

ABORTION IN JEWISH TRADITION

During my 20-week anatomy scan, the sonographer detected severe problems with the baby. It was agony. This baby was beyond wanted. But his prognosis was so bad that we knew he would have no quality of life if he were to even make it to birth, and that continuing the pregnancy would severely impact our family.

We spoke to our rabbi, who consulted with a gadol [great rabbi]. I don't remember exactly what he said, but the message was that, not only was this halachically permissible, given the prognosis of my baby, it was something I should do. I went through a range of emotions — grief, agony, despair, anxiety, acceptance — and back again. Right before the procedure, it felt horrible. To know that you are submitting and lying there while doctors end your pregnancy and while you want a child more than anything. Even if it's the right decision, it defies comprehension.

When it was over, I held my baby. He was lifeless, but beautiful. You couldn't tell what was wrong with his insides. We buried him. The emotional aspect of it was the hardest afterwards. It was grief and pain. It's recovery from pregnancy and childbirth without a baby. It's your milk coming in with no baby to feed. It's avoiding the room you expected to turn into a nursery.

To anyone who hasn't been there, abortion is a theoretical issue. And no one ever thinks they will have to deal with it on a personal level. Until you do. It's all well and good to have your opinions about abortion, but you really don't know what you're talking about until you're in the situation. Halacha is compassionate and we should be, too.

(Orthodox woman, 35 years old, 3rd pregnancy, almost 24 weeks. *Forward*, Aug 1, 2018)

Torah, Exodus 21:22-23: When men fight, and one of them pushes a pregnant woman, and a miscarriage results, but no other harm follows, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning. But if other harm follows, the penalty shall be life for life...

Mechilta (Rabbinic Midrash on Exodus): "other harm" here means death [of the woman].

Septuagint (ancient Greek translation of Bible): "other harm" is translated as "[her child be born] imperfectly formed"

Exodus 21:12: He that strikes a man so that he dies, he shall surely be put to death.

Mechilta & Rashi: A man, and not a fetus.

Mishna Ohalot 7:6: A woman who is having difficulty in giving birth, it is permitted to cut up the child inside her womb and take it out limb by limb because her life takes precedence. However, if the greater part of the child has come out, it must not be touched, because one life must not be taken to save another.

Tosefta Yevamot 9:9: When the child's head has come out...

Talmud Sanhedrin 72b: Once the child's head has come forth, it may not be harmed, because one life may not be taken to save another. But why is this so? Is he not a pursuer [*rodef*] with intent to kill? There is this distinction: she is pursued by heaven.

Rashi: As long as the child did not come out into the world, it is not called a living being and it is therefore permissible to take its life in order to save the life of its mother. Once the head of the child has come out, the child may not be harmed because it is considered fully born, and one life may not be taken to save another.

Talmud Yevamot 69b: Rav Hisda ruled that an embryo is considered "mere water" until the 40th day of pregnancy.

Mishna Niddah 3:7: If she miscarries on the fortieth day [since her prior immersion], she need not be concerned that it was a fetus. If [she miscarries] on the forty-first day, she should sit [for the required number of days] for a male and for a female, and for [being] a *niddah*.

Tosfot (Rabbinical commentators on Talmud, France & Germany, 12th -13th Centuries) write that although feticide is forbidden, except where the mother's life is in danger, there is no punishment for this act. Although feticide does not occasion capital punishment, the fetus is sufficiently human to render its destruction a moral offense.

Zohar (Mystical text, Spain, 12-15th Centuries): There are three persons who drive away the Shechina [God's Presence] from the world, making it impossible for the Holy One, blessed be He, to fix His abode in the universe and causing prayer to be unanswered...The third is he who causes the fetus to be destroyed in the womb, for he destroys the artifice of the Holy One, blessed be He, and His workmanship...For these abominations the Spirit of Holiness weeps.

Maimonides (Philosopher, doctor and jurist, Egypt, 12th Century.) This is a negative commandment: We have no pity on the life of the pursuer. Consequently, the sages have ruled that if a woman with child is having difficulty in giving birth, the child inside her may be taken out either by drugs or by surgery, because it is regarded as one pursuing her and trying to kill her. But once its head has appeared, it must not be touched, for we may not set aside one human life to save another.

Rabbi Yair Hayyim Bachrach (1639-1702). A married woman committed adultery and became pregnant. She then had pangs of remorse, wanted to do penance, and asked whether she could swallow a drug in order to get rid of the "evil fruit" in her womb. Rabbi Bachrach makes it clear immediately that the question of the permissibility of abortion has nothing to do with the legitimacy of the child to be born. The only question involved is whether abortion is considered taking a life or not. He distinguishes the various stages in the development of the fetus, ie: forty days after conception, three months after conception. Rabbi Bachrach then concludes that *theoretically* abortion might be permitted during the early stages of pregnancy, but we do not do so because of the custom adopted by both the Jewish and general community.

