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Induced Abortion According to Jewish Law

Introduction

The debate and controversy on abortion exist as long as civilization exists. The deliberate cessation of pregnancy is a practice which goes back to antiquity, but it was usually performed illegally, or with great reluctance as a medical necessity.

There are legal, religious, moral and practical considerations deeply involved in the delicate and intimate issue of abortion. In this article I propose to consider the question from the standpoint of Halacha: to understand what Halacha views as the basic issues regarding the pregnant woman, her needs and rights; and also to study the rights of the unborn child. Regardless of the philosophical and moral argument—both pro

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and con—which have caused heated debate all over the world, the only valid approach for a committed Jew is to seek the guidance of the Halacha, and to follow the solution proposed by Jewish law.

Nevertheless, we cannot be blind to the reality that societal influences greatly color the value structure of all of us. The more we participate fully in the modern world, the less we can ignore the deep impression which current mores and beliefs make upon even the deeply-committed and practicing Jew. Thus, as abortion becomes not only a possible, but sometimes even a purportedly desirable option, it is vital that we do know just what it is that Jewish law teaches on the subject. This article will discuss the many sources which forbid abortion, and explain in which situations exceptions might be considered.

Let me emphasize before proceeding further, that this article is not in any way intended to indicate the “psak halacha,” the actual law. For that, as for all questions of Jewish practice, the sincere Jew must turn to his competent Rav for instruction. Each situation has unique features, and the Posek has to consider myriad details in arriving at his final decision. My intention, rather, is to elucidate the principles upon which the ultimate “psak halacha” is based, so that we may better appreciate the profound wisdom of our Torah.

A. Types of Abortion

Abortions can be classified into two basic categories: spontaneous and induced. Induced abortion—which this article discusses—is divided into two main groups: medical (therapeutic) abortion, performed legally by a physician, and criminal abortion, carried out against the law. Throughout the ages both secular legal systems and Halacha have attempted to define permitted and prohibited forms of induced abortion; the

status of criminal abortion was determined according to such definitions.

B. Abortion in Antiquity

The majority of religious authorities and legislators of ancient cultures opposed induced abortion.¹

1. Buddhism prohibited it for religious reasons and severely punished transgressors. Abortion was treated as murder in Hindu regulation. Assyrian law sentenced the woman to death. Even the Egyptians imposed stringent penalties on persons performing induced abortions. We find dissenting opinions among the Greeks—some regarded abortions as a general and well-known phenomenon, while others prohibited harming the fetus.² Roman law banned abortions from the second century, C.E., instituting penalties such as hard labor, exile, confiscation of property and so on.³

2. Christianity took the extreme position in prohibiting abortion from the moment that a woman became pregnant.⁴ Abortion is the medical subject mentioned most frequently in ecclesiastical literature. The religious ban on performing abortions is absolute, even including situations in which continuation of the pregnancy constitutes a definite threat to the woman's life.

We can identify various formulations and promulgations in church literature stressing this absolute prohibition. For example: Any intervention likely to unavoidably cause elimina-

1. See I. Jakobovits, *Jewish Medical Ethics*, Bloch Publishing Company, 2nd ed., New York, 1975, pp. 170-172.

2. *ibid.*

3. *Encyclopaedia Hebraica*, Vol. 15, “Abortion”, p. 85.

4. For Christian views see Jakobovits, *ibid.*, pp. 174-78.

tion of non-viable products of conception is forbidden in any event, even if the goal is desirable.⁵ Therefore, “when grave complications . . . occur in the early months of pregnancy . . . the Catholic physician . . . must withdraw from the case. If there is no other physician to attend the woman, he must let her die.”⁶ One rationalization of this attitude is that “better two deaths than one murder.”

3. Most known “Physician’s Oaths” refer negatively to abortions. In Hippocrates’ (460-370 B.C.) Oath the matter is formulated as: “I will not at any time give a woman any drug or instrument for the purpose of causing abortion”.⁷ (Or, according to another translation, “I will not insert any device in a woman to abort the fruits of conception.”) The oath of Assaf HaRofeh (6th century) refers to a specific problem within the overall context of abortion—“and do not administer an abortifacient to an adulterous woman.” Amatus Luzitanus (1511-1568) declared in his vow: “No woman has aborted her unborn child with my assistance”.⁸

☛ C. Abortion in Early Jewish Sources

This section presents a brief summary of the discussions referring to abortion in the Torah and in the Talmud, which constitutes the basis for every Jewish legal discussion in the later literature.

