

Muhammad Tariq*
Wajid Mehmood**

Islamization in Colonial India, An Analysis Of The Sharia Bill 1934 In The North West Frontier Province

Abstract

The North West Frontier Province remained different among all the eleven provinces of British India. The religious passion, the Pashtuns ethnicity and the strong ethos of Pashtun's culture (Pashtunwali) had distinctive features during the colonial rule in South Asia. Muslim Sharia Laws and British customary laws under Custom (Rewaj Act) have had the conflicting characteristics in British Indian constitutional system. After the British occupation, they consented on Riway to civil affairs in the NWFP and replaced it with Sharia which had been in practiced since the establishment of Sultanat-i-Delhi in the 13th century. NWFP since its separation from Punjab 1901 could not get constitutional development and political reforms until 1932 as other provinces within India got. Jamiat Ulama Hind the affiliates of which were much active in the politics of NWFP demanded for political reforms in the province in its Annual session in Peshawar in 1927. The Ulama demanded that Sharia Law be implemented in the province for regulating the Muslim Personal life. Ulama prepared a Bill known as Sharia Bill and presented it in the Provincial Legislative Council. The Bill was passed by the Provincial Council but could not get the consent of the central Legislative council. It had far reaching consequences for the people and politics of the province. This study analyzes the process of Shariatization and the involvement of the Ulama in the politics of the frontier. The work is based on the Police Intelligence Abstracts, CID Files and debates of the Legislative Council of NWFP/K.P archives, India Office Record of the British Library, personal collections of Ulama diaries and interviews of the religious leaders. The paper will help in tracing the historical roots of the process of Islamization of laws in the modern times.

Keywords: Sharia, Custom (rewaj) Ulama, Islamization, Reforms, Pakhtuns, NWFP, Jamiat-ul-Ulama-i-Sarhad.

Background

Sharia¹ was first introduced in the sub-continent in the thirteen century with the establishment of *Sultanat-i-Delhi*. Since then Muslims used to decide their personal matters with the guidance of Sharia laws in the *Qadhis* courts. Other communities were free to adopt their own religion and decide their issues accordingly. The Mughals preserved it for their secular cause of governance and

* Dr. Muhammad Tariq Subject Specialist History/Civics GHSS Khesghi Payan, Nowshera, Email: muhammadtariqphd@uop.edu.pk.

** Dr. Wajid Mehmood Assistant Professor Political Science FATA University, FR Kohat, Email: wajid.mehmood@fu.edu.pk.

the British adopted it in order to avoid disturbance and other strategic and political objectives when they occupied Muslim territories in India. At first the British followed the liberal policy and guaranteed² the people to enjoy their religious laws and customs according to their own faith.³ When the revenue and Judicial Administration was passed on to the British officials, the role of Muslim *Qadhis* was minimized, however, all suits for Muslims were still observed according to Koran and the Hindus with respect to Shuster.⁴ In the early British rule, the Muslim and the Hindu laws were applied in civil matters in accordance to the opinion of Ulama and *Pundits* attached to the courts.⁵

After the war of independence (Mutiny) 1858, India came under the direct control of British government. High courts were established in the cities of Bombay, Madras and Calcutta. In the subsequent years, some radical reforms were introduced in the civil and criminal laws like the code of civil procedure in 1859, followed by limitation Act, Indian penal code in 1860 and code of criminal procedure in 1861. The criminal procedure code superseded the Islamic criminal laws and as a result the muftis and *Pundits* (who assist the judge in the relevant religious laws) were taken out from the courts in 1864.⁶ With the introduction of the Indian evidence Act 1872, based on the English principles of jurisprudence, Muslim laws became invalid.⁷

The Frontier province remained different in all the eleven provinces of British India. The inhabitants of this area had a peculiar history, culture and custom which is commonly known as Pashtunwali or the code of the Pashtun life.⁸ The Muslim personal affairs were usually decided according to Sharia law which was replaced with *Rivaj Act* (a different code of conduct for civil affairs) by the British Sharia.⁹

In response to that Ulama and religious leaders have given instructions to masses and directed them not to decide cases according to the *Rivaj* and customs. In the Annual Session in 1927 at Peshawar, Jamiat-ul-Ulama-i-Hind passed a resolution and demanded that the Muslim personal law should be applied to all Muslims throughout the country.¹⁰ It was the first formal kind of demand for *Shariatization* from the British Authorities.

