ISLAMIC PRINCIPLES *Of* HUMAN RIGHTS: REFRAMED BY THE WEST
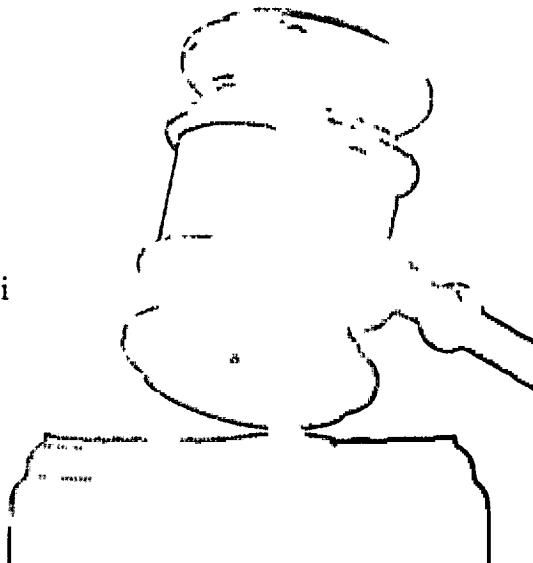
NEHALUDDIN AHMAD

Islamic Principles of Human Rights : Reframed by the West

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PREFACE

بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيمِ

الْحَمْدُ للهِ رَبِّ الْعَالَمِينَ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ، وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ؛

The issues of human rights, equality, freedom, fairness and justice are inherent in human civilization. They have a history as ancient as human progress itself. The subject had its genesis when mankind came into existence on Earth. While human society grew bigger and its population became more overwhelmingly massive, these issues expanded. They nevertheless remained eternal and perpetual ideals of mankind.

The 610 C. E. emergence of Islam, was a golden and most eternal period in human history. Islam blossomed under sensitive circumstances and conditions, while mankind suffered from mistaken customs, racial discrimination and class differences. Islamic teachings helped humanity to depart from ignorance, superstition and slavery, to march towards humanitarian values and perfection. Because of the contents of its teachings, particularly in the field of human rights, oppressed people in vast regions of the world welcomed and accepted it.

According to the well-known researcher and scholar, Abu al-A'la Maududi, "the people in the west have the habit of attributing every good thing to themselves and try to prove

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that it is because of them that the world enjoys these blessings". However, their first Great Charter of Liberties, called Magna Carta, was only issued by England's King John in 1215 C.E., some six hundred years after the beginnings of Islam. When we study the concept of human rights in Islamic teachings, we realize that the Islamic law human rights system, and the teachings of the Prophet(s), are much more comprehensive and more flawless than what is claimed of them by the west. Islam recognized the foetus as a human being and gave it the rights of inheritance after birth. Islam recognized human beings as dignified individuals who have the right to equality, personal freedom, liberty, personal opinion, emigration, justice, and social welfare. Even the poor due *(zakat)* is not a charity, but the right of the poor over the wealth of the rich. In family matters, there is the right of the husband over the wife, and vice versa, that of the parent over the children and vice versa. But between the 12th and 17th century, there was no reference of the practice of human rights by west. Only in the 18th century in documents such as the Constitution of France or the Declaration of Independence in the U.S., we found the mention of the rights of people. Even in later documents, the words, "We the People," mean only white males. Abigail Adams (U.S. First Lady 1797 –1801), wife of John Adams (US Second President), who was one of the authors of the Constitution of US, wanted women also to have voting rights, but American women did not win their voting rights until 1920. Blacks, as slaves were denied all rights, and they did not receive their full civil rights until in the 1960's. The Islamic teachings paid specific attention to the criteria of human erudition and wisdom, humanity and spirituality. To the contrary, the west's attitude toward mankind is not based on spiritual and ethical precepts.

O mankind, indeed we have created you from male and female and made you people and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. *(Al-Quran, Surah al-Hujurat (49:13).*

Thus, Islam does not limit equality and brotherhood to be solely among Muslims. It exhorts brotherhood and equality among all the world's peoples, to lay the foundation for peace and calmness in society. The Islamic concepts of the welfare state, religious liberalism, equality and individual freedoms are misconceived issues world-wide. So many people, including intellectuals and academicians, particularly in the democratic western countries argue that Islam establishes inequitable social and political orders, and allows very little space for contemporary social and political thought. Islamic scholars usually must take great strides to prove that Islamic doctrine contains all types of contemporary legal, social and political thought and actions, such as fair justice, a secular society, individual freedoms, religious liberalism, the concept of collectivism, equality of human beings, the rule of law, the notion of sovereignty, and, women's rights.

