

# THE FIRST WRITTEN CONSTITUTION OF THE WORLD.

An important document of the  
Prophet (ﷺ)'s time.

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NOT to speak of civilized nations, even the savages possess their own fixed rules for government and administration of justice; and even the most autocratic chief finds himself controlled by them.<sup>1</sup> Generally speaking, whenever such rules are collected in writing, they have been called books. The words bible and scripture mean book. The Yasa<sup>2</sup> of *Changiz Khan* also means “book.” (Cf. Modern Turkish, the infinitive *Yazmak*, to write.) Our own Holy Quran has been called “the Book of God.” The *Shu-king*<sup>3</sup> of *Confucius*, too, means “the book.”

Although the rules and regulations of a country can be found in a more or less written form everywhere, yet, in spite of strenuous search, I could not find any instance of the constitution of a country, as distinct from ordinary laws, reduced to writing, before the time of the Holy Prophet Muhammad (ﷺ). True, *Mann*

<sup>1</sup> Grammar of Politics by H.J. Laski.

<sup>2</sup> Masalik of Ibn Fazlul Allah Al-umari MS—Paris.

<sup>3</sup> Confucius et Mencius, by M. G. Pauthier (Paris, 1890), p. 3.

*Smriti* (500 B.C.) mentions the duties of a king and the *Artha Shastra* (Science of Politics) by *Kautilya* (300 B.C.) and the books of *Aristotle*, written about the same time, contain complete treatises on politics. Aristotle described the constitutions of 158<sup>4</sup> of his contemporary city-states in many countries, including India.<sup>5</sup> From among these monographs, only the constitution of Athens has come down to us. It was discovered on papyrus in Egypt just 50 Years ago and was published in the year 1891. It has also been translated into English and other languages. But writings of this kind are either in the nature of text-books or “advice-books” to princes, or are historical accounts of the constitutions of certain places. None of these enjoys the dignity of an authoritative constitution of a state issued by the sovereign of the country.

In the year 1 A.H., i.e., the very first year of the Holy Prophet (ﷺ)’s migration to Madina, he had a deed drawn up in which there was a detailed discussion of the prerogatives and obligations of the ruler as well as of other immediate requirements. Fortunately, the whole of this document, word for word, has been reproduced by *Ibn Ishaq* and *Abu Ubaid* in their respective books and it is some discussion of it that is proposed here.

<sup>4</sup> Aristotle on the Athenian Constitution, by Kenyon, p. xiii, cf. also *Encyclopedia of Social Sciences*, Vol. I, p. 27.

<sup>5</sup> Aristotle, *op. cit.*, p. xv.

This document contains 53 sentences, or, to use legal terminology, sections; and is an invaluable example of the legal language and the manner of document-writing of the time. The importance of it has been felt by the European Christians even more than by the Muslim historians. Besides *Welhausen*, *Mueller*, *Grimme*, *Sprenger*, *Wensinck*, *Caetani*, *Buhl* and others, an English historian, in the course of a short history of the world, has felt it necessary to mention it in considerable detail. It is unnecessary to discuss here the remarks of these German, Dutch, Italian, English and other writers. I just propose to express here my own humble opinion on the question.

Before discussing the contents of the document in question, it is necessary to outline the historical background and the circumstances under which it was prepared and issued.

When the Holy Prophet (ﷺ) started his preaching and reformative work in the Holy City of *Makkah* and proposed a change in the beliefs and practices existing for generations, he first surprised his countrymen, then he was hated and, in the end, he encountered their opposition and hostility. From the very first day, his mission was universal in its nature and the possibility of its spreading immediately and with ease over the whole of the known world, particularly the Iranian and the Roman (Byzantine) empires,

was clearly discernible. The Holy Prophet(ﷺ), in the course of his preachings, used to predict, to the people of material interests, the conquest of these empires.<sup>6</sup> But inasmuch as he was a junior member of a comparatively poorer and weaker clan, it was difficult for him to be accepted as a leader.

The Prophet(ﷺ) had, no doubt, family connections both in *Ta'if*<sup>7</sup> and *Madina*<sup>8</sup> It was expectations on this score that took him first to *Ta'if*, the nearer of the two places; but the difficulties that greeted him there were even greater than those in his native city. At last, after years of persistent efforts during *Hajj* seasons he could secure the adherence of a few people who belonged to no other place than *Madina*. They it was who promised to help and give shelter to him and his Makkahn companions in the event of their migration there.

The state of affairs in *Makkah* had become unbearable. Apart from general hostility, physical persecutions threatened the lives of

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<sup>6</sup> Ibn Hisham, p. 278; c.f., also *Tabaqat of Ibn Sa'd*, Chapter: "Circumstances Before Hijra."

<sup>7</sup> *Ma'arif of Ibn Qutaibah*, p. 43 : *Muntaqa of Abu Nu'aim*, Ch. XX.

<sup>8</sup> Ibn Hisham, pp. 107, 336 and 346; *Tabaqat of Ibn Sa'ad*, 1/1, pp. 34, 45, 46 ; *Ma'arif of Ibn Qutaibah*, "Ahwal Umumabihi" : *Tarikh of Tabari* (ed. Cairo), Vol. 2, pp. 177 - 79, etc.

many among the believers. For this reason the Muslims of *Makkah* began to leave their city for *Madina*. The Makkahns became afraid lest these fugitives might make preparations for a retaliation from outside. Accordingly it was decided to lay siege to the house of the Prophet (ﷺ) and murder him there by night. But Providence willed it otherwise. The Prophet (ﷺ) managed quietly to leave *Makkah* and reached *Madina* safely. In their rage, the Makkahns forcibly took possession of the property and belongings of the Prophet (ﷺ)<sup>9</sup> and other Muslim emigrants.<sup>10</sup> The total number of believers in *Madina*, at this time, including the Makkahn refugees, hardly exceeded a few hundreds, while the total population of *Madina* about this time is estimated at between four to five thousands, to which Jews contributed nearly a half.

