

حق المواطنة في الإسلام: دستور المدينة أنموذجاً دراسة تحليلية وصفية

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ملخص:

إن تحديد مفهوم المواطنة أمر مهم من الناحيتين: السياسية والقانونية؛ فمن الناحية السياسية تقتصر المواطنة على حق المواطن في ممارسة الحقوق السياسية التي يتمتع بها وحده دون غيره من الأجانب المقيمين داخل أراضي الدولة. أما من الناحية القانونية؛ فهي تعني تمتع المواطن بحقوق خاصة كثيرة لا يتمتع بها الأجنبي، فالدولة جعلت مباشرة وظائف ومهن معينة وتقلد مناصب حقاً خاصاً لمواطنيها دون غيرهم من الأجانب المقيمين فيها. أهداف الدراسة: تكمن مشكلة البحث في صعوبة تحديد مفهوم المواطنة في الوقت الحاضر، حيث يعد هذا الأمر من أهم الموضوعات التي تثير الجدل والنقاش في العالمين العربي والإسلامي؛ وذلك بسبب الشبهات والاتهامات المثارة حول حق المواطنة في الشريعة الإسلامية في العصر الحاضر، وذلك انطلاقاً من إنكار وجود حق المواطنة في الشريعة واتهامها بعدم الاعتراف بحقوق الأقليات الدينية والعرقية والقومية التي تعيش في كثير من الدول العربية والإسلامية. وتأتي أهمية هذه الدراسة في تبيانها لمفهوم المواطنة في النظام الإسلامي من خلال تسليط الضوء على دستور دولة المدينة بشكل خاص باعتباره أنموذجاً يحتذى به في أي مجتمع ينشد دولة، أساسها العدل وسيمتها الأمان وتتمتع باستقرار شعوبها. المنهجية: اعتمد الباحث في إعداد هذه الدراسة على المنهج الوصفي التحليلي في مناقشة هذا الموضوع. الخاتمة: المواطنة من أهم المفاهيم التي تطورت بالتوازي مع تطور المجتمعات والدول. وقد ارتبط هذا التطور بشكل رئيسي بتطور حقوق الإنسان وتأثير العولمة على المجتمع البشري. وقد أصبح هذا الموضوع محط الاهتمام منذ تطور البشرية واستحداث القوانين المدنية، لا سيما في البيئة الغربية. المصطلحات الأساسية: المواطنة، الجنسية، دستور المدينة، أهل الذمة، المساواة أمام القانون.

The Right to Citizenship in Islam: The Case of the Constitution of Madinah: A Descriptive and Analytical Study

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Abstract:

Defining the concept of nationality is an important issue politically and legally. From the political standpoint, nationality refers to the right of a person (a national) to exercise his/her political rights, which he solely enjoys, and which are not available to the foreign residents of the state. From the legal standpoint, nationality refers to the person's (the national's) enjoyment of various rights which may not be enjoyed by a foreign person, such as the right to hold governmental positions. **Objective:** the problem which this research aims to address lies in the present difficulty of determining the definition of nationality which is an ongoing debate in both the Arab and Islamic worlds. This is due to the various suspicions and accusations forwarded against the right to nationality under Islamic law (Shari'ah). The Shari'ah is accused of being inapplicable of recognising the rights of religious, ethnic and nationalist minorities in many Arab and Islamic states. Hence, this research aims at defining nationality under the Islamic system by examining the Constitution of Al-Madinah being a model constitution to be followed by any society. **Methods:** to achieve the study objectives, a descriptive and analytical approach was implemented in conducting this research. **Conclusion:** citizenship is one of the most important concepts that has developed parallel with the development of societies and countries. This development has been mainly linked to the development of human rights and the impact of globalisation on human society. It became a topic of interest since the evolution of humanity and the introduction of civil laws, especially in the Western environment.

Keywords: Nationality, Citizenship, Constitution of Al-Madinah, People of the Pact, Equality before the Law.

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Significance of the Research

The importance of this study arises in reference to the claims of some secular writers and thinkers (Al-Jabri, 2008; Ibn Rushd 1986; & Abul-Magd, 2010) that Islam has overlooked the concept of citizenship and that it distinguished between its Muslim population and those of other religions and sects and that the concepts of citizenship and identity were defined solely on the basis of belonging to Islam. In so doing, they ignore or miss the facts of history, whose sources and documents refute this claim and affirm its invalidity. They point to the fact that the first construction of the Islamic state when it was in its embryonic stage was founded on the concept of citizenship by determining the identity of the state and all its parties along with their rights and duties. The study is also important due to the many changes in the concept of citizenship, as it no longer only describes the relationship between the individual and the state in its legal and political capacity, but has become part of the concept of citizenship in political theory. This renewed interest in citizenship is the result of several factors, most notably the crisis of the idea of nation-state, which has been at the core of liberal thought, in addition to the several transformations witnessed by the end of the twentieth century including increasing ethnic and religious problems from the Nazi genocide of Jewish groups to the nuclear annihilation of Hiroshima, the Serbian genocide of Muslims, the American genocide of the Iraqis and the Afghans, the ongoing genocide of the Palestinians as well as the growth of extremist fundamentalism and Christian trends. These have led to a revision of the concept and emphasis on its centrality to confront these ideas and their implications in the complex western political and social reality. The problem of the Arab and Muslim mind in this regard is that liberal thought has not only influenced the democratic experience in the Western world but now presents itself almost exclusively as an alternative to the political and intellectual reality of third world countries undergoing a democratic transition.

