

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>.

psychological distress resulting from their childlessness and not merely a biological disability.¹⁰ In addition, Halakhah views reproduction as a *mitzvah rabbah* and not a social right (see below).

Halakhic authorities are sensitive to the fact that women often develop psychological distress from the social stigma that results from their infertility. Psychological distress in infertile women also arise from the frequent conflation of motherhood with womanhood,¹¹ as well as strong cultural expectations for orthodox Jewish women¹² to bear children.¹³ Moreover, the effects of that social stigma of infertility lead to more than psychological stresses. Medical research has confirmed that infertility and its social stigma can have clear negative health implications¹⁴ including: long-term depression,¹⁵ lower life satisfaction,¹⁶ and social isolation.¹⁷ The estimated prevalence of mental health problems associated with infertility as reported in different studies ranges from 30% to 80%,¹⁸ and includes inferiority complex, interpersonal relationships stress, anxiety, and severe depression.¹⁹ Moreover, infertile females are more likely to suffer from psychological stress than infertile males, especially in societies where fe-

¹⁰ One rabbi who does hold the view that infertility is simply a biological disability is Rabbi Menashe Klein.

¹¹ Hird, 2007; Rich et al., 2011; Peterson and Engwall, 2013.

¹² KM Loewenthal and V. Goldblatt, "Family size and depressive symptoms in Orthodox Jewish women," *Journal of Psychiatric Research*, 1993 Mar 31;27(1):3–10.

¹³ Musick et al., 2009; Sweeney and Raley, 2014.

¹⁴ Slauson-Blevins et al., 2013; Clark et al., 2006; Goffman, 1963; Kimani and Olenja, 2001; Nachtigall et al., 1992; Greil, 1997.

¹⁵ Schwerdtfeger and Shreffler, 2009.

¹⁶ Greil et al., 2011.

¹⁷ Miles et al., 2009.

¹⁸ F Ramezanzadeh, Aghssa MM, Abedinia N, Zayeri F, Khanafshar N, Shariat M, et al. "A survey of relationship between anxiety, depression and duration of infertility," *BMC Women's Health*, 2004;4(1):9: Kucur Suna K, Ilay G, Aysenur A, Kerem Han G, Eda Ulku U, Pasa U, et al. "Effects of infertility etiology and depression on female sexual function," *J Sex Marital Therapy*. 2015:1–9.

¹⁹ For example, see the following: Joelsson, L. S., Tydén, T., Wanggren, K., Georgakis, M. K., Stern, J., Berglund, A., & Skalkidou, A. (2017), "Anxiety and depression symptoms among sub-fertile women, women pregnant after infertility treatment, and naturally pregnant women," *European Psychiatry*, 45, 212-219. Schweiger, Ulrich, Julietta Ursula Schweiger, and Janina Isabel Schweiger. "Mental disorders and female infertility," *Archives of Psychology* 2.6 (2018).

males are mostly accused of being the reason for couples' inability to conceive. Thus, cultural, religious, and social pressures strongly contribute to the overall physical and mental repercussions of infertility.²⁰

Halakhic Ramifications Resulting from the Social Stigma of Infertility

Psychological anguish or stress related to a medical condition can provide sufficient justification to institute specific halakhic leniencies. For example, a Talmudic passage states that one may scrape off the dirt scabs and wound scabs that are on his flesh on the Sabbath because of the pain; [but] if in order to beautify himself/herself, it is forbidden.²¹ Tosafot add that if psychological pain results from the embarrassment to go out in public with such exposed scabs, then it is permitted to remove these scabs on the Sabbath.²²

Furthermore, the Talmud states that a childless person is considered like a dead person, a statement that reflects a social view about childrearing and not only a medical condition. "Rabbi Joshua ben Levi said, 'A man who is childless is accounted as being dead,' for it is written, 'Give me children, or else I am dead.'²³ And it was taught: Four individuals are accounted as (if there are) dead: A poor man, a leper, a blind person, and one who is childless..."²⁴ Though including the leper seems to indicate a biological/medical category, the four types of people listed in this statement are considered dead, not medically, but socially, since their conditions limit their capacity as contributing members of society. For example, the Talmud states that a blind person is exempt from performing commandments;²⁵ a poor man lacks the money to give charity; a leper must live outside of the community (and therefore cannot contribute); and one who is childless cannot partake in general commandment to populate the world (see below). Thus, none of these four types of individuals are "dead" because of a physical or medical disability; rather, they are "dead" due to social exclusion.

