

Jerusalem Post > Judaism

Should Israel allow posthumous sperm donation?

The halachic and ethical wisdom of this procedure, of retrieving sperm of deceased IDF soldiers, has been challenged on a number of different grounds.

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A medical professional works with a Petri dish in a lab. (Illustration)
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In 2022, the short-lived 24th Knesset passed early-stage legislation to authorize the IDF to ask enlisting male soldiers if they would want their sperm

posthumously extracted should they die in service.

Medical technology today allows for such sperm retrieval through a minimally invasive process within 72 hours after death.

In the past, various ethics committees and courts have allowed, on an ad hoc basis, such sperm retrievals at the behest of bereaved widows or parents. While the Knesset has not set any regulations on this process, it is believed that there are a few dozen children in Israel who have been born through an in vitro fertilization of the surviving widow or, in the cases of an unmarried soldier, a woman chosen by the bereaved parents.

Top Articles

The legality of posthumous sperm retrieval

Germany, Italy and Sweden. Some advocates see this as yet another area in which Israel will pioneer reproductive procedures. Others view this as a grave moral breach in which we are producing “planned orphanhood” for the sake of a creating a “living memorial” to the deceased.

“The first child that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel.”

Deuteronomy 25:6

ONE OF the impetuses for facilitating such a procedure is to allow the deceased to leave behind descendants to preserve his legacy. In biblical law, when a married man dies without any progeny, a “levirate marriage” is arranged between his brother and widow. “The first child that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel,” the Bible declares (Deuteronomy 25:6). Such marriages have largely been

defunct for many centuries. Nonetheless, some Israeli jurists and rabbis view posthumous sperm implantation as a modern-day version of this biblical value.



Irit Gunders with Nitza Shmueli meet with Interior Minister Ayelet Shaked. (credit: OR LAMISHPACHOT ASSOCIATION)

The most prominent supporter of this line of thought was Rabbi Zalman Nehemia Goldberg, who argued that such a procedure is permissible if the deceased gave explicit permission or “we can safely assume that he would have desired this.” While it may be sometimes difficult to know the desires of the deceased, one must take into account the “natural human desire” to leave a

legacy. Goldberg further argued that the default perspective of Jewish law is to permit an action unless it violates some clear prohibition.

In this spirit, Rabbi Dr. Mordechai Halperin has deemed this the ultimate act of kindness (hessed) to the deceased. Other scholars who have given general support to this process, in one form or another, include rabbis Meir Mazuz, Avraham Stav and Dr. Avraham Steinberg.

The halachic and ethical wisdom of posthumous sperm donation

THE HALACHIC and ethical wisdom of this procedure, however, has been challenged on a number of different grounds.

Firstly, Rabbi Shaul Yisraeli questioned whether a person can posthumously do an act that creates fatherhood. It is one thing when a pregnant widow gives birth to a child after her husband tragically died. It is quite another matter, Yisraeli argued, when sperm is posthumously extracted. In his mind, the child wouldn't even be recognized as his child.

Rabbi Shlomo Zalman Auerbach and others, however, contended that the biological provider of the sperm never loses his status as the father, as in other cases of IVF. As such, this child would continue the deceased's genealogical lineage.

Yet even if this is true, this does not necessarily mean that any mitzvah of procreation was fulfilled through posthumous fertilization. As Rabbi Asher Weiss has argued, the deceased cannot perform mitzvot. "Levirate marriages" might fulfill a biblical mandate, but that does not mean that a partially analogous act that produces a similar result bears any religious value.

Others, like Rabbi Dr. Yigal Shafran, worry that in cases when sperm was not already frozen in one's lifetime, the procedure to retrieve it violates the biblical prohibitions of desecrating a corpse or gaining illicit benefit from it.

It is true that we generally allow for posthumous organ donation. In those cases, the biblical prohibitions are trumped by the greater value of saving lives (pikuah nefesh). In this case, however, a life is being created, not saved.

Some retort that the sperm retrieval process is so noninvasive that it does not violate any of these prohibitions, especially when performed within 12 hours of death through an electric shock (electroejaculation). They further contend that

posthumous procedures performed for the sake of the honor of the deceased cannot violate these prohibitions.

Some figures, like Rabbi Yuval Cherlow of the Tzohar rabbinic group, have contended that we can claim that the use of this sperm fulfills the wishes of the deceased only if he previously approved of this in a living will or if the widow requests it. Those two are the only ones empowered to make such an intimate and personal decision. No one else, including the bereaved parents, have any right to bring this child to the world.

This approach, however, was rejected by a range of figures, including rabbis Yosef Shalom Elyashiv, Dov Lior and Nachum Eliezer Rabinovitch, who offered a more fundamental moral objection. While they are deeply sympathetic to the bereaved widow or parents, they contend that it is immoral to bring a child into the world knowing that he or she will not have a biological father. However noble the intentions, it is not in the interest of the child or broader society to allow such a phenomenon.

In this spirit, the [PUAH fertility and Halacha institute](#) has voiced vehement opposition to the currently stalled Knesset legislation.

Time will tell whether the next Knesset will take up this sensitive and contentious topic. ■

The writer is the executive director of the Halachic Organ Donor Society and author of A Guide to the Complex: Contemporary Halakhic Debates.

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