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Note: This Shiur it is not intended as a source of practical Halachic (legal) rulings. For matters of Halacha (practical details of Jewish law), please consult a qualified Posek (rabbi).
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Multifetal Pregnancy Reduction in Halacha

I. Introduction

The focus of this presentation is to explore the possible approaches for permitting multifetal pregnancy reduction (abbreviated as: MPR) in Halacha, by applying the teachings of the Talmud (Mishna, Braita and Gemara), post-Talmudic commentators and Poskim (Halachic authorities).

Multifetal pregnancies (abbreviated as: MFP) are associated with several risks including complete pregnancy loss (miscarriage and stillbirth) and very preterm birth (i.e., occurring before 32 completed weeks of gestation) which is often complicated by postnatal mortality (i.e., death after birth) and long-term disabilities. MPR is a procedure performed by obstetricians to reduce the number of fetuses in utero in a MFP, to improve the survival probability of the remaining fetuses. Reducing the number of fetuses leads to improved outcomes, as measured by lower rates of miscarriage, fewer very preterm births and reduced postnatal mortality (see Appendix C, p. 50). MPR is usually performed between 9 to 15 weeks of gestational age. Historically, MPR has been generally performed in triplet or higher-order pregnancies; however, cases of twin to singleton pregnancy reductions have also been reported.

It is understood that the goal of MPR is to optimize the survival chances of the remaining fetuses in cases where there is a high risk of fetal death without intervention. Yet, since MPR, by definition, terminates one or more fetal lives, contemporary Poskim and religious physicians have endeavored to understand how Halacha views this predicament. This dilemma falls into the rubric of a general question: Can we end one life to save another life? Generally, taking a life cannot be justified even if it is the sole means for promoting the survival of another life. This principle is described in Tractate Oholot as: אין דוחין נפשׁ מפני נפשׁ (which will henceforth be referred to as: "אין דוחין"), i.e., we may not push aside one life on account of another life. Nonetheless, in very limited applications discussed below, we are instructed to save a life even if this will lead to the demise of another life. The following discussion describes selected applications and limits of אין דוחין and their relevance to the potential permissibility of MPR.

In the course of this discussion, we will explore two different approaches for permitting MPR in cases where the failure to intervene will lead to a high risk of total fetal/neonatal death (i.e., death either in utero or shortly after birth). One approach is derived from the discussion in the Talmud concerning the ruling that one must give up his or her life not to commit murder: יהרג ואל יעבור (i.e., be killed rather than transgress). Perhaps the basis for the יהרג ואל יעבור ruling, which the Talmud describes as a logical reasoning that one may not presume one life is more valuable than any other life, may not apply in a case of multifetal pregnancy if the fetuses are likely to perish without intervention. If this is true, perhaps the principle of אין דוחין also will not apply under these conditions and MPR may therefore, be permitted. The second approach for permitting MPR is the דין רודף (i.e., the law of the pursuer) which states that the life of a pursued person must be saved even at the expense of the pursuer’s life. According to this approach, the fetuses that will be reduced (i.e., aborted) are considered as "pursuers" after the other fetuses. We develop this approach through the brilliant writings of the Gaon and Tzaddik, Rav Moshe Feinstein, זצ"ל, (who was a
leading Halachic decisor, Posek, spanning a half-century period in America, who will henceforth be referred to as: “Rav Moshe”) in his magnum opus, Igros Moshe. These approaches are built on two Talmudic cases, the “obstructed labor” and the “fugitive” situations, which will be explained below with different interpretations and their applications to MPR.

II. Two approaches to potentially permit multifetal pregnancy reduction:

Notwithstanding the general principle of אין דוחין, we will examine two approaches that could be applied to permit MPR in certain cases. These approaches, which originate from two different “life-vs.-life” discussions in the Talmud, will be referred to as: 1) the מאי חזית logic; and 2) the דין רודף.

1. The “coerced murder” case and the מאי חזית logic:

**Definitions:**

α: The coerced person: The Jewish person who was ordered by the governor (i.e., the hooligan) to kill another Jew (β) under the threat of being killed if he refused.

β: The hooligan’s target: The person who α was ordered to kill.

A. The Gemara Sanhedrin (Source 1) states that שפיכת דמים (murder, i.e., violating the prohibition of לא תרצח, “do not commit murder”), is one of the three prohibitions for which one must sacrifice his or her own life rather than transgress. This ruling is called יהרג ואל יעבור.

Source 1: Talmud Bavli - Sanhedrin 74a: Three cases where Halacha requires one to sacrifice his life to avoid transgressing (יהרג ואל יעבור).

B. The Gemara (Source 2) states that the Rabbis deduced the Halacha of יהרג ואל יעבור with respect to שפיכת דמים (murder), through a logical reasoning (סברא), for which the Gemara recounts a true incident: The governor ordered person “α” to kill person “β” or else the governor would kill α. (This case will henceforth be called the “coerced murder” case). Rav (or רבי) ruled that α must be killed rather than kill β because of the following logic: מאי חזית.
From where do we know that a person must sacrifice his life rather than commit murder? It is based on logic (סְבָרָא) as we see from the following incident: A certain person (א) came before רבא and told him, “The governor of my village said to me, ‘Go kill So-and-So (ב), and if you do not [kill him], I will kill you.’” Rav replied to him (א), “Let him kill you and do not kill (ב). Why do you presume that your blood is redder [than ב’s blood]? Perhaps the blood of that man (ב) is redder.”

Source 2: Talmud Bavli - Yoma 82b: Reason for the יירדג ואל יעבור ruling in the “coerced murder” case:

The邁ר מא חזית logic.

C. What is the meaning of the邁ר מא חזית logic and how does it dictate the Halacha of יירדג ואל יעבור by שפיכת דמים (the “coerced murder” case)? The following two approaches are presented:

i. Approach 1: The邁ר מא חזית logic operates from a perspective of uncertainty, i.e., since we do not know whose life is considered more valuable, the uncertainty dictates that one must maintain a passive stance (שב ואל תעשה) to avoid arbitrarily selecting who should be allowed to live versus who should be killed, even at the pain of his own death (Talmeidai Rabbeinu Yonah, Reference 1; see also p. 45, Source B-2). Rav Nochum Partzovitz (Reference 2) attributes this approach to Tosfot in Sanhedrin 74b.

According to this approach, in cases of MFP where there is a high risk of total fetal/neonatal death, an argument could be made to permit MPR. Since the fetuses that would be reduced (i.e., aborted) via the MPR procedure would likely die anyway if we remained passive, perhaps it is not considered selecting them for death and therefore, the邁ר מא חזית logic would not apply. This will be discussed further below (see VII-2-C, p. 25).

ii. Approach 2: Rashi (Source 3) explains that although the כו[++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++][++]
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Rav Moshe, when discussing this Rashi, adds, “Therefore, we infer [from Rashi] that with regard to this [ודרוגリアル עברין], his (α’s) life and the life of his friend (β) are equal” (Reference 3). Possibly, Rav Moshe inferred the equality of both lives (α and β) from Rashi’s explanation that the intent of the “וחי בהם-dispensation” is negated when the preservation of one life is neutralized by the destruction of another equally valued life (see Appendix B, pp. 43-49, for further aspects of Rashi’s view of the מאי חזית logic, with Rav Moshe’s explanation).

Source 3: Rashi’s explanation of the מאי חזית logic: Inapplicability of the “וחי בהם-dispensation” in the “coerced murder” case (Talmud Bavli - Sanhedrin 74a):

[The logic is]: α may not push aside his friend (β’s) life which entails two [negative consequences, “תרתי”], a loss of (β’s) life and transgression of an עבירה (i.e., ירצח האל תרצח, in order to save himself [from being killed] which would only entail one [negative consequence, “חדא”], a loss of (α’s) life, but he will not transgress (לא תרצח).

The Torah only permitted us to violate מצות based on the “וחי בהם-dispensation” because a Jewish life is precious in the eyes of Hashem.

However, here, regarding [the transgression of] murder, [i.e., if α kills β, the “וחי בהם-dispensation” will not apply for the following reason]: Since a life will be lost in any event, why should it be permitted to transgress?

Who says (literally: who knows) that your (α’s) life is dearer to Hashem than your friend (β’s) life?

Therefore, the word of Hashem (לא תרצח) may not be pushed aside.

Source 4: Basis for the dispensation to suspend nearly all מצות for the preservation of human life: The “וחי בהם-dispensation” (Vayikra 18:5 and Talmud Bavli - Yoma 85b).

You shall observe my statutes and ordinances which a man shall do and live by them, I am Hashem.

Rav Yehuda said in the name of Shmuel: The words “וחי בהם” teach us that he shall live by them (מלצות) and he shall not die by them.
**Figure 1:** Rashi explains the logic as the basis for the “coerced murder” case: The "חכי פנות"-dispensation" is inapplicable.

If $\alpha$ would murder $\beta$ to save his own life (*Option 1*), there would be **two negative consequences**: the loss of a life ($\beta$’s life) and violation of a מצוה (i.e., transgression of לא תרצח). On the other hand, if $\alpha$ remains passive (*Option 2*), only **one negative consequence** would occur: the loss of $\alpha$’s life, but no מצוה will transgressed. The reason for the "חכי פנות"-dispensation" is that a Jewish life (נפש ישראל) is dearer to Hashem than His מצות and thus, He prefers to forego His מצות in favor of preserving a נפש ישראל. However, here, since a life ($\beta$) will be lost in end, why should Hashem be willing to forego his מצוה (i.e., why should He allow $\alpha$ to transgress לא תרצח)?

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The logic in the “coerced murder” case, according to Rashi:

- "חכי פנות" - **two negative consequences** vs. **one negative consequence**

**Option 1:** If $\alpha$ kills $\beta$ to save his own life

- **2 negative consequences**
  - Observance of a מצוה (לא תרצח)
  - $\beta$’s life

**Option 2:** If $\alpha$ remains passive

- **1 negative consequence**
  - Observance of aמצוה (לא תרצח)
  - $\alpha$’s life

"\(\times\)" : Denotes the loss of a Jewish life (נפש ישראל) or a violation of aמצוה.

"\(\checkmark\)" : Denotes the fulfillment of aמצוה.
2. Concept of Pursuer - The דין רודף (Source 5):

**Definitions:**

- **רודף** - Pursuer: Person who endangers the life of a prospective victim.
- **נרדף** - Pursued person: The prospective victim, whose life is endangered by the רודף.

**A.** A pursuer who attempts to kill a prospective victim is called a רודף. The Torah authorizes the נרדף or anyone else to preemptively take the רודף's life to save the נרדף. This is called the דין רודף.

**Source 5:** Mishna - Sanhedrin 73a: The דין רודף: Saving the intended victim by killing the pursuer.

These are to be saved at the cost of their (attackers’) lives: One pursuing his fellow man to kill him ...

**B.** For the purposes of this discussion, we will divide pursuers (רודפים) into two categories:

i. **Intentional** רודף: This category refers to the classic pursuer who intends to kill or endanger another person. This category may perhaps be expanded to a situation where a person displays blatant disregard for another’s life by engaging in an activity with the awareness that it may result in a loss of life even if his goal is not to bring about someone’s death.

ii. **Unintentional** רודף: This category refers to a pursuer who has no intention to endanger anyone, but nonetheless unwittingly poses a threat to another’s life. This type of pursuer may be a passive participant in a process that leads to endangerment of another person, without knowledge nor intent of any potential harmful consequences.

**C.** There are two approaches, as to whether the דין רודף applies only to (permit killing) intentional pursuers or to both intentional and unintentional pursuers.

i. **Intentional pursuit only:** According to the *Dina Dechayei* (authored by Rav Chaim Benveniste, Reference 4) and the *Minchat Chinuch* (authored by Rav Yosef Babad, Source 8, p. 8), the דין רודף only applies to cases of intentional pursuit.

ii. **Intentional and unintentional pursuit:** According to the *Chazon Ish* (authored by Rav Avrohom Yeshaya Karelitz, Reference 5; see pp. 57-58) and Rav Moshe (Source 15, p. 17), the דין רודף applies to cases of both intentional and unintentional pursuit.

**D.** According to the position that the דין רודף applies even to unintentional pursuit, in cases of MFP where there is a high risk of total fetal/neonatal death, perhaps it would be permitted to reduce one or more of fetuses based on the premise that they pursue after the other fetuses. This will be discussed further below (see VIII, 2-7, pp. 27-30).
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III. The “obstructed labor” situation: When can the mother be saved at the expense of the fetus’ life?

1. Mishna, Tractate Oholot (Source 6): ‘non-emerged fetus’ vs. ‘partially-emerged fetus’

This Mishna discusses the case of a woman in mortal danger during obstructed labor. The only way to save her life would be to dismember and remove the fetus. Before the fetus’ head has emerged (henceforth described as the ‘non-emerged fetus’), the fetus should be cut out (i.e., killed) to save his mother’s life. The Mishna’s reason to permit sacrificing the fetus is “because her life takes precedence over his life”. However, after the emergence of fetus’ head (henceforth described as the ‘partially emerged fetus’), we must allow the childbirth to proceed although the mother will die, because of the principle of אין דוחין, i.e., we may not push aside the fetus’ life to save his mother.

Source 6: Mishna - Oholot 7:6: “Obstructed labor” situation: Source for the permissibility to save the mother at the expense of the unborn fetus.

A woman who is having difficulty giving birth (and her life is endangered), we cut the fetus within the womb and remove him limb-by-limb, because her life has precedence over his life. However, if his (i.e., the fetus’) head has emerged, we may not touch (i.e., kill) him, because we may not push aside one life on account of another life.

*According to the text in Talmud Bavli - Sanhedrin 72b

Table 1: Summary of the “obstructed labor” situation. Whose life is spared: the mother or the fetus?

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<th>What is the Halacha?</th>
<th>Whose life is spared?</th>
<th>Reason stated in the Mishna</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘non-emerged fetus’</td>
<td>Fetus is still totally in utero</td>
<td>Cut out the fetus</td>
<td>Mother</td>
<td>The mother’s life has precedence over the fetus’ life</td>
</tr>
<tr>
<td>‘partially-emerged fetus’</td>
<td>Fetus’ head has emerged during birth process</td>
<td>Remain passive</td>
<td>Fetus</td>
<td>We may not push aside one life to save another life</td>
</tr>
</tbody>
</table>

2. Gemara (Talmud Bavli) - Sanhedrin 72b (Source 7):

In this Gemara, רב חסדא states that a child pursuer may be killed to save his prospective victim. רבי חסדא posed the following challenge to רב הונא from the above Mishna in Oholot: Since the Mishna rules that we may not kill the ‘partially emerged fetus’ to save his mother even though he is the cause of her endangerment, it is apparent that the דין רודף is not applied to kill a child pursuer? The Gemara answers, “That (obstructed labor) case is different because she is being pursued by Heaven.” Two explanations of the Gemara’s answer are presented:
A. The *Minchat Chinuch* (Source 8), who believes the דין רודף does not apply in cases of unintentional pursuit, understands the phrase, “משׁמיא קא רדפי לה - she is pursued by Heaven -” to mean that, in fact, the ‘partially emerged fetus’ is not considered a רודף because physiology (childbirth), rather than volition, has endangered his mother’s life (per Rabbi Dr. Zalman Levine, Reference 6). Accordingly, the Gemara answers the above question on רב הונא by differentiating between the child pursuer and the ‘partially emerged fetus’, i.e., the דין רודף applies to the former case because the child pursuer intends to kill his prospective victim but not to the latter case because the emerging fetus lacks volition.

B. The explanation of the Gemara’s answer, according to Rav Moshe Feinstein, will be discussed below (VI, 4-6, pp. 14-17).

**Source 7:** Talmud Bavli - Sanhedrin 72b: Does the דין רודף apply to a child pursuer?

Source of the משׁמיא קא רדפי לה concept.

The Gemara in Sanhedrin states that a child pursuer may be killed to save his prospective victim. The Gemara asked from the Mishna in Oholot, “… If his head has emerged, we may not touch him because we may not push aside one life on account of another person’s life.” But why not kill the fetus – he is a רודף (pursuer)? [The Gemara answers]: That [obstructed labor case] is different because she (i.e., the mother) is being pursued by Heaven.

**Source 8:** *Minchat Chinuch, Mitzvah 296: The דין רודף does not apply to unintentional pursuit.*

(See Supplement 1, Source 3, p. 52, for a more extensive excerpt from the Minchat Chinuch).
IV. The “fugitive” situation: When can the townspeople save themselves at the expense of the fugitive’s life?

<table>
<thead>
<tr>
<th>Definitions:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fugitive:</strong></td>
</tr>
<tr>
<td><strong>Townspeople:</strong></td>
</tr>
<tr>
<td><strong>מסירה:</strong></td>
</tr>
</tbody>
</table>

1. The Tosefta in Terumot (Source 9) discusses a case in which a group of people (i.e., ‘townspeople’) are surrounded by hooligans who demand they hand over an individual (i.e., a ‘fugitive’) to be killed or else they will all be killed. The Tosefta and the Yerushalmi - Terumot (Source 10) distinguish between a case where the hooligans designate (i.e., single out) a specific victim to be delivered to them versus a case where they simply demand that the townspeople hand over any person to them. If the hooligans do not designate a specific victim, it is forbidden for the townspeople to hand over anyone even though everyone will then be killed. However, if the hooligans designate a specific victim to be handed over, under specified conditions, the townspeople may hand him over to save themselves. The paradigm presented by the Tosefta is the episode of **שבע בן בכרי** (**ש.ב.ב**), in Shmuel II, Ch. 20. After **ש.ב.ב**, a fugitive from justice for leading a revolt against **דוד המלך**, took refuge in the city Avel, the townspeople delivered him to **יואב**’s sieging army, thereby saving the lives of all the townspeople who otherwise would have been killed when the army invaded the city. Clearly, **ש.ב.ב** was a designated fugitive (and was liable to the death penalty for rebelling) as **יואב** stated, (ibid, verse 21) “**ש.ב.ב** has lifted his hand against the king, against David; give us him alone and I will depart from the city.”

