

HALAKHIC PERSPECTIVE ON INFERTILITY AND ASSISTED REPRODUCTIVE TECHNOLOGIES

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ABSTRACT

This study examines the halakhic response to infertility and assisted reproductive technologies, focusing on the principles that shape Jewish bioethical decision-making. The paper explores foundational concepts that inform reproductive ethics in Judaism, including preservation of life, loving-kindness, the preservation of family integrity and lineage. It analyzes contemporary reproductive interventions such as artificial insemination, in vitro fertilization, and surrogacy through the lens of rabbinic literature and responsa traditions. The study highlights the diversity of rabbinic opinions regarding the permissibility of these technologies, especially in relation to donor gametes, questions of parenthood, Jewish identity, inheritance, and marital sanctity. While procedures involving the married couple's own reproductive material are generally accepted under medical necessity, third-party involvement remains ethically contested. The paper concludes that Jewish bioethics adopts a conditional and principle-based acceptance of ARTs, balancing compassion for infertile couples with concerns for religious integrity and communal continuity.

KEYWORDS: Halakhah, Infertility, Bioethics, Artificial Insemination, In Vitro Fertilization, Surrogacy

INTRODUCTION TO THE HALAKHAH:

The Jewish law (*halakhah*) encompasses a wide swathe of written laws given to Moses on the Mount Sinai, along with rabbinic interpretations and amplifications of these laws, which were handed down orally from generation to generation and later began to be compiled after the fall of the Second Temple. *The Torah, or Pentateuch*, constitutes the Written Law. It is the first of the three divisions of the Hebrew Scripture; the other two being *Nevi'im* (Prophets) and *Ketuvim* (Writings). As a unit, the Torah consists of the first five books of the Hebrew Bible: Genesis, Exodus, Leviticus, Numbers, and Deuteronomy. The scroll of parchment on which these five books are written is also called Torah. Moreover, the term may be used more broadly to refer to the entire body of Jewish sacred writings and tradition, including the Oral Law. (Steinmetz, 2005, p.167)

Rabbinic Judaism maintains that the Torah cannot be properly understood without reference to the Oral Law. For generations, commentaries on the Torah were transmitted orally by the rabbis, until Rabbi Judah the Prince (c. 135–217 C.E.) undertook to redact and systematically codify the law around 200 C.E. He compiled the oral rabbinical interpretations of the law in the *Mishnah*, which consists of six orders and sixty-three tractates. The rabbis whose views are cited in it are known as *Tanna'im* (teachers). (Berlin, 2011, pp. 502-503) In the centuries that followed, some rabbis added further discussions and commentaries on the Mishnah. These rabbis are known as *Amora'im* (explainers or interpreters), and their discussions constitute the *Gemara*. Together, the Mishnah and the Gemara form the *Talmud*, the central work of Jewish Oral Law and tradition. (Steinmetz, 2005, p.46)

Strictly speaking, the term Talmud often designates the Gemara itself. Around 400 C.E., the rabbinical discussions of Palestinian sages on the Mishnah were edited, resulting in the *Palestinian Talmud*, also known as the *Jerusalem Talmud* (*Talmud Yerushalmi*). More than a century later, leading Babylonian rabbis produced more extensive elaborations on the Mishnah, forming the *Babylonian Talmud* (*Talmud Bavli*). (Berlin, 2011, p.714) In addition to

detailed legal discourse (*halakhah*), the Talmud also contains non-legal material, collectively known as *Aggadah*. (Eisenberg, 2008, p.10)

Another genre of rabbinic literature is the *Midrash*, a form of running commentary on specific passages of the Hebrew Bible. The purpose of these exegetical notes is to clarify the meaning of biblical laws and to derive moral principles or lessons from the text. The subject matter of Midrash is therefore either legal (*Midrash Halakhah*) or non-legal and primarily homiletical (*Midrash Aggadah*). In common usage, when Jewish people refer to “Midrash,” they usually mean the homiletical kind. (Steinmetz, 2005, p.112)

From the eighth to the sixteenth century C.E., prominent Jewish scholars codified Talmudic *halakhah* to clarify its laws and customs for practical application in Jewish life. In post-Talmudic times, two major sources of *halakhah* emerged: *halakhic* codes and rabbinic responsa. Among the most influential *halakhic* codes are the *Sefer ha-Halakhot* by R. Yitzḥaq Alfasi (1013–1103), the *Mishneh Torah* by Maimonides (1138–1204), the *Pisqei ha-Rosh* by Asher ben Yehi’el (c. 1250–1327), the *Arba’ah Turim* by R. Ya’aqov ben Asher (c. 1269–1343), and the *Shulḥan ‘Arukh* by R. Yosef Karo (1488–1575). (Berlin, 2011, p.316)

Responsa, in rabbinical terms, denotes a body of written answers given by deciders of Jewish law (*poskim*) in response to questions addressed to them. Spanning more than fifteen hundred years, the mode, style, and subject matter of the responsa reflect the developmental changes in Jewish thought and practice. This form of correspondence between laypeople and rabbis on matters of *halakhah* continues to this day. For instance, *Iggerot Moshe* by R. Moshe Feinstein (1895–1986) and *Yabia Omer* by R. Ovadia Yosef (1920–2013). (Eisenberg and Scolnic, 2006, p.134)

Halakhic Response to Infertility:

Halakhic response to infertility is based on a fundamental Torah principle: “*Be fruitful and multiply*”. (Gen. 1:28) The verse places an obligation on man to reproduce, and its broader interpretation indicates that there is no prohibition on treating male infertility. As a general rule, the absence of prohibition implies *halakhic* permissibility; therefore, any reproductive treatment that enables procreation is permitted.

