

# Alternatives to the Tal Law: An Equal Burden or the Burden of Equality?

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### **Abstract**

The origin of the arrangement whereby yeshiva students who fall into the legal category of “toratam omanutam” (lit. Torah study is their vocation) are permitted to defer their military service is a directive issued by Prime Minister David Ben-Gurion in 1948. The gist of the declaration was that yeshiva students were not obligated to perform military service. Over the years, this temporary arrangement, which affected only 400 yeshiva students at the time, has become the primary path for ultra-Orthodox young men, and has been largely responsible for turning the ultra-Orthodox community into a “society of learners.”

The Tal Law, enacted in 2002, was intended to enshrine the above arrangement in law, yet also to create specific mechanisms for a more equal sharing of the burden of military service: a so-called “year of decision,”<sup>1</sup> special military tracks for the ultra-Orthodox, and the option of civilian national service. In February 2012, Israel’s High Court of Justice struck down the Law by a majority vote. The Court determined that while the Tal Law had indeed aided in the establishment of military and civilian service tracks for the ultra-Orthodox, it had failed when it came to implementing them, as a result of the Law’s intrinsic shortcomings. A Knesset committee comprised of members of the coalition government—the KESHEV Committee headed by MK Yohanan Plesner—was established to present an alternative law to the Knesset, which must be enacted by the beginning of August, 2012, when the previous law will expire.

This position paper offers a brief review of the development of the service-deferral arrangement over the years, focusing on the involvement of public committees, the Knesset, the Government, and the High Court of Justice in shaping the agreement. The paper brings current figures on deferral of army service, on ultra-Orthodox young men who are serving in the army or in civilian national service, and on the economic and social aspects of the arrangement.

We present three problems with the present situation:

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1 Under the Tal Law, from the age of 22 an ultra-Orthodox yeshiva student is permitted to leave his studies for one year without being conscripted. At the end of this “decision year,” if he opts to continue in the work world, and not return to yeshiva, he is formally subject to conscription (several months of military service or a year of civil service).

1. **ethical problem** - lack of equality among individuals and groups in Israel;
2. **operational problem** - manpower shortage in the IDF;
3. **economic problem** - result of the service-deferral arrangement.

The recommendations offered below are assessed in light of their contribution to reducing these problems, taking into account both the legal ability to implement the policies and their effectiveness in terms of the ultra-Orthodox community. The alternatives to the status quo are presented in the form of two scenarios. The potential benefits of each option are weighed against the drawbacks.

### **First alternative: Universal service with exemption quota**

Under this alternative, ultra-Orthodox young men would be required to serve in the army upon reaching the age of 22, with the exception of a specific group, limited in number, to be determined by an outside examination or by giving exemption vouchers to yeshiva heads in accordance with the number of students in their institution. To implement this alternative, positive and negative incentives would have to be enacted into law. The incentives could be individual, institutional, or applicable to the entire ultra-Orthodox community.

- This alternative is expected to encounter across-the-board resistance on the part of ultra-Orthodox society and its opinion makers. Moreover, there is reason to assume that drastic measures aimed at initiating such sweeping social change will lead—at least in the short term—to a schism between the ultra-Orthodox community, on the one hand, and the secular and (non-ultra-Orthodox) religious population, on the other.
- In terms of equality, this alternative is the most consistent with the ruling of the High Court of Justice. Its economic benefits stem from the future entry of thousands of ultra-Orthodox into the labor market and the reduction of budgets for yeshivas and *kollels* (institutes for full-time, advanced Jewish learning); however, the greater the success of this alternative, the higher its short-term financial costs will be.

### **Second alternative: Setting of clear recruitment goals for the ultra-Orthodox**

According to this alternative, in theory the State of Israel does not demand that those who wish to learn Torah enlist in the army; yet at the same time, it is interested in conscripting the majority of young ultra-Orthodox men. As part of a gradual process extending over several years, a clear annual target would be established for the number of ultra-Orthodox males enlisting in the army or in civilian national service. Although

the government already established enlistment goals for the ultra-Orthodox in 2011, under this scenario the recruitment efforts would be bolstered, for the first time, by negative incentives.

- This alternative would be interpreted by the public as continuing along the lines of the Tal Law, since conscription would not be mandated for the ultra-Orthodox, unlike the general public, which is obligated to enlist.
- A law that sets recruitment goals but does not require individual ultra-Orthodox males to serve will have a limited effect on the number of ultra-Orthodox who choose military or civilian-national service. Consequently, it is doubtful whether the option of enlistment targets will meet the standard of equality set by the High Court of Justice. It does, however, pass the test of economic feasibility in the immediate term.

The position paper also examines the feasibility of **combining the alternatives** by enshrining the principle of universal service in law but applying it only to those aged 17 and under, who have not yet entered into the “Torah study as vocation” arrangement.

The basic elements of this proposal are as follows:

1. For the next five years, conscription would be based on the target model.
2. The model would test the effectiveness of making yeshiva funding contingent on enlistment in the army.
3. At the end of the five-year period, the universal service model would be implemented, with a quota of permitted exemptions.

The obvious advantages of combining the alternatives are avoiding an immediate confrontation with ultra-Orthodox society, and inculcating the notion of universal service (with an exemption quota) to be instituted five years from now. The principle of equality would be grounded in law from the outset, even if its implementation would be gradual.

## **Recommendations**

Regardless of the alternative that is ultimately chosen by the policy makers, the paper proposes a series of steps that can **promote an equal sharing of the burden**:

1. Remunerating soldiers in accordance with the duration and nature of their service.
2. Shortening army service while making it more meaningful for the ultra-Orthodox, by:
  - a. extending civilian service

- b. setting up tracks similar to the *hesder* yeshivas (which combine army service with yeshiva study), but aimed at ultra-Orthodox males who opt for combat duty.

These steps would be carried out in tandem with encouraging entry into the army and the workforce via the following:

1. Limiting financial support for *kollel* members, with the exception of a group of outstanding students up to age 24.
2. Joint oversight of the yeshivas and *kollels* by the IDF and the Ministry of Education.

These measures are far-reaching, and should therefore be applied over a lengthy time frame and in stages. Prudent implementation of these steps to promote equal sharing of the burden is not only possible—it is crucial, if the State of Israel is to thrive and to maintain its values as a Jewish and democratic state.