to enjoy the marital relationship, and the fatwa follows this view, while Abū Yūsuf and al-Sughdī hold that she remains entitled because she is not at fault. If the husband is imprisoned, justly or unjustly, or goes into hiding, the wife's maintenance does not lapse, since the obstacle comes from his side (al-Ṣadr al-Shahīd, 1977:4/216).

Disobedience, servants and household work

The author distinguishes between a wife who leaves the marital home without her husband's permission and one who remains at home but refuses intimacy. The former is not entitled to maintenance until she returns; al-Ḥasan al-Baṣrī, asked whether such a woman is owed maintenance, answered ironically: "Yes, a sack of dust". The latter remains entitled, because she is still under her husband's care, in the same way as a woman with a physical impediment. A divorced woman who leaves the house during her waiting period loses her right to maintenance and housing (al-Ṣadr al-Shahīd, 1977:4/224). Concerning the wife's servants, Abū Yūsuf holds that the husband must maintain two servants, while Abū Ḥanīfa and Muḥammad require the maintenance of only one (al-Ṣadr al-Shahīd, 1977:4/224).

One of the most notable conclusions of this chapter concerns housework. Al-Ṣadr al-Shahīd states that if the judge assigns flour and other provisions to the wife as maintenance and she refuses to knead, bake or cook, she cannot be compelled to do so; the husband must bring her prepared food or hire someone to cook for her. He bases this on the Qur'anic term *iṭ'ām*, "feeding" (Q 5:89), arguing that wheat or flour is not food but the raw material of food, while food is what is ready to be eaten. The wife differs from a servant: a servant who refuses to cook loses her wage, because her maintenance is a return for her service, whereas the wife's maintenance is a consequence of the marital bond, not of service. Abū al-Layth al-Samarqandī approaches the question from the perspective of custom and social status: if the wife is ill, or belongs to a class whose women do not usually perform such work, the husband must provide a servant or prepared food; if she is healthy and belongs to a class whose women serve themselves, a demand for a servant is regarded as obstinacy (al-Ṣadr al-Shahīd, 1977:4/235–237).

Property of an absent person and the rights of parents

A judge may order maintenance from the property of an absent person for only three categories: his wife, his parents and his children. Members of these categories could take their right even without a judicial order if they had access to the property, so the order merely assists in enforcing an existing right. Other relatives, such as brothers and paternal or maternal uncles, cannot receive maintenance from the absent person's property, because their right arises only through a judicial decision, and a decision against an absent person is not permitted (al-Ṣadr al-Shahīd, 1977:4/260–263). A needy father may not sell the immovable property of his absent adult son, according to all the jurists; according to Abū Ḥanīfa he may sell movable property for his maintenance, while Abū Yūsuf and Muḥammad do not allow this, and if the son is present the father may sell nothing (al-Ṣadr al-Shahīd, 1977:4/266). Needy parents who hold their son's money may spend it on their maintenance without liability, since it is of the same kind as their right; a trustee who hands the absent son's money to his parents without the judge's permission is liable, but not if he acts on the judge's order (al-Ṣadr al-Shahīd, 1977:4/267).

Issues of contemporary relevance

Al-Ṣadr al-Shahīd distinguishes three kinds of maintenance: that owed to relatives, that which is recommended as charity and as a means of maintaining family ties, and that owed by virtue of marriage, which he regards as superior even to the best supererogatory charity (al-Khaṣṣāf, 1990:152). Several of his positions speak directly to problems faced by families today.

Support of a stepmother and of working-age children. If the father is poor and unable to work, the son is obliged to maintain not only his father but also his father's wife, because she serves the father and secures his comfort, and kindness to parents requires kindness to their spouses; the father, however, is not obliged to maintain his son's wife (al-Ṣadr al-Shahīd, 1977:4/267). The father may also place sons who have reached working age in a trade and maintain them from their earnings (al-Khaṣṣāf, 1990:152). This position has clear educational value in addressing idleness and dependency among young people. At the same time, an adult son who is healthy but has no trade and cannot find employment is treated as incapable, and his maintenance remains the father's obligation. The same applies to students whose study leaves them no time to earn a living; al-Ḥalwānī is quoted as saying that a healthy person unable to work

because he lacks a trade, or because work would dishonour a person of his standing, remains the father's responsibility (al-Ṣadr al-Shahīd, 2023:138–139).

