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**Halakha and Israeli History**

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**Shiur #28:**

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**Operation Cast Lead**

In the summer of 2005, Israel withdrew its military and civilians from the Gaza Strip, as we discussed at length in [*Shiur* #24](https://www.etzion.org.il/en/shiur-24-13-august-2005-disengagement-gaza).

The hope was that this would bring an end to terrorist attacks against both Israeli soldiers and Israeli citizens, but they persist to the current day. The attacks have included thousands of rocket attacks against Israeli towns and cities, mostly against those bordering Gaza.

Between 2006 and 2008, the clashes between Israel and the militant group Hamas continued. During these years, Hamas attempted constantly to kidnap Israeli soldiers. (Many tunnels dug for that purpose have been exposed and destroyed by the IDF.)

In June 2006, Hamas attacked an Israeli force which was stationed by the border. In the attack two IDF soldiers were killed, and a third, Gilad Shalit, was taken captive.

Internal political and military clashes between the Palestinian Authority (led by Fatah) and Hamas led in June 2007 to the Hamas takeover of the Gaza Strip.

Israel does not recognize Hamas as a legitimate authority, seeing it as a terrorist group guilty of the murder of innocents. Israel’s response has been to besiege Gaza, limiting Hamas’s ability to arm itself with more rockets.

On 24 December 2008, over 60 rockets were fired from the Gaza Strip on Israeli towns. Three days later, Israel launched Operation Cast Lead, which lasted until a ceasefire on 18 January 2009.

On 3 January, Israeli ground forces entered Gaza. On 5 January, the IDF began operating in the densely-populated urban centers of Gaza. Hamas responded by intensifying its rocket and mortar attacks against civilian targets in southern Israel, reaching the cities of [Be’er Sheva](https://en.wikipedia.org/wiki/Beersheba) and [Ashdod](https://en.wikipedia.org/wiki/Ashdod).

At the time, the following story shook up many Israelis and became a legend. Lieutenant Aharon Karov was a paratrooper officer whose unit was deployed to the Gaza front. He was married the same day his unit was called up, and a few hours after his wedding night, he found himself fighting in Gaza.

On 13 January, an explosion critically wounded the officer, and it was doubtful whether he would survive. After a miraculous and difficult period of rehabilitation, Aharon recovered from his injuries and had a child.

His father, Rav Ze’ev Karov, Rosh Yeshivat Hesder Karnei Shomron, was interviewed the day his son was critically injured. In his emotional, moving words, he quoted the Mishna which states that for a *milchemet mitzva* (commanded war), even the bride and groom must leave their own wedding to fight for the Jewish people.

In today’s *shiur,* we will examine this law.

**The mitzva to fight in a war**

The Rambam lists three types of *milchemet mitzva*:

The war against the seven nations who occupied the Land of Israel, the war against Amalek, and a war fought to assist Israel from an enemy which attacks it.[[1]](#footnote-1)

The first two examples are wars in which fighting is required to fulfilling a mitzva, i.e. killing Amalek and killing the seven nations (Positive #187 and #188 in his *Sefer Ha-mitzvot).* Settling the Land of Israel may be a mitzva as well (see [*Shiur* #16](https://www.etzion.org.il/en/shiur-16-9-november-1989-fall-berlin-wall-and-aliya-soviet-union-part-1) of this series.) However, in the third case, what exactly is the mitzva?

One option is that the Rambam is referring to the mitzva of *“Lo ta'amod al dam rei’ekha,”*[[2]](#footnote-2) “Do not stand idly by your brothers’ blood,” which the Sages understand as the source of the duty to save a fellow Jew’s life.

However, there is great difficulty in this suggestion, because in war, one puts one’s own life in danger, possibly sacrificing it to save others, which seems to lie beyond the scope of *“Lo ta’amod*.” Therefore, it seems unlikely that this law serves as the basis for the mitzva of fighting a defensive war.

Rav Yair Kahn suggests that this mitzva is referring to the natural elementary right of survival that every individual and every nation possess.[[3]](#footnote-3) Responding to others’ threats by defense or offense is based on the basic human right to live and to exist.

There is a well-known rule in Judaism: *“Ha-ba le-horgekha hashkem le-horgo,”* “Rise to kill whoever comes to kill you.”This rule, which legitimates self-defense, is similarly based on the above logic. The Gemara discusses the Torah’s permission for a homeowner to kill a perpetrator who breaks in during the night.[[4]](#footnote-4)

The Torah states:

If, while breaking in, the thief is discovered, and he is struck and dies, [it is as if] he has no blood.[[5]](#footnote-5)

The Gemara explains that the license one to kill the burglar is based on the rule of *ha-ba le-horgekha hashkem le-horgo,* as the Torah permits people to protect themselves.

The common understanding is that this is the source for the rule; however, the Meiri suggests an alternative option.[[6]](#footnote-6)

He quotes Midrashic sources which connect our rule to wars that take place in *Tanakh*. He refers to the war that Moshe conducts against the Midianites as a response to their attacks against the Jews.[[7]](#footnote-7) It is this case, argues the Meiri, that proves that the Torah recognizes the right given to a person to fight back against those who wish him or her harm.