**Source 9:** Tosefta Terumot 7:20: “Fugitive” situation *(Explanation is based on the Eitz Yosef on Bereishis Rabboh, 94).*(

(See Supplement 1, Source 4, p. 53, for a more extensive explanation)

<table>
<thead>
<tr>
<th>Heified</th>
<th>Hebrew</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a group of people [were accosted by] gentiles who said to them, “Give us one of you and we will kill him; and if not, we will kill all of you,” [the ruling is]: Let them all be killed, and they may not give over one Jewish life to them.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>סיעת של בני אדם שאמרו להם גוים תנו לנו אחד מכם ונהרגווו ואם לאו הרי אנו הורגין את כלם</td>
</tr>
<tr>
<td>But if the gentiles designated someone (i.e., a ‘fugitive’) in the manner that they designated <strong>ש.ב.ב</strong>, they should hand him over rather than all being put to death.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>אבל אם ייחדווהו להם כגון שייחדו לשבע בן בכרי יתנוהו להן ואל ימסרו להן נפש אחת מישראל</td>
</tr>
<tr>
<td>What said, when does this apply (i.e., they may not hand him over)?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>אמר רבי יהודה מה כהן שיתווה לשבע בן בכרי</td>
</tr>
<tr>
<td>Only if the fugitive is in the exterior [and he can escape] while the townspeople are in the interior [and are unable to escape]. However, if all of them are in the interior since [no one can escape and consequently] they will all be killed, they should hand him over to them rather than all being put to death.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>אמר רבי יהודה מה כהן שיתווה לשבע בן בכרי אבל אם ייחדווהו להם כגון שייחדו לשבע בן בכרי, יתנוהו להן ואל ימסרו להן נפש אחת מישראל</td>
</tr>
</tbody>
</table>

9
As it states, “And the woman approached all the people with her wisdom” (Shmuel II, Ch. 20, v. 22). She said to them, “Since he will be killed and you will be killed, give him over to them so that all of you will not be killed.”

רבי שמעון said, so she said to them, “Anyone who rebels against the kingdom of David, is liable to execution.”

2. Yet, the hooligans’ designation of a specific victim (in most cases) is not sufficient to permit handing the fugitive over. In the Tosefta (Source 9, third statement), Rav Ribi Yehudah states that the second requirement for permitting handover (מסירה) is that the fugitive must be unable to escape (‘fugitive without escape capability’) even if they do not hand him over. However, if the fugitive can escape (‘fugitive with escape capability’), it is forbidden to hand him over even though he was designated by the hooligans.

3. The permissibility of מסירה is subject to further dispute between Rav Shimon ben Lakish in the Talmud Yerushalmi (Source 10). Rav Shimon ben Lakish maintains that the designated fugitive must liable to the death penalty (חייב מיתה) in order to permit handing him over, whereas Rav Yehudah believes that even if the fugitive was not liable to the death penalty, it is permitted to hand him over. Refer to Appendix A (pp. 35-41) for an explanation of the positions of Rav Shimon ben Lakish and Rav Yehudah.

Source 10: Talmud Yerushalmi, Terumot 8:4: Fugitive situation: Dispute between Rav Shimon ben Lakish and Rav Yehudah.
V. Reason for the difference within the two obstructed labor and the two fugitive situations (Approach 1):

1. **Obstructed labor situation:** What is the reason that the mother’s life is prioritized only over the life of the ‘non-emerged fetus’, but not over the life of the ‘partially-emerged fetus’? The Sefer Meirat Einayim (סמ״ע; Source 11b) and the Minchat Chinuch (Supplement 1, Source 3, p.52) take the approach that the unborn (‘non-emerged’) fetus does not have the Halachic status of a living human being. These commentaries interpret Rashi’s statement regarding a fetus, “as long as he has not emerged into the air of the world, he is not a נפש” (Source 11a), to mean that a fetus is not deemed a Halachic life. As such, feticide does not constitute שפיכת דמים (murder) and therefore, the fetus’ life may be pushed aside to save the mother, just as the imperative to save lives (פיקוח נפש) pushes aside all מצות (other than murder, idolatry and illicit relations). However, once the fetus’ head emerges, since he has the full Halachic status of a living being, killing him constitutes שפיכת דמים and therefore, we must remain passive so as not to push aside one life on account of another life.

**Source 11a-b:** Rashi in Sanhedrin (11a) and the Sefer Meirat Ainayim (סמ״ע) on Shulchan Aruch (11b):

**Status of the ‘non-emerged fetus’** (See Supplement 1, Source 2, p. 51, for full text of Rashi):

<table>
<thead>
<tr>
<th>Source 11a:</th>
</tr>
</thead>
<tbody>
<tr>
<td>This is referring to a woman who is having difficulty giving birth and her life is endangered. The first section of the Mishna states that the midwife extends her hand, cuts him and removes him limb-by-limb. As long as he (i.e., the fetus) has not emerged into the air of the world, he is not a נפש (i.e., a life) and it is permitted to kill him to save his mother.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source 11b:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonetheless, while he is still in utero, it is permitted to dismember him even though he is alive because there is no name (i.e., status) of a נפש on him before he emerges into the air of the world. The proof is from the fact that one who strikes a pregnant woman aborting her pregnancy, must pay restitution for the fetuses, but there is no name of a murderer or death penalty upon him.</td>
</tr>
</tbody>
</table>

2. **Fugitive situation:** Why is it prohibited to hand over a ‘fugitive with escape capability’ while it is permitted to hand over a ‘fugitive without escape capability’? The Chasdei Dovid (authored by Rav Dovid Pardo, Source 12) explains this distinction based on the logic of מאי חזית. If the fugitive has the capability to escape, the townspeople have two theoretical options: (1) they could either allow the fugitive to escape and they will all be killed, or (2) they could save themselves by handing over fugitive to be killed. This is the standard מאי חזית dilemma, i.e., *Why do you presume that the townspeople’s blood is redder than the fugitive’s blood?* Accordingly, the townspeople must remain passive and allow
the fugitive to escape. However, if the fugitive has no capability to escape, the \( \text{מאי חזית} \) logic does not apply since he cannot be saved even if the townspeople do not hand him over. Since the entire basis for the Halacha of \( \text{יהרג ואל יעבור} \) is the \( \text{מאי חזית} \) logic, when the \( \text{מאי חזית} \) logic does not apply, i.e., if he is unable to escape, it is permitted to hand him over (See Supplement 2, p.46, paragraph 6a-b, for further explanation of the basis to permit \( \text{מסירה} \)).

**Source 12:** Chasdei Dovid on the Tosefta (Source 9): Basis for differentiating between the ‘fugitive with escape capability’ and the ‘fugitive without escape capability’: The \( \text{מאי חזית} \) logic.

(See Supplement 1, Source 5, p. 54, for a more extensive excerpt from the Chasdei Dovid).

| When is it forbidden to hand over even a singled-out fugitive? ... | ... [if the fugitive is in a location where] if the townspeople do not hand him over, they will be killed and he will escape. In such cases, even if the hooligans designated him, it is forbidden to hand him over because of the reason of \( \text{מאי חזית} \) (\textit{Why do you presume that the townspeople’s blood is redder than the fugitive’s blood?}).

However, if everyone is in equal danger, i.e., they all are located in the inner sector ... such that if the hooligans would come, they would kill the fugitive along with the townspeople – then, if the hooligans designated him, it is permitted [to hand him over] ... because the \( \text{מאי חזית} \) logic does not apply when they all are in an equal state of danger.

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A. This explanation fits well with the opinion of the Minchat Chinuch that \( \text{מסירה} \) is called “\( \text{אביזרא דשפיכת דמים} \)” - i.e., an “ancillary form” of murder. Accordingly, just as the ruling of \( \text{יהרג ואל יעבור} \) is based on the \( \text{מאי חזית} \) logic, the ruling of \( \text{מסירה} \) is also based on the \( \text{מאי חזית} \) logic. Therefore, since the \( \text{מאי חזית} \) logic is inapplicable when the fugitive cannot escape, it is permitted to hand him over.

B. On a deeper level, the Chasdei Dovid’s understanding can be explained as follows: Perhaps the Halacha of \( \text{יהרג ואל יעבור} \) only dictates that one must remain passive (i.e., in the “coerced murder” case) when only one of the two parties will be killed and the only question is which of the two shall be killed. Since we don’t know whose life is more valuable, the \( \text{מאי חזית} \) logic dictates that we must remain passive rather than arbitrarily choosing one party to be killed. However, since the ‘fugitive without escape capability’ will be killed regardless of which option the townspeople choose, there is no reason to remain passive since we are not choosing any person for death. The only choice is whether to have all the townspeople killed along with the fugitive or to spare them, for which we may argue that \( \text{מאי חזית} \) does not pertain.
### Table 2: Summary of Approach #1 to explain the different rulings in the obstructed labor and fugitive situations:

Based on the position that an unintentional pursuer does not have a status of a רודף.\(^1\)–\(^2\).

<table>
<thead>
<tr>
<th>Type of Situation</th>
<th>Sub-category</th>
<th>Who will be saved, as a consequence of choosing the _______ option?</th>
<th>Is the active option a de facto selection? who shall live vs. who shall die?</th>
<th>Is the active option קֶשֵׁם דַּמָּי (murder)?</th>
<th>Does the נַעַר הָוהֵית logic apply to forbid choosing the active option?</th>
<th>How does the Halacha decide? which option?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstructed labor</td>
<td>non-emerged fetus</td>
<td>Mother</td>
<td>Fetus</td>
<td>Yes/ No</td>
<td>Why</td>
<td>Yes/ No</td>
</tr>
<tr>
<td></td>
<td>partially-emerged fetus</td>
<td>Mother</td>
<td>Fetus</td>
<td>Yes</td>
<td>By terminating the fetus, we are choosing that the mother, rather than the fetus, will live.</td>
<td>No</td>
</tr>
<tr>
<td>Fugitive</td>
<td>with escape capability</td>
<td>Townspeople</td>
<td>Fugitive</td>
<td>Yes</td>
<td>Fugitive will escape if we remain passive</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>without escape capability</td>
<td>Townspeople</td>
<td>No one</td>
<td>No</td>
<td>Fugitive will be killed even if we remain passive</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^1\)Dina Dechayai (see Supplement 1, Source 6c, pp. 54-55)

\(^2\)Minchat Chinuch (Source 8, p. 8)

\(^3\)The active option is as follows: In the ‘obstructed labor’ situation: feticide; in the ‘fugitive’ situation: מֶסְרָה (handing him over).

\(^4\)Based on the Chasdei Dovid (Source 12, p. 12)

\(^5\)Rish Lakish maintains that מֶסְרָה is only permitted if there is a death sentence against the ‘fugitive without escape capability’.
VI. Reason for the difference within the two obstructed labor and the two fugitive situations (Approach 2):

1. According to Rav Moshe Feinstein and the other Halachic authorities who maintain that the דין רודף applies even to an unintentional רודף, both the fetus and the fugitive have the status of a רודף since they (albeit unintentionally) pose a danger to the mother or the townspeople, respectively. Accordingly, the permissibility to kill the ‘non-emerged fetus’ or to hand over the ‘fugitive without escape capability’ is based on the דין רודף. Rav Moshe (Reference 7), as well as Rav Chaim Soloveitchik (Reference 8) and Rav Elazar Menachem Man Shach (Reference 10), derive this approach from the Rambam (Source 13) who states that it is permitted to kill the ‘non-emerged fetus’ because he is considered a רודף after his mother.

Source 13: The Rambam’s view: The fetus is viewed as a רודף after the mother.

This is one of the negative commandments not to take pity on the life of a pursuer. On this basis, our Sages ruled regarding a woman who is having difficulty giving birth (and her life is endangered), that it is permitted to cut out the fetus in utero, either medicinally or manually, because the fetus is considered a pursuer after her to kill her. However, if [the fetus’] head has emerged, we may not touch (i.e., kill) him since we may not push aside one life on account of another life and this is the natural order of the world.

2. Rav Moshe deduces from the Rambam that a fetus is deemed a living being to the extent that feticide is included under the prohibition against murder (לא תרצח) unless the mother’s life is threatened. If feticide was not included under the prohibition of לא תרצח, it would not be necessary to invoke the דין רודף to authorize saving the mother at the fetus’ expense since all prohibitions (other than the three prohibitions mentioned above) are pushed aside for the sake of saving lives (פיקוח נפש).

3. However, according to this view, since intent is not needed to be considered a רודף, the ‘partially-emerged fetus’ should also be considered a רודף and therefore, should be killed to save his mother? What is the basis for the distinction in Halacha between the ‘non-emerged fetus’ and the ‘partially emerged fetus’? Similarly, if the basis for handing over the fugitive is his status as a רודף, why is there a distinction between a fugitive who can escape and a fugitive who cannot escape? In both cases, he endangers the lives of the townspeople and should be handed over to save them?

4. To explain Rav Moshe’s resolution of this dilemma, we must present his explanation of the phrase, "משמיא קא רדפי לה" - “she is being pursued by Heaven”, which the Gemara (Source 7, p. 8) states is the reason the ‘partially-emerged fetus’ must not be harmed even to save his mother. According to Rav Moshe’s explanation, the concept applies equally to the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases. The following is the premise of his explanation:
Multifetal Pregnancy Reduction in Halacha

A. The obstructed labor and fugitive situations are cases of “bidirectional pursuit”:
   i. In the obstructed labor situation, the mother and fetus mutually pursue each other;
   ii. In the fugitive situation, the fugitive and townspeople mutually pursue each other.

| Definition: | “Rodef-א” = fetus or fugitive and “Rodef-ב” = mother or townspeople |
| Note: | The terms “opposing רודפים” or “opposing parties” denote a confrontation between “Rodef-א” and “Rodef-ב”. |

B. In the obstructed labor and fugitive situations, Heaven has arranged that there would be an “inverse relationship” between the respective survivals of Rodef-א and Rodef-ב:
   i. If the passive option is chosen, Rodef-א will live and Rodef-ב will die;
   ii. Conversely, if the active option is chosen, Rodef-ב will live and Rodef-א will die.

C. The reason why the fetus is considered רודף despite having no intention to pursue or harm his mother, is because his only path to survival is by allowing the birth to proceed, which will cause his mother’s death. Similarly, the fugitive is considered רודף because his only path to survival is by escaping, which will lead to the death of the townspeople.

D. One might ask, it is understandable that the fetus and fugitive are considered pursuers (רודפים) since their “arrival on the scene” threatens the lives of mother or townspeople, respectively. However, the mother and townspeople merely wish to defend themselves from the threat imposed on them. If so, how can they be defined as pursuers?

E. Rav Moshe writes (Source 14) that the message of משׁמיא קא רדפי לה is: Despite the fact that the mother’s life was not endangered until after the “arrival” of the fetus, we do not view the fetus as a unilateral רודף. Rather, Heaven ordained the “arrival” of the fetus with the purpose that both he and his mother would live, and only after this, the situation of danger befell both equally. My limited understanding of Rav Moshe’s explanation is: Since Heaven designed the (obstructed labor or fugitive) situation with an inverse relationship between the respective survivals of Rodef-א and Rodef-ב, none of which intended to cause harm, therefore, neither party is considered a greater contributor or more responsible for this situation. Accordingly, the same logic that defines the fetus and fugitive as pursuers, also defines the mother and the townspeople as pursuers since their only path to survival is through the death of the fetus and fugitive, respectively.

Note: Rav Moshe’s understanding of Rashi’s statement regarding a fetus, “as long as he has not emerged ... he is not a נפש,” can be found in in Supplement 2, pp. 66, and is explained in Appendix D, p. LVII.
Source 14: Rav Moshe’s explanation of the concept in the ‘partially emerged fetus’ case.

(See Supplement 2, pp. 80-82, for more extensive excerpts from the Sefer Igros Moshe).

1The Rambam’s answer משמיא קא רדפי לה comes to refute the contention that the ‘partially-emerged fetus’, who came into existence after his mother, is considered a unilateral [unilateral] Rodef א and Rodef ב after his mother since she was not in any danger prior to his arrival in her womb. [The Gemara’s rebuttal is, משמיא קא רדפי לה, i.e., the contrary], it was Heavenly decreed when the fetus initially arrived here at the inception of her pregnancy, that he also should be here, (i.e., his initial arrival was not to pursue, but rather, with the purpose that they would both live). Thus, [it is viewed] as if the pursuit from Heaven befell both equally, whereupon it is only possible for one of them to live and therefore, it is not known who is killing whom.

2Words in parentheses are from a subsequent section in the same responsum.

5. Thus, the questions in paragraphs 3 and 4D (pp. 14 and 15) can be answered by explaining that the 멋שינא קא רדפי לה concept tells us that we view the obstructed labor or fugitive situations such that Heaven has arranged that Rodef א and Rodef ב are equal participants in an impasse in which each one’s survival is dependent on the other’s demise, thus rendering both of them equal pursuers after each other. Consequently, we cannot apply the 법 רודף to kill the ‘partially-emerged fetus’ or hand over the ‘fugitive with escape capability’ because of the דין משין logic (Why should you presume that Rodef א pursues after Rodef ב more than Rodef ב pursues after Rodef א ?). See Source 15; also Figures 2-3, pp. 18-19, for schematic diagrams.

6. Rav Moshe points out that the Gemara’s answer משמיא קא רדפי לה, is identical (or, similar) to an answer in the Talmud Yerushalmi (Source 16). The Yerushalmi attempted to prove that theアー רודף does not apply to a child pursuer, from the prohibition to kill the ‘partially-emerged fetus’ (stated in the Mishna in Oholot). The Yerushalmi then refuted this proof with the following statement, “שניא היא תמן שאין את יודע מי הורג את מי - That case (of the emerging fetus) is different because you do not know who is killing whom.” Rav Moshe explains the meaning of the answer “את רודף מי הורג את מי “ is: “you do not know who pursues whom”, i.e., the mother and the ‘partially-emerged fetus’ equally pursue each other and therefore, the law cannot be applied because of the דין משין logic. The Divrei Yissachar (Reference 9) and Rav Shach (Reference 10) also understand that our Gemara’s answer משמיא קא רדפי לה, aligns with the Yerushalmi’s answer of "את רודף מי הורג את מי ".
**Note:** The term “מאי חזית” described by Rav Moshe is identical to that discussed above in Section II-C, pp. 3-5. However, to prevent confusion, we will refer to this term when used by Rav Moshe in the context of רודף as “‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases,” as “‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases.”

**Source 15:** Rav Moshe’s explanation of the concept in the ‘partially emerged fetus’ and ‘fugitive with escape capability’ cases. *(See Supplement 2, pp. 65-66; 68-70, for more extensive excerpts).*

We must explain that the reason [to permit handing over the fugitive] is that he is considered a רודף because the townspeople will be killed on account of him. [One may question] since the fugitive had no intention to pursue them, [the reasoning] should not apply because of the reasoning [as in the case of] the ‘partially-emerged fetus’? We can answer that this reasoning is only effective [to protect the fugitive] if he could escape and hide. Since he has no intent to pursue, it is only Heaven Who arranged that it is impossible for both parties to survive, for if they spare the fugitive, the townspeople will die and if they spare themselves, the fugitive will die. This is analogous to the obstructed labor case after emergence of the fetus’ head, where he and his mother are considered [equal] pursuers after each other. Although the fetus is the cause [of his mother’s danger], since he has no intent [to harm], we cannot permit [killing him] on the basis of the רודף logic – Why do you presume that the fetus pursues after his mother more than she pursues after the fetus?

