



## May a Woman Refuse Fertility Treatment?

***"And you, be fruitful and multiply and fill the land." (Bereishis 9:1)***

The Mitzva of *Pru uRevu* (procreation) is considered to be one of the central and most important Mitzvos. *Sefer haChinuch* (Mitzva 1) writes:

*...In order that the world will be inhabited, for Hashem wishes that it be inhabited as it states (Yeshaya 45:18): "He did not create it for emptiness; He fashioned it to be inhabited." It is a great Mitzva, through which all of the Mitzvos in the world are fulfilled, for (Mitzvos) were given to people, not to the ministering angels.*

In order to fulfill the Mitzva, a couple must engage in sexual relations, according to the laws of the Mitzva of "*Onah*". They may not desist from this Mitzva until they have produced viable offspring.

However, not all couples are fortunate enough to be able to procreate in the regular manner. As many as one in ten couples experiences difficulties in becoming pregnant. In recent decades, reproductive medicine has developed advanced diagnostic and treatment methods. There is a wide range of fertility treatments that can be tailored to individual couples according to their specific issues.

Broadly speaking, there are two principle forms of fertility treatment - those that are designed to correct minor issues, following which the couple are able to procreate in the regular fashion (such as pills that regulate a woman's menstrual cycle and ovulation), and those that help them to do so artificially, such as IVF and other assisted reproductive technologies.

In this essay we will attempt to clarify whether a couple that is struggling with fertility is *obligated* to undergo fertility treatment. Many are familiar with the questions discussed by the Poskim regarding the permissibility of these treatments. However, that will not be the focus of this discussion being that the general consensus of the Poskim today is to permit them (under various conditions) and couples who are struggling with fertility do tend to make use of them.



From our perspective, we should view the wonderful medical advances in the field of fertility in a positive light. We must never take lightly the dreadful suffering of those who are unable to have children and who have waited and struggled for many long years. The longing for children is one of man's most basic traits and the thought of remaining barren may be almost impossible to bear. The statement of *Chaza"l* that "a person without children is comparable to one who is dead" is not an exaggeration or hyperbole.

Therefore, any activities that promote or enable couples who are struggling in this area to realize their dreams, giving them an easier and more convenient path to bearing children, and affording them the most sophisticated medical and scientific techniques are to be commended. These activities help bring new children to the world and afford a happier life to a married couple and their relatives.

My dear friend, Rabbi David Fuld, who has made enormous contributions to organizations that help couples with infertility (and whose generosity made the establishing of our Beis haMedrash a reality), maintains that the question posed by the Heavenly court after a person's death, "did you engage in *Pru uRevu*?", can be seen not only as a query as to whether he bore children but also to a broader sphere of activity – "did you help advance the cause of *Pru uRevu* in the world?"

From this positive perspective, let us focus on the question of whether a couple is obligated to undergo fertility treatment in order to fulfill the Mitzva of *Pru uRevu*.

In general, fertility treatments cause difficulties for a couple who undergo them, whether through the associated constant stress and tension or due to the pain, discomfort, or inconvenience that are entailed. Some are also extremely costly<sup>1</sup>.

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<sup>1</sup> The obligation to expend money on fertility treatments is beyond the scope of this essay. In general, there is an obligation to spend up to one-fifth of one's assets in order to perform *Mitzvos Asei* (*Rema, O.C. 656*, see *Mishna Berura ad. loc.*). However, the *Avnei Nezer (E.H. 1:8)* maintains that the Mitzva of *Pru uRevu* is different. The *Shulchan Aruch (E.H. 154:10)* rules that essentially one may divorce one's wife if she has not borne children to him. Certainly, parting with all of one's money and assets is easier than divorcing one's wife. We must therefore conclude that one would indeed be obligated to do so. The reason why *Pru uRevu* may be different than other *Mitzvos Asei* is that if one does not spend the money, one will lose the chance to ever fulfill the Mitzva. This is the conclusion of the *Piskei Teshuva (123)*. However, the *Pischey Teshuva (E.H. 154:27)* holds that there is no obligation to spend more than a fifth of one's assets in order to fulfill the Mitzva of *Pru uRevu*.