Rav Natan Tzvi Friedman (1914-1993), a neighborhood rabbi in Bnei Brak, suggests that we need two separate sources: one provides legitimacy for the individual and one for the *tzibbur* (community).[[8]](#footnote-8)

**Exemption from participating in war**

After we have established that it is a mitzva to defend and protect a fellow Jew, we may discuss who is obligated and who is exempt from this mitzva. It is important to note that there are two possible levels of exemption. Receiving an exemption from fighting does not necessarily exempt one from participating and helping in war efforts.

The Torah mentions several groups of people who are exempt:

**Tribe of Levi**

The Torah states that when conducting a census, the tribe of Levi is not counted as all other tribes are.

But the tribe of Levi you shall not count [in the military census], nor number their heads.[[9]](#footnote-9)

The simple understanding is that the census is for military purposes; as the *kohanim* and Levites do not fight in the army, there is no need to count them.[[10]](#footnote-10)

It seems that this is the source of the Rambam’s *pesak*:

And why did not Levi partake of the patrimony of the Land of Israel and its spoils with his brethren? Because he was set apart to serve God, to worship Him and to teach His just ways and righteous ordinances to the masses. As it is stated, "They shall teach Ya’akov Your ordinances and Yisrael Your law." Therefore, they have been set apart from the ways of the world: **they do not wage war like the rest of Israel**, nor do they inherit or acquire unto themselves by physical force. They are, rather, the Lord's corps.[[11]](#footnote-11)

In one of our previous *shiurim*, we quoted Posekim who are puzzled by various sources that clearly indicate that the tribe of Levi did in fact participate in fighting.[[12]](#footnote-12) Two good examples are their participation in the biblical war against the Midianites[[13]](#footnote-13) and the battles against the Greeks led by the Hasmonaean family, who were *kohanim*. It seems that *kohanim* may volunteer to serve in the army.

Rav Yechiel Michel Tucazinsky (1871-1955), a prominent *posek* who served as Rosh Yeshivat Etz Chayim in Yerushalayim, debates this question and concludes that *kohanim* and Levites, although exempt from fighting, may volunteer to serve in the army.

**Newly married, bought a house or planted a vineyard**

The Torah mentions that prior to war the soldiers would gather, and the *kohen* would announce that the following soldiers should go home:[[14]](#footnote-14) anyone who has betrothed a woman but has not married her, anyone who has recently bought a house but has not lived in it and anyone who has planted a vineyard but has not enjoyed its fruit.

The *kohen* would then continue and discharge those who were afraid to fight.[[15]](#footnote-15)

However, the Mishna claims that all the above are still required to help with the war efforts.[[16]](#footnote-16)

Regarding the newlywed soldier, the Torah elsewhere commands him to stay with his wife at home for the first year of marriage, which implies full exemption for the entire year.[[17]](#footnote-17) This exemption is from all army service and war efforts.

Referring to these exemptions, the Mishna remarks:

When does this hold true [that people are sent back]? When it is a *milchemet reshut* (volitional war); but when it is a *milchemet mitzva*, all are to go out, even the bridegroom from his chamber and the bride from under her canopy.

The Rambam accepts this passage at face value and rules accordingly.[[18]](#footnote-18)

The *pesak* of the Rambam seems to obligate both women and Torah scholars. Is this the case?

**Drafting Women**

Many rabbis have come out against drafting women into the IDF. Their main argument is based on matters of *tzeniut* (modesty). In fact, Chief Rabbi of Yerushalayim Rav Tzvi Pesach Frank, in his introduction to Volume II of Rav Eliezer Waldenberg’s *Hilkhot Medina*, explains that he is not interested in discussing the halakhic matter regarding women’s obligation to participate in war due to his understanding that it is unconscionable for women to fight in battle because of *tzeniut*.[[19]](#footnote-19)

*Sefer Ha-chinnukh* seems to contradict itself in two separate *mitzvot* which involve war. Regarding the mitzva to kill the seven nations (#245) it rules that women are obligated, yet in the mitzva of destroying Amalek (#603) as well as other *mitzvot* to do with war, it exempts them.

Why would *Sefer Ha-chinnukh* obligate women to fight against the seven Canaanite nations but not against Amalek, when both are in the category of "*milchemet mitzva*"?

Rav Chanoch Henoch Eigis (Lithuania, 1863–1941) was one of the leading rabbis of [Vilna](https://en.wikipedia.org/wiki/Vilnius) for over 40 years, until he was killed in the [Holocaust](https://en.wikipedia.org/wiki/Holocaust). He explained that the default position of *Sefer Ha-chinnukh* is that women are exempt from all wars and battles. However, when it comes to the seven nations, the obligation to kill them applies to women because of the positive mitzva of settling the Land of Israel, which is the direct outcome of this mitzva.[[20]](#footnote-20) As women are obligated to settle the Land of Israel, they are obligated to rid the country of the seven nations.