Maintenance of a non-Muslim wife. A Muslim husband is obliged to maintain his Christian wife, because the cause of maintenance is marriage, and this marriage is legally valid (al-Ṣadr al-Shahīd, 1977:4/300). Differences of religion thus do not deprive a wife of her right to support, which reflects the principle of religious tolerance within the family.

The sick wife. If the wife becomes so ill that marital relations are impossible, her maintenance remains the husband's obligation. Analogy (*qiyās*) would suggest that maintenance lapses, since the principal purpose of marriage cannot be fulfilled; but on the basis of juristic preference (*istiḥsān*) maintenance is obligatory (al-Ṣadr al-Shahīd, 1977:4/313–314). Al-Ṣadr al-Shahīd supports this with two arguments. The first is ethical: to maintain a wife while she is healthy and abandon her when she falls ill is contrary to decency and chivalry (*murū'a*). The second is legal: the sick wife is still under her husband's care, she protects the household, and he finds companionship with her. He adds that it is unworthy of a man to send his sick wife back to her parents' house and leave her alone. Where the wife was already ill at the time the marriage was consummated, Abū Yūsuf, relying on analogy, denies maintenance, but al-Ṣadr al-Shahīd prefers juristic preference here as well. In an age when many families break up precisely because of such neglect, this fatwa is of obvious relevance.

Travel for pilgrimage. If husband and wife travel together to perform the pilgrimage, the wife's maintenance remains due, but the husband owes only her ordinary maintenance at home, not the additional costs of travel, which she bears from her own property. If she travels for the obligatory pilgrimage without him, accompanied by a close relative, her maintenance is suspended until she returns, because she has left the household; prayer and fasting differ, since they do not remove her from her husband's care (al-Ṣadr al-Shahīd, 1977:4/300).

Economic status of both spouses. If the husband is very wealthy and habitually hosts guests, the wife need not ask the judge to fix maintenance, since a man who feeds strangers will not leave his wife unprovided. If the husband is very wealthy and eats bread of fine white flour (*ḥuwwārī*), meat and sweets while the wife comes from a poor family, he is not obliged to feed her exactly as he feeds himself; the judge fixes the maintenance of people of middle means. If both are wealthy, generous maintenance

is due, but without extravagance (al-Ṣadr al-Shahīd, 1977:4/247). If both are poor, the maintenance of the poor is due, but not at a level that leaves the wife hungry; if the wife is wealthy and the husband poor, she receives more than the maintenance of the poor, and in the opposite case less than that of the wealthy. Al-Ṣadr al-Shahīd's conclusion is that, although Muḥammad and al-Khaṣṣāf in some places mention only the husband's condition, the correct view is that the wife's social and economic condition must also be taken into account (al-Ṣadr al-Shahīd, 1977:4/248). This balanced approach offers a practical basis for resolving modern disputes arising from the changing economic expectations of spouses.

Custom and climate. Iraqi jurists such as Ibn Abī Laylā fixed a wife's annual clothing as two shifts, two head coverings and one wrap, and did not mention trousers, which were not customarily worn in the hot Iraqi summer. Al-Ṣadr al-Shahīd notes that "according to the custom of our lands" the wife is also granted trousers and the winter garments she needs, such as a padded robe (*jubba*) (al-Ṣadr al-Shahīd, 1977: 4/240). Similarly, the report that the judge Shurayḥ fixed a monthly maintenance of fifteen dirhams is not a fixed tariff but an application of the principle of sufficiency (*kifāya*); the amount changes with time and place, and the judge must consider local prices and the wife's needs, since the purpose of the law is to avoid hardship (al-Ṣadr al-Shahīd, 1946:18–20). These passages demonstrate the flexibility of Islamic law in adapting to local conditions.

Needy relatives. A sister who owns a house, a servant and household furnishings but has no further means is not legally considered wealthy, since these possessions are necessities; her wealthy brother can therefore be compelled to maintain her, and she may even receive charity and *zakāt*. The maintenance of relatives, however, is due only when the provider is wealthy, whereas the maintenance of a wife and minor children remains due even if the husband or father is poor.

Custody and the mother's right to relocate

Al-Ṣadr al-Shahīd places the upbringing of the child at the centre of family law. If a maternal grandmother claims that her daughter has died and demands the grandchild and its maintenance, while the father insists that the mother is alive and in his house, the judge does not hand the child to the father until the mother's status is established, since by acknowledging the woman as grandmother the father has acknowledged her right of custody (al-Ṣadr al-Shahīd, 1977:4/232). If the father brings a woman and states that

she is the child's mother, while the grandmother denies it, the word of the father and the woman is accepted, since their marriage is established by their mutual agreement and lineage follows the marital bed. If the mother, although unmarried, declares that she does not want the child and the grandmother claims custody, the child is given to the grandmother and the father must pay its maintenance: the mother may waive her own right, but the child's right to care and affection cannot be waived by her (al-Ṣadr al-Shahīd, 1977:4/225).

