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PARTURITION

The Medical Background of Some Halakhic Maimonidean Rulings

According to Halakhah, saving life takes precedence over the prohibitions of Shabbat. A seriously ill person should, therefore, always be given the most efficient treatment available. If such treatment involves performing an act normally forbidden on Shabbat, it is sometimes possible, without any harm to the patient, to perform that act *in a manner other than that of the standard, usual and ordinary procedure ('beshinnuy')*. The question is whether it is necessary in such circumstances to minimise the Shabbat prohibition as far as possible by using a *shinnuy* in applying the treatment. Maimonides and Nachmanides hold different opinions in this matter.

According to Nachmanides, the requirement to use a *shinnuy* where possible is derived from the Talmudic rule concerning a woman in labour on Shabbat, when any act to comfort her and set her mind at ease should be performed if possible with a *shinnuy*.

On the other hand, Maimonides, who practised medicine in Morocco and Egypt, differentiates between the psychological needs of a woman during the first stage of labour and the medical care needed during the life-threatening stage which begins at the second stage of labour.

By clarifying both the medical background and the halakhic opinion of Maimonides, most of the difficulties raised by the commentators concerning Maimonides' ruling are avoided.

1. INTRODUCTION

It is a well-established principle of Halakhah that life-saving procedures take precedence over the observance of the Sabbath.¹ Consequently, for someone who is ill and in a life-threatening condition, it is a duty to violate the laws of the Sabbath: "one who is zealous in doing this deserves praise, while one who delays by asking [for a halakhic decision] is [equivalent to] a spiller of blood."²

The setting aside of the rules of the Sabbath on behalf of a patient whose life is in danger applies not only to restrictions of rabbinic origin, but even to those of Torah origin.¹ The question is whether it is necessary to minimise, as far as

possible, the Sabbath prohibition which is set aside in order to save the patient's life. This can be done, for instance, by applying the treatment *in a manner other than that of the standard, usual and ordinary procedure* (*'beshinnuy'*), thereby setting aside a prohibition of rabbinic origin instead of a commandment of the Torah.³ On the other hand, it might be held that when a life is threatened there is no obligation to minimise the severity of the prohibition that is being set aside.

Some authorities relate this to the age-old question: Are the Sabbath law restrictions *inapplicable* when a life is in danger, so that acts otherwise prohibited are *permitted* (*'hutra'*)? Or are they merely *overridden* and set aside (*'dehuyah'*)?⁴ It can be shown that our question does not necessarily depend on this distinction.⁵

2. THE DISPUTE BETWEEN MAIMONIDES AND NACHMANIDES

On this point of practical application of the law there is a dispute between Maimonides and Nachmanides. According to the former, "Sabbath with respect to a patient whose life is in danger is like a weekday in all matters concerning his needs,"⁶ so there is no need to reduce the breach of the Sabbath by doing things "in an unusual way."⁷

Nachmanides, on the other hand, considers that wherever the patient can be treated by "doing things in an unusual way" without reducing the quality of the treatment, this must be done in order to reduce the degree of breach as far as possible.⁸

3. NACHMANIDES' EVIDENCE

Nachmanides' sources are the Talmud's discussions on two issues:

- (a) A woman who gives birth on the Sabbath.⁹
- (b) Circumcision on the Sabbath.¹⁰

(a) A woman who gives birth on the Sabbath

It is explained in a Baraita that for a woman who gives birth and needs olive oil at the time of birth [on a Sabbath], olive oil may be carried via a public domain, but that the carrying should be done if possible in an unusual way: "Wherever it is possible to do it in an unusual way, that should be done."⁹

Since the Talmud places a woman giving birth in the category of a patient whose life is in danger,¹¹ Nachmanides concludes that the principle that "things should be done in an unusual way in order to minimise the degree of restriction as far as possible" applies to any patient whose life is in danger.

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(b) Circumcision on the Sabbath

The duty of circumcision on the eighth day after birth, just like the saving of a life, overrides the restrictions of the Sabbath.¹² Here, too, it is sometimes possible to do some of the preparatory work in an unusual way without any extra danger to the child. The Mishnah does in fact demand that medicines and bandages should be prepared in an unusual way if they have not been prepared before the Sabbath.¹³

4. MAGGID MISHNEH'S EXPLANATION OF MAIMONIDES' APPROACH

Maimonides' sources are not explicit, and it is therefore necessary to refute Nachmanides' evidence and to find a source for Maimonides' opinion.