But still, western mass media, intellectuals and ordinary people continue to draw gloomy conclusions about Islam. Thus, it is necessary to investigate these allegations systematically to resolve resulting confusion and misunderstandings. We have to understand rationally about century old stereotypes, misunderstandings and subliminal biases about Islamic concepts in western textbooks and media. If this sort of knowledge is disseminated in the western world, then their perceptions of Islam would

improve. Therefore, it is not the intention of this book to consider the reasons leading to such widespread misinformation, but rather, it presents to its readers, a scientific comparative reading on selected human rights issues, duly edited from the author's published articles in this broad field, and already accepted by the international scholarly community.

Wassalam.

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All praise is due to The Almighty ALLAH, who allowed me to reach this point of fulfillment.

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Nehaluddin Ahmad

Introduction

In the early Islamic period, there were no laws other than the Shariah law and there was no such concept of State in the Holy Qur'an. The Islamic State itself is a historical construct. The structure of Islamic State evolved over a period of time. The Holy Qur'an and the Hadith were the primary sources for the new State. It is important to note that before Islam, there was no State in Mecca or Medina. There was only a senate of tribal chiefs who took collective decisions and it was tribal chiefs who enforced those decisions in their respective tribal jurisdiction. There were obviously no written laws but only tribal customs and traditions. The decision had to be taken within the framework of these customs. There was no other source of law.

However, after Islam appeared on the social horizon of Mecca, the scenario began to change. In Medina the Prophet (PBUH) laid the framework of governance through what is known as *Mithaq al-Madinah* (Covenant of Medina). This Covenant basically respects tribal customs to which adherents of Judaism, Islam and pre-Islamic idol worshippers belonged. Each tribe, along with the religious tradition it belonged to, was treated as an autonomous unit in the Covenant, which has been described in full details by Ibn Ishaq, the first biographer of the Holy Prophet (PBUH). Thus, the Covenant of Medina respected the tribals as well as religious autonomy of the inhabitants of the town. It can also be said to be the first constitution of the state in making. The Covenant laid down certain principles which are valid even today in a secular state. When the covenant was drawn up by the Prophet of Islam, Shariah as a body of law had not evolved. In this important Medinan document, what is most important is that the Prophet (PBUH) did not compel the different tribes of Jews and idol worshippers to follow the Islamic law.

A state structure began to evolve only after the death of the Holy Prophet (PBUH) when vast areas of other territories were conquered, and new problems began to arise. During the Prophet's (PBUH) time, the governance was limited to almost a city. He did not live long after the conquest of Mecca. But after his death, the jurisdiction of the state expanded much beyond the frontiers of Arabia. During the Prophet's (PBUH) time, people were more concerned with today's problems of marriage, divorce, inheritance etc. on one hand, and problems like theft, robbery, murder and some similar problems for which the Qur'an and the Prophet (PBUH) were inerrant source of guidance. The people asked the Prophet (PBUH) for guidance and followed his pronouncements or the Qur'anic injunctions voluntarily. There was no state machinery to enforce it such as police force or any regular military. There was no separate judiciary either. As far as the Prophet (PBUH) was concerned he was legislator, an enforcer of laws (executive) and a judge (representing judiciary). He combined all three functions.

Thus, it can be seen that there was no regular state structure during the Prophet's (PBUH) time as he was a unique personality who could combine all the legislative, executive and judicial functions in addition of being a source of law. However, the death of the Prophet (PBUH) created a vacuum and no other person could fill it. Also, as pointed out above, the conquest of other territories created more complex problems. there was need for enforcement of laws as people in far off places with no commitment to Islam would not follow the laws voluntarily as they did in Medina in the Prophet's (PBUH) time. Thus, a police force was needed to enforce the laws. During the Prophet's (PBUH) time, people volunteered for fighting against enemies of Islam and there was no need for a paid regular army. Only after his death, need was felt for a paid regular army. The

border areas had to be guarded constantly. There were no such borders before.

