

Parshas Eikev

פרשת עקב

והיה עקב תשמעון את המשפטים האלה
"And it shall be, when you will heed to these statutes"

The Torah chooses a peculiar wording in this Pasuk, instead of the usual word "כי", the Torah uses the word "עקב". Rashi explains that the word "עקב" can also refer to the heel of a person. The Torah, with its use of the word "עקב" is actually referring to a specific group of Mitzvos, namely, the Mitzvos that one "tramples upon with his heel". In other words, the Torah is warning us to adhere even to the easy and common Mitzvos that people usually disregard as unimportant. It is very simple for someone to keep the "big" Mitzvos with great exactitude, but one who is just as careful with the everyday "small" Mitzvos is showing true greatness.

The Daas Z'keanim¹ adds, that the Torah is not really referring to an entire group of "simple" Mitzvos, but is more specifically referring to the Mitzva of Shiluach Hakein. This is the Mitzva mentioned in Parshas Ki Seitzei of sending away the mother bird prior to taking its eggs. This Mitzva is literally one that one "tramples with his heel", as it only applies, if while one is walking, he happens upon a nest. A privately owned or otherwise humanly prepared nest is exempt.

Furthermore, Shiluach Hakein is the quintessential example of a Mitzva that does not require any preparation or difficulty. In fact, preparation of a nest would invalidate it. The Mitzva is simply to chase away the mother bird (not a very difficult task), if one wishes to take its eggs. It is so simple that Chazal call this Mitzva שבקלות - "simplest of the simple".²

II. There are several explanations of the reason behind this Mitzva:

1) The Chinuch³ explains, that there is a basic distinction between the way Hashem oversees the overall Creation, and his care for Klal Yisrael. Although Hashem takes punctilious care of all of creation, from the microscopic organisms to the largest of the animals, this is in a general manner. In other words, Hashem makes sure that each species has its needs and environment to enable the continuation of that species. However, each specific organism in its own right does not have this special care. On the other hand, Klal Yisrael has a unique "Hashgacha Pratis" for each individual. Hashem cares for and is interested in the specific actions and needs of each and every person in Klal Yisrael. It is this principle that Mitzvas Shiluach Hakein is meant to illustrate. When we are dealing with birds, one may take the young for his own use, as long as the continuity of the species is not harmed. By sending away the mother and not taking her with her young, the species can be continued from the mother. Only the needs of the species in general are taken into account, not that of the individuals. With Klal Yisrael however, this is not the case. We have a special Hasgacha Pratis in which the needs and actions of each individual are of utmost importance.

2) Another explanation is given by the Rambam⁴: There is a natural bond between a mother and her children, even by animals. Therefore, if one would take away the children in view of their mother, it would cause the mother bird great distress. Hence, Hashem in his compassion, required one to chase the mother away, to spare her this agony.⁵

3) In a similar vein, the Ramban⁶ explains, that this Mitzva is meant to teach us to act with compassion and mercy. It is not Hashem's compassion that requires Shiluach Hakein, rather it is a lesson to us, demonstrating that we should treat one another with kindness.⁷

¹על אתר

²תנחומא פ' עקב ס"ג, וע' חולין קמ"ב ע"א במתני' מצוה קלה שהיא כאיסור ובפרש"י דאין בה חסרון כיו

³מצוה תקמ"ה וכן בפירושו (הרא"ה) לברכות ל"ד ע"א בשם ר' אחא

⁴מורה נבוכים ג' מ"ח

⁵וע"ש מש"כ בענין המשנה בברכות ל"ג, ואכמ"ל

⁶דברים כ"ב י

⁷וע"ע בס' חורב להגרש"ר הירש זצ"ל פרק נ"ח שביאר באו"א, וכע"ז כתבו המהרי"ט בדרשות צפנת פענח, והנצי"ב, ובחתי"ס בחולין שם

III. Some of the details of this Mitzva are as follows:

1) Shiluach Hakein only applies with kosher birds⁸. Although it is not so well known, several of the common species of birds in the Monsey / New York area, are in fact kosher. (This is not to say that one may eat them without a clear Mesora, only that they have a Mitzva of Shiluach Hakein). For example, all pigeons are kosher, as are doves, sparrows, blackbirds (not crows, the two are unrelated, contrary to a common misconception⁹, some swallows (white-breasted), and red robins. Geese (even Canadian ones...), ducks and swans are also kosher. Blue jays and other jays are not.¹⁰