It must be pointed out that the requirement to do things in an unusual way where there is danger to life is mentioned, only with respect to a woman in childbirth, and not in the general discussions about a patient in mortal danger. This is certainly rather surprising, and requires explanation.

Maggid Mishneh rejects Nachmanides' evidence.¹⁴

(a) Regarding a woman in childbirth

Maggid Mishneh considers that a woman in childbirth is not an example of someone whose life is really in danger, but carries an intermediate status between a patient whose life is really in danger and one whose life is not in danger. "The reason is that the pains and pangs of childbirth are natural, and not one in a thousand dies of childbirth, so the need to do things in an unusual way where possible was imposed, although it does not apply with a patient [whose life is really in danger]."

*Meiri*¹⁵ had already stated this: "Although with other patients an unusual way is not necessary, a woman in childbirth is different because most of them are not in [such great]¹⁶ danger."

(b) Regarding circumcision on the Sabbath

The discussion on circumcision deals with preparations that could have been made before the Sabbath. Only when they were for some reason not done is permission given to do them on the Sabbath, on condition that no Torah restriction is broken; hence an unusual way is required. In other words, we are not considering permission to deal with any problems that may arise *after* the circumcision, because in that case there is a danger to life, but with limited permission granted *before* the circumcision, where, if the preparations are not done, the circumcision can be postponed until the following day, after the Sabbath.

On the other hand, Nachmanides understood from the wording of the Mishnah that the unusual way is required even after the circumcision, in which case the baby's life is already in danger. From this he deduces the duty to use an unusual method for other patients.¹⁷

5. DIFFICULTIES WITH *MAGGID MISHNEH'S* MEDICAL EXPLANATIONS

(a) Assigning an intermediate status to a woman in childbirth defines a new medical-halakhic status, for which there is no source in the Talmud. Herein lies a serious problem.

(b) His medical assumption that "not one woman in a thousand dies in childbirth" appears to contradict both the Mishnah¹⁸ and the Talmud¹⁹ according to which the value of a pregnant slave woman (including the baby) is less than her value alone (without the child) after childbirth,²⁰ due to the real danger to a woman in childbirth.

(c) The latest epidemiological data shows that even today, in developing countries, the death rate per thousand in childbirth in hospitals is significant and noticeably on the increase.²¹ It is reasonable to assume that in the past in various places the death rate was no less, and there is no support for the assumption of Meiri and *Maggid Mishneh* that a woman in childbirth is not in a true life-threatening condition.

(d) From a medical standpoint it is clear that, even with advanced medical facilities, the process of childbirth is one that contains real danger to life.²² The danger is a result of many factors, of which the main one is loss of blood. The average amount of blood lost in childbirth is about 600 ml., but at times it is far greater, and often, without immediate intervention (such as stitching, or supplying liquids to the veins), the life of the woman is in immediate danger.²³ The low death rate after hospital treatment does not alter the fact that, fundamentally, childbirth is a process in which there is a real danger to life.²⁴

These facts, too, refute *Maggid Mishneh's* considering a woman in childbirth as being in less danger than a sick person whose life is known to be in danger.

(e) Maimonides himself defines a woman in childbirth "from when bleeding begins until the time of birth, and from then for a further three days" as a patient whose life is in danger,²⁵ "and we do whatever she requires,"²⁶ without any conditions or requirements of "unusual method."

The implication of this law, that a woman is regarded *in all respects* as being

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in danger of her life *from the start of bleeding or from actual birth*, is also inconsistent with the innovations of *Maggid Mishneh* and Meiri.

6. THE PROCESS OF CHILDBIRTH, FROM A MEDICAL VIEWPOINT

Modern medicine divides the process of birth into three stages:²⁷

(a) The first stage of labour continues for some hours, when uterine contractions of sufficient frequency, intensity and duration are attained to bring about effacement and dilation of the cervix of the uterus. The first stage of labour ends when the cervix is sufficiently dilated to allow the passage of the foetal head.

