

STUDENT FINANCE AND THE ISLAMIC PROHIBITION ON INTEREST-BASED LOANS: DOES THE UK HAVE A LEGAL OBLIGATION TO OFFER MUSLIM UNIVERSITY STUDENTS AN ALTERNATIVE STUDENT LOAN SCHEME THAT ALIGNS WITH ISLAMIC LAW?

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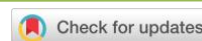
Abstract: Access to higher education in the United Kingdom is governed by a comprehensive legal framework that upholds equality and prohibits discrimination under domestic and international law. Nevertheless, the current student finance system poses significant challenges for adherents of Islam due to the Islamic prohibition on usury, which is inherent in the interest charged on conventional student loans. This financial exclusion extends beyond matters of religious accommodation, as it directly implicates the fundamental right to education and the principle of equality. This study explores whether the UK government has a legal obligation to provide adequate alternative student loan schemes aligned with Islamic principles to ensure equitable access to higher education. It critically examines the UK's obligations under international human rights law and domestic legislation, focusing on the right to education and the principles of equality and non-discrimination.

Keywords: British Muslims, human rights, Islamic finance, student finance, university education.

Abstrak: Akses ke pendidikan tinggi di Inggris diatur oleh kerangka hukum yang komprehensif yang menjamin kesetaraan dan melarang diskriminasi, baik menurut hukum nasional maupun internasional. Namun, sistem pembiayaan mahasiswa yang berlaku saat ini menimbulkan tantangan besar bagi pemeluk Islam karena adanya larangan riba dalam ajaran Islam, sementara bunga merupakan bagian tak terpisahkan dari pinjaman mahasiswa konvensional. Kondisi ini menyebabkan sebagian mahasiswa Muslim terpinggirkan secara finansial, bukan hanya karena alasan keagamaan, tetapi juga karena menyangkut hak dasar atas pendidikan dan prinsip kesetaraan. Artikel ini membahas apakah pemerintah Inggris memiliki kewajiban hukum untuk menyediakan skema pinjaman mahasiswa alternatif yang sesuai dengan prinsip-prinsip keuangan Islam, agar akses terhadap pendidikan tinggi tetap adil dan setara bagi semua pihak. Kajian ini menelaah secara kritis kewajiban Inggris berdasarkan hukum hak asasi manusia internasional dan peraturan domestik, dengan fokus pada hak atas pendidikan serta prinsip kesetaraan dan non-diskriminasi.

Kata kunci: Muslim Inggris, hak asasi manusia, keuangan Islam, pembiayaan mahasiswa, pendidikan tinggi.

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INTRODUCTION

Access to higher education typically requires sufficient financial resources to cover tuition fees and living expenses throughout the study period. While many UK-based

students rely on government student loans, others supplement these with scholarships, bursaries, part-time work, family contributions, or personal savings.¹ Employer sponsorship and degree apprenticeships also provide alternative routes for some students.² However, government-backed student finance remains a crucial mechanism for promoting equitable access to higher education, ostensibly providing an equal entry point for all eligible students, regardless of their financial background. However, for many British Muslims, accessing higher education presents a unique challenge because of the inherent conflict between the principles of Islamic law, which strictly prohibits paying and charging any amount of interest on borrowing and lending (with *Ribā* being the term commonly used for usury), and the prevailing interest rates associated with such loans. Consequently, these interest rates, albeit indirectly, create an obstacle to access to higher education, effectively perpetuating a cycle of inequality and limiting opportunities for adherents of Islam who elect to manifest their religious beliefs.

In 2013, the UK government initially recognized this issue and pledged to introduce an alternative student finance system.³ Years later, the government revealed that a mutual cooperation mechanism known within Islamic law as *Takāful* was being developed and could potentially be provided alongside conventional education loans. A decade after the initial pledge, the government emphasized that the proposed alternative student finance system would be part of the upcoming changes to the student finance system and would be implemented after the introduction of a more flexible system titled ‘the lifelong loan entitlement.’ Without identifying any specific date, the government justified the delay in implementing the alternative system by stating that such a system ‘needs to mirror’ the yet-to-be-implemented ‘lifelong loan entitlement system.’⁴ The paradox in this statement lies in the fact that any finance system compatible with Islamic law cannot possibly lead to equal outcomes with a finance system that has unidentified levels of debt, or in other words, is subject to a variable interest rate.

¹ Rita Hordósy, Tom Clark, and Dan Vickers, ‘Lower Income Students and the “Double Deficit” of Part-Time Work: Undergraduate Experiences of Finance, Studying and Employability’, *Journal of Education and Work* 31, no. 4 (May 2018): 353–65, <https://doi.org/10.1080/13639080.2018.1498068>.

² Jane Welbourn, David Devins, and Martin Reynolds, ‘Degree Apprenticeships: Reflecting on University–Employer Partnership Practice to Improve Workforce Development in the United Kingdom’, *Industry and Higher Education* 33, no. 6 (December 2019): 403–13, <https://doi.org/10.1177/0950422219877594>.

³ UK Government, ‘PM Announces New Measures to Help Muslim Students and Entrepreneurs’, GOV.UK, 21 October 2013, <https://www.gov.uk/government/news/pm-announces-new-measures-to-help-muslim-students-and-entrepreneurs>.

⁴ Department for Education and The Rt Hon Gillian Keegan, ‘Student Finance to Be Radically Transformed from 2025’, 7 March 2023, <https://www.gov.uk/government/news/student-finance-to-be-radically-transformed-from-2025>.

With the hope of delivering an adequate alternative model of student finance for Muslim students, this study explores this issue by addressing three important matters. The first, which we cover in the first part of this article, is the scope of the prohibition of usury in Islamic law, alongside a discussion of relevant discourses among Muslim jurists regarding its application in the modern context. We also explore the value of modern university education within an Islamic framework and examine two prominent UK-based Islamic legal verdicts on student financing. In the second part of the article, we undertake a human rights analysis to inspect the legal obligation of states, including the UK, to offer higher education without discrimination. Finally, in the last part of this article, we examine whether the UK government is legally obliged under international human rights law to ensure that Muslims are not excluded from access to higher education because of the interest inherent in conventional student loans, and consider how the contemporary UK higher education model might be developed to accommodate adherents of the Islamic faith in relation to student finance.

DISCUSSION

THE PROHIBITION OF USURY IN ISLAMIC LAW AND THE CHALLENGES POSED BY INTEREST-BASED STUDENT FINANCE

Today, interest-based transactions have become a foundational pillar of global economics and finance, to the extent that they dominate the economic and financial practices of modern countries. This poses a challenge to Muslim communities living under such economic systems, as they are forced to make difficult decisions regarding how they engage with public and social services that involve the charging of interest in some form or another. Muslim students are no exception in this regard, and they face the particular challenge of engaging with interest-based student loans offered by the state to access higher education. This may mean that they may have to face the difficult choice between adhering to their religion or going to university. This choice raises the question of the value Islamic law places on university education and the importance it places on upholding the right to access such education. The following two sections explore the prohibition of usury and the value of university education in Islamic law, respectively, to offer an appropriate theological and contextual framework for the legal human rights analysis that follows.

2.1 The Prohibition of Usury in Islamic Law

Islamic law recognizes no separation between economics and theology, nor does it recognize any dichotomy between financial affairs and religious practices. This is because Islamic law does not allow for secularism. This fact was recognized by the

European Court of Human Rights in the 2003 case of *Refah Partisi v Turkey*,⁵ in which the court emphasized that Islamic law “intervenes in all spheres of private and public life in accordance with religious precepts.”⁶ To express this in a way that is more familiar to European legal history, Islamic law does not recognize any divide between ‘temporal’ and ‘spiritual’ affairs, nor does it accept the Christian theological notion that temporal affairs ‘belong to Caesar’ and spiritual affairs ‘belong to God.’⁷ In contrast, Islamic jurisprudence views all aspects of life as fundamentally interconnected. This principle is explicitly articulated in the Quranic verse 6:162, which obliges religious adherents to declare that ‘*my prayers, my rites, my life and my death belong to Allah*.’⁸ This verse serves as a concise expression of total submission, encompassing existence, worship, and mortality within a unified framework of devotion, thereby reinforcing the overarching belief in the Qur’an that God has ultimate sovereignty over all creation.

