



## As Many As The Stars: Multifetal Pregnancy Reduction in Halacha

*And [Hashem] took him outside and said, "Look toward heaven and count the stars, if you are able to count them." And He said, "So shall your offspring be." (Bereishis 15:5)*

In multifetal gestations, there is a higher risk of maternal, fetal, and neonatal complications than in singleton pregnancies, regardless of whether they occur spontaneously or as the result of assisted reproductive technology and/or fertility treatment. As the morbidity and mortality of multifetal gestations increase with an increasing number of fetuses, primarily due to preterm birth, termination of one or more of the fetuses may be recommended. This is known as multifetal pregnancy reduction (MPR).

In other cases of multiple gestation, a severe fetal abnormality (either known or suspected) that has been diagnosed in one (or more) of the fetuses may be an indication for selective termination of the affected fetus to optimize the outcomes of the surviving sibling(s). Multiple gestations are at higher risk of preterm delivery, and many severe fetal abnormalities increase that risk. We will not address this latter issue in this week's essay; we will focus on the fascinating Halachic issues associated with multifetal pregnancy reduction.

From a purely scientific and medical perspective, there has been a longstanding debate regarding the effectiveness of MPR. It has been alleged that non-medical considerations have been involved in recommending the procedure. Comprehensive studies were carried out by a committee of the Israel Society of Obstetrics and Gynecology resulting in the conclusion that triplet pregnancies should be approached differently than multiple gestations of quadruplets (or more). In triplet pregnancies, parents should be provided with information about fetal reduction that "emphasize the advantages of performing this operation", but in higher-order gestations, "reduction is recommended" (usually to a twin gestation). A couple must sign a special consent form if they decline an intervention after counseling.

This essay will examine this heartbreaking and distressing topic from a Halachic standpoint.

First, it is clear that performing an abortion is *Asur mid'Oraisa*, though it is not considered *Retzicha* (for a Jew). The details of this *Isur* are beyond the scope of this

essay; we have discussed them in several essays in the past, and there is a great deal of literature on the subject.<sup>1</sup>

There is no difference in the manner that the abortion is performed; even a medication-induced abortion is *Asur mid'Oraisa*. Rav Shlomo Zalman Auerbach zt"l (*Shulchan Shlomo*, 3, *Erkei Refua* p103) cites the *Shu"t Beis Yehuda*<sup>2</sup> (1, E.H. 14) who held that an abortion induced by "*Sam*" (medication) is only an *Issur d'Rabbanan*, but Rav Shlomo Zalman disagreed. Even if this form of abortion would be considered a *Grama* (indirect), it is still forbidden. Although a person who causes an act of damage or harm by *Grama* is exempt, it is still forbidden ("*Grama b'Nezikin Patur Aval Asur*"). (See there where he explains that abortion is also forbidden because it is the theft of the fetus's life.)

The *Tzitz Eliezer* (20:2) discusses a case of a woman who was pregnant with quadruplets. After diagnostic testing, her physicians determined that it was necessary to abort one of the fetuses to allow them to deliver the other three alive. If they did not abort one, all four would die. The woman's husband was a *Talmid Chacham* and he wanted to compare the case to the famous Halacha (see *Rambam Hilchos Yesodei haTorah* 5:5) of enemies who threaten to kill an entire town of Jews if they did not hand over one individual. The Jews are forbidden to hand over anyone and must instead allow themselves to be killed. The *Sho'el* asserted that the same was true of the quadruplets – it should be forbidden to kill one of them to save the other three.

The *Tzitz Eliezer* replied that the two cases were not analogous because abortion is not actually considered "spilling blood" (which is why it is not subject to the Halacha of *Yehareg v'Al Ya'avur*). Only a *Ben Noach* is liable to the death penalty for abortion. Therefore, since each of the fetuses was considered a "*Rodef*" of the others, it is permissible to kill one to save the others. "*However, one should try to ensure that the procedure is performed by those doctors who have clearly appraised the situation.*"

At the conclusion of his *Teshuva*, the *Tzitz Eliezer* relates:

*They told me that they also went to ask this question to my dear friend, the Gaon Rav Elyashiv Shlit"a. He also responded that it was permissible. I was pleased [to hear that he had reached the same conclusion that I did].*

In a fascinating *Teshuva* (*Teshuvos v'Hanhagos* 3:358), Rav Moshe Sternbuch *Shlit"a* analyzes the comparison between these two Halachos more closely:

*I will cite a question [that] I was asked regarding a woman who was found to be pregnant with triplets (this has become common in recent times as hormones are*

<sup>1</sup> See *Igros Moshe*, C.M. 2:69-71, *Yabia Omer* 4, E.H. 1, Rav Noson Gestetner in *biShevilei haRefua* 3-4 p. 95, and *Nishmas Avraham* 425.

