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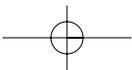
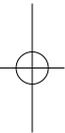
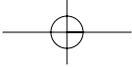
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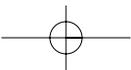
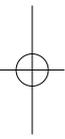
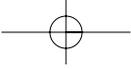
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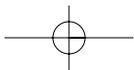
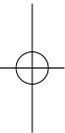
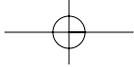
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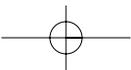
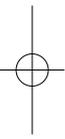
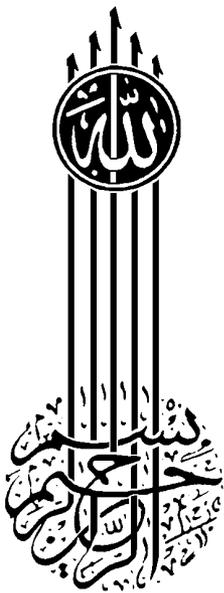
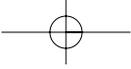
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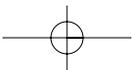
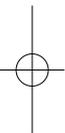
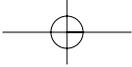
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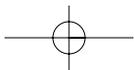
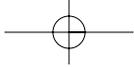






## In this issue

	Page
● Editorial : <b>The Message of Contemporary Human Thought</b> .....	11
● <b>Ijtihad and Modernity in Islam</b> <i>Dr. Abdulaziz Othman Altwaijri</i> .....	15
● <b>Peace and War in Islam</b> <i>Dr. Abbas Jirari</i> .....	33
● <b>The Spirit of Islamic Civilization</b> <i>Dr. Mohamed Imara</i> .....	47
● <b>A special dossier on the lecture of Pope Benedict XVI</b> .....	57
◆ <b>A Gentle Debate with His Holiness the Pope</b> <i>Sheikh Dr. Mohammed Sayed Tantawi</i> .....	59
◆ <b>Reflections on the Lecture of Pope Benedict XVI</b> <i>Dr. Abdulaziz Othman Altwaijri</i> .....	113
◆ <b>Reflections on the Statements of the Pope: History, the New Worlds ...and Islam</b> <i>Dr. Radwan al-Sayyid</i> .....	123
◆ <b>The Architect in Islamic Civilization</b> <i>Dr. Khaled Azab</i> .....	139
● <b>Knowing about Islamic countries</b>	
◆ Republic of Mali .....	157
● Index of " <i>Islam Today</i> " Journal (Issue 1 to 24) .....	171



## *Editorial*

### Message of Contemporary Human Thought

The campaign of hostility against Islam has reverted to its fierceness at many levels. Some religious and political leaders, thinkers, academicians, intellectuals, journalists and media figures now take part in that campaign in different ways and forms. Though the end is always the same, the means tend to vary depending on the circumstances. They may be overt in times, secret in others, and then may all of a sudden take the shape of a fierce war that continues unabated.

The world is embarking on an era where the advocates of racism, religious fanaticism, and intellectual and civilizational isolation are spreading allegations and fallacies that only kindle the fires of hatred and enmity among the world's peoples, deliberately promote unrest and purposefully cast doubts about historical facts and moral values. Those who do not know these facts and values find themselves in a quandary, torn between the radiance of faith, conviction and knowledge, and the darkness of doubt, fanaticism and ignorance, between tolerance, mutual understanding and dialogue and cooperation on the one hand, and hatred, racism, sectarian conflict and intellectual disputes on the other. This situation is of great concern and reflects the defectiveness of the international relations, the chaos of intellectual safety and cultural peace, and the dangerous discrepancy between the values, principles, ideals and theories addressed today and adopted by the international community, and a reality that is replete with deviations in thought, erratic behaviour and an inclination for misleading minds, distorting the truth and baffling the international public opinion. Such a situation is unprecedented in world history, not only in its scope but also in that strange perseverance to doing evil, committing cruel injustice, and overusing deception and betrayal under pretexts that were used in the past to impress and befuddle the simple-minded and that are now open secrets.

Any sensible person knows that today's world takes an unsafe path. There are ill-intentioned parties who seek to sow trouble and unrest, disrupt the stability of human societies and trigger religious strife, leading to a state of utter chaos

that no effort on the part of genuine rational-thinking men and no good offices of wise men can end. This poses a serious threat to the state of the world and opens the doors wide open before anarchic ideas, erratic actions, and exclusionist policies that seek to separate man from his reality and lure him into illusions and perdition, thus placing him outside the historical moment, stripping him of his rational and civilized mind, and making him unable to act positively or constructively in ways that affect the lives of individuals and communities.

Those who commit the crime of waging a war on Islam and Muslims, no matter how diverse and myriad their styles are- are knowingly or unknowingly prejudicing the entire humanity and all divine religions. They erect obstacles on the path to the future that mankind dreams of and strives with all its might to fulfil with the help of the Almighty and Creator (SWT) and thanks to the desire to build not to demolish, and to edify civilization instead of wreaking havoc on earth. These fierce campaigns against Islam as a religion, a way of life, a culture, a civilization and an Ummah, have as their first and last target humanity at large, a humanity that is thus thrust into labyrinths to which there is no beginning or end, and that sees its future on this planet at stake.

