

**THE EARLIEST DOCUMENTS OF THE MUSLIM STATE :
A LEGAL PHILOSOPHY**

by

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Introduction :

Every ideology like any revealed religion visualize a philosophy. But not every philosophy can be regarded as a legal philosophy. Apparently the word "legal" is very distantly related with philosophy. The legal affairs are always of concrete and specific character, while "philosophy" is mainly a subject of deeper thoughts, ideas and understandings of invisible as well as visible world and life.

Islam being a world religion has its own philosophical fundamentals. But how far Islam is relevant to a particular type of legal philosophy? At present one can talk about the terminologies such as Islamic Economics, Islamic Sociology, Islamic Politics etc. In literature "Islamic philosophy" is not a notion of so frequent discussion or study. "Islamic Law" has been treated as a misnomer and the "Muslim Law" is regarded as the right terminology to be used by the law-makers, judges, jurists, advocates and even by the law students. The reason is very simple. The religious law used by the Muslims can easily be regarded as Muslim Law. As the Muslim law used by the followers of different schools of Jurisprudence are not of same nature and very often even contrasting, so room for the "Islamic Law" does not exist in an existing secular legal system.

A 'fundamentalist' view may argue that the colonial rule over the Muslim Countries downgraded "Islamic Law" to "Muslim Law" making it simply a personal law concerned with marriage and divorce. But the countries, which had never been under the rule of any western colonial empire also failed to prove that Islamic Law is a synonymous of a legal system. While naming 'Islam' as a complete code of life the Muslim rulers and legislators in reality never hesitated to adopt Western legal norms as their own. Injection of the Western legal principles, rules and norms in the legal system of a Muslim country is

simply regarded as a symbol of progress and prosperity. During the reign of colonial empires the Muslim traditionalism could successfully withhold the Westernization process in the legislation of a Muslim country. But in the absence of overt colonialisation, the Western codified law found their justified places in different Muslim countries. The main justification was the convenience of their use in the legal system by the westernized Muslim elites.

The governments of the Muslim countries striving to uphold the Islamic issues and causes very often have been trying to Islamise their legal system. But very rarely they are confident in their understanding of Islamisation of law and legal system. Naming the Quran as their constitution they also agree that the holy Book of Islam is not a law book in any sense of its meaning. Very quickly they turn to the science of fiqh, which can be regarded as a science of discussion of Islamic issues. Academic discussion not necessarily leads to the invention of new rules and norms. Scientific commentaries at best can be regarded as a science of discussion of Islamic issues. Thus fiqh in no way can be treated as source of Islamic law. Even it is not the fundamental source, as the Quran itself is the fundamental source of Islamic Jurisprudence, legal principles, Islamic philosophy and so forth. Hadith being the secondary source serves the same purpose. But what about legal philosophy?

Conventionally speaking religion is mainly a precept of moral conduct of the followers of concerned religion. As the issues of religious beliefs and norms determine predominantly a relation between the Creator Almighty and the followers of a particular religion, *so tenets of Islam serve not as the codified laws but the philosophical basis of Islamic law. Not all the fundamentals of Islam can be treated as the basis of legal philosophy of Islam. The notions related to the issues and affairs of legal importance are the main concern of legal philosophy.*

The most important utility of law is its ability to determine the rights and duties of various interest groups and individual in the different states of life. After the determination of specific rights and duties in different situation, the law demonstrate its capability to settle the

disputes and conflicts of interest. In this perspective of law the foundation of legal philosophy is far narrower than the philosophy itself. Similarly the room for legal philosophy in Islam is also narrower than the Islamic philosophy.

The experiences of the first Islamic state in Medinah during the Phophet's time can be treated as the foundation of the Islamic legal philosophy. How far Medinah, a city-state, could provide ideas, thoughts and value-system to be considered as a definite legal philosophy? What are the historical documents of the Muslims to be considered as the foundation of legal philosophy? What are the major teachings of the Islamic legal philosophy? What were the implications of legal philosophy in the formative stage of Muslim rule? Are those lessons relevant to the modern Muslim states? These are the major issues to be dealt with in this paper. For this purpose a detailed study of the texts of the Medinah Charter, Treaty of Al-Hudaybiyah and the last Hajj Sermon of the prophet of Islam would be undertaken in the paper.

The Medinah Charter

a) A Treaty or a Constitution :

The Medinah Charter is regarded as the constitution of the city-state of Medinah. Many Western and Muslim authors identify this historical document as the first written constitution followed by the state authorities. But in terms of a treaty it is an outcome of the agreements among the clans of Medinah. Whether the Medinah Charter, a treaty, is not a fundamental question. The major questions regarding the Medinah Charter are : why it should be regarded as the first written constitution of a state? Why the Greek civilization or the legacy of the Greek statehood failed to produce such a written state-constitution? Whether the Medinah Charter could satisfy the criterion of a state-constitution? How far the power struggle among the major clans of Medinah was reflected in the document? And finally, how seriously the document could see its realization in the socio-political affairs of Medinah.

It is of great importance to know the socio-political situation of Medinah prior to the migration of the Muslims to Medinah. It is a well established historical fact that the prophet of Islam arrived at Medinah in September, 622 A.D. How he found the clans of Medinah? "For many years before the Hijrah — traditionally for over a hundred, but according to existing records for only fifty years or so... there had been a series of feuds and battles, gradually increasing in numbers involved and in ferocity."¹ What were the reasons of such feuds? What were the motives of feuding clans? Did the feuds bear political or economic character? It would be difficult to reach a consensus of opinion regarding the causes or motives of such feuds. But there is no doubt that there had been nomadic blood-feuds having fatal consequences to the inhabitants of Medinah. Against this backdrop there was a crave for peace in the hearts and minds of the ordinary people of the city. The very fact that the prophet and his companions were invited by the Ansars of Medinah proves that they had been searching for peace and tranquillity in their city. *The Muslims became the most active party to the Medinah charter. The Emigrant Muslims and the Ansar-Muslims forgetting their tribal or clan identity used their religious identity. It was completely a new phenomenon in the then entire Arabia.* What did prompt the Muslims to be a party to the constitutional rule of the city-state of Medinah?

Generally speaking constitution is the fundamental law of an institution. A state-constitution can be termed as the supreme law of a concerned state. In the annal of political history the Greeks are probably the first to quest for a fundamental legal document to govern a state. In fact the stronger Greek city-states adopted a sort of unwritten constitution. In the Arabian peninsula the concept of a state-constitution was entirely unknown. The revealed text of the Quran had been creating an opportunity to have a written document to be followed by the Muslims.