*Makkah* enjoyed at that time the status of an organised city-state where there were some 25 public offices concerning different state departments such as the Army, the Revenue, the Temple, the Foreign Affairs, the Administration of Justice and the like. A detailed discussion of these constitutions has been presented in my paper read at the Orientalist Conference at *Trivandrum*.<sup>11</sup> As

<sup>9</sup> Bukhari, Book 64, Chapter 84, Hadith 3.

<sup>10</sup> Ibn Hisham p. 39, also 321-322

<sup>11</sup> Cf. Islamic Culture, July 1938

contrasted with this, *Madina* was almost in a state of anarchy, where tribalism prevailed. If the Arab section of the population was divided into twelve tribes of *Aws* and *Khazraj*, the Jews were divided into the ten tribes of *Banu Nadzir* and *Banu Quraiza*. Dissensions raged among them since generations. Some of the Arabs, having entered into an alliance with some of the Jews, had been on terms of hostility with other Arabs who, in their turn, were similarly allied to some other Jews. These continuous wars had tired both the parties out,<sup>12</sup> And although some there were who were anxious to secure military help from outside tribes such as the Quraish,<sup>13</sup> the peace-loving parties were getting preponderance in the city, and a considerably large section of people had begun to make preparations to install *Abdullah ibn Ubayy ibn Salul* as King. So much so that, according to *Bukhari*,<sup>14</sup> *Ibn Hisham*<sup>15</sup> and others, a crown was already under construction to be worn on this occasion.

<sup>12</sup> Ibn Hisham, p. 287:Tabqat Ibn Sa'ad Vol. 1/1, p. 147:Masnad Ibn Hanbal, Vol. 5, p. 427: Bukhari, Book 63, Ch. 1, 27, 46.

<sup>13</sup> Ibn Hisham, p. 285, 290.

<sup>14</sup> Bukhari, Book 79, ch. 20.

<sup>15</sup> Sirat Ibn Hisham, p. 726 : Tarikh Tabari, European Edition, p. 1511 : Also Holy Quran Ch.63, Verse 8.

True, the Holy Prophet (ﷺ) had appointed at the time of the Pledge of 'Aqaba twelve Muslims to represent him in twelve tribes, one in each, and thus tried to create a centralization of power. But apart from this every tribe had its independent sovereignty and decided its own affairs in its own *saqifa* or shed, and there was no central urban organization in the city. Through the efforts of trained preachers a considerable number of people in the city had accepted Islam in the course of three years. But religion was yet a domestic affair there and had not attained any political status. Persons belonging to different religions used to live in the same house. It was in this situation that the Prophet (ﷺ) came to *Madina*, where the following problems demanded urgent solution :

- (1) Definition of the rights and obligations, his own as well as those of local inhabitants.
- (2) Arrangement for the settlement and livelihood of the Makkahn refugees.
- (3) An understanding with the non-Muslims of the city, particularly the Jews.
- (4) Arrangements for political organization and military defence of the city.
- (5) Compensation for the loss of life and property suffered by the refugees at the hands of the *Quraish* of *Makkah*.

In view of these objects the Holy Prophet, a few months<sup>16</sup> after his flight to *Madina*, had a deed drawn up, which has been referred to as a *kitab* and *sahifa* in the deed itself, and which obviously was written after a consultation with the people concerned. It should be borne in mind that the general laws of the country, meaning the chapters of the Quran, were promptly reduced to writing according as they were promulgated or revealed, but as for his own utterances or instructions, the modest and cautious Prophet had issued a general prohibitory order against their being written down. That the document under discussion was written down in spite of this order is significant— a document which, has been referred to as *kitab* or *sahifa*, meaning a “code of action” or a “chart of duties.” In fact it amounted to a declaration of the city of Madina as a city-state for the first time, and to the laying down of a code for its administration.

*Rousseau, Hobbs* and other political scientists consider social contract between the rulers and the ruled as the beginning of state. A patent and factual example of this is to be found in the Bai‘at (pledge) of '*Aqaba*, in which the people of *Madina* accepted the Prophet as their leader, invited him to come to their country and agreed to obey his orders in weal and woe. This is the reason why the document under discussion was not of the type of a contract but

<sup>16</sup> Ibn Sa‘ad, Vol. 2/1 p. 19 : Kitabul Amwal by Abu Ubaid p. 518.

was issued as a prescription and a proclamation. Thus every one knows that *kitab* means a prescription and a command; for instance, in the Quranic passages such as:

إِنَّ الصَّلَاةَ كَانَتْ عَلَى الْمُؤْمِنِينَ كِتَابًا مَّوْقُوتًا ﴿النساء: ١٠٣﴾

“Verily prayer is a timed ordinance (*kitab*) for the believers.”

Or

كَلَّا إِنَّ كِتَابَ الْأَبْرَارِ لَفِي عِلِّيِّينَ ﴿المطففين: ١٨﴾

“Most surely it has been ordered (*kitab*) about the virtuous that they shall be in the highest places,”

Or

كُتِبَ عَلَيْهِمُ الْقِتَالُ ﴿النساء: ٧٧﴾

“Fighting was enjoined (*kutiba*) on them.”