²⁰ Pak J Med Sci. 2016 Nov-Dec; 32(6): 1340–1343. Depression, anxiety and stress among female patients of infertility; A case control study by Lamia Yusuf).

²¹ *Shabbat* 50b.

²² Tosafot s.v. *bishvil*.

²³ Genesis 30:1

²⁴ *Nedarim* 64b.

²⁵ *Bava Kamma* 87a.

Similarly, when Rachel says to Yaakov, “Give me children or else I am as if I am ‘dead,’”²⁶ the Biblical commentaries comment that even though Rachel is not obligated to have children, she still considers not having children as a state of being dead.²⁷ This idea is supported by Ramban who explains her statement as follows, “Rachel asks Jacob to give her children, but in reality she was requesting that he pray for her, and to continue to pray for her until she has children, and if not, she would die from grief.”²⁸ Therefore infertility, while not only a biological/medical condition, should be viewed as the cause of personal anguish due to the presumption that having children is a great social norm based on the Torah’s commands.²⁹

Halakhah also views the status of infertility as including a physiological state of illness. This idea is supported by the Biblical verse that states, “And you shall serve Hashem your God, and He will bless your bread, and your water; and I will take sickness away from the midst of you. None shall miscarry, nor be barren, in your land; the number of your days I will fulfil.” The juxtaposition between taking sickness away and not being barren demonstrates that barrenness is a sickness. A second supporting claim is based on a Talmudic passage in Yevamot, regarding a previously childless woman who married a fourth husband and then gave birth to children. The question is whether she is allowed to claim her Ketubah from her third husband. In discussing the ramifications of this case, Rav Papa suggests that the woman’s ability to have children with her fourth husband proves that she is fertile and could have had children with the third husband. Therefore, the third husband may have divorced her on false pretenses, thereby making the divorce invalid. The Talmud retorts Rav Papa’s suggestion and claims that perhaps this woman has been restored to health, validating the third husband’s divorce.

Finally, Netziv in his *Sheiltot*³⁰ explains Rachel’s claim that her childlessness is as if she were dead to mean that to be infertile constitutes a harmful situation and she may even be considered as a critically ill individual.

²⁶ Genesis 30:1

²⁷ For example, see Rashi who explains this verse to mean that those [women] without children are considered as dead (see also *Bereishit Rabbah* 71:6).

²⁸ Ramban’s commentary on Genesis 30:1. See also the *Sheiltot* who explains the term “dead” as harmful. Rav Yaakov Emden, *Mor u-Ketzia*, OH 328, *Magen Avraham* 9 states that someone who suffers pain but is not ill is treated like a *hole she-ein bo sakanah*.

²⁹ See below for a different explanation.

³⁰ (Genesis, 30:1). Netziv, *Sheiltot*, *Naso*.

Halakhah views illness and health as more than binary states; they are markers on a spectrum that allows for different levels of leniency. Specifically, there are four main categories used to demarcate the gravity of a person's illness, which impact the type of leniencies, such as with respect to Sabbath observance or other areas of Halakhah (e.g., dietary laws), that are permitted for the sake of healing. The four categories are:

- 1) **Critically ill (*holeh she-yesh bo sakanah*).** For someone who is critically ill, a Jew is obligated to “transgress” even a Torah commandment to provide life-saving procedures.³¹ This means that even if a non-Jew is available to do the *melacha*, a Jew is required to “transgress” the commandment.³² In contrast, there are a variety of other medical situations where the person is not critically ill, Halakhah would demand that a non-Jew preform the activity even though one may not normally ask a non-Jew to transgress a commandment for the benefit of a Jew.³³
- 2) **Ill, but not in a critical condition (*holeh she-ein bo sakanah*) or having a body part in danger of losing function (*sakanat eiver*).** *This is the main category under which questions of infertility treatments emerge.* Normally, a Jew cannot ask a non-Jew to “transgress” a commandment to benefit any Jew. For someone who is ill but not in

³¹ *Shulhan Arukh (Orah Hayyim 328:2)*: “It is a mitzvah to desecrate Shabbos for a dangerous illness. He who does so swiftly is praised; the person who goes to ask what to do is a shedder of blood!” and again: “Whoever is swift in desecrating Shabbos in a matter that involves danger is praised!” (*Shulhan Arukh, Orah Hayyim 328:13*).

