

Jewish Perspectives on Reproductive Realities

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A note on the content below: We acknowledge that this document invokes heavily gendered language due to the prevailing historic male voices in Jewish rabbinic and biblical perspectives, and the fact that Hebrew (the language in which these laws originated) is a gendered language. We also recognize some of these perspectives might be in contradiction with one another and with some of NCJW's approaches to the issues of reproductive health, rights, and justice.

Background

Family planning has been discussed in Judaism for several thousand years. From the earliest of the 'sages' until today, a range of opinions has existed — opinions which can be in tension with one another and are constantly evolving. Historically these discussions have assumed that sexual intimacy happens within the framework of heterosexual marriage. A few fundamental Jewish tenets underlie any discussion of Jewish views on reproductive realities.

- Protecting an existing life is paramount, even when it means a Jew must violate the most sacred laws.¹
- Judaism is decidedly 'pro-natalist,' and strongly encourages having children. The duty of procreation is based on one of the earliest and often repeated obligations of the Torah, 'פרו ורבו',² to be 'fruitful and multiply.' This fundamental obligation in the Jewish tradition is technically considered only to apply to males.

Of course, Jewish attitudes toward procreation have not been shaped by Jewish law alone, but have been influenced by the historic communal trauma (such as the Holocaust) and the subsequent yearning of some Jews to rebuild community through Jewish population growth.

Contraception

There is a spectrum of opinions with regard to the appropriateness of the use of contraception in the Jewish tradition and under what circumstances it should be considered.

¹ Babylonian Talmud Yoma 84b-85a.

² Genesis 1:28, Genesis 9:1, Genesis 9:7, Genesis 35:11

There is essentially no dispute in the Jewish tradition that contraception should be used when the health of the mother may be at risk. This is supported not only by the principle stated above about the primacy of protecting life, but is also specifically discussed in the Jewish sources regarding birth control.³ Contraception has also long been permitted for women with childbearing difficulties.⁴ In fact Jewish authorities in the case of a risk to the mother actually prefer the use of contraception to abstinence.

One important issue surrounding Jewish views on contraception is that there is a prohibition on the 'destruction' or 'wasting' of a man's 'seed.'⁵ This prohibition (coupled with the obligation to be fruitful and multiply) is why very traditional Jews often avoid birth control and tend to have large families. The more liberal orthodox authorities and the more liberal Jewish denominations permit birth control (at least for some period of time), by taking into account other considerations such as the ability of the couple to financially or emotionally support children; the welfare of existing children; the importance of a couple solidifying their relationship before child-rearing; and the physical and emotional needs of the mother.

In cases where contraception is warranted, traditional Jewish authorities prefer certain forms of contraception: specifically those used by women rather than men (since the obligation of procreation technically falls on males), and methods that do not 'destroy a man's seed,' such as the pill or an IUD. Almost all Jewish authorities would permit the use of condoms to protect against sexually transmitted infections.

Abortion

Unlike some faith traditions which view abortion as murder, Jewish law does not consider abortion as such because the fetus is not considered a 'life' or a 'person' with independent rights. In Exodus 21:22-23, we learn that if two men are fighting and one winds up pushing a pregnant woman and causing her to miscarry, that man needs to pay only a fine, but not the penalty of "a life for a life" as in other homicides.⁶ Jewish law interprets this to mean that the fetus doesn't have the same legal status as the mother who is a full-fledged, autonomous human being.

³ See the Baraita of the 'Mokh' and the Three Women, Babylonian Talmud Yevamot 12b and 100b, Ketubot 39a, Niddah 45a, Nedarim 35b and Tosefta Nidda 2:6

⁴ See discussions of *kos shel ikkarin*, the 'cup of roots' Babylonian Talmud Yevamot 65b, Tosefta Y'vamot Ch. 8 and subsequent response literature with regard to its applicability to the Birth Control Pill.