The word *kitab* has been used in this particular sense in all these citations, The German word “**vorschrift**,” the word “**prescription**” in English, “**Prescipient**” in French, word “**prescrizone**” in Italian and “**prescipcism**” in Spanish, all meaning “command” and “ordinance,” have their root meaning in “writing.”

The Prophet (ﷺ), who was a lover of order and unity, sought the remedy for the centrifugal conditions which prevailed in Arabia in general and in *Madina* in particular, in the motto “one ruler and one law.” The centripetal injunctions of *Zakat* and *Hajj*—which later gave the opportunity to people to be brought to a common control through powers given to the central government to levy and collect taxes and through a pilgrimage to a common *Qibla*—had not yet been received. Still instructions such as faith in One God, obedience to the commands of the same Prophet and observance of the congregational prayers, which so vitally affected their beliefs and actions, had already been in existence. Now this new constitution of the city-state brought with it the very important and—to Arabia—very revolutionary change and improvement, by providing the people with a central public institution for seeking justice in the place of every one seeking it with the power of his own hand or at best of that of his family. This epoch-making innovation has been recorded in that very document, which brought an end for all times, to the chaos of tribalism and which laid the basis for a wider institution, viz., state.

In this document the Holy Prophet (ﷺ) secured for himself the highest judicial, legislative, military and executive powers for himself, but a very important and remarkable difference between

this authority and the autocratic royal authorities of other countries was that materialism had no part to play here. The Holy Prophet (ﷺ) introduced moral elements in politics. He regarded God as the source of authority and considered himself as His messenger and agent; and alongside with this he declared the command and injunctions ordained for the people as equally applicable to his own self. And in view of very many cases of civil and tort nature brought against his holy person in his own lifetime<sup>17</sup>, we can say that Islam rejected the theory that “*the King can do no wrong.*” And since the most powerful man in the state could not violate the laws at will, other officials and the people in general naturally observed them with greater care.

This document has two distinct parts:

In the first part there are twenty-five clauses which were counted as 23 by *Wellhausen*, whose numbering has been followed by all European writers. I have advisedly retained this numbering of 23 clauses, so as not to confuse anyone availing of European materials, with this much of difference that I have divided certain sections into two by the signs (a) and (b) and thus considered the first part of the document to contain 25 clauses.

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<sup>17</sup> Ibn Hisham, p. 444 : *Tarikh Ibn-al Athir* : *Seerat Shami*; Cf. *Islamic Culture*, April 1941, pages 192-95.

The second part runs between clause 24 to 47. But it has to be sub-divided into many sub-clauses. In my count this part really consists of 28 clauses and thus the whole document consists of 53 clauses in all.

The first 23 sections lay down rules affecting the “refugees” and “helpers” (*Ansar*) and the rest of them discuss the rights and obligations of the Jewish tribes of *Madina*. In both of them one sentence has been repeated, to the effect that the last court of appeal will be the Holy Prophet (ﷺ) himself. There is no difficulty in understanding this position in so far as the “refugees” and “helpers” are concerned; but it is not quite so easy for one to understand how the non-believing section of the population could agree to invest a newcomer and a stranger at that time with so much authority within a few months of his arrival. So far as the Madinite Arabs are concerned it may appear to be a somewhat satisfying reply to be told that since tribal organisation prevailed among them hitherto, and since the tribal chiefs had accepted Islam, the younger relatives, although they did not as yet accept the religion of their elders, yet were compelled to follow these latter in what they did otherwise. Due to the peculiar nature of the Arab social system they could not separate themselves from the tribe and even outside their own territory they could not have any security of

life and possession without the help of the rest of the tribe. It has been clearly laid down in the document that the pagan relatives of the Madinite “helpers” could avail of the great centralised strength brought about by the combination of all the tribes of *Madina* in conjunction with the refugees of *Makkah* and others, provided only that in political matters they should create no obstacle in the way of the central government. Thus it has been commanded in the document that idolaters and the followers of the Jewish faith, in these Arab tribes should follow the Muslims and help them in war, and that they should neither themselves give quarter to the lives and property of the *Quraish* of *Makkah* nor should they prevent the Muslims from attacking the same. In other words, these people were given the right of citizenship on condition of their breaking alliance with the *Quraish*, cutting off all connections with them and at best remaining neutral in Muslims’ relationship with them; and they had to agree to this. We also come across statements from the pen of Arab writers purporting that the Arabs of *Madina* had become sick of fratricidal and internecine fightings and were, in their dilemma, prepared to follow a life of peace even by appointing some outside non-party man as their ruler.

So far about the Arab non-Muslims. It does not seem probable that the Jews also accepted the political authority of the Holy Prophet (ﷺ) in those early days. So far as I can see it, the second

part of the document, i.e., the code for the Jews, was an event following the Battle of ***Badr***, which on account of the glorious victory achieved by the Muslims had created an impression on all minds in their favour. The people of *Madina* had repudiated all treaty alliances with the Jews. The Holy Prophet (ﷺ) had made the strength of the Muslims immensely secure through his alliances with such tribes in the neighbourhood of *Madina*, as ***Banu Damra*** and ***Juhaina***.

