

legal code of conduct for the establishment of an ideal society in all respects of life. The orientalists with sound and unbiased minds not only confirmed these evidences but also categorically rejected the views of the extremist orientalists. They proved that the opinions of those Orientalists who went against the existence of the legal system in the entire life of the Holy Prophet (ﷺ), were irrational, illogical and irrelevant to the undeniable proofs of history. So the contradictions among orientalists on this issue support the idea that the orientalists who denied the legal status of Prophet Muḥammad (ﷺ) and the existence of Islamic law in the earliest days of Islam are utterly prejudiced in respect to the basis of Islamic teachings and ideology.



He considers the Qur'ān a document more legal than the Pentateuch. He states that if Quran's main five types of teachings like preaching, Polemics, stories allusion to the Prophet's (ﷺ) life and legislation are studied deeply, it can easily be deduced that Quran contains legal data more than the Pentateuch, the Tora, which is famous as 'the law' in the world.<sup>(1)</sup>

The picture of early Islamic law depicted by Goldziher shows as if its existence was uncertain and unstable. But Fitzgerald and Coulson deny his thesis. Fitzgerald confirms the mode of Islamic law by asserting that Islam introduces God as the only root of legislation and denies any human authority to legislate.<sup>(2)</sup>

N. J. Coulson echoes the similar concept. He says that God only has the authority of law-giving and His prime authority over all the fields of society was out of question.

*"The principle that God was the only law-giver and that His command was to have supreme control over all aspects of life was clearly established."*<sup>(3)</sup>

On another place, Coulson speaks more specifically and rejects Schacht's extreme assumptions. He explicitly says that Quran introduced issues related to the Muslim society with which Muhammad (ﷺ) dealt. He does not accept Schacht's assumption that the proof of the ahādith on law does not go back earlier than the year 100 A.H. He considers Schacht's assumption as void and fabricated.<sup>(4)</sup>

## Conclusion

In the presence of all the previous proofs of rational and traditional analysis of the Divine Sunnah and philosophy of prophet hood experienced by the humanity throughout the history of the prophets, evidence of Quranic commands of Prophet Muhammad's (ﷺ) legal authority, historical evidence of his judicial activities, and finally the balanced opinions of a good number of orientalist in favour of Islamic view point on the legal authority of the Prophet (ﷺ) and the existence of strong and comprehensive legal system in early Islam, it is difficult to assume that Prophet Muhammad (ﷺ) neither had the ability and authority nor He intended to create a new legal system. Therefore, it could safely be concluded that the Prophet Muhammad (ﷺ), just like the previous prominent Prophets, was bestowed with the legal status and a complete

(1) Studies in Islamic History and Institutions, 128.

(2) Fitzgerald, S. V. The Alleged Debt of Islamic to Roman Law, Law Quarterly Review, 67 (January 1951), 82.

(3) Coulson, N. J. A history of Islamic Law, (Lahore: Lahore Law Publications, ), 11.

(4) Ibid., 64-65.

*have faith in Allah and the Day of judgment and who often call Allah to remembrance”.*<sup>(1)</sup>

*“And whatsoever the Messenger gives you, take it. And whatsoever he forbids you, abstain from it and keep your duty. Lo, Allah is stern in reprisal”.*<sup>(2)</sup>

This means that Muslims should follow the foot-prints of the Prophet (ﷺ) in all the aspects of life. As taking the previous directions and instructions of the holy Qur’ān it seems clear that Prophet’s (ﷺ) commands and actions were identical with the directions of the Almighty because they were sectioned by the Almighty Himself through revelation. As Qur’ān explains:

*“And He does not speak of His desire but whatever He speaks is the Divine revelation revealed to Him”.*<sup>(3)</sup>

### **Impartial Orientalists on Prophet’s legal Authority and the existence of legal system in early Islam.**

Besides the Divine philosophy of Prophet hood, the witness of legal and judicial activities in early Islam the impartial opinions of a considerable number of orientalist have also gone close to the Muslim concept of Prophet’s (ﷺ) legal authority , His legislative and judicial role and the existence of legal system in early Islam. They not only spoke in favour of Muslim view-point but also rejected the views of Goldziher, Schacht, and Anderson etc. The findings of some scholars seem pertinent to be mentioned here.