³² *Yoma 84b* “We do not have gentiles perform these matters (being *mehaleil Shabbos* to save lives), only *gedolei Yisrael*.” The Rosh (*Yoma 8:14*) explains why we prefer a Jew perform the *melacha*—because of concern that people seeing a gentile instructed to perform the activity may erringly think that *pikuah nefesh* is less valuable than Shabbos and in the future may jeopardize someone's life when a gentile is not available. Rambam states that the greatest of the Jewish people, i.e., people we usually call *Gedolei Yisrael*, should be the ones to perform the *melakhah* (Rambam, *Peirush Ha-Mishnah, Shabbat* end of Chapter 18, and *Hilkehot Shabbat 2:3*—see *Mishnah Berurah* (328:34).

³³ *Gittin 8b* explicitly state that *Amirah Le-Nokhri* is only a rabbinic prohibition. Additionally, Ramban, *Shemot 12:16* writes that even though *Mekhilta* learns *Amirah Le-Nokhri* from a *pasuk*, it is only an *asmakhta*. Tosfot (*Yevamot 48b s.v. Zeh Ger*) writes that asking a *Ger Toshav* to do a *melakhah* on Shabbat for the benefit of a Jew is a biblical violation of Shabbat. One of the earliest sources of this prohibition is the Mishnah (*Shabbat 121a*) that states that it is forbidden to ask a non-Jew to put out a fire on Shabbat. Rashi (150a s.v. *Amirah*) writes that this Mishna is the source for *Amirah Le-Nokhri*.

a critical situation, a Jew is permitted to ask a Gentile to “transgress” even Torah laws for the sake of performing a medical treatment or procedure.³⁴ If a non-Jew is unavailable to perform such procedures, then the Jew may transgress, if necessary, rabbinic decrees in a manner that is different from the normal way to do so (*shinui*). For someone who has a body part in danger of losing function, a Jew may transgress a rabbinic enactment for the sake of treatment, even without performing it in an unusual way (*shinui*).

- 3) **Slightly ill (*miktzat holeh*) or enduring significant pain (*mitzta'er harbeh*).** For someone who is slightly ill or enduring great pain, a person may ask a non-Jew to help if it involves transgressing rabbinic decrees, yet a Jew cannot transgress a rabbinic decree himself. A *miktzat holeh* would include an individual who is suffering with significant pain due to arthritic attack, gout, or kidney stone. For example, it is often difficult to quantify how intense the pain or discomfort is for any individual. One suggested method to assess the level of discomfort is to ask the individual whether he or she will have to stay home from work because of the discomfort. If the individual responds that he or she would, then he or she would be allowed to take pain medications on the Sabbath.
- 4) **General discomfort (*mi'hush b'alma*).** Someone with a general ailment, such as a migraine headache, is basically healthy; therefore, all medical treatments are prohibited to that individual even if performed by a non-Jew. The most common question is whether such an individual can take medications on the Sabbath. The original prohibition of taking medications on the Sabbath stems from preparing the medications, e.g., grinding medicinal herbs. However, today when there are generally no actual preparations of medications, the halakhic concerns include using a phone to call the physician or traveling by car to the physician or pharmacist on the Sabbath.

The majority of halakhic decisors readily accept that a woman struggling to have a child and taking infertility treatments is viewed as an ill person who is not in critical danger due to her illness (*holeh she-ein bo sa-kanah*).³⁵ Categorizing an infertile woman as one who is not dangerously

³⁴ *Shabbat* 129a states that it is permitted to ask a non-Jew to do *melakhab*, even if it is *de-oraita*, for a sick person [see *Shulhan Arukh* 328:17; *Shemirat Shabbat Ke-Hilkhata* 30:11; and *The 39 Melakbos* (vol. 1, p. 73-4)].