One of the amazing aspects of this anti-Islam and Muslims campaign in this juncture of history are the so-called experts, disguised as men of thought, science and culture, who introduce themselves as the champions of reason and logic and of defending rights. They claim that they fight ignorance and superstition, combat fanaticism and extremism and endeavour to eradicate terrorism. All of these are but false claims, fallacies and lies that they spread for no purpose but to serve their own interests and realize their plans. These plans can be summed up in a desire to enfeeble the great Islamic edifice, undermine its integrity, mercilessly tear it apart, create a cleavage between Islam and life, and force Muslims to follow their policies.

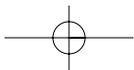
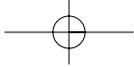
Faced by such a worrisome and extremely tense situation, the world's conscience and rational-thinking people stand fast before the conspiracies being weaved against humanity by the true fanatics, the prominent extremists and those who have no respect for the truth. In fact, thinking rationally about the world's current situation can only lead to favouring the supremacy of human interests over the sectarian and religious interests of a given group or community, the political and economic interests of a category or the strategic interests of a country, no matter how powerful this country is. It is not in the interest of humanity to kindle the fires of religious wars, spur sectarian conflicts or escalate

clashes - instead of dialogue - between civilizations and cultures. Nor is it in the interest of humanity to turn the onslaught upon another religion into an international crisis that preoccupies the public opinion and distracts the attention from important matters such as the pursuit of people's prosperity and progress and the achievement of peace and stability. It is not in the best interest of the world, today and the future, to create tension spots that would serve as breeding grounds for crises of with unpredictable consequences. There is no doubt that offending religions and questioning people's faith and beliefs are two matters of great danger. In addition to being a blatant violation of human international laws, the risks that they entail are despicable crimes.

The responsibility of the sensible people and rational thinkers in this world only becomes weightier as this abnormal phenomenon escalates in its threat to the safety of human societies, and as long as the war waged on Islam and Muslims in all parts of the world continues unabated. We still believe that fighting these campaigns is not the responsibility of Muslims alone. It is also the responsibility of the intellectual and cultural elites that nurture a human conscience, an enlightened mind and a clear vision of the world's issues and destiny.

The mission of human thought in today's world is one of great value, and discharging this mission is a moral duty, a human necessity and the expression of a strong need that cannot be evaded or neglected. With an enlightened thought and a wise mind, it becomes possible to deal with this phenomenon which has come to characterize our today's world, to face it with wisdom and clarity, unmask its true purposes and unveil its real plans. If the Islamic thought fails to tone with the fundamental goals of Islam, to adopt the argument of the Middle Way and tolerance, and to open up to the world while assimilating its changes, freeing itself from the after-effects of the age of civilizational regression, then it will never be able to convince others of the true essence of Islam and to provide compelling arguments that refute the allegations against Islam.

Islam Today





## **Ijtihad: its notions and meanings**

Jurisprudents define Ijtihad as the jurist's exertion of the utmost endeavours to reach a conjecture to religious rules in such a way that reaching beyond it would be impossible.<sup>(2)</sup> Ibn Hazm defined it as (the expending of efforts in reaching a ruling concerning a certain matter; it is a certainty that Allah the Almighty has laid down and expounded all rules of the Shari'ah; hence most scholars are assured that they will reach these rulings. If some people fail to reach such rulings, it is impossible that others won't manage to come to these judgments. For Allah has not placed on us burdens greater than we can bear; Allah has not commissioned us with performing impossible missions.<sup>(3)</sup>

Ijtihad can be divided into two types: firstly, an ijtiḥād which is absolute in all rulings; this can be reached through inferring few rulings based on substantial evidence or a trustworthy reference. Secondly, an ijtiḥād specific to a certain ruling; it is worth mentioning that the one who engages in this type of ijtiḥād has to be sure that the ruling does not run counter to a certain text or to a consensus reached in this connection; knowledge about the different aspects pertaining to all rulings is not a prerequisite.<sup>(4)</sup>

Scholars consider that every religious ruling that is not based on conclusive evidence can be subject to ijtiḥād. Hence, no ijtiḥād can be exercised in matters that are established by irrefutable evidence such as the five prayers, the zakat and the other remaining pillars of Islam.<sup>(5)</sup>

Ijtiḥād can be performed within the realm of the text, which involves the exertion of one's efforts to take cognizance of the inclusive rules which constitute the unequivocal evidence. Another methodology of ijtiḥād consists in consideration which involves an analogy between a matter about which there is neither text nor consensus and another one that is supported by texts and the consensus of scholars; it also involves the inference of religious rulings from the general rules of the Islamic Shari'ah. This is termed as ijtiḥād by means of opinion.<sup>(6)</sup>

(2) At-Tahanawi, "*Kashf Istilahat al-Funun*" 198/1.

(3) *Al-Ihkam*, Ibn Hazm 133/8, p. 347.

(4) The General Islamic Encyclopaedia (Cairo: The Supreme Council for Islamic Affairs, 2001), p. 45.

(5) *Ibid*, p. 46.

(6) *Ibid*.