Having affirmed the above, it is therefore no surprise that Islamic law offers a comprehensive framework of rules and regulations in the sphere of economics and finance, with the expectation that Muslim communities will adhere to these guidelines. Indeed, former Supreme Court Judge in Pakistan, Mufti Taqi Usmani, emphasizes this point in the introduction to his seminal work on Islamic finance. He states in this regard, “Unlike other religions, Islam is not confined to some moral teachings, some rituals or modes of worship. It rather contains guidance in every sphere of life including socio-economic fields.”⁹ In this context, one of the foundational tenets of the Islamic economic system is the prohibition of “*Riba*,” which is considered a major evil in the Islamic ethics system.¹⁰ Lexically defined as “increase,” ‘*Riba*’ encompasses any predetermined return on capital, regardless of its magnitude.¹¹ Historically, the term “usury” denoted any excess over the principal amount of the loan. However, contemporary usage often restricts “usury” to

⁵ *Refah Partisi (The Welfare Party) v. Turkey*, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (2003), Samuel Moyn ____ (European Court of Human Rights (Grand Chamber) 2003), <https://opencasebook.org/casebooks/393-international-law-and-human-rights-fall-2016/resources/6.3.1-ecthr-refah-partisi-the-welfare-party-v-turkey-grand-chamber-app-nos-4134098-et-al-2003-excerpt/>.

⁶ *Refah Partisi (The Welfare Party) v. Turkey*, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (2003).

⁷ Steven D. Smith, *The Disenchantment of Secular Discourse* (Harvard University Press, 2010), <https://doi.org/10.2307/j.ctv1n1bshj>.

⁸ Sahih International, *The Qur'an* (Jeddah: Sahih International, n.d.), accessed 5 October 2025, <https://corpus.quran.com/translation.jsp?chapter=6&verse=162>.

⁹ Mufti Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, Brill Book Archive Part 1, ISBN: 9789004472495 20 (Leiden Boston: BRILL, 2001), <https://doi.org/10.1163/9789004479913>.

¹⁰ The Quran Verses (2:275) to (2:279).

¹¹ Verse (2:279).

exorbitant rates, while more moderate returns are commonly termed “interest.”¹² For clarity and consistency within this article, the terms “*Riba*,” usury, and interest are used interchangeably.

A prominent form of *Riba* in Islamic law involves loans conditioned on an interest-based fee, regardless of whether repayment is made in a single sum or in installments. This fee is known as ‘*riba al-fadl*’ (*Riba* of excess).¹³ Another form involves charging borrowers a fee for extending the loan’s repayment date beyond the original agreement, referred to as ‘*riba al-nasia*’ (the interest of deferment).¹⁴ The latter form of ‘*riba*’ is particularly recognized for its potential to harm both individual borrowers and society. Repeated defaults can result in accrued fees exceeding the principal loan amount. There are also other types of transactions in Islamic law that are considered to fall under the prohibition of usury, as they bear the hallmarks of usury, such as financial manipulation and unfair profit making.¹⁵ A prime example is the prohibition of *gharar*, a term that lexically denotes hazards, uncertainty, or risk. This prohibition forbids transactions involving excessive uncertainty or outcomes akin to gambling and consequently requires contracts to clearly specify their fundamental elements, including the rights and obligations of all parties.¹⁶

Islamic law considers usury to be an extremely harmful way of making profit, which involves manipulating the financial weakness of the other party and more generally damaging the social fabric of society by encouraging greed and hoarding wealth at the expense of the poor and needy.¹⁷ Notably, the prohibition of *Riba* extends to both creditors and debtors. Consequently, adherents are obligated to refrain from charging interest and entering into loan agreements identified as involving ‘*Riba*.’ The Quran further contrasts usury with consent-based commercial transactions or what was historically known simply as ‘trade.’ In a normal commercial transaction, both sides harmoniously consent to the transaction, and the process requires effort and contribution from both sides, as well as acceptance that the transaction may lead to either loss or profit. Usury also conflicts with Islamic law’s emphasis on social

¹² The Editors of Encyclopaedia Britannica, ‘Usury’, in *Britannica Money*, accessed 5 October 2025, <https://www.britannica.com/money/usury>.

¹³ The Quran, Verse (2:279).

¹⁴ M.A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2006), <https://books.google.co.id/books?id=2ElRUvoVRxYC>.

¹⁵ Wahba az-Zuhaili and Muhammad S. Eissa, *Financial Transactions in Islamic Jurisprudence: Dr. Wahbah Al-Zuhayli’s Al-Fiqh al-Islami Wa ‘Adillatuh: (Islamic Jurisprudence And Its Proofs)*, trans. Mahmoud A. El-Gamal (Damascus, Syria: Dar al-Fikr, 2003).

¹⁶ El-Gamal, *Islamic Finance: Law, Economics, and Practice*.

¹⁷ Sa’id Hawwa, *Al-Asās Fī al-Tafsīr, Asas Dalam Tafsir* (Cairo: Dār al-Salām, 1985), <https://books.google.co.id/books?id=MMCLnQAACAAJ>.

cooperation and altruistic enterprise, whereby members of society help those in financial need through voluntary, altruistic, and cooperative initiatives.¹⁸

2.2 The Value of University Education in Islamic Law

Do young Muslims need to access university education? Is access to university education considered an obligation in Islamic law, or is it merely something that is superfluous? Can a Muslim compromise on other rules and principles in Islamic law to attend university? These questions are relevant to clarify before continuing to explore the issues Muslim students face with modern interest-based student loans. This issue has been highlighted by the European Court of Human Rights in the case of *Sahin v Turkey*.¹⁹ This case involved a female Turkish medical student whose access to medical education was restricted by the University of Istanbul because she insisted on wearing a headscarf in contravention of state law, which (at the time) banned the wearing of Islamic headscarves at university. Sahin thus faced the stark decision of choosing between continuing her university education or adhering to her religious beliefs. Her claim in the European Court ultimately failed; however, it vividly portrays the challenges that Muslim students can face when engaging with state policies that effectively restrict their access to university education.

Islamic law classifies knowledge into two categories: the first is personally obligatory for every Muslim to acquire and consists of the foundational tenets of Islamic faith and practice.²⁰ This obligatory type of religious knowledge includes the foundational tenets of creed, fundamental religious practices, and the central tenets of ethics and spirituality.²¹ This obligatory knowledge must be equally acquired by both male and female Muslims. The second category includes knowledge that is not obligatory for every Muslim individual but rather an obligation for the Muslim community as a whole to acquire. This type of communal obligation is fulfilled as long as a small group of individuals acquires sufficient knowledge. One type of knowledge that falls under this category is science, which will benefit the Muslim community in any capacity, including social and administrative development. This effectively means that modern university education generally falls into this second category and therefore is important for a Muslim community to access, but is not personally obligatory for every Muslim to acquire. Moreover, Muslim male students have the additional obligation under Islamic law to financially provide for their families.²²

¹⁸ Sa'id Hawwa.

¹⁹ *Sahin v. Turkey*, Application no. 44774/98, European Court of Human Rights, 2005.

²⁰ Ahmad Ibn-Lu'lu' Ibn-an-Naqib and Ahmad Ibn-Lu'lu' Ibn-an-Naqib, *Reliance of the traveller: the classic manual of Islamic sacred law 'Umdat al-salik*, Reprint., rev. ed., ed. Noah Ha Mim Keller (Beltsville, Md: Amana Publ, 2008).