Rabbi Jacob Emden (1697-1776) Even in the case of a legitimate fetus there is reason to be lenient if there is a great need, so long as labor has not begun (or: as long as the child has not yet begun to move); even if the mother's life is not in jeopardy, but only so as to save her from an evil associated with it that would cause her great pain...

Rabbi Eliezer Deutsch (1850-1916). A woman who had been pregnant a few weeks began to spit blood. Expert physicians said she must drink a drug in order to bring about miscarriage. Should she wait, it would be necessary to remove the fetus by surgery, endangering the life of the mother. Is it permissible to induce miscarriage by means of the drug? Rabbi Deutsch answers that in such a case it is certainly permissible to do so. He concludes that abortion is permitted in this case for three reasons: 1) Until three months after conception, there is not even a fetus; 2) No overt act is involved in this abortion; 3) The woman herself is doing it and it is thus an act of self-preservation.

Rabbi Ben-Zion Uziel, late Sephardic Chief Rabbi of Israel dealt with a case concerning a woman threatened with deafness if she were to go through with the pregnancy. He decided that since the fetus is not an independent life but only a part of the mother, there is no sin in destroying it for the sake of the mother.

Rabbi Isaac Meir Mizrahi (1913) Mental health risk has been definitely equated to physical-health risk. This woman who is in danger of losing her mental health unless the pregnancy is interrupted, therefore, would accordingly qualify

Rabbi I.J. Unterman, former Ashkenazic Chief Rabbi of Israel dealt with the question of an expectant mother who contracted Rubella and it was feared that the child might be born with serious physical and mental abnormalities. Likewise **Rabbi Moshe Yonah Zweig** dealt with a case suspected deformities caused by thalidomide. Permission to abort was denied. Both of these authorities are unalterably opposed to any abortion, except in a case like that mentioned in the Mishna, where there is a direct threat to the life of the mother. Moreover, both argued that there is no distinction in the eyes of the law between normal and abnormal persons with regard to the statutes governing homicide or with regard to those governing feticide.

Rabbi Eliezer Waldenberg, (1915 – 2006) If there is a danger to the mother from continuing the pregnancy, one should permit abortion without hesitation. Also, if her health is poor and to cure her or to relieve her from great pain it is necessary to abort the fetus, even if she is not in actual danger, there is room to permit it, based on the halachic authority's evaluation of the situation.

In the case of a baby who will have Tay-Sachs, "One should permit...abortion as soon as it becomes evident without doubt from the test that, indeed such a baby shall be born...if, indeed, we may permit an abortion according to the halachah because of 'a great need' and because of pain and suffering, it seems that this is the classic case for such permission. And it is irrelevant in what way the pain and suffering is expressed, whether it is physical or psychological. Indeed, psychological suffering is in many ways much greater than the suffering of the flesh.

Rabbi Moshe Feinstein, (1895 – 1986) It would be forbidden to kill it even to save someone's life. The exception would be to save the life of the mother during childbirth, not for any other need of the mother, which would definitely be forbidden.

Even for children for whom the doctors predict a very short life span, such as those children who are born with the disease called Tay-Sachs, which through newly developed tests can be diagnosed prenatally, it would be forbidden since there is no danger to the mother and the infant is not a rodef. One cannot permit an abortion even though there is very great suffering involved ... It is incontrovertible and clear as I have written, a straightforward halachah according to the words of our Masters, the traditional commentaries and halachic authorities, that abortion would be forbidden as bona-fide murder, for any fetus; legitimate or a mamzer, genetically normal or afflicted with Tay-Sachs, are all included in the prohibition according to Jewish law.

Rabbi David Feldman, Birth Control in Jewish Law: What generalizations, then, can be made about the rabbinic attitude to abortion at any time? It can best be described as bifurcating into two directions, both of which presuppose that the fetus is not a person, yet one approach builds down and the other builds up. The first can be identified especially with Chief Rabbi Unterman, who sees any abortion as "akin to homicide" and therefore permissible only in cases of corresponding gravity, such as saving the life of the mother. It then builds down from this strict position to embrace a broader interpretation of lifesaving situations which include a threat to health, for example, as well as a threat to life. The other viewpoint (identifiable with the late Chief Rabbi Uziel) assumes no real prohibition against abortion at any time, except perhaps during the most advanced stages of pregnancy, and builds up from this lenient position to safeguard against indiscriminate abortions.

Rabbi Isaac Klein (Conservative): There is a distinction between the early and the later stages of pregnancy:

In the later stages we would permit abortion only when the birth of the fetus would be a direct threat to the life of the mother. This threat should be interpreted to include cases where continuation of the pregnancy would have such a debilitating effect on the mother as to constitute a hazard to her life, however remote such danger may be.

In the earlier stages, we would allow therapeutic abortions whenever there is any threat to the health of the mother, directly or indirectly, physically or psychologically. Since such an interpretation is very flexible and therefore subject to abuse, the facts have to be established by reliable medical evidence.