5. A. Klarman, *The Crux of Pastoral Medicine*, Ratisbonne, 1912, p. 135.
 6. O’Malley & Walsh, *Essays in Pastoral Medicine*, New York 1906, p. 54.
 7. See the list of formulations of oaths—D. Margalit, *Derekh Yisrael baRefuah*, Publication of the Medical Academy, Jerusalem 5730, Chapter 24.
 8. Regarding the authenticity of this statement see Jakobovits, *ibid.*, p. 172.
 9. See A. Steinberg, “Prayers and Oaths of Patients and Physicians” in *Book of Assia*, R. Mass Publication, 2nd ed., Jerusalem 1978, pp. 248-256.

The crux of the discussions hinges on whether the prohibition of terminating a pregnancy prior to term is to be considered of Biblical origin (*mi d’oraitha*) or whether the prohibition stems from Rabbinic decree (*mi d’Rabbanan*). This is a crucial distinction in Jewish law: A prohibition *d’oraitha* is generally not set aside except to save a life (*pikuach nefesh*); however, if the Rabbis are the ones who forbade the act, then they also retain the right to remove or modify that prohibition. Therefore, if abortion is forbidden by the Torah, there would be relatively few instances in which we could halachically permit it. But if the Rabbis made that regulation, they can also make exemptions to that rule as they consider proper or necessary.

1. In the Torah, there is no source related to this matter. The only time it is even mentioned is:

*“If men fight, and hurt a pregnant woman so that her fruit departs from her, and yet no further harm ensues: he will surely be punished according to the demands of the woman’s husband, and he shall pay as the judges determine. However, if harm ensues, a life is to be given for a life.”*¹⁰

As noted in the Sages’ commentaries, the word “harm” in the above verse applies to the woman; that is, if there is no other injury to her other than miscarriage, those responsible must pay a monetary fine to her husband. However, if as a result of the blow, “harm” came to the woman—i.e., she died—then the one responsible is sentenced to death.¹¹ According to this reading of the verses, the Torah herein is not

10. Exodus 21:22.

11. *Mechilta*, Mishpatim, ch. 8; *Baba Kama* 42a; Also see A. Aptowitz, “The Status of the Fetus in the Jewish Penal Code” in *Sinai* 11 (5702). pp. 1-32.

referring at all to induced abortion in the usual sense, which is when the mother needs or requests an abortion for any reason.

2. The sole Talmudic source dealing directly with abortion for medical reasons is the following Mishna:

*"If a woman is undergoing difficult labor, the child is cut up within her and extracted limb by limb, as her life takes precedence over its life. However, if the greater part of the fetus has already appeared (and is endangering the mother's life), it may not be touched, as one life (the child's) is not set aside for another life (the mother's)."*¹²

This situation involves a threat to the mother's life *during delivery*. The Mishna distinguished two cases: until most of the fetus has appeared, it may be dismembered in order to save the mother. But if the child has already appeared, even if it endangers the mother's life, one is not permitted to harm it, as "one life is not set aside for another life." It is evident from this Mishna that, were the fetus *not endangering* the mother's life prior to its birth, it would certainly be forbidden to destroy it. This is the ruling of the Rambam, in Hilchot Rozeach 19, as well as of the Shulchan Aruch.

3. The Talmud specifically discusses criminal abortion in only one place: "In the name of Rabbi Yishmael, it was said, a Noachide (Gentile) is executed even for a fetus."¹³ Rambam follows this in stating: "A non-Jew who murdered a person, even a fetus within its mother, is executed for it."¹⁴ This is the accepted ruling of Jewish law—that a Noachide who performs an abortion is deserving of the death sentence, in accordance with the teaching of Rabbi Yishmael.

12. Mishna Ohalot 7, 6.

13. *Sanhedrin* 57b.

14. Rambam, Hilchot Melachim 9, 4.

In Hulin 33, Tosafot further elaborates on the Biblical origin of the prohibition of destroying a fetus by reasoning *a fortiori* that since a Gentile is definitely forbidden to perform an abortion, it stands to reason that a Jew may likewise not do it. If even a non-Jew may not do this act, how could it be permissible for a Jew?

Yet, in Nidah 44, Tosafot challenges the conclusion of the above citation. In the latter instance, they argue that a Jew is allowed to destroy a fetus. Later commentaries, including the Maharitz Chayus¹⁵ and Rabbi Yaakov Emden¹⁶ debate the implications of the apparent contradiction between the two Tosafot texts. In conclusion, we are not in a position to state categorically that the prohibition of destroying a fetus originates in the Torah itself, nor can we say that all authorities accept it only as a Rabbinic regulation. There are eminent authorities for either point of view.

One fact is however agreed amongst all Poskim—that even those authorities who rule that an abortion is an "issur d'oraita", would not inflict the death punishment for such an act (based on Mishna Nidah 5,3).

It is worth noting in the continuation of the text in Erchin 7a, the ruling of the Sages that if a pregnant woman is sentenced to death, we do not wait for her to give birth before executing her. Teshuvot Ahiezer, section 3, 65:14, discusses the implications of this text.