Duty of Procreation: Jewish law does not merely encourage procreation; it makes it mandatory for men to marry women and have children. Procreation is the main purpose of marriage and a child is seen as a ‘*fruit of womb*’ (Deut. 7:13) or ‘*the fruit of body*’. (Deut. 28:11) The wife is like a ‘*fruitful vine*’ and children are like ‘*olive plants*’. (Psalms 128: 3) They are a ‘*heritage from the Lord*,’ and are like ‘*arrows in the hand of a warrior*,’ and ‘*happy is the man who has his quiver full of them*’. (Psalms 127: 3-5)

After their creation, Adam and Eve were commanded by God to populate the uninhabited earth. Procreation was thus entrusted to them as a duty of Divine Providence. (Gen. 1:28) In the time of Noah, when a global catastrophe in the form of the Flood struck the world, God commanded him and his sons to repopulate the devastated earth: “*Be fruitful, and multiply, and replenish the earth*.”. (Gen. 9:1) In keeping with the example of their forefathers, the children too are commanded to reproduce and multiply.

As a reward for their obedience, God promised to honor the people of Israel with love and abundant fertility: “*And He will love you, bless you, and multiply you; He will also bless the fruit of your womb*.” (Deut. 7:13) And if they serve their Lord, He would save them from miscarriage and barrenness: “*No one shall suffer miscarriage or be barren in your land*”. (Exod. 23:26) Thus, the spirit of divine favor is closely tied to fertility, and remaining childless is regarded as undesirable. Hence, they are encouraged to marry, reproduce, and multiply their community.

Procreation is an act that involves two persons with complementary biological functions. This raises the question: upon whom does the obligation to reproduce fall — the man or the woman? Most rabbis maintain that the command “*Be fruitful and multiply*” is binding only upon men, since they hold the more dominant role in the process of procreation. Rabbi Johanan ben Beroka, by contrast, argued that women are also included in this command, pointing out that God addressed both Adam and Eve when assigning the duty of procreation. Yet when Rabbi Abbahu (ca. 279 CE – 320 CE) once endorsed Johanan’s view, both Rabbi Ammi and Rabbi Assi turned their faces away, signaling that his opinion was not accepted as normative *halakhah*. (Talmud, Yebamoth 65b).

The next question that arises is: how many children must a man have to fulfill this commandment? There is a difference of opinion on this matter between two ancient schools of Jewish thought. Most rabbis hold that both the Shammai and Hillel schools agree that at least two children must be born. The division, however, concerns their gender: the Shammai maintain that both should be sons, as Moses had two sons—Gershom and Eliezer—while the Hillel argue that one son and one daughter are required, since at the beginning of the human race, procreation involved one son and one daughter of Adam and Eve. (Yebamoth 61b) Notably, daughters alone are not mentioned by any school, suggesting that at least one son is necessary to fulfill the commandment of procreation.

Another inquiry concerns the duration a man is required to live with a woman who has borne him no child. The *Mishnah* prescribes a period of ten years because Abraham took Hagar after living ten years with Sarai in the land of Canaan. If, within these ten years, she proves unable to bear a child, excluding any time lost due to illness or imprisonment, he may divorce her. She is also permitted to marry another man, as the cause of infertility might lie with her previous husband. (Yebamoth 64a)

Preservation of Life: In the eyes of a Jew, life is the most precious gift of the Lord. All divine laws and commandments are meant to help him live well. Lord says, “*You shall therefore keep My statutes and My judgments, which if a man does, he shall live by them: I am the Lord.*” (Lev. 18:5) The phrase “*he shall live*” expresses a strong divine assertion that in any life-threatening circumstance, life must be preserved. Leviticus also says, “*nor shall you take a stand against the life of your neighbour.*” (Lev. 19:16) Moreover, it is written, “*But the excellence of knowledge is that wisdom gives life to those who have it.*” (Eccl. 7:12)

From these verses, the maxim of preservation of life is derived known as *Pikuach Nefesh*. It holds that all biblical and rabbinical commandments may be suspended to save life of a person in danger, even the sanctity of the Sabbath may be overridden for the sake of preserving life. (Rosner, 2001, p.94) Moreover, in situations of uncertainty concerning a potentially life-threatening condition, the Sabbath restrictions are likewise to be set aside. The *Talmud* records that Rabbi Mattithiah ben Heresh (ca. 90–135 CE) ruled that if a person suffers pain in the mouth, he may take medicine on the Sabbath, since there exists the possibility of danger to life. (Yoma 84b)