**Source 16:** Talmud Yerushalmi - Shabbat 14: 4: The does not apply to the ‘partially emerged fetus’.

*(See Supplement 1, Source 7b, p.55, for the commentary of the Pnei Moshe on the Yerushalmi).*

Rav Chisda asked, Can you save an adult [who is being pursued], by killing a child [pursuer]? Rav Yirmiya answered, Is this not addressed in the Mishnah *(in Oholot)*, “If *most [of the fetus] has emerged, we may not touch him because we may not push aside one life on account of another life?” Rav Yosse son of Rav Bon, quoting Rav Chisda said, That case [of the emerging fetus] is different because you do not know who is killing whom.

*This text of the Mishnah in Oholot differs from the version quoted in the Talmud Bavli (see Source 7, p. 8).*
Figure 2: The *partially-emerged fetus’ case*, as explained by Rav Moshe: The respective survivals of the fetus and mother are “inversely related”: if the active option is chosen (i.e., if the fetus is killed), the mother will live at expense of the fetus’ life. If the passive option is chosen, the fetus will be born while his mother will die. Therefore, the fetus and his mother pursue each other equally and the logic determines that we may not apply the דינין רודף.  

- **Active option**: Feticide (cut out fetus)  
  - **Fetus**: Surviving Rodef Ḥametz  
  - **Mother**: Surviving Rodef Ḥametz

- **Passive option**: Allow birth to proceed  
  - **Fetus**: Surviving Rodef Ḥametz  
  - **Mother**: Dead

“✓” : Denotes the saving of a life  
“✗” : Denotes the loss of a life
Figure 3: The ‘fugitive with escape capability’ case, as explained by Rav Moshe: The respective survivals of the fugitive and townspeople are “inversely related”: If the active option is chosen (i.e., if the fugitive is handed over), the townspeople will live at the expense of fugitive’s life. If the passive option is chosen, the fugitive will escape and live while the townspeople will be killed. Therefore, the fugitive and the townspeople pursue each other equally and the logic determines that we may not apply the דין רודף.

“ الصحيح” : Denotes the saving of a life

“ שאין右侧” : Denotes the loss of a life
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7. However, this “flips” our original question (in paragraph 3, p. 14) “on its head”. By his own definition of משׁמיא קא רדפי לה לידע רוחה, how can Rav Moshe explain the permissibility to kill the ‘non-emerged fetus’ or to hand over the ‘fugitive without escape capability’ based on the דין רודף? Since all the obstructed labor and fugitive situations involve bidirectional רודיפה, we always have a מאי חזית dilemma and therefore, the דין רודף should not apply?

8. Rav Moshe explains that in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases, Rodef-א has a lower “level” of life than Rodef-ב. In the ‘non-emerged fetus’ case, the fetus has an “incomplete נפש status whereas the mother has a “complete נפש status. Similarly, in the ‘fugitive without escape capability’ case, the fugitive only has transient life (חיי שׁעה, i.e., short stay of execution until the hooligans invade the city and kill everyone if the townspeople do not hand him over), while the townspeople have the potential for normal life expectancy (חיי עולם) if they hand him over. Therefore, we say that there is a “differential” (abbreviated with the symbol “∆”) between the respective “life-levels” of Rodef-א and Rodef-ב. Only Rodef-א pursues after this ∆ and therefore, with respect to this ∆, only Rodef-א is a רודף. Since they are not equal pursuers (with respect to the ∆), Rodef-א is assigned the “definitive רודף” status and thus, there is no מאי חזית logic (Source 17).

Note: See Table 3, p. 21 and Figure 4, p. 22, for depiction of the “differential” (∆) concept.

Note: The expression “definitive רודף” status, in reference to Rodef-א (the fetus or fugitive), is not intended to suggest that Rodef-א is considered more responsible (or a greater contributor) than Rodef-ב for the perilous situation they are in. It is merely a convention that was created to refer to Rav Moshe’s explanation that Rodef-א alone pursues a “differential” between their “life levels”.

A. In the case of ‘non-emerged fetus’, only the fetus pursues after the נפש-∆ between the complete נפש of the mother and his own incomplete נפש. Therefore, the fetus has the “definitive רודף” status and the דין רודף will permit killing him to save his mother. However, after the emergence of his head, since both the mother and the fetus have a complete נפש, there is no נפש-∆ between them. Therefore, they are equal רודפים and the דין רודף cannot be applied because of the מאי חזית logic (Source 17).

B. Similarly, in the case of the ‘fugitive without escape capability’, only the fugitive pursues after the life expectancy-∆ between the townspeople’s חיי עולם (normal life expectancy) and his own חיי שׁעה (transient life). Therefore, the fugitive has the “definitive רודף” status and the דין רודף will permit handing him over to save the townspeople (see Figure 5, p. 23, for a
schematic diagram of the ‘fugitive without escape capability’ case). However, if he can escape, since both the fugitive and the townspeople have potential for жизнь עולם, there is no life expectancy-∆ between them. Therefore, they are equal and the דין רודף cannot be applied because of the logic (Source 18).

Source 17: Rav Moshe’s explanation why the דין רודף applies to the ‘non-emerged fetus’ (See Supplement 2, pp. 65-66, 70-71):

However, [the ‘non-emerged’] fetus does not yet have a complete נפש, as we deduce from the fact that one does not incur capital liability (for killing an unborn fetus). Therefore, regarding the advantage (i.e., the נפש-∆) that the mother has over the fetus – that she is a complete נפש while he is not yet a complete נפש – only the fetus is a רודף and his mother is not a רודפת (pursuer). Therefore, the דין רודף applies to the fetus because of the advantage that the mother has over him.

Source 18: Rav Moshe’s explanation why the דין רודף applies to the ‘fugitive without escape capability’ (See Supplement 2, pp. 67, 69):

However, if it is evident that everyone will die [including the fugitive, if they remain passive] … the townspeople only pursue after the fugitive’s עший (transient life) while he pursuers after all their life (חיי עולם - normal life expectancy). Thus, regarding the essential life – which is the advantage (i.e., the life expectancy-∆) that the townspeople have over the fugitive’s ע申し込み – the fugitive pursues after them while they do not pursue after him at all. Thus, the דין רודף applies to the fugitive despite his lack of intent to harm, since he nevertheless is the cause [of their impending danger].

Table 3: Description of “differentials” between the participant’s respective “levels” of life in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Participant</th>
<th>“Level” of life</th>
<th>Type of “differential”</th>
<th>Abbreviation for “differential”</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘non-emerged fetus’</td>
<td>Fetus</td>
<td>incomplete נפש</td>
<td>נפש-differential</td>
<td>נפש-∆</td>
</tr>
<tr>
<td></td>
<td>Mother</td>
<td>complete נפש</td>
<td></td>
<td></td>
</tr>
<tr>
<td>‘fugitive without escape capability’</td>
<td>Fugitive</td>
<td>ע申し込み</td>
<td>life expectancy-differential</td>
<td>life expectancy-∆</td>
</tr>
<tr>
<td></td>
<td>Townspeople</td>
<td>עולם</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Figure 4: The “differential” (Δ) in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases: The term “level” refers to “life-level”, either the “נפש-level” or the “life expectancy-level”. Rodef-א’s “Level 2” is higher than, and is inclusive of, Rodef-א’s “Level 1”. The Δ refers to the “differential” between “Level 1” and “Level 2”. Accordingly, only Rodef-א pursues after the Δ and therefore, he has the “definitive רודף” status.

<table>
<thead>
<tr>
<th>Case</th>
<th>Rodef-א</th>
<th>Rodef-ב</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Name</strong></td>
<td><strong>“Level 1”</strong></td>
</tr>
<tr>
<td>‘non-emerged fetus’</td>
<td>Fetus</td>
<td>incomplete נפש לנדש</td>
</tr>
<tr>
<td>‘fugitive without escape capability’</td>
<td>Fugitive</td>
<td>حرしていて transient life</td>
</tr>
</tbody>
</table>
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Figure 5: The ‘fugitive without escape capability’ case: If the active option is chosen (i.e., if the fugitive is handed over), the townspeople will live at the expense of the fugitive’s life. If the passive option is chosen, both the fugitive and townspeople will only have שׁעה (temporary life extension). Since there is a life expectancy-$\Delta$ between them, they do not pursue each other equally and there is no רodef dilemma.

- Hand over fugitive (מסורת)
- No hand over

“✓” : Denotes the saving of a life

“✗” : Denotes the loss of a life

“✓ ” : Denotes the temporary extension of life
Table 4: Summary of Approach #2, (approach of Rav Moshe), to explain the different rulings in the obstructed labor and fugitive situations:

Based on the position that an unintentional pursuer has a status of a רודף.

<table>
<thead>
<tr>
<th>Type of Situation</th>
<th>Sub-category</th>
<th>Who will be saved, as a consequence of choosing the ______ option?</th>
<th>Does $Rodef_{\text{A}}$ pursue a $3\Delta$ between the “life-levels” of $Rodef_{\text{A}}$ and $Rodef_{\text{B}}$?</th>
<th>$^4$Doesalmacia.caרדריהלן apply?</th>
<th>Who is assigned “definitive-רודף” status?</th>
<th>How does the Halacha decide? which option?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstructed labor</td>
<td>non-emerged fetus</td>
<td>Mother’s complete נפש</td>
<td>Fetus’ incomplete נפש</td>
<td>Yes</td>
<td>The fetus pursues the $3\Delta$ between the mother’s complete נפש and his own incomplete נפש.</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>partially-emerged fetus</td>
<td>Mother’s complete נפש</td>
<td>Fetus’ complete נפש</td>
<td>Yes</td>
<td>The fetus and mother equally pursue each other’s complete נפש.</td>
<td>Yes</td>
</tr>
<tr>
<td>Fugitive</td>
<td>with escape capability</td>
<td>$^5$TP’s חיי עולם $^6$חיי עולם</td>
<td>Fugitive’s חיי עולם $^5$חיי עולם</td>
<td>No</td>
<td>The fugitive and TP equally pursue each other’s $^7$חיי שׁעה.</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>without escape capability</td>
<td>$^5$TP’s חיי עולם $^6$חיי עולם</td>
<td>Fugitive’s חיי שׁעה $^7$חיי שׁעה</td>
<td>Yes</td>
<td>The fugitive pursues the $3\Delta$ between the TP’s $^8$חיי עולם and his own $^7$חיי שׁעה.</td>
<td>No</td>
</tr>
</tbody>
</table>

$^1$The active option is as follows: In the obstructed labor situation: feticide; in the fugitive situation: hand-over (מסירה).

$^2$Rodef$_{\text{A}}$ = fetus or fugitive; Rodef$_{\text{B}}$ = mother or townspeople; $3\Delta$ = “differential”, either a נפש-$\Delta$ or a life expectancy-$\Delta$.

$^4$For simplicity purposes, this can be regarded as synonymous with: “Is there a 르ודף dilemma?”.

$^5$TP = Townspeople

$^6$חיי עולם = Normal life expectancy; $^7$חיי שׁעה = Transient life expectancy;

$^8$יוסף maintains that מסירה is only permitted if the hooligans imposed a “death sentence” (they have a grievance) against the ‘fugitive without escape capability’.
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VII. Application of אין דוחין נפשׁ מפני נפשׁ and the דין רודף to the multifetal pregnancy (MFP) situation:

1. The following discussion refers to a hypothetical sextuplet pregnancy (6 fetuses), in which:
   A. There is a high probability of fatality for all fetuses either in utero or shortly after birth, if MPR is not performed. In this scenario, “F_reduce” = the 3 fetuses that the physician wishes to reduce, and “F_save” = the remaining 3 fetuses that the physician wishes to save.
   B. All fetuses have the same potential to survive if other fetuses are reduced.
   C. No fetus displays a gross abnormality or malformation (based on ultrasound imaging studies).

2. In light of the above discussions, several arguments can be made to either allow or prohibit MPR:
   A. On one hand, perhaps the principle of אין דוחין would forbid performing MPR even though it would increase the survival probability of the remaining fetuses, since we would be forced to save some lives at the expense of others.
   B. On the other hand, just as we are permitted to hand over the ‘fugitive without escape capability’ where everyone would die if the townspeople remained passive, perhaps we should be permitted to reduce some of the fetuses to save the others if all fetuses are otherwise likely to perish (without MPR). We have looked at two different approaches for the permissibility to hand over the ‘fugitive without escape capability’ (i.e., the permissibility for מסירה). The logic inherent in each of these approaches may also provide a basis to permit MPR.
      i. Approach 1 - Chasdei Dovid: The permissibility for מסירה is based on the inapplicability of the דין חזית logic. Since the fugitive will die whether or not the townspeople hand him over, the logic of דין חזית does not apply.
      ii. Approach 2 - Rav Moshe: The permissibility for מסירה is based on the דין רודף since the fugitive is considered a רודף after the townspeople.
   C. Rabbi Dr. Zalman Levine (Reference 6) suggests that the דין חזית logic may not apply in a MFP situation where there is a high risk of total fetal/neonatal death without reduction. Therefore, just as the inapplicability of the דין חזית logic permits מסירה (when the fugitive is unable to escape, according to the Chasdei Dovid, Approach 1), this approach may also permit MPR.
   D. According to Rav Moshe (Approach 2), perhaps each fetus in an MFP situation has the status of a רודף after the other fetuses. Just as the דין רודף permits מסירה (when the fugitive is unable to escape, according to Rav Moshe) despite the absence of volition to harm or wrongdoing, perhaps the דין רודף will permit MPR if the passive option is likely to lead to total fetal/neonatal death.

This approach is problematic, however, because Rav Moshe explains that the permissibility to hand over the ‘fugitive without escape capability’ is based on the fugitive being considered the
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“definitive רודף” due to the life expectancy-$\Delta$ between himself and townspeople. By MFP, there is no life expectancy-$\Delta$ between the fetuses, assuming all have the same survival probability. Accordingly, even if the fetuses are considered pursuers (רודפים), they all equally pursue after each other, and thus, we have a מאי חזית Rodef dilemma: Why do you presume that F_reduce pursues after F_save more than F_save pursues after F_reduce? Apparently, it does not seem possible for the דין רודף to permit MPR?

3. In personal correspondence with Rabbi Dr. Zalman Levine (Reference 6), Rav Yosef Sholom Elyashiv ruled that the single deciding factor for permitting MPR is the probability of mortality for each of the fetuses. Rav Elyashiv permitted MPR (in a specific case presented to him by Rabbi Dr. Levine) if the probability of all fetuses perishing was greater than 50%. In addition, Rav Elyashiv ruled that major disability or morbidity (which is common in surviving multifetal-pregnancy babies) may not be considered a factor in allowing MPR.

4. In Sefer Nishmat Avraham (Source 19), Rabbi Dr. Abraham records the ruling of Rav Shlomo Zalman Auerbach (henceforth referred to as “Rav Shlomo Zalman”) who permitted MPR in “cases where the pregnancy is at high risk” on the basis that “each of the fetuses has the status of a רודף”. I do not know the risk level necessary to be considered a “high risk” to the pregnancy, in order to permit MPR according to Rav Shlomo Zalman. Similarly, Rav Mordechai Eliyahu wrote that if all fetuses will otherwise die, each fetus is a רודף after the others and therefore, MPR would be permitted (Reference 11).

Source 19: Rav Shlomo Zalman Auerbach permits MPR in certain cases of high risk to the pregnancy based on the דין רודף; Sefer Nishmat Avraham. (See Supplement 1, Source 11, p. 58, for a more extensive excerpt).

The Gaon, Rav Shlomo Zalman Auerbach, ZT”L, explained to me that in cases where the pregnancy is at high risk due to multiple fetuses, *each of the fetuses has the status of a רודף and therefore the physicians are permitted to select those fetuses for reduction whose termination will cause the least risk of aborting the entire pregnancy. He also agreed that this is permissible even beyond 40 days .... The Gaon, Rav Yosef Sholom Elyashiv, Shlita (now, ZT”L) told me since the doctors state there is a risk in a quadruplet pregnancy that all the fetuses will be miscarried, it is permitted to reduce. On the other hand, it is known to me that the Gaon (Rav Elyashiv), Shlita, forbade reducing a triplet pregnancy.

*If none of the fetuses displays abnormalities (which is our hypothetical case), the physician selects the fetus(es) to be reduced based on their position in the uterus (per Rabbi Dr. Levine, Reference 6). It is beyond my level of understanding to determine whether such a selection is Halachically equivalent to the designation required to permit מפירה in the fugitive case, or even if such equivalency would be necessary to permit MPR based on the דין רודף.
VIII. Possible approach to permitting MPR based on Rav Moshe Feinstein’s explanation of the דין רודף:

**Note:** Rav Moshe has not published any ruling on the permissibility of MPR (possibly because this procedure was not yet clinically well established during his life time). Thus, any thoughts below are intended as merely an attempt to logically extend Rav Moshe’s Halachic analysis from the fugitive and obstructed labor situations discussed above, to multifetal pregnancy.

1. Rav Hershel Schachter (Reference 12) explains that the position of Rav Moshe, i.e., the prohibition of feticide is included under לא תרצח, is based upon the eventuality that a fetus would become a viable born person. Therefore, if the physicians state with near-certainty that all fetuses will die unless MPR is performed, since the eventuality of a viable born person does not exist, there would be no prohibition of לא תרצח. Therefore, MPR would be permitted to save the remaining fetuses in such cases. According to this approach, Rav Moshe would presumably not agree with Rav Elyashiv that a mortality risk of merely greater than 50% suffices to permit MPR. Rather, a much higher mortality risk would likely be required to permit MPR.

2. Above (VII-2-D, pp. 25-26), we suggested the possibility that perhaps Rav Moshe would consider each fetus as a רודף after the others and accordingly, the דין רודף would provide the basis for permitting MPR, which is the position of Rav Shlomo Zalman. However, we challenged this supposition: Since there is no life expectancy-∆ between fetuses, the רodef logic (Why do you presume that $F_{reduce}$ pursues after $F_{save}$ more than $F_{save}$ pursues after $F_{reduce}$?) would prevent the דין רודף from permitting MPR?