4. The Zohar¹⁷ specifically deals with criminal abortion, reasoning that he who does it "contravenes the creation of the L-rd and His handiwork."

15. Maharitz Chayus, Nidah 44b.

16. R. Yaakov Emden, Nidah 44b.

17. Zohar, Exodus, Warsaw ed., 1876, p. 3, column 2. See also: *Encyclopedia Hebraica*, *ibid.*, p. 89.

However, in the Talmud as well as in the pre-seventeenth century legal texts, there is no reference to criminal abortion among Jewish sources, though the theological literature of antiquity and the Middle Ages include many comprehensive treatments of this subject. Several authors have offered various explanations of this fact. The most reasonable is Weiss' explanation¹⁸ that "apparently, murder of fetuses has never existed in Jewish society during any period" and thus there was no need for specific discussion of this problem.

In several places in the Talmud we find a discussion of non-criminal abortion, i.e., a description of situations where abortion is permitted under certain conditions. These sources comprise the central basis for Rabbinic discussions of various aspects of the problem during the era of the *Poskim*.

In commenting on the Mishna cited previously (concerning an abortion to save the life of a woman giving birth), the Tosefta adds: "The person who cuts up the fetus within the woman with the court's permission and harms the woman thereby—if it was unintentional, he is not punished; but for an intentional harm he is liable, because we must strive toward a better world."¹⁹ What this means is that if a person performing the abortion unintentionally harms the woman, we do not hold him liable, because if we did, no one would ever try to save the woman's life by aborting the child, for fear that he would be punished for any accident which might occur. It is clear that this kind of abortion was not only permitted by the Rabbis but was seen as a beneficial act.

Thus, one can see that few sources in the Bible or the Talmudic literature deal with abortion. The common denominator in the cases mentioned in the Talmud is the existence of specific, infrequent and exceptional conditions.

18. Weiss, A. H., *Dor Dor v' Dorshav*, New York & Berlin, 1924, Vol. II, p. 23.
19. Tosephta Gittin, 4. 7.

D. Reasons for Prohibiting Abortion

The Rabbinic authorities who have determined and interpreted Jewish law have unanimously taken a negative attitude towards abortion. All agree that some prohibition against inducing an abortion does exist. However, we do find differences of opinion as to the nature, severity and grounds for this prohibition, according to strict halachic rulings and criteria.

Those who presume that abortion is prohibited by the Torah (*mi d'oraitha*) attempt to refer and compare this prohibition to other existing and accepted prohibitions in the Bible, making an abortion into an offshoot of other forbidden acts, such as murder or wounding. However *all* agree that it is not actually considered murder, and that a Jew is not punishable by death for feticide.

Another reason for prohibition of abortion is that "withholding life is a negation of the injunction 'to be fruitful and multiply' as well as 'diminishing the Divine form'".²⁰

Rabbi Uziel (1880-1953) formulated it thus: "On the one hand, one must prohibit abortion of a fetus . . . as said in the Gemara . . . : Every Jew who is not involved in 'multiplication' is considered to be shedding blood. . . . Ben Azzai said, as if he sheds blood and diminishes the Form . . . how much more so for him who performs an act reducing the potential existence and growth of one Jewish life." The Zohar²¹ further elaborates and stresses that abortion contains an element contravening the creation and handiwork of the L-rd.

20. Responsa Binyan David #47, note 3; Mishpatei Uziel, Part 3, Choshen Mishpat #46.

21. Zohar, Exodus, Warsaw ed. 1867, p.3, column 2. See also: *Encyclopaedia Hebraica*, *ibid.* p. 89.

Another reason for prohibiting abortion is the danger to the woman involved in the procedure,²² in accordance with the assumption that every abortion is considered to be dangerous.²³ It is therefore forbidden to endanger a woman by performing an abortion. However, most of the Rabbinic authorities dealing with this aspect of the problem have concluded that when abortion is permitted for an accepted reason, the risk nowadays is not a limitation any more, because "the physicians are experts in these matters and there is little danger."

That ascribing the proper reasons for prohibiting abortion is not merely an intellectual exercise is illustrated in a real case which was presented to Rabbi Unterman: A Nazi had raped a Jewish woman, who had become pregnant. The Nazi now brought the woman to a Jewish doctor and demanded he perform an abortion. In this case, it would be crucial to know whether an abortion is forbidden because it is murder, or for some other reason. A Jew must allow himself to be killed rather than commit a murder; however, if some other lesser issue is involved, then it would be permissible to perform an abortion to save one's own life.