The most conspicuous feature that can be noted when pondering over the fundamental books of theology that tackled the issue of ijtiḥad is that they did not confine ijtiḥad to the field of fiqh (jurisprudence) in its recent restricted extent. For *Fiqh* means understanding. Islamic jurisprudence, in more precise words, is the full understanding of the rules of Islamic Shari'ah. As far as terminology is concerned, the ijtiḥad of the jurist means the exertion of his utmost efforts to reach a conjecture to a religious ruling. Accordingly, jurisprudential ijtiḥad means the exertion of efforts to attain a desired ruling through deduction.<sup>(7)</sup>

The scholar who applies ijtiḥad must possess an understanding of the general principles and the essence of legislation that underlie all religious rules and which are not limited to one set of rulings.<sup>(8)</sup>

Since the rules of Islamic law are so comprehensive and thorough that they touch upon different aspects of human life, Islamic jurisprudence is, in essence and according to the Islamic conception of the individual, life and the universe, the comprehension of life. In this regard, it is not admissible neither by religion nor by reason that fiqh should be limited to a part of the Shari'ah, thus restraining the jurist's scope of action. Indeed, it is commonly established and agreed upon that Islamic law is all-encompassing in scope and valid for every time and place.

Linguistically speaking, fiqh is the power of sophisticated understanding that fathoms the intents of words and deeds. This definition also holds true for scholars. In more precise terms, it is the knowledge of religious practical rules through their detailed proof. To fully assimilate the aims of ijtiḥad, it is necessary to define the science of fiqh which consists of two parts:

- Knowledge of religious practical rules. The rules pertaining to faith -such as the Oneness of Allah, the mission of messengers, their conveyance of Allah's message and the belief in the Day of Judgement- are themes that are not covered by the terminological purport of the word "fiqh".
- Knowledge of the detailed proof of each matter.<sup>(9)</sup>

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(7) *Kitab Attaarif*, Ali ibn Muhammad Asharif Al Jurjani, p. 9, Maktabat Lubnan, Beirut, 1990.

(8) Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, p. 220, Dar al-Qalam, 20<sup>th</sup> Edition, Kuwait, 1986.

(9) Muhammed Abu Zuhra, *Usul al-Fiqh*, p. 6, Dar al-Fikr al-Arabi, (no date).

*Fiqh* is, according to juristic terminology, the knowledge of religious practical rules that can be acquired through their detailed proof, or it is the set of religious practical rules that can be inferred from their detailed proof.<sup>(10)</sup>

However, those who tackle this subject make a big mistake as they distinguish between what is religious and what is worldly. Indeed, this distinction has no grounds in religion and leads to a considerable confusion over the issues under consideration. Hence, the extent of *fiqh* and *ijtihad* is greatly restricted. Actually, the scope of Islamic jurisprudence and *ijtihad* covers all matters pertaining to individuals and communities since it is the understanding of life at its different levels of meaning. It is then of paramount importance to rectify this erroneous concept so that truth is elucidated and all facts are unravelled and explained.

Based on this understanding of the word “*fiqh*” and the term of “jurist”, it becomes clear that jurisprudential *ijtihad* has a large and limitless scope which encompasses all matters and issues that are associated with human life.

Accordingly, *ijtihad*, which is the exertion of the utmost efforts either in the deduction of religious rulings or in their application,<sup>(11)</sup> **always aims to be cognizant of human interests which are the intents of any rule within the Islamic law.** Islam is always in support of human interests for Islamic Shari'ah is but mercy being extended to human beings; in addition, Islamic interests are subjective facts that are not considered as desires that the individual is pursuing. Rather, they are assessed as being salutary or harmful per se.<sup>(12)</sup>

A modern jurist sums up all these meanings and phrases them as *ijtihad istislahi* (useful or utilitarian *ijtihad*); he considers that this type of *ijtihad* consists in defining the essence of Shari'ah in general so that it is adopted as a source of legislation to be ultimately used as a reference to deduce the right ruling in any new matter through *istislah* (utilitarianism); this method can be employed if *ijtihad bayani* (it is applied to cases that are explicitly mentioned in the Quran or Hadith but need further explanation) and *ijtihad qiyasi* (it is applied to cases that are not mentioned in the Quran or Hadith, but that are similar to cases mentioned in either of them) can not be conducted.<sup>(13)</sup>

(10) Abd al-Wahhab Khallaf, op. cit., p. 11.

(11) Muhammed Abu Zuhra, op. cit., p. 379.

(12) Ibid, p. 387.

(13) Dr. Mohammed Maarouf Dawalibi, *al-Madkhal ila Ilm Usul al-Fiqh*, p. 407, Damascus University Press, Damascus, 1963.

It is known that **istislah** has as a subject-matter the public interest that is in line with the objectives of Islamic law, and that the interests of individuals are the ultimate goal of legislation and underlie all its rules. The vast majority of jurists agree that Islamic fiqh gives due consideration to the public interest. In this regard, it maintains that every interest has to be given priority **unless it conveys personal desires or bears inherent contradictions to the aims of the Shari'ah.**<sup>(14)</sup>

In the light of our presentation to this issue, we think that (jurisprudential ijtiḥad) or (ijtiḥad in fiqh) are two broad concepts that are pregnant with a wide range of meanings and profound significance. Hence, we conclude that the ijtiḥad we need is the one that keeps a careful eye on the present and future interests of the individuals, and is keen to materialize and preserve them; it is also the one that presents to the Ummah a useful tool to solve current problems through a scientific and comprehensive approach that is in line with the spirit of the Islamic law.