Local Mobilization By Ulama For Sharia Bill

Jamiat-ul-Ulama-i-Sarhad expounded the people of Frontier and asked them to change the custom (*Rivaj*) and enforce Sharia laws after the Legislative Council was instituted in 1932.¹¹ Prominent Ulama went around the province and visited different cities. In Peshawar Mawlana Abdul Wadood and Mawlana Mir Sahib of Shahab Khel, in Charsadah Mawlavi Muhammad Israel, in Sawabi Mawlavi Muhammad Yunis, in Nowshera Mawlavi Abdul Rauf and Mawlavi Abdul Hanan, in Pabbi area, Mawlavi Fazli Haque and Hafiz Abdul Qayum visited different villages and started propaganda for Sharia Bill.¹² Mawlavi Ghulam Yahya had been assigned the task to visit Hazara District. He was given a letter, asking for assistance and favor of Faqira Khan of Malik Pura and Abdul Qayum Khan M. L. C. of Sufeda.¹³

Mawlana Abdul Hakim¹⁴ and Mawlana Shibzada Samdani held a meeting of Jamiat-ul-Ulama-i-Sarhad on 20th January 1932 and suggested the following demands;¹⁵

1. Settlement of cases by Sharia (Mohammadan Law) and not by the customary law.
2. Repressive policy to be discontinued abolished.
3. Member of the Jamiat Ulama should be given a seat in the council.¹⁶

On the next day, Jamiat-ul-Ulama-i-Sarhad workers held a meeting on 21st and 22nd January 1932 under the presidency of Mawlana Abdul Hakim and the following resolutions were adopted;

- a) Jamiat Ulama proposed the reforms granted to this province subject to the following conditions.
- b) Progressive procedure should be familiarized for the representation of Jamiat Ulama in the legislative council for the protection of Sharia.
- c) The right to vote would be vested in any capable person or in a person considered to be fit by the Jamiat.
- d) Special features of the province referred to by the premier should not lower the province than other.
- e) Cases (civil and family) should be decided by Sharia.¹⁷

The above meetings show that for the first time Jamiat spoke in the political tone and the Ulama started using parliamentary language by demanding rights in the true direction rather than in terms of agitation and emotions. Member of Legislative council passed some useful bills and the reforms process and constitutional development got accelerated in NWFP. Due to the tireless efforts of the Ulama the Sharia bill movement very rapidly spread throughout the province. In all subdivision of Peshawar district, meetings were held for the information and awareness about Sharia laws.¹⁸ In Sawabi, on July 18, 1933 Bacha Sahib Bamkhal stressed upon the maintenance of customs and laws according to Sharia. He also discussed that it would be raised in the coming meeting of Jamiat at Bannu.¹⁹

Prominent Ulama from Jamiat Ulama-i-Sarhad, i.e. Mawlana Abdul Hakeem Popalzai, Mawlana Abdul Qahar (Mullah Marwat)²⁰ and Mawlana Shakirullah prepared Sharia Bill in 1933.²¹ Habibullah Khan an elected member from Bannu moved it in the NWFP legislative council on 15th March 1934.²²

Contents Of The Bill

The bill was comprised of the following points.

1. This act may be called the Muslim Personal Law Sharia Application Act of 1934.
2. It would come into force at once.
3. It should be extended to the whole of the North West Frontier Province.
4. Decision in certain cases would be according to Muslim's personal Law. In question regarding Succession, Special Property of Females, Betrothal, Marriage, Divorce, Dowry, Adoption/Guardianship, Minority Bastardy

Family Relations, Will, Legacies, Gift or Any Religious Usages or Institution Including *Waqaf*, (trust and trust property) the rule of decision shall be the Muslim personal law (Sharia) in case, where the parties are Muslims.²³

Repeal Of Provisions Of Previous Law

From the day of enforcement of this act, section 27 of the North-West Frontier Province law and justice regulation (No. VII of 1901) shall be repealed as far as the Muslims are concerned.²⁴

The North West Frontier Province Muslim Personal Law (Sharia) application Bill, appeared before the legislative council on 13th March 1934. Khan Habibulla Khan²⁵ said in his introduction to the bill that "It is a very important bill and it will affect all the Muslims of this province." He described the interests of the frontier Muslims in Sharia as, "Just a few years ago in 1927 the Jamiat-ul-Ulama²⁶ in their Annual meeting at Peshawar passed a resolution demanding that the Muslim Personal Law should be applied to all Muslims throughout the country. In various public meetings, Muslim's organizations and societies demanded Sharia for this province".²⁷