The Jews were divided into two sections rival to each other. It was not possible for them to live in mutual friendship or to feel safe and secure in their independent isolation. Cut off from all sides they had become friendless and a prey to any and every strong invader. Circumstances such as these obliged them to seek the protective co-operation of the Holy Prophet (ﷺ) while retaining their religious freedom as well as internal autonomy. And as I have just stated, this event could have taken place only after the Battle of ***Badr***, not before that. Although the two parts of document constitute one complete whole, and its text and style also indicate same authorship, and although Muslim historians generally state that this document was written in the beginning of the first year of the ***Hijra***, yet it is also possible that the first part of the document was written in the first year of the ***Hijri*** era, while the second part was added on to it in the second year, after the

Battle of *Badr*. This view of mine is supported by the fact that in *Lisanul-Arab*, whenever there is a reference to this document, it has been given two names, In one place it has been referred to as “the code for the refugees and the helpers” while a little below this, referring to the second part of it, it has been designated as “the code for the Jews.”<sup>18</sup> A more direct evidence on this score is furnished by the fact that Imam *Abu Dawud*, in his *Sunan*<sup>19</sup>, has described this code for the Jews as an event following the Battle of *Badr*.

As has been stated above, there are two distinct parts in this code—one concerns the Muslims and the Arab tribes, while the second the Jews. It will not be out of place to give here a short summary of each.

In the very first clause, a proclamation has been made of the inauguration of an Islamic political unit composed of the refugees of *Makkah* and the helpers of *Madina* and also those others who were willing to take part in wars, under the guidance of and in co-operation with this united body of the Muslims of *Makkah* and *Madina*.

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<sup>18</sup> *Lisanul-Arab*, S.v. RB' (ربع).

<sup>19</sup> *Sunan of Abu Dawud*. Book 19, ch. 21.

It has been further laid down that this political unit will obey the orders issued by Prophet Muhammad (ﷺ), the Messenger of God (Clause 1). In the very last sentence of this part of the document which concerns Muslims, this very principle is repeated, viz., that although the source of all authority is God Himself, yet people will obey the Messenger of God—the Prophet Muhammad (ﷺ); and in all their differences and dissensions will turn to him and regard his verdict in these matters as final (Clause 23). Also that this political unit, in spite of the variegated nature of its internal composition, will be considered as one community (*ummat*), and will hold a distinguished and independent position as compared with the rest of the world, and that all classes of Muslims will have equal rights and obligations— (Clause 2). And feelings of self-respect and righteousness were instilled in their minds in spite of the smallness of number, and weakness and the dangers amidst which they had to live (Clauses 13 and 20). The question of war and peace was regarded as the prerogatives of the central authority, and it was made impossible that some sections should enter into a peace or war while others remain out of it. Military service was made compulsory and everyone was to take equal part in it. When the fighting is actually going on, different detachments will fight and take rest by turns, and it cannot be that a whole battle will be fought by one section alone (Clauses 17 and 18). Although peace and war will be treated as the central question, the right of giving

quarter will, as before, accrue to every one, small or great, and even the promise of protection given by the humblest person will be honoured by the whole community (Clause 15). And thus the principles of brotherhood, equality and freedom of action, were made to play an active part in this political unit. The freedom of giving quarter was circumscribed only by one condition, viz., if any idolatrous Arab wanted to acquire the rights of a subject in this political unit, he would be obliged not to give any quarter to the lives and property of the *Quraish*, nor would he put any obstacle in the way of Muslims causing injury to the lives and property of the *Quraish* in the exercise of their right of belligerency (Clause 20-b). Two events are worth noting in connection with this section. They have been mentioned by *Bukhar*,<sup>20</sup> and they took place before the Battle of *Badr*. In each of these cases a very big Muslim personage had undertaken to protect the property of some members of the *Quraish* on account of his friendly relations with them. True, the prohibition against protection to the *Quraish*, as contained in the clause, was applicable only to the idolatrous subjects, but it is only reasonable that Muslims also should abide by it and, as a matter of fact, even in the absence of any explicit injunction they used to act upon it. Hence it is that in my opinion this section had not found place in the original document, but was appended to it later on either at the conclusion of the Battle of *Badr* when a treaty was

<sup>20</sup> Bukhari, Book 4, Ch. 2 and Book 64, Ch. 2.

concluded with the Jewish tribes, or in the neighbourhood of this time. All the Muslims were required to be helping one another and sharing one another's pain and sorrow in the course of a war (Clause 19). On the question of the administration of justice, while the Prophet (ﷺ) was regarded as the final court of appeal, for the realisation of damages, blood-money, etc., the old system was confirmed and enlarged, to the effect that if anyone become liable to any payment his relations should come to his help. Similarly, if anyone was taken prisoner by the enemy, and was required to pay for his ransom, his tribe should be held responsible for the payment (Clause 4). To keep in line with this arrangement the City was divided into different districts, meant for different tribes, people of each tribe living together in the same locality and away from others. In each district there were a chief, several deputy chiefs and a meeting place called, respectively, *Naqib*, *'Arif* and *Saqifa*. We cannot trace the existence of any district fund. Most probably subscriptions were raised, as needs arose.<sup>21</sup> These communes or ward councils were, to a great extent, autonomous and self-contained.

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<sup>21</sup> But Banu Nadzir, the Jewish tribe, had its clan funds, Thus in Sirat Shami in the course of a discussion on the battle of Sawiq it is written: "Salam ibn Mishkam, who was the head of the tribe of Banu Nadzir and its treasurer, i.e. the keeper of the funds which they used to collect as a provision against hard times and what might befall them."