1. Montgomery Walt, *Muhammad at Medinah*, Oxford University Press, 1988. p. 155.

By 622 A. D. a large portion of the Quran had already been revealed. Many of its parts had already been written in different forms. *But neither the prophet nor the Muslims insisted on the incorporation of the Quranic verses in the Medinah Charter.* Apparently they were least concerned about their own religious principles in the process of reaching general agreements facilitating to put to an end to the clan-feuding. In modern terms a state-constitution describe the governmental structure and power-sharing system of the country. Looking to the issue differently, one can state that the "Constitutions have been equated with contracts and have been characterized as agreements between people and their governors that protect the former from the latter by making governors and governed subject to the same rule of law." ² in Medinah the clan chiefs held the absolute power over their own people. But because of continuous clan-feuding their power also had been undermined. In fact state authorities were completely absent in the city. Objectively the Medinians were suppose to understand the necessity of a fundamental law to be obeyed by all clans. But subjective consideration did not allow them to understand how to reach an agreement, which could bind all the clans.

The Muslims under the leadership of their prophet chalked out a formula. The major achievement of the Medinah Charter was that all the clans agreed to be a party to the agreement. It was not an agreement between governors and governed. It was a contract among the clan-chiefs that every clan would be ruled by its clan-leader according to the customs of the concerned clan. Accepting Islam the Muslims had been losing their clan peculiarities ; so their community could not be regarded as a clan in traditional Arabian sense. The clan identity is based on blood-relationship, while religious identity is based on faith. The Muslim religious identity, going across the feuding clans was something unimaginable in the then Arabia. Not only conceptually, but also practically the Arabs

2. Lawrence Ziring, "Constitutionalism and the Quran in the Final Decads of he 20th Century". In : *Journal Institute of Minority Affairs*, Vol. 9, No. 2, London 1988 p. 223.

hardly could think of an identity having given up their blood-relationship as a matter of secondary importance.

In reality the emigrant-Muslims of Mekkah and the Ansar-Muslims of Medinah constituted a group of people having their own leader, religious customs and norms to be followed. Thus they as a group of people or same category also became a party to the contracts or agreements named the Medinah Charter.

The Medinah Charter on its part could fulfil some basic characteristics of a state-constitution. Being a constitution of a city-state of seventh century, it can not of course claim to be a match for modern era. But its quality superseded all the previously known sources and standards because all previous sources were not preserved in a form of written documents and the parameters of a state-constitution were then unknown, so the claim of Medinah Charter being the first written constitution ever produced by human civilization, remains unchallenged. But the Charter itself provided some unique criteria to us as the essentials of a statehood and the ruling principles of a state. From this point of view, the Medinah Charter can be regarded as the predecessor of the Magna Charta for a Muslim State. Like Magna Charta many of the principle of the Medinah Charter can not be used directly as constitutional principal or norms, but those would serve as the orientation in dissolving the constitutional problems. "Today few provisions of Magan Charta remain on the statute book. Its historical and symbolic value is greater than its current legal force".³ *But the Medinah Charter bears not only historical or symbolic value, it is a document of constitutional importance for every state pursuing a policy of peaceful co-existence with other states, nations and religions.*

b) The Territorial Integrity of Medinah

Nomadic life can not create a state. Feuding clans could never been sure of their destination regarding their territorial disposition. Everything depended upon the physical might of the clans and their

3. E. C. S. Wade, A.W. Bradley, *Constitutional and Administrative Law*, Longman Group U.K., Ltd., 1985, p. 14.

war-fortunes. *But the Medinah Charter for the first time in article 39 clearly declares that "The valley of Yathrib is sacred for the people of this document."*⁴ This article presents the valley of Yathrib as a territory of the city state of Medinah. The territory being an essential element of a state gets proper treatment.

Merely possession of a territory by a group of people is not sufficient to create a statehood; protection of the occupied land surface is more important. Protection of air space was not a relevant issue for the territorial integrity at that time. Defence of sea shore was not a question of reality for Medinah either. For the protection of the integrity of Medinah a formal agreement among the clans regarding the safety of the inhabitants was not enough. At the time of intervention from outside an utmost effort on the behalf of all clans was needed to protect the city. The article 44 clearly stipulates : *"Between them (the people of this document) is help against whoever suddenly attacks Yathrib".*⁵ *Thus protection of Medinah was regarded as a collective responsibility of all citizens of the state: Muslims, Christians and Jews. Irrespective of their beliefs they promised to up hold the interests of the city stats of Medinah.*

Nationhood and Citizenship of Medinah

By the time of the emergence of Islam, the Arabs already could treat themselves as a nation. *But Islam initially appeared to be a threat to the Arab nationhood.* After the migration of the Muslims from Mekkah to Medinah, the Arabs of Mekkah quickly got united to challenge the emerging Muslim political power of Medinah. *The Muslims making their tribal or national identity as a matter of secondary affairs and giving utmost importance to their new faith and religious precepts: appeared to be a challenge both to the nationalist Arabs and Jews they promised to uphold the interests of the city state of Medinah.*

Apart from all big or small Arab clans all the Jew clans also became a party to the Charter. Articles 3 to 10 mentioned the names of bigger and stronger clans and specifically declare their responsibilities.

4. Article 39, The Medinah Charter.

5. Article 44, The Medinah Charter.

The articles 25 to 31 dealt with the Jews of different clans. The basis of Jewish identity was of a similar kind with that of Muslim. In the charter it was reflected very clearly. "To the Jews their religion (din) and to the Muslims their religion."⁶ This is the Quranic teaching as well as a constitutional principle of modern time. But in the charter it was in a very rudimentary form dealing with the relationship between Muslims and Jews.

The reality of Medinah demanded a fair stipulation of such principle in the Charter and the Charter unequivocally declared it. It was a difficult task to make all sub-clans also a party to the Charter. But the Charter finishing its task with the bigger clans and making Jews a party to it tried to deal with smaller clans as well. The article 31 deals with the Jew of Banu Tha' labah and gives them a status similar to the Jew of Banu-Awf, a very reputed clan. Immediately article 32 declares that the "Jafnah, a sub-division (batn) of Tha' labah, are like them".⁷ The Charter is very meticulous regarding other Jews i.e. article 35 which states that "the bitanah of (particular) Jews are as themselves".⁸ The literally meaning of the word 'bitnah' is obscure. Why should a Jewish identity be obscured? Unequivocal answer may not be found. But as a whole by the advent of Islam, as a religion Judaism lost its dynamism and for some Jews their tribal identity might appear strongly than their religious faith or adherence to the Jewish rituals. In the case of Jews both their clan and religious loyalties were respected by the Charter and that is why we find separate treatment of the issues. The people those who lacked such identities or loyalties also were not ignored. The article 34 states that "the clients of Jha 'labah are like them".⁹

6. This Constitutional Principle was derived from the Quranic lesson : "Unto you your religion, and unto me by religion" (Quran 109 : 6). The article 25 of the Medinah Charter simply applied here the general principle to a particular case, the issue of the Jews.

