

of God. (1)

c. Implicitly, the constitution gave the Prophet the right of making the final decision in matters of war and peace. (2)

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1. *Saunders, A history of medieval Islam*, p. 26; *Tor Andrae, Mohammad and his faith*, p.190; *Gabrieli, Muhammad and the conquests of Islam*, p.65; *Wellhausen, The Arab kingdom and its fall*, p.13; *Serjeant, Haram and Hawtah*, p.44; *Siddiqi, Islamic state*, pp.4; 6-7 .
 2. *Buhl, The encyclopaedia of Islam*, vol. 3, p. 649; *Levy, R., The social structure of Islam*, Cambridge, 1957, pp.275-276; *Hamidullah, The first written Constitution . . .*, pp.382-384 ; *Siddiqi, Islamic state*, p.6; *Al Ali, Tanzimat al-rasul fi al-Madina*, pp. 4; 6.

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- d. The Jews were to share with believers the duty of defending al-Madina, and they were to support the Muslims against their enemy.(1)
- e. The jews were not to make any alliance with the Quraysh or to protect its trade or that of its allies.²
- f. The Jews must not enter or take part in any war without the permission of the Prophet Muhammad. (3)
- g. Any serious disputes should be arbitrated by Muhammad the Prophet. (4)
- h. The position of the allies of the Jews was to be like that of the Jews themselves in respect to the above rights and obligations.(5)

4. The Prophet's position :

The constitution defined the position of the Prophet as follows:

- a. The Prophethood of the Prophet Muhammad was recognised by the constitutional text;(6) and his city, al-Madina, was regarded as a sacred place, (*haram*). (7)
- b. The Prophet was recognised as supreme Judge of appeal for settling among the population of Madina in accordance with the instructions

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- 1. Brockelmann, *Tarikh al-shu'ub al-Islamiyyah*, vol. 1 p.52; Watt, *Islamic political thought*, p.5; Johnston, *Muhammad and his power*, Edinburgh 1901, p.90; al-'Ali, *Tanzimat al-rasul fi al-Madina*, pp. 5-6.
 - 2. *Al-Amwal*, pp. 205-206.
 - 3. Hamidullah, *The first written constitution of the world*, *Islamic Review*, 1941, p. 382; Al-'Ali, *Tanzimat al-rasul fi al-Madina*, p. 6.
 - 4. *Ibid.*; Hamidullah, pp. 380; 383; Al-'Ali, pp.6; 8; Siddiqi, *Islamic state*, Karachi 1961, pp. 6-7; Gabrieli, *Muhammad and the conquests of Islam*, p.65.
 - 5. Hamidullah, p. 381 .
 - 6. *Ibid.*, p. 380; Watt, *Muhammad at Medina*, p. 228.
 - 7. Serjeant, R., *Haram and Hawtah*, *Melanges Taha Husain*, Cairo, 1963, p. 50; *The Constitution of Madina*, p.15; Hamidullah, *The Battlefield of the Prophet Muhammad*, *Islamic Review*, vol. 40, Sept. 1952, p.96; Al-'Ali, *Tanzimat al-rasul fi al-Madina*, p.6.

in all cases. (1)

2. The position of the tribes:

The constitution recognised the tribes, as administrative units under the overall leadership of the Prophet Muhammad. Therefore the constitution regarded the emigrants as one tribe alongside the other tribes of Madina .

The duties of the tribes according to the constitution were to preserve solidarity among their own members, as they were, and to pay, collectively ransom or blood-money for their prisoners. (2)

3. The position of the Jews:-

The constitution regarded each of the Jewish tribes at Madina as a community in itself and additionally as making a community, *ummah*, along with the believers. (3) It organised the relations between them and the believers under these principles:

- a. The constitution recognised the religious freedom of the Jews. (4)
- b. No one was permitted to commit an act of aggression against the Jews and their allies. (5)
- c. If any Jew were to attack or commit any crime against another person within the community, then the responsibility was his alone. (6)