1. Introduction

The right to citizenship is an age-old debate that rears its head every now and then according to the political and constitutional circumstances facing states. It is an issue that has been given extensive attention by researchers and those interested in politics, society, and law. Many countries, institutions and international organisations have contributed

to defining the rules that govern the rights and duties of individuals, drawing the boundaries between individuals on the one hand, and between them and the state with its institutions and bodies on the other. These rules are based on the principle of the equality of rights and duties, without regard to religion, race, creed or any other considerations (Ali Jomaa, 2011).

The definition of citizenship is important politically and legally. Politically, it concerns the extended political rights to the citizens of the state only and not to the foreigners residing within its borders. Legally, we find that citizens have many more rights than foreigners such as the right to obtain certain professions and hold government postings (Ashraf Mohammed, 2014).

At present, the issue of citizenship is a controversial topic in the Arab and Muslim worlds because of the doubts and accusations raised about the right of citizenship in Islamic law by claiming that Islamic law is not applicable in the present era. Some groups even deny that the idea of existed in the Shari'ah and accuse it of not recognising the rights of religious, ethnic and national minorities living in many Arab and Islamic countries.

Islam has established and defined the rights of citizens some fourteen centuries ago. When the Prophet (PBUH) emigrated to Al-Madinah, he found different religions and tribes. Upon his arrival, he (PBUH) found that Al-Madinah consisted of three different groups: the Muslims, the Jews, and the polytheistic Arabs. The Muslims consisted of the Muhajireen (the immigrants) and the Ansar (the supporters) who were made up of the al-Aws and al-Khazraj tribes. This was a unique composition in the Arabian Peninsula at the time and contrary to Arab traditions and customs.

The Constitution of Al-Madinah, (which was written immediately after the migration of the Prophet Muhammad to Al-Madinah), is the first written document that regulates the relationship between Muslims and non-Muslims. The Prophet (PBUH) drafted it to establish the rights and duties on the basis of full citizenship in which Muslims are equal to other residents of the Al-Madinah and its surrounding territories (The Constitution of Al-Madinah).

This study identifies the concept of citizenship in the Islamic system

by referring to the Constitution of Al-Madinah as a model for every community seeking to establish a state based on justice, peace and stability. Therefore, this study followed the descriptive analytical approach in discussing this subject, and it was structured as follows:

- The meaning and dimensions of citizenship
- The foundations of citizenship and its characteristics in the Constitution of Al-Madinah
- Practical applications of citizenship in the Islamic system
- Conclusion

2. The Meaning and Dimensions of Citizenship

2.1. The concept of citizenship

Several definitions view citizenship in terms of belonging to a homeland, carrying the nationality of the state to which the person belongs and coexisting in a single society. This topic will be divided into three branches:

2.1.1. The concept of citizenship in Western thought

Plato opined that humanity was created differently into two classes: those who would govern and those who would be governed; it was stated by Karam (2014: 193) that “The truth that nature has agreed is that the patient, whether rich or poor, should wait at the doctor’s door and every person needs to be condemned to wait on the door of those able to govern”.

Aristotle views the idea of differently. For him, the citizen is defined by the practice of citizenship by excellent free men who participate in the policy of the state. He is a soldier in his youth and a priest in his old age, and thus serves the state throughout his life (Luisa 1997, p 28).

Through these two definitions, we can distinguish between Plato and Aristotle’s concepts of citizenship. They confined the idea of to a specific category of society with the natural variation that each of them recognised. Plato gave a broad meaning to citizenship, with its explanation of the two sides of the relationship, i.e., the ruler and the governed, while distinguishing it from the image of that citizenship from one class to another (rulers, philosophers, soldiers, the rest of the parish). Aristotle denied the status of citizenship to the parish and limited it to the elite regardless of their fields (political, religious, military).

Marshall (1950) defined citizenship as "*the status of having the right to participate in and to be represented in politics*". It is a collection of rights and obligations that gives individuals a formal juridical identity. In other words, Marshall considered citizenship as "*a status bestowed on those who are full members of a community; thus, "All who possess the status are equal with respect to the rights and duties with which the status is endowed"*". (Baylis & Smith, 2001; Brubaker, 1992).

Marshall (1950) formulated a theory of citizenship focusing precisely on the relationship between developments in the nature of citizenship and in the class system. As he stated at the very beginning of his article, he was dealing with national citizenship, for it was a formation of nation-states that contributed to universalization of what were in medieval Europe local rights and duties (Baylis & Smith, 2001; Brubaker, 1992).

According to Marshall, there are three distinct elements of citizenship, which may or may not be present in any given constitution of citizenship, as follows:

1 - The civil element of citizenship is composed of the rights necessary for individual freedom, and the institution most directly associated with it is the rule of law and a system of courts.

