

THE BAIS HAVAAD

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Family, Business, and Jewish Life through the Prism of Halacha

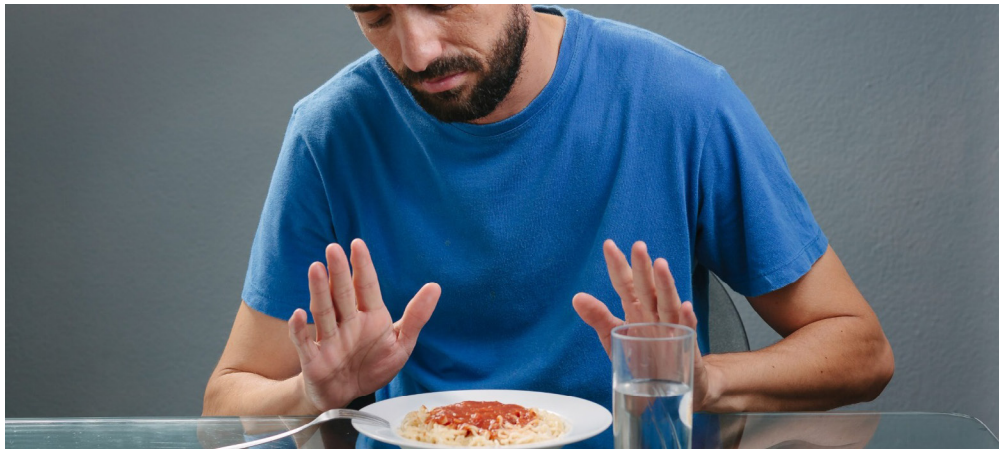


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לע"נ הרב יהושע צבי
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Dedicated by Rabbi and Mrs.
Eliezer Naftoli Weiser

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STRIKING OUT: FORCE-FEEDING IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

Reuters reports:

A Palestinian prisoner who has been on hunger strike for over 160 days in protest over his detention by Israel could die at any moment, his lawyer said on Wednesday.

Israeli forces arrested Khalil Awawdeh, 40, in December 2021 and have since held him without charge or trial, a practice known as administrative detention...

In March, Awawdeh launched a hunger strike demanding his freedom. He has subsisted only on water since, said his lawyer, Ahlam Haddad...

Awawdeh has managed to survive this long without food likely because of a two-week break a couple of months ago, during which he received vitamin supplements, said Naji Abbas, the case manager for prisoners at Physicians for Human Rights-Israel...

In this article, we consider from a halachic perspective two key questions presented

by hunger strikes (without reference to the article's specific case):

1. Is engaging in a hunger strike permissible?
2. Should or may someone engaged in a hunger strike be force-fed?

THE PERMISSIBILITY OF HUNGER STRIKES

R' Eliyahu Abergel concludes a lengthy analysis of the permissibility of hunger strikes with the unequivocal ruling that hunger strikes are forbidden under the prohibition against self-harm.²

R' Yehudah Zoldan rules similarly that hunger strikes are forbidden, at least insofar as they entail self-harm:

It is prohibited to cause oneself physical or mental harm by a hunger strike or fasts...

Hunger strikes or fasts for consecutive days with nightly interruptions are possible and permissible, on condition that the fasting itself does not harm the faster. A hunger strike or fasts of consecutive nights and days are dangerous and endanger the life of the faster.

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² Shu"t Dibros Eliyahu cheilek 3 siman 35.



PARSHAS KI SEITZEI

MARRYING OFF

Excerpted and adapted from a shiur by
Dayan Yitzhak Grossman

If brothers reside together, and one of them dies having no son, the dead man's wife shall not marry an outsider...But if the man does not wish to take his brother's wife...Then his brother's wife shall approach him before the eyes of the elders and remove his shoe from his foot...

Devarim 25:5-9

The Torah makes it plain that *yibum* is preferred over *chalitzah*, but Chazal debate whether this remains the case in later times. According to Abba Shaul, people no longer perform *yibum* with the proper intent, rendering their *yibum* tantamount to an *ervah*. The Chachamim disagree, maintaining that *yibum* should still be performed, regardless of intent.

Rishonim disagree about the final halacha. According to many *Rishonim* (including the Rambam, Radbaz, Rashba, and Ran), *yibum* should still be done, in accordance with the Chachamim. But some prominent Ashkenazi *Rishonim* (including the Ba'alei Tosafos and the Mordechai) rule like Abba Shaul that *chalitzah* should be performed instead. The Shulchan Aruch cites the Chachamim as the primary opinion and Abba Shaul as a "yeish omrim." The Rama appears to hold that *chalitzah* is preferred, though he does not definitively forbid *yibum*.