²¹ Ibn-an-Naqib and Ibn-an-Naqib.

²² Ibn-an-Naqib and Ibn-an-Naqib.

Accessing university education may therefore become a religious obligation for them, specifically if their university degree is going to facilitate a particular career path for them from which they can eventually earn an income. This highlights the fact that while modern university education may not necessarily be a religious obligation for Muslim students, it is nevertheless still considered a potentially important value in Islamic law.

2.3 Islamic Legal Verdicts on Student Finance in the UK

Do modern student loans involve some type of usury or interest? If so, do they fall within the classical prohibition of usury in Islamic law? This is a major theological question that modern Islamic jurists have engaged with, and it fundamentally affects the inquiry regarding a state's potential obligation to offer the Muslim community alternative interest-free student loans. Indeed, if modern student loans are not even considered to be prohibited by Islamic law, then they are no longer an issue for Muslim students. In this section, two modern Islamic legal verdicts issued in the UK are contrasted with one another to illustrate the different approaches that have been taken to this question.

One of the most popular Islamic legal verdicts in the UK that considers modern student loans permissible according to Islamic law was issued by Dr. Haitham Al-Haddad. Dr. Al-Haddad is a UK-based Islamic scholar of Palestinian origin with a PhD from SOAS University. His PhD thesis explored the unique legal issues that Muslims, as a minority community in the UK, specifically face. He is involved in several different community organizations as a religious leader and has a leading role in the Islamic Council of Europe, which offers arbitration, mediation, and theological services to European Muslims.²³ The essence of his legal verdict is that modern student loans are not considered traditional loans according to Islamic law; rather, they are more akin to what Islamic law would consider permissible types of investments. Based on this analysis, therefore, even if universities claim to be offering a loan with an attached interest rate, it should be more properly treated as a permissible commercial transaction in which the state invests in a student's education and they agree to share the profit of such an investment after the student graduates and starts earning an income.²⁴ To support this analysis, the verdict highlights that modern student loans are not typical loans and have many unique characteristics, such as the fact that they are not paid directly to the student, they may be written off after an extended period of time, and the student is only required to start paying back the loan

²³ Amin Al-Astewani, 'To Open or Close? COVID-19, Mosques and the Role of Religious Authority within the British Muslim Community: A Socio-Legal Analysis', *Religions* 12, no. 1 (December 2020): 11, <https://doi.org/10.3390/rel12010011>.

²⁴ Zahed Fettah, 'On Sheikh Haitham's Student "Loans" Fatwa', *Islam21c*, 2016, <https://www.islam21c.com/islamic-law/on-sh-haithams-student-loans-fatwa/>.

once they start earning a particular income.²⁵ To highlight the influence of this verdict, it is pertinent to note that the University of Sheffield has cited the verdict on its official website as part of its guidance to Muslim students wishing to apply to the university.²⁶

In contrast to the above verdict, one of the most popular and detailed legal verdicts that takes the opposite view is one issued by Mufti Faraz Adam. Mufti Adam completed his traditional Islamic learning in a UK-based seminary in Leicester before moving to South Africa in order to specialize in Islamic finance at a religious seminary in Durban. He also acquired postgraduate and vocational qualifications in finance and accounting, making him one of the leading authorities on Islamic finance in the UK, with positions as a financial consultant in several institutions.²⁷ He also runs his own website, Darulfiqh, which specializes in issuing Islamic legal verdicts. On this website, he issued a verdict in which he respectfully refuted the one issued by Dr. Al-Haddad.²⁸ The essence of Mufti Adam's verdict is to highlight in detail how the student loan contract does not fit in any way within the framework of an investment contract according to the technical stipulations of Islamic law. Rather, this verdict states that Islamic law considers student loans to be either a type of debt transfer or a financial guarantee. When comparing both verdicts, it is clear that Mufti Adam's verdict engages in a more thorough and detailed analysis of the Islamic framework regulating the nature of investment contracts. However, it is important to highlight that this verdict does not aim to declare student loans impermissible but rather to refute the notion that they can be classified as investment contracts. Nevertheless, Mufti Adam's verdict has been cited by other UK-based scholars to support the view that Muslim students should not access student loans because they involve interest.²⁹ Therefore, Mufti Adam's verdict supports the wider view shared by a strong segment of religious leaders in the Muslim community that student loans are not permissible for Muslim students.

THE LEGAL OBLIGATION ON STATES TO OFFER HIGHER EDUCATION WITHOUT DISCRIMINATION: A HUMAN RIGHTS ANALYSIS

2.4 The International Right to Education

²⁵ Fettah.

²⁶ University of Sheffield, 'Information for Students Who Do Not Take Out a Student Loan', 2023, <https://www.sheffield.ac.uk/students/finance/information-students-who-do-not-take-out-student-loan>.

²⁷ Mufti Faraz Adam, 'Profile: Mufti Faraz Adam', Simply Ethical, 2025, <https://simplyethical.com/profile/mufti-faraz-adam/>.

²⁸ Faraz Adam, 'Are Student Loans a Mudharabah (Investment Contract)?', Darul Fiqh, 2021, <https://darulfiqh.com/are-student-loans-a-mudharabah-investment-contract-2/>.

²⁹ WhiteThread Fatwa Centre, 'Student Loans Update 2021', 2021, <https://fatwacentre.org/view-answers/Business%20Trade/523/Student%20loans%20update%202021>.

The right to higher education is recognized in several human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). According to Article 26 (1) of the UDHR, ‘everyone has the right to education’ and that ‘higher education shall be equally accessible to all on the basis of merit.’³⁰ In a similar but not identical textual, Article 13 of the ICESCR highlights that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by the progressive introduction of free education.’³¹ The ICESCR builds upon the foundational principles of the UDHR to introduce a more detailed article on the right to higher education. Notably, the UDHR requires equality in access to higher education based on ‘merit’, while ICESCR Article 13 bases equality on the capacity of the relevant individuals. The capacity of individuals, in relation to education, can denote more than one meaning, in the sense that it could be limited to the individual merit (whether academic merit or personal abilities), as the terminology of Article 26 of the UDHR implies, or it could refer to the financial capacity of the concerned individuals.

The Committee on Economic, Social and Cultural Rights (CESCR or the Committee) has clarified that ‘the ‘capacity’ of individuals should be assessed by reference to all their relevant expertise and experience.’³² This requires states to implement higher education fees to establish mechanisms that prevent the exclusion of students based on financial constraints. Without such mechanisms, as we explain below, charging fees for higher education may result in de facto discrimination against those who desire to pursue higher education but lack the financial resources to do so.³³ Nevertheless, charging fees for higher education is not necessarily contrary to the right to education, provided that adequate alternative ‘means of access’ are available to those who cannot afford such fees.³⁴ This also aligns with States’ obligations under Article 13 of the ICESCR, which requires them to ensure equal access to higher education through ‘every appropriate means’ and to undertake ‘deliberate, concrete, and targeted’ steps towards the progressive realization of this right.³⁵

³⁰ Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948).

³¹ International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (1966).

³² Social and Cultural Rights United Nations Committee on Economic, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*, para. 19, E/C.12/1999/10 (1999); Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights*, International Studies in Human Rights (Boston: Martinus Nijhoff Publishers, 2006), <https://doi.org/10.1163/ej.9789004147041.i-738>.

³³ Fons Coomans, ‘Justiciability of the Right to Education’, *Erasmus Law Review* 2, no. 4 (December 2009): 427–43, <https://ssrn.com/abstract=1542676>.

³⁴ Jane Kotzmann, *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy* (New York, NY: Oxford University Press, 2018).

³⁵ United Nations, ICESCR, art. 13(2)(c).