³⁵ Rabbi Gideon Weitzman writes that Rav Yitzhak Zilberstein, Rav Eliashiv, Rav Zalman Nehemiah Goldberg, Rav Shlomo Zalman Auerbach, Rav Mordechai Eliyahu, Rav Yitzhak Ariel and Rav Ephraim Greenblatt hold that someone who

ill allows the person to have certain leniencies with respect to Sabbath laws. However, some authorities do not consider infertility to be a classic physiological illness, nor do they deem that an infertile person fits any of the halakhic categories for illness (including #4, *mibush b'alma*).³⁶

Justifications for applying a halakhic leniency for the sake of treating infertility can include the social stigma associated with this condition. There is great social pressure to have children to the point that the inability to have children affects the psychological and sometimes even physical well-being of an infertile person. In order to relieve a person from such psychological stress, she should benefit from the same halakhic leniencies as someone who is deemed medically ill but not in a critical situation.

Social Stigma and the Commandment to Procreate

The phrase *Derekh Eretz Kadmah l-Torah* originates from a Midrash³⁷ where Rabbi Yishmael son of Rabbi Nachman said: *Derekh eretz* preceded Torah by twenty-six generations. Rabbi Yishmael interpreted the meaning of “to guard the way of the tree of life” as follows: “the way” refers to *derekh eretz*, “the tree of life” that precedes (*Kadmah*) the Torah.

In the above statement Rabbi Yishmael claims that God directs the divine gatekeepers at the Garden of Eden to guard the way of the tree of life, meaning that societal norms were enshrined in human consciousness from the time of Adam. Only after twenty-six generations after Adam was the Torah presented to the Jewish People via Moshe.

Thus, the seven mitzvot of Bnei Noach represent an overall code of ethics and a set of laws to establish a functional society³⁸ that includes establishing courts of law and codes of law that include the prohibition of murder and adultery. Through these commandments, Hashem gave humankind a moral intuition in the world’s first millennium as an integral

is infertile should be considered a *holeh she-ein bo sakanah*. See “Ha-Ma’amad Ha-Halakhti Shel Zug Im Bayot Poriyot,” *Te’umim* 223 (5763) 223–230.

³⁶ This may still allow for leniency, however. For example, Rabbi Shlomo Zalman Auerbach is cited in SSK 34:82 to say, medical treatment (*refuah*) is only for someone with physical pain or feels weak; it does not apply to matters of fertility.

³⁷ *Vayikra Rabbah*, Chapter 9.

³⁸ *Hizkuni* (*Bereishit* 7:21) understands this to be the basis upon which the generation of the flood was punished, despite having never received specific divine commandments about how to behave: If you will ask: Why was the generation of the flood punished if they were never commanded to fulfill *mitzvot*? The answer is that there are numerous *mitzvot* that people must keep based on logic even if they were not commanded to keep them. Therefore, they were punished.

component of universal human experience. The Netziv³⁹ explains further that the rationale for such conduct is to preserve social order of the world to the greatest degree possible—the quintessential notion of *derech eretz*.⁴⁰ Included in this moral institution is the obligation to procreate (*la-shevet*). This corresponds with what the Navi Isaiah states,⁴¹ “He did not create [the world] for a waste [uninhabitable state], He formed it to be inhabited”—that **all** human beings (male and female) have a mitzvah to have children.⁴² Thus, the obligation to procreate (*la-shevet*) applies to all humankind to fulfill the will of God.

However, Jews, as a chosen people, have a special obligation to engage in the mitzvah of *pru u-rvu* (procreation). *Arme Nezer* and *Piskei Teshuvah* both write that *pru u-rvu* is so great a mitzvah that one is obligated to spend more than one-fifth his wealth to fulfill it, unlike other positive commandments which requires an individual to spend only one-fifth of his wealth.

Tosafot’s explanation of the following Mishnah⁴³ addresses the issue of the relationship between the obligations of *la-shevet* and *pru u-rvu*: The Mishna states that one who is half a slave and half a free individual works for his master and for himself on alternate days. This was the ruling of Bet Hillel. Bet Shammai said, “You have made matters right for the master but not for the slave. It is impossible [for the slave] to marry a female slave because he is already as only a half-free individual. It is impossible for him to marry a free woman because he is considered a half slave. Should such an individual then remain unmarried? Was not the world made only to be populated, as it states, ‘He created it not a waste, He formed it to be inhabited.’? To prevent abuses, therefore, his master is compelled to free him and he gives him a bond for half his purchase.” Bet Hillel thereupon retracted and ruled like Bet Shammai.⁴⁴ The Tosafists

³⁹ Introduction to *Bereishit*.