Jonathan A.C. Brown describes the judicial and the political function of the Prophet (ﷺ) in the last days of his life. He asserts:

*“The Prophet taught thousands of followers, interested with his community for twenty-three years, and acted as a judge and political leader for the last ten.”*<sup>(4)</sup>

Another orientalist S. D. Goitein concludes that the concept of legal system was not the outcome of best Quranic community but was formatted by the Prophet himself.<sup>(5)</sup>

Goitein verifies the existence of legal system in early Islam described in the Qur’ān. He notes that the holy Prophet realized that even solid legal issues were a necessary part and parcel of the heavenly message to the community. According to him these legal matters were deduced from the holy Qur’an.<sup>(6)</sup>

(1) Surah Al-Aḥzāb:21

(2) Surah Al-Ḥashr:7.

(3) Surah Al-Najm:3-4.

(4) Brown, Hadith, Muhammad’s Legacy in the Medieval and Modern World, 160.

(5) Goitein, S. D., Studies in Islamic History and Institutions (Leiden: 1965), 133.

(6) Ibid. 129-30.

verses of inheritance [4:11-12 ], decided to give the shares of inheritance prescribed in the Qur'an to those who are entitled by the Qur'an to receive and then to give the rest to his closest male relatives.<sup>(1)</sup>

For more practical examples of legislative and judicial proceedings from the life of Prophet Muhammad (ﷺ), the readers are recommended to consult the following two books in Fazl ur-Rahmān's Encyclopedia of Sīrah;

- Book iv: Muhammad as a Legislator.
- Book v: Muhammad as a Judge.

**c). Muṭā‘: To be Obeyed:**

All the prophets were sent to be obeyed by their respective nations. Allah Almighty says:

*“We have sent no Messenger save that he should be obeyed by Allah's leave”.*<sup>(2)</sup>

Obedience to the prophets was called the real obedience to the Almighty. The Lord of lords says further:

*“Whoever obeys the Apostle obeys Allah. But any one who turns away, we have not sent thee to watch over [their evil deeds]”.*<sup>(3)</sup>

Many other verses of the holy Qur'an make the obedience to the Prophet (ﷺ) an obligation for the Muslims. Qur'an says:

*“Say: “Obey Allah and the Messenger.” But if they turn away, Allah does not love the unbelievers”.*<sup>(4)</sup>

It says on another place:

*“Obey Allah and the Messenger, so that perhaps you will find mercy”.*<sup>(5)</sup>

And again it is commanded to the believers:

*“O believers, obey Allah, and obey the Messenger and those in authority among you. If you should dispute regarding anything, refer it to Allah and the Messenger, if indeed you believe in Allah and the Last Day. This is better and fairer in the issue”.*<sup>(6)</sup>

**d). The Role Model for Muslims.**

The Qur'an describes the way of the Holy Prophet, as a life-pattern (uswah) for the Muslim community. It says:

*“You have in Allah's messenger a noble model for all whose*

(1) Fazl ur-Rahmān, Encyclopaedia of Sīrah, 758.

(2) Surah Al-Nisā:64.

(3) Ibid:80.

(4) Surah Āl-e-‘Imrān:32.

(5) Ibid:132.

(6) Surah Al-Nisā:59

responsibility, to explain each verse and each word of the Holy Qur'ān both orally and practically.

**b). Legislator:**

Allah authorized the Holy Prophet (ﷺ) to legislate for the regular life of the community. He defines the prophet's (ﷺ) role as a legislator in these words:

*“He will make lawful for them all good things and prohibit for them only the foul, and will relieve them of their burden and the fetters which were set upon them. Then those who believe in him, honor and help him, and follow the light which is sent down with him: they are the Successful”.*<sup>(1)</sup>

As a result, all the companions admitted the holy Prophet's status as a law giver (ﷺ) and considered lawful what was made lawful by the holy Prophet (ﷺ) and strictly avoided what was prohibited by the Him.