E. Stages of Pregnancy and Childbirth

In determining whether an abortion is to be permitted, the Rabbis took into account a number of factors, including the stage of pregnancy or childbirth during which the abortion is to be performed. Depending upon the stage, the issue may be stronger or there might be more reasons for granting a lenient ruling (heter). In the Talmud, the entire span of pregnancy is

22. Responsa *Beit Shlomo*, Choshen Mishpat, no. 132.

23. Ramban in *Torat ha'Adam*, cited in Rosh and Ran, Yomah 83a.

24. Responsa *Mishpatei Uziel*, *ibid*.

seen as a single unit and the various stages of birth are differentiated from it. In contrast, the later Rabbinic authorities in explaining the Talmud differentiate also between various stages even during pregnancy.

1. Based on the Talmudic definition²⁵ "until 40 days, it (the fetus) is considered as natural fluid", many Rabbinical authorities derived²⁶ that for the first forty days of pregnancy, the fetus should not be referred to as a life, and some concluded that it was permissible to abort it at that stage. Accordingly, Rabbi Weinberg (1892-1966) wrote: "Several later authorities maintained that prior to 40 days, feticide is essentially permitted."²⁷

However, Rabbi Unterman, the former Chief Rabbi of Israel, is of a dissenting opinion.²⁸ He does not consider 40 days as constituting any border line whatsoever in terms of abortion, which he prohibits during the entire course of pregnancy. His basis is that most women deliver a normal and viable infant, and therefore the fetus from the moment of conception is to be regarded as a living soul. Indeed, there are those who permit desecrating the Sabbath for its sake even before forty days.²⁹

2. Another Talmudic statement further supports an additional stage of pregnancy as a critical period for abortion, in

25. *Yevamoth* 69b. The talmudic dictum "mere water" is stated in regard to a wife of a Cohen, whose husband has died, even though if she is pregnant she cannot continue to eat terumah; for the forty days following the death of her husband, she may continue to eat terumah, for even if she is pregnant the child is considered "mere water".

26. Responsa *Chavot Ya'ir*, No. 31; Responsa *Torat Chesed*, Even Ha'ezer, no. 42; Responsa *Achi'ezer*, part 3, end of no. 65; Rabbi Zweig, *No'am*, vol. 7, pp. 36 ff.; Responsa *Tzitz Eli'ezer* part 7, no. 48, ch. 1, note 8; and many others.

27. Responsa *Sridei Esh*, part 3, no. 127.

28. Rabbi Unterman, *No'am*, vol. 6, p. 1 ff.

29. See *Rosh* and *Ran*, end of tractate Yomah.

the view of a number of Rabbis. This source in the Talmud is the statement, "When is the fetus recognized . . . three months."³⁰ That is, the end of the first trimester is the point at which a woman's pregnancy is externally discernible. Rabbi Ovadia Yoseph, Chief Rabbi of Israel, writes: ". . . and in our case, the fetus is not yet three months old. It appears that according to this opinion, a Noachide is not executed for it and a Jew is not prohibited by the Bible against it, as recognition of the fetus is not possible at less than three months."³¹ Apparently, those Rabbis who apply the injunction against abortion more strictly, do so with respect to the later stages of pregnancy, not to the first three months.³² In the words of Rabbi Chaim Ozer Grodzenski, "it seems to me that a Noachide is not killed for this (performing an abortion before forty days), and also for a Jew it is possible that there is no prohibition from the Torah."³³

3. As noted, the Talmud differentiates several stages of childbirth:³⁴ the onset of labor (termed "sitting on the birthing stool"); regular contractions; and crowning (the appearance of the head). In the Gemara it states that a woman sentenced to death was not executed if she had reached this last stage; the execution was delayed until after she gave birth.³⁵

30. *Nidah*, 8b.

31. Responsa *Yabi'a Omer*, part 4, Even Ha'ezer no. 8.

32. Responsa *Chavot Ya'ir*, no. 31; Responsa *Pri Ha'sadeh*, part 4, no. 50. The list of those reasoning that the prohibition is from the Bible or from the Sages is long, and a number of authors have consolidated these lists. *Sedai Chemed Maracha Alef #52*, Responsa *Yabia Omer* (R. Ovadia Yosef), part IV, Even Ha'ezer no. 8, Responsa *Achiezer*, part III, question 65. sec. 14; also see the summary of Rabbi Jakobovits, *ibid.*, pp. 190-191.

33. Mishna *Arachin*, 7, 1.

34. According to the text of the Yerushalmi, *Shabbat* 14, 4, and Yerushalmi, *Avodah Zara* 2, 2.

From the time that the head or most of the body³⁶ appears, the injunction "a life is not set aside for another life" takes effect. At this moment religious law considers the infant to be equivalent to a grown person under most criteria. If he is expected to live, the mother's life cannot be preserved at his expense.

In sum, most of the Rabbinic authorities consider the age of the fetus and the stage of childbirth to be significant factors when discussing the stringency of the prohibition against abortion.