Halakhah extends the principle of *pikuach nefesh* to non-lethal medical conditions such as infertility. In Jewish law, those who suffer from infertility are regarded as ill but not in life-threatening danger (*choleh she'eyn bo sakkanah*). Although such a condition does not fall under the category of *Pikuach Nefesh* in its strictest sense, treatment may nonetheless be permitted on the Sabbath, provided it is performed by a non-Jew. The infertile couple is viewed as a single halakhic unit, and since the commandment to “be fruitful and multiply” (*peru u'rvu*) is of great religious importance, their treatment assumes exceptional significance. In such cases, the mitzvah of Sabbath observance may be set aside to facilitate medical intervention aimed at fulfilling this foundational commandment. (Schenker, 2011, p.343)

Although childlessness is not life-threatening, it can severely impair a couple’s emotional and functional well-being. The man may experience guilt for failing to fulfill the divine commandment, while the woman faces stress and anxiety over the possibility of future divorce. Both may endure social and familial pressure to contribute to the growth of the Jewish community. If the physical cause of infertility is identified in one or both partners, they are clearly in need of medical assistance and may be considered seriously ill. Even when the cause remains unknown, the resulting psychological distress places them within the category of *choleh she'eyn bo sakkanah*—the ill whose condition does not involve danger to life.

Loving-Kindness: Within the Jewish ethical framework, one of the most characteristic social values is *Gemilut Chasadim*, usually translated as “the giving of loving-kindness.” (Eisenberg, 2008, p.143) In both letter and spirit, God is the ultimate Bestower of loving-kindness, and since man is created in His image, he is likewise expected to embody and extend this divine attribute toward others. The essence of this principle is rooted in the Torah, which commands, “*You shall love your neighbour as yourself.*” (Lev. 19:18)

This concept is further elaborated in the *Talmud*, particularly in *Pirkei Avot* (Ethics of the Fathers). Simeon the Righteous used to say, “*The world stands upon three things: the Torah, Divine Service, and the practice of kindness.*” (Aboth 1:2) His statement signifies that the existence and continuance of the world rest upon an order sustained by the coexistence of these three pillars—one of which is kindness among human beings. Jose ben Johanan, a man of Jerusalem, expands upon this idea by saying, “*Let your house be wide open, and let the poor be members of your household.*” (Aboth 1:5) The breadth of this command reflects that all humanity is essentially one household, and the poor are members of a single family—no one should be excluded on account of their humble status. The *Mishnah* also relates that Hillel used to say, “*Be you of the disciples of Aaron, loving peace and pursuing peace, (be you) one who loves (one’s fellow) creatures.*” (Aboth 1:12) The importance of this teaching is further emphasized in Hillel’s saying, “*Separate not yourself from the community.*” (Aboth 2:4)

Gemilut chasadim is a term that implies acts beyond mere charity; it denotes personal service rendered to people of all classes. It applies to a wide range of communal welfare activities; however, the *Talmud* enumerates six deeds of kindness: clothing the naked, caring for the sick, consoling mourners, welcoming strangers, supporting a bride, and attending to the burial of the dead. (Eisenberg, 2008, p.143) “Visiting the sick” is also considered a part of *chesed*; therefore, those suffering from infertility should likewise be visited, for they too are regarded as ill. Hospitality should be extended to them. They should be met with a pleasant countenance. Their diagnosis and treatment fulfil the *mitzah* of loving-kindness. It’s a deed of such rank that it’s “*no definite quantity is prescribed*” and he who performs this act “*enjoys the fruit in this world, while the principal remains in the world to come.*” (Pe’ah 1:1)

Family Integrity: In Rabbinic Judaism, marriage is natural in purpose but divine in meaning. This sacred institution represents a consecrated union between a man and a woman, aimed at both procreation and chastity. According to the Torah and its Talmudic exegeses, the marital bond safeguards the sanctity of marriage, promotes moral integrity, and preserves the purity of family life.

The *Torah* presents an elevated view of married life. It is written, “*Two are better than one,*” (Eccl. 4:9) and “*It is not good that man should be alone.*” (Gen. 2:18) Regarding the couple, it states, “*They shall become one flesh.*” (Gen. 2:24) A man is obligated to provide his wife with food, clothing, and conjugal companionship, as it is written: “*He*

shall not diminish her food, her clothing, and her marriage rights.” Her claim to these rights is so strong that their denial constitutes valid grounds for divorce, as the *Torah* declares: “And if he does not do these three for her, then she shall go out free, without paying money.” (Exod. 21:11)

The conjugal duty of a husband toward his wife is known as *mitzvah onah*. The term *onah* is itself associated with the notion of time, referring to “her time” — the period in marriage that is exclusively hers. (Bulka, 1986, p.114) Conjugal visitation is thus a right of the wife and an obligation upon the husband. Rabbi Eliezer elaborates on the timing of *onah* in relation to the husband’s occupation. “*For men of independence, every day; for labourers, twice a week; for ass-drivers, once a week; for camel-drivers, once in thirty days; for sailors, once in six months.*” (Kethuboth 61b) *Mitzvah onah* explains why the early rabbis were reluctant to approve infertility treatments that bypass natural marital relations.

