

# The Use of Umbrellas on Shabbos: *A Test Case of the Fluidity in Halakha*

---

RABBI DR. LAZER FRIEDMAN

---

## Introduction

**THE TENSION AROUND** the fluidity of Halakha is manifest in many contemporary issues such as technology, and medicine. Halakha analyzes and attempts to incorporate novel scenarios within the framework of traditional sources. The development of a Halakha is a complex process rooted in several seemingly contradictory fundamental concepts:

### 1. The Torah Is Fixed and Never Changing

This concept is based on the Rambam's 13 principles of faith of Judaism discussed in his introduction to the Mishna Perek Cheilek, the tenth chapter of Tractate Sanhedrin. In the ninth principle, the Rambam states that the Torah has faithfully been transmitted from G-d and not from anyone else.<sup>1</sup> Therefore, it cannot be added to nor be diminished from. A basic and unwavering tenet of Orthodoxy is the firm belief that the Torah which originated at Sinai, and was handed to Moshe Rabbeinu, is essentially the same Torah we have today.

### 2. Halakha Is Fluid and Adaptive

The entire Responsa literature analyzes Halakhic questions as applicable within a contemporary society. We are witness to an explosion of advancement in technology and medicine in the last quarter century, which has led to tomes of Halakhic literature from *Gedolim* which have facilitated the incorporation of these advances into our daily lives.

---

1. פירוש המשנה לרמב"ם מסכת סנהדרין פרק י.

**LAZER FRIEDMAN** is a pediatrician at Mackenzie Health. At BAYT, he served twice as co-chair for the Assistant Rabbi committee, and was on the senior Rabbi search committee. He received Semikha from Rav Baruch Lichtenstein, Sgan Rosh Kollel of the Kollel Ohr Yosef. Lazer gives a Minchas Chinuch shiur at the Hashkama minyan.

### 3. כַּה דְּהִיתְרָא עֲדִיקָּ: “The Power of a Permissive Ruling Is Greater”<sup>2</sup>

It is easy to rule that something is prohibited. Conversely, to issue a permissive ruling requires a greater degree of knowledge, scholarship and authority to support and implement such a ruling. This principle can easily be manipulated and distorted when Rabbis with limited experience and knowledge issue permissive rulings on the basis of a cursory review of the subject.

### 4. פְּרִץ גֶּדֶר - “Breaching a Fence”

Halakhic authorities use this term to convey the seriousness of breaching a particular Halakha. The Rabbis protect the Torah Laws by establishing various preventative barriers known as the Rabbinic laws. Sometimes, feeling that communal standards were at risk, they further enacted restrictions using the analogy of breaching a fence.

Strict adherence to the *Mesorah* (tradition) is the mechanism whereby Halakha follows the concept that the Torah is fixed and not fluid. On the other hand, we are all familiar with Rabbinic responsa dealing with circumstances that were not in existence in previous generations. One thinker who attempted to strike a balance between Halakha being fluid and at the same time fixed and unchanging was R. Yosef Dov Soloveitchik. In a public lecture in Toronto, R. Hershel Schachter, in the name of his teacher, R. Yosef Dov Soloveichik, differentiated between the concept of חִידוּשׁ (novel idea) in Torah which is highly meritorious as opposed to שִׁנוּי (alteration) of Torah which he felt was a breach of the principle that Torah is fixed and never-changing.<sup>3</sup>

The use of umbrellas on Shabbos will serve as a case study to examine the interplay of these factors in determining the Halakha, and will focus on the concept of פְּרִץ גֶּדֶר in terms of its application in practice within the scope of Halakha. It will also provide the backdrop to understand some of the contemporary Halakhic debates regarding the role of women in the Orthodox community.

## Umbrellas on Shabbos

Although umbrellas were invented in the Far East thousands of years ago, they only became popular in Europe in the 18<sup>th</sup> century prompting the first Halakhic query in 1783 to R. Yechezkal Landau of Prague, often referred to by the title of his Responsa, the *Noda BiYehuda*.