He also explained the misconception about the bill that it deals merely with the women shares in inheritance. As a matter of fact it deals with fifteen other questions including divorce, marriage, gift, dower, inheritance, wills, and various other personal laws.²⁸ He condemned the *Rivaj* and draws the attention of the house to the historical fact that when *Rivaj* was adopted as Muslim personal law only a few Khans were asked and consulted while the common people and the Ulama were not involved and taken into confidence.²⁹ He made analysis of the unpredictable condition of the custom and added that "the custom is a law which differ not only in its application to different districts but changes from tribe to tribe and village to village. The Mohamand, the Peshawar, the Marwat, Khalil, the Khattaks, the Afridis etc. have different customs. The result is the complication for the lawyers, courts and also for the parties." He also gave references from various conferences and gathering of the frontier Muslims in different districts. He gave the example of a huge gathering of Jamiat at *Shahi Bagh* Peshawar, a representative of all the classes within the Frontier Province. The resolution which was passed by 12000 people contained a request from the members of the council to support this Bill.³⁰ He told we have led to the other province in legislation even before, the Chakla Bill (Prostitution Bill)³¹ was first of all passed by this House.³² The government will not place obstacles in our way.

When Khan Habibullah Khan finished his speech, Mr. G. Cunningham (Home Member)³³ moved an amendment. He told that this bill would be circulated for public opinion until 20th February 1935". He told the house that the Muslims took 18 months on the preparation of the Bill, so it was not possible for this house to decide within one day.³⁴

Malik Khuda Bakhsh³⁵ pointed out that there is no controversy over the Bill between the treasury benches and the mover but as the mover has cleared that it was an insult to a Muslim to be asked whether he is prepared to the application of the law of the God. The Bill is about the application of those provisions which constitute the divine law. Moreover, Muslim throughout the India felt that it was a

crying shame that only a Muslim majority province in India should be slaved to the customs.³⁶ Arbab Muhammad Sharef Khan³⁷ supported the notion and told the finance member that amendment will not serve any useful purpose and that it will only be a delay to the application of law.

Khan Bahadur Ghulam Haider Khan³⁸ told the house that, “it was necessary to ask the people whether they want Sharia or not. It is an admitted fact that no Mussalman can reject the laws of Sharia, even though he may not be actually acting in accordance with it. Sir, I am not opposed to the suggestion that the Bill be referred to a Select Committee. But so far, as I have studied the provisions, there is hardly any material for the Selected Committee to take into consideration. It would have been very desirable if the Ulama, particularly Badshah Sahib of Bam Khel, had been consulted before the drafting of the Bill. The observations which I am going to make before the house are the result of many discussions with Ulama and other learned people. We should find out what is the opinion of the public and Ulama about the matter.” He concluded with the following advantages:-

1. No one will have an opportunity to criticize our action.
2. The masses being no longer ignorant of the sacred laws of Sharia will not be involved in litigation.³⁹

He also explained that Sharia comprises of all the provisions of the Holy Quran, the books of Traditions (Sunnah and Ahadith) and all the books of “Fiqhah” belonging to both the sect (Shias and Sunnis) but the Bill before the House does not deal with all of them. If the Bill is to be called the Sharia Bill, the following terms should be defined.⁴⁰

(1) Sharia. (2) Sharia or law of *Shara*. (3) Dar-ul-Qaza, (4) Qazi-ul-Quzat (5) Provincial *Mizan-i-Tahqiq* (6) Qazi, (7) Mufti, (8) Ecclesiastical attorney or *vakil*. (9) Hakam (10) Dehi Qazi. It will be necessary to have a Qazi in every village, who would keep a register for the entry of *Nikahs*, marriages, etc. In *madrassa* this is done under the Qazi act, XII of 1880. (11) The Qazis and Muftis required for the Dar-ul-Qaza should be duly qualified, experienced, honest, pious and religious people because we have reached the utmost limit of “*para jamba*” and mutual mistrust.⁴¹

The following illustration proves this contention;

- a) The Ulama make laws for prayers, zakat, usher and haj, etc., but no attention is paid to them.
- b) The Ulama preach against drink, murder, fornication, robbery, dishonesty, etc. and against giving away daughters for money, but no one follows their advice. If the Ulama had any power they would have been able to persuade the people to listen to them.⁴²

He also added that it is necessary to ask the Ulama and other men of the wisdom whether they will be contented with a partial enforcement of Sharia. For the above reasons I support the motion for the circulation of the Bill.