The corpus of Shariah evolved and for new situations, guidance could no more be from the Prophet (PBUH). One either had to look for verses in the Holy Qur'an or in the Hadith, which Prophet's (PBUH) companions remembered or one had to resort to analogy keeping analogous situations in mind. That was how the corpus of the Shariah law evolved slowly. The primitive Islamic State was democratic in spirit and the Caliphs often consulted their colleagues and companions of the Prophet (PBUH) while making any decision so as to conform to the Qur'anic values. Thus, the Qur'an and the Hadith then were the main sources of law. But in secular matters like building up institutions like army or police or bureaucracy, they did not hesitate to borrow concepts from other sources like Roman or Persian. Thus, Hazrat Umar borrowed the concept of *Diwan* (i.e. maintaining records of salaries to a paid army and bureaucracy) from?. Similarly, the Caliphs were called upon to legislate on matters like land ownership, suspension of certain punishments during times of emergency like famine etc.[1]

The conquests, internal strife among the Muslims, struggle for power among different tribes, groups and personalities and many other factors created strong pressures so much so that the institution of Caliphate itself did not survive. It was ultimately replaced by monarchy and dynastic rule. This was totally against the spirit of the Qur'an. These changes became inevitable under the fast- developing situation. The Muslim jurists had to come to terms with these

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[1] Asghar Ali Engineer. (2005). *On Developing Theology of Peace in Islam*, New Delhi: Sterling Publisher Pvt Ltd, p. 42.

new developments and to legitimize them somehow. Once the Institution of Caliphate was replaced by dynastic rule. The monarchy rule persisted until the Western colonial rule took over the Muslim world.[2]

It was under colonial rule that Muslims began to discover the virtues of democracy. It is true that during the dynastic rule Shariah law could not be ignored and most of the rulers had to keep the *'Ulema'* or Muslim scholars in good humour. However, some of them often found ways to go around and violate the spirit of the Shariah law. But they never ceased to pay obeisance to it. The situation then has changed drastically with the onset of colonial rule during the nineteenth century in the Islamic world. Many laws were enforced by the colonial rulers which were secular in origin. The Western countries themselves were once governed by the Church and it was the Church law which was supreme. But the reformation changed all that and the struggle against the Church gave rise to the concept of secularism and pluralism. Thus, there was intense fight between the Church and the ruling princes who desired independence from the hegemony of the Church. The emerging bourgeois class too wanted to be free from the sacred rule and saw immense benefits in secularisation of politics and society. It took more than three centuries in secularisation of society and marginalisation of religion and religious institution in the Western world. When the colonial rule was established in Asian and African countries, many of which happened to be Islamic countries, the process of secularisation had traversed a great distance in the metropolitan countries.

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[2] Ibid, p. 42.

The colonial countries posed a great challenge to Islam through their technological supremacy. The religious leaders and intellectuals in these countries found refuge in the 'glory of the past' and some were overwhelmed by the supremacy of the West and began to advocate secular modernisation. Many reform movements thus were born in Islamic countries. Jamaluddin Afghani and Muhammad Abduh of Egypt were among them. Some others, however, totally rejected the ideas of the West and launched intense efforts to revive the past. Revivalist and reformist movements jostled with each other for social and political space. Among those who faced the Western challenges were those who rejected religion altogether and adopted Western secular humanism. However, they remained in small minority.[3]

The nineteenth century rationalism and modernism are itself under challenge today. Our period is characterised as post-modernist period in which religious pluralism rather than rejection of religion is accepted. Post-modernism recognises limitations of reason and accepts validity of religious ethos. We are now in a world which is far removed from struggle between the Church and lay people. Church has also accepted the inevitability of secularisation of society. The Church no longer enjoys the hegemonic position it enjoyed before the Reformation. It has also apologised for persecution of scientists for discovering new scientific truths. It has also accepted the concepts of democracy and human rights.[4] There is, thus, no serious contradiction between modern values like secularism, pluralism, equality freedom, democracy and religion.[5]

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[3] Supra 1, Asghar Ali Engineer, *On Developing Theology of Peace in Islam*, p. 43.
[4] Supra 1, Asghar Ali *On Developing Theology of Peace in Islam*, p 46.
[5] Supra 1, Asghar Ali Engineer, p. 47.

