**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 1, **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. Rashi (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 שבע בן בכרי (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 1, **V**, pp. 9-10): (1) In the ש.ב.ב episode, everyone (including ש.ב.ב) inevitably would have been killed if they did not hand ש.ב.ב over 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 ש.ב.ב had the ability to escape, handing him over (מסירה) would have been forbidden.
(2) ש.ב.ב revolted against the kingdom of דוד המלך and thus, was deserving of the death penalty.

Source D-1: Rashi in Sanhedrin 72b: 1) Status of *‘non-emerged fetus’* vs. the *‘partially-emerged fetus’;*2) How does the שבע בן בכרי-episode differ from the *‘partially-emerged fetus’* case?

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| רש״י סנהדרין דף עב ע״ב, ד״ה יצא ראשו:באשה המקשה לילד ומסוכנת. וקתני רישא החיה פושטת ידה וחותכתו ומוציאתו לאברים, דכל זמן שלא יצא לאויר העולם לאו נפש הוא וניתן להורגו ולהציל את אמו. אבל יצא ראשו אין נוגעים בו להורגו דהוה ליה כילוד ואין דוחין נפש מפני נפש. ואם תאמר מעשה דשבע בן בכרי )שמואל ב׳ כ׳( הנה ראשו מושלך אליך דדחו נפש מפני נפש? התם משום דאפילו לא מסרוהו לו היה נהרג בעיר כשיתפשנה יואב והן נהרגין עמו אבל אם היה הוא ניצול אף על פי שהן נהרגין לא היו רשאין למסרו כדי להציל עצמן. אי נמי משום דמורד במלכות הוה והכי מפרש לה בתוספתא.  | 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 ש.ב.ב episode, where (*Shmuel II 20* states) “His head shall be thrown to you," they pushed aside one life (i.e., ש.ב.ב*’*s life) on account of other lives (i.e., the townspeople’s lives)? *Answer: The* ש.ב.ב *episode has two unique distinctions from the ‘partially-emerged fetus’ case:*(1) There, even if they did not hand him (i.e., ש.ב.ב) 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 ש.ב.ב] because he revolted against the kingdom. So it is explained in the תוספתא*.* |
| רש״י ד״ה משמיא קא רדפי לה :לאמיה.  | [Heaven is pursuing] the mother. |

1. The first answer mentioned in Rashi is discussed in Section 1. Two approaches were presented to explain the permissibility (היתר) to hand over a *‘fugitive without escape capability’*:
2. The *Chasdei Dovid* (Section 1, **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 the “coerced murder” case in Section 1, **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 פיקוח נפש (imperative to save an endangered life).
3. 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 three premises:

(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 reciprocal (bidirectional) pursuit after each other; and

(3) The pursuit of the *‘fugitive without escape capability’* after the townspeople is greater than their pursuit after him since the fugitive only has potential for חיי שׁעה (temporary life extension) while they have potential for חיי עולם (normal life expectancy)*.*

Consequently, although the fugitive has no intention to harm the townspeople, he is assigned the “definitive *רודף*” status and his life is pushed aside to save the townspeople (see Section1, **VI**, **1-4**,
pp. 14-15 & **VI-7 & 8,** pp. 20-23).

1. Rav Shmuel Rozovsky (“Rav Shmuel”; Source D-2) asks, why did Rashi develop his question about the ש.ב.ב episode based on the Mishna’s אין דוחין 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 Rashi need the Mishna’s אין דוחין ruling to prompt him to ask about the ש.ב.ב episode? Rashi 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 אין דוחין, 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 אין דוחין 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 לה *(“she is pursued from Heaven”*; Section 1, 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, Rashi 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 Rashi’s first answer in the same manner as the *Chasdei Dovid.* 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.