(b) The second stage of labour begins when dilation of the cervix is complete, and ends with delivery of the foetus.

(c) The third stage of labour begins immediately after the delivery of the foetus, and ends with the delivery of the placenta and foetal membranes.

Physiologically, the first, lengthy stage is the preparatory stage for the birth itself. This stage is characterised by involuntary activity of the womb muscles, and pains that continue intermittently for several hours, which weaken the woman considerably.

As long as no special complications develop (such as placental abruption — the separation of the placenta from its site of implantation before the delivery of the foetus — which can lead to considerable pre-birth bleeding), the danger to the mother is considerably less than in the second stage. On the other hand, the first stage is important not only in preparing the womb physiologically for birth, but also in its influence on the mental and physical state of the mother in the second stage. A woman who reaches the second stage feeling insecure or worried has a significantly lower chance of giving birth without complications, and the chances of her requiring the use of an instrument or a Caesarian section to complete the birth are increased. In contrast, a woman who reaches the second stage calmly can co-operate and actively assist in the process of proper birth.²⁸

7. MEDICAL EXPLANATION OF MAIMONIDES' APPROACH

A study of what Maimonides has written will show a clear difference between the laws concerning a woman in the first stage of labour and the laws of one during the second stage (“from the time of delivery of the foetus, or when the bleeding starts”).

At the beginning of law 11,²⁹ Maimonides describes the entire birth process as

one of danger, and lists the main professional actions required to prevent danger.

When the mother bears down to give birth, she is *like*³⁰ one in danger of her life, and the Sabbath restrictions are broken for her. A midwife is sent for from place to place, and the umbilical cord is cut and tied.

Immediately after this introduction, Maimonides continues with laws applying to the first stage, that of the labour pains:

If she needs a lamp *while she is crying out in her uterine pains* we light a lamp for her, even if she is blind, *because the lamp calms her down*, even though she does not see. If she needs oil or anything similar, we bring it for her, *bringing it in an unusual way as far as possible*.

On the other hand, when considering the situation from when the bleeding begins or after birth (law 13, loc. cit.), Maimonides treats her as any other patient whose life is in danger: “*we do for her whatever is required*”, with no condition or requirement of unusual method.

The implications:

(a) There is a clear distinction between the state of a woman in the first stage of labour and that in the second stage, with respect to Halakhah. The first stage is regarded as one which is liable to influence the danger in the second stage, whereas the second stage, starting with the delivery of the foetus, is considered as a true life-threatening condition.

Early separation of the placenta, which is diagnosed in general by pre-natal bleeding, is also a life-threatening condition.³¹

(b) The requirement to use an unusual method, specifically for the wants of the mother during labour and not in the later stages, can be understood in one of two ways.

(i) The need to use an unusual method applies only in the first stage, because there is no current danger, merely the need to prevent danger later on. Maimonides considers that such a situation demands minimising the severity of the restriction,³² unlike when there is a current danger, as in the second stage. Or,

(ii) When the requirement of the action is not objective (demanded by the doctor or midwife) but subjective, *then* it should be performed in an unusual way where possible.³³ On the other hand, where the required medical treatment is objective there is no need to reduce the seriousness by using an unusual method.

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(c) The situation of a woman in the first stage of labour cannot be compared to that of any other patient whose life is in danger, and there is no evidence from here that the whim of such a patient permits breaking the Sabbath restrictions without any medical indication. The special mental condition of a woman in childbirth affects her ability to co-operate, which is important for a proper birth, and this is something unique to childbirth.

(d) The requirement for an unusual method (where possible) to satisfy the whim of a woman in the first stage of labour (when she is not yet considered as a patient in danger) is not applied to the different situation of a patient who is currently in actual danger, where Maimonides states that all should be done without an unusual method, *as on a weekday*, in all matters concerning accepted medical treatment.

In this way the evidence of Nachmanides which is based on the subject of the woman in childbirth is refuted, even though Maggid Mishneh's explanation is rejected.

