

## **Validity and effects of the Prohibition of childbearing in marriage<sup>1</sup>**

**Razieh HASSANKHANI** (Private Law Ph.D ,Assistant professor ,Azad University of hamedan, Faculty of Humanities, Department of Law)

**Fariba AKBARY** (Graduated from the Master of Private Law, Hamedan University)

### **Abstract**

Marriage contract is considered as one of the contract which include lots of legal issues. The terms of a marriage contract, which is much more important than the marriage conditions, have caused the contract to be the subject of discussion between lawyers all the time. One of these conditions is the Prohibition of Childbirth which is also mentioned in fiqh as the condition for the Dismissal or Non-Claim of Offspring. Based on the fact that Childbirth and in general, Sexual Intercourse is considered as an integral part of the marriage contract or not, different opinions about the accuracy or inaccuracy of this condition have been stated. The Prohibition of Childbirth is usually a condition of non-performance, that its legal sanctions, as the similar conditions, might be enforcing to perform the commitment, pay damages, establishing the right of rescindment or divorce or any other legal sanctions which are agreed upon. On the other hand, if the condition is breached, there will be some changes in couples' rights and obligations; for example: if the man is the person in whose favor a condition is made, the issue will affect on paying the quit-rent and other material rights of the wife and in the terms of restitution might be effective; or even in the subject of custody, which may affect on the rights and duties of each of the couples according to the law. The current research tries to study these two issues: the legal validity and effects of the Prohibition of Childbirth condition in marriage.

### **Key words:**

Prohibition of Childbirth condition, Non-Claim of Offspring, Condition of performance, Marriage, Fertility

---

1. This article is based on the master's thesis of Hamedan Islamic Azad University, Faculty of Humanities, Department of Law with the same title, advised by Dr Razieh Hassan Khani.