3. I would suggest that the key to determining whether the דין רודף can be applied to permit MPR is by assessing if the concept of המהלך כא רופא ולא רופא applies to the MFP situation. If the concept applies to MFP, then, just as in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases, we cannot apply the דין רודף and thus, MPR would be forbidden. Conversely, if the concept does not apply to MFP, the דין רודף could be applied (just as in the ‘fugitive without escape capability’ case) and MPR would be permissible.

4. For purposes of simplicity, I suggest that Rav Moshe’s explanation how the דין רודף applies in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases, may be presented as follows: There are two ends of the “active-vs.-passive option spectrum” (abbreviated as “A-vs.-P spectrum”): The “passive end” and the “active end”. At the “passive end”, רodef א (the fetus or fugitive) will live at the expense of רodef ב (the mother or townspeople); whereas, at the “active end”, רodef ב will live at expense of the רodef א (see Figures 2-3, pp. 18-19). Since we see that their respective survivals are inversely related, it is evident that Heaven has arranged that רodef א and רodef ב are equally “opposing רודפים”. Accordingly, we have no basis to assign the “definitive רודף” status to one party more than to the other and thus, the דין רודף cannot be applied.
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5. How does this help us determine if missionary קא רדפי לה applies to the MFP situation? Two opposing perspectives are suggested, to either support or oppose applying missionary קא רדפי לה to MFP.

A. On one hand, there are two analogies between the MFP situation and the ‘fugitive with escape capability’ case: (1) Each fetus in the MFP situation has a similar potential to survive if other fetuses are reduced, and thus, there is no life expectancy-∆ between the fetuses; (2) Since $F_{save}$ can only live if $F_{reduce}$ is reduced and visa versa, therefore, the respective survivals of all the fetuses are inversely related. From this vantage point, we should say that all fetuses pursue after each other equally. Accordingly, just as in the ‘fugitive with escape capability’ case, the missionary קא רדפי לה concept should apply and the דין רודף would not apply to permit MPR.

B. On the other hand, a strong argument could be made against applying missionary קא רדפי לה to MFP, as follows: At the “passive end” of the “A-vs.-P spectrum” (i.e., if MPR is not performed), no fetus is likely to live at the expense of another fetal life since there is a high risk of total fetal/neonatal death. Only at the “active end” (i.e., if MPR is performed), some fetuses (i.e., $F_{save}$) will live at the expense of the others (i.e., $F_{reduce}$) (see Figure 6, p. 31). Accordingly, the survivals of $F_{save}$ and $F_{reduce}$ are not truly inversely related in the same manner as in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases. Therefore, we would not say that Heaven has arranged that all parties pursue each other equally. Accordingly, the missionary קא רדפי לה concept would not apply to the MFP situation in question and the דין רודף could permit MPR despite the absence of a life expectancy-∆.

6. Thus, we have arguments both to support and oppose applying missionary קא רדפי לה to the MFP situation. I would like to suggest the following approach why the missionary קא רדפי לה concept should not apply to the MFP situation and thus, the דין רודף would permit MPR.

A. In the 차דוושי רבן חוסי hele על המאפ (Reference 8), Rav Chaim states, “The הראב״ם understands that the הרודף’s authorization for killing the רודף is based on the imperative of saving the life of the pursued party (הסלת הנרדף).” In the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases, whether we choose the active option or passive option, we will save the life of a רודף since each רודף is simultaneously also a נרדף. If we choose the passive option, רודף (the fetus or fugitive) is the נרדף who will be saved and if choose the active option, רודף (the mother or townspeople) is the נרדף who will be saved. Since the entire purpose of the דין רודף is to save the נרדף, unless we know that one of the “opposing parties” has the “definitive רודף” status, we should choose the passive option since we are saving a נרדף without actively taking a life. This would seem to fit with Rav Moshe’s explanation of missionary קא רדפי לה: The same Heavenly process that caused the mother (רודף ב) to be the object of the fetus’
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(Rodef)'s pursuit, i.e., that she would suffer such a difficult labor that she cannot live if the fetus’ life is spared, has also caused the fetus to become the object of the mother’s pursuit. Since the fetus is an equal נרדף as the mother is, there is just as much imperative to save his life as there is to save his mother’s life. The רodef logic, therefore, dictates that we choose the option of saving a נרדף which would not require actively taking a life. Only if we know that רodef is the “definitive רודף” (in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases), which is another way of saying רodef is the “definitive רודף”, the imperative of saving רodef determines that we must choose the active option.

B. However, in the MFP situation, there is only one option that would result in saving a נרדף, i.e., the active option (MPR). The passive option is not likely to save any lives. Therefore, the imperative of saving the life of a נרדף should determine that we choose the active option, i.e., we should perform MPR to save some of the fetuses.

7. Rav Moshe’s use of the נא protective terminology in the context of the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases, may be analogous to Rashi’s understanding of the רodef logic in the “coerced murder” case.

A. Rav Moshe portrayed Rashi’s view of the רodef logic in the “coerced murder” case as “two negative consequences vs. one negative consequence” (see Figure 1, p. 5).

B. Similarly, in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases, we have a “standoff” between two options:

i. If we choose the passive option, there will be one positive consequence,전לת הנרדף (saving the pursued party), without performing an act of שפיכת דמים (murder).

ii. If we choose the active option, there will be a positive consequence,전לת הנרדף, but there will also be a negative consequence, an act of שפיכת דמים.

C. Thus, we have a “standoff” between: (1) the passive option, which will only produce a positive consequence; vs. (2) the active option, which will produce both a positive and a negative consequence. Therefore, the נא protective logic dictates that we should choose the passive option which will only produce a positive consequence.

8. However, in the MFP situation, there is no similar “standoff” since the passive option will not likely produce any positive consequence. The only available option which will produce the positive consequence of전לת הנרדף is the active option, i.e., performing MPR. Therefore, the נא logic and thus, the concept, will not apply and the would permit MPR. The only remaining question is which fetus(es) to select for reduction. Perhaps this is not a question in
Multifetal Pregnancy Reduction in Halacha

Halacha, but rather, a strategic medical question, i.e., which fetuses does the physician believe he can reduce while causing the least risk to the remainder of the fetuses as Rav Shlomo Zalman said (Source 19, p. 26).

9. There is a difficulty, however, with this rationale. Previously (VI-8, pp. 20-21), we explained that according to Rav Moshe, the reason why the משׁמיא קא רדפי לה concept does not apply in the ‘fugitive without escape capability’ situation is because of the life expectancy-∆ between the townspeople’s (חיי עולם) and the fugitive’s (חיי שׁעה) (normal life expectancy) and the fugitive’s (temporary life).

However, if our rationale by MFP is correct, we should apply the same logic in the ‘fugitive without escape capability’ case, i.e., since the only end of “A-vs.-P spectrum” in which anyone will survive is at the “active end” (i.e., משלמאו קא רדפי לה, מAccessException, the concept should not apply. Why does Rav Moshe need a life expectancy-∆ to explain why משׁמיא קא רדפי לה does not apply in the ‘fugitive without escape capability’ situation?

A. Perhaps we can answer that in the ‘fugitive without escape capability’ situation, even though there would be no survivors if the passive option was chosen, nonetheless, the fugitive would still haveחיי שׁעהremaining until the hooligans invade and kill everyone, which he stands to lose if the townspeople hand him over. Therefore, if not for the life expectancy-∆ between the townspeople’s חייו שלמה and the fugitive’s חייו שלמה, we would still have the same dilemma as in the ‘fugitive with escape capability’ situation: If we choose the active option, the fugitive will lose hisחייו שלמה and if we choose the passive option, the townspeople will lose theirחייו שלמה.

Accordingly, we would have reasoned since we can fulfill цель השה through the passive option, i.e., temporarily extending the life of the fugitive, we must remain passive rather than performing an act of רodef. Only because of the life expectancy-∆, we can say that the respective pursuits of the “opposing parties” are not equal and therefore, the משׁמיא קא רדפי לה concept will not apply.

B. However, in the MFP situation, if we believe that the concept of חייו שלמה does not exist during fetal life in utero, which is the position of the Yad HaMelech (Reference 13), there will not be any fulfillment of цель השה through the passive option. Although the passive option will temporarily prolong the existence of the fetuses, since they do not haveחייו שלמה, this prolongation is not considered life-saving ( цель השה) at all. Only the active option (MPR) can achieve цель השה. Thus, the רודף logic and the משׁמיא קא רדפי לה concept will not apply despite the absence of a life expectancy-∆ and the דן רודף would permit MPR.
Figure 6: Multifetal pregnancy (MFP) case: If the passive option is chosen, there will not likely be any הצלת הנרדף since there is a high risk of total fetal/neonatal death. Only if the active option (MPR) is chosen, some of the fetuses ($F_{\text{save}}$) will survive at the expense of the other fetuses ($F_{\text{reduce}}$).

"✓": Denotes the saving of a life

"✗": Denotes the loss of a life
IX. Conclusion

1. Table 5 summarizes Rav Moshe’s analysis of the fugitive and obstructed labor situations and compares these cases to the MFP situation.

2. We discussed several reasons to permit MPR in cases of high risk of total fetal/neonatal death:
   
   A. Rav Shlomo Zalman Auerbach ruled that in cases of high risk to the pregnancy, “each of the fetuses has the status of a רודף,” and on this basis, he permitted MPR.

   B. Rav Hershel Schachter explained that even according to Rav Moshe who believes that feticide usually is a violation of לא תרצח, if there is a near certainty that all fetuses will die without MPR, there would be no prohibition of לא תרצח and therefore MPR would be permitted to save the remaining fetuses.

   C. Rabbi Dr. Zalman Levine reasoned that if there is a high probability of fetal death, the נא TRESH logic would not apply (just as in the ‘fugitive without escape capability’ case according to the Chasdei Dovid’s explanation) and therefore MPR would be permitted.

   D. Although Rav Moshe did not rule on the permissibility of MPR, perhaps he would agree with Rav Shlomo Zalman that we apply the דין רודף to permit MPR since Rav Moshe believes that the דין רודף applies even to unintentional pursuit. This approach is based on a suggestion that the מشرعיא קא רדפי לה logic and thus, the concept, only apply if both the passive and active options can achieve הצלת המרי, i.e., in the ‘partially-emerged fetus’ and ‘fugitive with escape capability’ cases. However, in the MFP situation, if we assume that the concept of חיות שומא does not exist during fetal life, the only option that will achieve הצלת המרי is the active option (MPR). Therefore, מشرعיא will not apply and the דין רודף would permit MPR.

3. The question as to how Rav Moshe would have ruled regarding the permissibility of MPR cannot be definitively answered based on his rulings and insights that we have presented here. If we had the fortune to still have Rav Moshe leading us today, we could be certain that he would have marshaled his immense and profound understanding of all areas of Shas and Poskim, as well as his great Yirat Shomayim and Mesirat Nefesh for K’lal Yisroel to properly determine the Halacha in each type of multifetal pregnancy situation, to guide us through these very critical situations. It is our hope that through this essay, we have, in some small measure, demonstrated the timelessness of the Torah as well as the brilliance and ability of Torah giants such as Rav Moshe to transcend time and to thereby inspire the many to embrace the beauty that was Rav Moshe and that he left for us to further cultivate.

Woe is to us that Rav Moshe is lost and not found. Who will give us another as him?
Table 5: Summary of Suggested Analyses of the Fugitive, Obstructed Labor and Multifetal Pregnancy Situations, Based on Rav Moshe’s Insights

<table>
<thead>
<tr>
<th>Type of Situation</th>
<th>Sub-category</th>
<th>Who will be saved if the ______ option is chosen?</th>
<th>Is there a Δ (differential) between (Rodef_א) and (Rodef_ב)?</th>
<th>Does the משמיא קא רדפי לה concept apply?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstructed labor</td>
<td>non-emerged fetus</td>
<td>Mother’s complete נפש</td>
<td>Fetus’ incomplete נפש</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>partially-emerged fetus</td>
<td>Mother’s complete נפש</td>
<td>Fetus’ complete נפש</td>
<td>No</td>
</tr>
<tr>
<td>Fugitive</td>
<td>with escape capability</td>
<td>(^3)TP’s חיים עלמה</td>
<td>Fugitive’s חיים עלמה</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>without escape capability</td>
<td>(^3)TP’s חיים עלמה</td>
<td>Fugitive’s חיים שענה</td>
<td>Yes</td>
</tr>
<tr>
<td>Multifetal Pregnancy</td>
<td>Assume: High risk of total fetal/neonatal death without MPR</td>
<td>(^6)F\text{save} (=) fetuses that the physician wishes to save</td>
<td>High probability: No one</td>
<td>No</td>
</tr>
</tbody>
</table>

1The active option is as follows: In the obstructed labor situation: feticide; in the fugitive situation: hand-over (מסירה); in the MFP situation: MPR (fetal reduction)

2\(Rodef_א\) = fetus or fugitive; \(Rodef_ב\) = mother or townspeople; \(^3\)TP = Townspeople; \(^4\)חיי עלמה = Normal life expectancy; \(^5\)חיי שענה = Temporary life (expectancy)

3\(^6\)F\text{save} = fetuses that the physician wishes to save; \(^7\)F\text{reduce} = fetuses that the physician wishes to reduce.

The table provides a summary of Suggested Analyses of the Fugitive, Obstructed Labor and Multifetal Pregnancy Situations, Based on Rav Moshe’s Insights.
<table>
<thead>
<tr>
<th>Reference Number</th>
<th>Author/Work/Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>תלמידי רבינו יונה על מס' ב.sa &quot;דילה&quot; דינה דĽא דדובד ה Caleb פפ.</td>
<td>(See Appendix B, Source B-2, p. 45, for an excerpt and translation).</td>
</tr>
<tr>
<td>2</td>
<td>רבי נחום פרצוביץ', ספר זכרון טוב משה שמואל</td>
<td>(See Supplement 2, pp. 83-85, for excerpts and translation).</td>
</tr>
<tr>
<td>3</td>
<td>אגרות משה, יורה דעה חיב, פנין קך, הנס</td>
<td>(See Supplement 1, Source 2, pp. 54-55, for an excerpt of the Sefer Mitzvot Gadol and Dina Dechaye).</td>
</tr>
<tr>
<td>4</td>
<td>חיוורים אחרים על ספר מצוות גדול לאלוי קסד'</td>
<td>(See Supplement 1, Source 3a, pp. 57-58, for full Hebrew text and partial translation).</td>
</tr>
<tr>
<td>5</td>
<td>התיישר, חיוורים אחרים על מס' כא, פנין קך</td>
<td>(See Supplement 1, Source 4, pp. 62-62A, for an excerpt of the Yad Hamelech).</td>
</tr>
<tr>
<td>6</td>
<td>Rabbi Dr. Zalman Levine: &quot;Multi Fetal Reduction&quot;; audio file on YUTorah.org, October 2007</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>אגרות משה, חחוון משפט חיב, פנין מס' א-ב</td>
<td>(See Supplement 2, pp. 63-66, for excerpts and translation).</td>
</tr>
<tr>
<td>8</td>
<td>חיוורים אחרים על מס' ב.א</td>
<td>(See Supplement 1, Source 13, pp. 60-61, for an excerpt and translation).</td>
</tr>
<tr>
<td>9</td>
<td>אבר演习ר על מס' ב.א</td>
<td>(See Supplement 4, pp. 95-99, for excerpts and translation).</td>
</tr>
<tr>
<td>10</td>
<td>וחצרה אבר演习ר על מס' ב.א</td>
<td>(See Supplement 4, pp. 95-99, for excerpts and translation).</td>
</tr>
<tr>
<td>11</td>
<td>הרב מרדכי אליהו, התחום, השמדת ביציות מופר過程ים, פרק א' הלכות '</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>מירון על מס' ב.א</td>
<td>(See Supplement 1, Source 16, pp. 62-62A, for an excerpt of the Yad Hamelech).</td>
</tr>
</tbody>
</table>
Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, explained by Rav Moshe Feinstein

This discussion pertains to a dispute between ר יוחנן and לקיש ריש (ר “ל) in the Yerushalmi (Source 10, p. 10) regarding the fugitive situation, where hooligans order the townspeople to hand over a victim (a “fugitive”) to be killed, or else they will kill everyone in the town. In addition to the requirement that the fugitive was designated (i.e., singled out) by the hooligans, ר also requires that he is ḥויב מיתה (deserving of death, defined below) to permit handing him over (מסירה). However, ר יוחנן permits even if the designated fugitive is not ḥויב מיתה.

A. The חסדי דוד and the ב״ח (Rav Yoel Sirkes) explain that the term, ḥויב מיתה (which ר also stipulates as a requirement to permit מסירה), means that the fugitive deserves a legal death sentence because of his criminal actions. The ב״ח writes, “The logic does not apply since he brought [the threat] on himself through his actions for which he deserves the death penalty by the non-Jewish laws” (Source A-1). Similarly, the חסדי דוד, explaining the view ofשמעון ר in the Tosefta (Source 9, pp. 9-10), writes, “However, believes that ... if the designated fugitive is ליחוי מיתה, even if he could escape and the townspeople will be killed, it is permitted to hand him over because the logic of does not apply when he is ליחוי מיתה” (Supplement 1, Source 5, p. 54).

Both the חסדי דוד and the ב״ח understand that: 1) ר’s intended meaning of the term, ḥויב מיתה, i.e., the fugitive deserves a legal death sentence, is identical to שמיעון ר’s intent in the Tosefta; and 2) Since the היתר (permissibility) for מסירה is based on the fugitive deserving capital punishment because of his criminal actions, he should be handed over even if could escape (i.e., we prevent him from escaping, to save the others).

Source A-1: The ב״ח’s explanation why ר permits מסירה when the fugitive deserves the death penalty.

... If the townspeople are in immediate danger, even if the fugitive is outside the danger (i.e., he has escape capability), they should hand him over since he is ליחוי מיתה and the hooligans designated him. The ב״ח writes, “The logic only applies if β is not ליחוי מיתה, זיוד מיתה, even if he is outside the danger, the logic does not apply since he brought [the threat] on himself through his actions, for which he deserves capital punishment by the [non-Jewish] laws. In this case, we say, “On the contrary, the blood of α and similarly, the blood of the townspeople is redder,” since he (α) has not done anything at all for which he deserves to be killed.