In Islam, it must be noted, that there is no concept of organised priesthood. No single religious authority is considered absolute. There has been, on the other hand, the concept of consensus (*ijma'*) among the *'Ulema* (the Muslim scholars) which is quite democratic. In fact, the consensus has been considered as one of the sources of Islamic law in the Sunni Islam.[6] There is also the concept of *ijtihad* which infuses the spirit of dynamism and movement, though, of late, the *'Ulema* have refrained from using it for change. *Ijtihad* is legal reasoning[7] or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question.[8][1] It is contrasted with *taqlid* (imitation, conformity to legal precedent).[9] *Ijtihad* requires expertise in the Arabic language, theology, revealed texts, and principles of jurisprudence (*usul al-fiqh*).[10] An Islamic scholar who is qualified to perform *ijtihad* is called a *mujtahid*,[11] the jurist-*mujtahid* derives or rationalizes law on the basis of the Qur'an and the Sunnah.[12] By the beginning of the 10th century, the development of Sunni jurisprudence was encouraged, leading Sunni jurists to state that the main legal questions had been addressed and the scope of *ijtihad* was

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[6] Ibrahim Abu-Rabi. (2006). Islam and Secularism,ed. *The Blackwell Companion to Contemporary Islamic Thought*, Blackwell publishing Ltd, p343.

[7] Rabb, Intisar A. (2009). *"Ijtihād"*, In John L. Esposito. The Oxford Encyclopaedia of the Islamic World. Oxford: Oxford University Press.

[8] John L. Esposito, ed. (2014). *"Ijtihad"*, The Oxford Dictionary of Islam. Oxford: Oxford University Press.

[9] Ibid.

[10] Ibid.

[11] Supra 7, Rabb Intisar.

[12] Hallaq, Wael. (2005). *The Origins and Evolution of Islamic Law*, Cambridge University Press.

gradually restricted.[13] However, the 13th century jurist Ahmad ibn Taymiyyah,[14] who argued that jurists should use *ijtihad*. Now pressures are building up in Islamic societies for using the concept of *ijtihad*. All Islamic societies are in throes of change and modernisation.

Islam is not adverse with these ideas rather admits the freedom of conscience and democratic rights, concept of equality for men and women.[15] The Holy Quran made explicit and dramatic reforms to the position and treatment of women in the early Islamic community. It explicitly states that men and women are equal in the eyes of Allah, and addresses the revelation frequently to 'you the believing men and women'.

Islam also officially accepts religious pluralism in as much as it is Qur'anic doctrine to hold other prophets in equal esteem.[16] The Holy Prophet (PBUH) provided equal social and religious space to all religions present in Medina, as pointed out above, through the Covenant of Medina. The

[13] Supra 7, Rabb Intisar.

[14] Ahmad Ibn Taymiyyah (1263- 1323) was a medieval scholar of Islam. He lived after the fall of the caliphate of the Abbasid Dynasty based in Baghdad. He was contemporary to the Mongol invasions in former Abbasid territories in Mesopotamia and the Levant. His writing constituted an enormous contribution to Islamic Law (fiqh). He was a central figure in Sunni Islam.

[15] John L. Esposito, (1982), *Women in Muslim Family Law*, New York: Syracuse University Press.

[16] Supra 6,Ibrahim Abu-Rabi ,(2006) chapter Islam and Secularism, Surah (al Baqarah 2:62) and (Al-Hujurat, 13). "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted" According to this verse no person is superior to another person except for moral superiority that is a product of piousness.

other characteristic of secular democracy is a respect for human dignity and human rights. The Qur'an expressly upholds both.[17]

There are different political systems in different Islamic countries from monarchy to military dictatorship to limited democracy to democracy. But it will be naive to blame Islam for this. One must consider the political history of the country rather than search for its causes in Islam, In fact, the Qur'an's emphasis is on consultation (*shura*), and even the Prophet (PBUH) used to consult his companions in secular matters.[18]

Islam can hardly clash with this liberal secularism.[19] The Qur'an, in fact, directly encourages pluralism vide its verse in surah al-Maidah (5):48. This verse clearly states that every people have their own law and a way i.e. every nation is unique in its way of life, its rules etc. It also says that if Allah had pleased He would have created all human beings a single people, but He did not do so in order to test them

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[17]Ibid. also see (Al-Ma'ida, 48).
"To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you".

