

1. Rabbi Eliezer Melamed (21st century Israel), *Prinei Halachah*, **הפסקת הריון #9** (<http://ph.yhb.org.il/08-12-09/>)
Even when the couple has decided to follow the view permitting abortion, it would be appropriate for them to take counsel with a rabbi who deals with these issues (and as has been stated, they may choose a rabbi whose inclination is to be lenient in these matters). First, to verify that the medical opinion is trustworthy. Second, because one cannot be lenient without responsible weighing of the issue, for the law is established based upon many factors, such as: fetal age, the type of illness, the form of abortion, the quality of the test and the family situation. Further, the decision regarding abortion is very difficult in hidden ways for the couple, and taking counsel with a trained rabbi will ease these hidden issues, and guide them on a good path to continue building their family.

2. Rabbi Aharon Lichtenstein (20th-21st century Israel), *Abortion: A Halakhic Perspective*, Tradition 25:4 (1991)
[T]he reader has surely discerned that in a number of places I have refrained from setting down definitive conclusions, but have been satisfied to indicate general principles, tendencies and possibilities in the Halakha. This approach is not merely the product of modesty or hesitation in resolving debates among halakhic titans. It is rooted in a view of the nature of pesak in general and regarding this topic specifically. These are areas where, on the one hand, the halakhic details are not clearly fleshed out in the Talmud and Rishonim, and, on the other hand, the personal circumstances are often complex and perplexing. In such areas there is room and, in my opinion, an obligation for a measure of flexibility. A sensitive posek recognizes both the gravity of the personal situation and the seriousness of the halakhic factors... This approach is neither evasive nor discriminatory. The flexibility arises from a recognition that halakhic rulings are not, and should not be, the output of human microcomputers, but of thinking human beings; a recognition that these rulings must be applied to concrete situations with a bold effort to achieve the optimal moral and halakhic balance among the various factors. Thus, it is the case that halakhic rulings have more of the character of general directives than specific decisive rulings, within set limits, of course, and when the posek is not absolutely convinced respecting the point at issue....

3. Relevant discussions available on-line

- Genetic screening, aborting pre-implantation – <http://www.yutorah.org/lectures/lecture.cfm/812684/>
- Chemotherapy for a pregnant woman– <http://www.yutorah.org/lectures/lecture.cfm/754062>
- Aiding an abortion - <https://www.yutorah.org/lectures/lecture.cfm/893577>

Phase 1: Biblical text

4. Exodus 21:12

One who strikes an *ish*, who then dies, will be put to death.

5. Exodus 21:22-23

When men fight, and they strike a pregnant woman and her children emerge, but there is no death [for her], he shall be punished as established upon him by the woman's husband, and he shall pay it in court. And if there is death, you shall give a life for a life.

6. Rabbi Moses Maimonides (12th century Egypt), *Mishneh Torah*, Laws of the Murderer 1:9

The Torah prohibits having mercy for the life of a pursuer. Therefore, the sages ruled that one may cut the fetus inside a woman who is having difficulty giving birth, whether through medicine or by hand, as though he was pursuing her to kill her. Once he produces his head we do not touch him, for we do not push off one life for another; this is nature.

Phase 2: Rabbinic resolution

7. Mishnah Oholot 7:6

If a woman is having trouble giving birth, we cut the fetus in her womb and produce it limb by limb; her life precedes. Once the majority of the fetus has emerged, we do not touch it; we do not push away one life for another.

8. Talmud, Arachin 7a

If a woman is on the birthing table and she dies, and it is Shabbat, they bring a knife and tear open her belly and produce the child.

9. Mishnah Niddah 5:3 (43b-44a)

For a day-old child... one who kills it is liable.

10. Talmud, Yevamot 69b

If a kohen's daughter married a yisrael, who then died, she may immerse and eat terumah that night. Rav Chisda clarified: She may immerse and eat terumah for forty days, since if she is not pregnant then she is not pregnant, and if she is pregnant then the fetus is mere water until forty days have elapsed.

11. Talmud, Sanhedrin 57b

"Rabbi Yishmael is cited as saying that a Noachide is liable even for killing a fetus." Why? Genesis 9:6 says, "One who spills the blood of man in man, his blood will be spilled." What is the blood of man in man? This is a fetus inside its mother.