<sup>2</sup> R' Yehuda Ayash of Algeria, c. 1688-1760.

*used to stimulate ovulation and three or more embryos are produced). According to the doctors, her uterus is small and it is very doubtful that all of the fetuses will survive, thus it is necessary to terminate one, allowing the other two to live. One Rabbi did not want to permit it because we do not set aside one life on account of another - "Who says that the blood of this one is redder?" He cited Rav Chaim of Brisk zt"l who held that killing a fetus is Retzicha and it is only permitted to terminate when it is a Rodef of the mother. In this case, where the fetuses are each Rodef each other, it cannot be determined which is "better", thus it is preferable to sit and do nothing. The parents are weeping for they had [seemingly] experienced salvation after many years without children, of pain and distress but they are now likely to lose them all.*

In his response, Rav Sternbuch maintained that the Rabbi was mistaken, "and was endangering lives for no reason". He noted that, logically, when the act in question is not cruel (unlike the case where Jews hand over somebody to be murdered) but is a "*Ma'ase Hatzala*" – an act of saving lives (by preventing the fetuses from killing one another) – the rule, "We do not set aside one life on account of another" does not apply. He compares this to the famous ruling of the *Chazon Ish* in the case of an arrow that is shot toward five people and will kill them all but can be directed toward a single person instead. He rules that it is permissible to direct it toward the single person because it is not an act of cruelty but a *Ma'ase Hatzala*. The same is true of this case.

In fact, the *Chazon Ish's* ruling is a greater *Chidush*. In that case, the individual toward whom the arrow is redirected was not in any danger beforehand; the act places him in danger. Even so, the *Chazon Ish* considered it a *Ma'ase Hatzala* and not an act of *Retzicha*. Certainly in our case, in which the fetus that will be terminated was already in danger, it is not an act of *Retzicha*.

Rav Sternbuch adds two more considerations: First, if a fetus is unlikely to survive until birth it is unlikely to be an *Issur* to terminate it. Second, as the *Tzitz Eliezer* stated, terminating a fetus is not outright *Retzicha*, *me'Ikar haDin*. The *Kesef Mishna* states (*Hilchos Yesodei haTorah ibid.*) that the reason it is forbidden to hand over a Jew to be killed even though he will be killed in any case (when all of them are murdered) is that the *Issur* of *Retzicha* cannot be set aside. In this case, where it is not an outright act of *Retzicha* (thus the law of *Yehareg v'Al Ya'avor* does not apply), it would be permitted.

The *Tzitz Eliezer* does not delineate the specifics of his ruling. For example, how many fetuses are necessary such that it would be permitted to "reduce" them? Is there any distinction between one fetus and the other? Apparently, his intent was only to discuss the specific case in question, namely, quadruplets with a definite assessment by the obstetricians that none would survive unless one was terminated. In other cases, the ruling may not be so simple.

For example, Professor Abraham (*Nishmas Avraham*, C.M. 425) reported the following in the name of Rav Shlomo Zalman: "Regarding sextuplets, Rav Shlomo Zalman Auerbach zt"l said to me that it is permissible to abort some of the fetuses to save the others." It seems unlikely that Rav Shlomo Zalman only permitted this in the case of sextuplets. On the other hand, it does not seem straightforward to permit this practice in all cases of multifetal pregnancies, such as triplets.

Professor Abraham also relates another episode involving quadruplets where the doctors said that the pregnancy could not continue because the woman had a small pelvis. Rav Shlomo Zalman permitted aborting one or two of the fetuses, as necessary.

From the tone of these sections of *Nishmas Avraham* (we do not have any letters written by Rav Shlomo Zalman himself on the subject), it seems that the key is the doctor's view. The guiding principle is that since each fetus is considered a *Rodef* of the others it is permissible to reduce one or more, as necessary.

On the other hand, Professor Abraham cites Rav Elyashiv zt"l who forbade selective reduction in cases of triplets. However, his rationale is unclear. Did he hold that doctors could not be trusted in the case of triplets, or that there is little likelihood of danger in the case of triplets? As we saw above, Rav Sternbuch permitted reduction in a case involving triplets.