[18] *Secularism* is simply the idea that government (and society in general) should function independently of any religious faith. Secularism is incredibly tough to define, and the same word is used to describe several ideas relating to the regulation of religion and Administration of Government. Even in a completely secular state, there is not truly a separation of religion and politics, because the state is involved in the regulation of religion, but (hopefully) with an eye towards equality and protection of religious minorities from coercion or persecution.

[19] *Liberal Secularism is* a broad political philosophy that encompasses a number of items including secularism and pluralism. Broadly speaking, it's about freedom and equality for all members of society.

(whether they can live in harmony with each other despite their differences in laws and way of life). Thus, it is a clear assertion of pluralism. One must respect the other's faith and live in harmony with him/her.

The Qur'an also asserts that every people have their own way of worshiping God.[20] One should not quarrel about this. Instead, one should try to excel each other in good deeds. In the verses in surah al-Mumtahanah (60:7-8), we find that Allah will bring about friendship between Muslims and those whom you hold as enemies. And Allah does not forbid you from respecting those who fight you not for religion, nor drive you forth from your homes and deal with them justly. Allah loves doers of justice.

The above verse is a good example of secular ethos. If others do not fight you in matters of your faith and allow you to profess, practice and propagate your faith, you should respect them and deal with them justly. Also, in surah al-An'aam (6:108-110) the Qur'an prohibits Muslims from abusing people of other faiths or their gods as in turn they will abuse Allah. This verse also makes much more significant statement that Allah has made every for every people their deeds fair-seeming i.e. every community thinks its beliefs and deeds are fair and good and social harmony lies in accepting this situation rather than quarrelling about each other's beliefs and practices.[21]

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[20] Surah al-Baqarah (2:148).

[21] Surah at Anaam 6.108. `Ali bin Abi Talhah said that Ibn `Abbas commented on this Ayah (6:108); "They (disbelievers) said, `O Muhammad! You will stop insulting our gods, or we will insult your Lord.' Thereafter, Allah prohibited the believers from insulting the disbelievers' idols, Tafsir Ibn Kathir.

The Qur'an also states in surah Taha (22:40) that no religious place should be demolished as in all religious places be it synagogue, or church or monastery, name of Allah is remembered and hence all these places should be protected. This is another tenet of liberal secularism which is similar to the Qur'anic injunctions.

The Islamic tenets, it will be seen, do not disapprove of composite or pluralistic way of life. Even the Covenant of Medina (called *Mithaq al-Madinah*) clearly approves of pluralistic set up. When the Prophet (PBUH) migrated from Mecca to Medina owing to persecution in Mecca at the hands of Meccan tribal leaders, he found Medinese society a pluralistic society. There were Jews, pagans and Muslims. The Jews and pagans were divided into several tribes, each tribe having its own customs and traditions. The Prophet (PBUH) drew up a covenant between Muslims and these tribes guaranteeing them full freedom of their faith and also creating a common community in the city of Medina with an obligation to defend it, if attacked from outside. This was in a way, a precursor of modern secular nation, whereby every citizen is free to follow his/her own faith and tribal customs and their own personal laws but having an obligation towards the city to maintain peace within and defend it from without. The Prophet (PBUH) clearly set an example that people of different faith and traditions can live together in peace and harmony creating a common bond and respecting a common obligation towards the city or country.

The Qur'an nowhere states that religion can be the basis of political rights of the people. The only model for this purpose can be the *Mithaq al-Madinah*, as pointed out above, did not make any distinction between people of one religion and the other in matters of political rights. This Covenant, at least in spirit, if not in form, provides a valuable guidance for according political rights to citizens of modern

state irrespective of one's religion. The Prophet Muhammad was far ahead of his time in according non-Muslims equal religious and political rights.

Need for Comparing Qur'anic Principles with Modern Political Concepts

The practice of comparing a branch of knowledge with another is as old as the inception of human learning itself. It is motivated primarily by the desire to prove that the field of one's choice or conviction is superior to the rest or at least inferior to none. Sometimes, this practice is resorted to between conflicting religious ideologies and sometimes between the concept of religion, when taken as a unified whole, and other branches of learning, such as science, philosophy, jurisprudence, sociology etc. The whole history, especially of philosophy, even since before Socrates, is full of either agreement or confrontation with religious postulates. For a long time, there was a tendency amongst philosophers to justify their conclusions regarding various facets of human behaviour through certain presuppositions which, according to them, were ultimately rooted, directly or indirectly, in certain inexplicable divine sanctions.