8. HALAKHAH AND MEDICINE

The subject of childbirth on the Sabbath is characteristic of Maimonides' method of arriving at legal decisions. He integrates his vast medical knowledge with his understanding of the legal statements of the Talmud, and expresses the result as legal decisions in his *Yad Hahazakah*.³⁴ Modern medical knowledge enables us, in this instance, to understand Maimonides' words in connection with a woman in childbirth on the Sabbath, and, at the same time, to give a simple answer to difficulties pointed out by the commentators.

The words of the Vilna Gaon to Rabbi Israel of Shklov³⁵ — “All types of knowledge are required for our Torah” — and to Rabbi Barukh of Shklov³⁶ — “For Torah and [secular] knowledge are linked together” — are relevant also to our topic.

NOTES

- * Translated by Alan Smith from a modification of the Hebrew article in *Asia*, Tevet 5755.
- 1 *Rabbi Ishmael's Mekhilta*, beginning of section on Ki Tissa; *Mishnah* Yoma 8:6; Maimonides *Laws of Sabbath* 2:1; *Shulhan Arukh* Orah Hayyim 328:2.
- 2 *Jerusalem Talmud*, Yoma 8:5; *Shulhan Arukh* Orah Hayyim 328:2.
- 3 As in *Mishnah* Sabbath 10:3, and see also *Shulhan Arukh Harav*, Orah Hayyim 328:19.
- 4 *Talmudic Encyclopaedia*, entry HOLEH, vol. 13, col. 250, note 268. See also *Yesodey Yeshurun*, *Laws of Sabbath* (published by Otsar Haposkim, Jerusalem, 5739) “Saving Lives,”

pp. 173–176, where the author proves that (according to Maimonides) the Sabbath law is *inapplicable*, because the patient is treated in the same way as on a weekday.

5 See, for example, *Kesef Mishneh*, Sabbath 2:1, according to whom the Sabbath restrictions are merely *overridden* when life is endangered, although according to Maimonides there is no need to do things “in an unusual way,” as will be explained further.

6 *Maimonides*, Sabbath 2:2.

7 *Maggid Mishneh*, Sabbath 2:11.

8 *Letters of Nachmanides*, Torat Ha’adam, Danger to Life. (At the end of a nearby section he writes: “We do for him whatever is usually done on a weekday regarding suitable food and medicine, against the laws of the Sabbath, without asking any questions.” But this statement, apparently contradictory, refers only to a person who is attacked in a place where no doctor is available, and there is nobody there who “recognises the illness.” In such a case, an unqualified layman who is dealing with the patient should act exactly as he would on a weekday, because he cannot be expected to distinguish between what is essential and what is not.)

9 *Talmud* Sabbath 128b.

10 *Mishnah* Sabbath 19:2, *Talmud* Sabbath 133a.

11 *Talmud* Sabbath 129a.

12 *Mishnah* Sabbath 18:3; 19:1–3.

13 *Mishnah* Sabbath 19:2.

14 *Maggid Mishneh* Sabbath 2:11.

15 *Bet Habbehirah* Sabbath 128b.

16 Parma MS. of the *Meiri*.

17 This is consistent with the opinion he expressed in *Nachmanides’s Novellae* Sabbath 134b: Circumcision is not deferred on account of absence of preparation for post-operative treatment; the circumcision is performed, and then, since there is a danger to life, the preparations are made in an unusual way. Rabbenu Nissim’s commentary on Alfasi (Sabbath 134b) explains similarly.

Maimonides, consistent with his own opinion, states that if there is no advance preparation for treatment *after* the circumcision, the latter is deferred. (*Maimonides*, Laws of Circumcision 2:8 and *Kesef Mishneh* loc. cit., as understood by Razah and Rashbah. See also Rabbi Kafih’s explanation, loc. cit.) Meiri, however, appears to contradict himself. In his commentary *Bet Habbehirah* on the Mishnah (Sabbath 133a) he wrote: “*After* the circumcision — it can even be carried through a public domain, *but this should be done in an unusual way* such as tying it with his hair, as we have explained above (128b, with regard to a woman in childbirth!) when she needed a lamp.” In other words, not only for a woman in childbirth need it be done in an unusual way. This seems to contradict his own words in 128b, that it is only with a woman in childbirth that an unusual way is necessary. This contradiction requires looking into.