To preserve the status of family integrity, intimate relations outside wedlock are strictly prohibited in Jewish *halakhah*. Adultery is forbidden in the Seventh Commandment: “*You shall not commit adultery.*” (Exod. 20:14) A man cannot cohabit with another man’s wife, as the *Torah* states: “*Moreover you shall not lie carnally with your neighbour’s wife, to defile yourself with her.*” (Lev. 18:20) The punishment of such heinous crime is death, as the written law declares: “*The man who commits adultery with another man’s wife, he who commits adultery with his neighbour’s wife, the adulterer and the adulteress, shall surely be put to death.*” (Lev. 20:10) Hence, in the context of infertility treatments, it becomes essential to ascertain the origin of gametes to avoid any suspicion or implication of adulterous involvement. Incest is strictly forbidden in Judaism as stated in the written law: “*None of you shall approach anyone who is near of kin to him, to uncover his nakedness.*” (Lev.18:6) The relationships forbidden in the *Torah* are regarded as grave transgressions of Jewish moral law and are collectively known as *Arayot* (forbidden unions). These include one’s parents, stepmother, sister or half-sister, daughter, granddaughter, aunt (on either the father’s or mother’s side), uncle and his wife, daughter-in-law, brother’s wife, and a woman together with her daughter, granddaughter, or sister. (Leviticus 18:7-18) In addition, certain relationships are prohibited by rabbinic decree and are referred to as secondary prohibitions (*shniyot la’arayot*). These include one’s brother, grandmother, great-grandmother, grandfather’s wife, great-grandfather’s wife, and grandson’s wife. (Eisenberg, 2005, p.322)

In contrast to Islam and Christianity, Jewish descent has been considered matrilineal since the rabbinic period. However, a person’s tribal status as a Priest (*Kohen*), Levite (*Levi*), or Israelite is inherited from the father. This matrilineal principle is upheld by Orthodox and most Conservative communities. The Reform movement, however, recognizes a child as Jewish if either parent is Jewish, provided the child is raised within the Jewish faith. (Sheskin and Dashefsky, 2017, p.157) Due to biblical references to patrilineal descent, the conversion to Judaism is however allowed if someone is ready to follow the Commandments and learn Jewish religion, law and custom as Ruth was interpreted by rabbis to have being ‘converted’. (Zlotowitz, 1994, p.67) Therefore, great care must be taken in the use of assisted reproductive techniques to ensure that questions concerning Jewish identity do not arise.

Response to Assisted Reproductive Techniques:

Although modern reproductive technologies have significantly improved the prospects for infertile couples, they have also posed new ethical and religious challenges for observant Jews. For instance, the procurement of semen is problematic, as masturbation is prohibited in Judaism. In many assisted reproductive techniques, natural intercourse between husband and wife is bypassed, thereby neglecting the obligatory conjugal act (*mitzvah onah*). Moreover, the involvement of a third party in procedures that pertain to the couple’s intimate relationship raises serious moral concerns, for instance, artificial insemination or the placement of zygotes and embryos within the woman’s womb. The most serious challenge, however, lies in preserving the integrity of Jewish family lineage in cases involving gamete donation or surrogacy, where questions of parentage and Jewish identity may arise.

Preliminary Concerns: Under Jewish law, an infertile couple is regarded and treated as a single unit in both diagnosis and therapy. First, the female is evaluated for any underlying pathology, then her husband is tested. One start-off problem is the *halakhic* prohibition on masturbation which is condemned as “spilling one’s seed.” This raises the question of how semen may be lawfully procured for infertility evaluation. Although the poskim (Jewish legal scholars) have ruled that the procurement of semen for therapeutic purposes does not fall under this prohibition, the preferred method, however, is the Post-Coital Test (PCT), in which semen is collected following natural intercourse. If this fails, masturbation can be allowed to obtain a semen sample for testing. (Schenker, 2011, p.345)

Due to strict regulations of family purity (*taharat ha-mishpacha*) observed among Jewish women, it is necessary for the physician to comprehend her state of *niddah* (menstruation) prior to her examination. During the menstrual stage, she is considered ritually impure for seven days, and physical contact with her is not permitted. (Lev. 15:19) She has to abstain further from physical intimacy until seven ‘clean days’ have elapsed after the end of uterine bleeding. (Lev. 18:19) The woman is required to undergo the ritual bath (*mikveh*) on the evening of the seventh clean day. Following this purification, she is regarded as ritually clean, allowing for internal examination to be performed, and rendering the uterine environment suitable for embryo transfer. (Schenker, 2011, p.345)

