

Student Loans

A Contemporary Islamic Perspective

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Abstract

This research aimed at exploring the fiqh rulings with regards to obtaining loans for higher education as a necessity for Muslims in order to advance the status of society and the Ummah at large. Additionally, the application of the concept of '*riba*' was studied with regards to student loans.

Based on the current necessity of higher education in the west, coupled with the limited financial resources to attain such higher education, Muslims are in a dire need of a conference that would combine the efforts of Islamic Jurisprudence scholars, economists, and academicians to come up with contemporary guidelines for the short term as well as the long term solutions for the Muslim financial and socio-economic transactions.

This effort is merely just an attempt from our group as a research exercise and we are humble students of knowledge and not scholars.

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Education as a Necessity:

The final revelation to mankind by Allah(SWT) is His Deen of Al-Islam delivered to humanity by His final Prophet and Messenger, Prophet Muhammad (ﷺ), as a mercy to mankind. The Holy Quran and the Sunnah of our Prophet Muhammad (ﷺ) are our main sources for our lives from which to extract rulings by which our lives are to be governed.

From the Quran and Sunnah, we are commanded to seek useful knowledge to benefit our societies and communities, as well as ourselves. This is one of the goals of shariaa'h, the preservation of intellect. Our Islamic history is replete with examples of the strength of scholarship and Muslims who spent their lives across many disciplines to benefit humanity, from math to science to medicine to astronomy and much more. There was a time when people from across the world would travel to Muslim lands to become learned scholars. During the Abbasid Caliphate, the House of Wisdom was established in Baghdad which was a public academy and intellectual center for knowledge. Examples of scholars such as Ibn Khaldun who is regarded by many as the father of sociology, historiography and modern economics; Ibn Sina, who is regarded as the father of early modern medi-

cine; and many more too numerous to mention. This was a period known as the Golden Age of Islam. (1) (3) (8)

فَتَعَالَى اللَّهُ الْمَلِكُ الْحَقُّ وَلَا تَعْجَلْ بِالْقُرْآنِ مِنْ قَبْلِ أَنْ يُفْضَىٰ إِلَيْكَ وَحْيُهُ وَقُلْ رَبِّ زِدْنِي عِلْمًا - 20:114

So high [above all] is Allah, the Sovereign, the Truth. And, [O Muhammad], do not hasten with [recitation of] the Qur'an before its revelation is completed to you, and say, "My Lord, increase me in knowledge." (4)

In our present day and age, education has become even more paramount to our lives. In an age where most Islamic majority countries are in dire conditions, one of the most important ways to revive these places is through education through Muslims seeking education in order to improve the status of their societies and the Ummah at large; while fulfilling our role by our Creator to be true vicegerents of Allah on Earth. In Shariah (Islamic Law), one of the main objectives is the *preservation of the intellect*, which would be achieved through education. Education has become a necessity beyond it being a need or a luxury, especially in the twenty first century. However, with seeking education, many challenges are faced, especially the financial resources to fund such an education.

وعن أبي الدرداء رضي الله عنه قال سمعت رسول الله صلى الله عليه وسلم يقول: "من سلك طريقًا يبتغي فيه علمًا سهل الله له طريقًا إلى الجنة، وإن الملائكة لتضع أجنحتها لطالب العلم رضا بما صنع، وإن العالم ليستغفر له من في السماوات والأرض حتى الحيتان في الماء، وفضل العالم على العابد كفضل القمر على سائر الكواكب، وإن العلماء ورثة الأنبياء وإن الأنبياء لم يورثوا دينارًا ولا درهما وإنما ورثوا العلم. فمن أخذه أخذ بحظ وافر

(رواه أبو داود والترمذي)

Abud-Darda (May Allah be pleased with him) reported:

The Messenger of Allah (ﷺ) said, "He who follows a path in quest of knowledge, Allah will make the path of Jannah easy to him. The angels lower their wings over the seeker of knowledge, being pleased with what he does. The inhabitants of the heavens and the earth and even the fish in the depth of the oceans seek forgiveness for him. The superiority of the learned man over the devout worshipper is like that of the full moon to the rest of the stars (i.e., in brightness). The learned are the heirs of the Prophets who bequeath neither dinar nor dirham but only that of knowledge; and he who acquires it, has in fact acquired an abundant portion." (5) Hadith Grade: حسن

[Abu Dawud and At- Tirmidhi].

