

Ethical Business Practices under Jewish Law

Lesson Topic: Hunger Strike of Workers.

Lesson Subjects:

1. A hunger strike that endangers the lives of the strikers.
2. Is one allowed to harm himself?
3. A hunger strike dictated by great necessity.
4. Plastic surgery for a woman.
5. When is it permissible to harm oneself, (and more about plastic surgery for a man and for a woman).
6. Doctors' hunger strike.
7. Which hunger strike is permissible?
8. Questions for review.

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Protecting the Confidentiality of Health Information & Medical Records

Lesson Objective: Issues:

Case Facts and Objective of Lesson: A group of workers who are in a labor dispute with the government authorities are considering going on a hunger strike in order to achieve certain economic aims, such as higher wages, improvement of working conditions, but mainly, in order to draw public attention to their plight. In this lesson, we will try to clarify whether a hunger strike like this is permissible under Jewish Torah-law (*halachah*).

Sometimes, the purpose of a hunger strike is to achieve certain ideological aims. This lesson will dwell on all the aspects of the subject of hunger strikes.

A Hunger Strike that Endangers the lives of the Strikers

It is quite plain that Jewish Law forbids a person to endanger his life by going on a hunger strike in order to achieve the aforementioned aims. This issue features in the **Shulchan Aruch** (section "*Yoreh Deah*", chapter 116) and in the **Rama's** commentary, where they write that one is forbidden to do anything that is liable to lead him to danger. The **Shulchan Aruch** states likewise in section "**Choshen Mishpat**", that it is forbidden to perpetrate dangerous acts and names measures that one is obligated to take in order to avoid danger.

In this lesson, we will discuss hunger strikes, which although weakening a person, do not endanger his life (when, for instance, he refrains from solid food, but consumes liquid food, such as soup, or drinks other liquids, fasts during the day, but eats at night, etc.)

Is one allowed to harm himself?

The **Mishnah** in Tractate "*Bava Kama*" (page 90: b) states: 'A person who harms himself, although he has no right to do so, is exempt ("*patur*") from punishment. However, other people who harm him are liable to punishment ("*chayavim*"). The Talmud elaborates on it on page 91: b: "It is (an issue, regarding which there is a difference of opinion between two) *Tanaim* (i. e. two Sages of the *Mishnah*). There is one who holds that a person is not allowed to harm himself, and there is another one who holds that a person is allowed to harm himself, etc. (The *Tana*) Rabbi Elazar Hakappar, son of Rebbi, said: 'What did the verse (in *Numbers*, 6:11) intend to teach us by stating: '...and (the priest must) make an atonement for himself for the sin which he sinned through that soul'? Through which soul did he sin? (The answer is, – through his own soul, i. e.) he caused himself anguish (by abstaining) from wine. Is this not a "*kal vachomer*" (i. e. a conclusion drawn from a more lenient condition to a stricter one)? If this priest who caused himself anguish only by abstaining from wine was called a sinner (lenient condition), how much more reason there is to call a person who abstains from everything else – a sinner! (strict condition)".

Thus, the law pertaining to a person who harms himself is the subject of disagreement in the Talmud, and the *Tana* (*Mishnaic Sage*) who holds the stringent view is Rabbi Elazar Hakappar, who is of the opinion that a person who causes himself anguish under a circumstance that does not require him to experience anguish, – is called a sinner.

It would be reasonable to assume that a person on a hunger strike should also be regarded as someone who thereby inflicts harm on himself, and not only as someone who "causes himself anguish", because a person on hunger strike actively harms his body, weakens it, and sometimes also causes it to be sick.

As mentioned above, the law pertaining to a person who harms himself is the subject of disagreement as described in the Talmud.

The early Commentators are also divided over this law, whether or not it follows the ruling according to Rabbi Elazar Hakappar. The **Rambam's** opinion in the "Laws of One Who Inflicts Harm and Causes Damage"(chapter 5, ruling 1) is that one is forbidden to harm himself, in accordance with the opinion of Rabbi Elazar Hakappar. This is what the **Rambam** writes: "One is forbidden to harm either himself or his fellow, and not only to harm, but anybody who beats (hits) his fellow Jew by way of strife thereby transgresses a prohibition, etc."

