

**“A man takes precedence over a woman in matters
concerning the saving of life” (*Horayot* 3:7)
Gender preference in the Jewish Halakha and
implementation of the ancient rule in a changing reality**

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Abstract

Medicine and *Halakha* were intermingled when revealed by Heaven. As medical technology advances and becomes more sophisticated, the halakhic problems become more severe and the required solutions must be more creative. The intensive care system has raised one of the most serious halakhic and moral difficulties: the need to give precedence to certain patients in hospital treatment (otherwise known as triage).

Giving precedence to patients is a necessity in view of the inability of the health system to respond to every person, to every medical need, at all times and without restriction. The order of precedence can often be a matter of life and death. Customary practice in Israel is part of an “oral tradition,” which is not enshrined in legislation. It is based on giving precedence to patients based on medical considerations.

This article focuses on the priorities used in admitting patients into the intensive care unit suggested by Jewish law: “A man takes precedence over a woman in matters concerning the saving of life.” This order of precedence is not acceptable nowadays even if it is based on ancient sources. No one considers preferring a man over a woman merely for being a man. The article presents the halakhic basis for not acting according to the ancient halakhic priorities, but according to the guidelines customary in hospitals. Examination of the halakhic priority in light of the period and perceptions of Mishnaic and Talmudic sages suggests that the ancient halakhic scholars did not regard the above-mentioned priority as an unacceptable gender discrimination against women, but viewed it as applying different consideration, based on a hierarchy of objective priorities that was customary in the Mishnaic period and was based on the differences between the genders. Nevertheless, because reality has changed and it is no longer possible to apply the halakhic priorities, contemporary decisors found the halakhic way to adopt the customary practice.