**Source D-2:** Rav Shmuel Rozovsky’s explanation of Rashi (Source D-1):

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| 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,“ Rashi wrote, “In theש.ב.ב episode, why didthey 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 townspeople when יואב captured it.” This appears difficult – why was Rashi’s difficulty [with the ש.ב.ב episode] based on the Mishna’s statement, אין דוחין נפש מפני נפש - regarding the *‘partially-emerged fetus’*? Even without this Mishna, the ש.ב.ב episode is difficult to explain – it is obvious that we cannot kill one person to save another person? Perforce, the ש.ב.ב episode is different [than the “coerced murder” case] because everyone (including ש.ב.ב) would be killed in any event [even if they refused to hand him over]. Accordingly, why was the difficulty [understanding the ש.ב.ב episode] more [problematic for Rashi to reconcile] with the Mishna [than with the “coerced murder” case]?  | ספר זכרון שמואל סימן פג׳: ...דבהא דתנן יצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש, כתב רש״י ואם תאמר מעשה דשבע בן בכרי הנה ראשו מושלך אליך דדחו נפש מפני נפש, התם משום דאפילו לא מסרוהו לו היה נהרג בעיר כשיתפשנה יואב והן נהרגין עמו ... ולכאורה קשה מה דהעמיד רש״י קושייתו אהא דתנן בעובר שיצא ראשו אין נוגעין בו לפי שאין דוחין נפש מפני נפש, והלא בלאו האי מתניתין קשה איך נפרש מעשה דשבע בן בכרי דהא פשיטא דאין הורגין את האחד כדי להציל את השני? ובעל כרחך דהתם שאני משום דבלאו הכי יהרגו כולם, ואם כן מאי קשיא ליה טפי אמתניתין? |
| To understand Rashi’s approach, [at first glance, the ש.ב.ב episode can be understood 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 אונס (victim of circumstance), to which [the Gemara addresses], משמיא קא רדפי לה - *Heaven is pursuing (the townspeople)*, nonetheless, the fugitive is [legally defined as] a רודף. (Accordingly, the “coerced murder” case is distinguishable from ש.ב.ב who could be classified as a רודף). However, after the Mishna taught us (based on the Gemara’s explanation) that the דין רודף cannot be applied when we have a משמיא קא רדפי לה situation (i.e., when he is a complete אונס, without volition to harm), the ש.ב.ב episode was difficult [for Rashi to understand why ש.ב.ב was handed over].  | ונראה בכוונת רש״י משום דהיה אפשר לפרש דכל שיחדוהו הוה ליה רודף, ואף על פי שהוא אונס גמור ומשמיא קרדפי לה, מכל מקום הוה רודף. אולם אחר דתנן כאן דכל היכא דמשמיא קרדפי לה אין עליו דין רודף, שפיר קשה מעשה דשבע בן בכרי.  |
| This is the question that Rashi answers [by creating a distinction, i.e., the ש.ב.ב episode] is unlike [the Mishna’s case ofאין דוחין ] because everyone would be killed if they did not hand [ש.ב.ב] over to [יואב*’*s army]. Accordingly, the מאי חזית logic did not apply [to ש.ב.ב], as the כסף משנה 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 פיקוח נפש*.* (However, in the Mishna’sאין דוחין case, the מאי חזית 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 פיקוח נפש).  | ועל זה תירץ רש״י דשאני התם דאם לא ימסרוהו להם כולם יהרגו וכיון שכן לא שייך הסברא דמאי חזית וכמו שכתב הכסף משנה בשם הרמ״ך, ולפיכך שרי למוסרו משום פיקוח נפש. |