Mr. Pir Bakhsh responded to the “Dar-ul-Qaza” question and said that it was an all-India matter and the proposal was under consideration and will be applied to all Indian provinces. He appealed the members of the house to support the measure and oppose the amendment for circulation.⁴³

Khan Muhammad Abbas Khan;⁴⁴ told that the object of this Bill was to make the Muslims of the Frontier Province Muslims in the real sense of the word. He supported the motion for the immediate consideration of the bill and desired that the bill should be passed immediately.⁴⁵

The Honorable Khan Bahadur Nawab Sahibzada Abdul Qayum Khan⁴⁶ discussed various aspect of the bill and made some useful suggestions.⁴⁷ He declared that “I may also point out that I am a Mussalman and I consider Sharia to be a perfect and complete law, obligatory on every Mussalman to follow it.⁴⁸ Sharia is the most perfect code of all the juridical theses that the world has been able to produce. Unlike temporal laws it does not require any amendments or modifications to suit the needs of time. Sharia is the word of God and it is one divine attribute is that it is unalterable, absolutely immutable. Its integrity will remain intact till the Day of Judgment. Therefore, as far as the essentials of Sharia are concerned, no one has the right to mend or amend them.”⁴⁹

He further explained,⁵⁰ “Almost all the speeches that have been delivered from the opposition benches have dealt with the beauties of Islam. I think it was hardly necessary for the honorable members over there to have done so. The beauties of Islam are so patent that they need no elucidation and we the Muslim members of this House know that it is obligatory to abide by Sharia. The real question that confronts us today is how to eradicate those baneful usages that have crept into our society during the last 300 years or so.⁵¹ Custom has so entered into the routine of our everyday life and our minds have been so enshrouded with the clouds of sinful practices that at present the light of Sharia hardly reaches there. If the Government wishes to circulate this Bill, they probably are aware of the disease that is eating into the vitals of Muslim society and they want to know how far the malady has consumed the soul and what will be the amount of efforts required to exorcize the evil. I wish to remind the House that this is not the first time that an attempt has been made to eradicate custom and enforce Sharia in these parts.” (He) defined the contrast of Pashtun religiosity and culture giving the example of the past Muslim regime established in this part of the country by a great religious leader Sayed Ahmad Sahib⁵², the head of the ‘Mujahedeens’. “He enforced the laws of Sharia in our territory, but our ungrateful people, the *Yusufzais*, not only opposed those laws, but actually conspired against their benefactors and exterminated them.”⁵³ (He) gave another example of the Haji Sahib of Turangzai, a leader of great renown, who tried his best to persuade the people to conform to Sharia, but after four or five years there was not a sign of what he did.⁵⁴

He confidently said, “Sir, this Bill claims to enforce Sharia, but I do not find in the text a single line as to what will be the punishment awarded to those who would repudiate its provisions. It is a shame indeed to seek to enforce the laws of God by means of the rod of the Government. But if it is considered necessary to do so, there is no reason why the Bill embodying the suggestion should not include all the important features of Islamic law. The five pillars of Islam could not be

omitted in a measure called the Sharia Bill.⁵⁵ He also told on another occasion that *Shariat* is a sacred mandate and is always in force. This bill has introduced to extirpate the evil system of “*Rewaj*” therefore it would have been more suitable if this bill was called “A bill for the cancelation of the custom” instead of *Shariat Bill*”.⁵⁶

Khan Ghulam Rabbani Khan⁵⁷ made a long speech and raised some technical questions. He said, “I wish to make it clear that this bill has been given a wrong name by calling SSharia bill. It does not provide for the fundamentals of Sharia.” According to him, the word Sharia is comprised of all those institutions that constitute the fundamental principles of Islam i.e. Prayer, Fasting, Haj, Zakat, etc. The draft should have comprised of all the principals which form the foundations of our religion. He gave the example of Sarda Act and said that it was an innocent piece of legislation. Its object was to protect women and prevent child marriages. However, unfortunately the opposition did not include those items in the bill which were desirable.⁵⁸

Jamiat Ulama Sharia Conference In Peshawar;

Some of the official members reacted on the technical basis of the bill in the legislative council. At this, the president of Jamiat Ulama-i-Sarhad announced Sharia conference. The conference was held in Peshawar and Mufti Kefayatullah, president of the JUH presided it. However, the Khanate and landlord of the province boycotted the conference.⁵⁹ Mawlana Zafar Ali Khan and Mawlana Habbib-ul-Rahman also participated in the conference.⁶⁰

Abdul Rahman Khan, M.L.C., explained the aims of the conference and emphasized the importance of a collective support to Sharia Bill.⁶¹ Mawlana Mufti Kefayatullah, in his Presidential address, said that the objects of the Sharia Bill were to legislate for the strict enforcement of certain religious duties which had been neglected since the fall of the Mughal Emperors. The British Government had promised not to interfere in religious matters and to allow all communities complete religious freedom. The case is opposite. As an example, he counted the Sarda Act. He advocated the setting up of *Qazi* courts for the administration of pure Sharia law. After the passing of the Sharia Bill, steps would be taken to legislate for the application of other principles of Sharia law, not mentioned in the Bill. In his concluding words, he appealed the Muslim Members of the Legislative council to support the Bill, and urged official and non-Muslim Members to do likewise.