2 - The political part of citizenship consists of the right to participate in the exercise of political power. Such rights are associated with parliamentary institutions.

3 - The social element of citizenship is made up of a right to the prevailing standard of long and the social heritage of the society. These rights are significantly realized through the social services and the educational system (Marshall, 1950: 10).

The three elements of citizenship distinguished by Marshall are defined in terms of specific sets of rights and social institutions through which such rights are exercised. The requirement for understanding citizenship in terms of rights and the institutional context through which rights are exercised is a genuine improvement on the idea that rights intrinsically attach to persons and that the concept of human rights can create an understanding of the rights of the citizens. Marshall's approach indicates that rights are only meaningful in a particular institutional context and are thus only realizable under specified material conditions

Marshall defines citizenship as “the place where rights and associated forces are facilitated, which define civil rights such as freedom of expression and equality before the law and political rights that include the right to vote and the right to join any legitimate political organisation, social rights, economic rights... etc.” (Mbarkia, 2013, p 9)

Although Marshall explained that citizenship is a position reached by the individual through the acquisition of civil rights, he overlooked the duties assigned to the individual citizen in parallel with the acquisition of rights. This limits Marshall’s definition of citizenship.

Encyclopaedia Britannica defines citizenship as the “relationship between an individual, and a state in which an individual owes allegiance to that state and in turn is entitled to its protection. Citizenship implies the status of freedom with accompanying responsibilities. Citizens have certain rights, duties, and responsibilities that are denied or only partially extended to aliens and other noncitizens residing in a country. In general, full political rights, including the right to vote and to hold public office, are predicated upon citizenship” (Encyclopaedia, Boor international Britannica, Vol. 3: 332).

The International Encyclopaedia and Collier’s Encyclopaedia did not differentiate between nationality and citizenship. Citizenship in the International Encyclopaedia means full individual membership in the state or certain units of government. The Encyclopaedia asserts that individuals have some rights such as the right to vote and the right to hold public office, along with a duty to pay taxes and defend their country (World Boor international, (n-d), Vol. 4, p15). Citizenship in the American Collier Encyclopaedia is “the most complete form of membership in a political group” (al-Amer, 2005; Dajani, 1999). It is noted that the individual in both cases is considered to be a citizen socially and geographically. However, his participation and belonging to the country from a socio-political point of view is deeper.

2.1.2 Citizenship in contemporary Islamic thought

Scholars have differed on the meaning of citizenship. We find that each scholar introduced a definition influenced by the rules, foundations and dimensions of their environment. The Islamic definition of citizenship underlies the rules and foundations on which the Islamic vision of citizenship is based. Concerning the Muslim as an individual and element

of the nation, namely Muslim individuals, the ruler and the Imam, the relationship concerns the link between Muslims and their rulers on the one hand, and the land on which they reside on the other. Put differently, it concerns the relationship between these actors in Dar al-Islam (the abode of Islam) who reside therein.

Al-Qahtani (1998) defined the concept of citizenship from the Islamic point of view as “the group of relations, ties and links that develop between the Dar al-Islam and all who live therein, whether they are Muslims, believers or trustees”. Al-Qahtani also pointed to the source of the idea of and its role in the association with the emergence of Dar al-Islam. There are differences among Muslim thinkers concerning citizens (Musa, 2012). Al-Qahtani, for example, views citizens as those who live in the country even if they are not Muslims, but there are those who limit the status of citizenship only to non-Muslims who live in Dar al-Islam. Citizenship in the Islamic model appeared in the Medina Charter which laid down the rules of the multi-religious society for its inclusion of Jews, Muslims and others in the era of the Prophet (PBUH) (Al-Ghamdi, 2010). Citizenship in Islamic thought emerged when the Shariah systemised the authority of Muslims and non-Muslims (ahl al-Dhimma) in Dar al-Islam.

As for Fahmi al-Huwaidi (1995), citizenship in Islam is defined on the basis of the rules and foundations underlying the Islamic vision that is based on two pillars of citizenship, namely, the homeland and the citizen. Thus, Islamic law considers citizenship as an expression of the link between the Muslim as an individual and an element of the Ummah comprising Muslims, rulers and imams. It regulates the relationship between the individual and the ruler on the one hand, and the individual and the nation on the other.

Khalid Yaymut (2017) summed up the contents of citizenship through his analysis of the Medina Charter after criticising several views of Arab thinkers about this Charter, in which he stated the following:

- 1 - Islamic states recognise religious pluralism and the freedom to practice religious rites for non-Muslims.
- 2 - Non-participation of the ahl al-Dhimmah in wars
- 3 - The ahl al-Dhimmah are subordinate to the political authority and are equal before the judiciary with other Muslims.

4 - The ahl al-Dhimmah shall not occupy high positions in the State.

Citizenship in the Islamic state resulting from following the teachings of Islam as embodied in the Medina Charter was to guarantee the rights of the ahl al-Dhimmah and spirit of citizenship is the basis of transactions in the Islamic community.