Despite the Ashkenazi preference for *chalitzah*, *yibum* was sanctioned by Ashkenazi *poskim* in a number of cases. For example, the Shvus

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Leave Me a Loan

Q Does my wife have to write a *pruzbul*? Do I need to write one if no one owes me money? Does a *pruzbul* work if the borrower doesn't own land?

A Women are also subject to the laws of *shmitas ksa'fim*, so a single, widowed, or divorced woman who is owed money should write a *pruzbul*. Dinei Hashvi'is Hashaleim (31:21) quotes from R' Shlomo Zalman Auerbach that a wife who has a bank account in her name only should write a *pruzbul*. It is recommended that married women who are primary breadwinners—especially if

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We do not find [precedents for] fasts whose goal is the application of pressure on people to change a decree...³

(Note that the above sources are apparently referring to hunger strikes by Jews, and their arguments would not necessarily apply to non-Jews, who, while certainly forbidden to actually commit suicide, may not be forbidden to engage in self-harm or commanded to preserve their health.)

FORCE-FEEDING A HUNGER STRIKER

Modern society generally opposes the force-feeding of a hunger striker as an unethical violation of his personal autonomy. The World Medical Association declares:

Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially...⁴

All kinds of interventions for enteral or parenteral feeding against the will of the mentally competent hunger striker are “to be considered as ‘forced feeding.’” Forced feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force, or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting.⁵

But as we have noted previously:

A crucial difference between modern Western medical ethics and halacha (*lehavdil*), however, is that while in the former, personal autonomy as a fundamental value has become a dominant consideration (particularly in the United States), in the latter, the primary value remains simply the welfare of the patient, physical and spiritual.⁶

Accordingly, halacha diverges sharply from the aforementioned position of modern society opposing force-feeding.

It emerges that there are actually two similar but distinct halachic arguments for force-feeding hunger strikers:

1. The preservation of the hunger striker’s life and health takes precedence over

³ *Shvitas Ra'av Ke'emitz'a* / *Lehasagas Heseigim*, Shvus Yehudah VeYisrael Ch. 29. A similar position is taken by R' Efraim Weinberger (presumably R' Efraim Fishel Weinberger, rav in Poland and Tel Aviv and the author of *Yad Efraim*) in *Shvitas Ra'av Lefi Halacha*. Kipa.

⁴ World Medical Association Declaration of Tokyo, Article 8.

⁵ World Medical Association Declaration of Malta on Hunger Strikes, Article 23.

⁶ Diagnostic Disclosure Dilemmas: Therapeutic Privilege in Halacha. The Bais HaVaad Halacha Journal. Feb. 4, 2021.

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Y a a k o v writes that a man who is ineligible for *chalitzah* due to a deformity in his leg may do *yibum*, to prevent the woman from

remaining an agunah. He explains that even if the man’s intent is not purely for the mitzvah, *yibum* may be done if his intent is for the mitzvah together with other motives. In Eretz Yisrael, the Chief Rabbinate

ruled that *yibum* should not be performed even by Sephardim. But R' Ovadia Yosef wrote that Sephardim there should continue to follow their minhag and practice *yibum*.

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they were so right after their marriage—and are creditors, should write a *pruzbul*. Her husband (or someone else) can be her *shliach* (proxy) to appear before *bais din*. There are *pruzbul* texts written specifically for a husband representing his wife.



DAYAN YEHOSHUA GRUNWALD

Many people think they have not made loans and so do not need a *pruzbul*. But this is often not the case. One who has money in a Jewish bank with a *heter iska*, for example, requires a *pruzbul*. A shopkeeper who allows customers to buy on credit often requires a *pruzbul*.

Finally, a *pruzbul* can only be written if the borrower owns land, rents land, or has a room and board agreement; he must have some connection to land. A young *bachur*, for example, may not have one, so some *pruzbul* texts include a clause wherein the lender gifts the borrower a tiny piece of land.

I do not know whom Rav Breitowitz has in mind by “most decisors,” and I am not sure how to reconcile the position he attributes to them with the aforementioned established consensus of halachic authorities that a patient who refuses food should indeed be force-fed, unless he means to limit the restriction against force-feeding to the case of a patient who is terminally ill and suffering unbearable pain and suffering, who despite being obligated to accept nutrition, should nevertheless not be force-fed.

R' Moshe Feinstein does warn that

Physicians must exercise great deliberation, when they encounter a patient who does not desire the treatment that they are providing to him, as to whether to force him, insofar as he is an adult (*gadol*), since it is likely (*karov*) that it will not be very beneficial, and they must act for the sake of Heaven.

But this would not seem to apply to force-feeding of a person at a sufficiently advanced stage of starvation, where he will clearly die if he continues indefinitely without nutrition, and he will likely live if provided with it.

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