Generally, the principle of progressive realization acknowledges that fulfilling Economic, Social and Cultural rights, including the right to education, may not be achieved in a short period of time due to constraints on available resources. This means that States are exempt from achieving immediate results and can instead focus on making steady progress towards realizing these rights over time.³⁶ However, this principle has key limitations. It prohibits retrogressive measures, which means that states cannot take steps that undermine or worsen the situation in relation to economic, social, and cultural rights. In the context of higher education, for example, states cannot reintroduce or increase fees without violating their obligations under Article 13 of the ICESCR.³⁷ Furthermore, the right to non-discrimination in education at all levels, including higher education, is not subject to progressive realization. This means that states must ensure immediate equal access to education for all, regardless of their background or circumstances.³⁸ In this respect, the Committee highlighted that ‘the prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination’.³⁹

2.5 The Principle of Non-Discrimination

The principle of non-discrimination is an indispensable element in fulfilling economic, social, and cultural rights and plays a significant role in eliminating socio-economic inequalities.⁴⁰ This principle requires States parties to the ICESCR to guarantee both formal and substantive equality through the elimination of both *de jure* (or formal) and *de facto* (or substantive) discrimination within the relevant laws, legislation, or educational policies.⁴¹ The Committee, in this respect, has stressed that any direct or indirect differential treatment, *inter alia*, ‘distinction, exclusion, restriction or preference’ based on one or more of the prohibited grounds may constitute discrimination.⁴² Direct discrimination refers to the less favorable treatment of an individual (or a group of individuals) compared to another individual (or a group of

³⁶ Article 13 (2) a of the ICESCR.

³⁷ K. Tomasevski, ‘Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004’, *Human Rights Law Review* 5, no. 2 (January 2005): 205–37, <https://doi.org/10.1093/hrlr/ngi014>.

³⁸ CESCR General Comment No. 13 para 31.

³⁹ CESCR General Comment No. 13 para 31.

⁴⁰ Article 2, paragraph 2 of the ICESCR; CESCR General comment no. 20 non-discrimination in economic, social and cultural rights, para 1, 2.

⁴¹ CESCR General comment no. 16, para 41.

⁴² CESCR General comment no. 20 non-discrimination in economic, social and cultural rights, para 7.

individuals) because of a prohibited ground.⁴³ For example, a law or education policy that directly or indirectly prohibits an ethnic minority or religious group from accessing education or employment would constitute *prima facie* direct discrimination against this group.⁴⁴ Direct discrimination may also occur in cases where there are no comparable individuals in a similar situation, such as enacting laws that deny pregnant women access to education or employment.⁴⁵

Indirect discrimination, as the Committee puts it, is concerned with 'laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.'⁴⁶ For example, banning religious symbols in educational institutions would disproportionately affect religious groups who wish to manifest their personal beliefs by wearing certain clothes or symbols.⁴⁷ Hence, such a ban may arguably constitute indirect discrimination against those individuals.⁴⁸ In the context of higher education, it is notable that individuals who fail to access this level because the acceptance rate of their courses of choice is relatively high are generally excluded based on their academic merit and not because of their financial ability. From a human rights perspective, it can be argued that as long as the process of selecting eligible students is free from all forms of discrimination, there is no human rights violation. In contrast, the indirect exclusion of students from higher education because of their inability to afford the fees would arguably be incompatible with the human rights regime. Indeed, there is a fundamental difference between requiring a certain level of academic merit to access higher education, which is a legitimate aim that justifies different treatment, and socio-economic status, which may be considered a ground for discrimination.⁴⁹ The CESCR, for example, has considered 'socio-economic status' as a ground of discrimination under the term 'other status', as enshrined in Article 2 para.1 of the ICESCR.

2.6 Equitable Access to Higher Education

⁴³ CESCR General Comment No. 20 Non-discrimination in economic, social and cultural rights, para 10

⁴⁴ The Committee on the Elimination of Racial Discrimination in *Murat Er v Denmark*, found that the applicant was denied access to traineeship because of his ethnic origin and this denial constitutes a *de facto* discrimination.

⁴⁵ CESCR General Comment No. 20 Non-discrimination in economic, social and cultural rights, para 10.

⁴⁶ CESCR General Comment No. 20 Non-discrimination in economic, social and cultural rights, para 10.

⁴⁷ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law*, Second edition (Oxford ; Portland, Oregon: Hart Publishing, 2016).

⁴⁸ Ssenyonjo.

⁴⁹ The UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, on non-discrimination in economic, social and cultural rights.

Equitable access to fee-based higher education requires that all prospective students, regardless of their socioeconomic background, have equal opportunities to utilize alternative financial mechanisms. In this context, two primary routes have emerged as viable alternatives for accessing higher education: student financial aid programmes and student finance.⁵⁰ The first alternative, financial aid, is primarily based on academic merit and financial needs. It should be equally available to all qualifying individuals across all educational courses and programs. These financial aids should also be consistently accessible, enabling individuals to pursue their desired higher education without financial constraints or concerns. However, scholarships and other forms of financial aid are often competitive and not guaranteed. Moreover, such aid may be limited to specific educational programs or may not cover the total amount of required fees. Consequently, many individuals may remain unable to access their desired education through available financial aid programs. The second alternative, student finance, which typically encompasses both tuition fees and maintenance support, remains one of the primary routes that render higher education accessible to individuals who would otherwise be unable to pursue or continue their education. It essentially involves extending the payment time, where costs are paid in the future, either as a single payment or in instalments. Student finance repayment is usually structured through future earnings. This form of funding generally differs from other commercial financial products, offering advantages such as simplified credit check procedures, lower interest rates, and more flexible repayment methods, including income-contingent repayment after graduation.⁵¹ Even in States offering tuition-free higher education, students may need to access maintenance support to cover living expenses, particularly those without income sources and unable to work full-time due to academic commitments.

2.7 The Legal Obligation on States to Offer Equal Access to Higher Education

The role of government-backed student finance as a viable alternative means of enabling access to higher education raises a critical question: whether states that charge fees for higher education may be legally required to introduce student finance mechanisms under the auspices of the right to education. This question arises from the broader context of state obligations under international human rights law, specifically regarding the right to education and equitable access to higher education. As discussed above, state parties are not obligated under international instruments to introduce immediate free higher education but rather must progressively realize it

⁵⁰ In this vein, Article 13(2)(e) (e) of the ICESCR requires State parties to develop an adequate fellowship system to ensure 'the accessibility, and particularly economic accessibility, of higher education'.

⁵¹ *The Dearing Report, Higher Education in the Learning Society*. National Committee of Inquiry into Higher Education (1997), recommendations 78 and 79.

over time. However, they have an immediate obligation to ensure that access to higher education is non-discriminatory, both in terms of access and the exercise of this right.⁵² In this context, the ICESCR generally establishes three fundamental levels of interrelated state obligations towards various ESC rights, including the right to higher education. These obligations consist of three key duties: respect, protection, and fulfilment.

The obligation to respect requires states to refrain from implementing direct or indirect measures that impede individuals' enjoyment of their right to education, such as discriminatory policies or practices that deny or restrict equal access to higher education based on prohibited grounds of discrimination, including socioeconomic status, race, religion, gender, and other factors.⁵³ Furthermore, this obligation may include prohibitions on financial barriers that prevent individuals from accessing higher education, such as charging prohibitive fees without corresponding, accessible financial support mechanisms.⁵⁴ Crucially, this obligation also requires states to avoid measures that could diminish existing levels of educational accessibility, thereby preventing retrogressive measures. The obligation to protect obliges states to implement positive measures to ensure that individuals can exercise their right to higher education without third-party interference (whether from private actors or individuals).⁵⁵ Such measures may include enacting legislation, implementing policies, and adopting other appropriate mechanisms to prevent or counter third-party conduct that undermines the four essential elements of education: availability, accessibility, acceptability, and adaptability.⁵⁶

Finally, the obligation to fulfil mandates states to take positive measures through both facilitation and provision of the right to higher education. The obligation to facilitate constitutes an obligation of conduct, requiring states to 'take positive measures that enable and assist individuals and communities to enjoy the right to education.'⁵⁷ On the other end of the spectrum, the obligation to provide requires states to achieve specific outcomes when an individual or group cannot access education due to circumstances beyond their control.⁵⁸ This obligation encompasses ensuring equal access, including economic accessibility. Economic accessibility

⁵² Article 13 (c), article 2 (2) of the ICESCR; CESCR General Comment no. 20 non-discrimination in economic, social and cultural rights, para 7.