In Islamic thought, citizenship is the natural law of all components of society. The Medina Charter is a guarantee for the rights of non-Muslims in Dar al-Islam, which guarantees them their rights, clarifies their duties, and reflects their sense of belonging. It shows that the structure of society in the Islamic state did not distinguish between the ruler and the governed, nor between the Muslims and the ahl al-Dhimmah, contrary to the clear discrimination against Muslims in many western countries in our contemporary era.

Citizenship is characterized by mutual respect between citizens irrespective of race, sex and culture. The Constitution of Al-Madinah guarantees citizens the respect and protection of their dignity and provides them with the legal guarantees that safeguard their civil and political rights, and to participate in making decisions that relate to their lives.

Citizenship is one of the most important concepts that has developed parallel with the development of societies and countries. This development has been linked mainly to the development of human rights and the impact of globalisation on human society. It became a topic of interest since the evolution of humanity and the introduction of civil laws, especially in the Western environment. Through this study on the concept of citizenship, we can conclude the following:

- Citizenship in Islamic thought is guaranteed through the principles of Islam, which are the most important rules of justice and equality between all rulers and governed as manifested in the state by the rightly guided caliphates of Islam.

- Citizenship in Islam appeared as an idea to protect and integrate the ahl al-Dhimmah into the State of the Medina Charter.

- Citizenship in Western thought is the product of the difficult labour of the struggle of vulnerable peoples against domination, injustice and dictatorship through the ages and until now.

- Citizenship cannot be transferred to the global level in the so-called

global citizenship. This is a fantasy ideal that is difficult to achieve because of the root of the idea of nation state since the Treaty of Westphalia 1648. The most prominent examples of this are the inability of the European Union to reach political unity and the refugee crisis in Europe as the biggest proof of the fantasy of global citizenship.

2.2. The dimensions of citizenship:

Citizenship has long been associated with the recognition of equality among citizens, regardless of whether equality includes all or some of them. This right is manifested through the acceptance of equal citizen participation. It is a right that has evolved over different historical periods until it reached its contemporary form. Citizenship has different dimensions (Al-Kuwari, 2004).

1 - The legal dimension: It is determined according to the constitutional and legal texts that determine the different rights of the individual and his duties towards his society, and the means through which the rights and the fulfilment of duties are exercised.

In accordance with the legal dimension, the citizen shall be the legal person with the freedom to conduct and enjoy the protection of the law. The legal dimension is based on the following elements:

- *Nationality:* It is a right for every citizen and a legal association that attains the affiliation of an individual to a particular State. Belonging to the State is the first condition for acquiring citizenship. Citizenship is acquired either by blood (association of blood), by birth (land association) or by naturalization. This is a sense of belonging to a human group and place (homeland) of different ethnic, religious and sectarian diversity, which shapes the human form and adopts and integrates the specific values this group (Waldeb, 2010).

- *Rights and Freedom:* As for the private and public citizenship rights, they include the rights to security, safety, health, education, employment, basic public services, expression and political participation. As for freedom, it comprises the freedom of movement within the homeland, freedom of belief and the exercise of religious rites, the right to speak and debate the problems of the society and its future freely, as well as the freedom to support or protest a cause, position or policy, even if this protest is directed against the government; and finally, freedom to participate in conferences or meetings of a social or political nature.

- *Duties*: In exchange for these rights, citizenship imposes duties on citizens in order to safeguard the public interest and the rules of coexistence, such as respect for public order, preservation of public property, defence of the homeland, solidarity and unity with citizens and contribution to the nation's prosperity in addition to preserving public property.

- *Equality before the Law*: Citizenship also requires that all citizens be equal before the law in terms of submission and protection, without regard to any form of discrimination: sex, colour, religion, language, opinions and social identity...etc.; citizens are also required to know and respect the law.

2 - The political dimension: The political participation of the individual in the various political institutions and processes in the society (participation in political decision-making, such as election, nomination and management of public institutions and participation in everything that matters to the management and destiny of the homeland.) The political dimension of citizenship means "membership in a political society that governs itself" (Nabih. 2008).

3 - The social dimension: The membership of the individual in society with the consequent membership to acquire a distinct identity (sense of belonging). This is also called the psychological dimension of citizenship.

In short, citizenship is a comprehensive and complex historical concept that has many dimensions: legal, cultural and behavioural. It is also a means or a goal that can be achieved gradually (Nafie, 2001).

3. Foundations of Citizenship in Islam and its Characteristics in the Constitution of Al-Madinah

3.1. The idea of in the Shari'ah

Islam is a universal doctrine applicable to every place and time. There is no distinction between a Muslim who lives in Dar al-Islam (abode of peace/Islam) and a Muslim who lives in the Dar al-Kufr (abode of disbelief). This is based on the principle of brotherhood among the believers, which derives from a Quranic verse, "The Believers are but a single Brotherhood" (Quran, 49: 10).