7. Article 32, The Medinah Charter.

8. Article 35, Ibid.

9. Article 34, Ibid.

Thus one can observe that all the inhabitants of Medinah received the citizenship of the first Muslim city state. The concept of foreigner was not forgotten by the Charter. The article 40 stipulates that "the protected neighbour (Jar) is as the man himself so long as he does no harm and does not act treacherously."¹⁰ The article keeps provision for the foreigners to live in Medinah under the protection of any party to the Charter. As an individual citizen no one is a party to the Charter directly, so only the clans, sub-clans or the Muslims collectively could provide protection to the people other than the citizens.

The Issues of War and peace

After the migration of the Muslims to Medinah, the issues of war and peace became more relevant than ever before. The non-Muslims could not tolerate a prosperous Muslim community in Mekkah. Hence they were not inclined to tolerate the Muslims as a leading party in Medinah. *The main architect of the Medinah Charter, the prophet of Islam, was so careful in using terms and words that in most of the articles the very word Muslim was not used. Instead of 'Muslim' the word 'believer' was used. This was not only a matter of the projection of theoretical liberalism of Islam it was also a historical necessity. Respecting to this historical demand for peace, the Muslims in fact paved the ways to embrace more and more non-Muslims in the orbit of their religion. By preaching Islamic ideology they did not put others in overt hostility.*

The Muslims were quite aware of the fact that the non-Muslims of Mekkah could attack Medinah at any time and the Muslim alone might find it difficult to resist them. The Medinah charter did stipulate to fight jointly against any invader. It a provision propagates the necessity of mutual co-operation in the war fronts. But in the case of united war efforts who would bear the expenses? The article 24 and 38 clearly declare that "the Jews bear expenses along with the believers so

10. Article 40, Ibid.

long as they continue at war."¹¹ It means that with the exception of the Jews if the entire population would accept Islam, in that case also both the communities would bear the war expenses.

The Charter could foresee the difficulties in implementing such a provision. And in the articles 25 and 31 provisions had been made to make accountable those who might indulge in the acts of treason. Unless one acts treacherously he deserve all sorts of protection. Maintenance of peace gets the highest priority. Article 16 says "Whoever of the Jews follows us has the (same) help and support (nasr, iswah) (as the believers), so long as they are not wronged (by him) and he does not help (others) against them."¹²

The articles 15 to 20 deal with the issues of peace and security, taking them as an integrated whole. Peace and security could not be divided. The Muslims of one particular clan can not make a peace treaty with other without the consent of the entire community of the Muslims. The logic is simple. The Muslims are a single community (Ummah) and the peace, is a comprehensive whole, so the Ummah has to accept the peace in a synchronized manner. The article 17 states that "the peace (silm) of the believers is one; no believer makes peace apart from another believer, where there is fighting in the way of God, except in so far as equality and justice between them (is maintained)".¹³

Here fighting in the way of Allah and maintenance of equality and justice are not in conflict. Equality and justice is the main thing to be achieved in the process of fighting in the way of Allah. *A war or battle not persuing the issues of equality and justice can be regarded as a holy war (jihad). In other words, in the name of jihad no bloodshed is allowed unless it is the last resort to achieve peace.*

11. The principle makes the Jews an active party to the security affairs of the emerging Muslim State, which guaranteed their full religious freedom.

12. Article 16, The Medinah Charter.

13. Article 17, Ibid.

Peace, security, justice and equality are the concepts of similar and prominent importance for every constitution. The Medinah Charter not only stipulated some positive principles, but also was cautious regarding the negative phenomena of the city. Unknown or foreign elements might be serious threat to the congenial atmosphere of the city. That is why in article 20 it is stated categorically : "No idolater (Mushrik) gives neighbourly protection (Yujir) for goods or person to Quraysh, nor intervenes in his (a Qurashi's) favour against a believer".¹⁴ In fact the Quraysh was the main threat to the Medinah as well as to the Muslims. *The Medinah charter very skillfully integrated the interests of the Muslims and the city-state of Medinah.*

Principles of the Law of Crimes

A law being unsuccessful in handling the criminal offences can become absolutely obsolete. In those days offence hardly knew any division between civil and criminal. Before the advent of Islam, the Arabian peninsula did not know any method of differentiating between individual and collective offenses. For almost all individual offenses the entire family or the clan was held liable.

The charter taking treason as the most heinous crime states that the criminals are individually responsible for the crimes and the punishment would bring evil only on himself and his household.¹⁵ Such an individualistic approach to the criminals was completely a new phenomenon in the then entire Arab World. The Charter as a whole make this principle applicable to all sorts of crimes. The last article of the Charter starts with a provisions : "A person acquiring (guilt) acquires it only against himself."¹⁶

In the case of execution the approach was completely individualistic, but in a case of payment of ransom such an approach may hinder the justice. Payment of blood-money system was an ancient form of

14. Article 20, Ibid.

15. Article 25 and 31 Ibid.

16. Article 47, Ibid. This article established the principle of criminal law allowing persecution only for one's own acts.

Justice to the victims. The Charter retains this system. The article no 2 says that the emigrants of Quraysh pay the blood-money among themselves according to their former condition. The articles 3-10 provide the provisions to the major clans of Medinah to maintain their previous blood-money system. It appears that such a system of joint liability contradict to the principle of individualistic approach. But possibly the Charter could not help it, as all the clans agreed to conduct it that way. Still article 21 tries to change the essence of the system of payment as ransoms for a committed murder. It says: "When anyone wrongfully kills a believer, the evidence being clear, then he is liable to be killed in retaliation for him, unless the representative of the murdered man is satisfied (with a payment). The believers are against him (the murderer) entirely; nothing is permissible to them except to oppose him."¹⁷ Thus the treatment of the murderer is completely individualistic and the crime is regarded as an offence to the entire community. Murderer may be a wishful killer or he may wrongfully kills someone. In the second case intention of murder is absent and for the interests of the living victims a payment of ransoms is allowed. Moreover, as a whole it is not a general principle rather an exception to the general rule.

The Medinan Charter : Status of the head of the State

The Medinah Charter does not tell anything explicitly regarding the powers and functions of the head of the state and government. In fact the Charter does not distinguish the state from government and does not declare anyone as the head of the Medinah state or its government. But for the Muslims their prophet was not only a spiritual leader, but also a political leader, who along with his divine power also exercised temporal power. In fact all sorts of legislative, executive and judicial functions were incorporated in the prophethood of Islam. For the Muslims after Allah he was the ultimate source of all powers. The Medinah charter was accepted as a constitution of the entire population of Medinah; power and functions of Muhammad (SM), as a prophet of Islam were not fully reflected in it. But his pioneering role

17. Article 21, The Medinah Charter.

in establishing a city-state was not forgotten. The article 42 of the Charter says : "Whenever among the people of this document there occurs any incident (disturbance) or quarrel from which disaster for it (the people) is to be feared, it is to be referred to God and to Muhammad, the Messenger of God."¹⁸

