

VOLUME 5782 · ISSUE XLV · PARSHAS KI SEITZEI



# 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...1

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

1 Henriette Chacar, Palestinian hunger striker held by Israel could die at any moment, lawyer says. Reuters. https://www.reuters.com/world/middle-east/palestinian-hunger-striker-held-by-israel-could-die-any-moment-lawyer-says-2022-08-24/. 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.<sup>2</sup>

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.

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**Dedicated by Rabbi and Mrs.** Eliezer Naftoli Weiser



## 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

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?

Women are also subject to the laws of shmitas ksafim, 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 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 forcefeeding 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 iudament 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 forcefeeding hunger strikers:

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

- 3 Shvisas Ra'av Ke'emtza'i Lehasagas Heseigim, Shvus Yehudah VeYisrael Ch. 29A 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 Shvisas Ra'av Lefi Hahalacha. 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.

- respecting his personal autonomy.
- 2. The hunger striker is in violation halacha. SO he mav he compelled to comply.

#### **FORCE-FEEDING IN GENERAL**

The general question of force-feeding someone whose refusal to eat is endangering his life has been discussed by halachic authorities for centuries, and the consensus is that they generally should be force-fed.7 The Radvaz was asked about a dangerously ill person who did not wish that Shabbos be violated in order to save his life. He concludes that this is not piety but suicide, and he rules that the man should be force-fed against his will.8 Numerous later authorities cite and accept this view.9

R' Moshe Feinstein<sup>10</sup> and R' Shmuel Wosner<sup>11</sup> both discuss forcing medication on a sick person, and they both agree that at least in certain circumstances (absent various considerations that do not apply in the typical case of a hunger strike) this should indeed be done.

It would seem that the same basic principle would apply in the case of a hunger strike: If the striker's life is in danger, he should be force-fed.

R' Yitzchok Breitowitz, however, writes as follows in the name of "most rabbinical authorities (Rabbi Moshe Feinstein, for one)":

[A terminally ill patient, who suffers unbearable pain and suffering,] may decline surgery, chemotherapy, and painful invasive treatments but may not decline food, water, or oxygen (which are the normal sustainers of life, the withdrawal of which may be tantamount to murder or suicide). Antibiotics may also fall under the "food" category because they are generally a noninvasive, nonpainful procedure. There is also some question whether tube feeding falls in the category of "food" or in the category of "surgery." Most decisors would place it in the former but emphasize that even if the patient is halachically obligated to take artificial nutrition, he should not be force-fed or physically restrained.12

7 Cf. R' Yehoshua Ratabi, *Chisun Neged Corona Ke'arvus Hadadis* (section *Kfiah al Chisun*). Bais Hadin Kiryat Moshe. 11 Teves 5781/Dec. 26 2020

8 Shu"t Radvaz cheilek 4 siman 67 (1139)

9 Knessess Hagedolah O.C. siman 328 beginning of Hagahos Tur; Magein Avraham ibid. s.k. 6 and Mishnah Brurah ibid. s.k. 6 (referring to medication and medical treatment involving desecration of Shabbos); Kaf Hachaim ibid. os 45; Nishmas Avraham (Second Expanded Edition) O.C. ibid. os 28 p. 438; Pis'chei Teshuvah Y.D. siman 155 s.k. 4.

10 Shu"t Jaros Moshe C.M. cheilek 2 siman 73 os 5 (see R' Gidon Rothstein's write-up of this teshuvah here)

11 Shu"t Sheivet Halevi cheilek 8 siman 251 os 12.

12 The Right to Die: A Halachic Approach. See our discussions of the The Hallachic perspective on the provision of medical care to people who are terminally ill and/or experiencing great suffering: True to Life: May a Person Be Removed from Life Support? The Bais HaVaad Halacha Journal. Jul. 22, 2021; Terminal Velocity: May One Hasten Death? The Bais HaVaad Halacha Journal, Jul. 29, 2021



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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.

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

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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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Yaakov 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 Fretz Yisrael, the Chief Rabbinate

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

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