Needless to say, each thinker attempted to prove the ascendance of the ideas, which he thought, were most convincing or of the religion through which, according to his conviction, he genuinely hoped to attain salvation. With the gradual growth of rationalism as a symbol of modernity, the tendency changed radically - so much so that through the medium of reason, even those aspects of natural phenomenon were sought to be comprehended, which, by all prudent calculations, have always remained and will remain, for all the time to come, outside the pale of human cognition.

In consonance with this intellectual quest, the Holy Qur'an too, ever since its revelation, has during all ages, been thoroughly analysed - by some, to prove its comprehensiveness and infallibility and by others to criticise it on various counts. I am sure, it would not be a falsity, if I say that perhaps there is no book, religious or otherwise, which might have attracted so much world attention and subjected to as much rigorous scrutiny from all possible view points as has been the case with the Qur'an. The reason being that, on one hand, it makes an authentic claim to being the last comprehensive Divine Code and on other, it endorses the veracity of earlier revelations, though pointing out specifically the perversions introduced in them at the later stages through human intervention.

In other words, what has confounded the critics of the Holy Qur'an most is the fact that it nowhere claims to be making known to the humans what was hither to unknown but reminding them of what they have been told during all their preceding generations through the instrumentality of Divine Messages and which they have become oblivious of, it declares;

' Alif lam Miim' This is the Book. In it is guidance sure, without doubt, to those who fear Allah; *who believe in* the *unseen, are steadfast in prayer, and spend out of what we have provided for them; and who believe in the Revelation sent to thee, and sent before thy time, and (in their hearts) have the assurance of the Hereafter.'* [22]

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[22] Surah al-Baqarah (2: 1-4).

There might exist some sharp differences between Muslims and non-Muslims regarding the origin of the Holy Qur'an, but it has been universally acknowledged that, at no stage of history, has it ever undergone even the minutest alterations - a fact, not conclusively so well-established about any other religious scripture. Quite pertinent in this context is the following observation of Ninian Smart;

'From a human point of view the Qur'an looks like a miraculous achievement of sublime artistry. In any event, being written down so rapidly during the lifetime of Muhammad, and being pretty much consistent in its teachings and prescripts, it has not-created the problems encountered in looking at the New Testament which came into being through different hands over a much longer period and has undergone great editing.'[23]

Thus, what has one always kept assuming the most central point in the study of the Holy Qur'an is its unambiguous claim to being the last divine word in all the spheres that could even remotely affect the humanity in either spiritual or worldly affairs. This singular character, no doubt, has numerous sociological, scientific, legal, jurisprudential and philosophical implications. Ernest Gellner has discussed this point in a most logical manner.

'When Bertrand Russell discussed the doctrine of logical positivism, according to which both the world and our characterisation of it broke up into final

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[23] Ninian Smart. (1992). *The World's Religions – Old Traditions and Modern Transformations*, Cambridge University Press, p. 281.

atoms, such that each member of the set of atomic propositions as it were captured, married, mirrored one atomic fact, he noted that nonetheless, the set of all atomic propositions would not exhaust truth and our knowledge of the world: we would need at least one further proposition, namely, that the set was complete, that these were all the propositions which were available in Islam, through the doctrine that the line of Prophets was completed, satisfies the logico-philosophical requirement. No further increments to the Normative Truth are either possible or allowed. The logical point perhaps does not matter much. But sociologically it is extremely important. By firmly closing the door, in principle, to further additions to the Revealed doctrine, it enormously strengthens die hands of those who have access to the delimited truth through literacy and who use it as a charter of legitimacy. They cannot be outflanked by new Revelations.'[24]

Elaborating the point further, he asserts;
'The doctrine that the line of Prophets is closed firmly circumscribes the Sacred this saves it from devaluation. Plato himself was not sufficiently aware of the Quantity Theory of ideas. The Proscription of innovation protects a scriptural faith from inflation.'[25]

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[24] Earnest Gellner. (1981). *Muslim Society*, Cambridge University Press, p. 23.
[25] Ibid, p. 24.

