

Controversy Over Haredi Draft Weaponized for Multidimensional Encroachment on Equality and Independence of Judiciary

Some 300,000 IDF reservists were called up for duty following the outbreak of the war in Gaza after the Hamas attack on 7 October. The Defense Ministry published two bills, whereby mandatory service for men and women in combat roles will be extended to three years, the number of days reservists will serve each year will double, and the exemption age for reservists will rise to 45 for regular soldiers and to 50 for officers. In contrast, the bills make no mention of the government's obligation to comply with Supreme Court rulings to resolve the inequality caused by the failure to draft Haredim (ultra-Orthodox Jews).¹

These bills have rekindled the public and political controversy over the Haredi draft. This document does not offer a plan for their conscription or deal directly with the controversy, but addresses the resulting multidimensional encroachment on equality and on the independence of the judicial system.

As will be explained below, the controversy prevents an explicit anchoring of the right to equality in a Basic Law; is used for weakening the public status of the right to equality and to deliberately exacerbate the conflict between the executive and legislative branches and the judiciary; causes governments to function in a constant state of unlawfulness that undermines the rule of law; is used to justify the violation of equality of other minorities, especially Arabs; constitutes a permanent barrier blocking the reduction of socioeconomic disparities and the Haredi minority's poverty; and ignores the violation of equality of other populations that do not wish to enlist in the army for reasons of conscience and might be punished for it.

General Background on Evolution of Controversy

Due to the public criticism of the sweeping policy not to conscript Haredim by deferring the draft of yeshiva students whose "Torah study is their vocation" (a policy begun in 1949 by Prime Minister David Ben-Gurion), special committees were established, government

* English-language reference. All other references in this report are in Hebrew.

¹ *Michael Hauser Tov, [Netanyahu Coalition To Advance Controversial Army Draft Bill](#), *Haaretz*, 12 February 2024.

decisions were made, amendments were enacted designed to set down policy, bills on alternative plans were promoted, and petitions were submitted to the Supreme Court that were mostly rejected, with only a handful being accepted.

The first petitions lashing out at this policy were submitted in the early 1970s.² In order to allow a comprehensive public and Knesset debate, the Supreme Court put off a decision several times, until the Knesset enacted the Law on Army Service Deferral of Yeshiva Students Whose Torah Study Is Their Vocation-2002 (aka "The Tal Law," named after Justice Zvi Tal, who headed the public committee that led to its legislation).³ The legality of this law was first discussed in Supreme Court Case HCJ 6427/02, but even though the majority opinion was that it violated equality, the judges refrained from declaring it unconstitutional because it was a temporary provision.⁴ After the Knesset decided to extend the temporary provision for another five years and following a review of its implementation over time, the majority opinion in Supreme Court Case HCJ 6298/07 determined that the Tal Law violated equality, did not fulfill the conditions of the limitation clause in Basic Law: Human Dignity and Liberty, and was therefore unconstitutional.⁵

Given that the law expired on 1 August 2012 and the Knesset was unable to enact a new arrangement, petitions were submitted to the Supreme Court arguing that the state had violated its obligation to enlist Haredim. Successive governments went on to establish more committees, which engendered Amendments No. 19 and 21 to the Security Service Law-1986 [Consolidated Version],⁶ which in Supreme Court Case HCJ 1877/14 were ruled as seriously, disproportionately, and unconstitutionally harming equality, and therefore had to be annulled, albeit in a year's time.⁷

Since then, the state has repeatedly asked to put off the expiry date of the amendments arguing that an alternative law agreed by all was unattainable due to upcoming elections, the political situation, or the corona crisis.

On 1 July 2023, after numerous deferrals from the Supreme Court, the law finally expired. Without legal authority to take such a step, on 25 June 2023, the cabinet empowered

² For example, [Supreme Court Case HCJ 40/70 Yisrael Becker v. Defense Minister](#), *Nevo*, 26 February 1970.

³ [Law on Army Service Deferral for Yeshiva Students Whose Torah Study Is Their Vocation-2002](#), *Nevo*, 1 August 2002.

⁴ [Supreme Court Case HCJ 6427/02 Movement for Quality Government v. Knesset](#), *Nevo*, 11 May 2006.