The scheme of ritual cleanliness may complicate fertility management in several ways. According to the Jewish law, the prohibition includes at least five days during the menstrual flow of blood followed by seven clean days after the last sign of bleeding. For most women, the resumption of sexual activity therefore occurs approximately after 12-14 days, often coinciding the time of ovulation. (Feldman, 1992, p.30) However, difficulties arise when any spotting is observed during the clean days, as it requires a recommencement of the seven-day count, potentially causing the ovulatory window to be missed and conception to become unlikely. Similarly, ovulation in women with prolonged bleeding (*zavah*) may be bypassed, while in those with a shorter follicular phase it may occur during the prohibited period, thereby reducing fertility. This phenomenon, sometimes referred to as “*religious infertility*” or more specifically “*halakhic infertility*,” may necessitate consultation with rabbinic authorities alongside medical intervention, including strategies aimed at adjusting the timing of ovulation to align with permissible periods of marital relations. (Yairi-Oron, Rabinson, and Orvieto, 2006, pp.1771-2)

Artificial Insemination (AI):

The permissibility of artificial insemination has, at times, been associated with the possibility of conception without sexual intercourse (*sine concubito*). A Talmudic passage cited in favour of this possibility reflects Ben Zoma’s view that a maiden may conceive in a bath if a man has previously discharged his semen there. (Chagigah 14b-15a) Similarly, Rabbi Peretz ben Elijah (d.1295) cautions a woman against sleeping on sheets on which a man has slept, due to perceived risk of impregnation. Rabbi Jacob Molin Segal (d.1427) relates that Ben Sira was conceived by the Prophet Jeremiah’s daughter in a bath without natural cohabitation. The dubious nature of these seemingly unscientific and overtly protective accounts provided by the ancient rabbi help explain the ambivalence found in later rabbinic opinions about artificial insemination. Accordingly, Rabbi Judah Rozanes of Constantinople (d. 1727) expresses his doubts regarding Ben Zoma’s view, while R. David Gans (d. 1613) rejects the legend concerning Ben Sira. (Rosner, 2001, pp.129-130)

Artificial Insemination by Husband (AIH): Artificial insemination using the husband’s semen (AIH) is considered permissible by several rabbinic authorities, including Rabbis Moses Feinstein (d. 1986), Sholom Mordechai Schwadron (d. 1997), Aaron Wolkin (d. 1942), and Zevi Pesach Frank (d. 1960), provided that only the husband’s genetic material is used. However, Rabbis Marc Tanenbaum (d. 1992) and Eliezer Waldenberg (d. 2006) permit the procedure only under exceptional or extreme circumstances. Regarding the waiting period before resorting to AIH, opinions vary among authorities. R. Jacob Yitzchak Weiss (d.1989) recommends that it should be performed after a waiting period of ten years of childless marriage, while Rabbi Feinstein suggests five years, and Rabbi Karelitz (d. 1953) proposes a shorter duration of two years. In contrast, Waldenberg adopts a more flexible approach, arguing that this period should be long enough to establish clear medical necessity for proceeding with AIH. (Rosner, 2001, p.137) Generally, semen for this purpose may be through various acceptable methods, preferably by *coitus interruptus*, because R. Feinstein condemns masturbation. In contrast, Waldenberg permits masturbation for medical reason and even allows extracting semen directly from the testes. Nevertheless, many authorities maintain that the prohibition of “emission of seed for naught” does not apply in the context of medically indicated artificial insemination, thereby distinguishing it from prohibited forms of non-procreative ejaculation. (Rosner, 2001, p.138)

Artificial Insemination by Donor (AID): While artificial insemination by husband (AIH) is largely considered acceptable in Jewish law, artificial insemination by donor (AID) remains highly controversial and is generally regarded as objectionable. Rabbi Eliezer Waldenberg categorically prohibits AID, describing it as an ‘abomination’ due to concerns over uncertain genealogy, the potential risk of incest, and complications related to inheritance. He further cites an interpretation of the biblical phrase “*To be a God unto thee and unto thy seed after thee*” (Gen. 17:7) attributed to Rabbi Shlomo Yitzchaki (d.1105) to mean that God favours only those whose genealogy is known. (Rosner, 2001, p.133) Similarly, R. Nahman (d. 356) also comments regarding this verse that a distinction must be made between the offspring of the first and second husbands in cases of reproductive uncertainty. (Yebamoth 42a) A strong strand of opinion therefore rejects AID outright, describing it in moral terms such as “an act of hideousness” or “human stud farming.” Even in cases where the donor is known, some authorities argue that the biblical prohibition, “*Moreover you shall not lie carnally with your neighbour’s wife, to defile yourself with her*” (Lev. 18:20) extends to the introduction of a third party’s semen into a married woman, even in the absence of sexual intercourse. Nevertheless, a minority of authorities, including Rabbis Sholom Mordechai Schwadron and Yehoshua Baumol (d. 1948), permit AID only under exceptional or extreme circumstances. (Rosner, 2001, p.133)