If ijtiḥad consists, as we have seen earlier, in deriving the religious ruling on a given issue from the texts of the Quran and the Sunnah, it then creates a **motion into the static text in order to derive the ruling on the changing reality.**<sup>(15)</sup> On this premise, renewal is the core of ijtiḥad as it consists of exploring the religious ruling on issues that are generated by a new historical era or a new social environment. In this sense, ijtiḥad is a renewal, in its most profound meaning; in addition, it greatly facilitates human life by finding solutions to perplexing problems and critical situations.

### **Which ijtiḥad do we want?**

Considering the numerous levels and facets of ijtiḥad that scholars set forth,<sup>(16)</sup> the researcher can but put the following query: which ijtiḥad do we want? We have ended up by defining the broad lines within which we tackle

(14) Muhammed Abu Zuhra, op. cit., p. 283.

(15) Counsellor Tarik Al-Bishri, Islamic renewal between the preceding century and the coming one, magazine (*al-Manar al-Jadid*), Issue 1, winter 1998, p. 24, Cairo.

(16) Mentioned in (*Mawsu'at mustalahat usul al-fiqh 'inda al-Muslimin*), Dr. Rafiq al-'Ajam. (2 volumes, Maktabat Lubnan, 1st Edition, Beirut, 1998). 58 titles of theological books that have studied the term "ijtiḥad", along with concise quotes from the explanations of this term in these books, can be consulted for more elaboration.

ijtihad. So we should now examine the full significance of the ijtihad notion which is in line with the aims we attempt to achieve.

According to Dr. Yusuf al-Qaradawi, the ijtihad we need in our era is of two kinds: **selective and creative**.

Selective ijtihad involves the selection of one of the opinions in our large jurisprudential legacy of *fatwas* to give a sound judgment through making an analogy between different textual and ijtihad evidence; ultimately, we choose the most conclusive evidence, taking into consideration current requirements and needs which impose on the modern jurist to opt for practical and facilitated rulings.

As for creative ijtihad, it yields a novel opinion on an old or new question. However, creative ijtihad is applied in most cases in new matters.<sup>(17)</sup>

Thus, the ijtihad we need is the one that is required by the necessities of contemporary life provided that we do not yield to the constraints of reality to the detriment of the general rules and established fundamentals of the Islamic law.

### **What does contemporary ijtihad account for?**

The context within which we tackle the necessities of ijtihad and the necessity to observe the requirements of contemporary life presupposes that we determine the meaning intended by contemporary ijtihad:

- Is it the one that keeps pace with current trends or the one that assimilates the spirit of the era and gives due consideration to its needs?
- Is it the one that addresses these needs by creating a motion into the static text in order to reach a ruling on the changing reality?
- Is it the application of a text judgement on a given reality on the basis of the rules of Islamic Shari'ah?

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(17) Dr. Yusuf al-Qaradawi, "*al-Ijtihad al-mu<sup>o</sup>asir bayna al-indibat wa-al-infirat*", pp. 20-32-34, Dar al-Tawzi' wa-al-Nashr al-Islamiyah, Cairo, 1994. The author has also another book on this subject titled, "*Al-Ijtihad fi al-Shari'at al-Islamiah*", Dar al-Qalam for Publishing and Distributing, 1st Edition, Kuwait, 1985 and 2nd Edition, 1989. There are similar and repeated sections in the two books which present very important information.

One of the irrefutable facts is that we should not meet the requirements of a certain era in every detail as it is established that corruption and uprightness, acceptable and inadmissible phenomena, are common occurrences in every era. The stringent criterion in satisfying these requirements should stem from sound religious teachings that are based on the Quran and true Sunnah. Accordingly, contemporary ijtiḥad does not entail that we should adapt ijtiḥad to the characteristics of the era in which we live as this has no bearing to the religion. Rather, contemporary ijtiḥad should faithfully convey and strictly observe the interests of the Muslim community. Also, contemporary ijtiḥad should address the needs of people in such a satisfactory way that it paves the way for a decent and peaceful life.

In this regard, Dr. Yusuf al-Qaradawi says, “we should be cautious not to be prey to the pressure of the prevailing reality in our contemporary societies. This reality is not created by Islam through its creed, law and morals; it is brought about neither by Muslims' free will and accord, nor by their minds or hands. It was rather a reality that was imposed on them in times when they were unmindful, weak and disunited, whereas their colonizers were strong, alert and proficient. As Muslims could not at that time set themselves free, the subsequent generations inherited this reality and matters remained unchanged. Hence, the essence of ijtiḥad does not consist of finding justifications for this reality, making texts subservient to it and fabricating *fatwas* to lend legitimacy to its existence.” (18)

This does not imply that the current era is an absolutely corrupt one and that keeping pace with it is not valid. Religion, rationality and wisdom call us to employ our minds to look for the public interest and to accurately evaluate the ensuing needs so that we can be fully aware of the particularities of our present era. The ultimate goal is to acquire a thorough understanding of our contemporary problems, issues and needs.