The *Noda BiYehuda* was presented with two reasons to permit the use of an umbrella on Shabbos. On Shabbos, it is prohibited to create an אוהל (tent), however the Rishonim differentiate between an אוהל קבוע (permanent tent) which is prohibited Biblically and an אוהל עראי (temporary tent) which is prohibited Rabbinically. The questioner first suggested that, irrespective of the permanency of the tent, an אוהל זרוק (mobile tent), should not qualify as an אוהל and therefore an umbrella should not be subject to the prohibition of

2. רש"י מסכת ביצה דף ב עמוד ב.

3. שיעור מאת הרב צבי שכטר ניסן תש"ס, טורונטו.

creating a tent. Secondly, the mechanism of an umbrella resembles that of the כסא טרסקל (folding chair), which the Gemara permits to be opened on Shabbos.<sup>4</sup> The Noda BiYehuda summarily dismissed these suggestions and prohibited the use of umbrellas on Shabbos. First, he ruled like the Rif that any cover on an area greater than one cubit is considered to be an אהל, and a mobile tent being subject to the laws of טומאה (impurity), would qualify as a tent, and therefore its creation would be prohibited on Shabbos. Secondly, he rejected the comparison to the כסא טרסקל, since the permissibility of opening a folding chair is that the intent is to sit on the seat of the chair and not for the airspace below the seat. The Noda BiYehuda even prohibited carrying an umbrella which was opened before Shabbos for fear of מראית עין (perception).<sup>5</sup>

R. Moshe Sofer, also known as the Chasam Sofer, disagreed with the opinion of the Noda BiYehuda and issued a permissive ruling on the use of umbrellas on Shabbos.<sup>6</sup> He argued that opening an umbrella on Shabbos would not constitute a Biblical prohibition because an umbrella is a temporary structure and only permanent structures are liable for Biblical transgression. Secondly, whilst an אהל זרוק (mobile tent) is subject to the laws of טומאה (impurity), it is not considered a violation of Shabbos as there is no similar paradigm in the *Mishkan* which defines prohibited acts on Shabbos. All prohibited activities on Shabbos are derived from activities in the building or maintenance of the *Mishkan*, and if there is no parallel activity to be found, the activity cannot be deemed to be a forbidden activity for Shabbos. Finally, a Biblical אהל must also have walls that extend to the ground which the umbrella does not have. Therefore, the Chasam Sofer concluded that although it is not the ways of the pious, nevertheless it is permissible even on a rabbinic basis to open an umbrella on Shabbos. Moreover, he says that at the very least an umbrella could be opened by a Gentile on Shabbos, and that the world need not be agitated by this.

R. Yisrael Lipschitz, in his commentary on the Mishna, the Tiferes Yisrael, also took issue with the opinion of the Noda BiYehuda. However, in deference to the rabbinic authority of the Noda BiYehuda, he did not allow himself to issue a permissive ruling without the approval of his colleagues. He also stated that at the very least, it would certainly be permitted to ask a Gentile to open an umbrella on Shabbos as opening the umbrella is not a definitive rabbinic violation.<sup>7</sup>

The Chazon Ish also disagreed with the Noda BiYehuda, and felt that from a technical perspective, opening an umbrella on Shabbos is similar to opening a כסא טרסקל, the permissible folding chair of the Gemara.<sup>8</sup> However, he ruled that opening umbrellas on Shabbos is prohibited because of the prohibition of תיקון מנא (fixing an object), which many Poskim feel is a Rabbinic prohibition of building. He also raised concerns about the prohibition

---

4. תלמוד בבלי מסכת שבת דף קלח עמוד א.

5. שו"ת נודע ביהודה מהדורה תנינא, או"ח סימן ל.

6. שו"ת חתם סופר חלק א או"ח סימן עב.

7. תפארת ישראל כלכלת שבת לד, אורח.

8. חזון איש הלכות שבת סימן נב:ו.

of עובדין דחול (weekday activities). He felt that opening umbrellas on Shabbos would be tantamount to being פּרץ גדר (breaching the wall of Halakha), and concluded by saying that it is the responsibility of the *Poskim* to put up fences in areas of potential breach and that the transgression of these prohibitions are far more severe than individual infractions of Halakha, as these regulations apply to all of Klal Yisrael and for subsequent generations.