B. However, Rav Moshe understands that the basis for the היתר to hand over the fugitive according to both ר יוחנן and ר “ל stipulates that the fugitive must be ליחוי מיתה, זיוד מיתה, is that he is considered a רודף after the townspeople (Source A-2). Rav Moshe explains when ר “ל stipulates that the fugitive must be ליחוי מיתה, פסירה מיתה, he does not require that a death sentence was issued by a legitimate justice system. Rather, ר “ל’s intent in the term, ליחוי מיתה, is that the hooligans have any grievance against a specific victim for which they wish to kill him, in which case, מסירה is permitted. Moreover,
Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, explained by Rav Moshe Feinstein

... agrees with ר יוחנן that מסירה is only permitted if the fugitive has no escape capability, but if he has escape capability, מסירה is prohibited even if the hooligans have a grievance against him.

C. From Sources A-2 and A-3, we see that Rav Moshe understands that there is a two-step process in order to apply the דין רודף, מסירה, according to both ר יוחנן and ר"ל ר ויתן:

1. **Condition 1:** The fugitive must be considered the cause of the lethal threat (the exact term Rav Moshe uses is: "הסבה לרדיפה") facing the townspeople, thus defining him as a רודף; and

2. **Condition 2:** The fugitive must be unable to escape, in order to assign him the “definitive רודף” status due to the 'life expectancy-differential' between the townspeople’s חיי עולם and the fugitive’s חיי שׁעה (Section VI-8-B, pp. 20-21).

Source A-2: Rav Moshe’s explanation of the position of (ר"ל) רבי יהודה in the Yerushalmi.

(See Supplement 2, pp. 73, 75, for more extensive excerpts from the Sefer Igros Moshe).

D. In Source A-2, Rav Moshe states, “Thus, the townspeople will be permitted to hand him over even according to ר"ל, if hooligans want to kill the fugitive [merely] because of their grievance against him, the דין רודף will apply to him even though he has no intention to pursue. Thus, the townspeople will be permitted to hand him over even according to ר"ל just as [we may kill the ‘non-emerged’ fetus] when the hooligans come with a grievance against the fugitive, ר יוחנן will agree with ר"ל [to permit מסירה] since, in this case, the fugitive is certainly the cause of the pursuit (i.e., the threat) to kill the townspeople.

According to how I have explained ... that ר"ל does not require that a [legitimate] death sentence [was issued against the fugitive, מסירה], but rather, even if his death sentence came from [a grievance of] the gentile hooligans, ר יוחנן also agrees with (ויתן). Accordingly, ר"ל will not permit מסירה [unless the fugitive will certainly be killed along with the townspeople when the hooligans capture the city (i.e., if he has no escape capability).]
Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, explained by Rav Moshe Feinstein

they are prepared to kill all the townspeople unless he is handed to them. Therefore, he is deemed the cause of the threat and is defined as a רודף after the townspeople. However, ל"ר requires a higher level of designation, i.e., a designation linked to that specific victim because of the hooligans’ grievance against him. If the hooligans demand a specific victim because of their grievance toward him, their murderous desires will only be assuaged by receiving this individual, which identifies him as the cause of the threat against the townspeople, thus, defining him as a רודף. However, if they have no grievance against this individual, it is evident that the hooligans’ purpose is to demonstrate their ferocity and kill anyone they choose. If the selected person had not been present, the hooligans possibly would have picked out a different person and thus, their random selection cannot render him as the cause of the threat (Source A-3). The חזון איש explains ל"ר’s position in a similar manner (see Supplement 1, Source 10, p. 58).

Source A-3: Rav Moshe’s explanation of the dispute between ר יוחנן and רישׁ לקישׁ (ל"ר) in the Yerushalmi.

(See Supplement 2, pp.72, 74-75, for more extensive excerpts from the Sefer Igros Moshe).

E. According to Rav Moshe, since ל"ר’s disagreement with ר יוחנן is merely to require a higher level of designation (condition 1), ל"ר will agree with ר יוחנן that the fugitive must be unable to escape, so that the ‘life expectancy-differential’ will enable the דין רודף to permit מסירה (condition #2). However, if the fugitive has escape capability, even if he was defined as a רודף either via designation alone or in conjunction with the hooligans’ grievance, the townspeople are defined as equal pursuers (רודפים) after the fugitive, by the same logic that defines the fugitive as a רודף. Accordingly, the logic states, “Why do you presume the fugitive is more of a רודף after the townspeople, than they are רודפים after him?”, which according to Rav Moshe is the essence of the concept (pp. 16-17, 20-21). Therefore, the דין רודף will not apply when he has escape capability, regardless of the level of designation and thus, מסירה is prohibited.

F. Since the reason ל"ר requires a grievance against the fugitive is to define him as a רודף, if there are other means to define him as a רודף, Rav Moshe posits that ל"ר will agree with ר יוחנן that a grievance is not required
Appendix A: The “Fugitive” Situation in the Tosefta and Yerushalmi Terumot, explained by Rav Moshe Feinstein

Accordingly, Rav Moshe says if the fugitive was designated by the hooligans to be killed before he fled to the city, ר"ל ר"ג will agree that the townspeople may hand him over even if hooligans have no grievance against him, providing he has no escape capability (Source A-4). Presumably the explanation is: Since the fugitive was designated for death before he fled to the city, it is evident that the hooligans specifically are targeting him alone. Therefore, the circumstances define the fugitive as a רודף (condition #1) despite the absence of a grievance against him.

Source A-4: Rav Moshe explains that ר"ל (ר"ג) ל"א does not always require a “death sentence” (i.e., a grievance). (See Supplement 2, p.74, for a more extensive excerpt from the Sefer Igros Moshe).

Even in a case where the hooligans have no grievance against the fugitive but nonetheless, if they designated him to be killed before he fled to the city and then the hooligans demand that the townspeople turn him over or else they will kill them all, it is as if the fugitive has a “death sentence”. Since the hooligans previously designated him to be killed, it is as if he was sentenced to death by the hooligans and therefore, he is defined as a רודף even though he has no intent [to harm]. Accordingly, ר"ג ל"א will agree with ר"ג ל"א that if he is unable to escape to safety, but rather, everyone (including the fugitive) will definitely be killed, they are permitted to hand him over because of the life expectancy-differential that the townspeople have over his חיי שׁעה, for which he is a רודף after them and not the reverse. However, if he can escape and be saved, even though the townspeople will then be killed, it is forbidden to hand him over since he is not literally a רודף (i.e., he has no intent to harm).

G. Rav Moshe suggests (while cautioning that further study is needed) that if the fugitive was aware that the hooligans would discover the city where he would seek asylum and that they could massacre the townspeople on his account, his subsequent entry into this city renders him “as a רודף with intent ... since [the massacre of the townspeople] is an inevitable consequence [of him taking asylum there], it is certainly forbidden for him to save himself at the expense of his fellow’s life. In this situation, they would be permitted to hand him over even if he had the ability to escape” (Supplement 2, p. 74). This is consistent with Rav Moshe’s explanation that the requirement for escape incapability is to enable us to assign the “definitive רודף” status to the fugitive (condition #2). Therefore, if the fugitive took refuge in the city knowing that he was thereby endangering the townspeople’s lives, only he is the “definitive רודף” since the townspeople have not done anything to endanger him. Once he is deemed the “definitive רודף”, his ability to escape is immaterial and it is permitted to hand him over. Table 1 (p. 39) summarizes Rav Moshe’s analysis of the views of ר"ג ל"א in the cases discussed above. The two-step process (decision tree) for applying the דין רודף to the fugitive according to Rav Moshe’s approach, is schematically depicted in Figure 1 (p. 40).
**Appendix A:** The “Fugitive” Situation in the Talmud Yerushalmi (Terumot), as explained by Rav Moshe Feinstein

**Table 1:** Rav Moshe’s analysis of the fugitive cases: When is a grievance or escape incapability required to permit handing over the fugitive?

<table>
<thead>
<tr>
<th>1. Was the fugitive aware that the hooligans would discover his city of asylum and potentially kill everyone?</th>
<th>2. Was the hooligans’ designation of the fugitive based on a grievance specific to him?</th>
<th>3. Fugitive has escape capability</th>
<th>4. Fugitive has NO escape capability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No</strong>&lt;br&gt;(designation without a grievance)</td>
<td>After</td>
<td><strong>אסור</strong>&lt;br&gt;Not permitted</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
</tr>
<tr>
<td></td>
<td>Before</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
</tr>
<tr>
<td>Yes</td>
<td>Before or after</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
</tr>
<tr>
<td><strong>Yes</strong>&lt;br&gt;Possibly not applicable?</td>
<td></td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
<td><strong>מותר</strong>&lt;br&gt;Permitted</td>
</tr>
</tbody>
</table>

1. Before he took asylum in the city whose residents were threatened by the hooligans to either hand him over or else everyone will be killed.

2. If the hooligans had no grievance against anyone but randomly picked out a person in the city to kill, Rav Moshe maintains that the randomness (or capriciousness) of their designation cannot render this fugitive as the cause of the threat and thus, he is not defined as a רודף. However, if he was designated by the hooligans before he fled to the city, Rav Moshe maintains that מסירה would be permitted without a grievance even according to רכ"ל.

3. If the fugitive has the capability to escape, we have a מראית dilemma and therefore, the דין רודף will not apply to permit מסירה.

4. The fugitive knew that: (1) the hooligans wanted to kill him, (2) they would find him in the city in which he would hide, and (3) they had the ability to kill everyone in the city if he was not handed over, and despite this knowledge, he still took asylum in the city. Since he intentionally placed the townspeople at risk to save himself, he is considered like a רודף with intent to harm and therefore, Rav Moshe says it is probable that they are permitted to hand him over even if he has the ability to escape. However, Rav Moshe states that further analysis is required to finalize the Halacha accordingly.

**Note:** If the fugitive was truly deserving of the death penalty even through a (legitimate) non-Jewish legal system, Rav Moshe would appear to agree with the חסדי דוד and the ממילא רודף, i.e., that he may be handed over even if he has escape capability. The טו (Supplement 1, Source 9b, p. 57) states that in such a case, such as one who revolts against the non-Jewish government, he should be handed over even if the authorities did not demand his apprehension since he is certainly a רודף after the other Jews because of his evil actions, while they have done nothing to endanger him. From the context in which Rav Moshe quotes this טו (Supplement 2, p. 73), it appears that he concurs with the טו. This would logically apply even if this individual is able to escape.
Appendix A: The "Fugitive" Situation in the Tosefta and Yerushalmi Terumot, as explained by Rav Moshe Feinstein

Figure 1: Two-step process (decision tree) to apply the דֶּין רוֹדֵף in the fugitive case, based on Rav Moshe’s analysis:

**Condition 1:** The fugitive must be the cause of the threat and thus, he is defined as a רוֹדֵף. According to רב יוחנן, this is determined by the mere designation by the hooligans (Step 1a), whereas רישׁ לקישׁ also requires that they have a grievance against the fugitive (Step 1'b). **Condition 2:** The fugitive must have the “definitive רוֹדֵף” status (e.g., if he is unable to escape), because of the life expectancy-differential (Step 2a). However, if he can escape (2b), since the fugitive and townspeople (TP) are viewed as equal pursuers, there is a מאי חזית dilemma and the דין רוֹדֵף cannot apply.

**KEY:** 
life expectancy-Δ = life expectancy-differential

**KEY:** TP = townspeople

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**Question 1:** Was the fugitive designated by hooligans?

- **Yes:** רוֹדֵף
  - **Yes:** Do the hooligans have a grievance against fugitive?
    - **No:** Fugitive is not deemed the cause of the threat
    - **Yes:** רוֹדֵף

- **No:** Fugitive is not deemed the cause of the threat

**Condition #1**

**Question 2:** Is the fugitive able to escape?

- **Yes:** Fugitive & TP are equal pursuers
  - **No:** רוֹדֵף

- **No:** Fugitive has the "definitive רוֹדֵף" status

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Appendix A: The "Fugitive" Situation in the Tosefta and Yerushalmi Terumot, as explained by Rav Moshe Feinstein

H. In summary, the following two approaches for the הָיִיתָר to hand over the designated fugitive were presented:

1. According to the חָסְדֵי דָוִד and the בֵּיתֵי הָדָר, the townspeople are permitted to hand over the fugitive if the circumstances dictate that the מֵאֵי הַחַיָּה logic does not apply, as follows:
   a. If the fugitive has no escape capability, even if he does not deserve the death penalty, ר יוחנן in the Yerushalmi and ר הוהד in the Tosefta permit מסירה “because the reason of מֵאֵי הַחַיָּה does not apply when they all are in an equal state of danger” (חסדי דוד, Source 12, p. 12, and the first approach of the בֵּיתֵי הָדָר).
   b. If the fugitive deserves a death penalty (חייב מיתה) via a legal justice system because of his wrongdoings, ר"ל in the Yerushalmi and ר שמון ר"ל in the Tosefta permit מסירה regardless of his ability to escape. The reason for permitting מסירה is “because the logic of מֵאֵי הַחַיָּה does not apply when he isUntitled (Yedidim) (חסדי דוד and הבית).

Note: Both the חָסְדֵי דָוִד and the בֵּיתֵי הָדָר offer approaches whereby ר יהודה and ר הוהד could agree with each other. The בֵּיתֵי הָדָר maintain that ר יוחנן and ר"ל certainly disagree with each other.

2. According to Rav Moshe, the reason for the הָיִיתָר for מסירה is that the fugitive is considered a רודף after the townspeople since he is the cause of their impending doom (להרדיפה הסבה). This approach is based on Rav Moshe’s belief that intent to harm is unnecessary for a person to be considered a רודף. Both ר יוחנן and ר"ל agree that this applies only if the fugitive has no escape capability. ר יוחנן merely disagree as follows:
   a. ר יוחנן believes that merely by being (randomly) selected by the hooligans, the fugitive is the cause of the townspeople’s impending doom, thereby, defining him as a רודף. Therefore, he may handed over (providing he has no escape capability); whereas
   b. ר"ל believes that the fugitive is only defined as a רודף if the hooligans have a grievance against him for which they wish to kill him. However, if the hooligans randomly selected a person, he is not defined as a רודף. Alternatively, if the hooligans designated the fugitive to be killed before he fled to the city, he is defined as a רודף even without any grievance against him.

I. The approach of Rav Moshe with regard to the dispute between the Amoraim, ר יוחנן and ר"ל, in the Yerushalmi, also lends itself to a cogent understanding of the Tosefta which records the views of the Tannaim, ר יהודה and ר שמון. At first glance, it might appear that the statements of ר יוחנן and ר"ל are merely a reiteration of the statements of the Tannaim in the Tosefta, which is perplexing. Why would the Yerushalmi not simply quote the Tosefta if the Amoraim state nothing new, and or at least mention that the dispute of the Amoraim is identical to the earlier dispute between ר יהודה and ר שמון? As will be evident below, according to Rav Moshe’s approach, this difficulty is readily resolved.
Appendix A: The "Fugitive" Situation in the Tosefta and Yerushalmi Terumot, as explained by Rav Moshe Feinstein

J. The statement of ר יהודה in the Tosefta, requiring a situation of escape incapability in order to permit המסירה, is not explicitly found in the Yerushalmi. However, it is unlikely that the Yerushalmi’s case is where the fugitive has escape capability, because ר יוחנן’s leniency to permit המסירה if the hooligans merely designated an individual, would then defy explanation, from the perspective of either the המאי חזית logic or the דין רודף logic. The המאי חזית logic certainly applies if the fugitive has escape capability because the townspeople are then forced to choose between delivering him to die versus being killed in his stead if they allow him to escape. The דין רודף will not apply when he has escape capability because the townspeople and the fugitive would be considered mutually equal pursuers. Therefore, ר יוחנן’s statement must be referring to a case where the fugitive has no escape capability. Moreover, if we interpret ר"ל’s statement that the fugitive “must be the הריב הפניה (in order to permit המסירה) to mean that he must legally deserve the death penalty (due to his criminal behavior, as the המאי חזית and the דין רודף understand), ר"ל appears to merely paraphrase ר"ל’s statement. This reinforces our question, what information does the Yerushalmi offer that was not already covered in the Tosefta?

K. In paragraph C (p. 36) and in the decision tree (Figure 1, p. 40), we explained that Rav Moshe understands the המסיירה rule for מסירה, which is based on the דין רודף, as a two-step process. The dispute of ר יוחנן and ר"ל pertains to the hooligans’ designation of a fugitive to be killed (the 1st step in the decision tree). Is the designation requirement met if they merely randomly singled out any person (i.e., the position of ר יוחנן) or, must their designation be based on their grievance towards this individual (i.e., the position of ר"ל)? However, the statements of ר יהודה and רשון ר in the Tosefta, pertain to a downstream step in the decision tree, after the designation requirement has been satisfied (as stipulated by either ר יוחנן or ר"ל). At this downstream step, ר יהודה stipulates that (in addition to designation), the fugitive must be assigned the “definitive רודף” status, i.e., he must be unable to escape, in order to permit המסירה (the 2nd step in the decision tree). The phrasing of ר יהודה’s statement suggests that he is not disputing ר יוחנן’s statement (in contrast with the phrasing of the argument between ר יוחנן and רשון ר in the Yerushalmi). ר יהודה’s statement, “When does this apply (i.e., they may not hand him over)? Only if the fugitive is in the exterior while the townspeople are in the interior,” addresses the initial statement of the Tosefta which prohibits מסירה. Thus, ר יהודה is coming to define the parameters of this prohibition, i.e., המסיירה is only prohibited if the fugitive has escape capability. On the other hand, רשון ר’s statement, “So she said to them, ‘Anyone who rebels against the kingdom of David, is liable to execution,” addresses the details of the שבת בן בכרי incident, i.e., רשון ר is coming to clarify the negotiations between the wise woman (according to the Midrash, סרח בת אשר) and the residents of the city, Avel. Based on his insightful analysis of the verses in ספר שמואל, Rav Moshe explains that the townspeople were satisfied that שבת בן בכרי met the two requirements of the decision tree, i.e., he was designated (according to the stipulations of both ר יוחנן and רשון ר) and he also had the “definitive רודף status because he had no escape capability (see Supplement 2, pp. 76-79). Thus, the requirements to permit המסירה as defined by ר יהודה, were met.
Nonetheless, this is only sanctioned on the "היתר"-level" (rough translation: the minimal fulfillment level of the Halacha), but the townspeople would only agree to hand over if it was sanctioned on the "לכתחילה"-level" (rough translation: the ideal fulfillment level of the Halacha). Accordingly, explains ר"שמวล, the townspeople that, in addition to meeting all the above requirements, רו״ד המלך was sanctioned on the "לכתחילה"-level. Thus, according to Rav Moshe’s approach, there is no redundancy; the statements of ר"יוחנן and ר"ם in the Yerushalmi pertain to a different segment of the decision tree than the statements of ר"יזלה and ר"שמעון in the Tosefta. In the Yerushalmi, ר"יוחנן and ר"ל discuss the 1st step of the decision tree, i.e., delineating the required level of designation to define the fugitive as a רודף. However, in the Tosefta, ר"יזלה and ר"שמעון discuss the "לכתחילה"-level (based on the 2nd step of the decision tree) and the "לכתחילה"-level, respectively. Accordingly, the statements of both Amoraim are compatible with both Tannaim and therefore, we are not forced into a difficult position (taken by the שם אנשי תוס׳; see Supplement 2, p. 74) that the Amoraic dispute in the Yerushalmi is identical to the Tannaic dispute in the Tosefta.