Consequently, we will acquire a new fiqh based on ijtiḥad which would serve as a foundation to assimilate current problems and as a framework for contemporary ijtiḥad in order to find solutions that are in full consonance with the rules and spirit of Islamic Shari'ah.

The ijtiḥad associated with the application of religious rules to their corresponding events involves all communities of the Ummah; it can not cease

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(18) Ibid., p. 94-95.

since the “*taklif*” (responsibility according to capacity) is well-founded. This kind of ijtihad is termed as “*Tahqiq al-Manat*”, which consists of verifying the attributes (*'Illah*) of an established case in a new case (*far'*) re-offered for examination, i.e., ascertaining the presence of the *'Illah* in the new case where the ruling is to be extended.<sup>(19)</sup>

If ijtihad is, in an all-encompassing phrase, the science laid by Islam in order to involve competent scholars in legislation and interpretation of the divine message - thus making Islamic Shari'ah adaptable to the public and private interest in all times and locations,<sup>(20)</sup> contemporary ijtihad, or the ijtihad that keeps pace with current changes, is the science which materializes the interests of the Ummah and maintains their constant stability and their adherence to the principles of the Shari'ah. In this way, ijtihad shields the Ummah from deviation and confusion and prevents any legislative failure as well as inclination to positivist laws which are unjust in most instances and incompatible with the objectives of Islamic law in numerous cases.

To be genuine, effective and influential in the life of Muslim societies, contemporary ijtihad has to be carried out in conformity with the general objectives of the Islamic Shari'ah; it has also to build on the conviction of the validity of this Shari'ah for every time and place. Otherwise, ijtihad would depart from the essence of Islam and accordingly lose its legitimacy.

### **The fields of ijtihad are as numerous as the fields of life:**

Building on this premise, ijtihad has a large extent and unlimited scope. It may cover all matters associated with the life of the Muslim. So, the scope of Ijtihad, subject to the aforementioned rules, encompasses all issues and matters that hold the interest of Muslims.

It is not true nor does Islam stipulate that the subjects to be examined through ijtihad should not be far-reaching or complex. Indeed, Islam tackles all aspects of life and touches upon all human situations.

Since contemporary ijtihad rests on the shrewd adaptation of the religious texts that are definitive in their affirmation and reliability to the requirements of

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(19) Allal Al Fassi, *Maqasid al-Shari'ah al-Islamiyah wa Makarimuha*, p. 166, 5th Edition, Dar al-Gharb al-Islami, Beirut, 1993.

(20) *Ibid.*, p. 168.

the time and place where the Shari'ah is applied, the subjects of ijtiḥad should cover all matters that promote the public interest of Muslim society and advance the five general necessities or purposes: the preservation of religion, life, intellect, lineage and property. These necessities, according to Al-Shatibi, are found in every religion.<sup>(21)</sup>

The main function of the ijtiḥad that improves our conditions and edifies our societies consists of upholding and preserving the interests of people in all events. This is consonant with the spirit of Islamic Shari'ah which Ibn al-Qayyim expounded in such clear, illuminating and clear-cut phrases as the following: "the foundation of the Shari'ah is the safeguarding of people's interests in this world and the hereafter. In its entirety it is justice, mercy benefit and wisdom. Every matter that leaves justice for injustice, mercy for its opposite, benefit for harm, and wisdom for foolishness, does not belong to the Shari'ah even though it is attributed to it by means of false reasoning. The Shari'ah is the justice of Allah amongst His servants. It is His mercy amongst His Creation, His protection over His Earth, and His wisdom which is an indication of Him and of the truth of the Messenger, peace be upon him."<sup>(22)</sup>

On the basis of Ibn al-Qayyim's words, we can say that every ijtiḥad that leads to justice, mercy and benefit, and eliminates injustice, cruelty and harm is indeed upholding the objectives of the Shari'ah. Accordingly, every matter in which ijtiḥad is employed to achieve the objectives of the Shari'ah constitutes one of the necessities of the Islamic society that should be awarded due attention and consideration.

The political, economic and political reality of contemporary life has brought about numerous and complicated problems in the Islamic society. Hence, they must be addressed by the Shari'ah through a thorough understanding of the objectives set forth by Islam and through heightened awareness of current issues.

Given this situation, ijtiḥad has presently become not only a need but a requirement for the Muslim society wishing to live according to Islamic teachings. More than that, ijtiḥad is not only permissible but it constitutes

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(21) Al-Shatibi, *Al-Muwafaqat*, Volume 2, p. 10.

(22) Ibn Qayyim Al-Jawziyya, *Ilam Al-Mowaqqeen an Rabb Al alamin*, vol. 3, p. 1, Dar Al Fikr, 1<sup>st</sup> Edition, Beirut, 1955.

nowadays one of the collective duties on all Muslims in order to regulate all religious and worldly matters; if some perform these collective obligations in a competent way, then the rest are absolved of sin.<sup>(23)</sup>

Ijtihad is concerned with any issues and matters about which no text is mentioned in the Quran and the Sunnah; the scope of ijthid also covers the texts that are not categorically established.<sup>(24)</sup>

Building on this premise founded upon the fundamental rules of the Shari'ah and following this comprehensive approach, we notice that the fields, issues and subjects of ijthid encompass all aspects of Muslim life and they are not confined to jurisprudential matters in the purely terminological significance, or to legal matters in the limited professional notion, but they also cover political, administrative, economic, social, scientific, medical, environmental and educational aspects as well as any element in relation with the present and future of the Muslim society.