We would therefore permit abortion in the case of thalidomide babies, cases of rape and the like, not because such a fetus has no right to life, but because it constitutes a threat to the health of the mother. This is an area of controversy. Many authorities would disagree and limit abortion to cases where the threat to the life of the mother is direct.

We would not permit abortions that are prompted merely by the desire of the mother not to have another child.

Rabbi J. David Bleich (Orthodox) [The leading Orthodox scholar of our time, Rabbi Moshe Feinstein forbids an abortion unless in the opinion of the physicians it is "nearly certain" that otherwise the mother will die.] In light of what may at times appear to be a harsh and forbidding stance, one might be tempted to conclude that Jewish law manifests an indifferent attitude toward the individual and his [sic] plight. It is important that we recognize that, quite to the contrary,

Halakha is motivated first and foremost by concern and solicitude for all living creatures. It is this extreme concern for man's inalienable right to life, both actual and potential, which permeates these many halakhic determinations.

A Jew is governed by such reverence for life that he trembles lest he tamper unmindfully with the greatest of all divine gifts, the bestowal or withholding of which is the prerogative of God alone. Although he be master over all within the world, there remains areas where man must fear to tread, acknowledging the limits of his sovereignty and the limitations of his understanding. In the unborn child lies the mystery and enigma of existence. Confronted by the miracle of life itself, man can only draw back in silence before the wonder of the Lord.

Avital Chizhik-Goldschmidt, "My Dark Secret": Orthodox Women Reveal Their Abortion Stories *Forward*
Abortion is never simple — no matter the state, the stage of pregnancy, or the reason.

While the nation is besotted with headlines, as *Roe v. Wade* is once again brought to the forefront of debate, we often overlook the actual stories of women who go through this experience. But there is one group of women for whom abortion is an especially fraught decision — women in religiously conservative communities, and particularly, women of the Orthodox Jewish community. For women here, it is a much more complicated decision to terminate a pregnancy, both because the Halacha, the religious law behind it, is complex — and because the shame associated with it is severe.

There is a story of two layers here: There is an official story, of rigid policy, a community that is publicly anti-abortion-rights. And there is a secret one. What is not told is the white space in between those black letters — what happens when Halacha collides with real life. The questions are complicated — and the answers are even more so. What happens when a woman is raped? What happens when a fetus is found to be unviable, at 24 weeks? Must a woman continue carrying to term, as some will do? A child conceived of an extramarital affair — sure to be a mamzer, a bastard according to Jewish law? And what if a woman is mentally unstable, unprepared for yet another pregnancy and child — does the fetus present life-threatening harm to her?

Many Orthodox women go to rabbis not only for counseling and advice, but for direction, too. Among religious women, in private conversations, it is common knowledge which Orthodox rabbis rule sensitively on pregnancy and medical ethics. They are called poskim, halachic decisors with extensive legal scholarship. They are often heads of yeshivas, spending their days steeped in texts, and are experts in this specific area of Jewish law. Their names are kept private, passed around from woman to woman; a local rabbi or rebbetzin may discreetly forward a posek's phone number to a desperate congregant. Whether in New York or Jerusalem, these rabbinic offices, lined with gleaming talmudic volumes, often turn into places for people to unload their tears, as they face harrowing life decisions....

Deborah Eisenbach-Budner with Rabbi Susan Schnur, "A Ritual for Abortion"

Brucha Aht Rachamaima, sheh'ozeret lanu, livchor chayyim. Amen.

Bless You, Rachamaima, Compassionate Nurturer of Life, who helps us choose life. Amen.

I was on the abortion table when this prayer just came to me, addressed in the feminine — "Brucha Aht" — to "Rachamaima," a name for God that first birthed itself, 30 years ago, among a small group of women, including me, who were writing one of the first feminist Haggadot. Rachamaima combines three Hebrew words: rechem (womb); rachamim (compassion; related etymologically to "womb"); and ima (mother). Divinity here is a compassionate, female gestator of life. Imagining God in this way came out of a process I called "spiritual activism."... The words "You" and "us": During the abortion, my partner kept whispering the prayer in my ear, over and over, the syllables incantatory. "You" and "us" eradicated my feelings of being, somehow, the only one. They connected me to Divinity, to my partner, and to every woman who ever chose to have an abortion or will one day do so. The prayer's message is radically different from the Kaddish or from the words Jews say in response to a death — "Dayan ha-emet!" ["God is the righteous judge!"] — which don't engage relationally with us, which don't join us in our sorrow. The Kaddish resolves the unresolvable problem of mortality and anguishing loss by simply trumping it ("Let the glory of God be extolled, let His great name be hallowed, let His great name be blessed."). My female prayer, on the contrary, is an embrace.

"Livchor" — "to choose." The first time I went to the abortion clinic, I couldn't go through with it and left with my pregnancy still intact. During the six days that followed, I came to terms with the awesome charter of my choice. Okay, this is inescapable, I told myself. I can't pretend I'm not doing it. "Pro-choice," "pro-life" — I was taking responsibility for my power.