

Halachik Considerations of IVF

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The treatment options offered by the use of in vitro fertilization (IVF) present difficult halachik questions. This modern day issue has obliged our poskim to address the freezing of oocytes both for immediate re-implantation as well as to set aside oocytes for women who may choose to have them fertilized and re-implanted at a later date [1].

The American Society of Reproductive Medicine (ASRM) defines infertility as “a disease defined by the failure to achieve pregnancy after twelve months or more of regular and unprotected intercourse.” According to the ASRM, “earlier evaluation and treatment is warranted after six months of a woman over age thirty-five” [2].

Statistically, there is a clear decline in fertility as women age. Six percent of women in their early to mid-twenties are infertile, and nine percent of women in their late twenties cannot conceive. Fifteen percent of women in their thirties are infertile, and thirty percent of women in their late thirties cannot have children. Sixty-four percent of women in their forties no longer have the ability to conceive [3,4].

The process leading to IVF involves the determination of the source of the infertility. Physical examination, medical history, and a series of tests are administered to establish its cause. Once IVF has been chosen, stimulants promoting ovulation are prescribed. The reproductive endocrinologist will harvest follicles by needle aspiration; this may require local anesthesia or a sedative. The harvested follicles are frozen and will be re-implanted when fertilization is complete. This procedure is performed on an ambulatory basis. “A 0.08 to 0.7 percent incidence of intra-abdominal bleeding requiring surgical intervention, abscesses, ovarian torsion, cyst rupture, [and] severe ovarian hyper stimulation syndrome” are listed as the most common complications related to this procedure [5].

With age, the fixed number of oocytes with which a woman is born will have been exposed to insults, which compromise the integrity of the DNA. This increases the probability of chromosomal abnormalities, resulting in aneuploidy, which is a category of chromosomal defects involving particular genes or chromosomal regions present in extra or fewer copies of chromosomes than in a normal set of chromosomes. There is close to a one hundred percent statistical probability that a woman conceiving at or beyond the age of 45 will have a child with chromosomal abnormalities [6,7].

The process of IVF seems like a positive solution for women having difficulties conceiving children, but is it halachikally acceptable? Two halachik points are addressed regarding use of

IVF. The first issue is sakana, or self-endangerment, and the second issue is chavala, inflicting injury upon oneself.

The issues regarding sakana are complex. We are taught in Exodus that the source for doctors to intervene and heal a person is “verapoh yerapeh”, and they shall heal. As previously stated in this article, the ASRM classifies infertility as a disease. Since the medical establishment has labeled infertility as a disease, it should be halachikally permissible to seek out treatment for infertility.

The Rambam questions medical sakana by asking if one can undergo elective procedures despite an inherent risk [8]. The Avnei Nezer replies that it is forbidden to do so, and further more prohibits any non-lifesaving surgeries, arguing life-threatening risks [9]. On the other hand, Rav Breisch and Rav Moshe Feinstein agree that elective procedures are permitted under specific circumstances, and this is expressed in their teshuvot regarding the permissibility of cosmetic surgeries [10,11]. Rav Feinstein evokes the concept of shomea petaim HaShem, which is the idea that you can rely on God to protect and save you from risks you are facing, as long as it is in accordance with the social definition of acceptable risks [12].

The Torah and Talmud are extremely sensitive to women’s infertility and potential adverse effects it may have on marriage, specifically on the ketuba as well as yibum and chalitzah. Rav Moshe Feinstein also appreciates the need for an unmarried woman to secure her future as a mother and therefore allows her to freeze her oocytes.

One might argue that in terms of chavala, elective surgeries could be viewed as inflicting injury onto oneself. In Deuteronomy 21 we are given the prohibition of self-injury, which is further developed by the Tractate. Does this commandment apply to elective surgeries? Rav Moshe Feinstein categorizes elective surgery as removing a psychological pain. He interprets self-injurious behavior as something being done aggressively, derech nitzayon or derech bizayon.

To address the issue of psychological pain, Rav Breisch differentiates between two types of pain: letzorech, for monetary gain, which is forbidden, and tzaar, to improve one’s self-esteem, which is permitted [13,14].

Rav Breisch comments on the issue of embarrassment in relation to elective surgeries. Tosfot states that if a person suffers from psychological but no physiological pain, they can treat their condition [15]. Rav Breisch addresses an individual’s imperfections, acknowledging that this can bring a great deal of pain and embarrassment. This line of thought may lend support to the idea that IVF can help a patient attenuate the anguish of experiencing difficulty in conceiving a child.