1. 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 מאי חזית 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 אין דוחין ruling, but rather, משמיא קא רדפי לה is a separate concept. The אין דוחין ruling works through the מאי חזית 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, Rashi’s question was not by prompted by the Mishna’s אין דוחין ruling, but rather, by the Gemara’s משמיא קא רדפי לה statement which precludes applying the דין רודף in cases of unintentional pursuit.
2. 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 pursuers after each other (Source D-3). Since there is 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 Section 1, **VI-5 & 6,** pp. 16-19).
3. According to Rav Moshe, the דין רודף would apply to an unintentional רודף if he is considered the “definitive *רודף*”, as opposed to a situation where the two parties are equal bidirectional pursuers. If there is equal bidirectional 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 discernable “definitive *רודף*”. However, in the *‘non-emerged fetus’* and *‘fugitive without escape capability’* cases, the bidirectional pursuit is not equal; the fetus and fugitive are each deemed the “definitive *רודף*” (or, the greater *רודף*) in their respective cases. The *‘non-emerged fetus’* pursues after his mother’s complete נפשׁ, while she only pursues after his incomplete נפשׁ. Similarly, the *‘fugitive without escape capability’* pursues after the townspeople’s
חיי עולם, while they only pursue after his חיי שׁעה. Therefore, the דין רודף will permit feticide and מסירה in the *‘non-emerged fetus’* and *‘fugitive without escape capability’* cases, respectively (see Section 1, **VI-8A** & **8B,** pp. 20-21). Based on Rav’s Moshe’s explanation, the following two observations may be made:
4. The Mishna’s אין דוחין principle is not a separate concept from the Gemara’s statement, משמיא קא רדפי לה. Rather, אין דוחין נפש מפני נפש provides the reason we must remain passive, i.e., because both the *‘partially-emerged fetus’* and his mother have an identical “נפש level”. The Gemara’s statement,
משמיא קא רדפי לה provides further explanation of the Mishna’s אין דוחין ruling, i.e., the fact that the emerging fetus and his mother have an identical “נפש level”, in turn, determines that their mutual pursuit is (bidirectionally) 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 משמיא קא רדפי לה denotes that the mutual pursuit is equal). Accordingly, Rashi’s question was indeed prompted by the Mishna’sאין דוחין principle which is the operative ruling that precludes applying דין רודף in cases of equal bidirectional pursuit, and
משמיא קא רדפי לה is merely an elucidation of this concept.
5. The rule of אין דוחין works outside the purview of the standard the מאי חזית logic which dictates theדין of יהרג ואל יעבור in the “coerced murder” case. The מאי חזית logic alone would not have prevented us from killing the fetus to save his mother since the מאי חזית logic never prevents us from killing a רודף to save the נרדף. 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 “נפש level”, and therefore, the דין רודף cannot be applied. Consequently, Rav Moshe would not agree with Rav Shmuel’s explanation of Rashi’s question. According to Rav Shmuel, we infer from אין דוחין that the דין רודף does not apply to an unintentional רודף, and therefore, Rashi questioned why the ש.ב.ב episode was treated differently than the *‘partially-emerged fetus’* case*.* However, according to Rav Moshe, אין דוחין merely limited the applicability of the דין רודף to cases of unequal pursuit (i.e. where there is a “definitive *רודף*”), but certainly the Mishna does not preclude applying the דין רודף to unintentional pursuit in general.
6. It would appear that Rav Shmuel’s difficulty with Rashi’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), Rashi certainly understood that the handover of ש.ב.ב was sanctioned because of his status as a רודף. Therefore, the מאי חזית logic would not prevent handing over ש.ב.ב just as the מאי חזית logic never prevents us from killing a רודף. Thus, Rashi could not have invoked the מאי חזית logic to question the townspeople’s decision to hand over ש.ב.ב. 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 equal bidirectional pursuit, Rashi then questioned why the ש.ב.ב episode was treated differently since it also appears to be a case of equal bidirectional pursuit. Rashi’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 bidirectional pursuit was not equal, thus, distinguishing the ש.ב.ב episode from the *‘partially-emerged fetus’* case.

**Source D-3:** Rav Moshe explains the Gemara’s משׁמיא קא רדפי לה statement and Rashi’s understanding of
אין דוחין נפש מפני נפש: *(See Supplement 2, pp. 65-66, for more extensive excerpts).*

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| I have written that משׁמיא קא רדפי לה 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, משׁמיא קא רדפי לה denotes 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. ... | אגרות משה חושן משפט ח״ב, סימן סט׳ אות ב׳: דהרי כתבתי שטעם משמיא קא רדפי לה אינו טעם לומר שאינו רודף, אלא דבשביל זה שניהם רודפין ... היינו דמשמיא נעשה שאי אפשר שיחיו שניהן דכשיולד הולד תמות האשה, וכשלא יולד חי, שיצא אברין אברין תחיה האשה . שלפיכך מניחין הדבר כמות שהוא, שזה הוי בהוציא ראשו שווו תרוייהו בהרדיפה . ... |