The idea of in modern and contemporary governance is based on the division of persons residing in the state into national and foreign

depending on the affiliation of a state. The idea of in Islam is based on faith and adherence to the provisions of Islam, and can be inferred from the Almighty's words, "It is He Who has created you; and of you are some that are Unbelievers, and some that are Believers: and Allah sees well all that ye do. "He who created you is infidel and you are a believer" (Quran, 64: 2).

Muslim jurists divided the world into Dar al-Harb and Dar al-Islam (Zeidan, 1982):

The Abode of Peace is the country that is ruled by Muslim rulers and under their sovereignty, regardless of whether the citizens are Muslims or non-Muslims. If the origin of the Abode of Peace is to be Muslim, that does not prevent the people from being non-Muslims as is the case for the dhimmis.

Dar al-Harb (Abode of War) is a place where Muslims do not have authority and are governed by non-Muslim rulers and therefore do not apply the provisions of Islam. This description applies even to countries which have a Muslim minority. It is not subject to the rule of Islam, but Muslims carry the nationality of the Abode of Peace (Zeidan, 1982).

Muslim jurists disagreed about the existence of the idea of (nationality) in Islamic law, and their opinions diverged into three positions as follows (Mohammed, 2014; Al-Jeddawi, 1978).

The first group denied the existence of the idea of in Islamic law, as they believed that "the idea of itself is not in Islam as a religion based on the universal doctrine that does not accept such a political and legal barrier". The second group argued that Islamic law defined the idea of but narrowed its scope to Muslims only; according to this view, a Muslim is a citizen of Islam whether they reside in the Abode of Islam or not on the basis that the idea of is based on Islamic faith (Ashraf, 2014). The third group recognised the existence of the idea of in Islamic law and expanded its scope of application to include Muslims and non-Muslims from other sects who resided in the Abode of Islam.

We gravitate toward the third opinion which is considered the most acceptable to us. According to this view, the dhimmis enjoy citizenship and Islamic nationality in the Abode of Islam. The reason for this is due to the contract concluded between the dhimmi and the guardian where the contractual obligation is to pay tribute to ensure that the Islamic state

secures their safety and protection (Salama, 1993). Accordingly, the dhimmis enjoy citizenship as “The basis of nationality in Dar al-Islam is to convert to Islam or to abide by its provisions. Whoever converts to Islam is a Muslim and whoever commits to the provisions of Islam and is not a Muslim is a dhimmi. In contrast, the basis of nationality in Dar al-Harb is the denial of Islam and the non-observance of its provisions” (Odeh, 1949; Salama, 1993).

3.2. Foundations of citizenship in Islam and its characteristics in the Constitution of Al-Madinah

Citizenship in Islamic law can be traced to the Constitution of Al-Madinah. It is the first Islamic state and is based on brotherhood between Muslims (Muhajireen and Ansar), and that they are one nation, one body, and one opposite against enemies. As for the acceptance of non-Muslims who are composed of Jews and polytheists, the Constitution established the approach for legitimate dealings with them on the basis of justice, citizenship, rights and duties. The Prophet (PBUH) drafted the Constitution which contains a large number of provisions on the rights of Jews and other polytheists (Ibn Hisham, 1964; Ibn Katheer, 1899; Hamidullah, 1987; Ibrahim, 1965).

Based on the above, it could be argued that the Constitution of Al-Madinah has established many important constitutional principles that are represented by the following (Karra Daghi, 2013).

First: Place the Islamic nation above the tribe: One of the provisions of the Constitution of Al-Madinah stipulates: “This is a document from the Muhammad the Illiterate Prophet (the Messenger of Allah) between the believers and Muslims of Quraysh and Yathrib and those who followed them and fought with them that they are one nation above all else”.

He then mentioned the rights and duties of the Muhajireen and Ansar. The Prophet (PBUH) was able to integrate the Muslims with their different origins and tribes into a united group of Muslims. He made the affiliation to Islam above all considerations. This is a radical change from the tribal allegiances common at the time to a sense of a nation unified based on belief (Khalil, 1997; Al-Saghir, 2015).

Second: The Constitution of Al-Madinah contributed to the achievement of collective security and peaceful coexistence among all citizens

residing in the State. This can be deduced from the text contained in the Constitution: “Whoever leaves or stays in Al-Madinah is safe except for those who commit injustice and wrongdoing, and that Allah is with those who are righteous and fearful. The Constitution also preserves the neighbour’s right to security and self-preservation; it stated that: “The neighbour is like soul, it neither harms nor sins” (Ibn Hisham, 1964; Ibn Katheer, 1899; Hamidullah, 1987; Ibrahim, 1965).

It is, therefore, possible to say that this Constitution was founded on the principle of peaceful coexistence between individuals living in a specific time and geographical location, regardless of their ideological differences. This legal document does not contradict the principles of the *Shari’ah*. Nothing in Islam prohibits the contact of Muslim with non-Muslim within a social framework to be agreed under the title of citizenship. In this constitutional document, the Prophet (PBUH) established the rules of a single society that guarantees justice and protection for its members. Hence, the main objective of this document is to ensure that there is no injustice (Ibrahim, 1965; Jomaa, 2011).

