

Andalusian Women's Rights between Islamic Legislation and Practice during the 4th-6th AH / 10th-12th CE Centuries

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Abstract:

This study examines the reality of women's rights in Andalusian society. It focuses on the position women held within the family and social order. It also considers their presence as legal actors whose rights were guaranteed by Islamic legal rulings and shaped by prevailing social practice. The analysis shows that women possessed several social rights throughout the stages of family life. These rights appeared when the marital bond was formed, through the rules of guardianship, dower, shawar, and siyaqa. They also appeared when that bond ended, through issues such as withdrawal from marriage, the different forms of divorce, khul', waiting periods, proof of lineage, and custody. These fields reveal a careful system that aimed to preserve family balance and regulate relations among its members. The study also shows that women enjoyed financial rights that gave them a degree of economic independence. This was most evident in their right to maintenance, which was assessed in light of economic and social conditions. It was also clear in their right to inheritance, which was treated as a legal entitlement governed by precise rules. The findings confirm that Andalusian society had an advanced legal and social framework. This framework strengthened women's position within the family and recognized rights that reflected the level of social and economic organization reached in Islamic al-Andalus.

Keywords: women, al-Andalus, rights, social contracts, financial contracts

Introduction

Islamic jurisprudence formed a central regulatory framework in Andalusian society. It organized social relations through a legal system that sought to preserve rights and protect them. This system rested on justice and on the prevention of harm among individuals. Its effect was clear in everyday life. It produced a varied social reality and contributed to the formation of practices and customs that governed relations within society. In this context, the family emerged as the basic unit of social structure. A set of rulings became attached to it. From these rulings came rights and duties that shaped the general framework of women's status in Andalusian society.

This study seeks to clarify the nature of the rights enjoyed by women in al-Andalus. It also aims to reveal their status within the social and family structure. It does so by tracing the social rights linked to married life and its effects. It also examines the financial rights that secured for women a measure of economic independence within society.

On this basis, the study addresses the nature of the rights that Islamic legislation granted to Andalusian women. It also examines the extent to which these rights affected their social and financial standing in society. The study assumes that women in Andalusian society enjoyed a system of rights that did not merely regulate family relations. These rights also extended to financial matters and

helped establish women's presence within the social structure. From this problem arise several sub-questions, the most important of which are:

What was the nature of the social rights enjoyed by Andalusian women when the marital bond was established?

How did Islamic legislation regulate the different mechanisms related to ending this bond in a way that protected women's rights?

To what extent did women benefit from independent financial rights, mainly maintenance and inheritance, in Andalusian society?

In methodological terms, the nature of the subject required the use of the historical-analytical method. This method is the most suitable tool for examining the reality of women in Andalusian society. It makes it possible to identify their status and their role in social and financial life. It also helps explain how Islamic legislation regulated the relations connected to them.

Accordingly, the study is divided into two main sections. The first section deals with social rights. It focuses on the rights linked to the marital contract, beginning with the marriage contract as the legal framework that regulated family relations. It then discusses the dower as a financial obligation established by the contract. It also considers shawar and wedding gifts as social practices attached to marriage, as well as siyaqa and the customs connected to it. The same section also examines the rights linked to the dissolution of the marital bond. It addresses withdrawal from marriage, divorce and its procedures, the mechanisms of arbitration, and khul' as a legal form of ending marriage. It also studies the waiting period, proof of lineage, and custody as an extension of family rights after separation.

The second section is devoted to financial rights. It examines maintenance as a legal obligation that ensures support. It then studies inheritance as an economic right recognized by Islamic law and defined by precise juristic rules.

1. Social Rights

Social rights were among the most important areas through which women's status in Andalusian society became visible. They were mainly connected to the rulings that regulated family relations, since the family was the central unit of social structure. These rights were divided into two types. The first concerned the establishment of the marital bond and the rulings and rules that organized the relationship between the spouses. The second concerned the dissolution of that bond and the social and legal effects that followed it. These effects aimed to preserve rights and regulate relations between the parties after married life had ended.

1.1 Rights Related to the Marital Contract

Rights connected to the marital contract were among the main matters to which Islamic law gave special attention in Andalusian society. Marriage was the foundation of the family and a means of organizing social relations. These rights appeared in a set of rulings and practices related to the conclusion of marriage. They began with guardianship, which served as a guarantee for the protection of women's rights. They also included the dower as a fixed financial right. In addition, they extended to social customs attached to marriage, such as shawar, wedding gifts, and siyaqa. These customs reflected the particular character of Andalusian society in organizing family life.