The following is the **Rambam's** ruling in the "Laws Pertaining to Vows" (chapter 5, ruling 17): "A person who vows to harm himself in some way, such as to injure himself, although he has no right to do it, his vow takes effect upon him, etc."

Conversely, the opinion of the **Rama** (Rabbi Meir Halevi) is that the law is not to be ruled in accordance with the view of Rabbi Elazar Hakappar, and one is allowed to harm

himself, as ruled by the *Tana* who holds the second view mentioned in the Talmud. The author of the **Tur** Commentary quotes the **Rama's** ruling ("*Choshen Mishpat*", chapter 420), writing the following: "A person, who harms himself, although he has no right to do so, is exempt from punishment. Others who harm him are liable to punishment. The **Rama** writes that this is not the law (to be followed), but a person is allowed to harm himself".

Why did the **Rama** not rule this law according to Rabbi Elazar Hakappar? Rabbi Yosef Caro writes in his "**Beis Yosef**" Commentary on the *Tur* that the **Rama** understood from the Talmud that the law is not to be ruled according to Rabbi Elazar Hakappar. The author of the "**Bach**" Commentary clarifies the ruling of the **Rama**, saying that it is to be concluded from the Talmud ("*Shevuos*", "Vows") that the majority of the Sages disagree with Rabbi Elazar Hakappar, and the law must be ruled according to the opinion of the majority, therefore the **Rama** decided to establish that one is allowed to harm himself.

In section "*Choshen Mishpat*" (chapter 420, paragraph 31), the **Shulchan Aruch** rules this law according to the **Rambam**, saying: "A person who harms himself, although he has no right to do so, is exempt from punishment".

A Hunger Strike Dictated by Great Necessity

The **Tosefos** Commentary states in "*Bava Kama*" *ibid.* (initial words: '*ela hai tana*'): "R. Y. says: 'It is prohibited to inflict harm (injury), even if it is needed...e.g. a man who kills himself, frightened by something that he has seen (King *Shaul* fearing to be tortured to death by surrounding enemies), or a mourner rending his clothes over a deceased man.) This is defined as "need". The **Tosefos** Commentary establishes, therefore, that a person is not allowed to harm himself, even if there is a need for it.

According to the above, it is assumed that hunger strikes prompted by need, such as a need for improved working conditions or higher wages, are also prohibited.

The question is whether one must differentiate one need from another. Are there needs that make it permissible to cause anguish? We will dwell on this in the next chapter.

Plastic Surgery for a Woman

The author of the "**Yabi'a Omer**" Responsa (part 8, chapter 12) dwells on the question whether Jewish Torah-law can license plastic surgery performed on women for beauty's sake. Is it permissible, or is it considered as injuring oneself? The author concludes his Responsum by sanctioning plastic surgery of this kind. He quotes the aforementioned **Tosefos** that prohibits self-injury even when prompted by necessity, ruling that one must differentiate one necessity from another. In the case of plastic surgery, the woman enjoys

its results for the rest of her life, while the operation itself is brief and uncomplicated, because it is performed under anesthesia, therefore, it may be permitted, especially considering the anguish she suffers during her pre-operative state of affairs in contrast to her post-operative lasting contentment.

It would seem to be possible to use his aforementioned reasoning in order to establish that also in the case of a hunger strike there is a lasting need to make use of its achievements, such as higher wages or improved working conditions, not just once, but every single month, from then onward, like in the case of the woman's continual contentment. However, on second thought, these two cases cannot be compared, because in the case of a hunger strike, the anguish suffered by the strikers in the process of the achievement of their aims is long-lasting and tormenting: at least several days of hunger, exhaustion, etc., while the chances to achieve better conditions and a steady higher income are slim, at least not as certain as in the case of the woman's post-operative continual delight at the sight of her good looks.

Another different reason that makes it possible to permit a woman to undergo plastic surgery, despite the fact that Tosefos prohibits to cause harm even for a useful purpose, features in the "**Chelkas Ya'akov**"¹ Responsa (part 3, chapter 11) : because the woman will greatly suffer if she does not undergo plastic surgery, plastic surgery is to be compared to the act of drawing blood (cupping, venipuncture), which the Talmud sanctions and does not regard it as harming oneself. ("*Shabbos*", 129; "*Sanhedrin*" 84). [It is noteworthy to mention that R' Moshe Feinstein zt'l the late author of the "**Igros Moshe**" Responsa ("*Choshen Mishpat*", paragraph 103), whose permission to donate blood even not for an immediate medical need, but for the purpose of earning money, is based on the law that permits to draw blood. The author of "**Igros Moshe**" does not regard it as harming oneself].