⁴⁰ *Shemot* 15:25 describes how, after traveling for three days without water, the Jews arrived in Mara, where they could not partake of the waters, which were bitter. The Jews immediately complained to Moshe, who cried out to Hashem for assistance. Hashem, in turn, guided Moshe to miraculously sweeten the waters. The Torah concludes this verse with the words “*sham sam lo huk u-Mishpat, ve-Sham nisab*”—“there he established for them a decree and a law, and there he tested them.” Ramban states that these laws are standard practices and bylaws for regulating a civilized society.

⁴¹ Isaiah 54:3.

⁴² *Bekhorot* 47a. It is important to note that Rambam does not quote the verse from Isaiah regarding the mitzvah of populating the world.

⁴³ *Gittin* 41a.

⁴⁴ *Gittin* 41a and b.

compare this ruling to the one in Shabbat (4a) regarding whether a person is permitted to commit a minor transgression in order to prevent someone else from committing a major transgression. They conclude that in a case where the potential sinner is negligent, another person may not transgress for his sake. If, however, the person is not negligent, then one may transgress to save him from a graver sin.⁴⁵ Therefore, in this case, the master is compelled to free his slave, thereby transgressing the rabbinical prohibition of “*l’olam bahem ta’avodu*” in order for him to fulfill the mitzvah of procreation. In their comment, Tosafot conclude by emphasizing that the mitzvah of *pru u-rvu* is a *mitzvah rabbah*,⁴⁶ and that the mitzvah of *shevet* applies to both a Jew and a non-Jew. The importance of procreation is so great that the master is forced to free his slave, even though slaves are obligated to fulfill not the direct commandment of *pru u-rvu*, but rather the inferred intent of *la-shevet*.⁴⁷ Thus, the freed slave would be obligated to fulfill the mitzvah of *pru u-rvu*.⁴⁸

Is procreation a *mitzvah rabbah* for women?

The Talmud⁴⁹ mentions the *mitzvah* that a woman must marry. It is highly significant from a halakhic perspective that Rambam⁵⁰ introduces the mitzvah of *pru u-rvu* within the laws of marriage, even though he says that the mitzvah of *pru u-rvu* is incumbent on the husband and not on his wife.⁵¹ Several commentaries raise the question why a wife has a *mitzvah* to marry if she has no obligation to fulfill the mitzvah of *pru u-rvu*. Rabbeinu Nissim suggests that although she is not obligated, her participation is considered a *mitzvah* because of her essential role. In addition, the responsum of the Ran #32 states that while the mitzvah of *pru u-rvu* for a woman is optional and not obligatory, the commandment for a woman is to assist her husband in the mitzvah of *pru u-rvu*. Rabbi Meir Simḥah ha-Kohen of Dvinsk further explains that the Torah does not impose upon an individual a commandment that incurs medical risks.⁵²

⁴⁵ The Talmudic passage in *Shabbat* also states that an individual may save himself from a greater transgression by committing a minor one, even if he was negligent.

⁴⁶ Tosafot, *Gittin* 41b s.v. *koḥin*.

⁴⁷ Tosafot, *Gittin* 41b s.v. *lo tobu*.

⁴⁸ Tosafot, *Gittin* 41b s.v. *lissa*.

⁴⁹ *Kiddushin* 41a.

⁵⁰ *Hilkebot Isbut* 1:1.

⁵¹ *Hilkebot Isbut* 14:2.

⁵² *Meshbekh Hochma*, Genesis 9:7.

Tosafot⁵³ and *Ha'amek Davar*⁵⁴ understood the plural language of Genesis 1:28 related to *pru u-r'vu* to mean that procreation is a blessing for both husband and wife, but a commandment only for the man. Tosafot rely on the Talmudic passage in *Gittin* (41a) to contend that a woman is commanded to fulfill the mitzvah of *pru u-rvu*. The basis of Tosafot is the dispute between Rav Yohanan ben Berokah's and the majority ruling in the Mishnah that women are exempt. However, Tosafot continue to state that women are indeed equally obligated in the mitzvah of *pru u-rvu*.⁵⁵ Their reasoning is “*Al sh'neihem hu omeir ... pru u-rvu*”— that “*pru u-rvu*” is plural, indicating that God is addressing both men and women. Most *poskim*, on the other hand, contend that the mitzvah of *pru u-rvu* obligates only males.⁵⁶ One reason for why this mitzvah is directed exclusively to men is presented by Rabbi Illa in the name of Rabbi Elazar bar Shimon, based on the analysis of the word *v-kinshu'ba*, and “you shall conquer it.”⁵⁷ He argues that it is the way of men to conquer,⁵⁸ but it is not the way of women to conquer. However, even according to those *poskim* who argue that women are not obligated to fulfill the mitzvah of *pru u-rvu*, a woman nevertheless voluntarily performs a mitzvah in procreation. She is considered to be sharing her husband's mitzvah equally with him, because he was able to fulfill the mitzvah only because of her “partnership.”⁵⁹