1.1.1 Andalusian Women and the Rules of Marriage

Marriage held a very important place in Andalusian society. It was a basic social institution linked to rulings that sought to protect family stability and safeguard the rights of its members. For

this reason, Andalusians surrounded the marital bond with precise rules. These rules protected interests and prevented possible disputes. A woman did not enter marriage except under the guardianship of someone responsible for protecting her rights. This could be a direct guardian, an executor acting in his place when he was absent because of travel or death, or a person entrusted with carrying out related duties. These rules also extended to special cases. One example was the marriage of a Muslim man to a woman from the People of the Book, provided that she was not a harbi woman¹. This was permitted under specific conditions. The dower could not be less than a quarter dinar. Her guardians had the right to contract the marriage if they lived among Muslims. If they refused, authority over the matter passed to the ruler. Other cases, such as women freed from captivity or women granted safe-conduct, fell under judicial authority. Marriage to polytheist women or slave women was not permitted except within the established legal rules².

At times, violation of the conditions regulating marriage led to disputes over the right to exercise guardianship. Jurists and judges then had to intervene in order to decide the matter in a way that served the woman's interest and protected her rights. Among the cases treated by Judge Ibn Rushd was that of a man who died leaving a wife and daughters. He had placed guardianship in the hands of the mother, who preferred her brother over the daughters' paternal cousins in contracting the marriage. Al-Andalus also knew cases in which guardianship was transferred when a guardian refused to marry his daughter to a man whose suitability had been established. In such cases, the judge appointed the closest relative in lineage after obtaining the woman's permission. A virgin under her father's guardianship, however, remained under that guardianship even if she reached the age described as spinsterhood, which was estimated at forty years³. She could be married without requiring her explicit consent. Guardianship also extended to agency. A guardian could authorize another person to complete the marriage procedures on his behalf, especially in the marriage of a virgin when a suitor considered suitable in status, dower, or other conditions came forward. If the woman was previously married and had legal control over her own affairs, she was recognized as having the right to act in matters related to receiving the dower. This reflects a degree of independence in some aspects of completing the marriage⁴.

Testamentary guardianship also appeared as a legal extension of ordinary guardianship, especially in cases involving orphans and minors. The executor played an important role in supervising marriage matters. He was allowed to contract the marriage of a young male. His authority over a young female was more restricted. He could not complete her marriage before she reached maturity or without consulting her and obtaining her consent. The executor had clear priority over some relatives, such as brothers and paternal uncles, whether the woman was a virgin or previously married. He was also given the power to accept or annul a marriage when he considered that to be in

¹ A harbi is a non-Muslim at war with Muslims. For more, see Muhammad Rawwas Qalaji and Hamid Sadiq Qunaybi, *Mujam lughat al-fuqaha* [Dictionary of jurists' terminology], Dar al-Nafais for Printing, Publishing and Distribution, 2nd ed., 1408 AH / 1988 CE, p. 134.

² Al-Tulaytuli, Ahmad ibn Muhammad ibn Mughith al-Sadafi (d. 459 AH / 1067 CE), *Al-Muqni fi ilm al-shurut* [The sufficient book on the science of legal conditions], annotations by Duha al-Khatib, Muhammad Ali Baydun Publications, Dar al-Kutub al-Ilmiyya, Beirut, Lebanon, 1st ed., 1420 AH / 2000 CE, p. 57.

³ Al-Tulaytuli, previous source, pp. 39-40; Ibn Rushd, Abu al-Walid Muhammad ibn Ahmad ibn Ahmad ibn Rushd al-Qurtubi (d. 520 AH / 1126 CE), *Al-Fatawa* [Legal opinions], edited and annotated by al-Mukhtar ibn al-Tahir al-Talili, Dar al-Gharb al-Islami, Beirut, Lebanon, 1st ed., 1407 AH / 1987 CE, vol. 1, pp. 283-284.

⁴ Al-Tulaytuli, previous source, pp. 36-37.

the best interest of the person concerned, even if his view differed from that of the other guardians. This shows the importance given to guardianship and executorship contracts in the regulation of family life in Andalusian society¹.

1.1.2 The Dower and Its Manifestations in Family Life

The dower held a central place in the family system of Andalusian society. It was one of women's fixed financial rights and an essential element in completing the marital bond according to the legal rules then in force. Prevailing customs show that Andalusians were careful to pay it and to define it precisely in description and value. This applied to both the immediate and the deferred parts. Its details were documented in order to protect the rights of both parties. A minimum amount was also common. It was estimated at one quarter of a diz², or its equivalent in measure as three dirhams. This was the amount that permitted consummation and gave the marriage its full legal validity³.

The forms of dower in Andalusian society varied according to economic capacity. The most common form was a cash dower in gold or silver. Its value and characteristics had to be stated clearly. Dower in livestock was also known. It too required precise identification in number, description, and value, just like monetary dower. This ensured clarity in the financial obligation owed to the woman. Real-estate dower was also practiced. A man could give his wife a specific piece of land or property as dower. This form reflects the economic importance of real estate in Andalusian society. Yet it sometimes produced disputes when the value of the property did not match what had been agreed on. In such cases, the shortage had to be completed by adding another property. Andalusians required a kind of equivalence between the two properties. One could not be lower in value than the other, nor could its condition be unknown to the woman and her guardian. This protected justice and prevented harm to the wife's rights⁴.