12. Talmud, Sanhedrin 59a

"Any mitzvah conveyed to Noachides and not repeated at Sinai applies to Jews, not Noachides." Just the opposite – if it was not repeated at Sinai then it is only for non-Jews! [That cannot be;] nothing is permitted for Jews and prohibited for non-Jews.

13. Rabbi Aharon Lichtenstein (20th-21st century Israel), *Abortion: A Halakhic Perspective*, Tradition 25:4 (1991)

Assuming that we set aside certain general ethical and religious norms such as "You shall do that which is upright and good," "You shall be holy," and "You shall follow in the ways of G-d," there would be, according to this view, no biblical prohibition to kill any fetus.

14. Rabbi Yosef ben Moshe Trani (16th-17th century Israel/Turkey), Maharit 1:97

Tosafot there wrote, "Although he is exempt regarding the abortion, it is not permitted." This is because it is prohibited as an act of wounding.

15. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:69

It is even more clear in the Rambam that killing a fetus is murder, for he based the permission to cut a fetus to save a mother on the fetus's status as a pursuer attempting to kill her...

Phase 3: Nuances in particular cases

16. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:69:2

Killing a fetus is prohibited until the doctors have great reason, close to certainty, that the mother will die. Since the permission is due to the fetus's status as a pursuer, it must be near-certain that he is a pursuer.

17. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 9:51:3

Or, perhaps when Tosafot says one may kill [the fetus], he means one is not liable at all under the law of murder, but Tosafot agrees that it is prohibited as wounding, and therefore one may not kill it without another human need.

18. Rabbi Yechiel Yaakov Weinberg (20th century Germany, Switzerland), Sridei Eish 1:162:40

What emerges from this entire discussion as law is that if a woman becomes ill with rubella while pregnant, such that the doctors say the child is likely to be lacking a limb or intellectual function – then before forty days of pregnancy one may abort the fetus, for before 40 days it is just water... And after 40 days, Maharit 1:97 wrote that the basis for prohibiting killing a Jewish fetus is the issue of wounding, and the prohibition against wounding certainly doesn't apply before 40 days.

19. Rabbi Aharon Lichtenstein (20th-21st century Israel), *Abortion: A Halakhic Perspective*, Tradition 25:4 (1991)

According to the second possibility, the fate of the fetus itself is subservient to its status as part and parcel of the mother; if so, the forty-day mark might become irrelevant. Here too, nonetheless, one might suggest that prior to the forty-day mark, removal of the fetus (categorized as “mere liquid”) does not constitute injury to the mother, while removal after forty days does involve injury. This is because the fetus, having become a significant halakhic entity, renders the abortion a significant injury to the mother. This last point, however, is far from conclusive; there is definitely room to consider later stages as standards. Among these, three months seems to me the most reasonable, as it does appear in Halakha as the stage of “recognition of the fetus” conferring the status of “pregnant” on the mother (Niddah 8b).

20. Rabbi Ovadia Yosef (20th century Israel), *Yabia Omer* 4:Even haEzer 1:10

Further, there is room to say that in such a case, where the fetus is not yet three months in, we rely on the authorities who say that killing a fetus is rabbinic. This is a *sfeik sfeika* – perhaps the law follows the view that killing a fetus is rabbinically prohibited, and even if it is biblical, perhaps it is rabbinically prohibited before three months. If so, one could permit it in a case where there is also non-mortal illness.

Cases

21. Rabbi Eliezer Melamed (21st century Israel), *Pninei Halachah*, הפסקת הריון #9 (<http://ph.yhb.org.il/08-12-09/>)

I have heard of a woman who waited for years until she merited pregnancy, and then after a test they told her the fetus in her womb was dead, and they should conduct an immediate ‘abortion’. There is no need to describe her great pain. Fortunately, while she was waiting, crying, for her turn for the curettage, another doctor, who knew her from previous treatments, passed by. He asked what had happened. She told him she was waiting for an abortion, and that doctor advised her to have a second test with him. It was clarified that the fetus was alive. A daughter was indeed born, and with G-d’s help she has already celebrated her Bat Mitzvah.

