



## Animal Experimentation and Research

***"And the angel of Hashem said to him, 'why did you strike your ass these three times?'"***

***(Bamidbar 22:32)***

Animal experimentation is an integral part of scientific research in a variety of fields, particularly the field of medicine. Scientists routinely use animals for research into the pathophysiology of disease, drug development, and general biology and genetics.

In recent decades, this method of research and development has been the focus of enormous controversy in the Western world. Although the majority of people do not dispute the critical importance of these experiments in developing life-saving medications and procedures, there are those who oppose any use of animals for human benefit. As a result, many countries have legislated restrictions on animal experimentation to ensure that research is carried out only for medical purposes and not for other uses (e.g. cosmetics and other consumer products).

In the following paragraphs we will outline some of the opinions of the Poskim regarding *Tza'ar Ba'alei Chaim*: Is it permitted to cause animals pain for the benefit of humans? Is there any distinction based on the degree of pain or the purpose of the experimentation?

The *Tanaim* and *Amoraim* (*Bava Metzia* 32b-33a) (and thereafter, the *Rishonim* and *Poskim*) dispute whether the prohibition of *Tza'ar Ba'alei Chaim* is an *Issur d'Oraisa* or *d'Rabanan*.

Among those who hold that it is an *Issur d'Oraisa* there are various opinions as to its source in the Torah. Some hold that it is derived from the Mitzva to help unload a donkey that is struggling with its load (see *Shemos* 23:5). Others maintain that it is learnt from the prohibition to muzzle an ox while it is threshing which prevents it from eating while it works.

A third opinion is that it is implicit in the Posuk in *Tehilim* (145:9) which states "and His mercy is upon all His creations". Since Hashem has mercy on



everything He created, including the animals, and man is enjoined to emulate His *Middos*, he must also have mercy on the animals and prevent them from suffering.

The *Rambam* (*Moreh Nevuchim* 3:17) fascinatingly derives the prohibition of *Tza'ar Ba'alei Chaim* from the Posuk in our Parsha when the *Malach* rebukes Bilam for hitting his donkey. This teaches us that it had been an incorrect thing to do!

*Tza'ar Ba'alei Chaim* is considered to be a grave sin and warrants a severe punishment. The Gemara (*Bava Metzia* 85a) relates that *Rebbi Yehuda ha'Nasi* suffered severely for many years because on one occasion he had not acted mercifully to a calf that was on its way to be slaughtered. The calf ran in fright and buried its head in *Rebbi's* clothes and cried, but *Rebbi* said to it sternly "*go, this is what you were created for*". In Heaven at that time it was decreed that *Rebbi* would suffer because he did not act mercifully.

The Gemara also relates that *Rebbi's* suffering eventually came to an end when he did act mercifully to animals. He once saw his maidservant sweeping out some baby weasels that had taken up residence in his house but he stopped her. "The Torah says that G-d's mercy is upon all of his creations", he told her. At that time in Heaven it was decreed, "since he was merciful, we will be merciful to him".

The importance of *Tza'ar Ba'alei Chaim* notwithstanding, all of the Poskim agree that Man was created to be the pinnacle of creation. Hashem placed Man in charge of the natural world, including the animal kingdom, and, therefore, everything may be used for his benefit. For this reason, the Torah permitted the slaughter of animals for food and to make use of their hides. The *Rishonim* and *Acharonim* discuss whether the prohibition of *Tza'ar Ba'alei Chaim* applies only when there is no human benefit or even when there is some human benefit and what the parameters and criteria are for permitting it.

The earliest known source is the *Teshuvos ha'Geonim* (375) which states clearly that *Tza'ar Ba'alei Chaim* is only forbidden when there is no purpose (e.g. "for *Mazel* or *Refua*"). The *Ran* in *Maseches Shabbos* (154b) concurs. He argues that *Tza'ar Ba'alei Chaim* must be permitted when it benefits humans else it should be forbidden to have one's donkey grind wheat because of the discomfort of the donkey! The *Rema* (*E.H.* 5) rules similarly in the name of the *Issur v'Heter he'Aruch* (59).



The *Rema* (ibid.) further cites a ruling of the *Terumas haDeshen* (105) permitting plucking feathers from live ducks. However, as *Terumas haDeshen* himself notes, “the people refrain from doing so because it is cruel”.

Interestingly, the *Terumas haDeshen* was not discussing a case where there was a need for duck feathers for *Refua* or some other legitimate purpose. Rather, he ruled leniently even when there was no apparent purpose since the world was created for man’s usage. Nevertheless, as he notes, people refrain from such activities because of cruelty.

The *Shoel u’Meishiv* (Yosef Da’as Y.D. 348) offers a novel explanation as to why *Tza’ar Ba’alei Chaim* is permitted when it serves the purpose of humans. He explains that the reason for the prohibition of *Tza’ar Ba’alei Chaim* is to engender a trait of *Rachmanus* (mercy) in the Jewish people and not simply because Hashem is merciful to all living creatures. It follows that any act that causes pain to an animal should be permitted as long as it was not intended as cruelty.