Sometimes the high value of the dower made it difficult for the husband to pay it all at once. This led to the spread of a system that divided it into an immediate part and a deferred part, known as kali⁵. The first part was paid before consummation, while the second was postponed to a time agreed on by the two parties. The deferred portion had a firm legal status. It remained the wife's exclusive right even if the husband died before paying it. She was entitled to it, and judgment could be issued in her favor once her entitlement was proven. She was not required to swear the oath usually

¹ Ibn al-Attar, Muhammad ibn Ahmad al-Umawi (330-399 AH / 942-1009 CE), *Kitab al-wathaiq wa-l-sijillat* [Book of documents and records], edited and published by P. Chalmeta and F. Corriente, *Majma al-Muwaththiqin al-Majriti*, Spanish Institute of Culture, Madrid, 1983, pp. 11-12; Ibn Sahl al-Asadi (d. 486 AH), *Al-Ilam bi-nawazil al-ahkam*, known as *al-Ahkam al-kubra* [Notification of legal cases, known as the major rulings], edited by Nura Muhammad Abd al-Aziz al-Tuwayjiri, 1st ed., 1415 AH / 1995 CE, vol. 1, pp. 206-207.

² The diz was a coin equal to twelve dirhams. For more, see the same source, vol. 1, p. 90.

³ The same source, vol. 1, p. 197.

⁴ Ibn Rushd, previous source, vol. 1, pp. 608-609; Ibn Ward, Abu al-Qasim Ahmad al-Andalusi al-Tamimi (d. 540 AH / 1146 CE), *Al-Ajwiba al-musammata al-Jawabat al-hisan an al-tasa'ulat dhawat al-afnan*, edited by Muhammad al-Sharif, Abd al-Malik al-Saadi University, Tetouan, Morocco, 1st ed., 2008, p. 129; al-Barzali, Abu al-Qasim ibn Ahmad al-Balawi al-Tunisi (d. 841 AH / 1431 CE), *Jami masail al-ahkam lima nazala min al-qadaya bi-l-muftin wa-l-hukkam*, known as *Fatawa al-Barzali*, edited by Muhammad al-Habib al-Hila, Dar al-Gharb al-Islami, Beirut, 1st ed., 2002, vol. 2, pp. 211-212.

⁵ Kali' means all or part of the deferred dower. For more, see al-Tawzari, Uthman al-Makki, *Tawdih al-ahkam ala Tuhfat al-hukkam* [Clarification of rulings on Tuhfat al-hukkam], Tunisian Press, 1st ed., 1339 AH, vol. 2, p. 48.

connected to the rights of an absent or deceased person, as long as proof existed. Such proof was enough to preserve her financial right within the marital relationship¹.

1.1.3 Shawar and the Wedding Gift in Social Custom

Shawar² was one of the well-established social customs in Andalusian society. It was mainly connected to the family's contribution, especially the father's, to preparing his daughter for marriage and equipping the marital home. This contribution could take the form of money or household goods that helped her move into her new life. The custom gained an important place in the social structure. It became a recognized right among families, and people were keen to fulfill it as part of the requirements of marriage. Its value was often close to the dower paid by the husband. This reflected a kind of social and economic balance between the two families. Yet the practice sometimes led to legal disputes. This happened especially when a father tried to take back what he had given to his daughter after the marriage had been completed. In some cases, the father demanded the return of what exceeded the value of the dower, claiming that the gift was not a final transfer of ownership but only a loan meant to improve his daughter's condition. In such cases, what the father had given was examined. He could recover what exceeded the amount of the dower. If his claim was based on the daughter's imprudence or poor management, he had to prove it. Otherwise, his right to claim any part of her property fell away³.

Alongside shawar, Andalusian husbands commonly gave gifts to their wives before consummation. This social practice was linked to wedding celebrations and to the strengthening of family ties. The gifts varied. They could include clothes, servants, and personal items. At times, the husband also bore some expenses connected with the wedding ceremonies, such as the wages of the hairdresser, the tambourine player, and similar festive requirements. This custom became part of the social practices shared by Andalusians. Yet it did not rise to the level of a fixed financial obligation. The husband was not compelled to provide it if he refused, because it did not form part of the dower. The exception was a prior agreement in which the husband had undertaken to provide it. By contrast, the wedding feast remained one of the social duties attached to the completion of marriage⁴.

1.1.4 Siyaqa and Its Place in Marital Traditions

Siyaqa was one of the social customs that became established in Andalusian society. It was linked to practices that accompanied the conclusion of marriage. It consisted of additional money or goods given by the husband to his wife beyond the dower. Its forms differed according to what was given. It might consist of described items whose amount was unknown. For example, the husband might undertake to provide a house, a servant, or a plot of land without defining its precise features in the marriage agreement. In such a case, judgment was given for the wife according to the middle

¹ Ibn Sahl, previous source, vol. 1, p. 237; Ibn Dabbus al-Yafrani (d. after 511 AH), *Al-Ahkam* [The rulings], edited by Ahmad al-Hashimi al-Hafsi, Dar al-Rashad al-Haditha, Casablanca, 1st ed., 1420 AH / 2000 CE, p. 148.