The helpers (i.e., Madinite Muslims) had already their tribal units and now for legal and social purposes the whole body of refugees (i.e., Makkan Muslim settlers) were regarded as one tribe (Section 3). It was provided that if any district association were not in a position to meet the liabilities of any of its members, it will be incumbent on other associations to lend it a helping hand (Section 12). It was further emphatically laid down that if anyone became an associate member (*Mawali*, sing. *Mawla*) through a legal or contractual bond of fraternity with a regular member of a tribe, such an associate member will have no right to disagree with the original member, whose associate he is [Section 12-b]. It was further enjoined in connection with this order that no member should make anyone his brother-in-alliance (*Mawla*), if he is already in similar alliance with, another member, without the consent of the latter. (*Ibid*, in the variant as reported by *Ibn Hanbal*.) The right of seeking justice was transferred from individuals to the community, i.e., the central authority; and this was a great revolution. And it was ruled that in matters affecting the administration of justice, none will be permitted to take sides or show any favouritism to one's relations or even to try to save one's own son from the course of law, and that all Muslims should give full co-operation in the matter of bringing to book every one who makes any mischief or is on the way to creating one (Section 13). An act of wilful murder was to be avenged by capital punishment.

The heir of the murdered man, however, was given the power of reprieving the capital punishment in lieu of blood-money. Strong prohibition was issued against all interferences with the course of law and justice (Section 21). Although according to *Imam Abu Hanifah*, if a Muslim murders a non-Muslim capital punishment will be given, yet in this document Muslims were advised not to insist on capital punishment nor help any non-Muslim against a Muslim (Clause 14). This persuasion which did not amount to categorical prohibition was perhaps necessary to instil into the Muslim mind a feeling of superiority of faith which is so necessary for a rising nation to do great deeds. Similarly it was forbidden to give shelter or help to any culprit guilty of murder, and it was stated that a person who has been a believer in God and the Day of Judgment and has agreed to obey the orders set forth in this document, if he helped or gave protection to any murderer, would be under the curse and chastisement of God on the Day of Resurrection and would have no escape out of it.

Some among the Helpers(*Ansar*) had accepted the Jewish faith. Particularly among these were those children whose parents had made them Jews in fulfilment of certain vows. There was a special section dealing with such persons, saying that if they were prepared for a subordinate co-operation, they would be given rights of subjects equally with Muslims; they would be given protection

and help, and no manner of oppression would be allowed against them (Clause 16).

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So far we have discussed such matters as are written in the first part of the document and as concern the Arabs of *Madina*. The second part, as I have already said, concerns the Jewish tribes.

It has been discussed above whether this document concerning the Jews was prepared at the same time as the rules relating to the Helpers (*Ansar*) and Immigrants (*Muhajirin*) or after them. In furnishing a brief analysis of this part, I should like to submit that its first section is common to both documents, viz., in the event of a war if a Muslim and a Jew entered into an agreement of conjoint action, each party should bear its own expenses of war. This provision has not only been set forth in Section 24 but has been repeated in Sections 37-a and 38. Perhaps the rather obscure text of Section 45-b means the same thing. The text literally translated will read: "For each party its share the side which faces them"....

على كل اناس حصتهم من جانبهم الذي قبلهم

of which the term "حصتهم" has been quoted by *Abu 'Ubaid* as "حصتهم والنفقة" i.e., its share of expense. Most probably the

reason for this repetition was that in monetary dealings the Jews had a very bad name. It was the unsatisfactory manner of their dealings that had drawn such Quranic denunciations as:

وَمِنْهُمْ مَّنْ إِنْ تَأْمَنَهُ بَدِينَارٍ لَا يُؤَدِّهِ إِلَيْكَ إِلَّا مَا دُمْتَ عَلَيْهِ قَائِمًا ذَلِكَ بِأَنَّهُمْ قَالُوا لَيْسَ عَلَيْنَا فِي الْأُمِّيِّينَ سَبِيلٌ وَيَقُولُونَ عَلَى اللَّهِ الْكَذِبَ وَهُمْ يَعْلَمُونَ ﴿٤٥﴾

﴿٤٥﴾

Among the people of the scripture there is he who, if thou trust him with a dinar (piece of gold); will not return it to thee unless thou keep standing over him. That is because they say: We have no duty to the Gentiles. They speak a lie concerning God knowingly. (3:75.)

When they were responsible for the expenses, it is evident that they had the right to get a share of the booty, as has been clearly narrated by *Abu 'Ubaid* in his comment.<sup>22</sup> The Jews had acknowledged the authority of the Prophet (ﷺ); and also acknowledged his decision as final in every matter of dispute, as has been very clearly stated in Section 42 of the document. But it strikes one as rather strange that despite Section 25 announcing religious freedom and tolerance by the phrase “The Jews following

<sup>22</sup> Kitabul Amwal by Abu Ubaid p. 517 : Rawdzatul Unuf by Suhaily Vol. 2, p. 17.

