



Tubal Ligation – Are Our Hands Tied? (Part 2)

In the previous essay¹, we discussed the permissibility of tubal ligation for contraception, starting with the definition and severity of the prohibition of female sterilization. We then considered whether tubal ligation could be acceptable as a contraceptive method when pregnancy is considered dangerous and no other contraceptive methods are feasible. We presented the debate among the Poskim of the previous generation as to whether it is reasonable to impose permanent abstinence on such a woman, or whether the great suffering that this would cause justifies waiving the *Issur d'Rabbanan* (according to most *Poskim*) of female sterilization.

We have already seen the *Poskim* apply the narrow concept of “great suffering” as grounds for Halachic leniency. For instance, we discussed how the *Igros Moshe* extrapolated from the laws of Shabbos, where *Issurim d'Rabbanan* are waived in the face of “great suffering”, to permit tubal ligation in specific circumstances. However, *haGaon* Rav Asher Weiss *Shlit”a* offers the following broader grounds for leniency:

In my humble opinion, it seems more plausible that since this is the [normal] marital relationship as well as human nature, a person is not commanded to abstain from the ways of the world in [the face of] a dangerous situation. Rather, he should [take steps to] prevent the danger, even by [violating] Torah prohibitions. I believe that a similar line of reasoning was written in Igros Moshe, [namely,] that it is permissible for a sick person whose life is at risk to carry the medicines he requires to save his life into the public domain [on Shabbos], as this is Pikuach Nefesh. Though he could remain in his home, [it is still permissible] since he is not commanded to stay at home. And since he is permitted to go out, he is also permitted to carry the medicines. The same seems to apply to our subject: Since she is permitted to have intercourse with her husband as is the way of the world (since the intercourse itself is not dangerous, only the pregnancy [that might result]), she should prevent danger even by [transgressing a] fully-fledged prohibition.

Rav Asher finds support for this incredible principle from the *Gemara's Heter* for three women to use a *Moch* (diaphragm) during sexual intercourse to avoid pregnancy that would put their lives at risk (*Yevamos* 12b). The clear implication is that usually prohibited contraceptive methods are permitted when it is necessary to prevent danger, even when that risk could be avoided entirely through abstinence, as suggested by the *Igros Moshe*. It must be that since intercourse falls within the gamut of normal

¹ Available on the Beis Medrash website – <https://medicalhalacha.org/2023/05/04/tubal-ligation-are-our-hands-tied/>

human activity, a person is not expected to abstain from this normal behavior unless the behavior itself is dangerous. However, if the concern is only that she may become pregnant as a result of the behavior and thereby endangered, she is not required to abstain from a normal marital relationship. Rather, she is entitled to pursue all available methods of contraception, even if this leaves her with no choice but to violate a Torah prohibition.²

The *Divrei Yatziv* (E.H. 29) provides an additional practical consideration. While Halacha may dictate that a woman who cannot use a permissible contraceptive method and for whom pregnancy poses a life-threatening risk should abstain from sexual activity, it is not realistic to expect her to exercise such self-restraint for the rest of her life. Inevitably, she may endanger her life at some point. Thus, the only viable solution is to permit tubal ligation.

Rav Asher adds a further reason to permit the ligation: *“One can also add the deliberation of the Acharonim that perhaps tubal ligation is not considered sterilization, as it is possible to remove the tie at a later time; it is, [therefore,] like a temporary sterilization.”*

In other words, although Rav Asher considers tubal ligation permanent sterilization (since the intent when undergoing this procedure is to ensure permanent sterilization), the counterargument can nonetheless be invoked as additional grounds to support leniency

At the end of his *Teshuva*, Rav Asher makes reference to Rav Eliezer Waldenberg’s discussion of the subject in an incredibly clear *Teshuva* (Tzitz Eliezer 14:96). He clearly and concisely summarizes the debate, relating to the aforementioned reason as well. Due to the clarity of his presentation, we will present some of his discussion:

A young woman with high blood pressure and a kidney disorder had previously given birth to four daughters and a son. Her most recent pregnancy had seriously endangered her life and her doctors had insisted that she refrain from getting present again. She was incapable of using Halachically permissible forms of contraception as her hypertension precluded hormonal contraceptives, IUDs caused continuous bleeding that prevented her from counting *Shiva Neki'im* and going to the Mikva to

² He further cites the ruling of the *Avnei Nezer* (Y.D. 262) who permitted a woman to enter into a situation of risk in order to allow her to engage in normal marital relations with her husband. In that case, a woman had a serious ear condition, such that *Tevila* in a *Mikva* posed a degree of risk due to the possibility that the water would enter her ears. Although here too he could have required abstinence, the *Avnei Nezer* permitted the woman to take the risk and go to the *Mikva*, in order that she could continue to live with her husband. Rav Asher suggests that this leniency leads us to a remarkable conclusion: If it is dangerous for a woman to become pregnant, it is permissible for her to engage in intercourse with her husband utilizing an imperfect but Halachically permissible contraceptive method, and she can, therefore, undergo sterilization to eliminate the chance that she may still become pregnant and put her life at risk!

become permitted to her husband, she had a prolapsed uterus which ruled out a diaphragm, and spermicidal foam is unreliable and was therefore rejected by her doctors. Could she avail herself of the last possibility, namely, tubal ligation?