R. Yoseph Mesas acknowledged the debate of the *Poskim* of previous generations and felt that the current Rabbinate did not have power to adjudicate the matter, despite the fact that he personally felt more compelled by the position of the permissive opinion.<sup>9</sup> In his community, many individuals used umbrellas on Shabbos, and he felt that one should not protest their actions. He concluded that G-d-fearing individuals should persevere with the discomfort of not using umbrellas, however, in exceptional circumstances such as being a great distance from Shul, or in heavy downpours, it would be perfectly permissible to open an umbrella on Shabbos.

In terms of normative Halakha, the Mishna Berura quotes the Noda BiYehuda and others who prohibit the use of umbrellas on Shabbos, and completely omits any reference to the opinion of the Chasam Sofer or any of the other lenient opinions.<sup>10</sup>

Similarly, R. Yehoshua Yeshaya Neuwirth, the author of the Shemiras Shabbos Kehilchasa, uses the language of the Chazon Ish by making reference to the term פּרץ גדר in issuing a prohibitive ruling on opening an umbrella on Shabbos. Although he cites the permissive ruling of the Chasam Sofer in the footnote, he concludes with the prohibitive rulings of the Tehila L'David and Chazon Ish.<sup>11</sup>

In the final analysis, whilst there is great debate amongst the *Poskim* regarding the use of umbrellas on Shabbos, careful scrutiny demonstrates that the prohibitive opinion of the Noda BiYehuda is rejected by all the leading *Poskim* including the Chasam Sofer and the Chazon Ish. Notwithstanding the rejection of the opinion of the Noda BiYehuda, the accepted normative Halakha is that umbrellas may not be used on Shabbos. The prohibitive ruling, issued by the major contemporary *Poskim* including the Chazon Ish, Mishna Berura and Shemiras Shabbos Kehilchasa, has become the normative practice in Orthodox communities, based on the concept of פּרץ גדר.

## פּרץ גדר

The expression is derived from the pasuk in Koheles, וְיִפּוֹל וּפְרָץ גֵּדֵר יִשְׁכָּנוּ נָחָשׁ, – “One who digs a pit shall fall therein, and one who breaks a fence – a snake shall bite him.”<sup>12</sup> Rashi explains the pasuk by saying – “the Rabbis are charged with establishing a fence around their rulings.”

---

9. שו"ת מים חיים חלק א' סימן קמד.

10. ביאור הלכה סימן שטו.

11. שמירת שבת כהלכתה כד:טו.

12. קהלת י:ח.

The term is used in Shulhan Arukh in two different places. The first reference is in the discussion of the various customs of refraining from eating meat during the nine days. R. Yosef Karo the author of the Shulhan Arukh rules that one who eats meat in a community which prohibits the eating of meat during the Nine Days is considered a פּרַץ גֵּדֵר.<sup>13</sup> The second reference is with respect to the laws of reciting the תחנון prayer. In this case, the Shulhan Arukh rules it must be recited while standing, and if an individual does not recite it while standing, he is considered פּרַץ גֵּדֵר.<sup>14</sup>

These citations do not share common features that can be extrapolated to generate a generalized rule, and therefore one cannot draw any conclusions with regards to the usage of the term פּרַץ גֵּדֵר. However, the *Arukh HaShulhan* in dealing with the question of bathing in cold water on Shabbos rules:

ומנהג זה נתקבל מאבותינו ואבות אבותינו מכמה מאות שנים, והבא לפרוץ גדרן של ראשונים עליו נאמר 'פורץ גדר ישכנו נחש', דקבלנו זה כאיסור חמור לבלי לרוחץ בנהרות ובאגמים ובמעיינות בשבת כלל וכלל.

*This custom was received from our forefathers over the centuries and to the one who breaches the fence, it is said a snake shall bite him, for this custom is established as a severe prohibition.*<sup>15</sup>

The *Arukh HaShulhan* defines the term פּרַץ גֵּדֵר in a broader manner, to indicate a breach of a well-established and entrenched previously accepted custom. Contemporary *Poskim* also use this term to convey the seriousness of breaching a particular Halakha, and it is often used in the context of activities that border the “slippery slope” of Halakha. The term is intended to place limitations on the fluidity of Halakha.