their own faith and Muslims following their own faith.” in Section 42, the Prophet has been referred to as “Muhammad(ﷺ), Messenger of God” in *Ibn Is’haq’s* version and as “Muhammad(ﷺ) the Prophet” in *Abu ‘Ubaid’s* version, and in Section 47 of *Ibn Is’haq’s* version the phrase “Muhammad(ﷺ) the Prophet” is again used, although it has been dropped in *Abu ‘Ubaid’s* version. It does not seem advisable to ascribe this fact to any possible acceptance by the Jews of the Prophethood of the Prophet(ﷺ). It is safer to conclude that these words are the addition of some respectful scribes of these books of history, for in *Ibn Is’haq’s* version in both places the phrase “Blessings and peace of God be upon him” have been super-added and this does not seem probable to have been done under the instructions of the Prophet. Or maybe the words “*Nabi*”(Prophet) or “*Rasul-Allah*” (Messenger of God) were written under the instructions of the Prophet(ﷺ) and the Jews could not gather courage enough to protest against it in view of the dangerous political and war situation of the time. As for the phrase “blessings and peace of God be upon him.” it appears from *Sirat Ibn Hisham* (p. 992, line 3), that the Prophet(ﷺ) himself used to use it for his own self as a kind of prayer in his sermons and other utterances. But leaving aside this incidental discussion, the Jewish tribes have been mentioned in this document individually and by names, and their rights to equal treatment have been explicitly admitted. The object

of this seems to be to emphasise the fact that the Jews did not join this federal city state of *Madina* as a community and that every tribe entered in the pact as a separate unit. It was due to this fact that when the Muslims went to war against some Jewish tribes or ordered their expulsion from the city of *Madina*, not only that the rest of the tribes remained quiet, but on certain occasions they rendered military help to the Muslims; and this treaty or constitutional Act was not considered as repudiated in so far as other Jewish tribes were concerned, but was regarded as still in force. Thus in this document the people of a tribe and its “*Mawali*” (or clients) have been regarded as jointly responsible for the payment of blood-money; and the Holy Prophet (ﷺ), after the expulsion of *Banu Qainuqa*, had demanded subscriptions from *Banu Nadzir* on one occasion on the strength of the provision made in 25 and 31 of the document.<sup>23</sup> The Jews have been given equal political and cultural rights with the Muslims in the clearest terms (25); and the allies of the Jews, who have been variously called “*Mawali*” “*Batan*” and “*Bitana*” have been given equal status with original Jews in general, in the matter of rights and responsibilities (32, 34, 45 and 46). Of course a protected person cannot extend this protection to another person, without the permission of the protector (41). In reality it was a military alliance

<sup>23</sup> Ibn Hisham, p. 652 : Ibn Sa’ad, Vol. 1, p. 40-41 : Tarikh Tabari ( Printed Europe) p. 1449-50.

which was made with the Jews. Thus in 37, 44 and 45 it has been made quite clear that they shall have to fight against all those people against whom the Muslims will have to fight; and shall be in peace with whomsoever the Muslims may be in peace, and shall take an equal part in the defence of *Madina*; and that the Jews should help the Muslims were the latter attacked by anyone and similarly Muslims should help the Jews if these latter were attacked by anyone. Of course, the Jews would not be obliged to help the Muslims if the latter were involved in any religious war (45). It was also stipulated that joining the forces with the Muslims in an expedition would have to be with the permission of the Prophet (ﷺ) (36-a). The text of this section is a little obscure in its meaning and may also yield the sense that the Jews themselves were not to independently declare war against anyone without the permission of the Prophet (ﷺ). If that is so, it indicates an additional width of political power acquired by the Prophet (ﷺ). It is possible that the *Quraish* of *Makkah* were the people most affected by this important stipulation, as they were deprived of the help of a very important ally, viz., the Jews; for in 43 of the document it has been clearly laid down that the Jews should not give any protection to the *Quraish* or the helpers of the *Quraish*, though unfortunately this stipulation was not honoured in practice, and the Jewish chiefs kept on conspiring with the *Quraish*; and once these intrigues started after the battle of ***Badr***, they did not

stop till the unconditional surrender of *Banu Quraiza*.<sup>24</sup> In any case, peace and war have been regarded as an undisputed central question of this Federation. And the command of the war was obtained by the Prophet (ﷺ) and this was a great political success for him.

The Prophet (ﷺ) did not at all interfere in social and internal affairs and institutions like ransom, blood-money, asylum or quarter, membership of a tribe by treaty agreement and other customs were left untouched (25, 31 and 40). The result of this wise political step was that no one felt the slightest hesitation or embarrassment; and the Jews gladly agreed that the Prophet should discharge the functions of the final court of appeal even for themselves (42). From the records of precedents it appears that in the case of Jews the Prophet used to give judgment according to their personal law. Like the question of peace and war, the administration of justice to Jews also was clearly held up as a central question; and consideration of relationship, etc., was absolutely banned from interfering in matters of justice and the endless chain of vendetta or retaliations and counter-retaliations of olden times was completely put an end to. The acquisition by the

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<sup>24</sup> Ibn Kathir, Bidaya, Vol. 4, p. 6 : Ibn Hisham, p. 681: Torrey, Jewish Foundation of Islam, p. 130.

Prophet (ﷺ) of the supreme judicial authority over the Jews was an additional major political victory for the Muslims. The Jews not only accepted the Prophet as their sovereign but also agreed to regard the city of Madina with the neighbouring regions as a sacred territory (39). *Makkah* was already a sacred land; the sanctity of *Taif* was recognised and maintained in the Treaty of *Taif* in the year 9 *Hijri* (See *Kitab al-Amwal* by Abu 'Ubaid, p. 506). In fact, it was one of the political achievements of the Prophet to have a semi-Arab city like *Madina* recognised by the Jews as a sacred territory. Thus a small town with some twenty wards in it was organised into a city-state; and its small but heterogeneous population was united round one central, elastic and practicable constitution and with their aid a political system was inaugurated in *Madina*, which made that city in later times the headquarters of an extensive and powerful empire, extending over three continents of Asia, Africa and Europe, without any difficulty. There should be no surprise at my referring to the Continent of Europe as well. Long before the days of *Banu Umayya*, in the time of Caliph 'Uthman, in the *Hijri* year 27, Muslim garrisons actually marched into Spain and, in spite of lack of reinforcements, settled down in that country and remained in possession of a part of it, till after a very long time *Tariq* arrived on the scene and completed the

conquest. This event of the reign of ‘*Uthman* has been mentioned by *Tabari*<sup>25</sup> as well as *Gibbon*<sup>26</sup> and, as everybody knows, up to the time of ‘*Uthman*, *Madina* did remain the headquarters of the Caliphate.