Current Financial System:



Funding higher education is a difficult task for most people, and the rising, sometimes exorbitant costs, of university and graduate education in the United States has put many families in significant financial distress. The

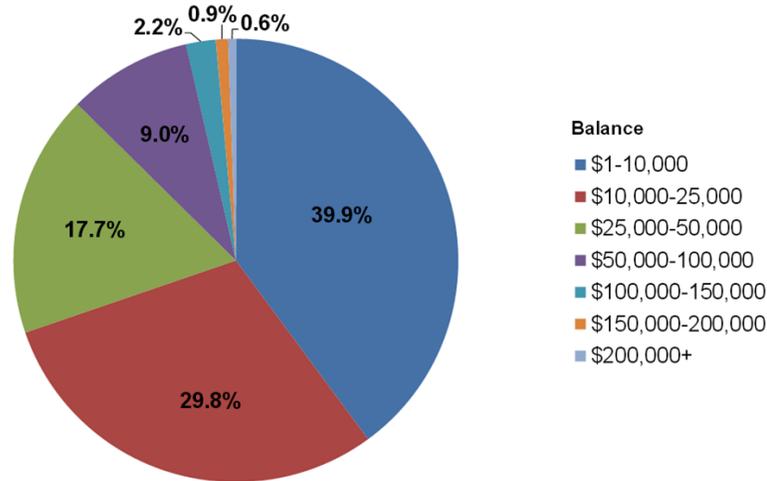
quick easy answer would be to take student loans, which of course carry interest, that is questionable regarding its permissibility in Islam. In general, the system with the cost of higher education has been set up as a disadvantage for the middle class families. Most of these families qualify for little or no governmental/ institutional financial aid. The student debt has reached crisis levels where student loans in the US alone have surpassed the credit card debts. The student loan debt is over \$1.5 Trillion, which is about one and a half times what Americans currently owe on their credit cards. (7)

When we think of loans, what comes to mind is the concept of *riba*, the Arabic word used to describe interest or an increase/ excess in something. *Riba* has evolved in our time now and is not just about the principle of *riba*, but rather it is the application of the concept of *riba* that has become problematic.

As the figure below will indicate the vast distribution of student loans and their amounts, which can become a crippling responsibility for people starting out their lives this much in debt.

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Distribution of U.S. Student Loan Debt Balance as of Q4 2012



Source: Federal Reserve Bank of NY

In the past, when gold and silver were used as forms of payments, their amounts and their valuation were rather fixed. In fact, that was the standard of owning wealth. Riba was used to describe additions/increases to the amounts of gold and silver. The existence of banknotes (present form of money) started strictly as a “bank-note.” According to the Egyptian Grand Mufti, riba is restricted to the exchanges involving currencies of gold and silver. Hence, riba does not apply to paper currency or bank notes. To support this, when currencies of base metal were first introduced to the Islamic World, Islamic jurists did not forbid interest charges on them as riba, going back to riba only relating to gold/ silver exchanges. (14)

This difference in the classification of what *riba* actually is has been the underlying problem for how the application of the concept of *riba* has been viewed. Some incidents from recent history highlight the major questions regarding the concept of *riba* and its application in the current financial system.

Firstly, in 1971, President Richard Nixon enacted a plan that ended the dollar convertibility to gold in an effort to control inflation and the looming gold run (the rush by countries to exchange the dollar for gold). Prior to that, countries had agreed to keep their currencies fixed to the dollar, which was then fixed to gold. This meant that foreign governments could no longer exchange their dollars for gold. Paper money was to be used. Other countries had to follow suit. Until now, other countries' currencies are measured against the US dollar. This raises major questions regarding the real value of current paper currencies, which would be susceptible to major variations based on inflation rates, as well as political and economical trade turmoils.(11)

Secondly, the great recession of 2008 which started with some housing and sub-prime mortgage lending practices that became problematic due to banks overselling the loans as derivatives. These questionable prac-

tices quickly spilled into the whole banking industry, along with the stock market crash, which affected the whole world, causing a worldwide economic meltdown. Some people lost their life savings, retirement savings, their homes, and more. Again raising the questions on the real valuation of the paper money. (13)

Thirdly, in 2016, Egypt in an effort to seek the support of the International Monetary Fund (IMF), floated its currency of the Egyptian Pound. Nearly overnight, the Egyptian Pound lost half its value against the US dollar. This is yet another example of the questionability of the value of the fluctuating paper money that is brought to light. (12)

Fatwas on Loans:

Much has been discussed and debated regarding loans in the west and Muslims continue to struggle with this difficult issue. According to the American Muslim Jurists Association (AMJA), their default ruling/ fatwa is the forbiddance of interest-based loans regardless of whether these loans are for students or otherwise due to it falling under the clear interest that scholars had agreed on its impermissibility. It is incumbent that all efforts are spent in finding permissible alternatives before leaping the justification of urgency or need. Students are encouraged to seek scholarship pro-

grams, grants, along with work-study opportunities as well as subsidized loans, whereby the government pays the interest on the loan until after the student's graduation. If all of these financial help opportunities have been exhausted and the interest-based loans are the only way to facilitate or continue university education for the Muslim communities, then the loans fall under the urgent necessity (falling under the sub-maxim of الضرورات تبیح المحظورات) which removes the sin even though the ruling of impermissibility remains. (9) (10)

According to Shaykh Dr. Yusuf Al-Qaradhawi in his book, The Islamic Jurisprudence of the Muslim Minorities, he mentioned the ruling of the Hanafi School of Thought according to Imam Abu Hanifa and his student Muhammad Ibn Al-Hassan Al-Shaybani as well as Sufian Al-Thawry and Ibrahim Al-Nakh'3y (all considered tabi3een) which is as follows: Muslims are allowed to deal with interest-based contracts between Muslims and others in non-Muslim lands. They used the following as reasoning: (16)

1. Muslims are not obligated to apply Islamic rulings in civilian, financial, or political in a non-Muslim society;
2. The Muslim is obligated to establish the rulings that relate to him/her as an individual such as those involving worship, marriage, food, inheritance, etc.