L. Furthermore, the Yerushalmi is intrinsically more logical to understand according to Rav Moshe’s approach. As explained above, the Yerushalmi appears to discuss a case without escape capability; otherwise, ר"יוחנן’s leniency would be untenable. Rav Moshe’s understanding that ר"ל does not require a legal death sentence to permit מסירה, fits this scenario most closely for the following reason: If the fugitive legally deserved the death sentence (due to his criminal behavior), מסירה would be permitted regardless of his escape capability (per the הב"ה, Source A-1, p. 35). Consequently, if we interpret ר"ל to mean that the fugitive must legally deserve the death penalty, we would be forced into an awkward explanation of the Yerushalmi, i.e., ר"יוחנן’s statement is limited to a situation where the fugitive has no escape capability whereas ר"ל’s statement applies to either situation - with or without escape capability - providing that the fugitive deserves a legal death sentence. However, according to Rav Moshe, ר"ל’s requirement that that the fugitive “must be מיתה" merely comes to stipulate a higher level designation than that required by ר"יוחנן, and therefore, ר"ל will also require a situation of escape incapability to permit מסירה, just as ר"יוחנן does (Source A-2, p. 36).

M. Lastly, if ר"ל’s intention is that the fugitive must legally deserve the death sentence to permit מסירה, what is the logical connection between the designation by hooligans who operate outside of any legal system, with the fugitive’s death sentence? Since the fugitive’s liability to the death penalty arises from his violation of Torah law or even civil law, if this liability alone is insufficient to permit מסירה, how would the designation by lawless hooligans combine with the legal liability to complete the process to permit מסירה? However, according to Rav Moshe’s understanding, ר"ל’s requirement, היריב מיתה, comes to stipulate the nature of the hooligans’ designation that is considered sufficient to define the fugitive as the cause of the threat, and thus, a רודף (Source A-3, p. 37). Accordingly, the hooligan’s designation and the “death sentence”, which in this context refers to the hooligan’s grievance, are integrally connected.
Appendix A: The "Fugitive" Situation in the Tosefta and Yerushalmi Terumot, as explained by Rav Moshe Feinstein

N. The second opinion in the Tosefta (Rav Moshe Isserles, Supplement 1, Source 9a, p. 57) and the second opinion in the Yerushalmi Terumot (Rav Moshe Isserles, Supplement 1, Source 9b, p. 57) follow the position of רבי שלמה (Rav Moshe Feinstein) who requires a “death sentence” (i.e., the hooligans’ grievance against this fugitive, according to Rav Moshe’s interpretation) to permit מסירה. This poses a difficulty for the suggestion that multifetal pregnancy reduction could be permitted based on the רודף דין (Section VIII, pp. 27-30). Certainly, no fetus in the multifetal pregnancy situation has a “death sentence” against him. According to the רמב״ם and the second opinion in the רמ״א, how could the רודף דין be applied to permit multifetal pregnancy reduction?

Source A-5: The רמב״ם follows רבי שלמה’s position regarding handing over the fugitive.

<table>
<thead>
<tr>
<th>Similarly, if gentiles told [a group of Jews], “Give us one of you and we will kill him; and if not, we will kill all of you”: Let them all be killed and they may not give over one Jewish life to them. However, if they designated someone and said, “Give us So-and-So, or we will kill all of you”: If the person is liable to the death penalty like שבע בן בכרי, they may give him over to them. However, at the ideal level of Halacha (לכתחלה), this instruction is not conveyed to them. If he is not liable to the death penalty, let them all be killed and they may not give over one Jewish life to them.</th>
</tr>
</thead>
<tbody>
<tr>
<td>רמב״ם פרק ה‘ הלכות יסודי התורה, הלכה ה‘: לטב אמרו להם לךตะבוכ אתה מברך כי לא התם. והם דרשו ובירו אף על פי כן שבע בן בכרי, מברך להם אף על פי כן. אם אינו מברך להם כל להם ואל ימסרו להם נפש אחת מישראל.</td>
</tr>
</tbody>
</table>

O. Perhaps we can answer this question based on Rav Moshe’s understanding that the only reason רבי שלמה requires a “death sentence” is to define the fugitive as the cause of the threat (הסבה להרדים) confronting the townspeople and thus, define him as a רודף (see paragraphs C-D, pp. 36-37). In the fugitive situation, there is no inherent basis for any one person to be considered as the cause of the threat even if he was designated because the entire origin of the crisis (i.e., the hooligans) was externally imposed (according to Rav Moshe’s understanding that רבי שלמה’s ruling is unrelated to any culpability of the fugitive). Thus, we need some method to discern that this fugitive is considered the cause of the threat. The “death sentence”, i.e., the hooligans’ grievance (unjust as it is), serves to define him as the cause of the threat since it demonstrates that the hooligans specifically selected this individual and they will not be assuaged by handing over anyone else. As an illustration of this notion, Rav Moshe notes that רבי יוחנן will agree with רבי שלמה that a grievance is not required if other situational details demonstrate that the fugitive is the cause of the threat, e.g., if the fugitive was designated before he fled to their city, the townspeople may hand him over even without a grievance (see paragraph F, pp. 37-38). By contrast, in the multifetal pregnancy situation, the cause of the danger is internally imposed, i.e., it is evident that the fetuses themselves are the origins of the threat and therefore, we do not require any external imposition of a “death sentence” to define any fetus as a רודף. Therefore, even according to רבי שלמה who requires a “death sentence” to define the fugitive as the רודף, presumably there would be no such requirement to define the fetuses in the multifetal pregnancy situation as רודפים (assuming that there are no other reasons to prevent the רודף from being applied in this situation).
Appendix B: Rashi’s View of the מאי חזית Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

Note: This discussion refers to the “coerced murder” case described in Section II-1A-B (pp. 2-3). “Option 1” and “Option 2” in the following paragraph, are schematically depicted in Figure 1 on p. 5.

1. רש״י (in סנהדרין; Source 3, p. 4) explains the “מאי חזית logic” as the basis for the דין of ואל יעבור יהרג, i.e., one must be killed rather than violate the prohibition (איסור) against השפיכת דמים (murder, i.e., the מצוה of לא תרצח, as follows: The “וחי בהם-dispensation”, which generally suspends observance of מצות to save a Jewish life, is inoperative in the “coerced murder” case (pp. 3-5) for the following reason: If α would murder β to save his own life (“Option 1” in Figure 1), there will be two negative consequences (“תרתי”):

- The loss of a Jewish life (β’s life) and violation of a מצוה.

On the other hand, if α remains passive (“Option 2”), there will only be one negative consequence (“חדא”):

- The loss of a Jewish life (α’s life), but the מצוה will be observed. Therefore, as רש״י in יומא (Source B-1) states, “... if you kill β, since a Jew will be killed and a מצוה will be violated, why should it be acceptable in the eyes of Hashem to violate hisמצוה”?

The terminology which Rav Moshe describes to formulate רש״י’s reasoning is the “תרתי-חדא - נגד” argument – “two negative consequences vs. one negative consequence” (see Supplement 2, pp. 86-87).

Source B-1: רש״י’s explanation of the מאי חזית logic: Inapplicability of the ”וחי בהם-dispensation”:

| Your premise is untrue because the reason for the ”וחי בהם-dispensation” is that Jewish lives are more precious to Hashem than the מצוה. Therefore, the Holy One, blessed be He, says, “let the מצוה be abrogated (i.e., violated) and this person will live.” | płciątwa Mitwot? ?המצוה מקימה את ה‡ה הדתא לברך הוא_reason של יהודית לפני ה‡ה הדתא?ملכתי מאי.wordpress שטרלי ישה האברך? ולא שימות בהם? ולא שימות בהם? לא ביתא הטון זכרתי.וחי בהם לט ràng ההמצאות:?
| But now if you kill β, since a Jew will be killed and the מצוה will be violated, why should it be acceptable in the eyes of Hashem to violate hisמצוה (ללא תרצח, מצוה)?  |ław ישמשת כבוש? ?למה ייטב עמי המקום לשאר אברך לברך?למה ייטב עמיضارם לברך לברך?למה ייטב עמיضارם לברך לברך?למה ייטב עמיضارם לברך?
| Why should your (α’s) blood be more precious to Him [i.e., to Hashem] than the blood of your Jewish friend (β)? |-law ישמשת כבוש? ?למה ייטב עמי מקום לשאר אברך לברך?למה ייטב עמיضارם לברך לברך?למה ייטב עמיضارם לברך?

2. Rav Moshe comments, “We can infer [from this רש״י] that with regard to this [היוודית], his (α’s) life and the life of his friend (β) are equal” (Supplement 2, p. 83). Perhaps Rav Moshe’s inference is as follows: The reason for the “מאי חזית-dispensation” is that Jewish lives are more dear to Hashem than observance of מצוה (ללא תרצח, above). If we accept the premise that all Jewish lives are deemed equal, it logically follows that the intent of the “מאי חזית-dispensation” cannot be met if α kills β to save himself, since the preservation of α’s own life will be nullified by the loss of β’s equally valued life. Therefore, since the “מאי חזית-dispensation” is inapplicable, the מצוה לא תרצח of מאי חזית must be observed even at the cost
Appendix B: Rashi’s View of the מקרא חוזית Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

of α’s life. According to Rav Moshe’s understanding, apparently believes that the Torah declares total equivalence between the two lives in question regardless of any factor that may appear to render one life more valuable than the other. Accordingly, even if there was a method to discern that α’s life has a higher value than β’s life, the inapplicability of the “רשי alcan הדית-Dispensation” and thus, the דין of הריג ואל יעבור, would remain in place.

3. Therefore, according to רashi, in a different “coerced murder” case where the hooligan orders α, “either kill β or I will kill both of you,” although β will certainly be killed in any event, it appears logical that α would still be forbidden to save his life by killing β because of the חוזית-Dispensation reasoning: If α remains passive, even though both α and β will die, this would still be classified as חוזית (”one type of negative consequence”), without transgression of an עבירה. However, if α kills β, there will be חוזית (”two types of different negative consequences”): β’s death and a transgression of an עבירה. Therefore, the חוזית-Dispensation” is inapplicable and the דין of הריג ואל יעבור would apply even if β will certainly be killed anyway. Thus, on a fundamental level, since רashi considers the inapplicability of the חוזית-Dispensation” as the basis of the מקרא חוזית logic, whenever we have a חוזית-Dispensation situation, the מקרא חוזית logic, and thus, the דין of הריג ואל יעבור, will remain in force.

4. We discussed two approaches to understand the permissibility היתר of handing over the ‘fugitive without escape capability’ (משירתו) (see Appendix A, p. 41, paragraph H).

a. The תוספות דוד (Source 12, p. 12) explains since the fugitive will certainly be killed with the townspeople if he is not handed over, “the logic of the מקרא חוזית does not apply when they all are in an equal state of danger.” Since the logic is not applicable, the דין of הריג ואל יעבור would not apply and therefore, the townspeople are permitted to hand over the fugitive.

b. However, according to Rav Moshe, the reason for the היתר to hand over the ‘fugitive without escape capability’ is because he is considered as a רודף after the townspeople (Source 15, p. 17). Below (paragraph 6b, p. 46), we will suggest a possible reason why Rav Moshe does not explain in the same way as the תוספות דוד.

5. In Section II-1-C (pp. 3-4), we discussed two approaches for the מקרא חוזית logic in the “coerced murder” case and how it dictates the Halacha of הריג ואל יעבור.

a. The תלמודי רבינא novamente (Source B-2), as elucidated by Rav Nochum Partzovitz, understand the מקרא חוזית logic as follows: Since we do not know whose life (α vs. β) is considered more valuable, therefore, the uncertainty dictates that α must remain passive (שב ואל תעשה), even at the pain of his own death. According to this approach, if there was a way to definitively determine that α’s blood is redder than β’s blood, (i.e., that α’s life is definitively more valuable), since there is no uncertainty, perhaps α would be permitted to kill β to save himself.
Appendix B: Rashi’s View of the מאי חזית Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

Source B-2: First understanding of the meaning of המאי חזית in the תלמידי רבין גויה: The logic operates from a perspective of uncertainty (about the relative worth of the two lives):

<table>
<thead>
<tr>
<th>The explanation is since his (i.e., your friend, β’s) blood [may be] redder [than your blood], he should continue to live and perform melava malama. By living, he β will continue to fulfill the will of הקב”ה. If you will ask, since the matter lies in doubt [whose blood is redder], let α kill β so that he α will not be killed? The answer is [the loss of a life by] remaining passive is different [i.e., preferable than the loss of life by a Jew actively committing murder]. A person must refrain from actively transgressing a sin.</th>
</tr>
</thead>
<tbody>
<tr>
<td>However, as explained by Rav Moshe, believes that the primary message of the מאי חזית logic is the inapplicability of the “וחי בהם - dispensation” to the בלקא תרתי איסור. When the Gemara used the words “מאי חזית”, it never meant to suggest that the דין of יהרג ואל יעבור could be influenced by any assessment of the relative worth of the two lives. Rather, the two lives in question are always considered equal, requiring α to sacrifice his life not to murder β, “even if α is a תלמידי תורה and β is an (ignoramous)” (Supplement 2, p. 84). Rav Moshe expands this thought, “For [in the ‘coerced murder’ case] the logic of מאי חזית is based on a certainty ... it must be that the Heavenly decree is on α [to be killed], even though he has the [unlawful] possibility of saving himself by committing murder.” Thus, Rav Moshe understands that the מאי חזית logic is not based on an uncertainty whose life is more worthy, but rather on the inapplicability of the “וחי בהם - dispensation” due to the הרתי-גרה-דהה argument. Therefore, the מאי חזית logic and thus, the דין of יהרג ואל יעבור, cannot be undermined even if theoretically, one could determine that one life is more valuable than the other.</td>
</tr>
<tr>
<td>6. The two approaches to explain the הליתר of handing over (מסירה) the ‘fugitive without escape capability’ may be related to the two approaches to understand the מאי חזית logic. The מאירי, who states that the מאי חזית logic does not apply if the fugitive has no escape capability, would likely subscribe to first opinion in the תלמידי רבין גויה. The מאי חזית logic dictates if we are uncertain about the relative worth of the two lives and thus, perhaps β’s blood is redder than α’s blood, this uncertainty forbids α from killing him. However, if the fugitive cannot be saved regardless of the townspeople’s actions, the redness (i.e., relative worth) of his blood is irrelevant since he is certain to die anyway. Since the מאירי believes this rationale will only permit handing him over to the hooligans, but not killing him with our hands. Therefore, if the hooligan orders α, “either kill β or I will kill both of you,” this rationale (that the מאי חזית logic is inapplicable) cannot permit α to kill β.</td>
</tr>
</tbody>
</table>
**Appendix B:** Rashi’s View of the **מאז חזית** Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

**Source B-3:** The **מאז חזית** explains the logic and the ‘fugitive without escape capability’:

We learned in the Talmud Yerushalmi, *If travelers were accosted by non-Jews who said “Give us one of you so that we will kill him, and if not, we will kill all of you,”* ... It appears that the Halacha accords with ר יוחנן, as in disputes between ר ר יוחנן and ר שלמה, and certainly [when ר יוחנן’s view is recorded] in his Talmud (Yerushalmi). ... But if the hooligans say, “I will kill all of you [unless you hand b over],” they should hand b over since he was designated, rather than having all of them killed so that (many) lives will be saved, even if b does not deserve the death penalty by Torah law. However, the virtue of piety dictates that we delay handing him over and maintain composure, until the townspeople are about to be killed. One who rushes to hand him over, has abandoned the virtue of piety.

From this we learn that when **מאז חזית** state the logic, this only applies if the hooligan says, “Kill him (b) or else I will kill you,” but if he orders (a), “Kill b or else I will kill both of you,” it is permitted to kill b. However, it appears that it is only permitted to hand b over, perhaps they will accept ransom or reconsider [their murderous plans], but it is not permitted to kill b with our hands.

<table>
<thead>
<tr>
<th>Basis for שׁפיכת דמים (murder) by</th>
<th>‘fugitive without escape capability’</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proponent</strong></td>
<td><strong>Meaning of the <strong>מאז חזית</strong> logic</strong></td>
</tr>
<tr>
<td><strong>1st opinion in the <strong>תלמודי רבנים</strong> (ורישי)</strong></td>
<td>Uncertainty about whose life (a vs. b) is more valuable</td>
</tr>
<tr>
<td></td>
<td>Yes (חסדי דוד)</td>
</tr>
<tr>
<td></td>
<td>Why “yes” or “no”?</td>
</tr>
<tr>
<td></td>
<td>The redness of the fugitive’s blood is irrelevant since he is certain to die.</td>
</tr>
<tr>
<td></td>
<td>Reason to permit <strong>מסירה</strong> (hand-over)</td>
</tr>
<tr>
<td></td>
<td>The <strong>מאז חזית</strong> logic does not apply</td>
</tr>
<tr>
<td><strong>2nd opinion in the <strong>תלמודי רבנים</strong> (ורישי)</strong></td>
<td>שׁפיכת דמים is excluded from the “חרות-נב-חדא” argument because of the “חרות-נב-חדא” argument</td>
</tr>
<tr>
<td></td>
<td>No (Rav Moshe)</td>
</tr>
<tr>
<td></td>
<td>Why “yes” or “no”?</td>
</tr>
<tr>
<td></td>
<td>The fugitive is unrelated to the relative worth of the lives, but rather, on the “חרות-נב-חדא” argument which still applies.</td>
</tr>
<tr>
<td></td>
<td>Reason to permit <strong>מסירה</strong> (hand-over)</td>
</tr>
<tr>
<td></td>
<td>The <strong>חרות-נב-חדא</strong> argument is considered a “חרות-נב-חדא” after the townspeople</td>
</tr>
</tbody>
</table>

*Rav Nochum Partzovitz attributes this approach to **תוספות** in Sanhedrin 74b (see p. 34, Reference 2).
Appendix B: Rashi’s View of the ‘מאי חזית’ Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

7. Perhaps the reason Rav Moshe offers a different explanation (to permit מסירה) than that advanced by the חסדי דוד, is because he understands from רashi that the דין of יהרג ואל יעבור is not based on any uncertainty about the relative worth of the respective lives, but rather, on the inapplicability of the “וחי בהם-dispensation” to the “תרתי-נגד-חדא” argument. Therefore, even though the ‘fugitive without escape capability’ will certainly be killed if the townspeople remain passive, the “חדא-נגד-תרתי” argument and thus, the inapplicability of the “וחי בהם-dispensation”, will still remain true, as discussed above in paragraph 3 (p. 44). Although the האיסור of מסירה may be less חמור than the האיסור of לא תרצח, Rav Moshe states that the “תרתי-נגד-חדא” argument, and thus, the דין of יהרג ואל יעבור applies even to indirectly causing someone’s death (such as removing a ladder needed to rescue a person trapped in a pit; see Supplement 2, p. 88), which certainly would also include מסירה.