There is also the use of the word “***Diin***” in this document. This word simultaneously stands for religion and government both, and it is a fact of such great importance that if we lose sight of it we shall fail to understand the religion and politics of Islam in a proper way.

In 25 there is mention of what has been interpreted recently by some as a recognition of composite nationality by Islam. There is hardly any justification for it. The perusal of the whole constitution will reveal that a federation of the Muslims and non-Muslims of *Madina* was established; and although Jews were given internal autonomy, they did not share in the foreign policy of their newly constituted city-state, and this, in spite of the fact that the Jews formed a majority community at the arrival of the Prophet (ﷺ) in *Madina*. The Jews could not declare or wage war independently;

<sup>25</sup> Tarikh Tabari, p. 2817.

<sup>26</sup> Decline and Fall of Roman Empire-V, p. 555.

they could not join city militia without the permission of the Prophet who was also their supreme court of appeal.



## A Translation of the Constitution of the City-State of Madina in the Time of the Prophet (ﷺ).

[I have tried to make the translation very clear so as not to require any marginal notes for its understanding. The clauses have been numbered, to facilitate easy reference. Since this numbering has been agreed upon and is the same in Germany, Holland, Italy and other places, so whenever I have had to differ I have indicated my difference by subdividing the clause into (a), (b), etc., so as not to interfere with the international numbering.]

In the name of God, the Beneficent and the Merciful.

**(1)** This is a prescript of Muhammad (ﷺ), the Prophet and Messenger of God (to operate) between the faithful and the followers of Islam from among the *Quraish* and the people of *Madina* and those who may be under them, may join them and take part in wars in their company.

(2) They shall constitute a separate political unit (*Ummat*) as distinguished from all the people (of the world).

(3) The emigrants from the *Quraish* shall be (responsible) for their own ward; and shall pay their blood-money in mutual collaboration and shall secure the release of their own prisoners by paying their ransom from themselves, so that the mutual dealings between the believers be in accordance with the principles of goodness and justice.

(4) And *Banu 'Awf* shall be responsible for their own ward and shall pay their blood-money in mutual collaboration, and every group shall secure the release of its own prisoners by paying their ransom from themselves so that the dealings between the believers be in accordance with the principles of goodness and justice.

(5) And *Banu Al-Harith-ibn-Khazraj* shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom from themselves, so that the dealings between the believers be in accordance with the principles of goodness and justice.

(6) And ***Banu Sa'ida*** shall be responsible for their own ward, and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom from themselves, so that the dealings between the believers be in accordance with the principles of goodness and justice.

(7) And ***Banu Jusham*** shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom so that the dealings between the believers be in accordance with the principles of goodness and justice.

(8) And ***Banu an-Najjar*** shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom so that the dealings between the believers be in accordance with the principles of goodness and justice.

(9) And ***Banu 'Amr-ibn-'Awf*** shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom, so that the dealings between the believers be in accordance with the principles of goodness and justice.

(10) And *Banu-al-Nabit* shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom so that the dealings between the believers be in accordance with the principles of goodness and justice.

(11) And *Banu-al-Aws* shall be responsible for their own ward and shall pay their blood-money in mutual collaboration and every group shall secure the release of its own prisoners by paying their ransom, so that the dealings between the believers be in accordance with the principles of goodness and justice.

(12) (a) And the believers shall not leave any one, hard-pressed with debts, without affording him some relief, in order that the dealings between the believers be in accordance with the principles of goodness and justice.

(b) Also no believer shall enter into a contract of clientage with one who is already in such a contract with another believer.

(13) And the hands of pious believers shall be raised against every such person as rises in rebellion or attempts to acquire anything by force or is guilty of any sin or excess or attempts to spread mischief among the believers ; their hands shall be raised all

together against such a person, even if he be a son to any one of them.

**(14)** And no believer shall kill another believer in retaliation for an unbeliever, nor shall he help an unbeliever against a believer.

**(15)** And the protection of God is one. The humblest of them (believers) can, by extending his protection to any one, put the obligation on all; and the believers are brothers to one another as against all the people (of the world).

**(16)** And that those who will obey us among the Jews, will have help and equality. Neither shall they be oppressed nor will any help be given against them.

**(17)** And the peace of the believers shall be one. If there be any war in the way of God, no believer shall be under any peace (with the enemy) apart from other believers, unless it (this peace) be the same and equally binding on all.

**(18)** And all those detachments that will fight on our side will be relieved by turns.

(19) And the believers as a body shall take blood vengeance in the way of God.

(20) (a) And undoubtedly pious believers are the best and in the rightest course.

(b) And that no associator (non-Muslim subject) shall give any protection to the life and property of a *Quraishite*, nor shall he come in the way of any believer in this matter.