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| ולכן כתב רש״י רק דלאו נפש הוא, היינו כיון דכל הדין ביצא ראשו דאסור להורגו להצלת האם תנן לפי שאין דוחין נפש מפני נפש, שמשמע דאיכא בעצם טעם להתיר להורגו שהוא מחמת שהוא רודף. אבל כיון שטעם זה איכא גם על האם שהיא גם כן נחשבת רודפת את העובר , מטעם דהרדיפה הוא מחמת שמשמיא עשו שלא יוכלו שניהם לחיות, שלכן איננו יכולין לדחות נפש הולד מחמת רדיפתו בזה שאם הוא יצא שלם לא תחיה האם - מפני נפש האם לבחור שהיא תחיה והולד יהרג, שהרי אין לנו טעם לזה מצד הרדיפה דשניהם שוין. ולכן קודם שיצא ראשו דלאו נפש הוא, דוחין העובר מפני שאין שוין ברדיפתן, שהעובר רודף היתרון שבאם שהיא נפש והוא אינו נפש עדיין, שלכן ניתן להרגו ולהציל את אמו ... ונמצא שגם רש״י סובר כן.  | Therefore, רש״י only wrote that the *‘non-emerged fetus’* is not a נפשׁ [but did not write, *“and consequently, feticide is a lesser prohibition (less severe than murder), which may which may be pushed aside for the mother’s* פיקוח נפש”]*.* [The reason רש״י stated the *‘non-emerged fetus’* is not a נפשׁ was to contrast this case with the *‘partially-emerged fetus’* case]. Since the משנה’s sole basis to prohibit killing the *‘partially-emerged fetus’* to save his mother is because ofאין דוחין נפשׁ מפני נפשׁ, this implies that one could have rationalized a היתר to kill the *‘partially-emerged fetus’* due to his status as a רודף [after his mother]. However, this logic would also apply for the mother, i.e., she is considered a רודפת 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 [complete] נפשׁ, 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 ‘נפשׁ*-differential’)* that she is a [complete] נפשׁ while he is not. This is the reason it is permitted to kill the *‘non-emerged fetus’* to save his mother ... It follows that רש״י also believes [the דין רודף is the basis for killing the *‘non-emerged fetus’*].  |

1. Rashi’s question about the ש.ב.ב episode is in the paragraph with the *ד״ה* (heading) of “יצא ראשו” (Source D-1). The *ד״ה* of paragraph of Rashi that follows immediately afterward is “משמיא קא רדפי לה”. In the first paragraph, ד״ה יצא ראשו, Rashi raised the question about the ש.ב.ב episode immediately after discussing the אין דוחין principle in the *‘partially-emerged fetus’* case. It would, therefore, appear that Rashi’s question was prompted by the אין דוחין ruling. According to Rav Shmuel, the Mishna’s אין דוחין ruling posed no difficulty to Rashi. Rather, Rashi’s question was only prompted after the Gemara’s statement, משמיא קא רדפי לה, which disallows the דין רודף in cases of unintentional pursuit. Rav Shmuel’s approach appears difficult to fit into the order of Rashi’s presentation. However, according to Rav Moshe’s approach, the logical flow in Rashi appears more cogent since Rashi’s question was prompted by the אין דוחין rule which disallows the דין רודף in cases of equal pursuit and משמיא קא רדפי לה is merely an elucidation of that rule.
2. Rav Shmuel explained Rashi’s first answer to mean that ש.ב.ב‘s inability to escape rendered the מאי חזיתlogic inapplicable. Perhaps the reason Rav Moshe did not explain Rashi’s answer in this way is because Rav Moshe understands that the מאי חזיתlogicis linked to the “תרתי-נגד-חדא” (“two vs. one”) argument of Rashi (which renders the “וחי בהם*-*dispensation” inapplicable to murder; see Appendix B, #1, p. 43 & #6-b, p. 44). Although ש.ב.ב would be killed even if he was not handed over, the “תרתי-נגד-חדא” argument and thus, the מאי חזיתlogic, will still be applicable regardless of the survivability of the situation.
3. Rashi (Source D-1), 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.” In Section 1, two interpretations of Rashi’s statement were presented:
4. The *Sefer Meirat Einayim* (סמ״ע) and the *Minchat Chinuch* (section 1, **VI-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 theדין of יהרג ואל יעבור apply or not? Theדין of יהרג 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), theדין of יהרג ואל יעבור does not apply; consequently, feticide is permitted for the mother’s
פיקוח נפש just as nearly all prohibitions are pushed aside for פיקוח נפש. 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 theדין of יהרג 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 יהרג ואל יעבור (Sanhedrin 74a-b)?
5. However, Rav Moshe maintains that an unborn fetus is deemed a life (see Supplement 2, pp. 63-66 & p. 71). 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 פיקוח נפש. According to Rav Moshe, the intent of Rashi’s statement, “he is not a נפשׁ”, is to contrast the “נפש-level”of the *‘non-emerged fetus’* with the “נפש-level” of the *‘partially-emerged fetus’*. In the *‘non-emerged fetus’* case, the bidirectional 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, there is no “definitive *רודף*” and the דין רודף is not applied. (Note: The entire focus of the Gemara’s discussion is to explain why the דין רודף is not applied the *‘partially-emerged fetus’* case. The Gemara never discussed 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 bidirectional pursuit, thereby laying the logical foundation why the דין רודף is not applied in the *‘partially-emerged fetus’* case).
6. It is noteworthy that the Ritva (Source D-4) explains the concept, “the fetus is not a נפשׁ“, which was written by other Rishonim including the Ramban (on Tractate 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 Rav Moshe, i.e., the “נפש-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.
7. According to Rav Moshe’s approach, Rashi’s question on the ש.ב.ב episode was only prompted by the Mishna’s אין דוחין ruling because this precisely is the source that precludes applying the דין רודף in cases of equal bidirectional pursuit. Rashi, therefore, questioned why the ש.ב.ב episode, which appeared to also be an equal bidirectional 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, Niddah 43b-44b