This can lead to a situation where either the husband or wife, or perhaps both of them, do not wish to undergo treatment. The question is whether it is permitted to refrain from treatment, considering that it will lead to them being unable to fulfill the Mitzva of *Pru uRevu*.

We will begin with a general overview of the Mitzva, followed by a distinction between the two types of therapy. Finally, we will examine whether there is a difference between the respective obligations of the husband and the wife in this regard.

### **The Mitzva of “*Pru uRevu*”**

The Gemara in *Yevamos* (61b) records a dispute between *Beis Shammai* and *Beis Hillel* regarding the parameters of the Mitzva of *Pru uRevu*. According to *Beis Hillel*, one has only fulfilled the Mitzva when one has fathered a son and a daughter; according to *Beis Shammai*, two sons. The Gemara explains that *Beis Hillel* reasoned that since Hashem chose to begin the human race by creating a man and a woman, each person must also endeavor to bear a son and daughter. *Beis Shammai* countered that Hashem only did so because that was the only way that the human race could multiply. Moreover, Moshe Rabbenu separated from his wife when he had fathered just two sons (Gershon and Eliezer). The Halacha is in accordance with *Beis Hillel* (*Rambam, Hilchos Ishus* 15:4).

That is as far as one's obligation *Min haTorah* is concerned. However, the *Chachamim* added a further obligation to bear children as the Gemara (*ibid.* 62a) relates:

*It was taught in a Braisa: R' Yehoshua says – if a person married a woman in his youth, he shall marry a (different) woman in his old age. If he fathered children in his youth, he shall father children in his old age, as it says (Koheles 11), “In the morning sow your seed and in the evening do not be idle, for you cannot know which will succeed – this or that – or whether both are equally good.”*

In addition (as we shall discuss shortly), there is a general obligation (known as “*Sheves*”) to populate the world by bearing children that is derived from the Pasuk in *Yeshaya* (45:18): “*He did not create it for emptiness; He fashioned it to be inhabited.*” This applies even to those who have already fulfilled the Mitzva of *Pru uRevu*.



### Is a Woman Obligated in *Pru uRevu*?

The Mishna in Yevamos (65b) records a dispute between the *Tana Kama* and R' Yochanan ben Beroka as to whether a woman is obligated in the Mitzva of *Pru uRevu*. The *Tana Kama* holds that she is not but R' Yochanan ben Beroka contends that both man and woman were addressed in the Pasuk of "and Hashem blessed them and he said to them, be fruitful and multiply". The Rambam (*Hilchos Ishus* 15:2) and other Poskim (see *Shulchan Aruch E.H.* 1:13) rule in accordance with the *Tana Kama*.

The Gemara explains that the reason that the Chachamim say that a woman is exempt from the Mitzva is because the Pasuk says "populate the world and conquer it". Since it is not the manner of women to "conquer" the world, the Pasuk cannot be referring to women when it instructs us to "populate the world"<sup>2</sup>.

The *Meshech Chachma* (*Bereishis* 9:7) famously explains that the reason that the Torah did not obligate a woman in *Pru uRevu* is because "Deracheha Darchey Noam" (the Torah's ways are pleasant). The Torah never obligates a person in something that is beyond his capabilities or that is exceedingly difficult. Since women place their lives in danger by going through pregnancy, labor, and delivery, the Torah does not directly obligate them to bear children.

Moreover, the Torah does not expect a woman to forgo her natural desire to remain married to the husband she loves<sup>3</sup>. The Halacha is that if a man cannot procreate with one woman, he should marry another woman who has already had children<sup>4</sup>. Since, by Torah law, he may be married to two women at once, it is not necessary to divorce his first wife. However, a woman may not be married to two men, and were she to be obligated in *Pru uRevu*, she would need to be divorced from her husband and marry another man. The Torah does not expect this from her, and the *Meshech Chachma* posits that this may be another reason that women are exempt from the Mitzva of *Pru uRevu*.

