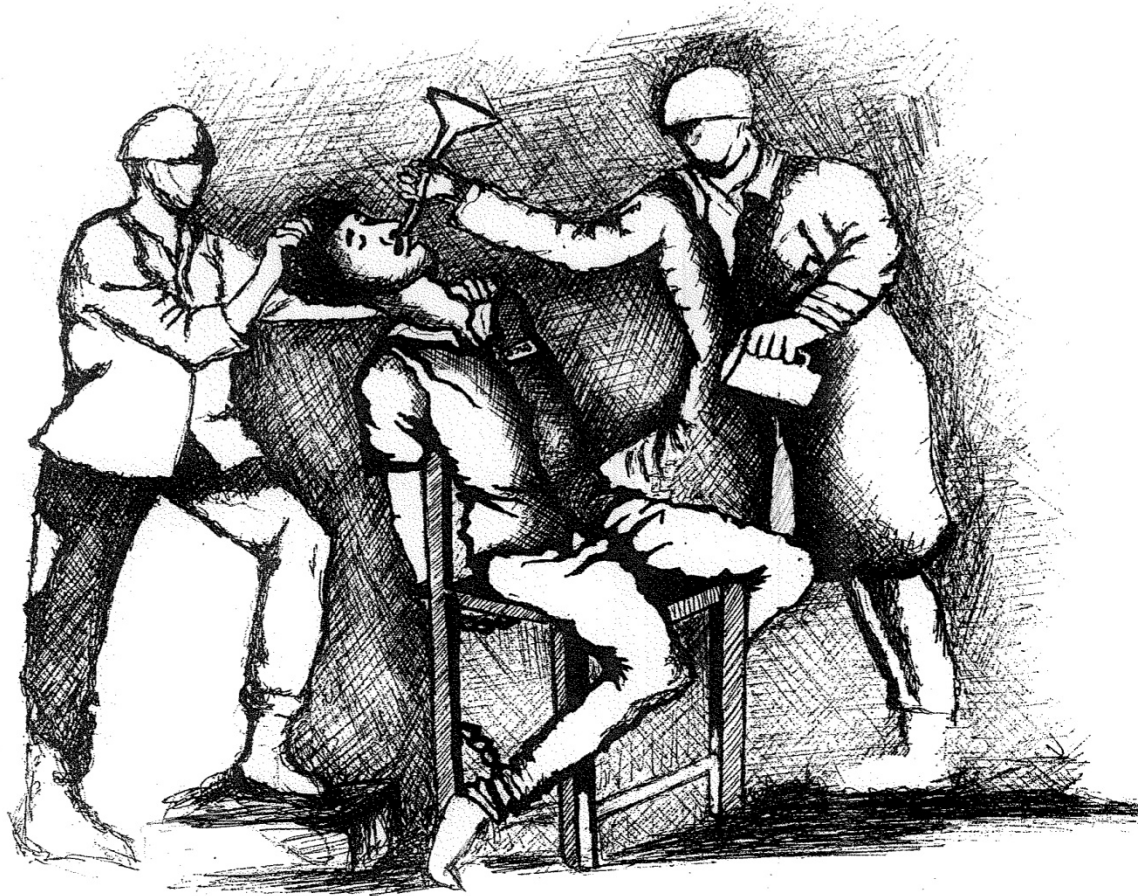


FORCE-FEEDING VS. FORCED TREATMENT OF PALESTINIAN HUNGER STRIKERS: BETWEEN LAW AND PRACTICE



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Mahannad
2015



Historical Background

- The implementation of force-feeding and forced treatment of Palestinian prisoners' hunger strikers have captured the attention of the international community and caused misunderstandings regarding the distinctions between each policy. The widespread and repeated use of hunger strikes by Palestinian detainees has presented a challenge for the Israeli government as well as human rights advocates. The greatest tension generally revolves around the set of rights that belong to the hunger strikers, who legitimately protest the Israeli detention policies and cruel prison conditions, including the use of solitary confinement, denial of family visits, inadequate medical treatment and torture and other forms of cruel, inhuman or degrading treatment. The World Medical Association (WMA) Declaration of Malta on Hunger Strikes defines hunger strike as “often a form of protest by people who lack other ways of making their demands known.”(1) This publication aims to highlight the differences and similarities between force-feeding and forced treatment in terms of their usage and legal aspects under international law.

Definition

Force-Feeding

- Force-feeding is the practice of feeding someone against his or her will, normally through a tube inserted through the nose and then down into the stomach. Another method involves injecting nutrients into a vein or into the stomach through surgically cutting open into the abdominal wall. Each of these methods are invasive and pose immediate risks of mechanical damage to surrounding tissues. Such developments and damages cause extreme pain and bleeding and can lead to infection.