² Shawar is a word used for household goods, clothing, and outward appearance. For more, see Ibn Manzur, previous source, vol. 4, letter shin, pp. 1357-2358.

³ Al-Lawraqi Ibn Bashtaghbir, Ahmad ibn Said al-Maliki (d. 516 AH / 1122 CE), *Al-Nawazil* [Legal cases], edited by Qutb al-Raysuni, Dar Ibn Hazm, Beirut, 1st ed., 2008, pp. 341-342; al-Wansharisi, Abu al-Abbas Ahmad ibn Yahya (d. 914 AH / 1508 CE), *Al-Miyar al-murib wa-l-jami al-mughrib an fatawa ahl Ifriqiya wa-l-Andalus wa-l-Maghrib*, prepared by a group of jurists under the supervision of Muhammad Hajji, Ministry of Awqaf and Islamic Affairs of the Kingdom of Morocco and Dar al-Gharb al-Islami, Beirut, 1401 AH / 1981 CE, vol. 3, p. 123.

⁴ Ibn Sahl, previous source, vol. 1, pp. 223-224.

level in value or description. She might, for instance, receive an average house that did not fall outside what was customary in construction or location, whether in an urban or a rural setting¹.

Siyaqa also appeared in other forms in which the object was identified but some of its features remained undefined. This was the case when jewelry or goods were known in kind but not in weight, such as silver bracelets. In such cases, assessment did not depend on exact weight or quantity. It depended instead on the value of the object itself. For that reason, settlement in such cases rested mainly on mutual consent between the two parties. The spread of this practice shows the forms of solidarity and esteem that surrounded the marital relationship at the time².

1.2 Rights Related to the Dissolution of the Marital Bond

Family relations in Andalusian society were not free from tension and dispute. Signs of conflict often appeared from the earliest stages of the marital bond. Disputes frequently arose because one of the agreed conditions had been violated, or because one party suffered harm as a result of the other party's failure to fulfill a duty. As a result, a set of judicial and social rulings developed to regulate cases in which the marital bond was ended. These began with withdrawal from marriage. They also included divorce and khul', which were among the most important forms of ending marriage. Related later issues often raised further disputes. These included the waiting period, proof of lineage, and custody, which was one of the main problems linked to the continuation of family responsibility after separation.

1.2.1 Withdrawal from Marriage and Its Family Effects

Among the issues that concerned Andalusian society and gave rise to family disputes was the guardian's withdrawal from the marriage contract and his arbitrary prevention of the woman from marrying despite the fulfillment of its conditions. This was considered a violation of her right to complete the marital bond. When such cases were established, the practice was to have the woman examined by someone known to understand her situation. The purpose was to verify her consent to the husband and her acceptance of the dower and clothing offered to her. If this was proven, and if the husband's suitability in condition and financial capacity was confirmed, the guardian's objection lost its force. The judge then had the right to appoint someone to marry her if she was legally mature. If the matter concerned a young girl, the marriage was annulled because the conditions required for its valid conclusion were incomplete³.

1.2.2 Types of Divorce and Forms of Arbitration

Divorce in Andalusian society was one of the most important matters connected to the stability of family life. Ending the marital bond was not treated as an arbitrary act. It was subject to conditions and customs that sought to preserve balance between the rights of the spouses and to prevent harm to either of them. This was linked to the emergence of several forms of special divorce. These forms gave women the possibility of ending the marital bond when conditions agreed on in the marriage contract were breached. Such cases included unjustified or prolonged absence, failure to fulfill family obligations, and violation of conditions specific to the marital relationship. Arbitration was therefore used as a means of settling disputes before divorce was reached.

This type of divorce was called tamlik. It meant that the husband transferred the power of disposal over the marital bond to someone else in a manner established by proof. Once he

¹ Al-Tulaytuli, previous source, p. 56.

² Ibn Ward, previous source, pp. 125, 139.

³ Ibn Sahl, previous source, vol. 1, p. 197.

acknowledged it, he could not retract it. The *mumallaka* was the woman to whom her husband had given full authority over her own marital matter¹. This type was common among Andalusians in different forms. It was mainly linked to breach of conditions included when the marriage was contracted. One of the most common cases involved a woman stipulating the right to divorce herself if the husband failed to pay the deferred part of the dower. Andalusian custom usually required the payment of part of the dower before consummation and the postponement of another part to a known date when full payment was not possible. If the husband failed to pay what he had undertaken, the wife, after proving harm, could choose to divorce herself. She might do so with one divorce or more if the husband denied her right. If he acknowledged the condition and did not dispute it, only one divorce occurred, and he remained obliged to pay what was still owed. Her financial right remained valid even if separation occurred before she had received the full amount².

