



Self-Endangerment and Participation in Coronavirus Vaccine Trials

Pharmaceutical companies and academic institutions around the world are rushing to develop a vaccine for COVID-19. As in previous vaccine trials, the development of the vaccine is taking place while the disease is still spreading around the world. Until an effective vaccine has been developed and becomes widely available, millions more are likely to be infected, many will fall seriously ill, and, unfortunately, a significant number may die.

Vaccine development begins with the exploratory and preclinical phases, followed by clinical development, which includes three phases of patient trials. Phase 1 and 2 trials use smaller groups of volunteers to establish the safety of the vaccine and identify its side effects. Phase 3 trials involve large groups of volunteers who are divided into control and experimental groups. The control group receives a placebo and the experimental group receives the vaccine, and follow-up is conducted over an extended period to see if fewer members of the vaccine group contract the disease than members of the unvaccinated control group. It is only after the Phase 3 trial that the efficacy of the vaccine can be established.

Clearly, this method requires an extended period of testing before a vaccine can be made widely available to the general public. The results of the trial can only be evaluated after the passage of enough time for participants to be randomly exposed to the disease through normal daily activities, which is even longer in the environment of social distancing.

An alternative method of testing, which has generated worldwide discussion lately, is to perform a "challenge study". In this type of study, both groups are deliberately exposed to the pathogen, even though only the experimental group has received the vaccine. Comparing the incidence of infection between the two groups reveals whether the vaccine is effective.

While the advantage of the challenge study is a significant reduction in the time to complete the trial, the disadvantage of this method is clear. The placebo group does not receive the vaccine and is deliberately exposed to infection without any protective advantage. The vaccine group is not necessarily protected either, as it is not yet known if the vaccine is effective. Although participation in the trial may be restricted to healthy individuals who are considered to be at low-risk, the risk of



serious illness is still present, and some participants may get very sick and a few may even die.

The reason that many experts support conducting vaccine trials via challenge method is the daily cost that the unchecked coronavirus has worldwide. With every passing day, tens of thousands become infected and thousands die. There are enormous economic costs and other serious consequences of the outbreak. In spite of the comprehensive preventive measures that have been put in place around the world, experts believe that until a vaccine is discovered the world will not be able to return to normal and many more lives will be lost. For this reason, there is a push to develop a vaccine using the faster challenge method.

Is it permitted, both from an ethical and from a Halachic standpoint, to conduct these types of trials? More importantly, is it permitted to volunteer for such a trial? This is a fascinating Halachic question. Although one might assume that participation would be forbidden on account of “*v’Nishmartem M’od l’Nafshoseichem*”, there may well be grounds for leniency given that the intention is to save lives.

We will begin with the obvious premise that the development of a vaccine will save lives, as outlined above. There is no need to elaborate on this point. Our discussion will focus on the *extent of a person’s obligation to endanger himself in order to save lives when the efficacy of his lifesaving act is itself in doubt.*

In general, if the lifesaving actions involve inherent danger to the rescuer, the *Poskim* disagree as to whether he is obligated to do so. Put simply, is one obligated to sacrifice his own life in order to fulfill the Mitzva of saving someone else’s?

This question is discussed by a famous *Braisa*, cited by the Gemara in *Bava Metzia* 62a:

Two people were traveling on a journey and one of them had a flask of water. If they both drink, they will both die [as it does not contain enough to sustain them both until they reach the next settlement]. If one of them drinks, he will reach the settlement [but his friend will die]. Ben Petura expounded: “It is better that they both drink and die than one of them should witness the death of his fellowman. [This was the accepted position] until R’ Akiva came and taught: [The Pasuk states] “v’Chey Achicha Imach - And your brother shall live with you” - your life takes precedence over that of your fellow man.



