

The Right of ‘Al-Kad wa Al-Sa’aya’ (Toil and Endeavor) A Social, Jurisprudential, and Legal Approach

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Muslim societies today face emerging and complex family issues that cannot be addressed merely by returning to partial texts or relying on traditional solutions detached from realities. This underscores the importance of knowledge integration in developing juristic reasoning, fostering critical thinking, and innovating solutions for contemporary challenges, while grounding them in reality in a manner that serves the higher objectives of Islamic law. Knowledge itself constitutes a fundamental criterion for human thought and guidance in life affairs, and success is rooted in the ability to bridge theory and practice.

The nature of these challenges calls for an integrated epistemic approach that activates the interplay between Islamic jurisprudence and relevant sciences, opening the way for renewed ijihad that balances texts with their objectives, and aligns with the realities and transformations of society. In this context, the study of The Right of ‘Al-Kad wa Al-Sa’aya’ (Toil and Endeavor) provides a living model that demonstrates how epistemic integration equips Islamic jurisprudence with deeper tools to address women’s and family issues.





Addressing this right is not confined to being a mere financial dispute between spouses; rather, it affirms the capacity of Islamic jurisprudence to generate fair solutions that safeguard women's dignity and their role in building family wealth, without conflicting with established Sharī'a rulings.

This right is defined as the recognition of a wife's contribution to the accumulation of joint family wealth during marriage, entitling her to a fair share upon divorce or the husband's death, proportionate to her effort and actual participation. Although no definitive textual evidence exists regarding it, the right emerged from the fabric of social reality in rural communities where women worked alongside their husbands in farming and trade. It later became a subject of juristic reasoning, grounded in the objectives of justice and preventing injustice, and eventually led to attempts at legal codification in some modern legislations.

The study addresses this right from a comprehensive perspective, integrating its social roots, juristic foundations, and potential legal codification. It does not seek to prove or negate the right but aims to analyze its origins, explain its development, and clarify how it may be adapted in light of social transformations.

It emphasizes that addressing such issues requires transcending disciplinary boundaries and combining text with context, purpose with reasoning, to fulfill the higher objectives of Sharī'a in preserving rights and establishing justice.

The significance of this study emerges amid the rapid transformations affecting family structures and redefining gender roles. Women's participation in household production has become a social reality that necessitates reconsideration of mechanisms for protecting their contributions, particularly in contexts where documentation is absent, and property titles are often registered exclusively under men's names—leading to the loss of women's rights in cases of divorce or death. This highlights the need for a purposive reading of this right, one that ensures justice through a multidimensional approach encompassing its social, juristic, and legal dimensions.

The study is driven by the central question: What is the nature of the Right of 'Al-Kad wa Al-Sa'aya', and what are its juristic, social, and legal boundaries, and to what extent can it be codified in contemporary contexts? Methodologically, the study adopts a descriptive, analytical, and comparative approach, drawing on

textual and juristic analysis, observation of social customs, and examination of modern legislation. Its three main axes cover the social background of this right, its juristic foundation, and legal status in contemporary family law.

The first axis explores its social roots, showing that it emerged in traditional rural contexts, particularly in Moroccan regions such as Sous and Ghumara, where women worked in agriculture and livestock alongside men. Local customs recognized the fairness of women's claims through terms such as *al-shaqā* (hardship) and *al-harīq* (toil), reflecting early awareness of the need for justice. With growing female participation, rising divorce rates, and a persistent lack of documentation, codifying this right became a social, legal, and even Sharī'a-based demand to realize justice rather than mere formal equality.

The second axis focuses on its juristic foundations, highlighting the fatwa of the Mālikī jurist Ibn 'Arḍūn in the 10th century AH, which recognized working wives' entitlement to a share of family wealth. His reasoning relied on local custom and the higher objectives of Sharī'a, such as removing injustice and achieving fairness, supported by general texts prohibiting wrongful appropriation of others' property. The fatwa sparked debate among jurists—some endorsed it as equitable and generalizable, while others restricted it to its particular social context to avoid conflict with inheritance rules. The study underscores that this fatwa exemplifies the flexibility of Islamic jurisprudence in responding to evolving social realities and provides a foundation for broader recognition of women's productive roles within the family. It also stresses the importance of distinguishing between inheritance, which concerns posthumous distribution, and *al-Kadd wa al-Sa'āya*, which addresses contributions during marital life—necessitating special evidentiary rules adapted to typically undocumented labor.

The third axis investigates the legal dimension, analyzing Article 49 of the Moroccan Family Code, which allows spouses to prearrange financial agreements or rely on evidence in disputes. The study compares this framework with the Right of 'Al-Kad

wa Al-Sa'aya', noting their shared aim of preserving rights despite differing mechanisms. It also reviews the French experience, which offers multiple models for marital financial arrangements. While such modern legal frameworks aim to safeguard women's contributions, the study stresses that codified texts alone are insufficient without flexible evidentiary systems and effective documentation to prevent rights from being lost.

The study concludes that the Right of 'Al-Kad wa Al-Sa'aya' is a juristic innovation (*nāzilah ijihādiyyah*) rooted in Sharī'a objectives such as justice and fairness, and in customary practices reflecting lived social realities. Recognition of this right does not contradict inheritance law, since it pertains to wealth generated during life, whereas inheritance applies after death. Attempts to use this right as a tool to undermine Sharī'a-based inheritance are therefore misguided, failing to recognize the distinction between the two domains. The findings further demonstrate that discussion of this right is not limited to Morocco but extends to other Arab contexts, including scholarly debates within al-Azhar.

The study recommends adopting an integrative epistemic approach in addressing family issues, anchored in purposive juristic reasoning (*ijihād maqāsidī*) that balances texts with social realities, thereby achieving Sharī'a's objectives of justice and protection of rights. It also calls for reforming family law, strengthening documentation and evidence procedures, and promoting legal awareness to foster a culture of participation and fairness within the family—without undermining Sharī'a's immutable principles—thereby securing stability for both family and society.

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