Andalusian society also knew another type connected to the husband's absence without excuse. A woman could stipulate in the marriage contract that her matter would be in her own hands if the husband exceeded the period of absence agreed on in advance. If that period was proven to have been exceeded, she could divorce herself. This was treated as a revocable divorce, during which the husband could take her back as long as she was still in her waiting period. If the husband proved that he had not left the agreed place, or that the claimed absence had not occurred, the cause of divorce became invalid and no divorce took place. If the husband returned during the waiting period, he had the right to take her back, while that divorce was counted among the number of divorces previously specified. These rules also extended to missing persons. This included a man who disappeared during travel or military expedition and did not return with the others. The judge set a period for searching for him. If that period passed without news, the wife was allowed to divorce herself once. The same applied to a man traveling for pilgrimage. The rulings on the missing person differed according to the place of disappearance. If he disappeared in enemy territory, his case was attached to that of the prisoner. If he disappeared during internal Muslim wars, the rulings depended on the period of *talawwum*³, the judgment of death, and the resulting waiting period and division of property⁴.

Another widespread form of divorce concerned breach of the *istir'a'* contract⁵. Under this condition, the husband undertook to care for his household and not to be absent from them except for a valid excuse. A specific period of absence was also agreed on. If he exceeded it, the wife's matter came into her own hands. She could remain under his marital authority, or she could divorce herself. This condition also established the wife's right to maintenance if consummation had taken place before the husband's absence. If consummation had not taken place, she was not awarded anything from his property⁶.

¹ Al-Tulaytuli, previous source, p. 82; Ibn Rushd, previous source, vol. 2, pp. 950-951.

² Ibn Sahl, previous source, vol. 1, pp. 288-289.

³ *Talawwum* means waiting and deliberation. It is said *talawwama li-l-amr*, meaning that he waited and held back until the matter became clear. See al-Firuzabadi, Amjad al-Din Muhammad ibn Yaqub al-Shirazi (729-817 AH / 1329-1414 CE), *Al-Qamus al-muhit*, with marginal notes and explanations, no editor, Egyptian General Book Authority, facsimile of the 3rd Amiri Press edition of 1301 AH, 1398 AH / 1978 CE, vol. 4, letter lam, chapter mim, p. 175.

⁴ Ibn al-Attar, previous source, p. 540; al-Barzali, previous source, vol. 2, pp. 480-481.

⁵ *Istir'a'* is derived from the verb *ra'a*, meaning to watch, follow, and preserve. It is said *istar'ahu al-shay'*, meaning that he entrusted something to his care. See Ibn Manzur, previous source, vol. 3, letter ra, pp. 1676-1677.

⁶ Al-Tulaytuli, previous source, p. 85; Ibn Bashtaghir, previous source, p. 355.

Tamlik divorce extended to other cases. In some of them, the woman stipulated that she would be divorced from her husband if he married another woman or took back a former wife whom he had previously divorced. Once the husband accepted this condition, he became fully bound by it¹.

Despite the many forms of divorce, arbitration remained the last means to which spouses turned when shared life could no longer continue and when harm was claimed by one of the parties. This procedure was a notable social practice in al-Andalus, especially in cases where the spouses exchanged complaints or where one denied harming the other. In such cases, the judge had to resort to arbitration before beginning divorce procedures. He appointed two arbitrators known for justice and uprightness. It was preferable that they be relatives of the spouses, or two upright Muslims. If it was established that the wife was disobedient without having suffered harm, this was taken into account when assessing her rights. If the judge could not identify the party responsible for the harm, separation could be ordered in return for compensation from her property. It could also be ordered without compensation if the arbitrators found that the husband's harm was greater than hers. If it became clear that the woman was in fact the injured party, the arbitrators had to verify this by asking trustworthy neighbors. If this was not possible, the husband was ordered to house her in a place where upright neighbors could observe her condition, or to place a trustworthy person with them to monitor the situation. If the harm done to her was proven, the husband was disciplined. If she had a previous condition related to harm, she could rely on it. On that basis, judgment was issued either for khul' or for divorce, according to the circumstances².

1.2.3 Khul': Its Means and Circumstances

Khul' was one of the known forms for ending the marital bond in Andalusian society. It meant that a woman redeemed herself from her husband in return for compensation³. Separation then took place between the spouses in exchange for an agreed substitute received by the husband. Andalusian social contracts show the spread of this form of separation, especially when married life could no longer continue. The sources preserve many examples in which women used different means to redeem themselves. These were not limited to returning what they had received as hadhifa. They also included the waiver of some financial rights owed to them, such as maintenance, kali', or the postponement of its entitlement. They could also include relinquishing rights connected to siyaaqa. This reflects the flexibility of the system in giving women a way to end marriage when its continuation became impossible.

Historical sources point to the common presence of forms of khul' linked to special circumstances of women. One of the most important was the case of a pregnant woman redeeming herself in return for waiving her right to the deferred dower. She could also waive what the husband owed for maintenance during pregnancy and childbirth. The matter might even extend to her bearing the expenses of the child and his care until weaning or even until maturity, provided that she did so voluntarily and without coercion. These obligations, however, were not absolute. If it was later proven, by the testimony of upright witnesses, that the woman had become poor and had lost what she owned, the husband again became obliged to spend on her. Maliki judges required, in cases where a woman obtained khul' in exchange for dropping maintenance, that this be for a defined period. The original rule was that maintenance of the child remained the father's duty. This shows the precision

¹ Ibn Sahl, *Al-Ilam bi-nawazil al-ahkam*, vol. 1, pp. 308-310; Ibn Ward, previous source, p. 123.