8. With this same reasoning, Rav Moshe would maintain that, even if by some Halachic “gauge”, one could assess that β’s level of life is definitively lower than α’s level of life, the דין of ואל יעבור יהרג would still hold true. However, according to first opinion mentioned in the תלמידי רבינו יונה and presumably the

Source B-4: The ב״ח answers the ת◊◊◊’s question regarding the ‘fugitive without escape capability’:

The ב״ח addresses the question of the ת◊◊◊ (Supplemental Source 8b, p. 56): Why does prohibiting handing over the ‘fugitive without escape capability’ if he is not obligated to hand over the fugitive? “The logic of the מยา does not apply since the designated fugitive will be killed along with everyone else”?

(The ב״ח answers): This is not a difficulty since the primary reason for the מยา logic is as רashi explains: “[If α would kill β to save himself], since a Jew (β) will be killed and the מצוה will be violated, why should it be acceptable in the eyes of Hashem that you (α) should violate the מצוה? Why should your (α’s) blood be more precious to Him than the blood of this person (β)?” Therefore, if the fugitive is not obligated, all of [the townspeople] should be killed so that the מצוה will not be abrogated.

However, if he is ρויב מנייה, he caused [the danger] for himself and therefore, his blood is on his head. We should not become ensnared because of his blood and it is permitted to hand him over. We do not describe this as [a situation] where the מצוה is abrogated [if we hand him over] since he himself abrogated this מצוה through his actions, whereby he caused the death for himself.
Appendix B: Rashi’s View of the מאי חזית Logic in the “Coerced Murder” Case, as Explained by Rav Moshe Feinstein

since the מאי חזית logic is operative only if we are concerned that β’s life may be more valuable than α’s life, if we are certain that the opposite is true, the מאי חזית logic, and thus, the דין of ירהג ואל יעבור, may not apply. Killing an unborn fetus or a טריפה (person with only transient life remaining, due to an illness or injury) is not subject to capital punishment, whereas killing a person with normal life expectancy (שם) incurs capital punishment. According to those who understand that the דין of ירהג ואל יעבור is based on the uncertainty about whose life is more valuable, if β is an unborn fetus or a טריפה and the hooligan threatens α to either kill β or be killed, perhaps α would be permitted to kill β to save his own life since here it is known that α’s life is “more valuable”. However, if the דין of ירהג ואל יעבור is based on the inapplicability of the “וחי בהם”-dispensation, this Halacha would still be in effect (i.e., α would be prohibited to kill β) even though a Halachic “gauge” tells us that α’s life is at a higher level than β’s life.

a. The מנחת חינוך states that in the fugitive case, if a טריפה was in the town, the townspeople would be permitted to hand him over even if the hooligans did not single anyone out, “because the logic of why do you presume that your blood is more red etc. (מאי חזית) does not apply since certainly the townspeople’s blood is more red” (Supplement 1, Source 3, p. 52). This position is also stated by the מאירי.

b. By contrast, regarding the ‘non-emerged fetus’, Rav Moshe describes, “the advantage that the mother has over the fetus, that she is a complete נפש while he is not yet a complete נפש,” which is based on “the fact that one does not incur capital liability (for killing an unborn fetus)” (Source 17, p. 21). Nonetheless, Rav Moshe does not say that the דין רודף would have prohibited saving the mother at the fetus’ expense, per Rav Moshe’s understanding of the דין רודף (Supplement 2, pp. 63-66). Similarly, Rav Shach writes (explaining the same דין רודף), “Even though killing the mother is subject to the death penalty whereas killing a ‘non-emerged fetus’ is not, nonetheless, since feticide is included under the איסור רצח (prohibition against murder), both the fetus and mother are equal with regard to the איסור רצח and thus, the דין of ירהג ואל יעבור would apply” (Supplement 4, pp. 95). Even though Rav Shach explicitly states, “the blood of a born person is redder than the blood of an unborn person because the murder of a born person is punishable by death whereas the murder of an unborn person is not,” he still believes that the logic of מאי חזית would have prohibited killing the ‘non-emerged fetus’ if not for the דין רודף, which aligns with Rav Moshe’s understanding.

c. Moreover, Rav Moshe states, “it is obvious that we would apply the דין of ירהג ואל יעבור to kill a hooligan who attempt to coerce a φ person to kill a β person, even though murdering a healthy person is punishable by the death penalty while murdering a φ person is not (ibid). Theشروיה נודעה בהגדה תינה, סימן נ’ takes the same position. Thus, Rav Moshe’s position is consistent that the דין ירהג ואל יעבור is fundamentally unrelated to the relative worth of the respective lives, but rather, on the inapplicability of the "וחי בהם"-dispensation", in accordance with רש"י’s explanation.
9. In a similar way, Rav Shmuel Rozovsky, based on the commentary of Rav Chaim Soloveitchik on the ס"רמב, explains רש"י (in פסחים, Source B-4) that the meaning of the מאי חזית logic is: Since the lives of $\alpha$ and $\beta$ are equal and one life will be lost in any event, therefore, the imperative of saving $\alpha$’s life (i.e., $\alpha$’s פיקוח נפש imperative) cannot permit the איסור of לא תרצח (i.e., the “וחי בהם-dispensation” does not exist in this case). This is because the entire purpose of the “וחי בהם-dispensation” is to save Jewish lives and here, a Jewish life ($\beta$) will be lost through the very transgression (see Source B-5).

Source B-5: Rav Shmuel Rozovsky: רashi’s explanation of the מאי חזית logic: Inapplicability of the “וחי בהם-dispensation”:

[responds to $\alpha$ who asked if he may kill $\beta$ to save himself]: “You are coming to ask [if you may kill $\beta$] because you know that no מצוה stands in the way of פיקוח נפש against murder. Therefore, you believe that this [לזרעת הצרה is unlike other [CC] לזרעת הצרה, since one life will be lost in any event.

And the only permitted pushing aside a מצוה [based on the “וחי בהם-dispensation”] because of the preciousness of a Jewish life.

But, here [if you kill $\beta$], an עבירה will be transgressed and a life will be lost.

Who says that your ($\alpha$’s) life is more precious to Hashem than $\beta$’s life? Maybe $\beta$’s life is more precious to Him?

And consequently, an עבירה will be transgressed and a life will be lost.

Source B-6: The following is not the explanation of the מאי חזית logic: Due to the equivalence between the respective פיקוח נפש imperatives [i.e., the imperative of saving the lives] of $\alpha$ and $\beta$, therefore, $\alpha$ must remain passive [so as not to actively push aside $\beta$’s imperative]. Rather, the explanation [of the מאי חזית logic] is: Since $\alpha$’s life and $\beta$’s life are equal and one of them will die in any event, the imperative of saving $\alpha$’s life cannot generate any dispensation [to transgress $\alpha$] since his friend ($\beta$) will be killed through [the transgression]. This is because the entire reason for the פיקוח נפש-dispensation (i.e., the “וחי בהם-dispensation”) is so that a Jewish life will be saved.
10. Theכסף משׁנה(Supplemental Source 8b, p. 56) suggests that according toרישׁ לקישׁ (who prohibits handing over the “fugitive” unless he is deserving of death), had a tradition for the.Refund the קשׁית logic does not apply, this Halacha remains in force. היהיל merely attributed a reason based on the basis of where applicable, but this is not the primary reason. Perhaps, we can explain theכסף משׁנה based on Rav Shmuel Rozovsky’s explanation, as follows: had a tradition for theדין ofיהרג ואל יעבור, based on the presumption that all lives are equal (i.e., theאיסור logic) and thus, the purpose of“יהרג ואל יעבור”, saving life, cannot be fulfilled by violating thisאיסור. From the perspective of this logic alone, however, killing the fugitive who is doomed to die anyway, could be considered a fulfillment of the purpose of“יהרג ואל יעבור”, since it will save lives who were not doomed to die. Nonetheless, once we have determined that the“יהרג ואל יעבור” directive was not stated for theאיסור ofלא תרצח, theMaya חזית logic is not used as a gauge to determine in which cases theדין ofיהרג ואל יעבור applies or not. In any situation where theאיסור ofלא תרצח will be violated, there is no“יהרג ואל יעבור”-��ר וזכות’dispensation” and thus, the דין ofיהרג ואל יעבור ofדרי חזית remains in force even if theMaya חזית logic is inapplicable. This may be further explained through theתלמידי רבינו יונה(Source B-7) who explain that רשב"י understands that our basic belief (i.e., our default position) is that theאיסור ofלא תרצח should apply to all מצוות, until theTorah stated“יהרג ואל יעבור” to allow transgressing עבירות to preserve life. Theủa התרצה כפברא reveals that theTorah’s words“יהרג ואל יעבור” were never intended for theאין התרצה אייסור, because the very result ofא”s self-preservation act, i.e., ending ב”s life, violates the entire purpose of“יהרג ואל יעבור”. Therefore, even if theאין התרצה אין קברא does not apply in certain cases, it is irrelevant since we merely needed theאין קברא to reveal that theTorah deemed theאין התרצה אייסור ineligible for the“יהרג ואל יעבור”-dispensation”, and thus, it reverts back to the default position ofיהרג ואל יעבור, regardless of the unique circumstances of a given case.

### Source B-7: Theתלמידי רבינו יונה explain Rashi’s understanding of the meaning of“יחי בהם”

Rashi explains [how the reason of“יחי בהם” determines that]α may not killβ: Our basic belief is that [in the absence of a dispensation], we must be killed to avoid transgressing anyמצוה. However, theTorah advocated [on behalf of Jewish life], stating“יהרג ואל יעבור”, teaching that we should live rather than die through theמצוה, and thus, היהיל taught that, except for threeאיסור, we transgress all עבירות to preserve life. And now that the hooligans orderα, “kill your friend (β),” there is no [possibility to fulfill the intent of“יהרג ואל יעבור”, since the dead person is before us (i.e., by killing β, the result ofα’s self-preservation act is death itself). Therefore, [since“יהרג ואל יעבור” cannot be applied toיהרג ואל יעבור, we revert to the [default] basic belief that we must be killed rather than transgress anyמצוה.
Appendix C: Medical Facts Relevant to Multifetal Pregnancies and Multifetal Reduction


- Morbidity (major illness or disability) and mortality associated with multifetal pregnancies increase with increasing numbers of fetuses. Many adverse outcomes are the consequence of preterm birth:
  - 11 percent of twins, more than one-third of all triplets, and more than two-thirds of all quadruplets and higher order multiples were delivered very preterm (<32 weeks of gestation), compared with less than 2 percent of singletons.
  - Early mortality (death from 20 weeks of gestation through the first year of life) was 4.8 percent for twins, 8.6 percent for triplets, 10.8 percent for quadruplets, and 28.9 percent for quintuplets.

- The two most serious risks of multifetal pregnancies are: (1) loss of the pregnancy and (2) preterm birth, with its potential sequelae including perinatal mortality (i.e., death within the first week after birth), respiratory and gastrointestinal complications, infection and long-term neurologic impairment.

- Prevalence of cerebral palsy ranges from 1.6 to 2.3 per 1000 surviving infants in singletons, 7 to 12 per 1000 surviving infants in twins, and 28 to 45 per 1000 surviving infants in triplets.

II. Goals and clinical effects of multifetal pregnancy reduction:

- The goal of MPR is to reduce the risk of adverse outcomes in survivors of multifetal pregnancies by decreasing the number of fetuses in utero, since the risk of complications is proportional to the number of fetuses.

- Reducing pregnancies with three or more fetuses to a twin pregnancy results in fewer pregnancy losses, fewer preterm births and fewer postnatal infant deaths than in non-reduced pregnancies.

- See table below for summary of the effects of fetal reduction on decreasing the rate of spontaneous pregnancy loss (from: Evans M, Andriole S and Britt D, Fetal Diagnosis and Therapy, volume 35: pp. 69-82, 2014):

<table>
<thead>
<tr>
<th>Type of Pregnancy (starting # of fetuses)</th>
<th>Spontaneous Pregnancy Loss Rates (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Without fetal reduction</td>
</tr>
<tr>
<td>Quintuplet (5)</td>
<td>50</td>
</tr>
<tr>
<td>Quadruplet (4)</td>
<td>25</td>
</tr>
<tr>
<td>Triplet (3)</td>
<td>15</td>
</tr>
</tbody>
</table>
Appendix D: Rav Moshe Feinstein’s Explanation of Rashi

Note: The following discussion is based on Rashi (Source D-1) in the Gemara Sanhedrin (72b) which discusses the fetus whose head has emerged (the ‘partially-emerged fetus’) in the Mishna Ohalot (see Section III, pp. 7-8). This Mishna is the source of the "אין דוחין נפש מפני נפש" ruling (henceforth abbreviated as: "אין דוחין") translated as, "we may not push aside one life on account of (i.e., to save) another life".

1. (Source D-1) asks the following question concerning the Mishna’s "אין דוחין" ruling in the ‘partially-emerged fetus’ case: Why were the townspeople in the ‘seven men of Bcheri’ (abbreviated as: "ש.ב.ב") episode permitted to push aside ש.ב.ב’s life to save their own lives? Rashi provides two answers, based on the statements of רבי יהודה and רבי שמעון in the Tosefta Terumot (Section V, pp. 9-10): (1) In the ב.ב.ש episode, everyone (including ב.ב.ש) inevitably would have been killed if they did not hand over ש.ב.ב since he had no avenue of escape (i.e., he was a ‘fugitive without escape capability’). Therefore, they were permitted to hand him over. However, if ב.ב.ש had the ability to escape, handing him over (מסירה) would have been forbidden.

(2) ש.ב.ב revolted against the kingdom of המלך דוד and thus, was deserving of the death penalty.

Source D-1: רashi in Sanhedrin 72b: 1) Status of ‘non-emerged fetus’ vs. the ‘partially-emerged fetus’;
2) How does the ש.ב.ב-episode differ from the ‘partially-emerged fetus’ case?

This is referring to a woman who is having difficulty giving birth and her life is endangered. The first section of the Mishna states that the midwife extends her hand, cuts him and removes him limb-by-limb. As long as the fetus has not emerged into the air of the world, he is not a נפש and it is permitted to kill him to save his mother. However, once his head has emerged, we may not touch him (i.e., we do not intervene) to kill him since he is [legally] considered a born person and we may not push aside one life on account of another life. One may ask that in the ב.ב.ש episode, where (Shmuel II 20 states) “His head shall be thrown to you,” they pushed aside one life (i.e., ב.ב.ש’s life) on account of other lives (i.e., the townspeople’s lives)?

Answer: The ב.ב.ש episode has two unique distinctions from the ‘partially-emerged fetus’ case:

(1) There, even if they did not hand him (i.e., ב.ב.ש) over, he would have been killed in the city when יואב would capture it and they (i.e., the townspeople) would have been killed along with him. But if he could have been saved (i.e., if he could escape), even though the townspeople would consequently be killed, they would not have been permitted to hand him over to save themselves.

(2) Another answer is: [They were permitted to hand over ב.ב.ש] because he revolted against the kingdom. So it is explained in the תוספתא.

[Heaven is pursuing] the mother.
Appendix D: Rav Moshe Feinstein's Explanation of Rashi

2. The first answer mentioned in רшениеי was previously discussed (see cross-references below). Two approaches were presented to explain the permissibility (היתר) to hand over a ‘fugitive without escape capability’:

A. The חסדי דוד (Section V-2; pp. 11-12) understands the היתר to hand over a ‘fugitive without escape capability’ through the prism of the מאי חזית logic which is the basis of the obligation to sacrifice one’s life rather than commit murder (described as: "יהרג ואל יעבור"; see “coerced murder” case, Section II-1; pp. 2-5). In the ‘fugitive without escape capability’ case, the מאי חזית logic is inapplicable because the fugitive will be killed whether he is handed over or not. Therefore, the prohibition against מסירה is pushed aside for the sake of the townspeople’s נפש פיקוח (imperative to save an endangered life).

B. Rav Moshe Feinstein ("Rav Moshe") explains that the היתר to hand over a ‘fugitive without escape capability’ is based on the דין רודף which sanctions killing a pursuer (רודף) to save the life of the pursued person (נרדף). This understanding is based on the following premises established by Rav Moshe:
   (1) The דין רודף applies even in the absence of any volition to harm (i.e., an unintentional רודף);
   (2) The fugitive and townspeople are engaged in mutual (bidirectional) pursuit after each other; and
   (3) The fugitive only has potential for חיי שעה, i.e., temporary life extension until the hooligans destroy the entire city, if he is not handed over. Therefore, the pursuit of the fugitive after the townspeople is greater than their pursuit after him since he pursues after their חיי עולם (normal life expectancy), while they only pursue after his חיי שעה. Consequently, the fugitive is deemed the “definitive רודף” Accordingly, although the fugitive has no intention to harm the townspeople, the דין רודף authorizes them to push aside his life to save their own lives (see Sections VI, 1-4, pp. 14-15 and VI-7 & 8, pp. 20-23).