(21) And if any one intentionally murders a believer, and it is proved, he shall be killed in retaliation, unless the heir of the murdered person be satisfied with blood-money. And all believers shall actually stand for this ordinance and nothing else shall be proper for them to do.

(22) And it shall not be lawful for any one, who has agreed to carry out the provisions laid down in this code and has affixed his faith in God and the Day of Judgment, to give help or protection to any murderer, and if he gives any help or protection to such a person, God's curse and wrath shall be on him on the Day of Resurrection, and no money or compensation shall be accepted from such a person.

(23) And that whenever you differ about anything, refer it to God and to Muhammad(ﷺ).

(24) And the Jews shall share with the believers the expenses of war so long as they fight in conjunction,

(25) And the Jews of *Banu ‘Awf* shall be considered as one political community (*Ummat*) along with the believers—for the Jews their religion, and for the Muslims theirs, be one client or patron. He, however, who is guilty of oppression or breach of treaty, shall suffer the resultant trouble as also his family, but no one besides.

(26) And the Jews of *Banu-an-Najjar* shall have the same rights as the Jews of *Banu ‘Awf*.

(27) And the Jews of *Banu-al-Harith* shall have the same rights as the Jews of *Banu ‘Awf*.

(28) And the Jews of *Banu Sa‘ida* shall have the same rights as the Jews of *Banu ‘Awf*.

(29) And the Jews of *Banu Jusham* shall have the same rights as the Jews of *Banu 'Awf*.

(30) And the Jews of *Banu al-Aws* shall have the same rights as the Jews of *Banu 'Awf*.

(31) And the Jews of *Banu Tha'laba* shall have the same rights as the Jews of *Banu 'Awf*. Of course, whoever is found guilty of oppression or violation of treaty, shall himself suffer the consequent trouble as also his family, but no one besides.

(32) And *Jafna*, who are a branch of the *Tha'laba* tribe, shall have the same rights as the mother tribes.

(33) And *Banu-ash-Shutaiba* shall have the same rights as the Jews of *Banu 'Awf*; and they shall be faithful to, and not violators of, treaty.

(34) And the *mawlas* (clients) of *Tha'laba* shall have the same rights as those of the original members of it.

(35) And the sub-branches of the Jewish tribes shall have the same rights as the mother tribes.

(36) (a) And that none of them shall go out to fight as a soldier of the Muslim army, without the per-mission of Muhammad(ﷺ).

(b) And no obstruction shall be placed in the way of any one's retaliation for beating or injuries; and whoever sheds blood shall be personally responsible for it as well as his family; or else (i.e., any step beyond this) will be of oppression; and God will be with him who will most faithfully follow this code (sahifdh) in action.

(37) (a) And the Jews shall bear the burden of their expenses and the Muslims theirs.

(b) And if any one fights against the people of this code, their (i.e., of the Jews and Muslims) mutual help shall come into operation, and there shall be friendly counsel and sincere behaviour between them; and faithfulness and no breach of covenant.

(38) And the Jews shall be bearing their own expenses so long as they shall be fighting in conjunction with the believers.

(39) And the Valley of *Yathrib* (*Madina*) shall be a *Haram* (sacred place) for the people of this code.

(40) The clients (*mawla*) shall have the same treatment as the original persons (i.e., persons accepting clientage). He shall neither be harmed nor shall he himself break the covenant.

(41) And no refuge shall be given to any one without the permission of the people of the place (i.e., the refugee shall have no right of giving refuge to others).

(42) And that if any murder or quarrel takes place among the people of this code, from which any trouble may be feared, it shall be referred to God and God's Messenger, Muhammad (ﷺ); and God will be with him who will be most particular about what is written in this code and act on it most faithfully.

(43) The *Quraish* shall be given no protection nor shall they who help them.

(44) And they (i.e., Jews and Muslims) shall have each other's help in the event of any one invading *Yathrib*.

(45) (a) And if they (i.e., the Jews) are invited to any peace, they also shall offer peace and shall be a party to it; and if they invite the believers to some such affairs, it shall be their (Muslims) duty

as well to reciprocate the dealings, excepting that any one makes a religious war.

(b) On every group shall rest the responsibility of (repulsing) the enemy from the place which faces its part of the city.

(46) And the Jews of the tribe of *al-Aws*, clients as well as original members, shall have the same rights as the people of this code: and shall behave sincerely and faithfully towards the latter, not perpetrating any breach of covenant. As one shall sow so shall he reap. And God is with him who will most sincerely and faithfully carry out the provisions of this code.

(47) And this prescript shall not be of any avail to any oppressor or breaker of covenant. And one shall have security whether one goes out to a campaign or remains in *Madina*, or else it will be an oppression and breach of covenant. And God is the Protector of him who performs the obligations with faithfulness and care, as also His Messenger Muhammad (ﷺ).

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For the original text see :

- Sirat of Ibn Hisham, *pp.* 341— 44.
- Sirat of Ibn Ishaq (MS. Paris), fol. 101a.
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- Ibn Kathir, al-Bidayah-wan-Nihaya, Vol. 3, *pp.* 224 —26.

## The First Written Constitution of the World.

“ ... this new constitution ... brought with it very important, and ... to Arabia at least — very revolutionary change and improvement, by providing the people with a central public institution for seeking justice, in place of everyone seeking it with the power of his own hand or, at best, that of his family. This epoch-making innovation ... brought an end for all times to the chaos of tribalism and which laid the basis for a wider institution, viz a State”.

Dr. Muhammad Hamidullah