There is also a messianic tradition that having children hastens the ultimate redemption. The Talmud states, “The son of David [*Moshiab*] will not come until there are no more souls in the [Heavenly storage house called] *guf*.”⁶⁰ In a similar vein, the Midrash states: “Just as the Jews were redeemed from Egypt through the merit of their having children, so too they will be redeemed in the future through the merit of having children.”⁶¹ Moreover, one who intentionally does not fulfill the mitzvah of *pru u-rvu* is considered to be a murderer, since he has depleted life and minimized the Divine presence in the world.

The leniency to include social anguish as it relates to fulfilling the Torah command to procreate is discussed in a responsum of Rabbi Moshe Feinstein.⁶² While he permits couples to see fertility doctors when they do

⁵³ *Yevamot* 65b.

⁵⁴ Genesis 35:11.

⁵⁵ *Yevamot* 65b.

⁵⁶ See Ramban, *Gittin* 38b; Rashba, *Shabbat* 4a; and Ran, *Gittin* [where?].

⁵⁷ Genesis 1:28.

⁵⁸ Similarly, war is primarily waged by males and not females.

⁵⁹ *Teshuvot Ha-Ran* s. 32.

⁶⁰ *Yevamot* 62a.

⁶¹ *Tana Devei Eliyahu Zutab*, 14.

⁶² Rabbi Moshe Feinstein, *Iggerot Moshe, Even Ha-Ezer* 4:73.

not have children, when they already have a boy and a girl, his response is quite different. Regarding a couple who have already fulfilled the obligation of *pru u-rvu* yet want to see a physician because they are having difficulties conceiving, Rabbi Moshe Feinstein writes the following: If they do not know which ailment is causing either him or her [not to conceive], it is not appropriate to suspect that it stems from any illness. Rather, it is because *HaKadosh Barukh Hu* does not want to bless them with more [children], in that they merit to fulfill what they were required and not more...and they are like those people whom *HaKadosh Barukh Hu* gives everything they need and nothing more. However, one must pray to *Hashem Yitbarakh* to bless the couple to have more boys and girls...that are created through the natural power of the man and woman to procreate...⁶³

Medical Interventions Related to Treating Infertility

There are four basic steps to a standard *in vitro* fertilization process: 1) hormonal stimulation to allow multiple follicles and eggs to develop, 2) egg retrieval to obtain eggs for IVF fertilization, 3) freezing other eggs, and 4) embryo transfer to the uterus. The first step involves administering a series of hormones. Specific hormones are first given at the beginning of a woman's menstrual cycle, to prevent spontaneous or premature ovulation. After the first set of hormones have reduced the level of estrogen, she receives a different hormone to stimulate ovarian follicle maturity, followed by the administration of a third hormone to trigger oocyte release from the ovary. This last hormone is self-administered by injection for seven to twelve days. During this time, the woman's follicular development is monitored every day or every other day through ultrasound imaging and hormone assessments in her blood. The final step in the maturation of her eggs is an injection of a hormone under her skin or into her muscle.⁶⁴

The second step of egg retrieval is usually scheduled 34–36 hours after her eggs mature. In the process of egg retrieval, ovarian follicles are aspirated using a needle guided by trans-vaginal ultrasonography. The embryologist scans the follicular fluids to locate all available mature eggs. Once retrieved, the eggs are placed in a special medium and cultured in an incubator until insemination. In fertilizing the egg, embryologists typically use a technique whereby a single spermatozoon is picked up using a fine

⁶³ Ibid.