The aforementioned approach also proves that hunger strikes held for the purpose of achieving higher wages and improved working conditions, etc., cannot be permitted, because the workers' condition prior to the strike cannot be defined as anguish, but rather as a lack of something better than they have at the moment, as opposed to the condition of a woman who will greatly suffer on account of her facial appearance, if she fails to undergo plastic surgery in order to improve it.

Hagaon Rabbi **Moshe Feinstein**, zt'l discusses plastic surgery in his "**Igros Moshe**" ("*Choshen Mishpat*", part 2, paragraph 66) quoting the aforementioned opinion of **Tosefos** that prohibits self-injury even for a useful purpose, and states: "If so, even though we are dealing with a case of great necessity, we would seem to be compelled to prohibit it, for it is impossible to authorize it for the reason of great necessity, so long as we do not find it expressly stated in reliable sources".

¹ R'Mordechai Yaakov Breish – Born: Galicia, 1895. **Died:** Zurich, Switzerland, 1976. **Notes:** Rav and Av Bet Din of Zurich from 1934-1976, Author of **Chelkas Yaakov**, a compendium of responsa

We, therefore, learn from their words that self-injury, as well as hunger strikes are prohibited even when prompted by great necessity, and even for the purpose of financial gain. It is impossible to define the legal status of self-injury as "abstention from drinking wine" (see "*Bava Kama*", 91: b) that would be considered permissible for the purpose of financial gain or for some other purpose, because hunger strikes actively afflict the body, as opposed to abstention from wine, which is to be considered no more than abstinence from a craving.

When is it Permissible to Harm Oneself and more about Plastic Surgery for a Man and a Woman?

The **Rambam** states the following in the Laws Pertaining to One Who Harms and Causes Damage, chapter 5, law 1: "One is forbidden to harm...and not only harm, but anybody who beats (hits) a good Jew, either a child or an adult, a man or a woman by way of strife thereby transgresses a prohibition, as it is stated: "So that he not beat him more than these, etc." It is to be concluded from the **Rambam** that harming and beating (hitting) are prohibited only if perpetrated by way of strife (fight, quarrel), or, according to other versions, "by way of disgrace, degradation".

The **Rambam's** reason for ruling so is based on the verse from the Torah that deals with the prohibition against beating: "So that he may not beat him more than these.... and your brother be [thus] degraded before your eyes" (Deuteronomy, 25). If so the Torah's reason for the prohibition is to prevent disgrace. (The **Rambam's** reason is quoted in the "**Yehuda Ya'aleh**" Responsa, section *Yoreh Deah*, paragraph 149). The "**Minchas Yitzchak**" Responsa (part 6, paragraph 205, note 2), also quotes the **Rambam's** precise Remark: "only beating by way of disgrace is prohibited".

The author of the "**Igros Moshe**" Responsa (in "*Choshen Mishpat* part 2, paragraph 66) also relies on the **Rambam's** aforementioned Remarks and original ruling, when he permits a woman to undergo plastic surgery "in order to make herself look beautiful", his reason being the actual purpose of the injury, i. e. – "to make herself look beautiful". He means to say that physical injury suffered during plastic surgery is definitely not thought of as injury caused by way of strife or disgrace.

The author of the "**Yabi'a Omer**" Responsa (in part 8, "*Choshen Mishpat*", paragraph 12) also relies on the **Rambam's** aforementioned original ruling, when he permits women to undergo plastic surgery for beauty's sake. He also permits men to have facelifts in order to remove blotches or other facial defects that cause them embarrassment and great anguish when they have to mix with other people.

