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**Childbearing Rights of Couples in View of Jurists with an
Emphasis on Imam Khomeini's Opinion**

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Introduction

Research Paper

Having children is one of the natural human actions and has a history as old as human life and is not limited to a specific time or place, and at the same time, it has many medical, psychological, sociological, jurisprudential, legal, etc. dimensions. In jurisprudence and legal texts, there is no stipulation on the nature of childbearing and whether it is a right or an obligation or has a dual nature of right and obligation. Although this category is often interpreted as "childbearing right" for various reasons; But a more detailed study shows that the evidences of considering it as an obligation aren't rare in the words of the legislator. As an example, the prohibition of sterilization can be considered as a presumption that childbearing is an obligation in legislator's view. This issue challenges the diagnosis of the nature of "reproduction" which apparently people are free to do and in this respect it should be considered a right. Also assuming into a category of rights (not being an obligation), the issues as its borders, the scale of individual's power in using it, conflict of couple's will don't clarify. Paying attention to the fact that the way individuals, couples, and governments deal with the assumption of right or obligation of this category will be different, and each one has independent and completely different effects from the other, shows the necessity of studying and recognizing the legal nature of childbearing.

Material and Methods

This research has been written with a descriptive-analytical method.

Past

Until now, researches have been done on topics such as "legitimacy of the obligation to childbearing", "justification of the right to reproduction", "the right of the wife and sovereignty over the body" and other similar topics, and no research has been done that focuses on identifying the nature of childbearing.

Results and Discussion

According to the findings of this research, the evidence of the right to childbearing is stronger than the evidence of its obligation, and therefore it should be said that having children is a

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right; but despite some jurists stipulate the right of women in claim of offspring, their lack of commitment to its necessities and preferring husband's will in the event of conflict, make it difficult to prove childbearing is into a category of "woman's right". Also the appearance of religious texts, if proves such a right for a woman, places it after the man's childbearing right.

Conclusions

1. "Having a child" is one of the natural human rights. In the words of some jurists, reproduction is considered a right that the parties to the marriage contract should be able to enjoy and cannot be prohibited; however, other aspects and effects of the rightness of this category have not been paid much attention; Therefore, some rulings issued are in contradiction with the considering the childbearing as a right. As the prohibition of removal or sterilization is not justified in this assumption; therefore, the nature of childbearing is still vague, and perhaps it is better to imagine a dual nature for childbearing, like custody or guardianship over a child.
2. Some jurists have said that reproduction is a woman's right; however, their non-adherence to its requirements and the preference of the man's will in conflict with the couple's will distorts their first statement. The expressions of many jurists, such as Imam Khomeini, are at most denote to the husband's power in this regard, and are silent about the right of the wife, and even in the assumption of submission, as it was said, they stipulate the primacy of the man's will in the conflict of rights. The words of proofs and religious texts also apparently consider having children as a right for a man, and some have given him the right to prevent childbearing according to this right, and there is a serious dispute about whether this power is absolute or limited; therefore, it is not possible to infer that the wife has the right to reproduction or to submit to its requirements from the statements and evidence invoke by them, which this result is apparently in conflict with the "considering as a natural right" of childbearing and needs to be revised.
3. Regarding the proof of the right of termination for each of the parties in case of sexual impotence of the other party, if this right is a result of the disabled person's inability to bear children, it can be considered as a proof of having the right of childbearing for husband and wife; However, the lack causing of sterility for the right of termination is a serious drawback to this argument, and it is highly probable that the right to terminate due to sexual impotence is a result of its conflict with the right to sexual pleasure.

Keywords: Imam Khomeini, childbearing right, natural rights, childbearing, dismissal

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