There are several approaches to explaining the dispute between *Ben Petura* and *R' Akiva*, each of which is based upon different view on the precise circumstances of the case. This is beyond the scope of this essay¹. Instead, we will make three clear assumptions that form the basis of the simplest approach to the subject, though they may not be unanimously agreed upon:

1. The primary issue in this *Braisa* is the extent of the obligation to save another person's life. In other words, does a person have to sacrifice his own life in order to save someone else's? This is not a question of "murder"² - even *Ben Petura* agrees that drinking the water in the flask and refraining from giving it to the other person is not an act of murder, even in a passive sense.
2. *Ben Petura's* view is that one is obligated to sacrifice his life in order to save the life of another person. Therefore, the person with the water must sacrifice his life and share it with the other traveler. The reason that *Ben Petura* does not obligate him to give him all of the water (thus actually saving his life) is that the other person is similarly obligated to share the water with him. If the second person was a minor (and thus exempt from the Mitzva of saving lives), he would have to gift him all of the water in order to save his life.
3. *R' Akiva's* dissenting view is that one is **not** obligated to sacrifice his life in order to save the life of another person. The person may therefore drink all of the water even though the second person will die as a result.

What is the Halacha? Since we generally follow the principle that "*Halacha k'R' Akiva meiChaveiro*" (the Halacha is in accordance with *R' Akiva* when he disagrees with his colleague [i.e. with an individual, but not when he argues with the *Chachamim*] - *Eirubin 46b*), the Halacha in this case should be according to *R' Akiva's* ruling. This is in fact the conclusion of the *Minchas Chinuch* (295). However, a close reading of the Gemara may imply otherwise. *R' Akiva* based his opinion on the words in the *Posuk*, "*v'Chey Achicha Imach*", but an opinion quoted earlier in that same Gemara utilized these words for a different *Drasha* entirely - that of the

¹ The following is a partial list of sources which discuss this topic: *Minchas Chinuch* (296), *Chidushei Rabbenu Chaim haLevi (Hilchos Yesodei haTorah)*, *Chazon Ish (C.M, Likutim Bava Metzia 20, 62a & Gilyonos on Chidushei haGra"ch ibid.)*, *Ha'amek Sha'ala* (147:3), *Shu"t Yad Eliyahu (Regoler 43)*, *Igros Moshe (C.M. 2:73:2 & Y.D. 1:145)*, *Tzitz Eliezer* (9:17) and *Minchas Asher (Bereishis 38)*.

² I.e., whether withholding water from his fellow traveler is considered as if he murdered him.



obligation to return *Ribbis* (interest) that was sinfully obtained. Since the Halacha follows that opinion³, it would appear that *R' Akiva's* ruling was not accepted as the Halacha.

The *Rosh* and *Ritva* discuss this and explain how in fact the Halacha is in accordance with *R' Akiva*, despite the fact that the *Posuk* ("v'Chey Achicha Imach") is used for something else. However, the *Rambam* and *Shulchan Aruch* entirely omit *R' Akiva's* ruling, and, according to the *Binyan Tzion* (175), this is because they were troubled by this question⁴. (In spite of this, in several other places it seems that the Halacha was clearly assumed to follow *R' Akiva*.)

Thus far our discussion applies to circumstances where a person's actions to rescue someone else will certainly cause his own demise. If his own demise is not certain, the Poskim disagree as to whether he is obligated to risk his life. The Hagahos Meimonis (Hilchos Rotzeach 1:15⁵) rules that in these circumstances he would be obligated to risk his life, based on a Gemara in the Talmud Yerushalmi⁶. This is also the conclusion of the Maharashdam (Y.D. 204), Chavos Yair (146), Chasam Sofer (Kesubos 61b) and "Yesh Omrim" in the Shulchan Aruch haRav (Hilchos Nizkey Guf 7).⁷

It is implied by the Poskim that according to these opinions, a person is obligated to attempt to save somebody's life even if he is uncertain that he will be successful. This is written explicitly by the *Bach* (C.M. 426), though he notes that the *Rambam* disagrees.

However, the *Sefer Chasidim* (674), *Isur v'Heter he'Aruch (Pikuach Nefesh b'Shabbos, 59)*⁸ and *Radvaz* (3:1052) hold that a person may not risk his life to save

³ *Rambam (Hilchos Malveh v'Loveh 6:5) and Shulchan Aruch (Y.D. 161:5).*

⁴ For further discussion of the omission of the *Rambam* see *Keren Orah (Nedarim 80b) and Achiezer (Y.D. 16:5)*. *R' Yitzchak Kolitz (Torah sheBa'al Peh 25 p133)* argues that the *Rambam's* omission is indeed due to the fact that we rule like the opinion who obligates retuning *Ribbis* but the *Rambam* agrees that the Halacha is nevertheless in accordance with *R' Akiva*, as evident from his rulings elsewhere.