Third: Deterring renegeing on the covenants: The Constitution is a legal document documenting the forms of cooperation and alliance between the different factions living in Al-Madinah and how to repel external aggression. It stipulates: “The faithful are the ones who have the right to address aggression or corruption even if it is committed by one of them”. The alliance between them is of a preventive or defensive nature and it is not aggressive. It is aimed to ensure a state of peace and security. It also aims to address injustice and aggression, spread security, and promote social solidarity. It is possible to say that this document establishes common rights and duties taking into account the religious specificity of each category of the society of Al-Madinah. These shared rights and duties are based on recognition of the other as a human value and meet in various paths, such as respect for the system and participation in defence of the homeland, respect for the Constitution, and spending for the protection and development of society in the event of war. These duties are shared with the Jews, and together they are obliged to pay the expenses needed by society as contained in this document of constitutional provisions (Karra Daghi, 2013).

The bottom line is that this Constitution aims primarily at regulating the relationship between all the communities and groups of

Al-Madinah, especially the immigrants, the supporters, the Jewish communities and other Arab polytheistic tribes, by jointly confronting any external aggression through this constitutional document.

Fourth: The Constitution of Al-Madinah ensured the freedom of belief and the exercise of religious rites was guaranteed to all denominations without exception: “The Jews have their religion and the Muslims their religion, supporters and themselves, except those who commit injustice and sin, for they are their own ruin”. The Constitution further stipulates: “The Jews of the Bani Auf are one nation with the believers”. This is not exclusive to the Jews of Bani Auf, but it is true for the Jews of Bani al-Najjar, Jews of Bani al-Harith, and Jews of Bani Sa’idah, Jews of Bani Thasbah, the Jews among the Aus, Jews of Jaffna, and Jews of Bani Shatiba and their supporters.

The Constitution is keen to establish this important principle and clarify it to all citizens, namely that Muslims and Jews in the city of the Prophet (PBUH) are one nation: “The Jews have their religion and the Muslims their religion, supporters and themselves, except those who commit injustice and sin, for they are their own ruin”.

Islam’s affirmation of religious pluralism is included in the Constitution: “The Jews have their religion, and the Muslims have their religion”. However, they are one nation, politically and constitutionally, even though each religion has its peculiarities (Ibrahim, 1965; al-Jundi, 1968).

The Constitution of Al-Madinah is a constitutional text with no equal in terms of establishing coexistence between the citizens of a multi-ethnic and multi-religious state. These constitutional provisions recognised the principle of pluralism in all its manifestations and acceptance of the other who differed religiously, ethnically and culturally (Ibrahim, 1965; al-Jundi, 1968). Paragraph (25) of the Constitution establishes religious pluralism in the following terms: The Jews have their religion, and the Muslims have their religion. However, they are one nation, politically and constitutionally, even though each religion has its peculiarities. This is supported by the verse, “To you be your Way, and to me mine” (Quran,109: 6) and “Those who believe (in the Qur’an), those who follow the Jewish (scriptures), and the Sabians, Christians,

Magians, and Polytheists,- Allah will judge between them on the Day of Judgment: for Allah is witness of all things.” (Quran, 22: 17)

The above verses list the believers alongside the Jews, Christians, Sabians, Magians and polytheists, and emphasised that the power to separate between the followers of religions belongs to God alone, and that this divine separation between the followers of religions will be on the Day of Resurrection and not in the life of this world. Therefore, followers of religions must coexist peacefully in each other’s life, accept each other, recognize the right of all to exist, and none of them has the power to adjudicate the beliefs of others (Hamid Allah,1969; al-Omari, 1991).

Fifth: To ensure the full equality of the citizens in active participation in the various spheres of life: This achieves the principle of full citizenship. The Constitution of Al-Madinah gave this right to every resident, at a time the world did not know the meaning of homeland obligations and duties (Karra Daghi, 2013).

Sixth: The geographical boundaries of the nascent or fledgeling state: The Constitution was established for the joint existence of the fledgeling citizens of Al-Madinah. After the migration of the Prophet (PBUH) to Al-Madinah, where he united the Muhajireen and Ansar and their different tribes, he established a polity independent of the influence of regional actors such as the Byzantines, Persians and Abyssinians. It was a state with a specific geographic region. The citizens of this state were Muslims (Muhajireen and Ansar), Jews and some polytheists. This means that the citizens in the emerging state had multiple religions and beliefs, diverse races, and different cultures. The Constitution announced the foundations and principles of the rule of the state, its citizens’ duties, and the type of relationship that holds between them and the head of stand and between themselves, along with their legal rights and constitutional duties (Abdel Nasser, 2013).

It is, therefore, possible to say that Al-Madinah established a global civil state with legitimate authority from the first day. Such a state could have been established in any place adopting the same ideals and embracing the religion. Al-Madinah was a pluralistic state. The immigrants who came to Al-Madinah did not practice the policy of ethnic cleansing against the indigenous people or expelled them but

rather coexisted with them and became a major and important component of the new state (Khalil, 1997).