1. *Serjeant, The Constitution of Madina*, p. 12; *Watt, Islamic political thought*, p.5; *al-'Ali, Tanzimat al-rasul fi al-Madina*, p.5.
2. *Wellhausen, The Arab kingdom and its fall*, pp. 12-13; *Watt, Muhammad at Madina*, p. 250; *Tyan, E., Histoire de l'organisation Judiciaire en pays d'Islam*, 2nd ed., Leiden, p. 64; *Siddiqi, A., Islamic state*, p.5; *al-Sharif al-daulah al-Islamiyyah al-ula*, pp. 79-80; *al-'Ali, Tanzimat al-rasul fi al-Madina*, p. 9.
3. *Khadduri, War and peace in the law of Islam*, p. 209; *Watt, Muhammad at Medina*, p. 241.
4. *Ibid.*; *Muir, The Life of Mahomet*, p. 192; *Nicholson, A literary history of the Arabs*, p. 173.
5. *Ibid.*
6. *Ibn Sallam, al-Amwal*, p. 207 .

nucleus of the community, and provided its leadership.(1)The constitution laid down several rules for organising relations between the believers as follows:-

- a. The community of believers was to be based on solidarity; therefore, it was the duty of all the believers not to leave any Muslim taken prisoner unaided, but to help him by paying ransom, *fida*, or blood-money, *'aql*, for him.(2)
- b. The Muslims were to be considered equal, so anyone of them could give protection, *Jiwar*, to a foreigner, and it was the duty of all Muslims to respect this action.(3)
- c. No Muslim was to be permitted an alliance with the client, *maula*, of another Muslim without his permission.(4)
- d. If anyone killed a Muslim he would be punished by Killing, unless the guardian agreed to take a ransom.(5)
- e. All the believers must co-operate to carry out punishments against the guilty, even though he were the son of one of them. By this rule the custom of the blood-feud within the community was abolished.(6)
- f. The believers must apply the principle of solidarity in war and peace

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1. *Ibn Sallam, al-amwal*, pp. 202-205; *Ibn Sallam, Gharib al-hadith*, India 1965, vol. 2 pp. 104-105; *Wellhausen, The Arab kingdom and its fall*, p.12; *Brockelmann, G., Tarikh al-shu'ub al-Islamiyyah*, (translated to Arabic by Faris and al-Ba'labakki). Beirut, 1960, vol. 3, p.52; *al-Ali Tanzimat al-rasul fi al-Madina*, p. 8 .
 2. *Watt, Islamic political thought*, Edinburgh, 1968, p.5; *al-'Ali, Tanzimat al-rasul fi al-Madina*, p. 8.
 3. *Wellhausen, The Arab kingdom and its fall*, p.8; *Watt, Islamic political thought*, p. 5; *al-'Ali, Tanzimat al-rasul fi al-Madina*, p. 5.
 4. *Serjeant, The Constitution of Medina*, vol.8, P.11.
 5. *Ibn Sallam, al-amwal*, pp.202-205; *al-'Ali, Tanzimat al-rasul fial-madina*, pp. 8-9 .
 6. *Lewis, B., The Arabs in history*, p. 43; *Watt, Islamic political thought*, p. 5; *al-Sharif, al-daulah al-Islamiyyah al-ula*, p. 82.

this writing, *Kitab*, as 'a Constitution for the Islamic state in its embryonic stage'(1) to organise the relations between the different elements of al-Madina.(2) This did not prevent the Prophet from holding preparatory negotiations with the Madinan groups and gaining their acceptance before the publication of the 'Constitution of al-Madina'.

The Contents of the Constitution of al-Madina:-

The subjects with which the Constitution deals could be divided into these main headings:-

1. The Community :

The Constitution regards all the believers and Muslims from Quraysh and Yathrib and those who followed them as a single community, *ummah*; this community was not confined to Muslims only, but was also extended to include the Madinan pagans and the Jews.(3) Basically, this community was established on the basis of religion, in contrast with the tribal community which was based on actual or alleged kinship.(4) The Muslims formed the