F. Indications for Abortion

In general, the indications for induced abortion can be divided into two categories: a) maternal and b) fetal.

The reasons for abortion related to maternal factors fall into the following groups: 1. The mother's life is endangered by the pregnancy or delivery; 2. The mother's life is endangered by a systemic organic disease, pre-dating the pregnancy and exacerbated by it; 3. A maternal systemic organic disease, exacerbated by the pregnancy, but not life-threatening; 4. Hastening of maternal death as a result of pregnancy (in the event of a disease with a poor prognosis in any case); 5. Maternal mental disease caused or exacerbated by pregnancy; 6. Organic disease of an isolated organ, exacerbated by pregnancy; 7. Extra-marital pregnancy due to adultery, promiscuity or rape; 8. Social, economic and other factors.

Fetal-related reasons for abortion are: 1. Maternal disease liable to cause birth-defects in the fetus; 2. An iatrogenic condition liable to cause birth-defects, particularly drugs and radiation; 3. Genetic disease inherited by the fetus.

35. According to the text of the Mishna, *Ohalot*, 7, 6.

In contradistinction to the Catholic prohibition of abortion under *any* circumstances, there is no such view in Judasim. We have indeed found a variety of opinions among the Rabbinic authorities in reference to various indications—some are more stringent than others—but all do permit abortion in certain situations.

a) *Maternal indications for abortion*

1. *The mother's life is endangered as a result of pregnancy or delivery:* This is the clearest case in which abortion is permitted, as stated plainly in the Mishna cited previously: "If a woman is undergoing difficult labor, the child is cut up within her." A few authors³⁶ have concluded that according to Jewish law, abortion is permitted *only* in such a situation—and not in any other case. Some examples they would include in this category are extreme cases of toxemia of pregnancy, placenta praevia, placenta abruptio, pathological presentations, etc. However, this extreme position is a minority view, and other Rabbinic authorities have extended permission to include other situations.

2. *The mother's life is endangered by a disease pre-dating the pregnancy, which is exacerbated by it:* This involves severe stages of diabetes, heart disease, kidney disease or other systemic diseases exacerbated by pregnancy, which are liable to threaten the woman's life. As mentioned above, most Rabbinic authorities are quite lenient regarding performing an abortion in such cases to save the mother.³⁷ However, there are some authorities who maintain that it is permissible to abort a fetus only when it is threatening the life of the mother. In the cases

we are discussing, it is not the *fetus*, but rather the *disease* which is endangering the mother, and therefore they would not permit an abortion. Nevertheless, Rabbi Chaim Ozer Grodzenski, the leading "posek" in the earlier part of this century, clearly did not accept this theory. In the case of a woman with serious heart disease, he permitted an abortion.³⁸

The problem of a severe medical condition threatening the mother's life was the most frequent organic-medical difficulty encountered in reference to abortion. Indeed, in the 1957-58 Yearbook of Gynecology, a gynecologist wrote that "medical care has greatly advanced today so that only isolated diseases justify an abortion." D. Ehrlich³⁹ noted that this declaration is somewhat optimistic in that present-day medical care has actually created new problems in this area, such as kidney failure and dialysis, prosthetic heart valves, etc.. We can thus see that in terms of abortion this area is not negligible.

3. *A maternal systemic organic disease, exacerbated by pregnancy, but not life-threatening:* We are dealing with the group of diseases discussed in section (2) above, such as diabetes, heart disease and the like. However, in this case, the condition, according to the physician's assessment, is not severe enough to threaten the mother's life. Most of the Rabbis maintaining that abortion is only prohibited by the Sages (d'Rabbanan), do consent to performance of an abortion in such situations.⁴⁰ In contrast, it is obvious that the authorities

38. R. Chaim Ozer, *ibid.*, permitted an abortion to be performed on a woman who was suffering from a severe heart condition. It was felt that to allow the child to proceed would have endangered the life of the mother.

39. Ehrlich, D., "The Medical Background for Interruption of Pregnancy in Jewish Law" in *Book of Assia*, pp. 70-77.

40. Responsa Rav Pe'alim, Part 1, Even Ha'ezer, no 4; Responsa Tzitz Eli'ezer, part 6, no. 48; and others.

36. Pachad Yitzchak, s. v. Nefalim: Responsa Ko'ach Shor, no. 20.
37. Responsa Beit Shlomo, loc. cit.; Responsa Pri Hasadeh, loc. cit.

who prohibit abortion even in the life-threatening situations mentioned in section (2), would also forbid it in these cases.