Possibly Meiri considers that the danger in the case of circumcision is similar to that in the case of woman in childbirth, because “in most cases there is not such a great danger,” and this too requires looking into.

At all events, Nachmanides considers that the Mishnah that requires an unusual way with respect to circumcision on Sabbath deals also with post-operative treatment (as explained by Meiri). Hence his deduction that what applies to circumcision applies also to other patients in danger is consistent with his own opinion.

18 *Mishnah* Bava Kamma 5:4.

19 *Talmud* Bava Kamma 49a.

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- 20 The conclusion of the Talmud there is that this is only true before the birth of the woman's first child. This, however, cannot be used to justify *Maggid Mishneh*, since the need to do things in an unusual way makes no distinction between a first child and a later one.
- 21 In 1989 an estimate of the death rate for women in childbirth in various parts of the world was published. In general, for every 100,000 births, the average rate in developed countries is 30; in Latin America it is 270; in Asia 420; in Africa 640 (i.e., 6.4 for every thousand births). The sources in medical literature are: Harrison, K. A., "Tropical Obstetrics & Gynaecology — Maternal Mortality," *Trans. R. Soc. Trop. Med. Hyg.* 83(4): 449–453, (1989).

Other medical articles published in the past ten years indicate that, overall, over half a million women die annually every year from complications in childbirth, and in many places the rate exceeds one per cent. See, for example: *Int. J. Gynaecol. Obstet.* 27(3): 365–370 (1988); *Ann. Soc. Belg. Med. Trop.* 73(4): 279–285 (1993).
- 22 In Israel, the low death rate among women in childbirth — only 10 in 100,000 — is a result of special medical treatment such as infusion, blood transfusion and antibiotics where needed, Caesarian sections, inducement of birth in various situations, and so on.
- 23 *Williams Obstetrics*, 19th edition (Appleton & Lange), p. 4 (1993).
- 24 Just as a surgical operation is always considered as dangerous despite the very low death rate with certain operations in modern hospitals.
- 25 *Maimonides Sabbath* 2:13.
- 26 Compare the wording of Maimonides to that in law 1 regarding a patient whose life is in danger.
- 27 *Williams Obstetrics*, 19th edition (Appleton & Lange), pp. 311–313 (1993).
- 28 When the second stage continues too long, as a result of weariness or lack of co-operation by the mother, among other causes, there is sometimes an instruction to perform a Caesarian section to prevent the dangers of a prolonged birth. See I. Gull, *et al.*, "Definition of Pathological Second Stage in Labor: Theory and Practice," *Harefuah* 129, 7–8: 267–272, 1995.
- 29 Laws of Sabbath, Chapter 2.
- 30 This is the version in manuscript R, in the printed editions of R. Moses Ibn Shealtiel, Soncino (year 5250), Venice (year 5284) and in the first printed edition of *Maggid Mishneh*.

However, in Yemenite manuscripts and those of Berlin and Cambridge, and in the printed editions of Rome (earlier than 5240), Constantinople (5269) and Venice (5334), the version is "she is *in* danger of her life." See the list of variant versions in the Frankel edition. [Translator's note: The only difference in the two versions is in one letter of the Hebrew alphabet, which in the first version is a *kaf* and in the second is a *beit*. The two letters are very similar indeed, and one version is clearly a copyist's error for the other. Which is correct cannot be proved. The author of the article has indicated his own preference, while quoting the other.]
- 31 *Williams Obstetrics*, 19th edition (Appleton & Lange), pp. 829–830 (1993).
- 32 Novellae of Riz Halevy on Maimonides, Laws of Yom Kippur.
- 33 See *Shemirat Shabbat Kehilekhatah* (5739 edition) 32:25 note 82. When a woman cries out in labour, if she is not calmed the danger in the second stage is increased, as explained above. If, therefore, it is not possible to do things "in an unusual way," then they may be done in the usual way, as on a weekday.
- 34 See Isaac Twersky, "Halakhah and Science: Aspects of Maimonides's Epistemology," *Hebrew Law Annual* (Jerusalem 5749) 14–15:121.
- 35 Rabbi Israel of Shklov, introduction to *Pe'at Hashulhan*.
- 36 Rabbi Barukh of Shklov, introduction to the Hebrew translation of *Euclid*.