⁵³ Manfred Nowak, 'The Right to Education – Its Meaning, Significance and Limitations', *Netherlands Quarterly of Human Rights* 9, no. 4 (December 1991): 418–25, <https://doi.org/10.1177/016934419100900404>.

⁵⁴ Ssenyonjo, *Economic, Social and Cultural Rights in International Law*.

⁵⁵ Ssenyonjo.

⁵⁶ Ssenyonjo.

⁵⁷ CESCR General Comment No. 13 para 47.

⁵⁸ CESCR General Comment No. 13 para 47.

becomes particularly relevant when states implement fee-based systems. It involves two elements: the first relates to the financial resources of the concerned individuals, and the second encompasses the direct costs of education, as well as indirect associated costs such as living expenses or transportation. The Committee in this context has emphasized that 'education has to be affordable to all.'⁵⁹ Consequently, States must ensure that the charged fees do not create insurmountable barriers to accessing higher education. In other words, in the absence of the States' ability to provide unconditional, comprehensive financial aid that considers individual financial needs across all higher-education programs, international human rights law may require States to implement comprehensive student finance mechanisms. These mechanisms must ensure that socioeconomic factors do not restrict equal access to any program within higher education, including, but not limited to, undergraduate, graduate, professional, and vocational courses.

A CASE-STUDY OF THE BRITISH MUSLIM COMMUNITY AND EQUITABLE ACCESS TO HIGHER EDUCATION IN THE UK

2.8 The UK Higher Education Framework and International Law Obligations

The United Kingdom is one of the states that have implemented fee-based systems for higher education. Tuition fees for higher education were initially introduced by the 1998 Labor Government as a maximum of £1,000 per academic year.⁶⁰ In 2006, the government raised the fees cap to a maximum of £3,000 per year and removed the requirement for the upfront payment of tuition fees.⁶¹ According to this approach, the government bears the upfront cost of providing higher education, requiring students to repay only when they have the financial means. In 2012, the government raised the upper limit of the tuition fee cap to £9,000 per academic and made some changes to students' loan system. More recently, in 2016, the Teaching and Excellence Framework was introduced, setting a new cap on permitted tuition fees at £9,250 for the 2017/18 academic year.⁶² This framework allowed institutions with high-quality teaching to increase their tuition fees annually, up to a maximum of £9,500 for the 2018/19

⁵⁹ CESCR General Comment No. 13 para 6 (b) iii

⁶⁰ These fees were introduced following the 1997 inquiry into UK higher education (the Dearing Review), which suggested that students ought to contribute to the cost of their education in exchange for the benefits they receive. Susan Hubble and Paul Bolton, *Higher Education Tuition Fees in England*, House of Commons Library Research Briefing (2018), <https://commonslibrary.parliament.uk/research-briefings/cbp-8151/>; Anthony O'Hear, *The Dearing Report on Higher Education: A Personal Response* (London: Centre for Policy Studies, 1997).

⁶¹ John Browne, *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Finance*, The Browne Report (London: Department for Business, Innovation and Skills (BIS), 2010), <https://assets.publishing.service.gov.uk/media/5a7f289540f0b62305b856fc/bis-10-1208-securing-sustainable-higher-education-browne-report.pdf>.

⁶² Browne.

academic year. However, in October 2017, the Prime Minister froze the fee cap at £9,250.⁶³ In 2024, the UK government announced a 3.1% increase in maximum tuition fees for the 2025-2026 academic year, aimed at aligning tuition fees with inflation and addressing the financial challenges faced by universities. This adjustment, which will take effect on August 1, 2025, marks a pivotal moment in higher-education funding policy after an eight-year hiatus. While the proposed increase appears relatively modest in relation to current inflation rates, it may potentially signal a shift towards more frequent or substantial fee rises, which may ultimately have adverse consequences for student affordability.

It is clear that any reintroduction or increase in tuition fees for higher education constitutes a retrogressive step, undermining the progressive introduction of free higher education as required by Article 13 of the ICESCR, to which the UK is a State Party.⁶⁴ As highlighted earlier, this provision obliges state parties to progressively introduce free higher education.⁶⁵ In a notable critique, Katarina Tomasevski, former United Nations Special Rapporteur on the right to education, argued that the government's 1998 decision to introduce fees for university education constituted a breach of the ICESCR.⁶⁶ Increasing the amount of fees charged may also exacerbate the accessibility of higher education and potentially breach equal access.⁶⁷ In this context, the CESCR, in its concluding observations report concerning the UK, expressed concern that increasing higher-education fees may hinder equal access to higher education.⁶⁸ The Committee further suggested that the UK government should 'take all necessary steps to reduce higher education fees, with a view to making higher education equally accessible to all, in accordance with capacity, and by progressively introducing free higher education.'⁶⁹

⁶³ Browne.

⁶⁴ United Nations Office of the High Commissioner for Human Rights, "International Covenant on Economic, Social and Cultural Rights." https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en, accessed October 1, 2025.

⁶⁵ United Nations Office of the High Commissioner for Human Rights, 'International Covenant on Economic, Social and Cultural Rights', United Nations Treaty Body Database, accessed 1 October 2025, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en.

⁶⁶ K. Tomasevski, 'Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004', *Human Rights Law Review* 5, no. 2 (January 2005): 205-37, <https://doi.org/10.1093/hrlr/ngi014>.

⁶⁷ CESCR General Comment No. 13 para 31.

⁶⁸ CESCR, *Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc E/ C.12/ G BR/ CO/ 6 (14 July 2016), para 65.

⁶⁹ CESCR, *Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc E/ C.12/ G BR/ CO/ 6 (14 July 2016), para 66.

It is also notable that the significant raise of the cap of permissible tuition fees to £9,000 in 2012 was challenged in the Hurley case, where the applicants argued that such an increase would discourage individuals from disadvantaged social backgrounds from pursuing university studies.⁷⁰ They claimed that this would contravene Article 2 of Protocol 1 of the European Convention on Human Rights (ECHR) and also this Article read together with Article 14 of the Convention, which prohibits discrimination on any ground (including socioeconomic status).⁷¹ The court recognized that the rise in tuition fees can act as a psychological barrier, deterring some individuals from applying to higher education because of concerns about debt. However, the court maintained that such a rise in tuition fees does not necessarily mean that the right to higher education has been denied or unjustifiably restricted.⁷² Rather, it acknowledges that measures such as education loans and financial support can mitigate the impact of fees on students from lower socioeconomic backgrounds.⁷³ As Kotzmann states, the court's conclusion seems to suggest that access to education loans can offset the discriminatory effects of tuition fees. Interestingly, in this case, the court recognized that some Muslim students may be disproportionately affected by interest charges on educational loans.⁷⁴ Notably, however, the court did not consider whether the government should provide alternative measures for Muslim adherents.⁷⁵

2.9 Student Finance and the British Muslim Community

The UK government established a student finance system, by which students can take tuition fee loans and maintenance loans.⁷⁶ According to this system, the concerned student concludes the loan contract with the Secretary of State for Education through a non-profit government establishment, the Student Loans Company Limited (SLC).⁷⁷ The repayments of the loan in question are made primarily through the UK tax system, and they are conditional on earning an income above the repayment

⁷⁰ *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, para 1.