Qur'ān explicitly defines the judicial authority of the Holy Prophet. It says:

*“But no, by thy Lord: They will not believe until they make you the judge regarding the disagreement between them; then they shall find in themselves no impediment touching thy verdict, but shall surrender in full submission”.*<sup>(2)</sup>

Complete obedience and submission to the decisions of the holy Prophet was compulsory for the completion of one's belief in Islam. In fact, Prophet's disobedience meant the denial of Islam and its teachings.

History shows that during the life of the holy Prophet (ﷺ) all the disputes and cases were referred to the holy Prophet (ﷺ) who used to judge and decide all of them with equity and justice irrespective of caste, creed or any relationship in complete coherence with the divine spirit of justice. Some of the Prophet's (ﷺ) decisions are being mentioned here as a proof of the judicial activity and practice of the holy Prophet (ﷺ).

- Once the holy Prophet ordered to cut off a Muslim woman's hand because of her act of theft. Some of his companions thought it so a bigger sentence and requested Him to let her off. But the holy Prophet abhorred the idea and applied the punishment by saying:  
*“Had she been Fatima, the daughter of Muhammad, I would have cut off her hand.”*<sup>(3)</sup>
- Once Jabir bin Abdullah fell ill and asked the holy Prophet how to distribute his property. The holy Prophet, after the revelation of the

(1) Surah Al-'A'rāf:157.

(2) Surah Al-Nisā:65.

(3) Fazl ur-Rahmān, Encyclopaedia of Sīrah, (London: Muslim Schools Trust, 1982), 2/808.

orientalists and Fazl ur-Rahmān that they consciously ignored the evidence of the Qur'ān which was revealed and preserved both in writing and memory during the life of the Prophet.

It seems pertinent here to describe the over all picture of the status, responsibilities and the activities of the Prophet as defined by the Almighty in the Qur'ān. The Divine philosophy of prophethood has been explained under the various distinct roles assigned to the holy Prophet (ﷺ). These are as:

a). **Interpreter of the Holy Qur'ān:**

It has been the sunnah of the Almighty, throughout the history of prophethood, that Allah sent His prominent Prophets with the Holy books as complete codes of conduct for all the facets of life and asked them all to explain the Divine message both theoretically and practically. Allah commands the Prophet:

*“And We inspired to you O Muhammad (ﷺ) the remembrance [the Qur'ān] to explain to the people all that has been revealed to them so that they may hopefully ponder”.*<sup>(1)</sup>

According to the Muslim scholars, true understanding of the Holy Qur'ān is impossible without the accurate perception of the sunnah of the Prophet (ﷺ). Since the Holy Qur'ān is the divine scripture of the most comprehensive rules the explanation of which required their practical implementation. Therefore, it has been the sunnah of the Almighty that He chose Prophets from among the human beings for the true and applicable exegesis of the Divine scriptures. For example Qur'ān commands to give Zakah, [i.e. compulsory charity prescribed by Allah and his Prophet], but does not Provide the necessary instructions for the complete implementation of the zakāt system. All of these instructions have well been provided in Prophet's way of life. This was why Muhammad(ﷺ) was required to explain all such commandments and rules. Some of the orientalists have rightly echoed the legal function of prophet's (ﷺ) sunnah in explaining the guidance and regulation. For example, Jonathan A.C. Brown states:

*“Throughout Islamic history, the vast preponderance of Muslims have also affirmed that the teachings of the Prophet adjust, augment and explain the Holy Book, although they have disagreed on how and to what extent it occurs. The Quran is not a detailed legal manual. Only about five hundred book's verses provide legal injunctions, and even on major questions such as ritual prayer the Quran is often vague”.*<sup>(2)</sup>

So, it was assigned to the Holy Prophet (ﷺ), as a prophetic

(1) Surah Al-'Isrā:44.

(2) Brown Jonathan, A. C. Hadith; Muhammad's Legacy in the Medieval and Modern World, (Oxford: Oneworld Publications, 2010), 150.

did not have the capability to do any of the legislative work.<sup>(1)</sup>

Fazl ur-Raḥmān, a well known Pakistani Islamist, also rejects the existence of the legal activities of Prophet Muhammad (ﷺ) and the legal authority of His sunnah.