Seventh: Establishing the principle of personal responsibility: This principle is based on the fact that criminal responsibility is based on the responsibility of the offender for his personal action and not the action of others, and the free will of the person who committed the crime. Hence, criminal responsibility is personal, and therefore, the penalty must be personal and must be inflicted on the person who committed the crime. No one imposes the penalty on others (Ahjila, (2007). The Constitution stipulated in more than one place: The wrongdoers ruin only themselves and their household. Moreover, that a person is not guilty by association if his associate committed an offence punishable by a judicial sentence. The Constitution stipulates, "That a person is responsible for his own deeds and that Allah supports the contents of this document, and that a person is not guilty of the crimes of his associate and that support is for the oppressed".

This is the fundamental change that the Constitution of the Al-Madinah introduced by establishing the principle of "individual responsibility". The Qur'an has explained this in several verses (Karra Daghi, 2013), "Every soul draws the meed of its acts on none but itself: no bearer of burdens can bear the burden of another" (Quran,6:164) and "Nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds" (Quran, 52: 21).

Eighth: The provision of financial support for the defence of the state, which is the responsibility of all the people: One of the provisions of the Constitution stipulates that Jews should participate in expenses. The article states that: "Jews spend with the faithful as long as they are at war". Al-Madinah is home to all residents on all its lands. Therefore, it is imperative that everyone, including the Jews, take responsibility for defending it by supporting the army with money and equipment.

Ninth: The supreme reference to the rule of law in Islamic law: Article 25 of the Constitution states that: "Disputes that arise from members of this Constitution is referred to Allah and Muhammad, the Messenger of Allah, and that Allah supports the contents of this Constitution" (al-Jundi, 1968).

4. Practical Applications of Citizenship in the Prophetic Sunnah

The Constitution of Al-Madinah explains the relationship between Muslims and Jews, and thus represents the state of peace guaranteed by the Constitution, which initiated all the legitimate rights of citizenship. The Prophet (PBUH) did not stop with the Constitution of Al-Madinah but also drafted contracts and covenants between him and the Jews and Christians, one of which is the treaty between the Prophet (PBUH) and the Christians of Najran after his return from the invasion of Tabuk in 9 AH. It is an exposition of justice, permissibility and freedom that gave them religious freedom and protection, and they were required to provide a modest tribute; the treaty stated: “In the name of Allah, the Most Compassionate, the Most Merciful. This is written by the Messenger of Allah, Muhammad, to the people of Najran... Najran and its territories are under the protection of Allah and Muhammad concerning their lives, faith, land wealth, for the present and non-present and their families. Your rights are established. The bishops are not harassed nor the monks and their possessions whether small or large. No army shall invade them, and they shall not partake in injustice. Those who consume or deal in usury are exempt from this covenant. No innocent will be treated unjustly. The people of Najran are bound by this treaty until such time that Allah’s decree arrives” (Al-Falazari, 1956; Ibn Saad, 1907; Yacoubi, 1964; Darwazah, 1965).

The Prophet (PBUH) gave the covenant and safety to the Jews even after their treachery during the Battle of the Confederates. He wrote to a number of Jewish communities in the north of Arabia several years of the Khyber expedition; he wrote to Bani Junba: Your ambassadors are returning to your village. If my covenant reached you, then you are safe. You have protection of Allah and His Messenger, and the Messenger of Allah forgives you of your sins. You shall not be oppressed. The Messenger of Allah is your neighbour.... If you hear and obey, then the Messenger of Allah (PBUH) should honour and forgive you, and you shall not have a leader except from among yourselves, or from the family of the Messenger of Allah. (Ibn Saad, 1907)”.

The Prophet (PBUH) adopted the same approach with Banu Ghadya, the People of Harbayah and the Jews. By doing so, the Prophet entered these Jewish communities into citizens of the Islamic State, who in recompense paid the due taxes in money or in-kind. They enjoyed the

sovereignty of the Islamic state, its justice and freedoms. There are many historical texts that indicate that the Prophet (PBUH) treated the Jews after the Khyber expedition with tolerance. He advised his representative Muath ibn Jabal: “not to harass the Jews for their Judaism”. In such a way were the Jews of Bahrain treated, since they were only charged with paying tribute and remained adhering to the religion of their forefathers (Ibn Saad, 1907; Khalil, 1997).

Other historical evidence indicates the acceptance and maintenance Islam, and that tributes are nothing more than the means to extend and recognise the right of citizenship to others. It determines financial rights in return for providing security. This is extolled in the Orientalist Thomas Arnold’s well-known book titled “*The Preaching of Islam*” (T.W. Arnold, 1913), which includes an analysis supported by documents, testimonies and texts of the humanitarian formulas in Islam for dealing with the sects and other minorities.

When Allah granted the Muslims victory over the Romans, Abu Ubaydah wrote to Umar bin al-Khattab regarding the success of the Muslims and treaties were concluded with the dhimmis. Umar wrote back: “Prevent the Muslims from injustice and harming them and consuming their wealth except in due rights. Honour the conditions of the treaty and give them all that is due to them” (Abu Yusuf, 1963).