4. *Hastening of maternal death as a result of pregnancy:* A situation in which the mother has a disease with a terminal prognosis and we fear that the pregnancy might hasten her death. The problem halachically arises from her precarious situation—her life is not termed “life” in the accepted sense, but rather “life for an hour” (Chayei sha’a). Is it permitted to terminate a fetus’s life in order to save a mother’s “life for an hour”? One contemporary source⁴¹ dealing with this issue, in the case of a pregnant woman with lung cancer, concludes that abortion is permitted even for that “life of an hour”.

5. *Maternal mental disease caused or exacerbated by pregnancy:* That is, manifestly psychiatric disease rather than minor psychological disorders. As known, pregnancy can bring out repressed or latent mental problems, although pregnancy-related psychosis is fairly rare (approximately 14:10,000). The more frequent disorders are schizophrenia, mania-depression and psychoneurotic reaction.⁴² In the Rabbinic literature dealing with this matter, it is termed “an attack of nervous disease”; some have permitted abortion⁴³ and some have prohibited it.⁴⁴

It is not that the mental disorders would of and by themselves be sufficient grounds for performing an abortion; however, if the psychological disturbance might so unbalance the mother’s mind that she is liable to kill herself, then we have a different situation. Here, depending on the circumstances, it might be “pikuach nefesh”. In the case of a woman suffering severe post-partum depression, Rabbi Moshe Feinstein permit-

ted birth control, for fear that a further pregnancy would precipitate a life-threatening mental condition.⁴⁵

6. *Organic disease of an isolated organ, exacerbated by pregnancy:* Referring to a situation in which pregnancy is liable to threaten a specific maternal organ. Essentially, the problems discussed include loss of vision (such as due to a detached retina) and loss of hearing.⁴⁶ The two authorities who handled these particular problems concluded that abortion was permitted. Rabbi Ovadiah Yoseph⁴⁷ determined that those declaring the prohibition of abortion to be of Rabbinic origin would permit it in the case of an endangered organ; but in the opinion of those who have stated that abortion is prohibited by the Bible and permitted only to preserve the mother’s life, it may not be performed for an endangered organ.

7. *Extra-marital pregnancy:* Involving pregnancy as a result of incest, adultery, promiscuity or rape. Rabbinic law distinguishes between two situations: the pregnancy of an unmarried woman, whose child is eligible to join the Jewish community (although he is labeled “flawed”), as opposed to a married woman’s pregnancy, which would result in the birth of a bastard (mamzer), who is forbidden to join the community.

Some Rabbinic authorities⁴⁸ prohibited abortion in both

45. R. Feinstein, *Iggeroth Moshe*, Even Haezer no. 65.

46. Responsa *Chavot Ya’ir*, loc. cit.; Responsa *Lechem HaPanim*, last volume, no. 19; *Sefer Chassidim*, no. 1518.

47. Responsa *Mishpatei Uziel*, part 3, Choshen Mishpat, no. 46-47.

48. Responsa *She’ilat Yavetz*, part 1, no. 43; Responsa *Mishpatei Uziel*, loc. cit. The case involved a married woman who became pregnant through an adulterous relationship. She later repented and wanted an abortion. Even though we cannot inflict the death penalty today, the rule still applies that the woman is guilty and should be put to death. Hence the child is really to be put to death, even though his mother, the adulteress, will not be put to death. It is even possible that one “would be performing a Mitzvah by the abortion.” This rule applies even if she were impregnated at the hands of a non-Jew.

41. Responsa *She’ilat Yeshurun*, part 1, no. 39.

42. Kolb, L.C., *Noyes Modern Clinical Psychiatry*, 7th ed., Saunders Co., Philadelphia 1968, pp. 123, 24.

43. Responsa *Pri Ha’aretz Yoreh De’ah*, no. 2; Responsa *Levushet Mordechai*, Choshen Mishpat, no. 39.

44. Responsa *Ko’ach Shor*, no. 20.

cases, as there is no difference between a legitimate fetus, a "flawed" one, or a mamzer in terms of its right to life. One is not permitted to destroy them. On the other hand, there are Rabbinic authorities who do differentiate between the above situations,⁴⁹ contending that there is no excuse to permit abortion in a promiscuous single woman, but the abortion of a bastard is allowed. One line of reasoning is that the adulterous married woman deserves the death penalty anyway, according to Jewish law. Because her execution would also cause the death of her fetus (and as we have noted, we do not delay the execution of a pregnant woman), therefore its right to exist is less than usual and abortion is permitted.

In the Responsa *Rav Pe'alim*, we find an even more far-reaching position. The author quotes sources permitting abortion even in the case of a promiscuous single woman, because "a flaw in the family is a degradation and desecration of the L-rd's name."⁴⁸

8. *Social, economic and other factors*: This group of indications includes the most frequent grounds for requesting an abortion. In a 1965-66 survey conducted in Israel, it was found that 27% of the women applying to the Sick Fund for an abortion justified their request with socio-economic reasons.⁵⁰ One can assume that this number almost certainly does not reflect reality, as "socio-economic abortions" are usually performed outside of institutions.