On relocation after divorce, al-Ṣadr al-Shahīd sets out detailed criteria. Moving from one village to another is permitted if the father can visit the child and return home the same day; moving from a village to a city is permitted if the distance is short; moving from a city to a village is not permitted, since it limits the child's educational and social opportunities; and moving from one city to another is permitted only if the destination is the mother's home town and the marriage was concluded there. Where the city is not her home town but the marriage was concluded there, two reports exist, and al-Ṣadr al-Shahīd, following *al-Jāmi' al-ṣaghīr* and al-Khaṣṣāf, permits the move. The right to relocate belongs to the mother alone, because it derives from the marriage contract between her and the father; a grandmother who has custody after the mother's death may not take the child away from the father's city, and neither may a freed concubine who bore her master's child, since neither has a marriage contract with the father (al-Ṣadr al-Shahīd, 1977:4/215). Al-Ḥalwānī urged students to memorise these two rulings on the grandmother and the freed concubine, noting that they are rare points not found even in al-Sarakhsī's *al-Mabsūṭ*.

Maintenance of shared property and animals

Al-Ṣadr al-Shahīd extends the concept of maintenance to jointly owned property. If the boiler or basin of a jointly owned bathhouse breaks and one partner refuses to repair it, the other may repair it at his own expense and recover the cost from the bathhouse revenue, since he acted under necessity rather than as a volunteer; if the building is completely destroyed and one partner refuses to rebuild, the land is divided. If one partner in an irrigation canal refuses to clean it, the others clean it and recover the cost from him, since part of a canal cannot be cleaned while the rest is left. Here he records a debate: Abū 'Alī al-Nasafī held that the refusing partner should be denied water until he pays, while al-Ḥalwānī objected that denying water would destroy his

right altogether. A partner who refuses to repair a well because he does not water his animals from it is not compelled, since the cost of repair is a return for its use (al-Ṣadr al-Shahīd, 1977:4/226).

The case of a jointly owned animal illustrates the distinction between individual and shared property. If one partner refuses to feed the animal, the judge tells him either to sell his share or to provide its fodder. If the animal belongs to one person alone, the judge does not compel him to feed it, although neglecting it is a sin before God, because failing to maintain one's own property is the destruction of one's own property; in joint ownership, however, the refusal amounts to destroying the partner's property, which no one has the right to do (al-Ṣadr al-Shahīd, 1977:4/334). These rulings show that maintenance in al-Ṣadr al-Shahīd's thought is not only a family institution but also an economic instrument securing the stability of property relations, which was of vital importance in an agricultural region such as Transoxiana.

CONCLUSION

The study leads to the following conclusions. First, the definition of maintenance in the works of al-Ṣadr al-Shahīd is the most comprehensive among those examined, since it covers all persons entitled to maintenance and extends to animals and property. His commentary on al-Khaṣṣāf's *Kitāb al-naḥqāt*, although many other commentaries were written on the same work, became the one most closely associated with the subject in the Ḥanafī tradition.

Second, al-Ṣadr al-Shahīd distinguishes clearly between maintenance based on marriage and descent, which exists independently of a judicial order, and maintenance of other relatives, which is created by the judge's decision. This distinction defines the scope of judicial authority and protects the rights of wives and children even in the absence of the husband.

Third, his positions on the economic status of both spouses, on the maintenance of a sick wife through juristic preference, on the absence of an obligation to perform housework, on the support of students and unemployed adult children, on the maintenance of a non-Muslim wife and on the role of local custom demonstrate a combination of legal precision and ethical concern. They protect the weaker party within the family while preventing extravagance and abuse.

Fourth, his detailed criteria on custody and relocation place the interests of the child at the centre, balancing the mother's right of care against the father's right of guardianship and access. Finally, his treatment of shared property and animals shows that maintenance also functioned as a mechanism of economic stability. Al-Ṣadr al-Shahīd's *Sharḥ Kitāb al-nafaqāt* can therefore serve as an important supplementary text in courses on classical Islamic legal texts, and his fatwas can inform contemporary discussions of family relations and the resolution of family disputes.

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