The Islamic Ummah is facing today numerous challenges and problems in all spheres of life. Any counter-attack should necessarily be engaged through sound opinion and shrewd knowledge that are founded upon a thorough understanding of the texts and an enlightened ijthid that moves the Ummah from the state of weakness and backwardness to that of power and progress. This process should also seek to maintain the public interest and abide by the objectives of Islamic law which are laid down in order to repel confusion and make things easy for people. Allah said, "*and has not laid upon you in religion any hardship*".<sup>(25)</sup> It is in this way that the validity of Islam for every time and place is confirmed.

### **The importance of ijthid nowadays:**

We are in dire need of ijthid; if there were no ijthid, the number of Muslims who would behave according to their personal opinion or according to non religious norms would multiply in every generation. As a matter of fact, this would constitute a deviation from the teachings of Allah since behaviour will

(23) Dr. Yusuf al-Qaradawi, op. cit., p. 19.

(24) Dr. Mohamed Faruq Al-Nabhane, *al-Ijthid Al Islami wa Attajdid* (Islamic thought and Renewal), p. 12-13.

(25) Al Haj, verse 78.

follow human criteria and be shaped according to personal desires. Accordingly, this would considerably undermine the public interest. That's why ijtiḥād was legalized in every time and place provided that the *mujtahid* is eligible for this task and abides by the terms laid down by the scholars.<sup>(26)</sup>

Despite the emergence of great *mujtahids* at the end of the 19th century and the beginning of the 20th century in a number of Arab Islamic countries, some of them received fierce criticism not only from rigid and traditionalist scholars but also from those who are supposed to assimilate the mission of ijtiḥād and who blame the jurists and scholars for not performing ijtiḥād. In this regard, Sheikh Muhammed Abdou, who was considered as one of the leading *mujtahids* and the pioneer of one of the renewal schools in Islamic thought, was severely criticized and disparaged. Surprisingly enough, his detractor was nobody but Dr. Taha Hussein who was considered as one of enlightenment pioneers in the Arab world. What is distinctly odd is that Muhammed Abdou's critics were partisans of a certain jurisprudential and intellectual school, but none of them was belonging to the school of (enlightenment) of which Dr. Taha Hussein was supposed to be one of the eminent figures.

Dr. Taha Hussein said in an article that appeared in a French magazine published in Paris in 1934, "Sheikh Muhammed Abdou has undoubtedly shaken the Islamic world as a whole, awakened the oriental mind and thought the Orientals how to have a liking for the freedom of thinking. **Mohammed Abdou was no longer able to capture the spirit of his time** to such an extent that the tact he used in bringing about renewal and innovation appeared to lack audacity. Thoughts and words are not enough; there is an attempt at action (sic); **all Mohammed Abdou's thoughts concerning science and religion have become outdated and are no more compatible with the Orientals' adherence to the greater freedom.**"

Dr. Taha Hussein went on saying, "there are few Muslims who seek to reconcile between their faith and their acquired knowledge while they joyfully rush upon western civilization and set it as a high ideal."<sup>(27)</sup>

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(26) Dr. Mohamed Faruq Al-Nabhane, op. cit., p. 47.

(27) Dr. Taha Hussein, article "**la Grande Figure du Cheikh Mohamed Abdo**", magazine "Un EFFORT », Paris, issue 44 published in June 1934.

The first thing we notice in this text which was not known in the Arab world till it was translated into Arabic<sup>(28)</sup> is that Dr. Taha Hussein did not use the term of “modernization” nor that of “modernity” though it was warranted by the context according to the criteria we adopt nowadays. In this connection, he excluded Sheikh Mohammed Abdou from the sphere of ijtiḥad and renewal with a stroke of the pen and branded his school as a failure. This stance requires some analysis to understand how ijtiḥad, though attaining a high level of intellectual courage, can be received with dismay by the school that is adversely influenced by western concepts. For influence by western thought within reasonable limits is not censured in all cases.

Ijtiḥad was performed in all Arab and Islamic countries throughout the 20th century. In this regard, an intellectual from the Kingdom of Saudi Arabia, Amin Madani, brought some attractive and innovating ideas in an original research paper published twenty-seven years ago; he said, “Islamic law has not stood in the way of evolution, nor has it constituted an impediment to progress in all Islamic eras. Indeed, it has assimilated each generation in its melting pot and shaped it in accordance with Islamic Shari'ah. Since the era of Islamic conquests, Islamic legislation **has codified laws in such a way as to benefit society**; law-makers in every generation **opted for the simplest solutions** and they would willingly lift any easily removable restrictions. Individuals in charge of law-making have to assume their duties **by establishing rulings for cases that were not expected by the ancients.**”<sup>(29)</sup>

Amin Madani expressed a courageous intellectual stance in which he formulated his own concept of innovating ijtiḥad; he said, “giving every novelty a negative and static response is not an impediment to it; on the contrary it encourages its dissemination because everyone is filled with a desire for evolution. If the novelty is not examined in a practical, wise and flexible approach, the masses will avert negativity and adopt the novelty with all its implications on the premise that it is one of the requirements of evolution.”<sup>(30)</sup>

This is a call for renewal that fell on deaf ears. Yet, it expressed a stance that supports the positions of a host of innovating *mujtahids* and thinkers in all Arab Islamic countries.