⁷¹ *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, para 4.

⁷² *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, paras 39 and 42.

⁷³ *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, para 52.

⁷⁴ *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, paras 80 and 93.

⁷⁵ *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* (2012) EWHC 201, para 80

⁷⁶ 'Student Finance' <<https://www.gov.uk/student-finance>> accessed July 2025.

⁷⁷ 'Student Finance' <<https://www.gov.uk/student-finance>> accessed July 2025.

threshold.⁷⁸ Thus, those who earn below the repayment threshold will not be obliged to pay until their earnings reach that threshold.⁷⁹ This approach, which was initially adopted by the Browne Report, is supposed to render the point of entering higher education free for all students.⁸⁰ Furthermore, the deferment of tuition fee payments until the concerned students have graduated and started earning an income above a certain threshold level ought to prevent many students from being directly or indirectly excluded from fee-based higher education. Indeed, when tuition fees are required to be paid upfront or during studies, concerned students who are unable to pay such fees may be directly excluded. In a similar vein, when concerned students are required to pay such fees after graduation with no guarantee of earning an income, they may be indirectly excluded from accessing higher education due to their fear of debt accumulation.

Since September 2012, the UK student finance system has started charging commercial interest on the provided loans.⁸¹ The interest rate charged is based on the Retail Price Index (RPI), mainly the RPI + 3%.⁸² According to the government guide on the terms and conditions of student loans, the interest charged on these loans is calculated daily and applied to the debt balance of the student each month (renowned as compound interest). The interest charged on such loans may have a disproportionate adverse impact on adherents of Islam, who cannot access the government student funding system in accordance with their religious beliefs. In particular, adherents from lower socioeconomic backgrounds may be indirectly excluded from accessing higher education. The exclusion of adherents would likely contravene the right to higher education, which enshrines equal access as a fundamental human right.

As mentioned above, the UK government is obliged under Article 13 of the ICESCR to provide equal access to higher education to all individuals, irrespective of their faith or background. In addition to this ⁸³, the UK's obligations under Article 2

⁷⁸ 'Student Finance' <<https://www.gov.uk/student-finance>> accessed July 2025.

⁷⁹ According to the Universities and Colleges Admissions Service (UCAS), the current loans repayment threshold is '£27,295 a year, £2,274 a month, or £524 a week'. See 'Repaying Your Student Loan' (UCAS) <<https://www.ucas.com/student-finance-england/repaying-your-student-loan>> accessed July 2025. It is also notable that the repayment threshold may still vary according to the type of the loan in question and the repayment plan. For details see "Student Loans: A Guide to Terms and Condition," UK Government, <https://www.gov.uk/student-finance>, accessed February 2025.

⁸⁰ The Browne Report, *Securing a Sustainable Future for Higher Education: Independent Review of Higher Education Funding & Student Finance*. (2010), 36.

⁸¹ Gotch, Chris. *Department for Business, Innovation and Skills, Interim Equality Impact Assessment: Urgent reforms to higher education funding and student finance*. (2010), 16.

⁸² The RPI measures the inflation and the cost of living in the UK.

⁸³ It is notable that the UK's obligations under the ECHR are reflected in the Human Rights Act 1998, which directly incorporates the Convention into domestic law and enables its provisions to be enforced within the UK judicial system.

Protocol 1 of the European Convention on Human Rights (ECHR), when read in conjunction with Article 14, require that existing educational institutions be accessible without discrimination.⁸⁴ Organizations must justify any policy or practice that might unfairly disadvantage people with a specific protected characteristic, such as religious belief.⁸⁵

2.10 The UK Government's Initiative in Attempting to Offer the Muslim Community an Alternative Student Loan System

The UK government initially recognized this issue in 2010 when a member of the Federation of Student Islamic Societies (FOSIS) raised concerns that some adherents of Islam may be discouraged from accessing the student loan system because of the interest charged on such loans.⁸⁶ In 2013, at the World Islamic Economic Forum, the UK Prime Minister pledged to introduce a Sharia-compliant alternative to student loans. In his own words, 'never again should a Muslim in Britain feel unable to go to university because they cannot get a Student Loan, simply because of their religion'.⁸⁷ In 2014, the government consulted on introducing an alternative student finance product compatible with Islamic principles, which concluded that there was a need for such an alternative.⁸⁸ The government further announced that it had developed an alternative finance product based on one of the Islamic principles, namely, '*Takaful*' or mutual cooperation, with the aim of potentially offering it along with conventional loans to both Muslims and non-Muslims.⁸⁹

According to this proposed finance model, which has not yet been implemented, a mutual fund (*Takaful*) 'will be established with an initial amount of money that can be donated to the fund or on the basis of *Qard Hasan* (interest-free loan).'⁹⁰ Students who apply for this alternative finance product receive financing from the *Takaful* fund in a manner similar to that of a conventional loan.⁹¹ In return, they are obliged to repay a charitable contribution to the fund aimed at providing

⁸⁵ See <https://www.legislation.gov.uk/ukpga/2010/15/section/19> accessed July 2025

⁸⁶ Gotch, Chris. *Department for Business, Innovation and Skills, Interim Equality Impact Assessment: Urgent reforms to higher education funding and student finance*. (2010), 16.

⁸⁷ <<https://hansard.parliament.uk/Lords/2019-07-25/debates/EE789E3A-C4D847319FC4B4DF2A6CE523/Sharia-CompliantStudentFinance>> accessed July 2025.

⁸⁸ <<https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice>> accessed July 2025

⁸⁹ <<https://www.gov.uk/government/consultations/sharia-compliant-student-finance>> accessed July 2025.

⁹⁰ The Department for Business, Innovation and Skills (BIS). *Higher Education: Teaching Excellence, Social Mobility and Student Choice*. (2015), 41.

⁹¹ The Department for Business, Innovation and Skills (BIS).

finances to future students who choose to participate in the fund.⁹² According to the Government, students participating in the fund will support each other in accessing higher education, and neither the SLC nor any third party will receive interest payments.⁹³ In other words, 'the money within the alternative finance fund would be ring-fenced and would only be used to provide alternative finance to other students.'⁹⁴

The Government has also set certain criteria to ensure that students who utilize either alternative finance products or conventional student loans would receive the same treatment and outcome.⁹⁵ For example, the government emphasized that applications for the alternative finance product would be made through the SLC and repayments would be made through the UK tax system.⁹⁶ The repayment contributions of the *Takaful* fund will also be deferred until after graduation and conditional on earning an income above the required threshold, in the same manner as conventional student loans.⁹⁷ Furthermore, the Government required the debt levels to be identical in relation to both the alternative finance product and the conventional loans, in the sense that 'students who chose the alternative finance product would be in no worse or better position than those who took out a traditional loan.'⁹⁸

In December 2017, the government conducted an assessment of the Higher Education and Research Act on the impact of interest charged on education loans in relation to adherents of Islam.⁹⁹ The assessment stressed that 'some prospective Muslim students could be deterred from entering higher education if they consider the interest payable on student loans inconsistent with the principles of Islamic finance.'¹⁰⁰ Consequently, sections 86 and 87 of the Higher Education and Research Act 2017 were enacted to 'allow the Government to introduce an additional model of student finance called "alternative payments," which would not carry any interest.'¹⁰¹ A key qualitative research study on the proposed alternative education loans was

⁹² The Department for Business, Innovation and Skills (BIS).

⁹³ The Department for Business, Innovation and Skills (BIS).

⁹⁴ The Department for Business, Innovation and Skills (BIS), 12.

⁹⁵ The Department for Business, Innovation and Skills (BIS), 12.

⁹⁶ The Department for Business, Innovation and Skills (BIS), 41.

⁹⁷ The Department for Business, Innovation and Skills (BIS), 40-41.

⁹⁸ The Department for Business, Innovation and Skills (BIS).40-41.