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1. Khadduri, M., *War and peace in the law of Islam*, p. 209.
 2. Wellhausen, *The Arab Kingdom and its fall*, p.11; Nicholson, R., *A literary history of the Arabs*, Cambridge 1962, p. 173; Lewis, B., *The Arabs in history*, London 1950, pp. 42-43; Levy, R., *The social structure of Islam*, Cambridge, 1957, p. 273.
 3. Saunders, J., *A history of medieval Islam*, London 1965, p. 26; Gabrieli, F., *Muhammad and the conquests of Islam*, p. 65; Nicholson, *A literary history of the Arabs*, p. 173; Watt, *Muhammad at Madina*, p. 241; Al-Sharif, *al-daulah al-Islamiyyah al-ula*, p. 79.
 4. Buhl, *The encyclopaedia of Islam*, vol. 3, p. 646; Rosenthal, *Political thought in medieval Islam*, Colchester 1962, p.25; TorAndrae, *Muhammad the man and his faith*, London 1936, p. 26; Wellhausen, *The Arab kingdom and its fall*, p. 11

- a. Relations between Muslims and Jews were good in the first year of the emigration. So it was logical to make a confederation with the Prophet.(1)
- b. The document mentioned the Jewish tribes as allied to the Madinan tribes. (2)
- c. Historians mentioned that Banu Qaynuqa' broke the pact between them and the Prophet after the battle of Badr.(3)
- d. I did not find any historical text mentioning that the document was in fact eight documents. Therefore I shall still treat the document as the single one transmitted to us.

The nature of the Constitution of al-Madina:-

Some writers regard the 'Constitution of al-Madina' as a treaty made between the emigrants, the adherents, and the Jews to regulate relations between them.(4) Careful examination leads us to believe that the conditions of a treaty did not exist, because there is no reference to the writer of the 'Constitution' nor to the signatures of the contracting parties as were to be seen in the Prophet's other treaties. (5) It is assumed that the name of the writer and the signatures of the contracting parties might be lost for some reasons.(6) But the text of the 'Constitution' does not help us to accept such an assumption, because it begins with this statement, "This is a writing from Muhammad the Prophet between the believers and Muslims of Quraysh and Yathrib and those who follow them and are attached to them and who crusade (*jahadu*) along with them." (7)

It is clear from the text that the Prophet Muhammad alone promulgated

1. See Chapter I, pp. 48-49. (*The thesis*)
2. *Ibn Hisham, al-sirah . . .*, vol. 2, p. 17.
3. *Ibid.*, vol. 2, pp. 47-48; *Ibn Sa'd, al-tabaqat, Beirut 1960, vol. 2, p. 29; al-Tabari, Tarikh, Egypt 1960-1966, vol. 2, p. 479; al-Waqidi, Maghazi, pp. 138-139; Ibn Sallam, al-amwal, pp. 206-207.*
4. *Hamidullah, Majmu'at al-Watha'iq al-Siyasiyyah, p. y; Gabrieli, Muhammad and the conquests of Islam' (translated from the Italian by Luling and Linell), London 1968, p. 65; Serjeant 'The constitution of Medina, p. 12.*
5. *Serjeant . . .*, p. 9; *al-Ali, Tanzimat al-rasul fi al-Madina, pp. 1-2.*
6. *Serjeant, . . .*, p. 9.
7. *Watt, Muhammad at Medina, Cambridge 1956, p. 221.*

Khaybar (6-7 A.H.).(1) But this pin-pointing is not accepted by him. He prefers to regard its date as after the battle of al-Khandaq (5 A.H.), because it was a "more suitable occasion".(2) This interpretation is not acceptable for these reasons:-

a. Al-Samhudi, was not a traditionist, and moreover he was comparatively late,(844-911 A.H.)(3) and thus we cannot depend on him alone to establish such points.

b. In history(we cannot depend on "more suitable occasion" to define the dates of events. We need historical evidence.

c. The traditions which are available did not fix the date of this declaration. So, there is no reason to suppose another date for this clause of the document (4.)He split up the 'constitution' into eight distinct documents "wherever there is to be found a terminating formula"(5) such as 'Wa'inna'Ilaha 'ala abarri hadha'.(6) But I do not find in all the 'constitution' more than four of what he regarded as terminating formulas; one of them at the end of it, the others could be regarded as emphasis on some important meanings such as "God will be the witness on the application of this document"(7)and "God and His Messenger Muhammad would be the protectors of the party who would respect the rules of this document.' (8)

Professor Serjeant emphasised that the first thirty clauses, (documents A and B) which organise the relations between the emigrants and the adherents were written in the first year A.H., the other documents most of whose clauses organise the relations between Muslims and Jews were later. I think these clauses were written at the same time as the other clauses for these reasons:-

1. *Ibid.*, p. 9.