² Ibn Sahl, previous source, vol. 1, pp. 297-302.

³ Ibn Manzur, previous source, vol. 2, letter kha, p. 1232.

of the rules governing khul' in Andalusian society and their concern to balance a woman's right to end marriage with the need to avoid harm to the rights resulting from it¹.

Forms of khul' also extended to cases connected to the woman's financial rights arising from siyaqa. A wife could obtain khul' from her husband in return for giving up the money or goods he had brought to her as siyaqa. She could not, however, waive part of the siyaqa and keep another part. The attached benefits were considered a complement to it, and the whole right returned to the husband².

The nawazil concerning khul' show that Andalusian judges considered a number of personal circumstances that could affect the validity of a woman's act when she entered this form of separation. A pregnant woman was allowed to obtain khul' as long as she had not reached the sixth month of pregnancy. At that stage she was deemed fully competent and was not treated as being in an illness that might lead to death. Her acts were therefore understood as valid choices. If she had passed that stage, khul' was not allowed until the expected danger linked to childbirth had passed. The matter was postponed until her recovery or death. Khul' by a woman suffering from a terminal illness was also known. Its validity remained tied to the value of the compensation offered. It could not exceed the amount the husband would inherit from her if she died. If it exceeded that amount, it was not effective³.

1.2.4 The Waiting Period and Its Role in Regulating the Post-Divorce Stage

The waiting period, or idda, is one of the legal rulings attached to the end of the marital bond. It is a period during which the woman must wait after the disappearance of marriage or after the existence of a doubtful marital situation. During this period she may not marry, whether the cause is divorce, the husband's death, or an invalid marriage. The practice served several purposes. The most important was to make sure that the womb was free from pregnancy⁴.

Judges and jurists gave these matters great attention, especially as new issues arose from the lived reality of al-Andalus. One of the most important concerned the place in which a divorced woman spent her waiting period and the disputes that could arise between the spouses. Among the cases treated in this context was that of a woman who was divorced and began her waiting period in her husband's house. After the period had ended, she refused to leave and claimed pregnancy, with the resulting continuation of her right to maintenance. The husband denied this. Such cases were assessed carefully. If the claim of pregnancy was made after four months had passed, her statement was accepted without an oath. If the claim was made after six months, or close to that, it was accepted with an oath, provided that signs of pregnancy had appeared and become known before that time. If the claim was delayed until after a year had passed, her statement was no longer enough. Women were then consulted to verify the pregnancy or deny it. Depending on what was established, the husband was required to continue providing maintenance, clothing, and housing until childbirth if

¹ Abu Ishaq al-Gharnati, previous source, p. 129; al-Qadi Iyad, *Madhahib al-hukkam fi nawazil al-ahkam* [Judges' methods in legal cases], edited by Muhammad ibn Sharifa, Dar al-Gharb al-Islami, Beirut, Lebanon, 2nd ed., 1997, p. 306; al-Barzali, previous source, vol. 2, pp. 144, 458, 463.

² Ibn Rushd, previous source, vol. 2, pp. 1187-1189; al-Barzali, previous source, vol. 2, p. 458.

³ Al-Qadi Iyad, previous source, pp. 135-136; al-Barzali, previous source, vol. 2, pp. 144, 458, 463.

⁴ Samira Abd al-Muti Muhammad Yasin, *Ahkam al-idda fi al-fiqh al-Islami: dirasa fiqhiyya muqarana* [Rules of the waiting period in Islamic jurisprudence: a comparative juristic study], MA thesis in comparative jurisprudence, Faculty of Sharia and Law, Islamic University of Gaza, academic year 1428 AH / 2007 CE, pp. 3-4.

pregnancy was proven. If it was not proven, the effects of the waiting period ended when its legal duration ended¹.

The rules governing the waiting period also regulated the woman's residence in the house of waiting. A man could not live with his divorced wife in the same dwelling if it was too small and if such residence would lead to mixing that contradicted the requirements of the waiting period. This was allowed only if the two were separated by an independent barrier and if each had a separate entrance. Jurists treated this matter through contractual forms in which the husband, after divorce, undertook to live in a separate part of the house and to leave the rest of the dwelling to the woman in waiting until she completed her waiting period. This reflects the concern of Andalusian society to regulate this stage according to the customs and rulings governing family relations².

These rules also covered the case of a divorced woman living in a rented house. The practice was that she remained in the same dwelling until the end of her waiting period, while taking into account the agreement with the owner of the house. If the rent had been fixed for a known period, the owner had no right to remove the woman in waiting before the agreed term ended. If the residence had not been tied to a known period, he could set a suitable term according to what he considered appropriate. If the tenant died before the waiting period ended, the owner had the choice either to keep her until the period ended or to remove her, while retaining the right to a fair rent. This reveals the careful regulation that surrounded women's conditions during the waiting period in Andalusian society, both with regard to housing rights and to the financial obligations that followed from them³.