The *Tzitz Eliezer* begins his reply by referencing his earlier *Teshuva* on contraception (9:51 *Sha'ar* 2 Chapter 4), in which he concluded that tubal ligation is the least desirable method. However, he adds, when there is no viable alternative, such as in the case of this young woman, she may undergo tubal ligation.

As to the argument that she can avoid danger by abstaining from sexual intercourse, he writes that this would entail "*great psychological suffering and render the woman an Aguna*". Therefore, it is permissible to waive the prohibition of female sterilization which most of the *Poskim* consider only *mid'Rabbanan*. Furthermore, even the *Gra* who considers it a Torah prohibition agrees that this prohibition does not carry the penalty of *Malkos* (lashes).

He adds that many leading *Poskim* hold that there is no prohibition of female sterilization when it is not performed destructively, but rather to prevent sickness or painful births. He also cites the opinion of the *Taz* (cited in the previous essay), who holds that female sterilization is only forbidden under the general prohibition against self-harm. Therefore, as other *Poskim* had already argued, it is obvious that sterilization to prevent medical is permitted, as this cannot be considered harm.

He goes on to argue:

Neither the woman nor her husband are required to sacrifice what is dear to them through abstinence or divorce so that they will not sterilize her. Decreeing divorce or abstinence on a couple like this one is more severe than the monetary loss that one is obligated to incur to avoid transgressing a Lo Sa'ase (See Y.D. 157:1 with Pischei Teshuva and Darkei Teshuva) as this is intertwined with psychological suffering and a great sacrifice of [quality of] life (and abstention itself is associated with a constant [risk of] the husband's transgression of Hotza'as Zera l'Vatala).

He supports his reasoning with the *Rema's* ruling in the following case of the *Shulchan Aruch* (E.H. 134:8):

If non-Jews coerced him to divorce: if he was Halachically required to divorce her, the divorce is invalid, but he has nevertheless disqualified her from marrying a Kohen. However, if he was not Halachically required to divorce her, this does not even have the "Rei'ach haGet"³, and he has not disqualified her from marrying a Kohen.

³ [Editor's note: Literally, "scent of a Get". *Chaza"l* forbade a woman who received an invalid *Get* from marrying a *Kohen* (after the death of her husband) in certain scenarios if the invalid *Get* was sufficiently similar to a valid *Get*.]

Would the Halacha remain the same if, in addition to coercion, the non-Jews offered the husband money? The *Rema* addresses this question by adding: “*And even if he received money for delivering the Get, we do not say that he consented*”.

To explain the ruling of the *Rema*, the *Pischei Teshuva* (17) cites the *Toras Gittin* who ruled that this applies even when the husband is offered an enormous sum of money. Even though the *Rashba* rules in a *Teshuva* that one is not considered coerced if he agrees to divorce his wife to avoid monetary loss, here it is different as he was simultaneously coerced physically. We presume that he consented to the divorce due to the application of physical force and not due to the financial incentive:

Perhaps all wealth is inadequate in his eyes [relative to] his wife, for his wife may be as beloved to him as his self, and, if so, he is not delivering the Get due to the money, only due to the coercion and the beatings. On the other hand, in the case of the Rashba, there is no coercion other than the money that he would have been obligated to pay if he did not divorce her, and he divorced her only out of fear of losing his money, as he does not fear anything other than his possessions since [he knows that] they will not take his life from him. And when he divorces out of fear of monetary loss, we see that money is more valuable to him than this woman.

The *Tzitz Eliezer* derives from here that we generally assume that money does not come into question when it comes to a person's wife. When it comes to the cost that one must incur to avoid violating a Torah prohibition, it is important to note that while a person is required to give up all of his money, this does not mean that he must also give up his spouse. This is especially true in our case since the prohibition of sterilization is only *mid'Rabbanan* according to most *Poskim*.

His next argument to permit tubal ligation is the one Rav Asher referred to:

One can add as a further reason to permit the suggested method of sterilization that it is performed in a manner that in some cases is possible to reverse and restore her childbearing ability, as they can surgically undo the ligation or reattach the fallopian tubes to the uterus and she will then once more be capable of having children.

As mentioned above, Rav Asher rejected this argument since her intention at the time of the initial procedure is to permanently render herself incapable of becoming pregnant. A slightly different counterargument is offered by Rav Waldenberg. Even if future surgery can restore her ability to have children, the current procedure is essentially permanent since she will never again bear children without surgical intervention. Nonetheless, Rav Waldenberg suggests that the possibility of reversal renders tubal ligation less Halachically severe than other irreversible methods of sterilization, and that this could be grounds for leniency when there is no viable alternative.

Rav Asher concludes his *Teshuva* by adding that it is preferable to have a non-Jewish doctor perform the procedure, as this only entails the prohibition of *Amirah l'Nachri* – instructing a non-Jew to perform a forbidden act on one's behalf. Her physical participation is only "*Mesayei'a*" (insignificant assistance) as she does not have an active role in the procedure itself.