It is noteworthy to quote the author of the "**Tzitz Eliezer**" Responsa (part 11, paragraph 41), who prohibits women to undergo plastic surgery for beauty's sake. His reason: the

Torah authorizes a doctor to cure people only in such cases when they develop bodily defects in the course of their lives, but if a person is born with a certain defect or blemish, and it causes no pain, it is forbidden to remove it. He adds: "One must know that there is no other artist like our G-d, and He, may He be blessed, imprinted each one of His creatures with His mold with a resemblance to Him, and this mold suites each creature perfectly, and one is not allowed to destroy that which is decreed by the King of the world, nor is one allowed to dig out lenient rulings from (the homiletic books of) *Midrash* and *Aggada* that praise and glorify the beauty of women, and about this it is said: 'one does not learn from Aggada and Midrash' ".

We, therefore, learn also from the above that there is no legal source that authorizes hunger strikes held for the purpose of achieving higher wages, etc., because a person's body is harmed by way of strife and degradation in the process: it becomes weak, a person's speech becomes incoherent, he cannot function properly and, sometimes, even faints and needs to be hospitalized.

Doctors Hunger Strike

We will end this lesson by a quotation from *Hagaon's* Rabbi Yitzchak Ya'akov Weiss's Responsa "**Minchas Yitzchak**" (assorted responsa, chapter 172) that deals with hunger strikes in general and doctors' hunger strikes in particular. He writes the following: "Regarding the doctors who, as we heard, are contemplating going on a hunger strike in order to achieve higher wages: I must hereby say that, according to Jewish Torah-law, no one has the right to do anything that might inflict harm or damage on himself, such as partial starvation, in order to get an increase in salary, when the planned strike is likely to be a lasting one, as ruled by the Rambam, etc. It is certain that a medical doctor who does it (i. e. goes on hunger strike) weakens himself, and (as a result,) will not be able to treat and cure his patients properly. In addition to this, the law stated in *Shulchan Aruch, Yoreh Deah* chapter 336, paragraph 1 applies (to a doctor who starves himself on a hunger strike, for he falls into the category of) a doctor who refrains from curing (people) being considered as someone who spills blood (i.e. a murderer). The doctor's obligation not to refrain from curing (people) applies also in a case when he is required to do so because his colleagues have acted against the Jewish Law (*balachah*)."

According to his ruling, the offence committed by a doctor going on a hunger strike is a much more severe one than a worker's, and it can never be permitted, because, besides the prohibition of afflicting his body, a doctor going on a hunger strike refrains from curing sick people, thereby endangering human society.

When is a Hunger Strike Permissible?

We must add, that, sometimes, it happens that a hunger strike does not cause the striker any anguish or harm his health (in fact, it may sometimes improve the striker's health...). Sometimes, the aim pursued by the striker is just to frighten a certain authority, etc. while the striker himself suffers no harm by going on strike. He may actually even feel happy to seize an opportunity to improve his state of health by going on strike. It goes without

saying that Jewish Torah-law relates differently to such strikes, and especially, when the striker's true intention is to repent and get closer to G-d.

Review Questions

Q. Is a worker allowed to go on a hunger strike, if he thereby endangers his life?

A. A hunger strike that endangers the life of the striker is forbidden.

Q. Is one allowed to harm himself?

A. The early Commentators differ on the issue, whether or not one is allowed to inflict harm on himself, and, according to Jewish Law, it is forbidden.

Q. Is it permissible to go on a hunger strike in case of great necessity?

A. A hunger strike (even such a hunger strike that does not present a danger to life) is prohibited even if prompted by great necessity, and especially, when its purpose is the achievement of higher wages, improvement of working conditions, or certain ideological aims.

Q. Is a person allowed to donate blood?

A. A person is allowed to donate blood, even if his blood donation does not serve an immediate medical need, and the donator does it in order to earn money.

Q. Is a woman allowed to undergo plastic surgery for beauty's sake?

A. Most rabbinical authorities hold that a woman is allowed to undergo plastic surgery for beauty's sake, (and some authorities also permit plastic surgery for men, if their defect presents a source of embarrassment for them when mixing with people).

Q. Is a doctors' hunger strike permissible?

A. A doctors' hunger strike is a much more severe offence and is forbidden also for a different reason, (he thus refrains from curing patients and thereby endangers their lives.)

Q. Which hunger strike is permissible?

A. Needless to say, Jewish Torah-law relates differently to hunger strikes that sometimes neither cause the strikers anguish nor harm their health (and may sometimes even improve their state of health), and especially, when the striker's true, inner intention is to repent and get closer to G-d.