1.2.5 Proof of Lineage and Its Role in Protecting the Family Structure

Questions of proving lineage in Andalusian society were closely connected to the rulings that followed the end of the marital bond, especially during and after the waiting period. Problems began to appear when a woman was found to be pregnant or gave birth after divorce. This was especially true when the husband did not know of the pregnancy, or when it had not been known among people before separation. Such cases led to complex family disputes. They centered mainly on the husband's denial of the child's lineage and his attempt to avoid the obligations arising from it, foremost among them maintenance and later responsibilities. The matter could even go further, reaching an accusation of adultery against the woman. This pushed the parties to resort to what was known as *li'an*, a procedure based on the husband's oath to prove his accusation or deny the pregnancy attributed to him, matched by the wife's oath denying his claim⁴.

The cases presented to jurists and judges reveal many disputes connected to proving a child's lineage after the waiting period. They also show the financial and family obligations that followed from such proof. This was especially the case when the husband tried to deny recognition of his child despite earlier indications that he knew of the pregnancy. For example, the woman may have informed him of it and he did not object during that period. She may also have demanded maintenance from him and he responded. His later denial, after pregnancy or birth had been established, was regarded by the court as explicit slander requiring the prescribed punishment, because he had not objected

¹ Ibn Rushd, previous source, vol. 3, pp. 1278-1279.

² Ibn Bashtaghir, previous source, p. 401; al-Wansharisi, previous source, vol. 4, p. 524.

³ Ibn Rushd, previous source, vol. 3, p. 1280; al-Barzali, previous source, vol. 2, p. 485.

⁴ Al-Wansharisi, previous source, vol. 4, p. 68.

when first informed of the pregnancy. This reflects Andalusian society's concern to protect lineages and safeguard the rights that resulted from them within the family structure¹.

1.2.6 Custody and the Continuity of Women's Family Function

Custody in Andalusian society was subject to a set of rulings that regulated the right to care for the child in a way that protected the child's interest. According to the established Maliki position, the resident custodian was preferred over the traveling custodian. Stability was regarded as a basic factor in preserving the child's welfare. For that reason, it was not permitted to move the child on a distant journey because of the hardship or danger that might result. Jurists were more tolerant of short travel that did not harm the child. In this context, some questions were presented to Judge Ibn Rushd. One concerned a woman who left her child and traveled, then wished to recover custody after her return. The opinion was to recognize her right to custody and not to consider it lost merely because of travel. Her absence did not remove the right once the reason that had led her to leave the child had disappeared. The same applied to a woman forced to leave custody because of illness or loss of milk. She recovered her right when the cause that had prevented her from fulfilling her duty ended².

On the other hand, living conditions in Andalusian society produced cases linked to the custodian's poverty and financial hardship. She might be forced to go out in search of livelihood. This raised questions about whether she could take the child with her during work or movement. If her need to earn was proven, the custodian was allowed to take the child with her over short distances that did not reach the legal distance of travel requiring shortening of prayer. This included seasonal agricultural work and other known forms of earning at the time. Yet this right was not absolute. The father could object to the child leaving with her if he undertook to provide enough maintenance for the child. In that case, he kept the child during her absence, and the child returned to her when she came back. This shows the balance that Andalusian justice sought to achieve between the custodian's right and the child's welfare³.

Al-Andalus also knew another practice called the sale of custody. It meant that the person entitled to custody gave it up in return for financial compensation from the other party. Jurists allowed this form of action because custody was treated as a right owned by its holder. The holder could keep it or give it up whenever he or she wished. One issue raised in this field concerned a woman who gave up custody of her child to the father in return for money he paid to her. This question was also presented to Judge Ibn Rushd. He recognized the permissibility of the act in principle. At the same time, he stressed that priority in custody remained with the mother if she wished to recover it. She was considered more capable of care and closer to fulfilling the child's need for tenderness and compassion. This reflects the place occupied by the mother within the family structure in Andalusian society, even in disputes linked to the continuing effects of marriage after its end⁴.

2. Financial Rights

Financial rights formed one of the basic dimensions that regulated women's position in Andalusian society. Islamic legislation guaranteed them in order to secure women's living stability and protect their independent financial liability. These rights appeared mainly in the right to maintenance, which ensured support for women in accordance with family relations, and in the right

¹ Ibn Sahl, previous source, vol. 1, pp. 272-273; al-Wansharisi, previous source, vol. 4, p. 71.

² Ibn Rushd, previous source, vol. 3, pp. 1370-1371.

³ Al-Wansharisi, previous source, vol. 4, p. 45.

⁴ Ibn Rushd, previous source, vol. 3, pp. 1546-1550.

to inheritance, which was a financial entitlement recognized by Islamic law and defined through its shares and rules.