2. *Ibid.*, p. 10.

3. *Al-Zirakly, al-A'lam*, vol. 5, 2nd ed., 1955. p. 122.

4. *al-Bukhari, Sahih . . .* ' vol. 4, pp. 122; 124-125; *Malik, al-muwatta'*, Cairo, 1951' vol. 2. p. 889; *Abu Da'ud, Sunan*, Cairo, 1952 vol. 1, p. 469.

5. *Serjeant*, p. 8.

6. *Ibid.*, p. 8.

7. *Ibn Hisham, al-sirah . . .* ' vol. 2, p. 17.

8. *Ibid.*, vol, 2 p. 18.

immediately raised a series of formidable new problems.”(1) The evidence which led him to treat the document as eight distinct documents were:-

1. He said, that there is a mention that Ja’far al-Sadiq had had a document, shorter than the constitution of al-Madina, consisting of about thirty clauses, probably documents ‘A’ and ‘B’.(2) But the document of Ja’far al-Sadiq did not reach us, and all our knowledge about it was that it was shorter than the constitution of al-Madina and it contained some rules about; “al-adab wa al - sunan wa ahkam al - halal wa’l haram” (3). Therefore it is difficult to determine if there was a connection between these two documents or not. And if there was, the extent of this connection.

2. He quotes a tradition according to which Anas Ibn Malik said, “The Apostle of God contracted an alliance (*hif*) between Quarish and the Ansar in my house”. (4) He linked this tradition with the remark of Ibn al-Athir that the Prophet made two *hif*s in the house of Anas. (5) And interpreted it to mean that the two *hif*s were documents ‘A’ and ‘B’.(6) This inference is open to criticism:

- a. Anas did not mention the two *hif*s.
- b. Ibn al-Athir, is a late historian and therefore we cannot depend on him alone to prove this point.
- c. There is a tradition, and historical texts to indicate that there was one *hif* in the house of Anas, and that this *hif* was the brotherhood bond. (7)

3. The document declared the centre of Yathrib sacred, *haram*, ‘to the people of his document.’ Profesor Serjeant said that there is a tradition conveyed by al-Samhudi pin—pointing this declaration to a time after

1. *Ibid.*, p. 9.

2. *Ibid.*, p. 6.

3. *Ibid.*, p. 6

4. *Ibid.*, p. 6.

5. *Ibid.*, p. 6

6. *Ibid.*, p. 7.

7. *al-Banna, al-Fath al-Rabbani*, Cairo, 1376, vol. 21, p. 7; *Ibn Kathir al-bidayah wa al-nihayah*, vol. 3, p. 266; *Ibn Sayyid al-Nas*, *Uyun al-athar*, vol. 1, p. 200; *Dahlan, al-sirah al-Nabawiyyah* vol. I. p.392, *al-Halabi, al-sirah*, vol. 2, p.96.

The Prophet proclaimed this document in the first year of the emigration,⁽¹⁾ and possibly after the establishment of the brotherhood bond, because the historians mention it in the course of their writing about the brotherhood.⁽²⁾ This date is not accepted by all writers, because Ibn Hisham the first to record it does not mention its exact date.⁽³⁾ So, some writers consider it was written before the battle of Badr,⁽⁴⁾ while others feel, that it was written afterwards, when the position of the Prophet had become strong. ⁽⁵⁾

In Professor Serjeant's view, this document was originally eight distinct documents, collected into a single one. He considered that two of them containing about thirty clauses out of the total of fifty were written in the first year of the emigration. Those clauses organize relations between the emigrants and the adherents. ⁽⁶⁾ The other six documents were written later at different dates. Professor Serjeant prefaced his view with the remark that, ' ' much of what I have to offer is at present interim and exploratory" .⁽⁷⁾ Then he decides that, "While the division at once resolved the inconsistencies apparent when you regard it as a single document, it