⁵ 'Hash-hatat zera,' Babylonian Talmud Yevamot 34b

⁶ Exodus 21:22

In the first 40 days from conception, a fetus is considered ‘mere fluid’⁷. After that, it is considered a part of the mother’s ‘thigh’ or genitals.⁸ It has no identity of its own since it is dependent on the body of the woman until “most of the body emerges” from her womb.⁹

This is why Jewish sources explicitly indicate that if the continuation of the pregnancy might imperil the life or health of the mother, abortion is not only permitted but required.¹⁰ In Jewish law the interests of the mother always comes before that of the fetus. This runs counter to many anti-abortion restrictions and proposed restrictions in the United States, which do not include adequate exceptions for the life and health of the pregnant person. Furthermore, several contemporary Jewish sources interpret the ‘health of the mother’ to mean her psychological health as well as her physical health.¹¹

Still, while abortion is widely accepted, traditional Jewish sources — especially because of the strong pro-natalist nature of Judaism — do consider the fetus a ‘potential life’. Traditional Jewish authorities are hesitant to permit abortion without “sufficient cause.” These authorities generally do not condone the right to abortion as a function of a person’s right to control their own body. Having said that, the scope of permissiveness for abortion is generally quite broad, which is why in Israel where family law is controlled by Orthodox Rabbinic religious authorities, the vast majority of abortions are considered legal and are permitted.

In Vitro Fertilization (IVF)

A majority of Jewish authorities not only permit IVF when using a husband’s sperm and a wife’s egg, but given the pro-natalist nature of the tradition, they welcome it as an aid to infertile couples. A minority of Jewish authorities object to IVF based on what they see as the problematic category of ‘wasting seed’ (see contraception section above), and the process of IVF as “upsetting the order of creation” for the fulfillment of the command to be fruitful and multiply.^{12 13}

Most religious authorities permit destroying excess frozen embryos or using them for medical research since they fall in the category of ‘less than 40 days’ (see Abortion above), and also have no independent status of their own since they cannot develop naturally outside the womb.

⁷ Babylonian Talmud Yevamot 69b

⁸ Babylonian Talmud Hulin 58a

⁹ Mishnah Ohalot 7:6, Babylonian Talmud Arakhin 7a

¹⁰ Mishnah Ohalot 7:6

¹¹ See for example The Conservative Movement’s Proceeding of the Committee on Law and Jewish Standards 1980-85 p. 37

¹² See Rabbi Eliezer Waldenberg *Tzitz Eliezer* vol. 15 siman 45 pp. 115-120

¹³ See Avram Israel Reisner, “Medical Ethics” in Martin S. Cohen, ed, *The Observant Life*, pp. 781-789 for a general discussion on all these issues.

The issues of donor sperm, eggs, and embryos raise complicated issues in Jewish law, including concerns of ‘adultery,’ the possibility of ‘unintentional incest’ in future generations, the issue of ‘wasting seed’ (see Contraception above), and the potential for exploitation of donors. While a range of opinions exists in the more traditional branches of Judaism, the Conservative Movement’s position is that helping infertile couples in this way is sufficient justification to override all these concerns¹⁴ and so expressly permits it.

In all cases above, the woman who gestates and gives birth to a child is to be treated as the child's mother for purposes of Jewish law, including the determination of Jewish religious identity.

Adoption

Since ancient times Judaism has valued and encouraged adoption, and some of the greatest biblical heroes — including Moses and Esther — were adopted.¹⁵ Given the importance the Bible placed on caring for the orphan, the rabbis of the Talmud desired to formalize and encourage guardians to provide a home for those most in need and so created a special category for them, saying that "A person who raises an orphan in their home is regarded by Scripture as if he had fathered them." ¹⁶ This was viewed as a righteous deed and an act of supreme loving kindness. ¹⁷ However, while this act was held in high regard, historically it differed from the legal adoptions in the American system today. This category generally pertained to orphans and was more closely related to a permanent sort of ‘foster care,’ where the adoptive parents do not become the legal parents per se, but function as ‘agents’ of the birth parents. In fact, there was no Hebrew word for the word ‘adoption’ until the 20th century when Israeli lexicographers chose the word ‘*ametz*,’ which comes from a root meaning strength or fortitude.

A child of a non-Jewish mother who is adopted into a Jewish home requires conversion to Judaism. This involves immersion in a ritual bath (*mikveh*) for girls and boys, as well as circumcision (*brit milah*) for boys. In these cases the child is asked to affirm their commitment to Judaism at the time of their Bar or Bat Mitzvah.

¹⁴ Rabbi Elliot Dorff *CJLS Responsa* 1991-2000 pp. 461-509

¹⁵ Exodus 2:10, Esther 2:7, (See also Naomi and Ruth’s son Ruth 4:17)

¹⁶ Sanhedrin 19b

¹⁷ Exodus Rabbah 45:6, Ketubot 50a