2.1 Maintenance and the Manifestations of Support within the Andalusian Family

Maintenance was one of the most important financial rights that Islam guaranteed to women within marriage and in the consequences that followed its dissolution. Its amount, however, was not fixed by one value or a single standard. It depended on several considerations that took account of the social and economic situation of the parties concerned. The recorded rulings show that maintenance was assessed according to the husband's wealth or poverty, the woman's need and status, and broader economic conditions, including whether prices were low or high. In this context, Ibn Sahl al-Asadi gave examples of imposed maintenance. He linked them mainly to the size of the family, the number of its members, and the financial ability of the provider. Its elements included a qafiz of ground wheat flour, half a quarter of oil for lighting, a load of firewood, what was needed for condiments, and seven dirhams paid monthly. This shows that the law considered the living dimension when assessing this right and sought to ensure its continuity according to available means¹.

A pregnant divorced woman enjoyed the right to maintenance. The husband was required to spend on her throughout pregnancy until delivery. This obligation could continue after birth if the mother took custody of the child and continued to care for the child. Yet this right remained tied to the proof of pregnancy and to the truth of the woman's claim. If she claimed that the fetus had died after remaining in her womb for a period, the husband was obliged to pay maintenance for the period during which its life had been established. The obligation then stopped once its death was proven. Verification was made through the testimony of women, since they were the proper reference in such matters. If it became clear that there had been no pregnancy, or if the woman's deceit was proven and she had claimed something contrary to the truth in order to obtain maintenance, she and her guardian had to return what had been taken from the husband without right².

2.2 Inheritance and Forms of Women's Financial Entitlement in al-Andalus

Inheritance issues were among the clearest areas reflecting the nature of financial relations in Andalusian society. They involved the transfer of ownership and the overlap of rights among heirs. This is shown by the rulings and legal opinions that dealt with different disputes arising when estates were divided, especially in relation to real property and cultivated lands. In many cases, such properties remained under the control of male sons, who exploited them and benefited from their yields. Daughters were enabled to receive the amount of their legal shares from the revenues of the property inherited from the father. This arrangement, however, often led to disputes when division of the estate was demanded. Daughters held that all the property left behind formed part of the inheritance due to them. Male heirs claimed that some of what existed within the property came from their own effort or from improvements they had made after the death of the deceased, and was not part of what had passed to them by inheritance. In such cases, the court required the claimants to provide legal proof for what they alleged. If they failed, the matter was referred to the oath of the opposing party. Likewise, a claim that the deceased had assigned part of his property to someone during his lifetime, or had endowed something to him, was not accepted unless supported by a valid

¹ Ibn Sahl, *Al-Ilam bi-nawazil al-ahkam*, vol. 1, p. 274.

² Ibn Salmun, Abu Muhammad Abdullah ibn Abdullah (d. 741 AH / 1341 CE), *Al-Iqd al-munazzam li-l-hukkam fima yajri bayna aydihim min al-uqud wa-l-ahkam*, reviewed and annotated by Muhammad Abd al-Rahman al-Shaghul, *Dar al-Afaq al-Arabiyya*, 1st ed., 2011, pp. 127-129.

document and the testimony of upright witnesses. Otherwise, the property remained part of the estate subject to division among the heirs¹.

Social practice in al-Andalus also produced many forms of consensual settlement among heirs in order to avoid litigation. This occurred especially when the deceased's wife had fixed financial rights owed by his estate. Some heirs used to settle with the wife of their deceased relative, whether she was their mother or another woman. They paid the equivalent of her deferred dower and gave her an amount equal to her share of the inheritance. In return, she waived the rest of her rights in the estate. This allowed them to take full control of the lands, houses, money, and movable property left by the deceased. The judiciary, however, did not permit such settlements before the estate had been inventoried and divided according to the legal rules. A settlement made before the amount of the assets and the rights attached to them were known was a settlement based on uncertainty. It could harm the rights of some heirs. For this reason, judges first required the debts owed by the deceased to be separated and the amount corresponding to them to be defined. Only then could what remained of the estate be known, so that settlement would rest on a clear and determined basis².

Conclusion

The study has shown that women in Andalusian society enjoyed an integrated system of rights. These began with social rights, which formed the basic framework within which their family relations were organized. They included the rulings connected to the establishment of the marital bond, such as marriage, guardianship, and dower, as well as related social customs such as shawar and siyaqa. They also included the various rulings that regulated the dissolution of that bond and the issues that followed from it, including divorce, khul', the waiting period, proof of lineage, and custody. This reveals a precise system that sought to preserve family balance and guarantee the continuity of rights, whether the marital relationship was being established or dissolved.

Alongside social rights, women also possessed financial rights that strengthened their presence within the economic sphere of the family. Foremost among these was the right to maintenance, which ensured their support according to the husband's financial ability and the living conditions of the time. Women also had the right to inheritance, which gave them a legally defined share of the estate. Disputes connected to inheritance were subject to legal rulings that protected financial entitlements and prevented aggression among heirs. It is therefore clear that Andalusian society possessed an integrated legal structure. This structure helped recognize women's position as an essential party within the family system.

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