At the second session, Mawlana Hussain Ahmad Madani of Deoband discussed the past glories of Islam and maintained that the present condition of Muhammadans, which could be compared with slavery, was due to the disregard paid to the dictates of the Quran.⁶² He compared existing laws with those in force when Islam was supreme and said that the British Government was out to impoverish India. Muslim kings, he maintained, on the other hand, had spent their wealth for the good of their subjects. He then spoke on Sharia affairs and emphasized on the necessity of the Sharia Bill.⁶³ The following resolution was passed in the conference.

1. All the people attending the conference showed their commitment to supporting the Sharia Bill.
2. They demanded that section 27 of the law and Justice Regulation should be repealed.
3. Requested the Members of the Legislative Council to support the Bill.⁶⁴

Following the acceptance of the resolution Ghulam Muhammad Khan of Lundkhwar, a Khudai Khidmatgar, said that it was necessary to denounce the propaganda that the Redshirts (Khudai Khidmatghars) were opposed to the SSharia Bill. Their King (Bacha Khan), he continued was in favor of Sharia law and had always impressed his followers with the necessity of deciding issues in accordance with the Sharia.⁶⁵ By concluding, he implored Hindu Members of the council to support the Sharia Bill and advocated that Muslim Members, who opposed it, should not be supported at the next elections. Abdullah Shah of Mazara, Batagram, then assured the audience that redshirts in general were in favor of the Bill. Mawlana Habib-ul-Rahman admired the work of redshirts, praised the services of Abdul Ghaffar Khan who, he maintained, had roused Muhammadans of the Frontier to action. He also criticized the Bombay Government for imprisoning the Redshirt Leader.

The conference reassembled on 24 February and confined itself to the passing of the following resolutions;⁶⁶

1. Congratulating the district judge of Bawalpur in holding that no Islamic relation can exist between a Qadiani and Musalman, as the former is a "Kafir" (Proposer-Mufti Kifayatullah.)
2. The forward policy of Government was protested in *Tirah*. (Proposer Mufti Kifayatullah)
3. The restrictions imposed on "Khudai Khidmatgar; were unnecessary and injurious. The government should immediately release Abdul Ghaffar Khan and other political prisoners unconditionally. (Proposer- Pir Bakhsh, M.L.C.)
4. Protesting against the Haj bill. (Proposer- Hafiz ul Rahman and seconded by Mawlavi Gulam Ghous.)
5. Declaring that the case against Ataulah Shah Bukhari should be withdrawn in order to dispel the impression that Government is partial to Qadianis. (Proposer- Pir Bakhsh, M. L. C.)
6. Appreciating the anti-Qadiani activities of Mawlana Zafar Ali Khan and to give him full assistance. (Proposer- Mawlavi Sami ul Haq)
7. Requesting Muhammadans to eschew evil customs, be economical and give up the borrowing of money on interest. (Proposer, Zafar Ali Khan of Lahore).⁶⁷

Jamiat Ulama And Select Committee

After a long discussion in the council on different aspect of the bill, it was decided by voting⁶⁸ to circulate the Bill for eliciting public opinion. In the house, 22 members favored the suggestion while 10 were against. The bill was circulated for the public opinion. In the next session, the bill was referred to a select committee⁶⁹ and they gave their report on 20th July 1935.⁷⁰

Sir George Cunningham decided to consult some of the Ulama related to the demand of Sharia and those who had some questions regarding the Bill. Both the opponents of the bill and Jamiat-ul-Ulama-i-Sarhad struggled for the satisfaction of the select committee. Mawlana Shakirullah tried to find the guidance of the Central Jamiat Ulama. Mufti Kifayatulla of Deoband gave him instructions about the bill. He gave references about the divine law of Sharia.⁷¹ Mawlana Shakirullah along with Mullah Marwat met the select committee of the council. Some amendments were suggested and agreed upon. The detailed report was submitted in the next session of the council.⁷²