A further question arises as to whether, in cases of artificial insemination by donor (AID), the act should be regarded as adultery, thereby rendering the wife forbidden to her husband and the resulting child classified as illegitimate (*mamzer*)? A number of authorities reject this on the grounds that no sexual intercourse has taken place. This position is held by Rabbis Peretz, Ben Zion Uziel (d. 1953), Moses Feinstein, Sholom Mordechai Schwadron, Yehoshua Baumol, and Aaron Wolkin. In contrast, other scholars, including Judah Leib Zirelsohn (d. 1941), Abraham Lurie, and Ovadia Hedaya (d. 1969), regard AID as tantamount to adultery in its legal and moral implications. Rabbi Eliezer

Waldenberg similarly views AID as analogous to adultery, although he maintains that the child is not classified as a *mamzer*. (Rosner, 2000, pp. 130-131)

A further related issue concerns paternity and the fulfilment of the commandment to procreate. Is the child considered the son of the donor? and has the donor fulfilled his duty of procreation even without sexual act? Some authorities affirm that the child is considered the legal offspring of the husband and that he has thereby fulfilled his duty of procreation even in the absence of sexual intercourse. This view is supported by Rabbis Moses Feinstein, Samuel ben Uri (d. 1705), Judah Rozanes, Jacob ben Samuel (d. 1549), Israel Ze'ev Mintzberg (d. 1962), Simeon ben Zemah Duran (d. 1444), and Jacob Ettlinger (d. 1871). By contrast, Rabbi Jacob Emden (d. 1776) and Moses Schick (d. 1879) maintain that the child is legally considered the donor's offspring, but that he has not fulfilled the obligation of procreation. On the other hand, Rabbis Ovadia Hedaya and Aryeh Leib Shapiro (d. 1837) argue that the child is not attributed to the donor, and consequently he has not fulfilled the commandment. (Rosner, 2000, pp. 130-131)

In Vitro Fertilization (IVF):

Since 1978, the year of the first successful birth following in vitro fertilisation (IVF), the procedure has offered new hope and notable success for innumerable otherwise infertile couples. At the same time, it has generated a wide range of theological, moral, and legal questions that have challenged scholars across traditions. A broad overview suggests that many of the principles and concerns discussed in relation to artificial insemination also apply to IVF. Like artificial insemination, pregnancy achieved through IVF and embryo transfer (IVF-ET) is also *sine concubito*, that is, without sexual intercourse.

Earlier debates concerning semen procurement, the use of the husband's or a donor's genetic material, questions of paternity, and the fulfilment of the mitzvah of procreation are likewise relevant in this context. However, IVF introduces additional procedure-specific ethical and legal complexities, particularly regarding the disposition of surplus fertilised ova. Moreover, in IVF procedures, embryo transfer may take place either into the same woman from whom the ovum was retrieved or into a different woman (a surrogate) who carries the pregnancy to term. In such cases, the question of maternity arises with particular force, especially in relation to the child's legal and religious status, including issues of identity within Jewish law.

In vitro fertilization opens the possibility for childbearing in cases where natural conception is not feasible. In appropriate circumstances, particularly where artificial insemination has failed and the procedure is medically indicated, IVF provides the opportunity for a childless couple to conceive, thereby bringing familial fulfilment and promoting the growth of the Jewish community. (Mackler, 1995, p.511) The former Sephardic Chief Rabbi of Israel, Rabbi Ovadiah Yosef (d.2013), gave his qualified approval to *in vitro* fertilization when it was the only way for a couple to have children. Similarly, the former Ashkenazi Chief Rabbi, Rabbi Shlomo Goren (d.1994), described the technique as 'morally repugnant but legally unobjectionable'. In his view, although IVF may appear to contravene the natural law of procreation and birth, but it does not violate any biblical or rabbinic prohibition. Consequently, in the absence of a specific legal proscription, recourse to scientific and medical technologies such as IVF is permitted as a means of fulfilling the obligation to procreate. (Bleich, 2000, p.100)

As an exception, Rabbi Eliezer Waldenberg (d.2006), a leading rabbi on the Supreme Rabbinic Court in Jerusalem and an eminent authority on medical halakha, argues that IVF is technically more problematic than artificial insemination. He considers IVF as 'wasteful emission of seed' because the sperm fertilizes the ovum outside the female body, thereby disrupting the natural order of creation. In contrast, Rabbi Avigdor Nebenzahl (born 1935), Chief Rabbi of the Old City of Jerusalem, disagrees with him, arguing that such a prohibition could effectively prevent a husband from fulfilling the *mitzvah* of procreation and may exacerbate marital distress, potentially even leading to divorce. (Mackler, 1995, p.513)