(28) Abdel-Rashid Al-Sadeq Mahmoudi, “**From the other shore: Taha Hussein in his new unpublished works**”, Sharikat al Matbou'at lill tawzi wal nashr, Beirut, 1990.

(29) Amin Madani, “**Islamic culture and its capitals**”, p. 45-46, the General Egyptian Book Organization, Cairo, 1980.

(30) *Ibid.*, p.69.

These ideas, if we are to describe them in current phrases we would say that they are “liberal”, “progressive” and “modernized”, reflect a mode of pioneering reformist and innovative thinking that prevailed in Arab Islamic countries; they are also expressive of an *ijtihad* school which would have yielded good results had it been provided with a favourable environment.

My intent behind quoting these passages from Amin Madani's book is to demonstrate that Arab Islamic thinking, regardless of its numerous trends, has called for employing *ijtihad* and innovation and capturing the spirit of contemporary times at an earlier stage. Indeed, a number of intellectuals, scholars, jurists and theoreticians performed various modes of *ijtihad* and reached results that were met with negative response or were diverted from their objectives; some *mujtahids* were even persecuted.

### **The gate of *ijtihad* is not closed:**

*Ijtihad* is one of the sources of legislation in Islam. Throughout history, neither scholars nor senior officials have ever issued a fatwa or a ruling to close the gate of *ijtihad*. “The closure of the gate of *ijtihad*” is one of the metaphors that spread all over the Arab Islamic world. Actually, it is the mind which was closed, failing to keep abreast of successive developments; the Muslim world was getting into an advanced state of lethargy and civilizational backwardness for numerous reasons that are known to all of us.

Throughout our civilizational process, *ijtihad* was affected by the fact that some fields of creation within Islamic thought grew sterile. Accordingly, their fruits withered and the Jurisprudence of Transactions lost some of its status as creativity and *ijtihad* have ceased up to modern times. This led to what some call the closure of the gate of *ijtihad*. As a matter of fact, we have an enormous wealth in the Jurisprudence of Worship and religious rituals, but we manifestly have a severe lack in the Jurisprudence of Transactions and the political thinking that are necessary to keep pace with recent developments. Hence, energizing *ijtihad* is obviously needed in the jurisprudence of political, economic and social reality so that the sources of our Shari'ah are supplied with branches that would regulate this new reality according to Islam.<sup>(31)</sup>

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(31) Dr. Mohamed Amara, “Conflict of terminology between the West and Islam”, p. 166, Nahdat Misr, 1996, Cairo.

## The comprehensive scope of Islamic law:

Apart from the rites of worship that govern relations of human beings with their Creator, we find in the Islamic law the two major sections of private law and general law. Thus, it encompasses the civil law which is the source of private law with all its branches, the commercial law, the procedural law, the private international law, the general international law, the constitutional law, the administrative law and its annexed financial law, and the criminal law.<sup>(32)</sup>

So, Islamic law provides the ground for *mujtahids* to explore new avenues and horizons and enables the scholars who meet the conditions of ijtihad to look for solutions to pending problems in all fields. It then covers all areas of life and includes all common branches of law.

Accordingly, ijtihad is a religious duty and one of life's necessities. In this regard, Muhammad Al Taher Ibn Ashour said "ijtihad is considered as a collective duty on the Ummah to the extent required by its needs and conditions. The Ummah has indeed committed a sin by its omission considering that it has sufficient capacities in terms of means and mechanisms."<sup>(33)</sup> He went on saying "the impact that ijtihad produces appears in the cases that are distinct from those that were examined at the time of *mujtahids*, the emerging cases that bear no similarity with previous ones, the cases in which Muslims' need to perform the same act does not match with the different Madhahibs, and in all cases that require religious consideration, deduction and the search for the original and secondary objectives set forth by the law-makers as well as the *mujtahids*' views that can and those that can not be changed."<sup>(34)</sup>

(32) Dr. Mohamed Yusuf Musa, "Islamic fiqh: Introduction to its study and its system of transactions", p. 103-115, 2nd Edition, quoted from his book "Islam and life", p. 114, *al-Asr al-Hadith lil-Nashr wa-al-Tawzi*, 2nd Edition, 1991, Cairo.

(33) Sheikh Muhammad Al Taher Ibn Ashour comments on this passage from his book "Objectives of Islamic Shari'ah" with these words, "scholars who can dedicate themselves to religious learning will be considered sinful in this connection. The common people will also be considered sinful if they keep silent, not insisting that ijtihad be performed and paying no heed to those who call for it. Likewise, emirs and caliphs will be sinful if they do not prompt competent persons in this field."

(34) Muhammad Al Taher Ibn Ashour, op. cit., p. 395, third volume, critical edition and revision by Dr. Mohammed Habib Belkhdja, edition of the Qatari Ministry of Waqfs and Islamic Affairs, 2004.

This is an approach to all aspects of ijihad in relation to the context of this paper. So what can we say about modernization and modernity???