Report Of The Select Committee

Khan Habibullah Khan presented the report of the select committee. He said, "Sir, during the last session I moved that the bill should be referred to the select committee. The motion was carried by majority and a select committee was constituted. The committee held two meeting at Abbottabad and few amendments were suggested. After a great deal of discussion, some of the amendments were withdrawn while some were rejected and the bill emerged in its original (present) form. Afterwards we had another meeting of the select committee and a procedure was adopted that was never adopted in the case of any other bill." He consulted all the classes of the society. There were Khans, property owners, Ulama and representatives of various associations. After recording evidence, the majority of the committee members decided in favor of the bill.⁷³ They wanted to improve the moral, political and educational condition of their society through this Bill. He removed the fear of those who were anxious about the new laws and said that "there are some people who fear that their properties will be lost. There is no justification for such fear. I assure them that, if we accept the rights of the fair sex our condition will be a hundred times better than at present."⁷⁴

Khan Sahib Khan Hidayatullah Khan⁷⁵ supported the bill and said that "Sharia is Islamic law and is related to the Muslims alone. No other community is affected by it. Therefore, it is the right of the Muslims only to decide how far it is necessary for them to follow it in our country and society." *Rivaj* was a human made law while Sharia is the word of God conveyed to us through his prophet for the better conduct of the affairs of mankind. There can be no comparison between the law of God and laws made by human brains.⁷⁶ "The *Rivaj* has not allowed any shares to women. It will be extremely unfair to deprive the women folk from their share. I therefore, maintain that it is necessary that the Sharia bill should be passed into law so that the nation may improve and the future generations should be happy and contented and live in peace and harmony."⁷⁷

Khan Bahadur Abd ul Rahim Khan⁷⁸ expressed his views and said that it is my duty as the representative of my constituency⁷⁹ to state clearly the whole position

of the bill. There are many *Zamindars* who are opposed to the bill. They think their properties will be ruined. However, it will not be like this. I told the honorable leader of the opposition that my sympathies lay with the fair sex. I requested him to consult the provision of Muhammadan law about the deceased person and his debt”.⁸⁰

Mr. Pir Bakhsh said, “It is true that the first duty of the heirs of a deceased is to give him a burial and the second to discharge his debts. In this respect what is the difference between the Sharia and the law as it stand for at present?” Then he gave an example that a man borrows money. The person’s property is responsible for his payments and liable for payment of his debts after his death. The position under the Sharia will be the same.

Khan Bahadur Nawab Hamidullah Khan⁸¹ said, “We believe in complete Sharia. You have taken into account only one part. It is of the utmost importance that cases referred to, under the provisions of the present bill, only a mullah can be considered as an authority on religious matter. This is somehow a worrisome situation as the pleader and other people ignorant of Sharia may also need to have some knowledge of the law. There should be complete Sharia and everything should be in accordance with it. Only one part of the laws of Sharia has been introduced. I therefore, must maintain that we desire complete Sharia.”⁸²

Malik Khuda Bakhsh, replied to the remarks and said, “Sir, this was a stage at which I thought no speech would be required. Speeches have been delivered on this subject both within and outside the Council Chamber for the last two years and every aspect of the bill has been fully explained. Now the only point at issue is whether the bill should be proceeded with or whether it should be dropped and should not be further taken into consideration.”⁸³ The select committee has taken the opinion of the Ulama and concluded that the one who inherits property will be liable to pay the debts of the deceased. This is British law and this is also what the Sharia says. I request that instead of making any lengthy speeches the bill should be considered a blessing and should unanimously be passed.⁸⁴ Khan Habib Ullah Khan moved the motion for adoption of the Muslim Personal Law; Sharia Bill.

Malik Khuda Bakhsh Khan expressed his opinions as, “today is an auspicious day. It is a day of great distinction for this small council which is yet passing through the early stages of its existence, has, notwithstanding many obstacles and much opposition, accomplished a task which could not be accomplished by many older and prominent legislatures in India. It took up a right cause and with courage and perseverance promoted it to its present stages and has justified the respect Muslims have for their Sharia. Sharia was represented as a bugbear for a long time while the *Rivaj* was hanging round the neck of the people. *Rivaj* was a human made law the outcome of the human brains with countless flaws was never acceptable to the people of frontier.⁸⁵ “In short nothing was left unclear and unexplained. The enquiry has been completed and all doubts have been cleared. The house should accept the bill and pass it into law. I hope the motion of my honorable friend will be unanimously carried in the house. I support the motion.”⁸⁶

The Impact Of Sharia Bill On The Socio-Political Life Of The Province

The people of this province have had a great desire for the implementation of Sharia laws. The famous *Mujahedeen* movement; *Khilaphat* and *Hijirat* movements were launched with the passion to attain the sprite of Sharia. These all activities show the emotional attitude of the people of Frontier. As far as the effect of the Sharia bill was concerned, it had a vital importance for the Muslim majority province of India having 93% Muslim population. This Bill was the first practical link of Sharia that would affect the social, economic and religious fabrics of the society of a large portion of entire population. It also affected and abrogated several legislative enactments which had been in force for the last three decades or more and which were designed for the benefit of the people as *Rivaj*.