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<sup>2</sup> The Gemara (*ibid.*) notes that although a woman does not have an obligation of *Pru uRevu*, she may nevertheless demand that her husband provide her with biological children who will take care of her when she grows old. It also emerges from the Gemara that since a woman is not obligated in *Pru uRevu*, it is permitted to sterilize her by having her drink a "Kos Shel Ikrin" (a mixture that causes sterility when ingested). This is cited l'Halacha (*Shulchan Aruch E.H.* 5:12). See the Beis Shmuel (*ibid.* 14) who cautions that this only permits chemical sterilization but not surgical sterilization.

<sup>3</sup> The Gemara famously says that from a woman's perspective "Tav l'Meisav Tan Du mil'Meisav Armela" (it is better to live together with somebody else than to live alone).

<sup>4</sup> I.e. a divorced or widowed woman who has confirmed her ability to procreate



Nevertheless, a woman may have an obligation of “*Sheves*” - the general obligation to populate the world by bearing children as mentioned above. The Mishna in *Gittin* (4:5) is clear that an *Eved Cana’ani* who is half-enslaved and half-emancipated<sup>5</sup>, who cannot fulfill the Mitzva of *Pru uRevu*<sup>6</sup>, is still obligated in *Sheves* and his master must free him so that he can marry and fulfill the Mitzva. According to the *Magen Avraham* (159:9) and *Beis Shmuel* (1:2) it is apparent from *Tosfos* (*ibid.* 41b, s.v. *Lo Sohu*) that the same applies to a woman. However, the *Aruch haShulchan* (*E.H.* 1:4) disagrees with their understanding of *Tosfos* and brings a proof from the *Rambam* (*Hilchos Isurey Biah* 21:26) that a woman is not obligated in *Sheves*. This is corroborated by a *Teshuvos haRan* (32) cited by *R’ Akiva Eiger* (*E.H.* 1)<sup>7</sup>.

Though a woman is exempt from *Pru uRevu*, she does have an obligation to engage in sexual relations with her husband and bear him children. This obligation can be defined in one of two ways. One possibility is that it is an extension of her husband’s obligation as she is the means through which he fulfills the Mitzva of *Pru uRevu*. This is implied by the *Ran* (*Teshuvos* 32 in the name of “*haRav R’ Dan*”) who writes that she does fulfill a Mitzva when she has children with her husband even though she has no actual obligation. If so, the extent of her obligation is only as far as her husband’s obligation.

Another possibility is that the responsibility to bear children is one of several marital obligations (that are understood to be part of the role of a married woman) that she undertakes when she is married. (Her husband similarly assumes several obligations that are understood to be a part of his role.) If this is the case, her obligation does not necessarily mirror that of her husband and she may be obliged to him even if he has no obligation to fulfill *Pru uRevu* at that time.

The practical difference between these two approaches would emerge in a case where a man is able to marry a second wife. According to the first approach, his first wife’s obligation to bear him children would disappear as it is only in effect when she is the only means through which he can fulfill his Mitzva of *Pru uRevu*. However, if it is one of her marital obligations, then it would be in effect regardless of the possibility that her husband can bear children from another woman.

<sup>5</sup> E.g. an *Eved* who is owned by two partners and one has freed him while the other has not

<sup>6</sup> As he cannot marry neither a maidservant nor a free woman.

<sup>7</sup> See also *Minchas Asher*, *Kiddushin* 45.



The first approach is, in fact, the position of the *Chasam Sofer* (*Shu"t E.H.* 20) who rules that if a woman has already fulfilled the Mitzva of *Sheves* (by previously bearing at least one child) and does not wish to become pregnant again, *if her husband is permitted to marry another woman* (as was the case before the *Cherem* of *Rabbenu Gershom*) she may sterilize herself even without her husband's consent<sup>8</sup>.