The Jewish authorities discuss and debate this indication at length. Obviously those who state that preservation of the mother's life is the only basis for permitting abortion, prohibit performing one when the only justification is merely socio-

49. Responsa *Rav Pe'alim*, part 1, Even Ha'ezer, no. 4.

50. Yeshurun-Bermann T., "Reasons for Applications for Abortions Due to Undesired Pregnancy," *Harefu'ah*, 76:452 (1969)

economic. Indeed, some Rabbinic authorities stress this point in their prohibition. The overall Jewish perspective is anti-abortion; therefore situations involving any superficial needs, particularly when they are inadequately defined, are prohibited by all Jewish authorities.

On the other hand, there are authorities who have permitted abortion "for a great need" or "extreme suffering"⁵¹—definitions which are inexact and do not specifically refer to physical conditions. One might wish to include social and economic hardships within these terms. But obviously the rational solution for economic problems should be within the framework of economy and social care, and not by abortion.

b) Fetus-related reasons for abortion

1. *Maternal diseases likely to cause fetal defects*: We are dealing with viral diseases of the mother, especially at the beginning of pregnancy, which can cross the placenta and are liable to cause birth-defects, as in the case of the rubella virus discovered in 1941 by Gregg in Australia.⁵² Since then, this phenomenon has been widely investigated and numerous relevant articles have been published. Aside from rubella—foremost among the viruses harmful to the fetus—other viruses and parasites are known or suspected to have teratogenic effects: mumps, cytomegalovirus, smallpox,⁵³ herpes simplex, syphilis and toxoplasmosis.⁵⁴ I will not discuss this subject at length, but will present only the Jewish legal aspect of the topic.

As this problem has arisen only during the last forty

51. Responsa *Tzitz Eli'ezer*, part 7, no. 48.

52. Gregg, N.M., "Congenital Cataract Following German Measles in Mother," *Trans. Ophthalmol. Soc. Aust.* (1941), 35-46 Book of Assia.

53. Freier, Z., "Influence of Viral Diseases on the Fetus."

54. Leading article, "Subtle Effects of Perinatal Infection," *New England Journal of Medicine*, (1974), 290:337-38.

years, there are few written opinions on it in Jewish law. Most Rabbinic authorities prohibit abortion under such circumstances. The approach is that defective individuals have a right to live equal to that of healthy persons, and we do not have the authority to select who will live and who will die. Moreover, in case of maternal teratogenic viremia there is a reasonable danger that the abortion will destroy a healthy, non-defective fetus, as only a certain percentage is affected (and according to many researchers this occurs in a fifth of rubella-affected mothers, or fewer cases, depending on the stage of pregnancy). So far there is no specific way of predicting whether the particular fetus is indeed defective, and all that can be said is a statistical estimate. This fact adds to the moral concern in performing an abortion in such cases. Rabbi Unterman has issued an absolute prohibition in the light of these findings: "There is an absolute prohibition against aborting a fetus . . . even before forty days it is forbidden. And the suspicion that rubella might have harmed it does not come under the law of saving a life (because we have never learned that in order to protect it from injury, one deprives it of its life—a strange idea!), but because the parents have to relieve themselves of the burden of caring for him, and a prohibition which involves a form of murder is not set aside because of suspicion."⁵⁵ (We must note that Rabbi Unterman's viewpoint is that the general prohibition of abortion is based on regulations against murder and is a Biblical prohibition.)

In contrast, the decision to permit abortion in such cases considers the parents' anguish, which are basically the harsh psychological implications for a pregnant woman who suspects that she is carrying a defective fetus in her womb and that his entire life will be one of affliction and suffering.

55. Rabbi A. Unterman, *No'am*, *ibid.*

Some⁵⁶ permit abortion within the first forty days of pregnancy (on the strength of their assumption that abortion is essentially not forbidden by the Bible), and tend to also permit it after forty days in consideration of the parents' anguish. Nevertheless the majority of current Poskim are opposed to abortion for this reason.