Rabbi David Feldman (d.2014), Rabbi Emeritus at the Teaneck Jewish Center and the Dean and Founder of the Jewish Institute of Bioethics affirms to the new reproductive techniques such as IVF, provided that appropriate safeguards are in place to prevent misuse. He argues that such techniques enable human beings to participate with God in the ongoing enhancement of creation and represent a constructive response to the universal human desire for offspring. Similarly, Rabbi Aaron Mackler, Associate Professor of Theology at Duquesne University in Pittsburgh, Pennsylvania and an ordained Conservative Rabbi, also agrees with this perspective. He maintains that IVF is consistent with the religious duty to combine reverence with active participation in the divine partnership with God. (Mackler, 1995, p.514)

Also, it must be borne in mind that IVF is not considered a substitute for the natural reproductive process. Therefore, no woman is obligated to undergo IVF in the absence of a medical indication for its use. Rabbi David Bleich (born 1936), a professor of Talmud (Rosh Yeshiva) at Rabbi Isaac Elchanan Theological Seminary, affiliated with Yeshiva University, observes that a woman's obligation to participate in the commandment to populate the earth is limited to bearing children through natural intercourse. Accordingly, she is under no obligation to conceive through procedures that may involve unusual or extraordinary pain, such as ova retrieval and embryo transfer associated with IVF treatment. Nevertheless, he concludes that when IVF is properly regulated and not permitted to replace natural procreation, it may serve as a legitimate means of bringing happiness to infertile couples. (Bleich, 2000, pp.102-104)

Similarly, Rabbi Elliot Dorff (born 1943), a professor of Jewish theology at the American Jewish University in California, also maintains that IVF is clearly not obligatory. However, when the procedure is considered necessary, infertile couples should be adequately informed of the risks, burdens, and uncertainties involved before proceeding. He further argues that a child conceived through IVF is fully regarded as the couple's own child in every respect, and that the couple's mitzvah is thereby fulfilled. (Mackler, 1995, p.515)

The permissibility of IVF discussed above pertains specifically to cases in which fertilization is achieved using the husband's sperm and his wife's ovum. In this regard, the following concluding observation by Rabbi Professor Avraham Steinberg (b. 1947), Director of the Medical Ethics Unit at Shaare Zedek Medical Center, Jerusalem, and Co-Chair of the Israeli National Council on Bioethics, reflects the prevailing rabbinical stance on in vitro fertilization: "In general, most rabbis in our generation allow IVF of husband's sperm and his wife's eggs. However, certain limits and controls are necessary to avoid ethical improprieties in this sensitive but vital field and to avoid serious consequences later." (Steinberg, 2003, p.581)

Use of Donor Sperm in IVF: Most rabbinic authorities regard the use of donor sperm in IVF as impermissible and strongly oppose it on the grounds that it may give rise to concerns relating to incest, uncertain genealogy, and complications of inheritance rights. Some authorities even regard the procedure as analogous to adultery; however, the majority maintain that the woman does not become adulterous because the procedure does not involve sexual contact. Accordingly, even if she undergoes this procedure using donor sperm, she is generally not prohibited from continuing marital relations with her husband. Regarding the status of the child conceived through donor insemination, most rabbinic authorities regard the offspring as legitimate, whereas some authorities consider him illegitimate. There is also disagreement concerning paternal affiliation: many authorities regard the child as the donor's offspring in all legal and religious respects; others recognize such paternity only in certain respects; while a minority maintain that he is not the donor's son at all. (Rosner, 2001, p.152)

In IVF procedures, a surplus number of fertilized ova are often produced, of which typically a limited number (e.g., three embryos) are transferred, while the remaining embryos are cryopreserved for future use. The freezing of fertilized ova or embryos is generally considered acceptable *in halakhah*, as it enhances the likelihood of IVF success while also reducing the medical risks and physical burdens placed upon the woman. (Mackler, 1995, p.518)

When cryopreserved embryos are no longer required, a significant halakhic question arises regarding their fate and whether their disposal is permissible.? On this issue, Rabbi David Halevi maintains that they can be discarded because *in vitro* embryos do not possess the same legal status as *in vivo* embryos, and accordingly, prohibition of abortion does not apply to them. Similarly, Rabbi Mordechai Eliyahu also agrees with him. In contrast, Rabbi David Bleich is against discarding them, contending that the sanctity of embryos would not change with a change in their natural habitat. Rabbi Mackler likewise supports this view, arguing that it is difficult to sustain the claim that the prohibition concerning embryos varies merely due to a change in their physical setting. (Mackler, 1995, p.518) In a broader institutional assessment, the Committee on Medical Ethics of the Federation of Jewish Philanthropies of New York concluded that a fertilized egg outside the womb, in an environment such as a test tube or petri dish, where it cannot achieve natural viability, does not possess full human status and may therefore be discarded or used for scientific research. (Rosner, 2001, p.154)

Surrogate Motherhood:

When an infertile woman has problematic ovaries or uterus, another willing healthy woman (*surrogate*) may be used as an alternative who is inseminated with the husband's sperm. The surrogate then becomes pregnant and carries the gestation to full term, ultimately giving birth to the child (*traditional or partial or ovum surrogacy*). The ovum surrogate who is genetically related to the child hands over his custody to the intended parents and they adopt the child. From mid-1980s onwards a new version of surrogacy came up. Using IVF technique, the infertile couple's ovum and sperm are fertilized *in vivo* and transferred to the womb of another woman who carries the gestation till birth (*gestational or full surrogacy*). The child is genetically related to the intended parents and surrogate serves as a 'carrier' only. In any case, the surrogate is paid and is supposed to relinquish custody of the child to the intended parents. (Spitz, 1997, pp. 530-531)

Surrogate arrangements, despite offering hope and happiness to couples struggling with infertility, have raised legal, moral and halakhic concerns. In some cases, the surrogate may change her mind leading to disputes over parental rights and child custody. Conversely, if the child is born with serious medical conditions or disabilities, the intended parents may be reluctant to assume responsibility. Financial compensation can become the main motive for surrogates, raising concerns about the potential exploitation of economically disadvantaged women by wealthier individuals or couples. On the legal side, court decisions vary widely, while on the religious front, halakhic rulings also differ because there is no direct precedent of modern surrogacy in biblical and Talmudic literature.

Among contemporary Jewish scholars who oppose surrogacy, Lord Immanuel Jakobovits (d.1999) has refused it primarily on ethical grounds. He considers the surrogate mother as functioning merely as 'an incubator' and regards taking a child away from his birth mother as 'a revolting degradation of maternity' and views gestation and childbirth

for financial compensation as ‘an affront of human dignity.’ Similarly, Rabbi Moshe Tendler (d.2021) considers surrogacy as undermining a woman’s dignity. In his view, surrogacy does not constitute a genuine therapeutic solution to infertility; rather, it replaces one pathology with another, creating additional emotional and social problems for multiple individuals in an attempt to address the suffering of a single woman. Rabbi Marc Gellman (born 1950) maintains that the sanctity of family life requires procreation to occur exclusively between husband and wife. Likewise, Dr. Daniel Gordis (b. 1959) contends that a commitment to human dignity and social good necessitates that Jewish women refrain from serving as paid surrogates and that Jewish couples avoid employing them. (Spitz, 1997, p. 530) Rabbi Aaron Mackler also holds that surrogacy is not advisable under *halakhah* and should generally be discouraged. Similarly, Rabbi David Golinkin (2012) argues that for couples unable to conceive, adoption is preferable to entering into surrogacy arrangements that generate numerous ethical complications.

On the other hand, several Jewish authorities regard surrogacy as permissible, provided that it is subject to appropriate ethical and legal safeguards. Owing to the high value Judaism places on procreation, the Central Conference of American Rabbis permitted surrogacy with caution in 1983. Likewise, the Committee of Jewish Law and Standards of the Rabbinical Assembly voted in favour of ovum surrogacy in 1985. (Spitz, 1997, p. 530) In one of his responsa, Rabbi David Lincoln (1984) asserts that the *mitzvah* of procreation is so significant that couples should not be denied this opportunity. Rabbi David Feldman (d.2014) suggests that although ovum surrogacy should not be taken as a matter of public policy, the courts should decide the matter of child’s custody according to the best interests of the child. Similarly, Rabbi Seymour Siegel (d.1988) considers surrogacy contract as morally valid if it is done in good faith, and hence it needs to be enforced. Michael Gold accepts surrogacy as a last resort for the treatment of infertility, although he prefers adoption and emphasized the need for surrogacy legislation. Dr. Fred Rosner likewise permits gestational surrogacy as a final option when other avenues have failed. (Spitz, 1997, p. 530) Rabbi Elliot N. Dorff and Rabbi Jonathan Spitz have also expressed support for surrogacy under certain conditions. Rabbi Spitz endorses both gestational and ovum surrogacy and views it as a legitimate means of fulfilling the *mitzvah* of procreation. (Spitz, 1997, p. 550)

CONCLUSION

The halakhic engagement with infertility and assisted reproductive technologies reflects the dynamic tension between fidelity to tradition and responsiveness to human suffering. Rooted in the biblical commandment to “be fruitful and multiply,” Jewish law upholds procreation as both a duty and a blessing, yet its application to modern biomedical realities requires nuanced interpretation. While techniques such as AIH and IVF using a couple’s own gametes are generally accepted when medically necessary, donor gametes, embryo destruction, and commercial surrogacy raise serious halakhic and ethical concerns, primarily regarding lineage, family integrity, and human dignity. Rabbinic authorities diverge in their judgments, but most agree that ARTs may be utilized when guided by the principles of *pikuach nefesh*, *gemilut chasadim*, and the preservation of marital sanctity. The debates illustrate the broader adaptability of Jewish law, which—through halakhic reasoning—seeks to balance compassion for infertile couples with caution toward potential abuses of technology. Ultimately, ARTs in Jewish bioethics are neither unconditionally embraced nor categorically rejected; they are conditionally permitted within a framework of reverence, responsibility, and communal integrity.

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