According to the *Chasam Sofer*, if we make the assumption that there is no actual obligation to undergo fertility treatments (even for a man who is obligated in *Pru uRevu*), then a woman could refuse them as she is only obligated to bear children to the extent that her husband is. However, if her obligation is based on her marital commitments, then she may be required to undergo treatment as doing so is the accepted normal practice for couples who are struggling with fertility and their agreement to be married included an implicit agreement to bear children even through fertility treatments.

### **Fulfilling *Pru uRevu* through Assisted Reproductive Technology**

There are Poskim who hold that one does not fulfill the Mitzva of *Pru uRevu* if one produces children through assisted reproductive technology. If so, one would certainly have no obligation to endure them. However, the vast majority of the Poskim hold that one certainly does fulfill the Mitzva in this manner and it is with regard to their view that we are investigating whether there is an *obligation* to do so<sup>9</sup>.

Rav Shlomo Zalman Auerbach *zt"l* (cited in *Nishmas Avraham* 5, p113) ruled that "*a couple has no obligation to undergo IVF in order to fulfill Pru uRevu*". No reason is provided for his ruling and it could well be that he held that doing so is beyond the extent that a person is obligated to exert himself to fulfill a *Mitzvas Asei* (just as he is not obligated to spend more than a fifth of his assets in order to do so – see footnote 1).

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<sup>8</sup> If he is unable to marry another woman then she may only sterilize herself if she is willing to accept a *Get* for having done so.

<sup>9</sup> See *Divrei Malkiel* (4:107) who rules that one only fulfills the Mitzva through engaging in regular sexual relations (see there at length, particularly his conclusion). See also *Har Tzvi* (E.H. 4) who disagrees and holds that one fulfills the Mitzva regardless. The *Minchas Chinuch* (Mitzva 1:26) maintains that even if a woman becomes "*pregnant in the bath*" (meaning that her husband ejected semen into the bath and afterwards, when his wife bathed there, it impregnated her), her husband has fulfilled the Mitzva. The *Chelkas Mechokek* (1:8) is unsure about this but the *Beis Shmuel* proves that one does fulfill the Mitzva in this fashion. The *Emek Halacha* (68) asserts that if the fertilized sperm is inserted into the woman's uterus, the Mitzva is certainly fulfilled as doing so is considered an "act". See *Minchas Yitzchak* 1:50, *Yabia Omer* 2, E.H. 1, *Tzitz Eliezer* 3:22 and a summary of the positions in the *Encyclopedia Hilchatit Refuit, Erchey Hazra'a Melachatit* and *Poriyut*.



However, it is reasonable to assume that the reasoning of Rav Shlomo Zalman was that the Mitzva of *Pru uRevu* only obligates a person to engage in regular *Hishtadlus* in order to bear children. There are those who say that the parameters of the Mitzva are tied to those of the Mitzva of *Onah* and therefore, a person who is only obligated by the Mitzva of *Onah* to engage in sexual intercourse with his wife once or twice a week need not do so more often in order to try to fulfill *Pru uRevu*. Many *Acharonim* wonder why this would be the case, but the most logical explanation is that by its very nature the Mitzva of *Pru uRevu* is only an obligation to **attempt to procreate**. Nobody can determine whether one's efforts in this regard will bear fruit, therefore, the obligation is only to engage in reasonable, normal *Hishtadlus* – each couple according to its situation. Perhaps, in Rav Shlomo Zalman's view, this *Hishtadlus* does not include fertility treatments either.

If this is the case, it is likely that it would make no difference whether the treatment in question is common or readily available or not. Though today most couples do decide to undergo treatment, it still cannot be described as a *natural method of procreation*. Therefore, there would be no actual obligation to do so.

However, that would only be true in the case of treatments like IVF which are not natural methods of procreation. Treatments that help a couple procreate in the regular way (such as pills that regulate a woman's menstrual cycle and ovulation) may well be within the realm of regular, natural *Hishtadlus* (as they resemble any other form of medical treatment) and the couple may be obligated to undergo them. (See the *Chelkas Yoav* 1, who rules that if a person is able to undergo medical treatment that will allow him thereafter to perform a certain Mitzva, he is obligated to do so, and if he does not, it is not considered to be an *Ones*.)