It should be noted that disagreements of the psychiatrists and psychologists also center around the psychological aspect. Some emphasize that this can be an indication for abortion, though on the other hand there are those who feel that this case is a contra-indication to abortion, because women blame themselves afterwards for committing a murder and enter severe depressive reactions.⁵⁷

2. *An iatrogenic situation liable to cause birth-defects:* There are two main factors involved in this section: certain drugs taken by the woman during pregnancy, and penetrating radiation for medical examination and treatment. The most notorious drug is Thalidomide, produced by Chemie Gruenthal. Approximately 6000 defective children were born as a result of its use by pregnant women as a tranquilizer. This firm faced a trial lasting for a year and seven months, during which 120 witnesses were called. The firm was obligated to pay compensation totalling 30 million dollars.⁵⁸ From a medico-legal and Jewish standpoint the problem was publicized following the trial of Mrs. Susan Van de For in November 1962 in Belgium. She ingested 11 Thalidomide tablets at the beginning of her pregnancy and subsequently delivered a daughter who lacked hands and had deformed legs. She killed her child, but

56. Rabbi Y. Weinberg, *No'am*, vol. 9, p. 193; Responsa *Tzitz Eli'ezer*, part 9, no. 51, section 3, ch. 3, note 9.

57. Calderon, M.S., *Abortion in the United States*, 1958, p. 129.

58. See *New England Journal of Medicine* (1971), 284:481.

escaped a murder conviction by the decision of a jury of 12 men who deliberated for six days, on the grounds that she had saved her daughter from a life of suffering. This trial generated numerous medico-legal discussions. A special article stating the Jewish viewpoint was published,⁵⁹ and its conclusion totally contradicted the verdict. In the author's opinion it is forbidden to kill such a child on legal or traditional grounds. Moreover, it is also prohibited to abort a fetus, despite the existence of radiographic evidence that the child will lack limbs.

There are other drugs which are now known or suspected teratogens. Among these one can list cytotoxic drugs, certain antibiotic preparations and anticonvulsants.⁶⁰ The rulings in such cases essentially follow that of the Thalidomide situation.

In reference to radiating a woman—if an x-ray is needed to clarify certain specific diseases, such as IVP, films of the GI tract, of the skeleton, etc., or if they are therapeutic, such as in the case of a tumor—teratogenic effects are also known. Essentially it is similar to the Thalidomide situation.

3. *Genetic diseases of the fetus*: By making use of new scientific developments it is now possible to examine the fetus while it is still in the uterus in a number of ways, and to identify various genetic diseases, mainly involving chromosomal and enzymatic defects.

a. The most important examination is amniocentesis—obtaining amniotic fluid and examining the sample. The topic is halachically similar to the case of rubella in a pregnant woman, but one should emphasize that there is an important difference between them. With amniocentesis, the physician is

59. Rabbi Z. Zweig, "On Abortion," *No'am*, vol. 7, p. 36.

60. See: Pomerance, J.J.-Jaffe, S.J., "Maternal Medication and its Effects on the Fetus," *Current Problems in Pediatrics*, vol. 4, no. 1 (November 1973).

61. See particularly: Rabbi M. Feinstein, in *Sefer Ha'Zikaron Le Hagaon R. Abromski*, p. 461, as opposed by Rabbi E.J. Waldenberg in *Hilchot Rofim U'refuah* (edited by Dr. A. Steinberg), p. 33.

now able to select and destroy only the potential defectives. Certainly, according to the authorities who maintain that abortion is forbidden by the Bible and can only be performed to save the mother's life, there is no way that one can permit abortion in these cases. The assumption that neither the physician nor even the parents are the judges to decide who will live and who will die, is true in this situation, as it is in the rubella or Thalidomide cases.

On the other hand, those who have declared that abortion is forbidden by rabbinical injunction and thus permitted in the case of anguish and problems of the parents—the same considerations should apply here to permit abortion. Moreover, in the case of a defect or a serious disease which was verified by sampling the amniotic fluid, there is less moral concern, as we can be certain that the particular fetus is indeed defective, and we do not destroy a normal and healthy potential human being. However, most contemporary halachic authorities, and foremost among them Rabbi Moshe Feinstein, forbid abortion in any fetal indication, including genetic disorders verified by amniocentesis.

G. Factors Facilitating the Decision to Perform an Abortion

In the cases in which the religious authorities decided that one *is* permitted to perform an abortion, there is a tendency to search for legal methods of easing the prohibition against abortion. It is possible to briefly summarize several "recommendations" provided by Rabbinical authorities:

1. When there is an indication for abortion, it should be performed as early as possible—before 40 days of pregnancy or within the first trimester.
2. It is preferable to carry out the abortion "by a drug"; that is, preparations which cause abortion, without direct manipulation of the uterus.

3. In this manner one should consult with a specialist who is as experienced as possible, because there is a danger to the woman in the process of abortion itself, and this aspect must be carefully considered.

☞ Summary

I have tried to show in this article the basic Jewish attitude toward abortion. Human life is of the utmost value in Jewish philosophy and law, and therefore much effort is put into preserving good and healthy life. This basic viewpoint is transferred to fetal life as well. Therefore abortion is fundamentally forbidden. However, the Jewish law differentiates between a born and an unborn life, and when these two collide—the former is preferred. This gives the basis for the possibility of certain indications for abortion, as we have shown.