⁹⁹ <https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf> accessed July 2025

¹⁰⁰ <https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf> accessed July 2025

¹⁰¹ <<https://commonslibrary.parliament.uk/sharia-compliant-alternative-student-finance/>> accessed July 2025

published in 2019 by the government, under the title 'Alternative Student Finance (ASF) Current and Future Students' Perspectives'.¹⁰²

The study highlighted several intriguing points, *inter alia*, a concern from some Muslim students regarding the total size of the debt concerning the alternative student finance system and whether the requirement to pay charitable contributions equivalent to the interest payments may be identified as prohibited *Riba*.¹⁰³ In any event, the report, which did not set a timetable for the implementation of these proposed alternative loans, concluded, *inter alia*, that 'the ASF model is viewed positively by Muslim and non-Muslim individuals and is seen to offer several benefits.'¹⁰⁴ In July 2021, Stephen Timms rightly criticized the government for the eight-year delay in implementing the alternative scheme.¹⁰⁵ He further raised his concern that some Muslim students are deferring their entry to higher education, year after year, in the hope that the government will fulfill its promise and implement alternate student loans. In February 2022, the Government published a policy statement in relation to future reforms to the student finance system and 'also launched a consultation on the lifelong loan entitlement, which is intended to replace the current student loan system from 2025.'¹⁰⁶ With respect to the proposed alternative student finance, the government highlighted that it 'will consider "if and how" alternative student finance could be delivered as part of the new lifelong loan entitlement.'¹⁰⁷

CONCLUSION

From the outset, it seems that the government sought to establish an alternative student finance product that is not interest-based and is not interest-free either. The government found the answer to this paradox in a mutual cooperation *takaful* fund. *Takaful*, which lexically means 'to look after' or 'to take care' of each other, is based on

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<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848145/ASF_Final_Report.pdf> accessed July 2025

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<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848145/ASF_Final_Report.pdf> accessed July 2025

¹⁰⁴

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848145/ASF_Final_Report.pdf> accessed July 2025

¹⁰⁵

<<https://parliamentlive.tv/event/index/b611720b-8a2d-42e0-818d-d4edeca33cd7?in=17:00:24#player-tabs>> accessed July 2025

¹⁰⁶

<<https://commonslibrary.parliament.uk/sharia-compliant-alternative-student-finance/>> accessed July 2025

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<<https://commonslibrary.parliament.uk/sharia-compliant-alternative-student-finance/>> accessed July 2025.

the Qur'anic notion of '*taawun*' or mutual assistance.¹⁰⁸ It broadly reflects the core of the socio-economic obligations in the Qur'an and the Sunna, such as the obligations to pay *zakat* (the Islamic social tax) and to give *sadaqa* (charity). With respect to the compliance of this proposed financial product with Islamic principles, the Government has confirmed that this model 'has been developed by experts in *Sharia*-compliant finance and has received preliminary approval from the Al Rayan Bank's (formally Islamic Bank of Britain) *Sharia* supervisory committee.'¹⁰⁹

To date, little has been published on the proposed *Takaful* system, and the system has not yet been materialized to assist in the proliferation of relevant research. Whether this alternative is adequate in terms of compliance with Islamic law remains to be seen. However, the government's requirement for this system to have identical repayments to interest-based student loans and requiring the same levels of debt seems problematic. This is because, according to the current student finance system, a certain percentage (currently 9%) will be deducted from any amount the concerned individuals earn above the repayment threshold (currently between £25,000 and £28,470 per annum). This debt will be active for a fixed period, typically 30–40 years (the term varies depending on the chosen plan), and irrespective of the paid amount, which may range from nothing to the full loan amount plus interest. Any remaining balance is written off at the end of the period. Hence, the amount of total debt (the principal together with the interest accrued) cannot be determined in advance.¹¹⁰ Apart from the issue of charging interest, unidentified payments (and therefore the contributions within the proposed alternative student finance system) would arguably mean the presence of *gharar* or uncertainty in the contract, which renders it incompatible with Islamic principles. The rules of *gharar*, as we briefly highlighted in the first part of the article, require the clear definition of the main pillars of the contract as well as the rights and liabilities of the parties. Thus, the government should ensure that the proposed alternative product is also *gharar*-free by identifying the specific repayments and contributions, which must be known and specified at the time of concluding the contract in question (the student loan contract).

It is comprehensible that the government requires similar repayments for the proposed alternative student-finance product. This is because any interest-free alternative loans would generally have an advantage over interest-based loans and may ultimately render the conventional loan system obsolete. The elimination of

¹⁰⁸ Mervyn K. Lewis. "Wealth Creation through Takāful (Islamic Insurance)" in Iqbal, Munawar, and Wilson, Rodney. *Islamic perspectives on wealth creation*. Edinburgh University Press, 2005, 168.

¹⁰⁹ The Department for Business, Innovation and Skills (BIS). *Higher Education: Teaching Excellence, Social Mobility and Student Choice*. (2015), 40.

¹¹⁰ <<https://www.gov.uk/repaying-your-student-loan/what-you-pay>> Accessed: 1 October 2025; <<https://www.gov.uk/government/publications/student-loans-a-guide-to-terms-and-conditions/student-loans-a-guide-to-terms-and-conditions-2025-to-2026>> Accessed: 1 October 2025.

conventional loans is not the intention of the government, which specified that the proposed alternative loans will potentially be provided alongside conventional ones.

It can be suggested that the government should consider providing interest-free student loans alongside the conventional ones (whether the tuition or the maintenance loans) and require the graduate to pay off their full debt within a specific period of their graduation once they start earning an income. This could be done by linking the repayment percentage to their income. For example, graduates who earn above a threshold of £25,000 may pay 5% of their full income towards clearing their debt, in the sense that the more the graduates earn, the higher the percentage will be deducted from their income until their debt is cleared. Graduates should have the option to clear their full debt at any time, irrespective of their earned income. Arguably, this proposal may not only provide adherents of Islam with equal opportunity to access higher education, but it also has several advantages for all graduates, irrespective of their personal beliefs. Initially, the implementation of this suggested interest-free system is fairly simple and less complex than both the conventional education loan system and the proposed alternative student-finance system. The borrowers will return what they borrowed with no less or no more, and therefore, it is fair for the graduates who may not feel that some of them have benefited more than the others. The government may also implement the mutual cooperation *Takaful* concept and ring-fence the fund to reuse it for funding future students. In this sense, those who take such loans would not only know that no third party is profiting from their loans (through interest), but even the repayments of the principal of their loan will be used to fund future students, which may encourage them to repay their debt promptly.

Moreover, introducing interest-free loans may widen access to higher education, especially for students who are not comfortable taking conventional student loans, whether because of their faith (the case of adherents of Islam) or because they do not wish to hold a burden of debt obligation for a long period of time. In terms of human rights, introducing interest-free student loans may generally constitute an integral step forward towards the fulfilment of the State's human rights obligation to progressively introduce free higher education (by reducing the total cost of the debt) and specifically to ensure equal access with respect to adherents of Islam.

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BIBLIOGRAPHY

- Adam, Faraz. "Are Student Loans a Mudharabah (Investment Contract)?" *Darul Fiqh*, 2021. <https://darulfiqh.com/are-student-loans-a-mudharabah-investment-contract-2/>.
- Adam, Mufti Faraz. "Profile: Mufti Faraz Adam." *Simply Ethical*, 2025. <https://simplyethical.com/profile/mufti-faraz-adam/>.
- Al-Astewani, Amin. "To Open or Close? COVID-19, Mosques and the Role of Religious Authority within the British Muslim Community: A Socio-Legal Analysis." *Religions* 12, no. 1 (December 2020): 11. <https://doi.org/10.3390/rel12010011>.
- Beiter, Klaus Dieter. *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*. International Studies in Human Rights. Boston: Martinus Nijhoff Publishers, 2006. <https://doi.org/10.1163/ej.9789004147041.i-738>.
- Browne, John. *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Finance*. The Browne Report. London: Department for Business, Innovation and Skills (BIS), 2010. <https://assets.publishing.service.gov.uk/media/5a7f289540f0b62305b856fc/bis-10-1208-securing-sustainable-higher-education-browne-report.pdf>.
- Coomans, Fons. "Justiciability of the Right to Education." *Erasmus Law Review* 2, no. 4 (December 2009): 427–43. <https://ssrn.com/abstract=1542676>.