He describes the scenario and assents that the holy Prophet was basically a moral reformer, who seldom intended to general legislation as a source to further the Islamic legal cause.<sup>(2)</sup>

Fazl ur-Raḥmān describes the Holy Prophet (ﷺ) having no time for legal regulation because of his indulgence in moral and political fight against the Makkans.<sup>(3)</sup>

In fact Fazl ur-Raḥmān and the orientalist have gone beyond the understanding of the Divine philosophy of prophethood according to which the Prophets are not sent as sole professional legists defining the technical legal terms of jurisprudence but as social, political, and finally the religious reformers who perform all of their functions and duties within the legal boundaries defined by the Almighty. Keeping in view the Divine philosophy of prophethood, it is improbable to assume, as Fazl ur-Raḥmān expressed, that the Holy Prophet (ﷺ) had little or no time for regulation out of his political and moral struggle.

To confirm the views of orientalist and Fazl ur-Raḥmān on the existence of legal system and the Prophet's legal authority, it is tantamount to admitting that:

- The Authority of the Holy Prophet was not legal but religious and political who did not intend to make laws.
- As a result Islam had no legal system before the year 100 A.H. but it had been formulated in the second century A.H. out of the Ummayyads' administrative practice.

Both of these assumptions would be refuted in this paper through the following strategies.

- By the historical Divine Sunnah and philosophy of prophethood.
- By the legal instructions in the very Qur'ān that was obviously revealed and completed within the Prophet's (ﷺ) life.
- By the witness of the early Islamic history, the legal teachings and judicial activities of Prophet Muhammad (ﷺ) and His companions in the 1<sup>st</sup> century A.H.
- By the impartial and scholarly opinions of some other orientalist contrast to the assumptions of those who went against the reality.

There is a basic technical and methodological mistake done by the

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(1) Snouck, C. Hurgronje, *Muhammadanism* (1916), 60.

(2) Fazl ur-Raḥmān, *Islamic Methodology in History*, (Karachi: Central Institute of Islamic Research, 1965), 10.

(3) *Ibid.*, 11.

completed during the life of the holy Prophet, So it seems in complete contrast to the real and authentic history of Islam to suppose that the legal institution of Islam could not have its genesis until the ending days of the Umayyad rule.<sup>(1)</sup>

Moreover, Schacht explicitly takes the whole of legal traditions as spurious and fabricated as they were circulated not earlier than the second century A.H. He states that all the legal traditions are not older than the second century A. H.<sup>(2)</sup>

Here Schacht consciously ignores the traditionists' restless efforts to found a matchless discipline of the 'preservation of hadith'. They, for the first time in the human history, invented various methods like 'aama ur rijal' and "Jarḥ wa ta'dīl" for the scrutiny of the reporters. As this genre of legal traditions was considered the most important part of the hadith literature therefore, these legal traditions were transferred under the most strict rules of scrutiny. Schacht considers the Umayyad practice as raw material for the birth of Islamic legal system in the second century A.H.<sup>(3)</sup>

He moves on and discards the historical authenticity of all the Prophetic traditions on Islamic law. He argues that all of such traditions are spurious and have no historical authenticity.

In his view, it is almost improbable to succeed in finding any of the traditions concerning the Islamic law.<sup>(4)</sup>

These are not only Goldziher and Schacht but also a good number of orientalist and their spiritual pupils in the West as well as in the East who express the similar views about the existence of law in early Islam and the prophet's legal authority. E. Tyan, For example, asserts that Prophet Muhammad (ﷺ) had no intention to find any of the judicial or legislative system.<sup>(5)</sup>

Similarly, Anderson expresses his opinion that Muhammad (ﷺ) did no effort to produce any comprehensive legal system because he was not in a suitable position for this task. According to Anderson, he made some of the adhoc amendments in the existing customary law.<sup>(6)</sup>

Similar trend of findings can be traced in the works of C. Snouck Hurgronje, who describes that Muhammad (ﷺ) was so less qualified that he

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(1) Schacht Joseph, *Origins of Muhammadan Jurisprudence*, 190.

(2) *Ibid.* 176.

(3) *Ibid.* 5.