Forced Treatment

- Forced treatment is the practice of providing medical treatment to competent patients or a detainee without his or her consent. In the Palestinian/Israeli context, the Israeli authorities have used both force-feeding and forced treatment against Palestinian hunger strikers as a policy to pressure them into putting an end to their hunger strikes.

Relevant Legislation

Force-Feeding

- In the Palestinian context, Israeli authorities have practiced force-feeding against Palestinian hunger strikers since the 1980s. On the 30th of July 2015, the Israeli Knesset approved a bill authorizing the Israeli District Court to instruct the force-feeding of a hunger-striking prisoner, without his or her consent. The legislation further allows for the hearings to decide on the request to be held in closed court sessions in which the discussion can be based on 'secret evidence' that is not accessible by the prisoner and his or her attorney, in accordance with article 19 d (IE).

Forced Treatment

- Israeli legislators created a mechanism to allow ethics committees to override patients' informed refusal and treat them against their will. The Israel Patient's Rights Act (IPRA) of 1996 (paragraph 15) allows the forced treatment of competent patients in order to keep him/her alive. (2)
- The IPRA establishes statutory ethics committees to consider a physician's request to forcibly treat a competent patient who refuses medical care. Committee members include two physicians with different specializations, an attorney fit to serve as district court judge, a representative of the public or clergy, and a psychologist or social worker (IPRA, paragraph 24). (3)

What Does International Law Say about it?

Force-Feeding

- Force-feeding of Palestinian hunger strikers is a violation of international law and International Humanitarian Law, as argued by the International Committee of the Red Cross (ICRC), by a 2015 joint statement published by the United Nations, and by The Third Geneva Conventions Common Article 3 that is specialized in the treatment of prisoners of war.

Forced Treatment

- The World Medical Association's declarations on hunger strikers, including the Malta Declaration “forbids applying pressure to end a hunger strike and forced medical treatment.” (4) It also cited the Tokyo Declaration, which it said “forbids physicians' participation in torture, including the forced feeding or treatment of hunger strikers.” (5)

International Law on Force-Feeding and Forced Treatment

Force-Feeding

- The ICRC has traditionally taken a stance in favor of hunger strikers and sought to play the role of mediator between the striking prisoner and the detaining authorities.
- The joint statement issued by the UN on 8 August (6) 2015 is of utmost importance as it recognized the illegitimacy of force-feeding and Administrative Detention under International Human Rights law and called for the release of all detainees or charging them before a court of law. Additionally, the statement reflects the legitimacy of the demands of hunger striking detainees who protest against the policy of Administrative Detention.

Forced Treatment

- The World Medical Association, the Red Cross, and the United Nations, consider forced treatment a cruel, inhuman, and degrading treatment or punishment, and a blatant violation of international law and human rights.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”(7) According to Article 2(2) of the Covenant, this right applies without discrimination of any kind to all persons, including detainees.

What Human Rights are violated by the Practice?

Force-Feeding

- ❑ The right to personal autonomy,'
- ❑ The right to self-determination;
- ❑ The right to be free from torture;
- ❑ The right to health and physical integrity;
- ❑ The right to protest;
- ❑ Constitutes significant violations of medical ethics and international law principles

Forced Treatment

- ❑ The right to health;
- ❑ The right to be free from torture;
- ❑ The right to refuse medical treatment;
- ❑ The right to physical integrity;
- ❑ The right to self-determination and personal autonomy;
- ❑ Constitutes significant violations of medical ethics

Conclusion

The policies of force-feeding and forced treatment have been practiced in various contexts in geographic scope and history, where hunger strikes became the prominent method to protest ill treatment, injustice and human rights violations in cases where individuals are deprived of liberty. The Israeli authorities have used both practices against Palestinian hunger strikers, who protest the prison conditions and an unjust detention. Both force-feeding and forced treatment are violent policies that are very painful and absolutely violate the principle of individual autonomy. The practices constitute degrading, inhumane treatment, that could amount to torture. Both practices may be dangerous and have a negative impact on Palestinian hunger strikers, and each presents an unsuitable approach to save their lives.

References

- 1- World Medical Association (WMA), Declaration of Malta on Hunger Strikes (hereinafter Declaration of Malta), Nov. 1991, available at <http://www.wma.net/en/30publications/10policies/h31/> (last visited Jan. 25, 2016).
- 2- The Israel Patient's Rights Act (IPRA) of 1996.
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- 5- Ibid
- 6- Unispal,. "UN Joint Statement On New Israeli Law On Force-Feeding Of Detainees". Aug. 2015, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B41EA3D4F402E0E485257E9D004C41EE> (last visited Jan. 25, 2016).
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