This is the article, which in fact made the Charter a full state-constitution. The Medinah Charter making him a sort of chief arbiter of the city gives him a status of chief executive and Justice. But it was very risky job. No clan-leader was even interested in bearing so heavy burden. Thus the Medinah Charter did not curtail the power held by the Medinian clan-chiefs. The state affairs of Medinah, specially in the early period show: "How the Medinah clan-chiefs retained much of their power and thereby limited Muhammad's authority."¹⁹ Ibn- Ubayy had been speeding calumny to Aysha's (wife of the Prophet) chastity and the prophet did not take any action against him. *In many other instances prophet was reluctant to punish the non-Muslim citizens of Medinah. On the other hand, the Prophet takes his constitutional position very similar to the ideal of *primes inter pares*. In no way he wanted to challenge the power of clan-leaders. In the case of disputes the prophet preferred the involvement of the clan-chiefs up to the extent that they could take decisions compatible with their own customs and traditions, specially in the cases where judgement determine some punishment.*

The practical ruling system rarely shows the implementation of article 42, as if the referring of disputes to the Muhammad (SM) meant only for the Muslims. In fact the able leadership of the Prophet could foresee a Muslim state in Medinah. Not the political power but the wisdom and talent of the prophet brought for him a wide reputation. *In fact in Mekkah he could capture political power, if he wished to do so. In Medinah also he was not running after political power. He had been projecting the superiority of his religious rules and norms in a peaceful atmosphere. In a conflicting situation or in a continuous*

18. Article 42, Ibid.

19. W. Montgomery Watt. *Muhammad at Medinah*, Ibid. P. 229.

clan-feuding atmosphere it is very difficult to prove the strength of a value-system. Moreover, by nature the prophet was a man of amiable character. Even the renowned non-Muslim author *W. Montgomery Watt* explaining the rule of the prophet in Medinah writes : "He is very far, however, from being autocratic ruler of Medinah. He is merely one among a number of important men. During his first year in Medinah several other were probably more influential than Muhammad. The provision that disputes were to be referred to him would not in itself increase his power unless he had sufficient tact and diplomacy to find a settlement that would command general agreement."²⁰ Thus we can see though the Charter itself referred to a nominal executive, but several years' of peaceful ruling made the institution so strong that in prophet Muhammad (SM) surprisingly enough it blends all religious and temporal powers. In other words his spiritual and political leadership had been established thoroughly and conclusively.

In the absence of the article 42 the entire Medinah Charter may fall short to be regarded as a constitution. On the other hand, the state of Medinah might not come into being without its slow and steady implementation. Strong single leadership of a modern state is a very common phenomenon. But it was unthinkable for the seventh century's Arab world that a single leadership could emerge there. The Medinah Charter played its unique role in consolidating Muslim political power not only in Medinah, but also in spreading Islam far beyond Medinah. "This study of text constitution, however, is sufficient to justify the use of it as a source for the ideas underlying the Islamic state in the early... formative years."²¹ As it is not only the first written constitution, which the humanity inherited, it is also the first constitution of the first Muslim state headed by the prophet of Islam. So its teaching is phenomenal for the entire Muslim world for all the future generations to come. *It can serve as a source of constitutionalism of the entire Muslim world and can provide some invaluable suggestions to the minority communities of the Muslims and non-Muslims alike.*

20. Ibid. pp. 228-229.

21. Ibid. p. 228.

MUHAMMAD (SM) AND THE OPPOSITION PARTIES IN MEDINAH

a) The rules of the battles of Badr and Uhud.

As the chief executive of the city-state of Medinah, Muhammad (sm) had to look after its security. The non-Muslims of Mekkah were the main threat to the independence of the city. Muhammad (sm) kept a close eye on the movements of the Quraysh. Collection of information of the Quraysh was not only a difficult job, but also a risky one. Sitting at Medinah it was impossible to know the real affairs of the Mekkans. Expeditions organized by the prophet was very successful in collecting information.

In March 624 A.D. Muhammad (sm) organized an expedition towards Badr. "The Muslims certainly did not expect a conflict when they set out".²² It is hard to believe that the organizer himself was not aware about the possibility of any conflict. Unlike the previous expeditions the prophet did not hide the name of the place of this expedition. Moreover, "The prophet gave the Ansar, the men of Al-Madinah, whose oath of allegiance had not included fighting in the field, the chance of returning if they wished."²³ According to Medinah Charter the non-Muslim's mere responsibility was to help the Muslims in organizing the defence of the city. More importantly their duties were confined within the Medinan territory. None of the Medinah tribes pledge to any battle outside the city. But the prophet could apprehend the danger of battle and its consequence on the Ansars of Medinah. The holy Quran itself hinted the danger of battle and encouraged the Muslims by the following verse : "And when Allah promised you one of the two parties (the army or the caravan) that it should be yours, and belonged that other than the armed one might be yours. "²⁴

22. Ibid. p. 11.

23. Marmaduke Pickthall, the *Holy Quran, English Translation*, (First printed in 1930), Karachi, 1975, p. 108.

24. Quran, 8 : 7.

From the site of Badr the prophet left with only three hundred and thirteen men. The proportion of Ansar-Muslims still was much higher than the emigrant Muslims. Some sources say that the number of emigrant Muslims were 86. After three days' of hard travel in desert the Muslims were tired. Moreover, they were ill armed and roughly equipped. On the other hand, the Muslim army was outnumbered by Qurahsh soldiers by three folds and was much better mounted and equipped.²⁵ Obviously non-Muslim leaders counted on an easy victory. For many historians it remains mysterious how the Muslims could win in such an unequal war. Many factors may explain the reason of the victory of the Muslims. Occupation of the strategically important place under the abled and foresighted leadership of Muhammad (sm) can be treated as the prime cause of victory of the Muslims. It is hardly believable that the farmers of Medinah were markedly superior fighters than the trained soldiers and merchants of Mekkah. Whatever may be the reasons of the defeat of the Quraysh, the consequence of the battle was very alarming for the enemies of Muslims in Mekkah.

"The loss of trained men was a disaster of the first magnitude for Mekkah. In Medinah itself the victory considerably strengthened Muhammad (sm) position. The most important result of the battle, however, was the deepening of the faith of Muhammad (sm) himself and his closest companions in his prophetic vocation."²⁶

Muhammad (sm) earned reputation not only as a leader of the Muslims, but also as the head of the city-state of Medinah. Usayed B. Al-Hudayr, one of the influential early converts who did not join Muhammad (sm) at Badr apologized to the Muslims and expressed his whole hearted support to Muhammad (sm).