⁵ [Supreme Court Case HCJ 6298/07 Ressler v. Knesset](#), *Nevo*, 8 September 2009.

⁶ [Security Service Law-1986 \[Consolidated Version\]](#), *Nevo*, 30 January 1986.

⁷ [Supreme Court Case HCJ 1877/14 Movement for Quality Government v. Knesset](#), *Nevo*, 12 September 2017.

Defense Minister Yoav Gallant to instruct the IDF not to draft yeshiva students until a new conscription law was enacted during the Knesset's winter session.⁸ To repeat, the latest bills make no mention of the government's obligation to comply with Supreme Court rulings to resolve the inequality caused by the failure to draft Haredim to the army.

Zulat's position is that the controversy over the Haredi draft has been weaponized to inflict multidimensional damage on equality and on the judiciary. Our position is based on the following arguments:

- It prevents explicit anchoring of the right to equality in a Basic Law. Along with the desire to prevent full gender equality, in particular in marital and family life, and to thwart full equal rights for the Arab minority, army service has over the years become one of the main justifications of Haredi, religious, and right-wing parties to avoid enshrining the right to equality in a Basic Law, so as not to block their ability to continue implementing the policy of non-conscription of Haredim. It is in this context that Zulat submitted to the Knesset Constitution Committee a legislative proposal to enshrine equality in a new Basic Law.⁹
- It is used to weaken the public status of the right to equality. In the absence of explicit anchoring in a Basic Law, the Supreme Court has recognized the constitutional right to equality in an interpretive way, as a derivative of the constitutional right to dignity anchored in Basic Law: Human Dignity and Liberty. Its rulings on the Haredi draft have been among the most important with regard to the recognition of the right to equality and the breadth of its protections, as well as the most politically and publicly controversial, and have therefore been used constantly to challenge the status and legitimacy of the right to equality.
- It is used to deliberately exacerbate the conflict between the executive and legislative branches and the judiciary. The rulings on the Haredi draft have been used by the executive and legislative branches as a "weapon" against the judicial system to justify the need to weaken or abolish the latter's independence, despite the fact that the Supreme Court acted with extreme caution by giving the government and the Knesset decades to reach a comprehensive and consensual solution, and refraining

⁸ *Carrie Keller-Lynn, [Cabinet Shields Haredi Youth From Military Draft, 5 Days Before Exemption Law Expiry](#), *The Times of Israel*, 25 June 2023.

⁹ *Eitay Mack, Einat Ovadia, Prof. Frances Raday, [Anchoring the Right to Equality in a Basic Law to Uphold Israel's Democratic Regime](#), *Zulat*, 30 September 2021.

from ruling on the issue altogether from the 1970s until 2009. After lengthy discussions on petitions filed in 2014, the Supreme Court put off the expiry date of the amendments from September 2017 to July 2023. Instead of settling the dispute and confronting the governments and coalition MKs who are categorically opposed to enlisting Haredim, the executive and legislative branches chose to put off a decision or to pass the bucket to the judiciary by means of unlawful amendments they knew would end up in petitions to the Supreme Court. In addition, since its establishment in December 2022, Netanyahu has used the non-enlistment of Haredim to safeguard the support of the Haredi parties for his latest government and to secure a majority in Knesset votes.

- **It causes governments to function in a constant state of unlawfulness that undermines the rule of law.** In the absence of the political will or ability to resolve the dispute legally, governments have to this day chosen to knowingly violate the Security Service Law, enact unlawful legislative amendments, or approve unlawful government resolutions, as was recently done on 26 May 2023, when the cabinet empowered Defense Minister Gallant to instruct the IDF not to enlist yeshiva students until a new conscription law was enacted during the Knesset's winter session. Rule of law means commitment to the law, public authorities functioning in compliance with the law, transparency, absence of arbitrariness, and accountability to the citizens by means of independent and established checks and balances. It also means laws and rules regulating a government's powers and actions and limiting its omnipotence, ensuring the separation and independence of the branches of government, protecting citizens from the tyranny of government, and guaranteeing equal and fair treatment of the entire population - in other words, equality before the law.
- **It is used to attack other minorities, especially Arabs.** One of the methods used by governments and Knesset coalitions to curb criticism of the non-conscription of Haredim is to direct the spotlight to the non-conscription of other minorities, especially Arabs, despite the fact that unlike the Haredim who are part of the Jewish majority, the collective rights of the Arab minority have not been recognized by the State of Israel and have even been explicitly denied in a number of discriminatory laws enacted since the birth of the state.¹⁰ While in the context of the Haredi public conscription is discussed as a way to integrate yeshiva students into the employment market, when it comes to the Arab public, whose discrimination in the labor market has never been