(4) Schacht, *An Introduction to Islamic Law*, 34

(5) E. Tyan, *Histoire de l'organisation Judiciaire en Pays d' Islam*, (Leiden: 1960), 64, quoted in Azami, M. Mustafa, *On Schacht's Origins of Muhammadan Jurisprudence* (Riyadh: King Saud University, 1985), 16.

(6) J.N.D. Anderson. *Recent Developments in Sharī'a Law*, (Muslim World, 40, 1950), 245.



*“His authority was not legal but, for the believers, religious and, for the lukewarm, political.”<sup>(1)</sup>*

It is so strange and astonishing for a common reader of Qur’ān and Islamic law that how Schacht, a well-known researcher of Islamic legal history, did claim that the holy Prophet’s status had no concern with the legal matters while a good number of Quranic verses confirm and verify the legal status and authority of the holy Prophet (ﷺ) in the society. It gives rise to a question in the reader’s mind that did Schacht not read these verses of the holy Quran or he consciously ignored the Quranic concept of prophethood.

He argues that Muhammad (ﷺ) had no intention to make a new legal system but to teach his followers how to perform their ritual duties . He points out:

*“Generally speaking, Muhammad (ﷺ) had little reason to change the existing customary law.”<sup>(2)</sup>*

It has Always been so logical and natural Divine custom of Prophethood that Allah Almighty sent the Prophets with not only having the authority to amend the existing laws but also with a huge set of legal rules and regulations that can be entitled as ‘complete legal system’. But on the other side, it is Schacht and some of his fellow Orientalists who deny this historical Divine tradition of Prophethood.

ii. In his second view point, Schacht deduces that as a result of the status and the intention of the holy Prophet (ﷺ), Islamic law could not have its gensis until the second century after Hijrah.<sup>(3)</sup>

According to him, Muhammadan law started in the second century after Hijra, and the Prophet and his earlier successors could play no role to introduce any legal system. As a result, Schacht assumes that the first century of Islam was led by the community without any set of legal rules and proceedings. It is so partial opinion for a researcher to assume that the religion having the largest legal system had no legal system in its formative period of the first century after Hijra.

He opines categorically:

*“Our conclusions so far have led us to the beginning of the second century A.H. as the time in which Muhammadan jurisprudence started”<sup>(4)</sup>*

As all of the Islamic teachings, disciplines and institutions were

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- (1) Schacht Joseph, An Introduction to Islamic Law, (Delhi: Universal Law Publishing Co. 1997A.D), 11.
  - (2) Ibid.
  - (3) Ibid., 19.
  - (4) Schacht Joseph, Origions of Muhammadan Jurisprudence, (Oxford: at the Clarendon Press, 1989), 190.

According to him just after the Prophet the expanded caliphate and its population of multi communities took various changes in social, political and religious nature of the society that definitely demanded a complete legal system for the solution of all the newly born issues.

He considers the Holy Qur'ān too insufficient to provide the essential details how to live the daily life. He seems to express that the holy Qur'ān's legal boundaries were so small that they could not cover and answer various demands and questions of daily life.

He points out the reason for such a limitedness of Prophet's (ﷺ) law. He opines:

*“Muhammed and his helpers had looked after the most immediate needs”<sup>(1)</sup>*

His argument shows that the Prophet and his successors, while dealing with legal matters, had no sketch of the widening range of the social life and its newly born demands. His opinion points out that they were actually dealing with the problems coming in front of them currently and the regulations made by them had no concern with the rising problems of upcoming community. He concludes his analysis of the absence of any legal development during the holy Prophet's (ﷺ) life in these lines.

*“What matters for our purpose is simply to recognize that in Islam legal development commensurate with public need began immediately after the Prophet's death”<sup>(2)</sup>*

Here Goldziher leaves aside all of the legal regulations and dealings of the holy Prophet (ﷺ) and his successors and argues that legal dealings with the needs of the public developed only after the death of Prophet Muhammad. Upcoming part of this paper will prove that Goldziher's denial of the legal proceedings throughout the Prophet's life is verified neither by the history of Islamic disciplines nor by the findings of the impartial orientalist.

### **Schacht and the Prophet's (ﷺ) Role in Islamic Law.**

Joseph Schacht resumes and extends Goldziher's studies on Islamic law in his works on Islamic law and Jurisprudence.