⁶⁴ Human chorionic gonadotropin (HCG) is a hormone that supports the normal development of an egg in a woman's ovary, and stimulates the release of the egg during ovulation.

glass micro needle and is then injected directly into the egg cytoplasm. The fertilized eggs are checked 16–18 hours after fertilization and then again on the second and third day after fertilization. If development of the embryo is normal, it is allowed to develop into a blastocyst and then transferred back into the woman (usually on the fifth day after fertilization). For transfer, these embryos are put into a soft catheter and are gently placed into the uterine cavity through the cervix. The unused eggs or non-implanted embryos can be frozen for future IVF procedures.

For this process, the major halakhic issue is whether it is permissible to take pills or inject hormones on the Sabbath. In reality, however, careful scheduling with the patient and the ob/gyn physician can avoid the need to undergo ultrasound imaging, hormone administrations and egg retrieval on the Sabbath. In most cases these procedures can be performed on a weekday so that there will be no conflict with Sabbath or other *Yamim Tovim*.⁶⁵

Interestingly, taking oral hormones on the Sabbath would be permissible. Since the infertile woman is considered a *holeh she-ein bo sakanah*, it would also be permissible to engage in IVF procedures even on the Sabbath, since Halakhah allows for transgressions of rabbinic prohibition for the sake of medical treatment. Similarly, as the woman is considered a *holeh she-ein bo sakanah*, intracutaneous injections are also permissible to be performed on the Sabbath,⁶⁶ since any bleeding that might result from the injection process would be considered unintentional (*davar she-eino mitkaven*) and it is undesired (*lo nihe le*).⁶⁷ If the injections are intramuscular, whereby the probability of bleeding is much greater such that it would be

⁶⁵ With respect to egg retrieval and transfer, the major halakhic issue regards whether the woman becomes a *niddah* through these processes. To retrieve the eggs, the embryologist does not pass through the cervix; therefore, even if there might be blood, it is considered to come from a wound. Therefore, retrieval would not make a woman *niddah*. In implanting the embryos, the embryologist does enter the uterus through the cervix. However, because the needle to insert the embryos is so small, the opening in the cervix that it makes through its removal does not render a woman *niddah*. (*Shulhan Arukh, Yoreh De'ah* 184:6. See also HaRav Eliezer Ben-Porat, “*Berurim B-Inyan Hafria butz gufit*,” *Assia* 13, 233–239.) Other halakhic issues may arise, if the couple seeks to qualify which embryos are transferred through preimplantation genetic diagnosis (PGD, a procedure that is designed to help detect genetic abnormalities/ inherited genetic diseases in embryos before implantation, thereby avoiding the transfer of affected embryos) or sex selection.


⁶⁶ *Shemirat Shabbat Ke-Hilkhata* 33:7.

⁶⁷ Rabbi Asher Zelig Weiss, “Heter Issurim L-kiryum Mitzvah Pru U-rvu,” *Tehumim* 23 (5763) 220–222.

an expected consequence (*psik reisha*), it still would be permitted to be done on the Sabbath since the bleeding is an undesirable result (*lo nihe le*). Of course, care must be taken to prepare the needle on Friday before the Sabbath. If one forgot to prepare the needle on Friday, one may prepare the needle on Shabbat.⁶⁸ One must also be careful not to clean the area for the shot with a cotton ball but rather wipe it with a cloth.⁶⁹

It is important to emphasize that some women respond to hormonal hyperstimulation with a condition called ovarian hyper-stimulation syndrome, which can be a life-threatening condition. If a woman develops ovarian hyper-stimulation syndrome, then everything must be done to save her from danger.

Conclusion

When halakhic decisors write that the same leniencies allowed for someone who is ill but not dangerously so should be permitted for someone who cannot have children, they are not actually equating infertility only with a pathological illness or a with a disability. Rather, they recognize the social pressures that surround the great mitzvah of *pru u-rvu* and are sensitive to the effects that those pressures have on people's psychological status. Granting halakhic leniency based on the psychological anguish of those who are infertile, and relying on the fact that procreation is a great commandment (*mitzvah rabbah*), enables these authorities to emphasize the importance of the *mitzvah* to have children without the consequence of labelling the person as inadequate. Halakhah recognizes that social perception and social anguish are important considerations in helping those women who wish to bear children with Hashem's help. 

⁶⁸ *Shemirat Shabbat K-Hilkhata* 33:9.

⁶⁹ *Shemirat Shabbat K-Hilkhata* 33:10.