The Sharia Bill agitation affected the Pashtun society. The outlook of the Ulama and common people began to change .The Ulama and the public for the first time had to divide the heredity to the heirs of a deceased person according to the rules implied by Sharia laws. During the debate in the council, Khan Habibullah Khan M .L. C. said in his speech to the council members on 5th November 1934, “This is a very important bill. It will affect all the Musalmans.” He further said that, “during the discussion we should not be carried away by the sentiments, nor we should indulge in inaccuracies.”⁸⁷ The main effect was sensed in the family life of Pashtuns. It was the first occasion when the religious and non-religious families were affected by Muslim family laws as before 1935 the Muslim society was governed by the Hindu laws in the matters of succession. Women could not own or inherit immovable properties.⁸⁸

With the Sharia agitation (1932-1936), the religious leaders began to think of the membership of the legislative council in the province because they saw for the first time the debate in the assembly Hall from the benches of local audience. It was the start of the parliamentary politics of the clergy in the Province. The attitude of the Ulama was for the first time politicized. Until the time Ulama were indulged in theoretical politics and agitations. Now Jamiat-ul-Ulama-i-Sarhad began to think about the parliamentary politics. The Idea of Membership to legislative Councils rose up during the Sharia Agitation in Peshawar. On October 24th 1933, a meeting was held at Peshawar by the Jamiat-ul-Ulama-i-Sarhad and discussed the parliamentary affairs of the province and the existing methods of election.⁸⁹ They suggested that Mawlana Muhammad Daud should be elected to the council at the next election to support Sharia bill which was not likely, they believed, to be passed for some considerable time. They also agreed that, if the Sharia Bill was passed, Mawlana Daud should be made president of the Sharia committee.⁹⁰

Sharia bill was accepted from the Province legislative council but in the central assembly it faced challenging situation because Muslim league opposed the bill and according to Mawlana Muhammad Miyan, when Muhammad Ali Jinnah⁹¹ along with other Muslim League leaders gave the suggestion that it should be optional not compulsory matter to the individual or parties dealing the maters. It saddened the Ulama and religious circle in India because the spirit of the bill was damaged.⁹² Jinnah was supporting the huge property owners’ members of Muslim league and for him the political coalitions were more important than ideological

questions. Mawlana Madani harshly opposed the attitude of the Muslim league and Muhammad Ali Jinnah.⁹³

Conclusion

The people of this province have had a great desire for the application of Sharia laws. The well-known *Mujahidin movement; Khilaphat and Hijirat movements* were launched with the passion to attain the sprite of Sharia. Moreover, Sharia was considered the sole purpose of a Muslim's life in the frontier religious circle. These all activities show the emotional attitude of the people of Frontier. Sharia Bill agitation affected the Pashtun society and the outlook of the religious leadership. After a great struggle and agitation, the prepared bill was moved in the provincial legislative council and was passed after long and thorough debates. The Ulama and the public, for the first time had to divide the heredity to the heirs of deceased persons according to the rules implied by Sharia laws. The socio-communal life of the common people especially women began to change.