We should also point out that an important detail of the *Tzitz Eliezer's* case is absent in many other cases, namely, the clear prognosis that if the fetuses were not reduced, all of them would die. Where this is true, for all intents and purposes each of the fetuses is considered a "*Gavra Ketila*" – a dead person – and it is less difficult to permit selective reduction. But where this is not true, such as if the fetuses will be endangered but will not certainly die, while they could still each be considered a *Rodef*, they cannot necessarily be considered a *Gavra Ketila*. (However, we should note that the *Tzitz Eliezer* did not mention this consideration in his ruling. It is only invoked by Rav Elyashiv – according to the testimony of the *Nishmas Avraham* – though it is also considered by other authors to be a significant factor.)

Most contemporary Poskim conclude that MPR is permitted in cases where the fetus' lives are genuinely at risk and reduction will give the others a genuine chance of survival. However, there is significant dispute as to the number of fetuses one may reduce. Should one aim to **definitely** save the remaining fetuses and, to that end, even reduce multiple fetuses? Or should one try to save as many as possible and only reduce the number that is necessary to give the remaining ones a **good chance** of survival?

The answer lies in the fact that the right to reduce the fetuses stems from the determination that each fetus is a *Rodef* of the others. Therefore, if reducing one of them would leave the remaining fetuses only in possible danger (as opposed to facing certain death), the status of *Rodef* may no longer be applicable. If so, it would be forbidden to

reduce any more for the sake of giving the remaining fetuses a greater chance of survival.

For this reason, it is essential to carefully and responsibly consider the facts of the case before performing MPR. To our great dismay, in the current political climate and medical establishment, questions of abortion are not considered with the same gravity as they are in Halacha. It is important, therefore, to seek the advice of a qualified Rav and Posek, who will accompany the decision process and who may advise consulting a God-fearing doctor to thoroughly analyze the case. He can determine the level of risk and decide whether reduction is necessary or whether the pregnancy should continue as is. If the procedure is necessary he can also determine how many fetuses should be reduced. These are weighty questions and must not be approached flippantly.

One more related question is the stage of the pregnancy at which reduction should be performed. From a medical standpoint, it should take place in the first trimester. In Halacha there is a great debate as to whether a distinction should be made between abortions performed before the fortieth day of pregnancy, and afterward. The Gemara states (*Yevamos* 69b) that a fetus before forty days of gestation is considered "*Maya b'Alma*" – mere water. Therefore, some say that abortion at this stage is less of a grave matter. However, many of the Poskim disagree, arguing that proof cannot be adduced from the Gemara. We have discussed this at length in another essay regarding abortion for the sake of research.<sup>3</sup>

Concerning either MPR or selective termination, this is less of a consideration because the early stage of a pregnancy is not an optimal time to perform the procedure (and, in selective termination, the diagnosis prompting the consideration is generally not made until the second trimester). First, it is difficult to provide an accurate prognosis as to the chances of survival of the fetuses with or without the procedure. Second, some claim that since the fetuses are so small at this stage, terminating one of them may inadvertently endanger the others.

In any case, the Poskim agree that when MPR or selective termination is permitted, it may be performed even after forty days of pregnancy (as attested by the *Nishmas Avraham* in the name of Rav Shlomo Zalman Auerbach).

Rav Sternbuch's concluding words are fascinating:

*Here, where the doctors are suspect and are likely to hurry to terminate one given that two others will remain, even though it is not truly a doubt, one therefore specifically requires two expert doctors. We should explain to them how grave a matter this is to us and ask them whether, in their view, it is necessary, and if failing*

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<sup>3</sup> "Destroying Embryos for Research", *Parshas Noach* 5781

*to do so will create a serious concern that the fetuses will die and even an incubator will not help. [If this condition is met,] I agree to permit it.*

*However, since this is one of the gravest questions, regarding the Issur of Retzicha, it is not for me to rule – it is for the Gedolei Hora'ah. Certainly, where the tears of the parents stand before me, it is difficult for me to rule, because the emotions are acting and not purely the Halachic considerations. (See Ta'am vaDa'as, Shemos 23:8 citing R' Yosha of Kotna zt"l<sup>4</sup>.) This question was also posed to Rav Shmuel Vosner zt"l and he agreed that it was permissible, as I concluded. May Hashem save us from errors.*

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<sup>4</sup> R' Yisrael Eliyahu Yehoshua of Kotna (1821-1893), author of *Shu"t Yeshuos Malko*