⁵ This comment of the *Hagahos Meimonis* only appears in *Mahaduras Defus Kushta*. It is cited by the *Beis Yosef* (C.M. 426) and *Kesef Mishna (Hilchos Rotzeach 1:14)*.

⁶ In all likelihood (see *Ha'amek Sha'alah, Sheilta 147*) he is referring to the *Yerushalmi in Terumos 8* and the episode involving *Resh Lakish* cited there.

⁷ See also *Ha'amek Sha'ala (Sheilta 147)* who maintains that this question depends upon a dispute between *R' Yosi* and the *Chachamim* in *Nedarim 80b* (and the *Chachamim* are obligate a person to risk his life). This contention is far from clear and depends on the precise circumstances of the Gemara's discussion there.

⁸ Who argues that, "We do not find any distinction between a danger to life and certain death."



another person. The *Radvaz* in fact dubs a person who does so a “*Chasid Shoteh*” – a foolishly pious person! This is also the conclusion of the *Maharam Shik* (*Sefer haMitzvos* 238) and *Shulchan Aruch haRav* (*O.C.* 329:8 & *Nizkey Guf ibid.*) who concludes that “*Safeik Nefashos l’Hakel*” and implied by the *Sm”a* (*C.M.* 426:2).

As stated, the *Yerushalmi* (cited by the *Hagahos Meimonis*) appears to hold that one is obligated to risk his life in order to save another person. The *Pischei Teshuva* cites the *Sefer Agudas Eizov* who explains that the reason that many of the *Poskim* omit this ruling of the *Yerushalmi* is because they believe that the *Bavli* disagrees⁹. The *Elya Rabah* (*O.C.* 329:8)¹⁰ writes similarly.

The *Ha’amek Sha’ala* (*Sheilta* 147) contends that this question is in fact the very point of dispute between *Ben Petura* and *R’ Akiva*! He argues that the circumstances in question are that if the two people divide the remaining water they may both survive but if one of them drinks it, the other will certainly die. Thus, the question is whether a person is obligated to *risk* his own life (by sharing the water) in order to attempt to save the other person. According to *Ben Petura* the danger to his fellow traveler overrides the possible danger to his own life. According to *R’ Akiva*, his own life takes precedence and he may not put himself at risk. The *Ha’amek Sha’ala* also explains that this is the point of dispute between *R’ Yosi* and the *Chachamim* in *Nedarim* (80a) and that the Halacha is in accordance with *R’ Akiva* and *R’ Yosi*.

The *Radvaz* (*Shu”t* 5, *Leshonos haRambam* 218, 1582) takes an intermediate stance:

To save the life of one’s fellow man... even if there is a possible risk he is obligated to save his life as we find in the Yerushalmi¹¹. Nevertheless, if he is

⁹ In all likelihood he refers to the Gemara in *Sanhedrin* 73a which notes that the obligation of “*Lo Sa’amod Al Dam Rei’echa*” – “*Do not stand over the blood of your fellowman*” is more stringent than the obligation of *Hashavas Aveida* (returning a person’s lost possessions) *because one is even obligated to hire others to help him do so*. If one would even be obliged to risk one’s life to save one’s fellowman the Gemara should mention that as a stringency for one is certainly not obliged to risk one’s life to fulfill the Mitzva of *Hashavas Aveida*.

¹⁰ The *Elya Rabah* appears to have understood that the *Sm”a*’s view is that one is *obligated* to risk one’s life to save another person. However, this doesn’t appear to be clearly stated by the *Sm”a* who may just hold that one is *permitted* to do so. Perhaps the *Elya Rabah* merely means to cite the *Sm”a* as having cited the view that one is obligated to risk one’s life and not to say that this was the *Sm”a*’s own opinion. See also the Or *Sameach* (*Hilchos Rotzeach* 7:8), *Meshech Chochma* (*Shemos* 4:19), *Mishna Berura* (329:19) and *Minchas Asher* (3:123).

¹¹ See above and footnote 5.



almost certain to be endangered he is not obligated to sacrifice his own life. And even if there is an equal chance [that he will survive or die] he is not obligated to sacrifice himself, for "Why do you perceive that your blood is redder, perhaps his blood is redder"¹². But if there is not an equal chance, and the chances of rescue are higher, and the rescuer will not be endangered, and he fails to attempt a rescue, he has transgressed "One shall not stand over the blood of one's fellow man".