The same point has been highlighted by Philip K. Hitti, though from a little different viewpoint observes;

'The religious influence it (Qur'an) exercises as the basis of Islam and the final authority in matters spiritual and ethical is only one side of the story. Theology, jurisprudence and science being considered by Moslems as different aspects of one and the same thing, the Koran becomes the scientific manual, the textbook for acquiring a liberal education.'[26]

If the Qur'an closes the doors for any new innovation, it definitely implies that it contains everything and those who have faith in its sagacity are placed under a relative obligation to derive guidance from its general and specific mandates. It is not a Book of any community, by whichever the denomination it may be called, but those who have accepted it as truthful are recognized by a particular nomenclature i.e. 'Muslims' – just as any person from any corner of the world, having acquired the citizenship of any particular country, whether by birth or naturalization, will be known as its citizen.

This being so, the Qur'an in the first place is to be distinguished from other religions in so far as it lays guidelines not only for achieving the celestial bliss or spiritual purification, but it also occupies the position of what may be termed as the Constitution for governance in the contemporary parlance. Thus, according to other major religions of the world, a demarcation line is to be drawn between politics and religion or in other words the religion

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[26] Philip K Hitti. (1970). *History of the Arabs*, London: Macmillan Education Ltd., Tenth Edition, p. 127.

is considered exclusively the personal affair of its adherents. A gross mistake that is often committed by some writers is that, while discussing the religious philosophy; they club together all the religions together and treat them as a single unified branch of knowledge. Because of this misconceived approach, they remain unable to discuss the merits of respective religions. As Frederick Copleston, while writing about Emile Durkheim (1858 -1917), has observed;

> 'Obviously Durkheim does not mean to imply that all religious beliefs, if considered as statements about reality, are equally true. He is thinking of different religions as all expressing, each in its own way, a social reality. One religion can be described as superior to another if, for example, it is 'richer in ideas and sentiments' and contains 'more concepts with fewer sensations and images.'[27]

This theory makes the Holy Qur'an the most significant focal point because according to it, there exists nothing beyond its purview, be it the law, morality, state or political life. Making this distinction explicit, Michael Cook has observed;

> 'Christianity, in short, is not a law-centred religion. Islam for all its liberalisation unmistakably remains one and in this it is supported by the legal content of Qur'an.'[28]

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[27] Frederick Copleston. (1975). *A History of Philosophy, Volume IX – Maine De Biran to Sartre*, London: Search Press, p. 128.
[28] Michael Cook, (1983), *Muhammad*, Oxford University Press, p. 331.

Thus once, by its contents, the Qur'an is universally recognized as a law-centric religion and simultaneously it is accompanied by the claim that it is the last divine code, its study vis-à-vis jurisprudence assumes an added all-pervasive significance. As the Christianity-dominated Western legal philosophy gained momentum, a trend came into existence whereby it was sought to be depicted as the lasting paradigm of human civilization and by analogy Qur'an was projected as an outmoded code, suited only to the circumstances prevailing in Arabia during the earliest phase of its revelation.

It is, therefore, most significant firstly, to have a clear idea of what comprises modern concept of legal philosophy; includes concept of secularism, pluralism, the concept of sovereignty and nation, rule of law, individual freedom, religious liberalism and socio-political cultural dimensions of the women's right, its ancient and modern forms, the legitimate demarcations between the two and their changing versions according to the changes in time, and secondly, the corresponding notions contained in the Qur'an, their finality and flexibility, and the extent of their firmness and adaptability.

Comprehensiveness of Qur'an

Having considered all these aspects, if we look at the Qur'an, it enjoys a unique characteristic of being the exponent of these universal values in a manner that remains unsurpassed. Simultaneously al-Quran also lays down the whole mechanism about how their obedience is to be ensured in a society by both the visible and invisible threats. As has been observed by Ernest Gellner:

'By various obvious criteria—universalism, scripturalism, spiritual egalitarianism, the extension of full participation in the sacred community not to one, or some, but to all, and rational systemisation of social life – Islam is, of the three great Western monotheisms, the one closest to modernity.'[29]

Emphasizing the clarity of the conceptions surrounding the normative truths as contained in Qur'an, he argues,