The rabbis who have discussed this matter usually focus on the biblical story of Yael, who saves the day by killing the chief of staff of the Canaanite army, Sisera, with a tent peg. The Gemara explains:

Rabbi Eliezer the son of Yaakov said: How do we know that a woman should not go out to war with weaponry? Because the Torah (*Devarim* 22:5) says, “A man's accoutrement (*keli gever*) should not be upon a woman.”[[21]](#footnote-21)

Rashi explains that the Gemara is bothered by Yael’s choice of weapon:

And that is why Yael, the wife of Chever the Kenite, did not kill Sisera with a weapon, as it says, "She set her hand out to take a tent peg... "

This source, as well as others, give Posekim like Rav Shelomo Yosef Zevin[[22]](#footnote-22) the basis for prohibiting the conscription of women.

Rav Yehuda Shaviv discusses whether the prohibition of the Gemara regarding Yael is about going to war or about carrying weapons. He points out that the Rambam, when referring to this passage, omits the element of war, instead focusing on the *keli gever* aspect. Furthermore, the Rambam cites this law in *Hilkhot* *Avoda Zara,*[[23]](#footnote-23) which deals with pagan practices, not in *Hilkhot Melakhim*, which deals with war.

As mentioned, the Rambam quotes the Mishna in *Sota* and seems to rule that even women are obligated to fight. Rav Shaviv explains how this fits nicely in with his interpretation of the Rambam’s ruling.[[24]](#footnote-24)

In fact, Rav Shimon Federbosh (1892-1969), Chief Rabbi of Finland, quoting the Rambam, agrees that this is the Rambam’s opinion.[[25]](#footnote-25)

Some Posekim cannot fathom the possibility that the Rambam permits women to fight and therefore suggest alternatives. In his commentary on *Mishneh Torah*, Rav David Ibn Zimra (Radbaz, 1479-1589) questions:

[The Mishnaic text] is difficult, for is it really a woman's way to do battle? Doesn't the verse [praise women and] say: "The glory of a princess is that she is within" (*Tehillim* 45:14)?

But rather it means to say that, since the groom is exiting his chamber, the bride also has to leave her canopy and cannot follow the usual nuptial customs.

In his second answer (which has practical differences from the first answer), he suggests that women are obligated to participate in the war effort but are exempt from combat:

Perhaps in wartime the women used to provide water and food for their husbands.

However, there are other indications that the Rambam believes that women are obligated to fight in war. In his introduction to *Sefer Ha-mitzvot*, Rule #14, he mentions twice that women are exempt from participating in a *milchemet reshut*, thus implying that they are obligated to fight in a *milchemet* *mitzva*!

Next week, we will continue to examine who is exempt from the army, focusing our discussion on Torah scholars.

1. *Hilkhot Melakhim* 5:1 [↑](#footnote-ref-1)
2. *Vayikra* 19:16 [↑](#footnote-ref-2)
3. *Ma Ahavti Toratekha*, pp. 46-61. [↑](#footnote-ref-3)
4. BT *Sanhedrin* 73a. [↑](#footnote-ref-4)
5. *Shemot* 22:1. [↑](#footnote-ref-5)
6. Ad loc. [↑](#footnote-ref-6)
7. *Bamidbar* 31. [↑](#footnote-ref-7)
8. *Shana Be-shana* (1972), pp. 143-148. [↑](#footnote-ref-8)
9. *Bamidbar* 1:49. [↑](#footnote-ref-9)
10. See both the ibn Ezra and the Abarbanel ad loc. [↑](#footnote-ref-10)
11. *Hilkhot Shemitta Ve-yovel* 13:12. [↑](#footnote-ref-11)
12. *Shiur* #25 is available at: <https://www.etzion.org.il/en/shiur-25-12-july-2006-second-lebanon-war-part-i>. [↑](#footnote-ref-12)
13. According to the *Sifrei* ad loc. [↑](#footnote-ref-13)
14. *Devarim* 20:8. [↑](#footnote-ref-14)
15. *Devarim* 20:5. [↑](#footnote-ref-15)
16. Mishna *Sota* 8:7. [↑](#footnote-ref-16)
17. *Devarim* 24:5. [↑](#footnote-ref-17)
18. *Hilkhot Melakhim* 7:4. [↑](#footnote-ref-18)
19. See Rav Alfred S. Cohen’s article about this (*Journal of Halacha and Contemporary Society*, No. XVI), especially in the beginning, where he quotes the rabbis who vehemently oppose the draft. [↑](#footnote-ref-19)
20. *Marcheshet* 20. [↑](#footnote-ref-20)
21. BT *Nazir* 59a. [↑](#footnote-ref-21)
22. *Le-or Ha-Halakha.* [↑](#footnote-ref-22)
23. 12:10. [↑](#footnote-ref-23)
24. *Techumin,* Vol. 4, pp. 79-90. [↑](#footnote-ref-24)
25. *Mishpat Ha-melukha Be-Yisrael,* p.194. [↑](#footnote-ref-25)