HaGaon Rav Asher Weiss Shlit"a (Shu"t Minchas Asher 3:123) maintains that the Halacha is in accordance with the *Radvaz* as his view sits in between the two extreme positions. It also fits well with the Gemara and is eminently logical. Therefore, in each situation, a person must assess the potential risks. If the risk is minimal he must attempt to rescue the other's life, but where the risk to himself is greater, he should refrain from doing so.

We see that where there is only minor risk to a person's life, there are those who hold that it is permitted (or at least *Midas Chasidus*) to take the risk and attempt to rescue another person, even if one is not certain to succeed. This would appear to be the exact circumstances of those who participate in vaccine trials where the risk to life is small.

However, there are two important distinctions between the two cases:

The sources cited above do not discuss cases where the rescuer actively harms himself or commits an action that could directly end his life. Rather, he performs an act of rescue – that is not inherently dangerous – under dangerous circumstances, which could possibly lead to the loss of his life. For instance, if he sees somebody drowning and jumps into the water to save him, while he has exposed himself to the possibility of drowning, he has not actually drowned himself. Likewise, in the circumstances described by the *Ha'amek Sha'ala*, if he shares the water with the other person, although he has put himself in danger of dying of thirst, he has not performed a direct act of harm.

¹² The explanation of this statement is as follows. The Gemara in *Pesachim* 25b explains that a person is not permitted to kill another person in order to save his own life for "why did you perceive that your blood was redder, perhaps his blood was redder?" However, this is only true when his death will be brought about by a direct act of murder. But where it will only be caused by inaction (and certainly if it is only due to that person failing to perform an act of rescue), the reverse argument can be made, "Why should he pay with his life in order to save his fellow man?" This argument first appears in *Tosfos* in *Pesachim* (*ibid.*)



However, by participating in a vaccine trial, a person actively infects himself (or allows himself to be infected) with a potentially lethal virus! Though the vast majority of those who are not in the high-risk category will not become seriously ill, a small minority will be endangered, and they will have directly brought the illness upon themselves. The injection of the virus is equivalent to drinking poison! It is likely that all of the *Poskim* would agree that it is forbidden to endanger oneself in this manner, even for the sake of saving others.

Nevertheless, there may be grounds to permit even a direct act of harm or injury. There is a discussion among the *Poskim* as to whether a person is obligated to donate his organs in order to save somebody's life. The discussion revolves around the extent of the danger to life that is entailed in organ donation (see particularly the *Radvaz Shu"t* 3:1052 / 1627)¹³. Organ donation would appear to be a direct act of endangering one's life both in terms of the loss of the organ and the danger of the procedure itself. It therefore closely resembles the participation in a vaccine trial and there are *Poskim* who permit it.

However, there may be an additional distinction between the cases discussed by the *Poskim* and our question of vaccine trials. In all of the former cases, the act performed by the rescuer **can definitely be considered an "act of Hatzala"** (an attempted act of rescue), the only doubt that we must reckon with is whether it will be successful¹⁴. In the case of the vaccine trial, however, the act of being infected with the virus does not *directly* save anyone's life even if the vaccine is ultimately successful. Therefore, participation in the first instance could more readily be considered a "*Safek Hatzala*" (a doubt whether the act he is performing is an act of *Hatzala* at all). Though the cases appear similar (in both it is unclear that the rescue act will in fact save lives), it is not certain that those *Poskim* who permit risking one's life to perform a *Ma'aseh Hatzala* would permit him to do so in order to do something that would not be directly lifesaving at all.

As always, practical questions concerning this topic must be addressed to *Gedolei Yisrael*.

¹³ In general, those who hold that a person is obligated to risk his life in order to save another person, obligate him to donate his organs for that purpose. See *Pischei Teshuva* (Y.D. 157:2) who cites the *Mishnas Chachamim, Or Sameach* (*Hichos Rotzeach* 7:8), Rav Yeruchum Fishel Perlow (*Rasag* 3:33). See also the *Shach* (Y.D. 157:3).

¹⁴ See above where we cited the *Bach* who rules that one needn't be certain that the attempt will be successful.