'A Muslim Europe would have saved Hegel from the need to indulge in most painfully tortuous arguments in order to explain how an earlier faith, Christianity, nevertheless is more final and absolute than a chronologically later one, namely Islam (In fact he did it by invoking the fact that Europe was only Christianised at the time of Charlemagne, who is at least suitably posterior to Muhammad). Had Islam, the later and by some plausible criteria *purer* faith, prevailed, no such problem would have arisen for a Muslim Hegel.'[30]

Describing an all-encompassing nature of Qur'anic dictates, Ninian Smart says,

'The law covers all topics, from morality to civil law and from criminal law to courtesy. It is interesting that five classes of action are recognised; those which are obligatory, those which are prohibited, those which are disapproved and those which are indifferent. This fivefold distinction helps to give Islamic law a great deal of subtlety.'[31]

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[29] Earnest Gellner. (1981). *Muslim Society*, Cambridge University Press, p. 7.
[30] Earnest Gellner. (1981). *Muslim Society*, Cambridge University Press, p. 7: [Quoting Charles Taylor. (1975). *'Islam'*, Cambridge, p. 492]'.
[31] Ninian Smart, (1992), *The World's Religions – Old Traditions and Modern Transformations*, Cambridge University Press, p. 288.

Almost along the same lines runs the observation of Michael Cook:

> 'In the second place, the Koran discusses a range of less narrowly religious aspects of law; marriage, divorce, inheritance, homicide, theft, usury, the drinking of wine and the like. Again, the treatment is uneven; thieves are to be punished by having their hands cut off, but the fate of the unrepentant usurer is not prescribed 9 though he receives a dire warning that he will find himself at war with God and His messenger) The scope and character of this material suffices to define Islam as a legally oriented religion.'[32]

The comprehensive nature of Qur'anic injunctions lies more significantly in the fact that it contains no distinction between the divine and the mundane authority than in any other aspect so far as its attraction for social and legal philosophers is concerned. It is not at all concerned with what in the modern parlance might be terms as 'secular' and 'non-secular' or anything like that. In the Qur'an's sight, the only distinction remains between 'Islamic' and 'non-Islamic'. The attempts of many writers to assess Qur'anic principles in the light of the contemporary notions, such as 'secularism', 'nationalism', 'nation-state' etc. sound totally preposterous. Quoting Michael Cook in this context, Earnest Gellner says,

> 'Dr Michael Cook has also shown how the relative mundane and secular Jewish preoccupation with the regulation of social life, based on human legal wisdom

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[32] Michael Cook. (1983). *Muhammad*, Oxford University Press, p. 332.

rather than on divine authority, when fused with the **God-Centred** unificatory theology-mindedness of **Christianity,** produced the characteristically Muslim **divinely** sanctioned and God-centred legalism **beneficiary.**'[33]

He further continues,

'Thus, in Islam, and only in Islam, purification and modernisation on the one hand, and the re-affirmation of a putative old local identity on the other, can be done in one and the same language and set of symbols. The old fold version, once a shadow of central tradition now becomes a repudiated scapegoat, blamed for retardation and foreign domination. Hence, though not the source of modernity, Islam may yet turn out to be its beneficiary'.[34]

As is characteristic of a comprehensive code, the Qur'an prescribes the punishment by the worldly sovereign for the actions which are either having a direct effect on fellow humans or which can be enforced through coercive means. In the matters which are related directly to the conscience and in which the external authority, despite all possible vigilance, cannot compel obedience, the Almighty's attribute of being omniscient and the chastisement in the Hereafter are being repeatedly stressed. Besides, the element of mercy for every sin or offence except the one involving a challenge to His absolute authority – something, which in the purely worldly legal systems may be comparable to sedition – is an all –pervasive theme so that

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[33] Earnest Gellner. (1981). *Muslim Society*, Cambridge University Press, p. 2. [Referring to Michael Cook – *Monotheist Sages*].
[34] Ibid, p. 5.

one might not lose the hope of forgiveness and reclamation. The following verse may be quoted here by way of example;

'But if any have done wrong and have thereafter substituted good to take the place of evil, truly, I am Oft-forgiving, Most Merciful.'

<div align="right">Surah an-Naml (27:11)</div>