- Department for Business, Innovation and Skills (BIS). *Consultation on a Sharia-Compliant Student Alternative Finance Product*. London: BIS, 2014.
- — —. *Higher Education: Teaching Excellence, Social Mobility and Student Choice*. London: BIS, 2015.
- Department for Education, and The Rt Hon Gillian Keegan. “Student Finance to Be Radically Transformed from 2025.” GOV.UK, 7 March 2023. <https://www.gov.uk/government/news/student-finance-to-be-radically-transformed-from-2025>.
- El-Gamal, Mahmoud A. *Islamic Finance: Law, Economics, and Practice*. Cambridge: Cambridge University Press, 2006.
- Fettah, Zahed. “On Sheikh Haitham’s Student ‘Loans’ Fatwa.” *Islam21c*, 2016. <https://www.islam21c.com/islamic-law/on-sh-haithams-student-loans-fatwa/>.
- Gotch, Chris. *Interim Equality Impact Assessment: Urgent Reforms to Higher Education Funding and Student Finance*. Department for Business, Innovation and Skills (BIS), 2010.
- Hansard. “Sharia-Compliant Student Finance.” *House of Lords Debate*, 25 July 2019. <https://hansard.parliament.uk/Lords/2019-07-25/debates/EE789E3A-C4D8-4731-9FC4-B4DF2A6CE523/Sharia-CompliantStudentFinance>.
- Hordósy, Rita, Tom Clark, and Dan Vickers. “Lower Income Students and the ‘Double Deficit’ of Part-Time Work: Undergraduate Experiences of Finance, Studying and Employability.” *Journal of Education and Work* 31, no. 4 (May 2018): 353–65. <https://doi.org/10.1080/13639080.2018.1498068>.
- Hubble, Susan, and Paul Bolton. *Higher Education Tuition Fees in England*. House of Commons Library Research Briefing, CBP-8151. London: UK Parliament, 2018. <https://commonslibrary.parliament.uk/research-briefings/cbp-8151/>.
- Ibn al-Naqīb, Aḥmad ibn Lu’lu’. *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law* (‘Umdat al-Sālik). Revised Edition. Edited by Noah Ha Mim Keller. Beltsville, MD: Amana Publications, 2008.
- Kotzmann, Jane. *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy*. New York: Oxford University Press, 2018.
- Lewis, Mervyn K. “Wealth Creation through Takāful (Islamic Insurance).” In *Islamic Perspectives on Wealth Creation*, edited by Munawar Iqbal and Rodney Wilson, 168–189. Edinburgh: Edinburgh University Press, 2005.
- Nowak, Manfred. “The Right to Education – Its Meaning, Significance and Limitations.” *Netherlands Quarterly of Human Rights* 9, no. 4 (December 1991): 418–25. <https://doi.org/10.1177/016934419100900404>.
- O’Hear, Anthony. *The Dearing Report on Higher Education: A Personal Response*. London: Centre for Policy Studies, 1997.

- ParliamentLive.tv. "Sharia-Compliant Student Finance Debate." *UK Parliament Live Video*, 25 July 2019. <https://parliamentlive.tv/event/index/b611720b-8a2d-42e0-818d-d4edeca33cd7>.
- Refah Partisi (The Welfare Party) v. Turkey. App. Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (European Court of Human Rights, Grand Chamber, 2003). <https://opencasebook.org/casebooks/393-international-law-and-human-rights-fall-2016/resources/6.3.1-ecthr-refah-partisi-the-welfare-party-v-turkey-grand-chamber-app-nos-4134098-et-al-2003-excerpt/>.
- Sahih International. *The Qur'an*. Jeddah: Sahih International, n.d. Accessed 5 October 2025. <https://corpus.quran.com/translation.jsp?chapter=6&verse=162>.
- Sa'id Hawwā. *Al-Asās fī al-Tafsīr (Asas dalam Tafsir)*. Cairo: Dār al-Salām, 1985.
- Sahin v. Turkey. Application No. 44774/98 (European Court of Human Rights, 2005).
- Smith, Steven D. *The Disenchantment of Secular Discourse*. Cambridge, MA: Harvard University Press, 2010. <https://doi.org/10.2307/j.ctv1n1bslj>.
- Ssenyonjo, Manisuli. *Economic, Social and Cultural Rights in International Law*. 2nd ed. Oxford and Portland, OR: Hart Publishing, 2016.
- The Editors of Encyclopaedia Britannica. "Usury." *Britannica Money*. Accessed 5 October 2025. <https://www.britannica.com/money/usury>.
- Tomasevski, Katarina. "Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998–2004." *Human Rights Law Review* 5, no. 2 (January 2005): 205–37. <https://doi.org/10.1093/hrlr/ngi014>.
- UK Government. "PM Announces New Measures to Help Muslim Students and Entrepreneurs." *GOV.UK*, 21 October 2013. <https://www.gov.uk/government/news/pm-announces-new-measures-to-help-muslim-students-and-entrepreneurs>.
- — —. "Student Loans: A Guide to Terms and Conditions 2025–2026." *GOV.UK*, 2025. <https://www.gov.uk/government/publications/student-loans-a-guide-to-terms-and-conditions>.
- — —. "Repaying Your Student Loan." *UCAS and GOV.UK*, accessed 1 October 2025. <https://www.ucas.com/student-finance-england/repaying-your-student-loan>.
- — —. "Sharia-Compliant Student Finance Consultation." *GOV.UK*, 2014. <https://www.gov.uk/government/consultations/sharia-compliant-student-finance>.
- — —. "Higher Education: Teaching Excellence, Social Mobility and Student Choice Consultation." *GOV.UK*, 2015. <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice>.

United Nations. *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (1948).

— — —. *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (1966).

United Nations Committee on Economic, Social and Cultural Rights (CESCR). *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*. E/C.12/1999/10 (1999).

— — —. *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*. E/C.12/2005/16 (2005).

— — —. *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*. E/C.12/GC/20 (2009).

— — —. *Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*. E/C.12/GBR/CO/6 (14 July 2016).

United Nations Office of the High Commissioner for Human Rights (OHCHR). "International Covenant on Economic, Social and Cultural Rights." *UN Treaty Body Database*. Accessed 1 October 2025. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en.

University of Sheffield. "Information for Students Who Do Not Take Out a Student Loan." University of Sheffield Student Finance Office, 2023. <https://www.sheffield.ac.uk/students/finance/information-students-who-do-not-take-out-student-loan>.

Usmani, Mufti Muhammad Taqi. *An Introduction to Islamic Finance*. Brill Book Archive Part 1, ISBN 9789004472495. Leiden and Boston: Brill, 2001. <https://doi.org/10.1163/9789004479913>.

WhiteThread Fatwa Centre. "Student Loans Update 2021." *WhiteThread Fatwa Centre*, 2021. <https://fatwacentre.org/view-answers/Business%20&%20Trade/523/Student%20loans%20update%202021>.

Zuḥaylī, Wahbah al-, and Muḥammad S. Eissa. *Financial Transactions in Islamic Jurisprudence: Dr. Wahbah al-Zuḥaylī's Al-Fiqh al-Islāmī wa Adillatuh (Islamic Jurisprudence and Its Proofs)*. Translated by Mahmoud A. El-Gamal. Damascus: Dar al-Fikr, 2003.



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