

Does Halakhah consider female infertility an illness?

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Infertility is both a global problem and a particular problem for the Jewish community. According to the latest assessment by the Center for Disease Control, the rate of women between the ages of 15 and 44 who suffer from some form of impaired fecundity (a physical inability to have a child) is almost 12% (approximately 7.5 million).^{1,2} In the Jewish community, estimates of infertility are as high as one in six women.³

To reduce infertility, biotechnologies and medical innovations have been, and are currently being, developed to allow men and women to have children in ways that have never been previously considered possible. In fact, the last forty years have been transformational in reproduction medicine by providing a wide variety of new drugs, procedures (such as artificial insemination, in vitro fertilization, hormonal treatments) and surgical interventions to treat infertility in women.⁴ Current interventions include

¹ <http://www.cdc.gov/nchs/data/nhsr/nhsr067.pdf>; <https://www.cdc.gov/reproductivehealth/infertility/index.htm>.

² http://www.philly.com/philly/health/womenshealth/New_advances_in_In-Vitro_Fertilization.html.

³ https://www.ou.org/jewish_action/10/2013/childless-couple/ reported in *Jewish Action*.

⁴ <https://www.nichd.nih.gov/health/topics/infertility/conditioninfo/Pages/treatments-women.aspx>.

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genetic screenings, freezing eggs, stem cell technologies, cloning technologies, uterine transplants, ovary transplants and gestational surrogacy.⁵ In this article, we advocate that Halakhah views infertility as an illness and, therefore, permits the use of new reproductive technologies to treat infertile women.⁶

Is infertility viewed as an illness?

American law deems reproduction to be a right and that infertility is a disability. The Americans with Disabilities Act defines a disability as a physical or mental impairment that substantially limits one or more major life activities for a person.⁷ Such a definition presumes that reproduction is a major life activity and that people who suffer from infertility can demand reasonable accommodations to treat it.⁸ Thus, American law understands the disability of infertility as stemming from one's right to have children.

Halakha, on the other hand, must consider any medical intervention with human physiology, including treating the infertile woman, within the scope of the prohibition of self-injury (*havala*). There are clear health risks⁹ that can result from the necessary administration of hormones and surgical interventions to treat infertility, and these health risks fall under the definition of *havala*. If physical "injuries" are incurred as a consequence of a necessary medical intervention then, there is no halakhic prohibition of *havala*. Thus, it is critical that many halakhic decisors view infertility as an illness, albeit for different reasons than how American law views infertility. Specifically, Halakhah views infertility as an illness due, in part, to the

⁵ <http://www.livescience.com/46578-future-fertility-treatments.html>.

⁶ Tzipy Ivri has noted that there are two consequences for the relationship between medicine and Halakhah given the advances of medical technology today. "The first is the emergence of a combined medico-rabbinic authority structure that utilizes biomedical knowledge to negotiate medical care on behalf of patients as well as to fortify religious authority. The second is the medicalization of rabbinic law—a growing tendency to think of medical interventions as imperative for observing God's commandments." (Tzipy Ivri, "Kosher medicine and medicalized halacha: An exploration of triadic relations among Israeli rabbis, doctors, and infertility patients," *American Ethnologist*, Vol. 37, No. 4, pp. 662–680.)

⁷ <https://www.ada.gov/cguide.htm>.

⁸ The details of what constitutes reasonable accommodation is outside the scope of this article.

⁹ <http://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/details/risks/cmc-20207080>.