

# 'I'm Orthodox Jewish & Single, Can I Freeze my Eggs?' An Analysis of *Halachic* Issues Related to Oocyte Preservation

By Chava Kaufman

We live in a society where gender equality is championed and women's health issues are gaining increasing attention. With women achieving similar career success alongside their male counterparts, it is common in many societies for women to postpone motherhood. With the advent of modern technological advancements in medicine, oocyte cryopreservation or "egg-freezing" may be a viable option for women who feel their "ticking biological clock" and want to have children, but later in life. However, with this trend comes many questions about the efficacy and viability of these procedures. For the Orthodox Jewish community, this is compounded by the philosophical, cultural, and other complex issues of Jewish law (*halacha*) inherent in such cases.

Older single women in the Orthodox Jewish community often feel the pressure to marry grow stronger as they hit their later 20's and early 30's. Dr. Sherman Silber, director of the Infertility Clinic of St. Louis, notes that "most orthodox women marry early, often at age 20." Dr. Silber's practice is supervised by top halachic authorities from Jerusalem. He is a proponent of egg freezing for single women who want to become more "marriageable in the eyes of their communities" by keeping childbirth possible and recommends that they do so no later than "age 38." This is because women experience a decline in ovarian function and ability to conceive spontaneously after that age. Out of her 200,000 to 400,000 oocytes, a woman will usually ovulate only 200 - 400 eggs during her entire reproductive life span. Most of these eggs are rendered practically inert and unfit for reproduction for one of two reasons: apoptosis of the oocyte or the occurrence of chromosomal abnormalities of the egg. As a woman grows closer to her late 30's and early 40's, both of these biological events increase and lower the chances of the woman conceiving via natural methods. The historical data demonstrate that a woman first marrying in her early 20's only has a 6% statistical chance of being infertile, while a woman marrying in her early 40's has a 64% chance [1]. Based on multiple case studies, the preferred age for successful oocyte preservation is before the age of 35 [2]. Orthodox Jewish women are taught from a young age that one of the tenets of Judaism is to fulfill the Biblical injunction "to be fruitful and multiply" and that procreation is one of the major purposes of marriage [3]. It is no wonder that more and more older Orthodox Jewish single women are prepared to spend up to \$10,000 per monthly cycle to freeze their eggs with fertility specialists who comply with the halachic framework.

Before discussing the potential hashkafic or potential halachic issues involved in oocyte cryopreservation, a brief history of "egg-freezing" is in order. The process of harvesting viable eggs from a candidate involves aspirating multiple follicles via a transvaginal ultrasound-guided needle through the back of the vagina (the posterior fornix) into the ovary itself. Although general anesthesia is usually used for this procedure, most patients can return home within 1-2 hours after the procedure. The eggs are then kept "frozen" in liquid nitrogen until needed for in vitro fertilization. Since 1953, scientists have been able to freeze sperm and even an embryo in order to later produce a live birth, but freezing eggs proved difficult as the classic freezing process created ice particles that damaged the egg's mitotic spindle. Hence, from 1986 through 1996 there were only 5 live births from frozen-thawed eggs [4]. To solve this, scientists developed the idea of using sucrose as an anti-freeze to prevent ice damage and dubbed it the "slow-freeze" technique. Additionally, a technique called intracytoplasmic sperm injection (ICSI) was devised whereby a sperm is injected directly through the hardened zona pellucida after freezing. Using these techniques, 100 live births were reported from 1997 through 2005. A more recently developed technique - the vitrification method - involves rapidly cooling the oocyte in a minimal volume of solution, causing high viscosity and allowing solidification at a more optimal temperature [5].

Although the American Society for Reproductive Medicine published a position paper in 2007 that labeled egg-freezing as an "experimental procedure" and "not an established medical treatment" [6], the Israel National Bioethics Council is of the opinion that egg-freezing is an accepted practice today and permits registered fertility centers to freeze eggs using the newer vitrification method [7]. The controversy is not related to the safety of the woman undergoing the procedure, as everyone agrees that the evidence indicates there is only a 0.08%-0.75% chance of serious complications, such as intra-abdominal bleeding, abscess, ovarian torsion, etc. [8]. Rather, the question is regarding the safety of the fetus created from thawed eggs. It is reassuring to know that thawing sperm and embryos have produced no demonstrable safety risks to children and, thus far, studies have not shown any negative outcomes in children born from thawed eggs [9].

The Orthodox Jewish community practices halachic Judaism. Halacha is Hebrew for "the path" and refers to adherence to the many Biblical and Talmudic mandates and laws regarding how to live a Jewish life. Hashkafa is

colloquially translated as “the outlook” and refers to the legal culture that creates the frame for how to evaluate certain halachic questions. In reference to oocyte cryopreservation, a number of potential issues must be considered: are elective procedures halachically permitted? Even if they are, is a woman’s motive to procreate enough of a reason to permit this procedure and what other motives could play a role in this decision? Furthermore, would in vitro fertilization be a violation of “wasteful emission of sperm”, a halachic prohibition?

In regards to elective surgical procedures, let us begin with the Bible which states “but the judge must not impose more than forty lashes” (Deuteronomy 25:3). From here, the Talmud (Bava Kama 91b) infers that imposing a forty-first lash is forbidden because it would cause bodily harm. However, the verse being analyzed is discussing the scenario whereby person A hits person B. What about where person A injures himself? This is a subject of debate amongst the Talmudic scholars. Maimonides (Hilchot Chovel Umazik 5:1) rules that self-injury is strictly forbidden. The legal source that a Jew is allowed to undergo a surgical procedure which may be considered “self-injury” is derived from the verse in Exodus 21:19, “and he shall surely be healed.” The Talmud (Bava Kama 85a) understands this to be a license for a physician to take whatever action is necessary to heal the body. Additionally, this verse provides the license for a physician to heal a person without any theological argument that human actions are interfering with some kind of divinely ordained destiny for the patient to be ill [10].