All the clans of Medinah are now convinced that without a prior approval of Muhammad (sm) no bloodshed is possible in Medinah. Individual killings no more could be used as a pretext for clan blood feud. Internally the entire socio-political atmosphere was then much

25. Marmaduke Pickthall, *Ibid.* p. 108.

26. W. Montgomery Watt. *Ibid.* pp. 14-15.

more favourable for Muhammad (sm). But the Quraysh took the defeat seriously and got prepared for a knock-out blow to the emerging political strength of the Muslims.²⁷

The Muslims got only one year to face the challenge of the Mekkans. On Thursday, 21 March, 625 A.D., the Mekkans camped to the north of Medinah near Uhud. "Almost at once a scout brought Muhammad exact information about their strength."²⁸ The prophet involved the influential figures of Medinah in discussion to formulate major strategy of protection of the city. *This time again Muhammad (sm) was reluctant to face the Mekkah at the doorstep of the city. He was faithful to the Medinah Charter, which declared the valley of Yathrib a sacred place.*²⁹

According to the article 44 of the Charter every inhabitant of Medinah was duty-bound to fight the Mekkans in case of their invasion of Medinah. But the prophet decided to face the Mekkan army near the camp. The Muslims were defeated as the strategy designed by their leader was not followed properly in the battle field. Still the battle of Uhad was not a great military disaster for the Muslims. The enemies of the Muslims counted sixty five dead bodies, out of which only three were emigrant Muslims.

The Siege of Medinah

Historically the siege of Medinah is known to the Muslims as the battle of khondoq or Trench. It began on 31 March, 627 A. D. and lasted about for a fortnight. "It was the supreme effort of the Mekkans to break Muhammad's power".³⁰ Success of the Mekkans meant a total destruction of the Muslim State of Medinah and could also lead partial destruction of the city itself. The Mekkans collected about 10,000 men for this invasion. The Quraysh and their closer allies

27. Ibid. p. 181.

28. Ibid. p. 21

29. Article 37 of the Medinah Charter stipulated this constitutional principle.

30. W. Montgomery Walt. Ibid. p. 36.

constituted one army of 4,000 men. Other tribes supplied 6000 men divided into two armies. On the other hand, Muhammad (sm) could count on about 3000 Medinans. It means by the time of siege the main-stream of population of Medinah whole heartedly accepted the leadership of the prophet. But the Jewish tribe of Medinah did not join the army of Muhammad (SM) to protect the city.

The main strategy of the Medinan army was to avoid a face to face battle with the Mekkans, who were desperate this time to destroy the city ruled by their arch rival, Muhammad (sm). The prophet on his part had been trying to chalk out a plan, completely unfamiliar with the enemies. This time the Mekkans studied all the probable alternative plans, while Muslims had started to use the wisdom of non-Arabs as well. After intensive discussion, a new strategy for defence hitherto unknown in Arabia was adopted. As Medinah lay open to cavalry attack, the Muslims dug a trench, *khandoq*, an obstruction to the Quraysh army. "The idea might have come from Persia, and the Persian convert Salman is credited with an important share in the detailed planning".³¹ The plan was so convincing to the Muslims that with a great enthusiasm they completed digging the trench within six days.

Like the battles of Badr and Uhud the prophet himself commanded the Muslim army. This time his headquarter was established on mount Sal. The trench surprised the Mekkans, who had been trying to cross it with little success. On one occasion a few horsemen crossed the trench and two of them were killed by the Muslims. Their attempts to attack the city from South and North also could not bring any success to them. The Mekkans were demoralized up to the level that they were about to give up any hope for success of their mission. Moreover, a stormy wind compelled the besiegers to withdraw their army. It was a humiliating defeat to the Mekkans. But the casualties were minimum. Six of the Muslims and three of the Mekkans were reported to be killed. The most important outcome of the siege of Medinah was a clear testimony to all that the leadership of Muhammad

31. *Ibid.* pp. 36-37.

(sm) was unwinnable. It is clear that not the strength of army, but his wisdom brought the success to the Muslims, who already could claim their legitimate political power in Medinah. The Medinah turned into a Muslim city-state, which now fulfills both the aspects of Sovereignty : internal and external.

The sovereign power held by Muhammad (sm) was not a titular or formal one. His power was all pervading in the city in regard to both religion and secular affairs. Even the non-Muslim authors with some reservation acknowledged the fact that the absolute power earned by Muhammad (sm) was not of military in character. "On the military side, the reason for the Mekkan failure was the superior strategy of Muhammad and probably also his superior information service and secret agents."³² In course of the projection of his superiority in military and civil affairs Muhammad (sm) showed his ability to incorporate new ideas and thought of all inhabitants of Medinah. In this consideration his popular base was so wide that one can easily observe direct link between his political power and public opinion. His rule can be characterized as an introduction of popular sovereignty.

Sovereignty of God and popular Sovereignty seem to be organically and functionally combined in the absolute leadership of Muhammad (sm). In fact his prophecy and political leadership was also inseparable. The mission was ingrained with all sorts of peaceful efforts. An objective analysis is bound to prove that his war efforts were merely of defensive character. But in every battle his total or partial victory overshadowed his efforts as a peace-maker. It is the non-Muslims of Mekkah, who were not familiar with any peace treaty. But the Medinah Charter educated the Muslims and non-Muslims of Medinah with the lessons of agreements for peace.

The security of Medinah and the Jewish Tribes

Among the Jewish tribes three were prominent : the Qurayzan, Nazir and Qaynuqa. According to Medinah Charter the Jewish tribes were bound to bear responsibility and financial burden for the defence of

32. Ibid. p. 37.

the city. But in every war effort they kept themselves aloof in a concerted manner.

It is not clearly known when Muhammad (sm) started to approach to the Jews. Some sources say that even before his arrival in Medinah he approached the Jewish tribe in search of his peace mission.³³ Muhammad (sm) tried to convince the Jewish tribes that his source of revelation was not something new. In fact the Jews were aware of that, but they thought that the last prophet also would be selected from the Jews. Initially the Jews were not overtly hostile to the mission of Muhammad (sm), though a very few Jews accepted Islam. But some of them were not worried about the prophet. The holy Quran itself gives some message regarding these people by saying :

"They are not all alike. Of the people of the Scripture there is a staunch community who recite the revelations of Allah in the night season, falling prostrate (before him)".³⁴

Thus there is no reason of hostility on the prophet's part to the Jewish tribes on the matters of faith or religion. But they became jealous to the increased prestige of Muhammad (sm) as a political Leader. In fact, they challenged his leadership in various ways starting from the rejections of his plans to protect the city up to the secret collaboration with the Mekkans. "The great majority of the Jews not merely accept Muhammad (sm) but became increasingly hostile".³⁵

Neither the prophet nor the holy Quran outrightly rejected the Jewish entire religious belief and traditions. Initially Muslims also took Jerusalem as their Qiblah. In rituals also Medinan Muslims maintained some similarities with the Jews. Friday's prayers and fasting of the days of Ashura of the Muslims distantly related with the original Jewish system of prayer. The Holy Quran makes the Muslims so liberal that the Muslims are permitted to eat the food of the people of

33. See for details. Ibid. p. 195.

34. Quran, 3 : 113.

35. W. Montgomery Walt. p. 197.

the books and to marry girls from them.³⁶ But political hostility of the Jews to Muhammad (sm) turned into a religious one. The Jews failed to respond appropriately to the peace making efforts of the Muslims. "On the contrary, they became hostile, and broadcast adverse criticism of Muhammad's claims to be a prophet... If Muhammad (sm) succeeded with his plan, the Jews would have no chance of supreme power."³⁷ The Prophet remained patient to the hostility of the Jews. He was quite aware about their intellectual strength and planned to face them intellectually and politically.