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| A one-day old baby boy ... inherits and bequeaths and one who kills him is liable (i.e., he incurs capital punishment).  | משנה מס׳ נדה דף מג׳ ע״ב - מד׳ ע״א:תינוק בן יום אחד ... ונוחל ומנחיל וההורגו חייב. |
| **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*. | גמרא מס׳ נדה דף מד ע״ב:וההורגו חייב  **:**דכתיב (ויקרא כד, יז) ואיש כי יכה כל נפש, מכל מקום. |
| The explanation is that even a one-day old child is considered a נפש (i.e., in reference to the verse in Vayikra 24:17, “one who strikes any person, ‘כל נפש’, shall be put to death”). Tosfot ask: From here, it appears that a fetus is not considered a נפש (since there is no capital punishment for killing a fetus, one may deduce that he is not deemed a נפש) ... A similar conclusion may be deduced from [the Mishna] stated in Sanhedrin, “If a woman’s life becomes endangered during childbirth, we cut out the fetus limb by limb. If his head has emerged, we may not touch him because we do not push aside one life one account of another life.” Thus, we see that a *‘non-emerged fetus’* is not a נפש (since his existence does not qualify as “one life on account of another life”). ... *[The Ritva now presents the question that his version of Tosfot raised on the previously cited sources which imply that a fetus is not a* נפש]: 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, how can we violate the Shabbat for his פיקוח נפש? Tosfot 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 Talmudic derivation to permit violating Shabbat forפיקוח נפש], “Violate one Shabbat so that he will observe many Shabbatot” (Yoma 85b), also applies to a fetus. The בה״ג also rules in this way.  | חידושי הריטב״א ,ד״ה דכתיב ואיש כי יכה:פירוש ואפילו קטן בן יום אחד קרוי נפש .הקשו בתוספות דאלו הכא משמע דעובר לא חשיב נפש וכן משמע מהכה את האשה ויצאו ילדיה שאין שם אלא תשלומי ממון דמי ולדות כשפחה הנמכרת בשוק כדאיתא בפ״ק, והכי נמי משמע מהא דאמרינן בסנהדדין האשה שהיא מקשה לילד חותכין את הולד ומוציאין אבר אבר יצא ראשו אין נוגעין בו שאין דוחין נפש מפני נפש אלמא עובר לאו נפש הוא ... ואיכא למידק אם כן היכי אמרינן בפ״ק דערכין האשה שישבה על המשבר ומתה בשבת מביאין סנין וקורעין אותה ומוציאין את הולד וכיון דלאו נפש הוא היכי מחללין עליה את השבת ? ותירצו דאף על גב דלאו נפש הוא היינו לחייב ההורגו או לדחות נפש אמו כדי שלא יגעו בו, אבל לענין הצלתו בשבת דינו כנפש דהא שייך לומר כן טעמא דאמרינן גבי בן קיימא חלל עליו שבת אחת כדי שישמור שבתות הרבה ... כן כתב בעל הלכות גדולות (בה״ג) ז״ל. |