22. Rabbi Eliezer Waldenberg (20th century Israel), *Tzitz Eliezer* 13:102

It is clear and obvious as law that a Jew is not killed for a fetus. Aside from one view, the authorities rule that there is a prohibition, but many authorities believe that this prohibition is rabbinic, or it is under “building the world.” But there is no concern for destroying a life, and therefore *Maharit* 1:97-99 permits arrangement for a Jewish woman to abort a fetus where it is needed for the mother’s health, even without it being a matter of saving the mother’s life...

And in such a case, and beyond this, Rabbi Yaakov Emden permitted, writing, “And even with a legitimate fetus, there is room to be lenient for great need, so long as it has not been uprooted [for birth], even without a need to save the mother’s life, but only to save her from her evil, which causes her great pain.” We see clearly that this permission of Rabbi Yaakov Emden is even when it is not a matter of saving the mother’s life, and it is only to save her from great pain from the child, and that in general there is room to be lenient for great need.

If so, ask yourself: Is there any need, pain or ache greater than in our case, which will cause the mother in birthing such a creation, whose whole existence is suffering and pain, and whose death is certain in a matter of years, and whose parents watch and deteriorate without any power to save? (And certainly, it would not change or reduce anything if the child would be taken to a special institution without access for the parents until his death). And added to this are the suffering and pain of the child himself... And suffering and emotional pain in great measure are greater and more painful than physical pain...

23. Rabbi Yitzchak Zylbershtein (21st century Israel), *Assia* 8:209

Rabbi Yitzchak Zev Soloveitchik, the Brisker Rav, told a doctor that ‘saving a life’ is not specifically the case of someone who is now dangerously ill and will die. Even where the fast will affect him years later when the disease will recur, and so fasting [now] will cause him to die early, this is ‘saving a life’ and he is required to eat.

24. Rabbi Dr. Avraham Sofer Abraham (21st century Israel), *Nishmat Avraham Choshen Mishpat* 425:1:12

The [non-observant] head of a psychiatric department told me that he never recommends abortion for such a woman, for she can be treated with pills, and in the great majority of cases the force of depression and irrationality after birth can be prevented. And so a leading psychiatrist has told me. Based on this, it appears that there is no permission to

conduct abortion for a woman like this. And Rabbi Shlomo Zalman Auerbach and Rabbi Yehoshua Neuwirth agreed with me.

25. Rabbi Eliezer Melamed (21st century Israel), Pinei Halachah, **הפסקת הריון #13** (<http://ph.yhb.org.il/08-12-09/>)
But it is clear that where there is emotional illness which cannot be treated with medicine, and it is caused by the pregnancy – then since emotional illness is generally considered a threat to life, she may abort her fetus to protect her life.

26. Rabbi Shemuel Vosner (21st century Israel), Shevet haLevi 7:208

Were we to permit abortion for this, Gd forbid... we would be assisting sinners to be lenient in killing fetuses, for there is no cause to think this possibly life-saving. Calming her spirit and depression would be a mitzvah.

A Concluding Thought

27. Rabbi Aharon Lichtenstein (20th-21st century Israel), *Abortion: A Halakhic Perspective*, Tradition 25:4 (1991)

But it is worth making clear, certainly to those who, in seeking a humane approach, are liable to adopt slavishly an overly liberal attitude in this area, that from the perspective of the fetus and those concerned with its welfare, liberality in this direction comes at the expense of humanity, insofar as the caution of the Halakha is tied to its intimate concern for the values of kindness and mercy. It is not only the honor of G-d which obligates us, regardless of the cost, to avoid what is prohibited and to obey the commands of the Holy One Blessed be He that are expressed in this Halakha. It is also the honor of man in Halakha, the humane and ethical element which insists on the preservation of human dignity and concern for human welfare, that rises up in indignation against the torrent of abortions. If the Halakha's course is sometimes onerous for certain families or for those responsible for them-and this fact should neither be denied nor ignored-let us remember, paraphrasing the famous words of Byron, that Halakha loved not the parents less, but the child more.