Of course, the argument may be that this entire legal development only applies to a mandatory surgical procedure and not to an elective one. The classic response to this in rabbinic literature is that Jewish law relies on the theological premise of “shomer peta’im Hashem,” that God will protect people undergoing an accepted medical procedure even if elective [11]. Nonetheless, the Talmud (Pesachim 8b; Kiddushin 39b) limits this clause to a situation when danger is not prevalent. The definition of “danger” is debated by later rabbinic authorities, and Rabbi Yekusiel Yehuda Halberstam, the Klausenburger Rebbe, ruled that “the absence of danger” can only be defined by the exact same examples listed in the Talmud, and extrapolations to other situations are not permitted. Rabbi Yaakov Breisch, better well known as the Chelkat Yaakov after his halachic sefer, offers a rationale permitting elective surgeries even though there can be small health risks involved. He writes, “If a birthing mother is considered as a person in danger, can we really prohibit her from childbearing?...therefore, since many people freely subject themselves to elective surgery despite the attendant risks...and our own eyes see that the vast majority are cured/avoid complication...we can trust God” (Chelkat Ya’akov, Choshen Mishpat 31). Hence, according to Rabbi Breisch, a woman undergoing the elective surgical procedure to freeze her eggs can rely on this

halachic basis even though it was not an example listed in the Talmud.

Interestingly, the famous halachic authoritarian, Rabbi Moshe Feinstein, permits rhinoplasty (a “nose-job”) as an elective procedure and does not consider it to be “self-injury.” Although it’s not a mandatory procedure, Rabbi Feinstein understands that a procedure desired by the patient is not considered “inflicting self-injury” because “chavala - self-injury” is defined only as an injury committed in an “aggressive or demeaning” manner (Iggerot Moshe, Choshen Mishpat 2:66). Rabbi Breisch also permits it but understands the permission is not because of the definition of “self-injury,” but rather because the license for physicians to heal includes psychological pain as well (Chelkat Ya’akov, Choshen Mishpat 31). Interestingly, Rabbi Eliezer Yehuda Waldenberg, 20th century Rabbi of Shaarei Zedek Medical Center and commonly known as the Tzitz Eliezer, disagrees with this logic. He forbids cosmetic surgery because it’s a rejection of the Divine design of the person. In other words, he understands the physician’s Biblical license to heal as an allowance to contravene in a Godly destiny only when the patient is in danger but not for cosmetic purposes (Tzitz Eliezer 11:41).

One may be able to apply reasoning from the debated case of rhinoplasty to our scenario of egg-freezing. Bolstering our case is the fact that egg-freezing is not a cosmetic procedure but one that greatly improves an older single woman’s odds of bearing genetically-related children in the future. Another factor to consider is the applicability of the premise that a woman has a halachic obligation to procreate. The source for the Biblical injunction to procreate is derived from the verse “be fruitful and multiply” (Genesis 1:28). The Talmud debates whether this applies to men, women, or both. The conclusion in Talmud (Yevamot 65b) is that women do not have this Biblical responsibility. Nevertheless, rabbinic authorities included women in this commandment because women are also obligated to “populate the world” (Kiddushin 41a, Commentary on the Rif, 16b; Orach Chaim 153, Responsa of the Chatam Sofer, Even HaEzer 1:20). Furthermore, later rabbinic authorities have stopped requiring men to fulfill this Biblical injunction in a number of ways. Firstly, they do not force a man to divorce his wife after 10 years of infertility nor do they prevent a man from marrying a woman who cannot procreate (Ramo, Even Haezer 1:3). Therefore, one can argue that egg-freezing would help a woman with her rabbinic injunction and her husband with his Biblical injunction to procreate.

Based on the above discussions, there are many reasons to permit freezing the egg via an elective surgical procedure according to Orthodox Jewish halachic standards. Yet there remains another aspect of the process that is under halachic question. This is in relevance to the in vitro fertilization (IVF) procedure which requires the male to ejaculate. Based on Genesis (chapter 38), the Talmud

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forbids male ejaculation outside of coitus (Talmud Niddah 31a). Rabbi Waldenberg therefore forbids IVF under all circumstances since, even if one of the sperm used via IVF results in a child, the excess unused spermatozoa are “wasted male emission” (Tzitz Eliezer 15:45). Conversely, Rabbi Avigdor Nebenzahl argues with this reasoning by emphasizing that IVF may be an infertile couple’s last resort and forbidding it may result in endangering the permanence of the marriage [12]. Some modern rabbinic authorities such as Rabbi Ovadiah Yosef and Rabbi Yosef Shalom Elyashiv both permit IVF as long as there is strict supervision of the gametes being used [13].

The Puah Institute, directed by Rabbi Gideon Weitzman, has been the preeminent authority in the Orthodox Jewish world on fertility issues and solutions. Founded on the idea that the development of new scientific procedures provides opportunities for the Orthodox Jewish, halacha-sensitive community, the Puah Institute encourages the

practice of egg-freezing for older, single women. Additionally, Rabbi Weitzman notes that often the women who freeze their eggs end up marrying and conceiving naturally without the need to utilize their frozen eggs. Nonetheless, the option to freeze one’s eggs offers hope and psychological solace to Orthodox Jewish women in an ever complicated and nuanced society. As Rabbi Weitzman says “We get calls on this topic every week, if not every single day” [14].

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### References

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