



Abortion in Halacha – Part 3: Teratogenic Therapies

This is the final essay in our series on termination of pregnancy. The initial essay discussed whether abortion is permissible when the mother's life may be endangered, and we reviewed the two approaches of the *Rishonim* as to why the mother's life takes precedence over the fetus. Our last essay examined the issue of medical procedures or medications that may cause a miscarriage when the mother's life is not endangered, and we cited the permissive opinion of R' Elyashiv *zt"l*.

This essay will address a third question: May the mother take medications that will cause harm to the fetus (though not cause a miscarriage)? Certainly, if an alternative is available she should take it, and, if they are not strictly necessary, she should certainly avoid them, but what about necessary medications?

There are three possibilities: 1. Taking the medications is forbidden 2. Abortion is permitted to avoid the possibility of giving birth to a baby with a congenital defect. 3. Taking the medication(s) is permissible but abortion is forbidden, leaving her open to the risk of giving birth to a baby with a congenital defect. We will discuss each of these separately.

The first option does not seem like it could be correct as R' Elyashiv permitted the mother to take medications that risk causing a miscarriage, so it appears that he would certainly permit her to take medications that risk causing birth defects. The second possibility also seems incorrect as we would not abort a fetus just because it would be born with a congenital defect. After all, a person cannot be killed simply because he has a physical or mental disability! Therefore, the third option must be acceptable even though the outcome appears harsh.

HaGaon Rav Asher Weiss Shlit"a was asked about a complex case involving a young woman who was diagnosed with cancer at the beginning of pregnancy. The doctors believed she could continue the pregnancy and give birth because the cancer was not particularly malignant. However, it was possible that the disease would progress more quickly, in which case chemotherapy would be required and the pregnancy would need to be aborted.

(The *Sho'el* made note of the fact that the pregnancy was within forty days of conception and pointed out that several Poskim hold this to be a reason for leniency. However, Rav Asher stated that it made no difference in his view. If there was a chance

that the pregnancy could be completed safely, there was no basis for termination now due to the chance that it might be required in the future. He ruled that she should continue the pregnancy, and, if the malignancy progressed and required chemotherapy before delivery, an abortion would be permissible in order to treat her.)

In his response, Rav Asher assumed the accepted medical position that chemotherapy should not be initiated when a woman is pregnant (nor even advanced diagnostic testing due to the exposure to radiation that would likely cause great harm to the fetus).

The prevalent attitude of doctors around the world favors the abortion of fetuses that will be born with (serious) congenital defects. However, this is because they do not believe that abortion is a grave matter at all. Given that abortions are routinely performed for non-medical reasons, most people would likely have no qualms about termination in a case like this.

This may also be the accepted legal perspective. If a child is born with a defect, he can sue his parents (and the physician) for harming him for the sake of his mother's medications. (Cases like this have arisen in courts around the world.) Therefore, doctors do not want to continue a pregnancy of this nature.

Rav Asher explained that this is incorrect. We cannot consider this from the standpoint of the child's right to a future lawsuit. The question is solely whether it is permissible and correct. One could even make the opposite claim: Who gave the parents the right to abort the fetus rather than allowing it to be born?

In Halacha, it is certainly preferable to harm a person rather than kill him. Killing a person is a capital crime but injuring him is only a *Lo Sa'asei*. By extension, if a person is pursuing another person to kill him and one can disable *the Rodef* by injuring him, one may not kill him. Here too, where the mother is permitted to take the teratogenic medications, it should be forbidden to terminate the pregnancy when "merely" harming the fetus (by allowing it to be born) is possible.

This would appear to be a straightforward conclusion; however, Rav Asher makes the following contention:

However, there is room to say that when we terminate the pregnancy – an act that can only be judged in its time and place – we consider [only] the original situation. Since [at that time] it is merely a fetus, its life is set aside on account of its mother's. This is not the case when we cause it to be mentally impaired or physically defective. We would have to consider that from the perspective of the baby that was born, grew up, and had to live with the defect that we brought upon it. At that stage, it would be a Nefesh and one may not cause harm to one person to save

another person from death, just as we do not amputate one person's limb against his will to save another.

To understand Rav Asher's contention, we must return to the basic principles discussed in the first essay in this series. Essentially, the Halacha follows Rashi and the other *Rishonim* who hold that the reason a fetus' life is set aside to save its mother is because it is not considered as much of a "*Nefesh*" as she is. In other words, we look at their respective situations at the time of the termination, when the mother is alive but the fetus is not. Therefore, the mother's life takes precedence. We do not consider the fact that the fetus will later be alive and that termination now would prevent that future life.

Rav Asher argues that this is only true when considering termination. If, however, the fetus will be born, we must consider all of the ramifications of our actions now (and not only what will happen if we do not act). There is no basis for burying our heads in the sand and ignoring the reality that this fetus will face if it is born with serious defects. A person who is already living cannot be harmed in any way, even to save the lives of others. The same could perhaps even be said of the fetus, therefore, perhaps it would be permitted to terminate the pregnancy (which, as stated above, requires consideration only of the current situation, and not the future ramifications).

This is somewhat reminiscent of the *Psak* of the *Rishonim* that one may desecrate Shabbos to save the life of a fetus. Though a fetus is not included in the injunction of *vaChai Bahem* (the usual source that *Pikuach Nefesh* is *Doche Shabbos*) since it is not alive, it would be included in the principle, "*Desecrate one Shabbos for it so that it will be able to observe many other Shabbosos*" (*Yoma* 85). In other words, if we look at the state of the fetus now, we would have no permission to desecrate Shabbos based on "*vaChai Bahem*" would apply. But, if we consider its future potential as a "full-fledged *Nefesh*", we are justified in saving its life because it will go on to observe Shabbos when it is born. A similar argument can be made here. If we seek to terminate the pregnancy, we must consider only the current situation. If there is a risk of congenital defect(s), we must take the future possibilities into account.

[My good friend R' Mordechai Orlinsky pointed out that the following argument could be made in light of the above: If a medication will not cause the immediate death of the fetus, but will cause its death at a later date (*i.e.*, after birth), the Halacha will depend on which of the two above approaches we take. According to the first approach (that we do not consider the fetus's potential future life and it is permissible to either cause its death or risk significant congenital defects), the same would apply in this case. But, according to R' Asher, we do consider the fetus' future when it is expected to be delivered. If so, it would only be permissible to cause a miscarriage before the birth, not postnatal demise. (This distinction requires further study but does appear to be correct).]

Rav Asher refrains from definitively ruling this way as he feels that the argument might be overly complex and the distinction too subtle as the basis of a *Psak*. In the case that was presented to him, there was no practical difference as there are no hospitals that would administer chemotherapy to pregnant women. The question was therefore simply which life should take precedence, the mother or the fetus, to which the answer is clear: the mother's life takes precedence and the pregnancy should be terminated.

In conclusion, there are many medications that can be taken during pregnancy that are not lifesaving but have a risk of causing congenital deformities in the fetus. As stated above, Rav Elyashiv permitted medications that risked causing a miscarriage. It requires a lot of study as to whether the argument would also apply in this case.