Khalid ibn al-Waleed concluded a treaty with the people of Al-Hira and neighbouring cities. He agreed with them that they should pay the tribute on the condition that they and their leader should be spared by the Muslims and others. He said: “If we protect you, then we are entitled compensation” (Abu Yusuf, 1963). The treaty stated: “This is a covenant from Khalid ibn al-Walid to the people of Al-Hira... in giving tribute... and imposing on them they should observe the Covenant of God on the people of the Torah and the Gospel: that they do not violate or support an infidel over a Muslim be he Arab or otherwise, and not to reveal the weaknesses of the Muslims. For this they shall have the covenant of God and his Messenger. If they renege, they shall no longer be entitled to protection, and if they honour the terms of this contract, then they are guaranteed protection...” (Abu Yusuf, 1963).

Among the examples that highlight the justice of Muslims toward others is the order by Umar bin Abdul Aziz to the commander Qutaybah bin Muslim Bahli to leave the territory of Samarkand with the army after entering without declaring war. This led many of the people of Samarkand to accept Islam. Commander Qutaybah bin Muslim Bahli (may Allah have mercy on him) besieged the city of Samarkand without inviting its people to Islam or to pay tribute. He gave them three days as was customary before fighting would start. When the people of Samarkand learned that this is contrary to Islamic practise, the priests wrote a letter to the Sultan of Muslims at that time who was Umar bin Abdul Aziz (may Allah have mercy on him). The delegate from Samarkand narrated: I knocked the door... A man came out, greeted and welcomed me and washed his hands and asked, how can I help? I said: This is a letter from the priests of Samarkand. He read it and wrote on its back. "From Abdullah Umar bin Abdul Aziz to his agent in Samarkand, appoint a judge to look into their case". He then sealed it and gave it to me... When I arrived in Samarkand and read to the priests the letter, they went to Umar's agent in Samarkand who appointed the Judge Jumay' bin Hadir al-Baji to consider their complaint (Yassin Yousef,1995). The judge said to the successor of Qutaybah (may Allah have mercy on him) who had died, so what do you say. He said: "Their land was fertile and vase, and Qutaybah was afraid that if he gave them time, they would fortify themselves". The judge said: We came as Mujahideen in the name of Allah and are not here to subdue the land as we will. The judge then ordered the Muslims to withdraw in accordance with Islamic principles. The people of Samarkand could not believe that such few words would lead to the withdrawal of the Muslim army from Samarkand. The Samarkand witnessed what was unparalleled in the history of mankind of justice implemented by the state on its army and its leader. They said: This nation rules in mercy and grace, and most of them entered the religion of God and imposed tribute on the rest" (Alomran, 2010).

This ruling confirms the Qur'anic approach and practical behaviour as evidenced in the Sunnah of decisive directives regarding adherence to the rule of justice. Abu Dawood and Al-Bayhaqi narrated from the Prophet (PBUH): "Beware, if anyone wrongs a contracting man, or diminishes his right, or forces him to work beyond his capacity, or takes from him anything without his consent, I shall plead for him on the Day of Judgment" (al-Bayhaqi, 2013).

5. Conclusion

Citizenship is one of the most important concepts that has developed parallel with the development of societies and countries. This development has been linked mainly to the development of human rights and the impact of globalisation on human society. It became a topic of interest since the evolution of humanity and the introduction of civil laws, especially in the Western environment. Through this study on the right to citizenship in the Islam we can conclude the following:

The Constitution of Al-Madinah includes many important constitutional and political principles, which can be concluded as follows:

- Citizenship in Islamic thought is guaranteed through the principles of Islam, which are the most important rules of justice and equality between all rulers and governed as manifested in the state of the rightly guided caliphates of Islam.

- The concept of citizenship in Islam is based on the religion of Islam, while for the dhimmis it is based on compliance with the provisions of Islam. By doing so, they become citizens of the Islamic state. Citizenship has a political, civil, and contractual meaning. Therefore, we find that Islam is the first to call for comprehensive human unity to live in love, cooperation and stability and that a Muslim and dhimmi is duty-bound to protect the homeland.

- Religious freedom and respect for privacy, the right to private property, the right to human dignity, freedom of belief and good treatment. The Constitution recognises the rights of the religious, national and ethnic minorities of Jews, Christians and polytheists on the basis of citizenship in the state of Al-Madinah. Therefore, we must treat each other on the basis of citizenship and not on the basis of religion and belief. They have their religion and we have ours. Religions to all is one of the legal principles enshrined in contemporary constitutions.

- The sanctity of rights must be defended, maintained and nurtured, and no one should be allowed to abuse or violate them. Therefore, a Muslim may not violate the rights of others, and this is the privilege of rights in Islam.

- Rights in Islam are in line with responsibilities and have been affirmed in the Constitution of Al-Madinah by stipulating cooperation against injustice, tyranny and corruption, and the protection of the

vulnerable. Rights and obligations are imposed such as the defence of the homeland.

- One of the important constitutional principles stipulated in the Constitution is that responsibility is personal. The community has the responsibility to protect the Constitution, to prevent anyone who wishes to violate it and not to grant protection to the enemies except as stated in the document. This underscores communal responsibility.

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