2) A privately owned nest (even by someone else) is not subject to Shiluach Hakein¹¹. This includes any nest that is located on an enclosed private property (such as a courtyard). However, in the event that one discovers a nest on his property, if the mother has just laid its eggs and has not flown away from the nest, it is still possible to perform Shiluach Hakein.¹² The reason for this is, that since as long as the mother is still on the nest it is forbidden to harvest the eggs, the property owner cannot yet be considered to have acquired them.¹³

3) There is a Machlokes Rishonim regarding how one should go about sending away the mother bird. The Rambam¹⁴ says that one must grab the bird by its wings, and then release it. However, when one grabs the bird, he must have in mind not to acquire it, since taking the mother is forbidden¹⁵. Rashi¹⁶ and others say, that it is enough to scare away the mother with a stick or with any other noise¹⁷. It is interesting to note, that the Aruch Laner¹⁸ paskened that according to Rashi, it is forbidden to grab the mother, even without intention to acquire it. This is in contrast to the Rambam who says that the CORRECT way of doing Shiluach Hakein is by taking hold of the mother.(כ"ל)

4) One is only required to perform Shiluach Hakein if one wishes to take either the young chicks, or the eggs¹⁹. However, a person who otherwise would not take the eggs is certainly able to perform Shiluach Hakein for the sake of the Mitzva. In such a case, there is a discussion in the Poskim if one is required to actually take the eggs after the Mitzva, or may he leave them in their nest. Most Poskim say that one does not need to take them²⁰. However, the Aruch Hashulchan says that there is a Mitzva to take the eggs or chicks, and not leave them in the nest.²¹

5) A nesting that is in the courtyard of a Shul, is questionable if Shiluach Hakein can be done. It would depend on the Halachic status of a Shul, as property owned by a partnership or by Hekdesh.²²

IV. Bracha

Although some Poskim say that one should make a Bracha on Shiluach Hakein, many say not to.²³

⁸ חולין קל"ח ובשו"ע יו"ד רצ"ב ס"א

⁹ ע' מחזיק ברכה יו"ד ס' פ"ב סק"ז

¹⁰ ספר קן ציפור, ע"ש שהאריך בראיות וביאורים על כל מין ומין

¹¹ חולין ושו"ע שם ס"ב

¹² חולין קמ"א ושו"ע שם

¹³ בספק אם הוגבה מעל הקן נחלקו האחרונים, ע' קר"נ חולין שם ובשלחן גבוה סק"ח. יש מי שנתנו עוד עצה להפקיר מקום הקן בפני ג', ע' להורות נתן ח"א ס' מ"ט ובס' הבנים תקח לך בשם הגרי"י פ"ש זצ"ל. אמנם לכאורה הר"ן ב"מ דף י' בשט"מ, כתב ד"א דבכה"ג לא מהני לדאורייתא, ע"ש

¹⁴ ה"ל שחיטה פי"ג ה"ה, וברש"י חולין שם בל"ק

¹⁵ ע' השגת הראב"ד על האבודרהם שער ג' ד"ה תשובה, ובברכ"י בשם האריז"ל

¹⁶ שם בפירוש ב'

¹⁷ ע' חז"א יו"ד ס' קע"ה אות ב'. וכ"כ הסמ"ק רנ"א והגר"א בביאורו בדעת המחבר. וע' ערוה"ש דגם ע"י קול מהני

¹⁸ שו"ת בנין ציון החד' ס' י"ד

¹⁹ ע' חז"א שם שהוכיח דכן דעת רוב הראשונים, אמנם באבן ישראל ח"ז ס' מ"ג כתב בשם הרבה פוסקים דיש חיוב לשלח בכל גווי שיטת החכ"צ בס' פ"ג, ובהגהות יד שאול על השו"ע שם הביא כן בשם האב"ע דלקיחת הבנים הוה רשות וכן משמע מהרמב"ם במורה

שם

²¹ וכפשטי' דקרא "והבנים תקח לך"

²² ע' קצוה"ח ס' ר' סק"א בשם האגודה, וגם תלוי אם יש חצר להקדש, ע' מ"א ס' קנ"ד ס"ק כ"ב ובמ"ב שם

²³ רוקח ס' שס"ו, שו"ת הרשב"א ח"ג ס' רפ"ג, תמים דעים ס' קע"ט, תשו' סמא דחיי מובא בפת"ת סק"ב, פאת השלחן ה"ל א"י פ"ג ס"כ, שו"ת בית אב חמישאי יו"ד ס' ש"ז, כולם ס"ל דמברכין וכ"פ הערוה"ש. וע' שו"ת ברכה ס' רצ"ב. אמנם הרבה ס"ל דאין מברכין כדלקמן

There are three basic reasons why one would not make a Bracha on Shiluach Hakein. They are:

1) Shiluach Hakein is not an obligation, since it is only if one happens to discover a nest and wants the eggs (ע' לעיל). Only Mitzvos that are an obligation, such as Matza and Arba Minim, require a Bracha.²⁴

2) According to the opinion of the Rambam (see above) that one must grab the bird prior to sending it away, the beginning of the Mitzva is accomplished through taking the mother, an action that the Torah forbids. This is called מצוה הבא בעבירה - a Mitzva that comes through an Aveirah. Such a Mitzva does not require a Bracha.²⁵

3) The third reason is a practical one. It is likely that while a person is reciting the Bracha, the bird will fly away on its own, he will then have lost the Mitzva and recited a Bracha in vain. Therefore, since all Brachos are made before doing the Mitzva, it is not possible to be made.²⁶
Since making a Bracha is a Machlokes, many Poskim advise to make the Bracha without Hashem's names.²⁷

Making the Bracha of שהחיינו, is also subject to a Machlokes. Therefore, if one is able to have a new article of clothing or fruit at the time, he should make שהחיינו on them, and have in mind the Mitzva as well. Otherwise, פקו and no שהחיינו should be made.²⁸

V. Although this Mitzva is considered a very easy one (as we explained), the reward for this Mitzva is innumerable. The Torah explicitly promises למען ייטב לך והארכת ימים - "so that it shall be good for you, and you shall have length of days". If for the "easiest" of all Mitzvos such compensation is assured, it is unfathomable what lies in store for the more difficult ones.²⁹

Aside from the reward mentioned expressly in the Torah, Chazal and the Rishonim mention several other "fringe benefits" of this Mitzva:

Shiluach Hakein is known as a Segulah for a couple who is ל"ע childless. The Medrash says that this can actually be seen from the Pasuk itself. The Pasuk says "שלח תשלח את האם, ואת הבנים תקח לך" - "You shall send away the mother, and the children take for yourself", hinting at the reward of "children" for "sending away the mother".³⁰

Furthermore, the Rishonim say³¹, that at the time one performs the Mitzva of Shiluach Hakein, an angel pleads with Hashem to have mercy on the mother bird and her children. At that moment Hashem evokes his compassion for his own children - Klal Yisrael, and longs to finally bring the Redemption. Ultimately, through this Mitzva and the divine mercy that it invokes, we will be Zocheh to see the Geulah Shleimah. To conclude with the words of the Paytan: קן ראש נשוואך - "May the nest of birds (Klal Yisrael) be gathered upon the hilltops (Yerushalayim), and may its leaders once more raise their heads in pride", Bimheira B'yameinu.

Good Shabbos,

מאיר הלוי הלמן
פעיה"ק תובב"א

²⁴ מאירי מגילה כ"א ע"ב וברבינו בחיי פ' כי תצא, וכן הובא בברכ"י שיעורי ברכה שם בשם עוד ראשונים. וע' בס' הפרדס הל' ברכות ס' מ"ט ודו"ק

²⁵ שו"ת הרשב"א ח"א ס' י"ח וכן האבודרהם שם, וע' בהגהת (הראב"ד) שם. וכן המאירי קידושין מ"א שו"ת בנין ציון שם

²⁶ מהר"ם שיק יו"ד ס' רפ"ט, וגם יכול לברך בהרהור ויוצא לדעת הרמבם ע"ש ובביא"ה ס' ס"ב ד"ה יצא, וע' העמק שאלה שאילתא נ"ג דהחת"ס בירך "ברוך רחמנא וכו'" בכה"ג. וע' באפיקי ים ח"ב ס"ג. ולכאורה גם יש עצה לברך דרך לימוד, ע' אב"נ יו"ד ס' שפ"ג ע' ברכ"י שם אות ב' שהביא ב' דעות, ולפי הכרו"פ ס' כ"ב יש לברך. וסיים דספק ברכות להקל ע"ש. וע' תמים דעים ס' קע"ט דא"מ כיון

דיש בה אזהרה, והבעל העיטור כתב שיברך ע"ש, וע' בשדי חמד מע' ברכות ס"א אות ט"ז מתני' סוף חולין, וע' ש"ש ד"ש מ"ד ששכר זה לעוה"ב ושכר מצוה בהאי עלמא ליכא

²⁹ ילקו"ש תתקל"ב ובמ"ר פ' כי תצא וע' בתנחומא שם שעי"ז זוכה לבית חדש וכו' ועוד דברים רבינו בחיי, וכן בש"ך עה"ת ובחיו"ס ז"ז ומקורם בתיקוני זוהר ו' זוהר מדרש רות