1. See Ibn Sallam, *al-amwal*, PP.206-207; *al-Waqidi Maghazi rasul Allah*, p. 138; *al-Maqrizi, Imta'al-asma*, vol. 1, Cairo, 1941, pp 49-50; *Ibn Sayyid al-Nas, Uyun al-Athar*, Cairo 1365, vol. 1, p. 198; *Ibn Hisham' al-sirah al-nabawiyyah*, vol. 2, 1st ed., Egypt, 1329 A.H., p. 94; *Ibn Kathir, al bidayah wa al-nihayah*, vol. 3, p. 224; *Muir, The life of Mahomet*, London 1878, pp. 193-194; *Gabrieli, A short history of the Arabs*, p. 35; *Saunders, A history of Medieval Islam*, London, 1965, p.26; *Gaudefory-Demombynes, Muslim institutions*, London 1961, p.18; *Zaydan, J., Tarikh al-tamadun al-Islami*, vol. 1, Cairo, p. 57.
2. *Tarikh Ibn Khaldun*, Beirut 1956-59, vol. 2, pp. 740-741; *al-Maqrizi, Imta al-asma*, vol. 1, pp. 49-50; *al-Halabi., al-sirah al-Halabiyah*, Egypt 1329, vol. 2, p. 96; *Dahlan, al-sirah al-nabawiyyah*, vol. 1, p. 392.
3. *Ibn Hisham, al-sirah . . . ' vol. 1, p. 501 .*
4. *Wellhausen, The Arab Kingdom and its fall*, Beirut 1963, p. 11; *Khadduri, M., War and peace in the law of Islam*, Baltimore, 1962, pp. 205-206.
5. *Al-'Ali, Tanzimat al-rasul fi al-Madina*, Baghdad 1963, pp. 2-3.
6. *Serjeant, R. B., The Constitution of Medina*, *Islamic Quarterly*, 1964, vol. 8, p. 9
7. *Ibid.*, p. 4,

THE CONSTITUTION OF AL-MADINA*

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In order to organize relations between the inhabitants of Madina, the Aus, Khazraj, emigrants, and Jews and (Muhammad) the Prophet the ruler of al-Madina, the Prophet proclaimed the document (*al-Sahifah*), which has become known recently as "the constitution of al-Madina". This document was recorded in full by Ibn Hisham in his biography of the Prophet, and by Abu Ubayd al-Qasim Ibn Sallam in his *Kitab al-Amwal*, while some historians and traditionists have transmitted partial quotations, or merely mentioned it. (1)

This document is authentic, and very important for understanding the early period of Islam in the view of historians and recent scholars. (2)

* This is an article taken from my ph.D., thesis: *The Governmental System of the Prophet Muhammad* (University of St. Andrews 1971 p.p. 54-68).

1. *Ibn Hisham, al-sirah . . .*, Cairo 1955, vol. 1, pp. 501-504; *Ibn Sallam, al-Amwal*, Cairo, 1353 A.H., pp. 202-207; *Al-Waqidi, Maghazi rasul Allah*, Cairo, 1948, p. 138, *Ibn Kathir, al-bidayah wa al-nihayah*, Beirut 1966-1967, vol. 3 p.224; *Al-Bukhari, Sahih al-Bukhari*. Egypt, n.d., vol.4, p.224; *Hamidullah, M., Majmu at al-watha iq al-Siyasiyyah*, Cairo, 1956, 2nd ed., pp. 15-21.
2. *Serjeant, R. B., The Consitution of Madina, Islamic Quarterly*, vol 8, 1964, p.3; *Hamidullah, M., The first written constitution of the world, The Islamic Review*, 1941, p. 377; *Gabrieli, F. A., A short history of the Arabs*, London 1965 p. 35; *al-Sharif, al-daulah al-Islamiyyah al-ula*, Cairo 1965, pp. 75-77; *al-Ali, S., Tanzimat al-rasul fi al-Madina*, Baghdad 1963, p.1.