Unlike Rav Breisch and Rav Feinstein who endorse IVF, Rav Eliezer Yehuda Waldenberg staunchly opposes it [16]. He interprets the process of IVF as rejecting the divine model HaShem instilled in each human. Each person was created “Betzelem Elokim,” in the image of God. According to Rav Waldenberg, this concept is so important that no one should intervene with the way God created an individual, and even a person’s imperfections should not be changed.

Rav Waldenberg expresses a few concerns in regard to IVF. One issue is the waste of sperm, which is an outright prohibition from the Torah [17]. Artificial insemination is only permitted when treating male infertility, and IVF is a treatment for women’s infertility. A second concern is the involvement of a third party when creating a child. He views the interference of doctors as unnatural and concludes that a man does not satisfy his rabbinic and biblical obligation to procreate when conceiving in this manner [18]. Rav Waldenberg perceives the zygote as a processed specimen entering the woman’s uterus. Another concern is that IVF can lead to more complex issues, such as cloning, so this experimental process needs to be stopped before it advances to further manipulations.

Rav Avigdor Nebenzahl raises several issues with Rav Waldenberg’s teshuva [19]. He questions the effects of denying a couple the opportunities to undergo IVF and the marital stress which may ensue. Rav Nebenzahl addresses the issue of fulfilling the commandment of “pru urvu,” to be fruitful and multiply. He views the process of IVF as equivalent to normal conception and states that it satisfies the commandment of “pru urvu.” Finally, he suggests that the halachik and personal need to procreate overrides the risks of cloning.

Rav Ovadia Yosef and Rav Elyashiv permit the use of IVF only given that the sperm donated must be used, IVF must be undertaken as a last resort, and there must be strict supervision of the gametes [20,21,22].

Almost four decades after the first IVF live birth, a majority of poskim recognize this procedure as an acceptable last resort for women unable to conceive naturally, given that the wife’s oocytes and the husband’s sperm are used. However, many poskim continue to view the use of donors in the process as problematic.

Acknowledgements:

Thank you to my parents for supporting me in writing this article, and especially to my father for encouraging me to participate in writing for Derech HaTeva and for reviewing my article. I would like to thank Dr. Babich for his dedication to this journal. Thank you to Rabbi Haim Steinmetz for reviewing the halachik content of this article and Dr. Michael Dahan for approving the medical content.

References:

- [1] Eli A. Rybak, (2012) Aging Ovaries and Age-Old Tradition: Elective Egg Freezing in Jewish Law by, J Halacha Contemporary Society, pp.22-50
- [2] Practice Committee of the American Society for Reproductive Medicine, (2008) “Definitions of infertility and recurrent pregnancy loss” Fertility and Sterility 09:S60
- [3] Menken J, Trussell J, Larsen U (1986) Age and Infertility, Science 233:1389-94
- [4] <http://www.cdc.gov/art/ART2007/sect2%20fig5-15.htm#14>
- [5] Aragona C, Mohamed MA (2011), Espinola MSB, et al, Clinical complications after transvaginal oocyte retrieval in 7,098 IVF cycles. Fertility and Sterility 95:293-4
- [6] Volarik K, Sheehan L. (1998) , Goldfarb J, Woods L, Abdul-Karm FW, Hunt P. Human Reproduction 13:154-60
- [7] Battaglia DE, Goodwin P, Klein NA, Soules MR, (1996), Human Reproduction, Textbook of Assisted Reproductive Techniques: Laboratory and Clinical 11:2217-22
- [8] Rambam, Torah Haadama, Shaar Ha-sakana
- [9] Chelkat Ya’akov, Choshen Mishpat 31
- [10] Iggrot Moshe, Choshen Mishpat 66
- [11] Chelkat Ya’akov, Choshen Mishpat 31
- [12] Pesachim 8b, Kiddushin 39b
- [13] Bava Kamma 91b
- [14] Ramo, Yoreh Deah 241:3
- [15] Tosfot, (s.v. bishvil tza’aro)
- [16] Tzitz Eliezer 11:41, 15:45
- [17] Genesis 38:10
- [18] Rabbinic commandment to procreate is derived from the word ‘lashevet’ - Isaiah 45:18. Further discussion in Yevamot 62
- [19] www.medethics.org.il/articles/ASSIA/ASSIA5/R0051084.asp#11
- [20] R. Ovadia Yosef, Responsa Yabia Omer, Even HaEzer 8:21
- [21] Nishmat Avraham, English 1st edition, 2004, Volume 3 (Even Haezer, Choshen Mishpatim) p.15
- [22] www.medethics.org.il/articles/ASSIA/ASSIA8/R0081046.asp