The Holy Quran provides details about the origin of Judaism. The prophet Abraham was declared one of the true messengers of Allah. Abraham's religion was a true religion of God and he was not an idolater. The Quran is very categorical about Abraham : "O people of the scripture! Why will ye argue about Abraham, when the Torah and the Gospel were not revealed till after him.... Abraham, was not a Jew, nor yet a Christian; but he was an upright man who had surrendered (to Allah) and he was not of the idolaters".³⁸ It was not merely a religious challenge to the Jews, but an intellectual challenge based on historical documents and facts. "The corollary of the conception of the religion of Abraham is that the religion of the Jews is not the pure religion of Abraham".³⁹ Islam, on the one hand, recognizes the Jews as the people of Scripture, on the other hand, accuses them for the disobedience to the commands of Allah. They are accused for changing their scripture both textually and meaningly.

Whether the Jewish scripture was textually corrupted or not by that time, might be a difficult question to prove, but it was not difficult to prove that they had been altering the proper meanings of their religious scripture. But the Quran gives the proof of both the types of corruption. "They change words from their context and forget a part

36. Quran, 5 : 5-7.

37. W. Montgomery Watt. p. 201.

38. Quran 3 : 65, 67.

39. W. Montgomery Watt. p. 205.

of that whereof they were admonished".⁴⁰ In many other verses⁴¹, the Quran repeatedly attest that the Jews had been concealing the truth. What is the truth concealed by the Jews? Their religious scripture Torah described clearly that the prophetic mission of Muhammad is truly controlled by God and he is the last prophet and the Quran is the final revelation from God. Both spiritually and physically, Muhammad (sm) was the successor of Abraham. But the Jews disobeying the message of the Quran and Muhammad (sm) in fact rejected the revelation of Torah and Abraham. "Much of the Jewish strength presumably lay in their absolute conviction that they were God's chosen people..... To such claims, which were tantamount to a dismissal of Islam is completely false. At present Muslims also have been concealing many teachings of Islam."⁴²

In various ways and forms the Holy Quran replied to the Jewish behaviours and finally invited them to Islam. The Holy Quran taught Muhammad (sm) : "Say : produce the Torah and read it (unto us) if ye are truthful..... say : Allah speakth truth. So follow the religion of Abraham, the upright. He was not of the idolaters. Say : O people of the scripture! Why drive ye back believers from the way of Allah..."⁴³ Thus religious challenge of the Jews had been faced by Muhammad (sm) religiously. The Jews tribes of Medinah failed to stand against the strong Muslim spiritual, intellectual and religious waves and they overtly engaged in conspiring against the first Muslim state. Some of the Jews being a party to the Medinah Charter completely ignored that they were supposed to maintain the minimum standard of civic behaviour prescribed by the state.

They could not tolerate the emerging Muslim state under the leadership of the prophet. *With the collaboration of outsider non-Muslims, the Jews waged a war against the state authorities, which*

40. Quran, 5 : 13.

41. Quran, 4 : 46 & 48, 5 : 41 & 46, 2 75, 70.

42. W. Montgomery Walt. Ibid. p. 207.

43. Quran, 3 : 93, 95, 98.

*had been working according to the agreements of all tribes. Thus the Medinah Charter was put on a serious test. Prolonged conspiracies hatched by some sections of Jewish tribes against the prophet ultimately led to the destruction of Jewish political and military power. Despite all their terrorist activities many Jews were allowed to live there in peace and had never been forced to accept Islam.*⁴⁴

The Medinah state was marked with its high moral standard. It was the standard bearer of Muslim behaviour and statehood. The Muslims statehood established by the prophet in Medinah was the symbolic representation of Islamic civilization and Muslim brotherhood. The internal strength of the Muslim community demanded its expansion, but the Prophet avoiding all sorts of armed conflicts at the first place wanted to project the spiritual and humane aspects of Islam. For any Medinian citizen Islamic civilization was apparent, but for the Mekkans it was still a foreign religion. The best way to solve the problem was to visit Mekkah in a great number for a peaceful mission. Pilgrimage to Ka'ba was as such designed to preach Islam in Mekkah.

The treaty of Al-Hudaybiyah : A peace treaty or a constitutional document.

It was clear to the Mekkans that the Muslims consolidating their power in Medinah obviously would try to expand their influence both internally and externally. In Medinah the Muslims of Quraysh were in exile, but within a short span of time they proved the strength of their community and faith. Together with the Ansar-Muslims of Medinah they demonstrated that their new religion holds ingrained prosperity to be expanded further. From the very beginning a peaceful method had been adopted, but the non-Muslims of Mekkah adopted military means to stop the march of Muslims in preaching their religion further.

In 628 A. D. the Muslims of Medinah decided to go on pilgrimage to Mekkah. A peaceful caravan of 1400 to 1600 men reached

44. See for details : "Human Rights in Islamic Perspective : A comparative Approach" In : The Dhaka University Studies. Part F. Vol. III. No. 1, 1992. p. 45.

Hudaybiyahd on the edge of the sacred territory of Mekkah. The non-Muslims threatened to fight, if the Muslims tried to proceed further for pilgrimage. The Prophet Muhammad (sm) wanted to avoid bloodshed at any cost. Though the morale of the Muslims was very high to fight the non-Muslims, still their leader wanted to project the peaceful character of Islamic mission and hence made the pilgrimage a series of rituals deserving respect and attention from the Muslims and non-Muslims alike. He decided to reach an agreement with the non-Muslims of Mekkah so that the Muslims could perform their rituals during the time of pilgrimage. But unlike the Medinans, the Mekkans did not want to recognize Muhammad (sm) as the prophet of Islam. After a strong and persistent persuasion of the prophet for peace, ultimately the Quraysh leaders agreed to sign a peace treaty with the Muslims.

They sent Suhayl to conclude a treaty with the prophet. The prophet told Ali to write down the terms and conditions of the treaty. Ali started to write beginning with the revealed words of consecration, "in the name of God, the beneficial and merciful," But Suhayl objected to it and the some of the Muslims insisted to keep it as the starting clause of the treaty. The prophet (sm) ignored the demand of the Muslims and dictated Ali to write : "These are the terms of the truce between Muhammad, the Messenger of God and Suhayl, the son of Amir."⁴⁵ But Suhayl immediately protested by saying : "If we knew thee to be the Messenger of God, we would not have barred thee from the House, neither would we have fought thee. Write Muhammad the son Abd Allah"⁴⁶ Ali had already written the words "the Messenger of God" and the prophet told him to strike out those words. But Ali refuse to do so. For the Muslims these are the words for which they had been fighting since they embraced Islam. In theory also through acceptance and rejection of these words the Muslims divide people into Muslims and non-Muslims. The issue was very delicate. But the prophet was ready to pay any price for a peace-

45. Martin Lings, *Muhammad, his life based on the earliest sources*, London, 1988. p. 252.

46. *Ibid.*

treaty. "So the prophet told him to point him with his finger to the words in question and he himself struck them out. Then he told Ali to write in their place "the son of Abd Allah."⁴⁷ Needless to mention that the prophet of Islam could not read or write.