3. Rav Shmuel Rozovsky ("Rav Shmuel"; Source D-2) asks, why did רש"י develop his question about the episode based on the Mishna’s דוחין אין ruling in the ‘partially-emerged fetus’ case. Even without this Mishna, the ש.ב.ב episode poses a difficulty, “It is obvious that we cannot kill one person to save another person?” The “obvious” aspect to Rav Shmuel’s question may be: Why did רש"י need the Mishna’s דוחין אין ruling to prompt him to ask about the episode? How could have asked the same question by invoking the מאי חזית logic: Just as the מאי חזית logic prohibits killing one person to save another in the “coerced murder” case, it should also prohibit handing ש.ב.ב over to save the townspeople? Rav Shmuel offers the following answer: Without the Mishna’s ruling of דוחין אין, we would have assumed that the דין רודף applies even to an unintentional רודף, and this was the basis for the townspeople’s היתר to hand ש.ב.ב over. However, once the Mishna ruled דוחין אין in the ‘partially-emerged fetus’ case, it is evident that the דין רודף does not apply to an unintentional רודף per the Gemara’s statement, "משמיא קא רדפי ליה ("she is pursued from Heaven"; Source 8, p. 8) which is interpreted by Rav Shmuel that the fetus is not deemed a רודף because he lacks volition to harm. Accordingly, רש"י was troubled, why was the ש.ב.ב episode treated differently than the ‘partially-emerged fetus’ case? In both cases there is no volition to harm and thus, the דין רודף should not apply to either case? Rav Shmuel explains Rash's first answer in the same manner as the חסדי דוד. Since everyone would be killed even if they did not hand ש.ב.ב over, the מאי חזית logic did not apply and therefore, it was permitted to hand him over to save the townspeople.
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**Source D-2:** Rav Shmuel Rozovsky’s explanation of רashi (Source D-1):

Regarding the Mishna’s statement, “If his head has emerged, we may not touch him because we may not push aside one life on account of another life,” Rav Shmuel Rozovsky wrote, “In the ב.ב.ש episode, why did they push aside one life on account of another life? There, even if they did not hand him over, he would have been killed along with the people in the city when יואב captured it.” This appears difficult – why was רashi’s difficulty [with the ב.ב.ש episode] based on the Mishna’s statement, נפש מפני נפש דוחין אין, regarding the ‘partially-emerged fetus’? Even without this Mishna, the ב.ב.ש episode is difficult to explain – it is obvious that we cannot kill one person to save another person? Perforce, the ב.ב.ש episode is different [than the “coerced murder” case] because everyone (including ב.ב.ש) would be killed in any event [even if they refused to hand him over]. Accordingly, why was [the ב.ב.ש episode] more difficult [for רashi to reconcile] with the Mishna [than with the “coerced murder” case]?

To understand רashi, [at first glance], we might have understood [the ב.ב.ש episode as follows]: When a person is designated (i.e., “hand him over or else everyone will be killed”), he has the status of a רודף. Although he is considered a complete עון (victim of circumstance) since Heaven, rather than the fugitive, caused the threat [to the townspeople], nonetheless, the fugitive can be [legally defined as] a רודף. (Thus, we might have assumed that ב.ב.ש was classified as a רודף). However, after the Mishna taught us (based on the Gemara’s answer, “משמיא קא רדפי לה”), that the דין רודף is not applied when the pursuit has come “from Heaven” (i.e., the fetus is a complete עון, without volition to harm), the ב.ב.ש episode was difficult [for רashi to reconcile - why was it permitted to hand ב.ב.ש over?]

This is the question that רashi answers [by creating a distinction, i.e., the ב.ב.ש episode] is unlike [the Mishna’s case of נפש מפני נפש דוחין אין] because everyone would be killed if they did not hand ב.ב.ש over to [יואב’s army]. Accordingly, the logic did not apply, as the הבדלה הסבר said in the name of the רמ״ך (Supplemental Source 8b, p. 56), and therefore it was permissible to hand him over for the sake of the townspeople’s נפש פיקוח. (However, in the Mishna’s ב.ב.ש case, the הבדלה הסבר logic applies because the ‘partially-emerged fetus’ could be saved if we remain passive, and thus, we may not push aside his life even for his mother’s נפש פיקוח.)
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4. Thus, according to Rav Shmuel, the דין רודף is inapplicable in any of the fetus and fugitive cases because the “pursuer” lacks volition to harm. The reason for the distinction in Halacha between the ‘partially-emerged fetus’ case (in which we must remain passive) and the ‘fugitive without escape capability’ (who we may actively hand over) is that the logic applies to the former but not to the latter. Furthermore, according to Rav Shmuel’s explanation, the Gemara’s statement, משמיא קא רדפי לה, does not come to elucidate the Mishna’s דין רודף ruling, but rather, משמיא קא רדפי לה is a separate concept. The דין רודף ruling works through the logic (Why do you presume that the mother’s blood is redder than the fetus’ blood?), whereas משמיא קא רדפי לה is the reason why the דין רודף is not applied, i.e., because the fetus lacks volition to harm. Accordingly, רש״י’s question was not by prompted by the Mishna’s דין רודף ruling, but rather, by the Gemara’s משמיא קא רדפי לה statement which precludes applying the דין רודף in cases of unintentional pursuit.

5. However, Rav Moshe understands the משמיא קא רדפי לה concept differently than Rav Shmuel. Rather than saying the דין רודף does not apply to an unintentional רודף, Rav Moshe explains that משמיא קא רדפי לה means that both the ‘partially-emerged fetus’ and his mother are equal participants in an impasse in which each one’s survival is dependent on the other’s demise, thus rendering both of them mutually equal (bidirectional) pursuers after each other (Source D-3). Since we have no basis to declare the fetus’ pursuit after his mother greater than her pursuit after him, we cannot apply the דין רודף to kill the ‘partially-emerged fetus’ and consequently, we must remain passive (see Sections VI-5 & 6, pp. 16-19 and VI-8a&b, pp. 20-21).

6. According to Rav Moshe, the דין רודף would apply to an unintentional דין רודף if he is considered the “definitive רודף” or, the greater רודף, as opposed to a situation where the opposing parties (e.g., fetus vs. mother, or fugitive vs. townspeople) are mutually equal pursuers. If there is mutually equal pursuit, e.g., in the ‘partially-emerged fetus’ and the ‘fugitive with escape capability’ cases, the משמיא קא רדפי לה concept dictates that the דין רודף cannot be applied since there is no “definitive רודף.” However, in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases, the mutual pursuit is not equal; the fetus and fugitive are each deemed the “definitive רודף” in their respective cases. The ‘non-emerged fetus’ pursues after his mother’s complete נשימה, while she only pursues after his incomplete נשימה. Similarly, the ‘fugitive without escape capability’ pursues after the townspeople’s חייו עולם, while they only pursue after his חייו שעה. Therefore, the דין רודף will permit feticide and מסירה in the ‘non-emerged fetus’ and ‘fugitive without escape capability’ cases, respectively. Based on Rav Moshe’s explanation, the following two observations may be made:

A. The Mishna’s דין רודף principle is not a separate concept from the Gemara’s statement. משמיא קא רדפי לה provides the reason we must remain passive, i.e., because both the ‘partially-emerged fetus’ and his mother have an identical “نفسו lãnh.” The Gemara’s statement, משמיא קא רדפי לה provides further explanation of the Mishna’s דין רודף ruling, i.e., the fact that the emerging fetus and his mother have an identical “نفسו lãnh”, in turn, determines that their mutual pursuit is equal and thus, the דין רודף cannot be applied (i.e., there is no “definitive רודף”; see Source D-3 to see how Rav Moshe understands the phrase, משמיא קא רדפי לה, denotes mutually equal pursuit). Accordingly, רש״י’s question was indeed prompted by the Mishna’s דין רודף principle which is the
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operative ruling that precludes applying דין רודף in cases of mutually equal pursuit, and דין לא רודף is merely an elucidation of this concept.

B. The rule of אין דוחין works outside the purview of the standard the logic which dictates the דין רודף in the “coerced murder” case. The logic alone would not have prevented us from killing the fetus to save his mother since the דין רודף never prevents us from killing a רודף to save the רודף. The only reason we rule אין דוחין in the ‘partially-emerged fetus’ case is because both parties are mutually equal pursuers due to their identical ”نفسה level”, and therefore, the דין רודף cannot be applied. Consequently, Rav Moshe would not agree with Rav Shmuel’s explanation of רש"י’s question since (according to Rav Moshe), אין דוחין merely limits the applicability of the דין רודף to cases where there is a “definitive רודף (i.e., the pursuit of one רודף is greater than the pursuit of the opposing רודף), but certainly the Mishna does not preclude applying the דין רודף to unintentional pursuit in general.

7. It appears that Rav Shmuel’s difficulty with רש"י’s question about the ש.ב.ב episode, would not present the same difficulty to Rav Moshe. Since the דין רודף can apply to an unintentional רודף (according to Rav Moshe), רש"י certainly understood that the handover of ש.ב.ב was sanctioned because of his status as a רודף. Therefore, the logic would not prevent handing over ש.ב.ב just as the logic never prevents us from killing a רודף to save the רודף. Thus, only after the Mishna qualified the דין רודף, i.e., it is inapplicable to the ‘partially-emerged fetus’ case because it is a case of mutually equal pursuit, then questioned why the ש.ב.ב episode was treated differently since it also appears to be a case of mutually equal pursuit. רש"י’s first answer, which is the position of רבי יהודה in the Tosefta, explains that ש.ב.ב was a ‘fugitive without escape capability’ and therefore, the mutual pursuit was not equal, thus, distinguishing the ש.ב.ב episode from the ‘partially-emerged fetus’ case where the mutual pursuit is equal.

Source D-3: Rav Moshe explains the Gemara’s משמיא קא רדפי לה statement and רש"י’s understanding of נפשبدء.

I have written that משמיא קא רדפי does not mean that the fetus is not a רודף. Rather, this statement indicates that both the mother and the ‘partially-emerged fetus’ are considered [equal] רודפים. ... [The Gemara’s expression, משמיא קא רדפי does not mean that] it was arranged by Heaven that it would be impossible for both of them to live, for if the fetus will be born alive, his mother will die and conversely, [only] if the fetus will be dismembered, his mother will live. Therefore, we remain passive after his head emerges since both are equally engaged in pursuit. ... Therefore, only wrote that the ‘non-emerged fetus’ is not a רדף [but did not write, “and consequently, feticide is a less severe prohibition (than murder), which may which may be pushed aside for the mother’s פיקוח נפש.”].
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The reason Rashi stated the *non-emerged fetus* is not a *نفس נפש* was to contrast this case with the *partially-emerged fetus* case. Since the Mishna’s sole basis to prohibit killing the *partially-emerged fetus* to save his mother is because of the דוחין אין נפש ביצא דין due to his status as a נפש [after his mother]. However, this logic would also apply for the mother, i.e., she is considered a נפש after the fetus, because this pursuit situation is a result of Heaven arranging that both parties cannot survive (i.e., their respective survivals are mutually exclusive). Accordingly, his pursuit [after her, which is manifested by the fact that] if the fetus will emerge alive, his mother will not live, cannot serve as a basis to choose that she should live and he should be killed, because they are both equally engaged in pursuit. Accordingly, prior to the emergence of the fetus’ head, since he is not yet a נפש, we push aside his life because their respective pursuits are not equal, i.e., the fetus alone pursues after the mother’s advantage (i.e., the *נפש-differential*) that she is a נפש while he is not. This is the reason it is permitted to kill the *non-emerged fetus* to save his mother ... It follows that also believes [the דוחין אין נפש rule is the basis for killing the *non-emerged fetus*].

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8. Rashi’s question about the *ב.b.b.ה* episode is in the paragraph with the word דוחין אין נפש (Source D-1). The first paragraph, דוחין אין נפש, raised the question about the *ב.b.b.ה* episode immediately after discussing the דוחין אין נפש principle in the *partially-emerged fetus* case. It would, therefore, appear that *דוחין אין נפש* question was prompted by the דוחין דין ruling. According to Rav Shmuel, the Mishna’s דוחין דין ruling posed no difficulty to Rashi’s question. Rather, Rashi’s question was only prompted after the Gemara’s statement, משמנה קא רדפי לה, which disallows the דוחין דין in cases of unintentional pursuit. Rav Shmuel’s approach appears more cogent since Rashi’s question was prompted by the *ת namespaces and hence the logic is linked to the *ת namespaces argument of *רashi* (which renders the *ת namespaces-dispensation* inapplicable to murder; see Appendix B, #1, pp. 43-44). Although the ש.ב.ב would be killed even if he was not handed over, the *ת namespaces argument and thus, the logic, may nonetheless apply (according to Rav Moshe) regardless of the survivability of the situation.
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10. When discussing the ‘non-emerged fetus’, states: “As long as the fetus has not emerged into the air of the world, he is not a נפשׁ and it is permitted to kill him to save his mother.” Previously, two interpretations of Rashi’s statement were presented (see cross-references below):

A. The ספר מאירת עיניים (Section V-1) and the מנחת חינוך (Section V-1, p. 11) interpret Rashi’s statement, “he is not a נפשׁ” to mean that the ‘non-emerged fetus’ is not deemed a life; consequently, feticide is not considered murder (i.e., it is not a transgression of לא תרצח). The ‘partially-emerged fetus’, on the other hand, is deemed a life and therefore, killing him is a transgression of murder. Accordingly, the operative Halachic determinant whether or not to rescue the mother at the fetus’ expense, is: Does the דין of ירה ואל יעבור apply or not? The דין of ירה ואל יעבור applies to the transgression of murder; therefore, killing the ‘partially-emerged fetus’ is prohibited even to save the mother, and this is the very intent of the Mishna’s אין דוחין statement. However, since killing the ‘non-emerged fetus’ is not a transgression of murder (according to these opinions), the דין of ירה ואל יעבור does not apply; consequently, feticide is permitted for the mother’s נפשׁ פיקוח just as nearly all prohibitions are pushed aside for נפשׁ פיקוח. According to this approach, the question that Rav Shmuel raised on Rashi would pose a difficulty. If the effective difference between the ‘non-emerged fetus’ and the ‘partially-emerged fetus’ is whether the דין of ירה ואל יעבור applies or not, why was Rashi’s question about the ש.ב.ב episode prompted by the Mishna’s ‘partially-emerged fetus’ case; his question would fit more logically in the Sugya (Talmudic discussion) of ירה ואל יעבור (Sanhedrin 74a-b)?

B. However, Rav Moshe maintains that an unborn fetus is deemed a Halachic life (Section VI-1-6, pp. 14-17). Consequently, if not for his status as a רודף, it would have been forbidden to kill the ‘non-emerged fetus’ even for his mother’s נפשׁ פיקוח. According to Rav Moshe, the intent of Rashi’s statement, “he is not a נפשׁ”, is to contrast the ‘non-emerged fetus’ with the ‘partially-emerged fetus’. In the ‘non-emerged fetus’ case, the mutual pursuit is not equal because the fetus only has a “incomplete נפשׁ” while his mother has a “complete נפשׁ” (Source D-3). Therefore, the fetus is considered the “definitive רודף” and the דין רודף is applied to kill him. By contrast, in the ‘partially-emerged fetus’ case, both the fetus and his mother have a “complete נפשׁ” level; therefore, the mutual pursuit is equal. Since there is no “definitive רודף”, the דין רודף is not applied. (Note: The Gemara only discussed the ‘partially-emerged fetus’ case to explain why the דין רודף is not applied, but never mentioned the ‘non-emerged fetus’ case. Therefore, based on Rav Moshe’s explanation, I would suggest that Rashi’s purpose for mentioning the ‘non-emerged fetus’ case is to define the ‘definitive רודף’ criterion for applying the דין רודף in cases of mutual pursuit, thereby laying the logical foundation why the דין רודף is not applied in the ‘partially-emerged fetus’ case).

11. It is noteworthy that the ריטב״א (Source D-4) explains the concept, “the fetus is not a נפשׁ”, which was written by other Rishonim including the רמב״ן (on Mesechet Niddah 44b), as follows: When we are deliberating whether to refrain from saving the mother’s life because of the אין דוחין principle, we say that the ‘non-emerged fetus’ is not deemed a נפשׁ, and therefore his life is pushed aside to save his mother. Similarly, we say that, “the fetus is not a נפשׁ”, to exempt one who kills him from capital punishment. This explanation is consistent with the approach of
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Rav Moshe, i.e., the “non-emerged level” of the ‘non-emerged fetus’ is lower than that of his mother, since killing the former does not invoke capital punishment while killing the latter is punishable by death.

12. According to Rav Moshe’s approach, Rashi’s question on the הב.ב.ב episode was indeed prompted by the Mishna’s ruling because this precisely is the source that precludes applying the דין רודף in cases of mutually equal pursuit. Rav Moshe, therefore, questioned why the הב.ב.ב episode, which appeared to also be a mutually equal pursuit situation, was treated differently than the ‘partially-emerged fetus’ case. Thus, according to Rav Moshe’s understanding, the logical flow of Rashi’s arguments appears more precise than according to the commentaries who interpret Rashi to mean that a fetus has no life.

Source D-4: Mishna, Gemara and Ritvah, Tractate Niddah 43b-44b

A one-day old baby boy ... inherits and bequeaths and one who kills him is liable (i.e., he incurs capital punishment).

And one kills who him is liable: Because it is written “If a man kills any human being, he shall be put to death” (Vayikra 24: 17) – this teaches us that the murder of any victim, even of a minor, is liable to capital punishment.

The explanation is that even a one-day old child is considered a נפש (i.e., in reference to Vayikra 24:17: “One who strikes any person, ‘כל נפש’, shall be put to death”). Tosafot ask: From here, it appears that a fetus is not considered a נפש [since killing someone prior to his birth does not incur capital punishment].

Similar inferences are deduced from: 1) One who hits a pregnant woman causing her to miscarry, only pays monetary restitution for the fetus based on the sale value of maidservant; 2) From [the Mishna recorded in] Sanhedrin, “If a woman is having a difficult childbirth, we cut out the fetus limb by limb. If his head has emerged, we do not touch him because one life is not pushed aside on account of another life.” Thus, we see that a fetus is not considered a נפש, since:

1) There is no capital murder punishment for killing a fetus prior to birth; and
2) The ‘non-emerged fetus’ does not qualify as “one life on account of another life”.

If so, why do we say in Erchin (7a-b), “If a woman sat on the birthstool and died on Shabbat, we bring a knife [through the public domain, violating Shabbat] to cut her open and extricate the fetus (i.e., to save his life).” If the fetus is not deemed a נפש, why are we permitted to violate the Shabbat for his נפש פיקוח?

The Tosafot answer, when we say “the fetus is not a נפש”, this is [intended] so that [we will not] sentence one who kills a fetus [to capital punishment] or [so that we not] protect the fetus’ life at the expense of his mother’s life. However, with regard to [violating] Shabbat to save the fetus’ life, he is legally treated as a נפש. This is because [the derivation to permit violating Shabbat for נפש פיקוח], “Violate one Shabbat so that he will observe many Shabbatot,” also applies to a fetus.