3. If the Muslim does not follow the interest-based system, it would lead to him being economically weaker leading to financial difficulties.

Based on these reasons, Shaykh Qaradhawi reached the conclusion of allowing the partaking of loans by Muslims in non-Muslim lands.

Applicable Usul-al-Fiqh Concepts:

As scholars have debated and researched the issues regarding loans, many have made *ijtihad* and used some of the fiqh concepts arrived at by their predecessors while providing evidence and explanations.

The main legal maxim/ submaxim used are:

Core maxim: المشقة تجلب التيسير = **Difficulty Begets Ease;**

Sub-maxim- -الضرورات تبيح المحظورات = **Extreme necessity changes the unlawful to lawful. (2)**

This rule is agreed upon and supported by multiple Quranic texts; some of which are: (15)

وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ وَإِنَّ كَثِيرًا لَيُضِلُّونَ بِأَهْوَائِهِمْ بِغَيْرِ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ - 6:119

And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, with the exception of that to which you are compelled. And indeed do many lead [others] astray through their [own] inclinations without knowledge. Indeed, your Lord - He is most knowing of the transgressors.

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحْرَمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهْلًا لِّغَيْرِ اللَّهِ بِهِ ۚ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ - 6:145

Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in]

disobedience, dedicated to other than Allah . But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful."

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ ۗ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ مَلَّةَ أَبِيكُمْ إِبْرَاهِيمَ ۗ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ مِنْ قَبْلُ وَفِي هَذَا لِيَكُونَ الرَّسُولُ شَهِيدًا عَلَيْكُمْ وَتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ ۚ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَاعْتَصِمُوا بِاللَّهِ هُوَ مَوْلَاكُمْ ۖ فَنِعْمَ الْمَوْلَىٰ وَنِعْمَ النَّصِيرُ - 22:78

And strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty. [It is] the religion of your father, Abraham. Allah named you "Muslims" before [in former scriptures] and in this [revelation] that the Messenger may be a witness over you and you may be witnesses over the people. So establish prayer and give zakah and hold fast to Allah . He is your protector; and excellent is the protector, and excellent is the helper.

We can say that by applying this maxim/ submaxim, are a means of achieving one of the main goals of shariaa'h, that of preservation of intellect= عقل through the gaining of knowledge for the benefit of oneself and society in general.

Conclusion:

In Islam, we are encouraged to make sincere ijtiḥad. It is reported that the mujtahid will receive a reward for his/ her ijtiḥad, even if he/she makes a mistake. If his/ her ijtiḥad was correct, the reward would be double, one for the ijtiḥad and the other for being right about the matter at

hand. This is one of the beauties of Islam that encourage the concept of ijtiḥād.

Over the past couple of decades, much research has gone into writing contracts for housing loans that are acceptable by Islamic standards. We have seen the emergence of companies such as Guidance, LaRiba American Finance House, and others which have been able to provide the Muslim community with shariaa'h compliant loans for homes and has eased the process of home ownership for Muslims helping to achieve the goal of shariaa'h of preservation of wealth. Unfortunately, the same has not happened regarding student loans and education.

In some European countries, such as the United Kingdom, the loan contracts are written in such a way that some scholars have deemed them to not even fall under the definition of loans, and as such are permissible for Muslim students to take them without any reservations. (17). Perhaps similar efforts are in order for the US Muslims to partake in.

As a Muslim community in America, we need to work towards the following:

1. Support our elected officials on a State and Federal level to push for free tuition to public colleges and universities.

2. Additionally, we also want to push for loan forgiveness plans like those in other countries in the world.
3. Expand different scholarship programs in higher education.
4. Collaborate with other minority groups and disadvantaged groups to come up with programs to help to solve the student loan crisis.
5. Create a Muslim endowment program that benefits Muslim students who would in return serve the needs of the Muslim community.

Based on the current necessity of higher education in the west, coupled with the limited financial resources to attain such higher education, Muslims are in a dire need of a conference that would combine the efforts of Islamic Jurisprudence scholars, economists, law-makers/ politicians and academicians to come up with contemporary guidelines for the short term as well as the long term solutions for the Muslim financial and socio-economic transactions. (15)



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