Now Ali writes the words demanded by Suhayl, but the Muslims in general remained unsatisfied. The prophet, who always took decisions after consultations with the Muslims, now even did not bother to take their strong emotion and sentiment to his account. Thus in fact the prophet with his own initiative signed the peace treaty of Hudaibiyah with the Quraysh on the following terms :

1. Both the sides agreed to lay down the burden of war for ten years, in which times men shall be safe and not lay violent hands the one upon the other.
2. Whoso cometh unto Muhammad of Quraysh without the leave of his guardian, Muhammad shall return him unto them; but whoso cometh unto Quraysh of those who are with Muhammad, they shall not be returned.
3. Both the sides would abstain from raiding or spoliation.
4. Both the sides are free to enter into a covenant and alliance with any third party.
5. Muslim would go back to Medinah without performing pilgrimage that year.
6. In the next year they would come for pilgrimage, but would not be entitled to bring arms except the riders' swords in scabbards.
7. For pilgrimage they would not spend more than three days.

Apparently all the terms were humiliating for the Muslims. Ordinary Muslims even could not understand the logic of this most disappointing treaty. But in Islamic perspective it was not at all a bad treaty for the Muslims.

47. Ibid. p. 253.

Removal of war for ten years was the greatest victory in the backdrop of clan feuding of Arabia. The Muslims got a peaceful atmosphere to preach their religion.

The treaty proved that peace is more valuable than the sacred rituals of Islam and pilgrimage. Moreover, avoiding bloodshed in one year they got opportunity to perform pilgrimage in the succeeding years without any fear or hesitation. Above all, now both the sides got opportunities to start again trade and business freely.

The Hydaybiyah treaty was a recognition to the Muslims that they attained a statehood for themselves. Medinah, as a city-state, needed recognition from outside as well. *Since the inception of the Medinah Charter, the Medinah city-state was a de facto state with legal and political system of its own. The Hudaybiyah treaty brought de Jure sovereignty to the Muslims state both internally and externally.* Neither the non-Muslims of Medinah or the Quarrysh of Mekkah could create any obstacle to the Muslims to enter into any international covenant, alliance or treaty. *Thus the Hydaybiyah treaty is a sort of extension of the Medinah Charter.* The Medinah Charter provides the principle and strategies in handling deutes within the state and the Hydaybiyah treaty teaches how to handle deutes with the outsiders. Both are the agreements for peace and security among the peoples of different tribes and religions.

The treaty put the Muslims of different tribes and temperament on a difficult test. The disappointment was very serious. They even could not understand the necessity of such an unsuccessful mission initiated by their prophet. But the prophet was determined in his decision and strategy. "This is a part of Muhammad's Programme of Consolidating his own strength and building of tribes in alliance with himself possibly he saw that in the new Islamic state this administrative and organizing ability would be in demand The treaty was thus favourable to Muhammad's long-term strategy, but for the moment left him to deal with the disappointment of his followers at the apparent failure of the expedition.⁴⁸

48. W. Montgomery Walt. p. 49.

It was indeed a great moral victory of the Muslims. The Prophet's strategy was endorsed by the revelation of the Quran. The Quran terms Hydaybiyah treaty as a victory the Muslims : "Verily we have given thee a clear victory.... God was well please with the believers when they pledged allegiance unto thee beneath of tree. He know what was in their hearts, and sent down the Spirit of peace upon them, and hath rewarded them with a near victory"⁴⁹

Here victory is not taken from military perspective. Even strategic victory is not so important. Peace is taken in the core of entire Islamic statehood. The Muslims were not allowed to stay peacefully in Mekkah. Driven out from their homeland the Muslims skillfully established a lasting peace in Medinah. Depending upon of their moral virtues the Muslims not only could establish their state authorities, but successfully could attract the majority inhabitants to the Islamic teachings. Now they have to offer something substantial to the inhabitants of Mekkah. Signing Hydaybiyah treaty with the leaders of Mekkah in fact the Muslims offered a comprehensive peace to the Mekkans.

Conclusion

A legal philosophy must have a vision of socio-political system to be established in the state affairs. The fundamental Islamic tenets obviously provides a comprehensive world-view to be reflected in a socio-economic system. But those fundamental principles do not present ready-made guide lines for a legal system. Any legal system needs some principles and basic norms to be guided with. Mere philosophical concepts can not serve as the framework of the legal system. Legal philosophy being the founding stone of a legal system likes to appear itself as an applied science to accept or reject some ideas and norms as objectively good or bad. Depending upon those ideas and norms a legal system gives a comprehensive shape of its regulative character.

49. Quran, 48 : 1, 18.

Thus a legal philosophy is not a collection of some notions and ideas, it is rather outcome of application of some concepts in material life of a society. Any concept experiencing of application always meet with some success and failure. Only by the very virtue of conceptual strength of a legal philosophy it can not face the odds of material life. Quality of the standard-bears of a legal philosophy ultimately determine the fate of the concerned legal system. In the case of Islam and the Muslims it has no exception.

The emergence of the first Islamic state under the leadership of the prophet received the direct guidance of the holy Quran. But the Quran itself was in the process of revelation. Does it mean that the legal system established by the prophet of Islam in Medinah at the beginning was not fully Islamic? How could the Quran being the universal source of divine message for the entire mankind be reflected in the treaties signed between the Muslims and the non-Muslims regarding the various issues of social, economic and political importance of the city state of Medinah? In fact, in the Medinah Charter there is no single direct reference to the Quranic verses, while a major portion of the Quran had revealed by that time. Though the Quranic verses were absent from the Medinah charter, but the very spirit of the Quran was ingrained in the Charter, which very rightly regarded as the written constitution of the state of Medinah.

This constitution could be treated as human-face of the Quran, but not holds the same value as the Quran itself. On the other hand, without the introduction of a political system guided by the Medinah Charter the Quranic messages could not received their fruition in the Arab society. It is not only that the Arabs and the Muslims were in need of Quranic messages; those messages also had to rely on them in the process of making Islam a universal religion of all time to come.

Thus the political system of Islam is more directly related with the tribal dynamics of Arab societies than any thoughts and ideas serving its philosophical basis. And the place of the Medinah Charter is in the middle between the philosophical basis and the political system of Islam. In other words, the Medinah Charter is the legal philosophy of

the socio-political and economic system run by the Muslims in the city of Medinah.