¹⁰ *Eitay Mack, [Pseudo Democracy: State of the Regime in Israel](#), *Zulat*, 23 June 2022.

addressed by the state in any serious way, their conscription is discussed as a way to forcibly fuse them into Israeli nationality and deny their Palestinian-Arab nationality, even though international treaties to protect freedom of conscience and expression forbid Israel to force members of the Arab minority to enlist in an army that enforces a racist regime against their brethren on both sides of the Green Line. In the public and Knesset debates on the Nationality Law,¹¹ Zionist centrist and leftist parties made repeated attempts to secure the rights of the Druze minority on the grounds that many of them serve in the security forces, as opposed to the Arab minority about which there was wide consensus that their collective rights should be ignored or even denied.

- **It is a permanent obstacle to reducing socioeconomic disparities in Israel and the Haredi minority's poverty.** Despite the power wielded by the Haredi parties because of the need there is for them to form governments and coalitions, the Haredi population suffers from institutional discrimination and severe poverty. As concluded in a long series of studies and reports compiled by the Knesset, government ministries, academia, and civil society, the non-conscription of Haredim is one of the main barriers to their integration in the labor market and to reducing the cycle of poverty in Israel. Haredi men, Arab women, and people with disabilities are the groups with the lowest employment levels in Israel. According to the latest data from the National Insurance Institute, approximately 62% of Haredi households are below the poverty line and approximately 60% of Haredi children are poor.¹² For example, here is what the report of the 2030 Committee for the Advancement of Employment in Israel states: "A major barrier for the employment of Haredi men and their acquisition of human capital is the legislation on army service, which prohibits yeshiva students from working or acquiring a non-religious education before the age of 24. This barrier automatically lowers employment rates at a young age, impedes the ability to acquire skills that match the demands of employers, and causes men to enter the labor market when they are already married with children and in immediate need for income to provide for their families."¹³
- **It ignores the damage to equality of other populations who do not wish to enlist for reasons of conscience.** While the executive, legislative, and judicial branches of

¹¹ [Memorandum of Meeting No. 1 of Joint Committee of Knesset House Committee and Constitution, Law, and Justice Committee of Proposed Basic Law: Israel-Nation State of Jewish People](#), Knesset, 26 July 2017.

¹² *Miri Endeweld, Lahav Karadi, Rina Pines, and Nitza (Kaliner) Kasir, [Poverty and Income Inequality 2021-According to Administrative Data](#), National Insurance Institute, January 2023.

¹³ [Report of 2030 Committee for Advancement of Employment in Israel](#), Ministry of Labor, 17 August 2020.

government attend to the subject of the Haredi draft, the equality of other populations that do not wish to enlist for reasons of conscience continues to be violated. For example, there are acute differences between the easy procedure with which women obtain an exemption from army service by citing freedom of conscience for religious reasons, and the procedure for obtaining a similar exemption due to freedom of conscience for non-religious reasons (such as democratic or humanistic motives). As a result of successive coalition agreements signed with the religious parties, the only requirement under Article 40 of the Security Service Law for women seeking an exemption is to submit a written affidavit declaring that they observe a religious lifestyle. In contrast, women and men who request an exemption due to freedom of conscience for non-religious reasons are discriminated against, required to appear before a Consultative Committee for Exemption From Military Service for Reasons of Conscience, and most of them are incarcerated for varying periods. A petition submitted in this regard by the Yesh Gvul movement was rejected in Supreme Court Case HCJ 2619/17.¹⁴

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¹⁴ [Supreme Court Case HCJ 2619/17 Yoav Hass et al v. Defense Minister Avigdor Lieberman](#), Nevo, 28 June 2018.