The implication of the umbrella debate is that it does not represent a singular Halakha. The term פּרַץ גֵּדֵר reflects the Meta-Halakha versus the Halakha. In other words, rather than focusing on the details of the specific Halakha of the umbrella, it speaks to the much greater role of protecting the sanctity of Shabbos. In this respect, the umbrella is akin to many kinds of activities such as swimming<sup>16</sup> or riding a bicycle on Shabbos.<sup>17</sup> In these cases, although there may be ample Halakhic maneuverability, the *Poskim* have generally employed the principle of פּרַץ גֵּדֵר to preserve the unique majesty of Shabbos.

## Women and Ritual in Orthodox Judaism

Halakhic issues involving women are currently receiving significant attention. The evolution of Halakha and specifically the concept of פּרַץ גֵּדֵר has previously been implemented in determining Halakhic matters involving women and Orthodoxy. As the role of women in the secular world has evolved in the last century, the role women play within Orthodoxy

13. שולחן ערוך אורח חיים סימן תקנא.

14. שולחן ערוך אורח חיים סימן קלד.

15. ערוך השולחן אורח חיים סימן שכו:יא.

16. שו"ת אגרות משה אבן העזר חלק ב סימן יג.

17. שו"ת ציץ אליעזר חלק א סימן כא.

has become a new Halakhic frontier. At the turn-of-the-century, the issue of women studying Torah was the greatly debated issue. Traditionally, Torah study was almost exclusively within the domain of males based on the ruling in the Gemara.<sup>18</sup> Women studying Torah was perceived as an example of פרוץ גדר, until the Chofetz Chaim issued a permissive ruling.<sup>19</sup> He felt that despite the significant Halakhic concerns, the situational need for women to study Torah became paramount, and consequently following his ruling Torah study for women became institutionalized.

Contemporary issues such as women donning תפילין, and most recently the appointment of a woman as Rabbi of a Shul in Israel have stirred new controversy within the Orthodox camp. A complete analysis of these issues is beyond the scope of this paper; however, these issues are steeped in legitimate Halakhic debate, and have created a schism within the Orthodox community. The question at hand is how will *Poskim* apply the foundational principles set forth in this paper to adjudicate these specific issues.

The ruling regarding umbrellas on Shabbos may serve as a template for some *Poskim*. Indeed, R. Hershel Schachter in discussing the issue of women donning תפילין, marshals the strictly prohibitive position of the Chazon Ish discussed above regarding the use of umbrellas on Shabbos.<sup>20</sup> He feels that even if one could offer a permissive position for women to don תפילין, it would still be prohibited due to the concept of פרוץ גדר. He argues that just as opening an umbrella on Shabbos was a defining characteristic of Orthodox Jewry in Europe vis-à-vis the Reform movement, similarly women donning תפילין represents a line drawn in the sand, and crossing this line is a פרוץ גדר which ultimately breaches the current definition of Orthodox Judaism.

At the moment, the position of R. Schachter<sup>21</sup> and the Rabbinical Council of America<sup>22</sup> is that women assuming a Rabbinic position is not congruent with Orthodox Judaism. The last page of this debate has not been written, and is likely to intensify in the coming years. Local Orthodox Rabbis (LOR) certainly play an important role in developing the Halakhic process within their communities; however, issues of this magnitude extend beyond the purview of a LOR. These complex and pivotal issues must be addressed and adjudicated by our *Gedolim*. All parties will have to consider the foundational principles of the Halakhic process outlined in this essay, and allow the *Gedolim* of the generation to determine the net sum of the various vector forces.

May Hashem grant the Jewish community the insight to make appropriate inquiries to our *Gedolim*, and may Hashem in turn grant our *Gedolim* the strength and wisdom to guide our generation in navigating the uncharted waters of Halakha.

---

18. תלמוד בבלי מסכת קידושין דף כט עמוד ב.

19. לקוטי הלכות חפץ חיים סוטה כא.

20. תשובה מאת הרב צבי שכטר "כל העדה כולם קדושים", אדר תשע"ד.

21. R. Hershel Schachter, "Women Rabbis?" *Hakira*, Volume 11 (New York, 2011).

22. RCA position statement (November 12, 2015).