The *Shoel u’Meishiv’s* explanation can be supported by the words of the *Sefer ha’Chinuch* (Mitzva 596) regarding the prohibition of muzzling one’s ox during threshing. The *Chinuch* does not attribute this prohibition merely to the ideal of saving an animal from needless pain, but also “to teach us to be people with good hearts, who choose to do what is just and to cleave to it, and to pursue kindness and compassion. And when we accustom ourselves to acting as such even with animals who were only created to serve us... the soul will become accustomed to it and will endeavor to do good with people as well...” We see that the purpose of the prohibition is to accustom people to compassion and kindness.

This perspective is quite unlike that of the modern animal rights activists who reject any hierarchy of man over the animals and believe that the two should be held as equals and that man should have no right to cause any harm to animals. Our belief, by contrast, is that the hierarchy of man over the animal kingdom is a part of creation, but we nevertheless have an obligation to avoid causing animals any needless pain so that we learn to be compassionate.

Many later Poskim invoked the ruling of the *Terumas haDeshen* to forbid *Tza’ar Ba’alei Chaim* on moral grounds when it serves no useful purpose. *Noda biYehuda* (Mahdura Tinyana Y.D. 6) famously decried the custom of the rich who would go fox-hunting as a pastime. “How can a Jewish person kill a living creature



with his own hands just to pass the time?" he wrote. "It is only permitted for the purposes of making a livelihood."

Let us now examine the rulings of the Poskim regarding using animals for medical experimentation. As stated above, the *Rema* (in the name of the *Issur v'Hetter*) permits *Tza'ar Ba'alei Chaim* for the purposes of *Refua*, even for the sake of a person who is not in danger of dying. At the same time, it is important to avoid cruelty as much as possible.

The *Shevus Ya'akov* (Y.D. 3:71) was asked by a Jewish doctor whether it was permitted for him to perform medical experiments on animals. The doctor claimed that since his experiments would not kill the animals but would merely cause a perforation of their internal organs, the ruling ought to be more lenient. The *Shevus Ya'akov* pointed out to him that, on the contrary, it would be better if the experiments would kill the animals painlessly, rather than leaving them alive to suffer the consequences of the experimentation.

Nevertheless, the *Shevus Ya'akov* ruled that it was permitted for the doctor to experiment on the animals even if it wasn't certain that doing so would lead to a *Refua* for human beings. He also wrote that the custom cited by the *Rema* to avoid plucking feathers from ducks because of cruelty, was only because plucking the feathers was a direct act that caused pain to the animal. Administering an experimental medication to an animal that does not directly cause pain to the animal, although it may cause pain or suffering at some future time, is not considered an act of cruelty.

It follows that according to the *Shevus Ya'akov*, if experimenting on an animal will cause it immediate pain, it would be *Midas Chasidus* (pious conduct) to refrain from it even if it is done for the purpose of *Refua*. The *Chelkas Ya'akov* (1:30) concurs.

However, the *Seridei Aish* (3:7) disagreed. He argued that *Midas Chasidus* can only be invoked when dealing exclusively with an individual person who is being advised to act or behave piously. In our case, where the outcome of this experimentation will (hopefully) benefit the general public, there is no room to acting "piously" at the expense of others. Therefore, all experiments on animals for the purposes of *Refua* would be permitted.



The *Tzitz Eliezer* (14:68) discusses the question of surgically removing the eyes of hares in order to try and develop a cure for diseases of the eyes. He rules conclusively that it is permitted (and that it is not even "*Midas Chasidus*" to refrain from it) for if it is permitted to make use of animals for non-essential purposes, it should certainly be permitted for *Refua*. However, it is preferable to make the process painless for the animals, such as by using local anesthetic and performing the surgery quickly.

It is clear from the above, that the basis of the prohibition of *Tza'ar Ba'alei Chaim* is a moral duty to refrain from acts of cruelty and to be merciful towards all of Hashem's creations. Therefore, despite the clear conclusion of the Poskim permitting experimenting on animals for the purposes of *Refua*, it is still important to limit the animals' suffering as much as possible. In all cases, one should find a substitute whenever possible (e.g. using simulations instead of animals for medical education), and one should always take care to ensure that the animals are well-fed and cared for, and to use anesthesia and provide analgesia whenever possible during the experiments.

In many cases, the animals used for medical experiments are rodents (rats and mice). One might assume that the prohibition of *Tza'ar Ba'alei Chaim* would apply to these animals no less than any other and that is in fact clearly stated by the *Kitzur Shulchan Aruch* (191:1).

However, Rav Yaakov Emden *zt"l* (*Sheilas Ya'avetz* 1:17) writes that *Tza'ar Ba'alei Chaim* only applies to animals that are domesticated or those that can be trained, but not fleas, for example. Though Rebbe was rewarded for not allowing his maidservant to evict weasels (which are not domesticated) from his home, that was because he was a "*Kadosh* and a *Chassid*" and Hashem expected him to show mercy to all creatures.

Rav Moshe Feinstein *zt"l* (*Igros Moshe C.M.* 2:47) has an alternate approach and rules that *Tza'ar Ba'alei Chaim* does not apply to animals that cause discomfort to a person (e.g. flies, fleas, or mice). The weasels that took up residence in Rebbe's home were a species that do not cause any harm to people at all. He was therefore expected to be merciful towards them.

Therefore, it is possible that according to the *Ya'avetz* it would be permitted to experiment on any non-domesticated animals, but according to Rav Moshe *zt"l* it



would only be permitted to experiment on those that are harmful or annoying to humans.