He steps forward rather specifically on this issue and concludes his whole discussions in two points.

i. Muslim law fell outside the sphere of religion. This was because neither Muhammad's (ﷺ) authority was legal nor He intended to make a new legal system.

He defines the nature of Prophet's (ﷺ) authority in these lines:

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(1) Goldziher Ignaz, Introduction to Islamic Theology and Law, 32.

(2) Ibid., 32-33.

Human history witnesses that a civilized social life is impossible without the true implementation of a mature and logical legal system as no civilized nation in human history led any sort of its social, political or economic life without a set of rules and regulations. Peace, prosperity and collective sustainable development is dependent upon its legal and judicial system. Categorically speaking, the word of 'nation' cannot be applied to a society that lacks a legal code of life. Islam, throughout its history from 'Adam to Prophet Muhammad (ﷺ), led its Prophets and their followers with comprehensive but simple and natural set of universal rules guiding them how to live all the facets of social, political and economic life with the acknowledgment of necessary Divine and human rights.

Before the holy Prophet Polytheism had become the new symbol of Makkah. There was no organized government and as a result there was no legal or judicial system through which the justice could be obtained. Disputes were rife throughout the Peninsula most of which lasted for centuries and were commonly settled through crude revenge and by calling arbitrators.

This was the social environment to which Muhammad (ﷺ), the seal of the Prophets, was sent with Allah's message for humanity Therefore; it stood the duty of this last Prophet to settle all these problems of the Arabian society with the effectiveness and the true implementation of a complete legal code of conduct.

### **Orientalists on the Prophet's Legal Authority and the Existence of Legal system in Early Islam.**

The whole of the early life of Muslim community shows that Islamic law not only existed but was also followed by the community, the proofs of which will be discussed later. Here the notions of the Orientalists and their Muslim followers are being mentioned who went against this background of Islamic law.

Goldziher leads the orientalist in this regard and states that the Prophet Muhammed's (ﷺ) institutions could not provide the legal solutions for the later circumstances of the vastly enlarged society.<sup>(1)</sup>

He describes the reason because of which the legal regulation needed after the Holy Prophet (ﷺ). He states:

*"Internal consolidation and military expansion had already, during the rule of the first caliphs, the Prophet's immediate successors, contributed to a change in the nature of the community"*<sup>(2)</sup>

(1) Goldziher Ignaz, Introduction to Islamic Theology and Law, (Princeton: Princeton University Press, 1910), 31.

(2) Goldziher Ignaz, Introduction to Islamic Theology and Law, 31.

## Legal Authority of the Prophet Muhammad (ﷺ) and the Orientalists: A Critical Study

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### ABSTRACT

This research paper is produced to rationalize the existence of legal system in early Islam. Sixth century after Christ, the social, and political, life in the Arab societies was the worst example of mismanagement. Polytheism and the tribal disputes were rife throughout the Peninsula. This was the social environment to which Muḥammad (ﷺ), the seal of the Prophets, was sent with Allah's message as a guiding pattern for a successful social life of humanity. Therefore, it stood the duty of the last Prophet to settle all such problems of the 'Arabian society and the rest of the world with the effectiveness and the true implementation of a complete legal code of conduct. Some of the orientalists closed their eyes from the undeniable historical facts and denied the legal role of the Prophet and the legal system of Islam. Their illogical and superficial opinions have well been denied by a good number of sound rational proofs of the Prophet's legal authority, the elegant feature of Islamic legal system and its functional character throughout the first century A. H. and afterwards. Especially the rational views of some other orientalists, quite identical with the historical facts and contrast to the orientalists' anti-Islamic views, helped us as well to verify and conclude that the legal authority of all the Prophets including Prophet Muhammad (ﷺ) was sanctioned by Allah Almighty. It is suggested in this research work that every reader of the history of Islamic studies should have a deep understanding of the legal activities of the holy Prophet (ﷺ) and the legal teachings of the holy Quran for a concise analysis and conclusion of this vast historical aspect of Islamic teachings.

**Keywords:** *Prophet Muhammad, Legal authority, Orientalists, Legal System, Early Islam.*

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