### **The notion of modernization and modernity:**

Has this ijihad paved the way for modernization? First of all, we have to define the matter in precise terms. Modernity has indeed several currents and notions; modernity has no static meaning.

The first thing we can say in this context is that modernity is an idea that originated in western environment. Modernity substitutes science for God within the centre of society and discards all religious beliefs from the private life of individuals.<sup>(35)</sup>

If we search in the French “Encyclopaedia Universalis”, we will find that (modernity is neither a sociological, nor a political notion nor a purely historical concept. It is rather a distinctive civilizational mode that is opposed to the traditional one. It is not static...in this it resembles tradition.”<sup>(36)</sup>

Modernity then has no fixed and clear notion. It is, generally speaking and as western thinkers themselves put it, a break with the past and the cultural legacy as a whole. One of its meanings in the field of art and philosophy is “a break with the past and a search for new forms of expression”. In addition, it is a tendency in theology seeking to accommodate traditional religious teaching to contemporary thought and especially to devalue supernatural elements.<sup>(37)</sup>

Modernity is not only the use of reason, science and technology; it is also the **value-free** use of mind, science and technology. This dimension is fundamental to the system of western modernity. A free-value world is dissociated from Man; it is a world of material continuity that subjects human beings to the laws of the matter. Hence, all matters become relative and it becomes impossible to distinguish between good and evil, justice and tyranny, the fundamental and the relative, Man and nature, and Man and the matter. **In the absence of absolute values we can refer to, the individual or the racial group**

(35) Alain Touraine, “**Criticism of modernity**”, Gallimard, Paris 1992, quoted from the Arabic translation published as part of the publications of the National Project for Translation in Cairo.

(36) Jean Baudrillard, Encyclopaedia Universalis, Second Volume, edition of 1980, Paris.

(37) Merriam-Webster's Collegiate Dictionary, p. 763, edition of 1991, Massachusetts, USA.

**becomes a reference of its own** to the extent that it brands its interests as good and considers what is detrimental to its benefits as evil. Western modernity has made Man the centre of the universe.<sup>(38)</sup>

French researcher Emile Poulat who is one of the contemporary eminent researchers in the sociology of religion says, “the philosophy of western enlightenment which forms the basis of western modernity made a major epistemological break with western Christian heritage”. He also says, “This ideology -enlightenment- is the source, i.e., the ramifications are generated through its progresses and contradictions without invalidating the major epistemological break which separates the era of the Summa Theologica by St. Thomas Aquinas and the Encyclopaedia era by the enlightenment philosophers. **From now on, the hope in the kingdom of God will depart to give way to the era of reason and its hegemony...** Hence the system of divine favour has been obliterated and to has faded away before the law of nature.”<sup>(39)</sup>

Modernity then is not a plain word in all cases. That's why we should examine the matter from its various aspects and not take modernity as per se. Otherwise, we risk losing the quality of thinking with which the Creator has endowed us as a scale on which we can weigh various matters.

So, is it meant by modernization in this very context modernity with this western notion? Is this modernity related to ijtihad in Islam in our contemporary world?

After careful consideration, I deemed it necessary to pose these two questions in order to know the exact meanings of the terms and to expound the issue under study in an accurate way. The aim is to be well-informed about the purport of the issues studied.

The meaning of modernization in this context is undoubtedly the renewal of life on the basis of a modern system that organizes the life of human communities in the modern state; a system that regulates the affairs of the society

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(38) Dr. Abdulwahab Al -Masiri, magazine “*wijhat nadir*” (Viewpoints”, issue 89, p. 6, Cairo, June 2006.

(39) Emile Poulat, “**Liberty, Secularism: The War of Two Frances and the Principle of Modernity**”, Cerf Editions, Paris, 1987, quoted from Hashem Saleh, magazine (Al Wahda) which was published in Rabat, issue February -March, 1993, pp. 20-21.

and the state according to fixed norms and criteria. The adherence to these particular rules leads to progress and development and secures a decent and prosperous life for individuals and communities.

These meanings constitute the aims of the Shari'ah and the objectives that ijtiḥad seeks to achieve according to the Islamic conception. For ijtiḥad seeks to renew life and to give fresh impetus to Muslim society. Ijtiḥad can by no means be considered as a deviation from religious fundamentals.

Accordingly, it is not wise to adhere to western modernity in all its aspects. Wisdom requires that we adopt beneficial elements and discard all unhealthy trends whose detriment is greater than their benefit.

The aim of the ijtiḥad we employ nowadays is not to conform to modernity in its western notion. Rather, it seeks to enable us to keep abreast of recent developments and to benefit by their merits while preserving our religious and cultural particularities.

Our societies have indeed a constant need for ijtiḥad and modernization; this need has to accommodate the **priorities of ijtiḥad** which we have to give due care. Ijtiḥad has various types and fields; these are: jurisprudential ijtiḥad, political ijtiḥad, economic ijtiḥad, scientific ijtiḥad, technological ijtiḥad, civilizational ijtiḥad and all other kinds of ijtiḥad that are concerned with the issues raised by every particular field. Hence, ijtiḥad has to pursue its course in these fields within the framework of a comprehensive vision that accommodates the objectives of the Shari'ah and the interests of individuals both in the present and the future.