Islam and its prescribed systems were not supposed to be confined within the boundary of Medinah. In efforts of spreading the messages of Islam, the Muslims wanted to win the hearts and minds of the Mekkan people as well. But the Muslims had no access to Mekkah. Even they were not allowed to visit Mekkah during the pilgrimage. *The prophet was not in hurry to use force to have access to Mekkah. Achieving a stable and peaceful social order in Medinah the prophet demonstrated the superiority of the Islamic system bringing benefits to all irrespective of their religious and tribal loyalties.*

Thus the legal philosophy of Islamic state-building had been lost by the Muslim politicians. With the sound preservation of the fundamental source of Islam, the Muslim philosophy or world-view could survive; but Islam as a problem-solving methodology was gravely discredited by the Muslims rulers and politicians.

Recent resurgence of the Muslims throughout the World has been increasingly turning into desperate attempts of revolt against western domination over the Muslim countries. Still it lacks the vision of Islamic legal thoughts and ideas, which are quite capable of influencing and even reshaping the western legal philosophy. Apparently the western legal system have been failing in the face of the endemic increase of organised crimes and social malaise both at public and private level; but in reality it is an outcome of deep rooted crisis in legal philosophy.

Western systems lost their stable criteria of differentiating objectively sound acts from the unhealthy human behaviours, while the modern Muslims had yet to re-discover their own roots and methodology of their state governance. *In the efforts of re-discovering the Islamic criteria the Muslims have to take the Islamic documents of legal importance as their first term of reference. They must have to understand that discovering some new rules of grammar or linguistic beauty in the verses of the Quran and the Hadiths is no answer to the*

crisis of the Muslim state-building issues. Scholasticism may sound good in rejecting the western legal norms and values, but can contribute very little in solving the burning issues of the Muslims' common interest. The Muslims have to produce their own codified legal systems, which must be dynamic enough to reflect the level of socio-economic development and religio-cultural standard of the concerned countries.

The Muslims not only constitute about one fifth of the total population of the globe, they also occupy many strategically important territories and resources, but overwhelming majority of the Muslim population are not only illiterate or living below the poverty line, *they are now painfully chained and subjugated by their own "Muslims systems" which they inherited from colonial legacy.*

To breakthrough this vicious circle of intellectual poverty in formulating their own legal philosophy and socio-political system, and subsequent dependence, albeit fruitless, on the West, the Muslims in fact need to find out their own system, which is ingrained in the historical documents of Muslim statehood. They desperately need a legal philosophy and system, where they would be able to see themselves as the owners of their country and resources. For this purpose legal documents of the first Islamic state should serve as the orientation, not the source of blind imitation, for every Muslim state and community.

Non-Muslims leaders of Mekkah were determined not to allow the Muslims to preach Islam among the ordinary Mekkah people. This antagonistic stand of the non-Muslims led the expulsion of the Muslims from Mekkah. Naturally success of the Muslims in achieving a peaceful co-existence with all non-Muslims communities in Medinah made the non-Muslims of Mekkah more jealous to the Muslims state; and they had been trying to organize a crushing blow to the Muslims. *But the prophet of Islam did not provide any excuse to the non-Muslims to organize popular uprising against the Muslims.*

All the battles launched against the Muslims were of military character, while the mission of Islam was of popular character. Without stopping

bloodshed between Mekkah and Medinah the Islamic messages could not get through the doors of all walks of life in the Arabian peninsula. Retreat of the Muslims from the place of Hudaibiyah could easily be regarded by an ordinary Muslim as betrayal to the fundamental causes of Islam prescribed by the Quran.

Apparently such a retreat was an anti-Islamic act. And in fact almost all ordinary Muslims found some "Islamic arguments" not to retreat from Hudaibiyah without performing Hajj. Moreover, all the conditions of the Hudaibiyah treaty went against the Muslims' interest. Though the term and conditions of the Hudaibiyah treaty were humiliating for the Muslims, but it had a far-sighting impact in the epoch making history of Islam. Subsequently the Quran itself declared the treaty as a victory for the Muslims. It was possible because of the leadership of the prophet.

As a legal document the Hudaibiyah treaty lost its credibility with the violation of its terms by the Mekkan non-Muslims. And with the victory-march of the Muslims in the city of Mekkah the treaty was completely dead. None of its conditions were anymore binding to any parties of the treaty. Here the test of the hudaibiyah treaty serves as a source of legal philosophy for all the Muslims states and communities. Neither the politicians nor the religious people can escape from the bitter test of the Hudaibiyah lessons. Arguments stating the Hudaibiyah treaty as a part of distant history of the Muslim-statehood is erroneous and not acceptable to the legal thoughts of Islam. As guiding principles to the conflicting issues between the Muslim and non-Muslim communities, the Hudaibiyah is very much alive like the Medinah charter. In Terms of legal philosophy the Hudaibiyah treaty is the extension of the Medinah charter.

All the Hajj sermons of the prophet are also of valuable importance to the legal philosophy of Islam. These sermons identified the various fundamental issues of common interest of humanity and gave the direction how to handle human problems. *The last hajj sermon of the prophet put a final touch to the architectural beauty of the Islamic humanity and statehood.*

Design of Islamic legal systems was completed, but the structure of the legal system yet to be built by the prophet's companions. Depending upon the same legal philosophy the early history of the Islamic statehood produce different types of framework for the implementation of the Islamic ideology in practical life.

The development of the Muslim statehood and politics went through trials and errors. But during the last several centuries the Muslims intellectuals and politicians in general tended to miss the terms of reference of their state-building efforts. *They either indulged in scholasticism or in blind imitation of foreign ideologies.*

On the other hand, a very few Muslims understand that the Quran is neither a literature nor a law-book. In fact, Islam is a way of living rather than a way of thinking. That is why the political life of Medinah could produce enormous force to chance the entire socio-economic system of the Medinah city-state.

A so called modern man misses the huge inner span of human life and dignity. That is why he is capable of the most abominable crimes. A modern Muslim rarely understand the relationship between science and religion.

"[T] here is neither pure religion nor pure science; for example there is no religion without some elements of science in it and so science without some religious hope in it. . . Islam here is the name of a method rather than of a ready-made solution and means the synthesis of opposite principles. . . Islam's middle position can be recognized by the fact that Islam has always been attacked from the two opposite directions : from the side of religion that it is too natural, actual and tuned to the world; from the side of science that it contains religious and mystical elements. There is only one Islam, but like man it has both soul and body."⁵⁰

Legal philosophy is the soul of the legal system. The Muslim states and societies have been observing this or that rules and regulations

50. Allija Ali Izetbegovic, *Islam Between East and West*, American Trust publications. Third Edition, 1994 p.xxvii,xxv,xxxi.

of Islam without understanding their essence for life in this world. That is way they are not blessed with the aims and objectives of real Muslim images. But at present Islamic legal philosophy and system have been emerging to salvage the human civilization. Islam offers both inner and external salvation. It is really a very difficult task to complete. But it is a continues process to run the human societies, which are very often endangered by the evil designs of the rulers. Thus Islamic legal system would always find its way to the perfect source of orientation in handling the crises moments of life and world.