Notes & Reference

- ¹ Sharia is commonly known as the Islamic law based on Quran and Sunnah, deduced by the Muslim jurists. It is a specialized and complex subject of Islamic knowledge.
- ² Queen proclaimed and the religious freedom was acknowledged.
- ³ In 1765, the revenue system of Bengal, Bihar and Orissa gone into the hands of British East India Company. The Judicial Administration also passed on to British officials and gradually the role of Muslim *Qadhis* minimized. The position was abolished in 1772. All cases of Muslims regarding inheritance, marriage and other religious usages were observed according to Koran and those of the *Shuster* with respect to Hindus. (Muhammad Qasim Zaman, *Ulama in Contemporary Islam, Custodians of Change* (Karachi: oxford university press, 2004), 20-22.
- ⁴ Muhammad Qasim Zaman, *Ulama in Contemporary Islam, Custodians of Change* (Karachi: oxford university press, 2004), 21.
- ⁵ Regulation II of the 1772 provided that “in all suits regarding inheritance, marriage, cast and other religious usages and institutions, the laws of the Koran with respect to Mohamedans, and those of the Shuster with respect to Hindus, shall be invariably adhered to”. Alamgir Muhammad Serajuddin, *Muslim Family Laws, Secular Courts and Muslim Women of South Asia*. (Karachi: Oxford University Press, 2011), 13.
- ⁶ Alamgir Muhammad Serajuddin, *Muslim Family Laws, Secular Courts and Muslim Women of South Asia*. (Karachi: Oxford University Press, 2011), 13.
- ⁷ For the first time they decided to run the judicial matters under the regulations of British parliament. If there was no law then the matter would be decided under the laws of equity or the justice based on the goodwill.
- ⁸ Amit Kumar Gupta, *North West Frontier Province Legislature and Freedom Struggle, 1932-47*. (New Delhi: N.D, 1976), 1.
- ⁹ Mawlana Muhammad Miyan, *Jamiat Ulama Kiya Hay*, (Lahore: Maktaba Mahmudia, Shuba Nashr-o-Ishaat Jamiat Ulama-i Islam, 2004), 20.
- ¹⁰ Mulla Marwat was resolute to give due share to women in the inheritance. (Abdul Rauf, ‘Jamiat-ul-Ulama-i-Sarhad Annual Conference 1927’ *Journal of the Research Society of Pakistan*, University of Punjab Lahore, Vol. xxxiii (No. 1. July 2006), 219)
- ¹¹ NWFP, P. A. I. S. No. 31/7258 Dated. 8/4/1924. D. O. A. Peshawar.
- ¹² NWFP, I. P. A, S. No. 42/1769/1935, Para No. 108. D. O. A. Peshawar.
- ¹³ D. O. A. Special branch bundle No. 54. File No. 922/1772 -1.
- ¹⁴ He was the Provincial President of JUS.
- ¹⁵ The former was the president and the later was General Secretary of the JUH Sarhad.
- ¹⁶ D. O. A. Peshawar 1772. Bundle No. 54. Dated 24-1-1932.
- ¹⁷ Ibid.
- ¹⁸ D. A. O. C. N.W.F.P.D. NO. 39/7266/1934.
- ¹⁹ D. O. A Peshawar I. B. dairy No (536) 18th July 1933.
- ²⁰ Muhammad Afzal Raza, *Karwan da Azady*, (Peshawar: University Book Agency, 1996), 115.
- ²¹ The British intelligence reported, “There are possibilities of danger in the growth of this movement. Especially for those religious people of the province who react to every appeal

made for religion in any form and shape". (B.L, I. O. R., L/PJ/7/667, Extract From The Proceedings of the North West Frontier Province Legislative Council of the 15th March and 3rd & 8th Novemeber1934, and 7th March & 6th November 1935)

²² Jamiat-ul-Ulama-i-Sarhad session at district Bannu, talked about the preparation of Sharia bill to be moved in the legislative council. (BL, IORL /PS/12/1341. (Diary No. 9 for the week ending 22th June 1932).

²³ BL, IOR, L/PJ/7/667. Bill No. 2 of 1934 (as introduced in the NWFP Legislative Council)

²⁴ That regulations enabling Governor General in Council for governing and regulating the frontier area. In exercise of this power, the *Munsif* courts were established in North West Frontier Province.

²⁵ He was a member from Bannu in the 1932 legislative council and belonged to the Marwat tribe of Pashtuns. From student life, he was a political worker of high ranks. He served the people in the Hijrat Movement in the early 1920s. After graduation from Islamiyah College, he obtained law degree from Aligarh University. He was a good orator and his speeches had a great influence on the audience. He was also arrested in 1930 and was sentence a period of three years in jail. In 1932, he was elected as member of the legislative council. He was elected as the deputy opposition leader and later on deputy speaker of the council. He was re-elected as a member of the council in 1937 and 1946. He served on various posts after partition. After the 1973 constitution formulation, he was elected as the first chairperson of the Senate of Pakistan. He was also a great poet and writer of the Pashto literature. (Javed,472-82.)

²⁶ JUH was formed in 1919 with the purpose of bringing together different groups of Ulama, in order to safeguard the Muslim law and give the Muslim community religious and political guidance, according to Islamic principles and commandments. In 1925, JUH passed a resolution for making organized efforts and changing all those (un) Islamic laws, formulated and decided by no legal principles other than those of Islam. Mawlana Ashraf Ali Thanvi published a monograph, entitled "*Alghasab al Mirah*" (usurping the heritage), explaining that it was un-Islamic to follow customary law.

²⁷ It was the first campaign which started in NWFP and JUS successfully raised the public support through *Shariat* day and *Shariat* conference. (Karin, A. Deutsch, 209) Debates of the NWFP Province Legislative Council from 2nd November to 8th November 1934, Volume-Vi No. (1-5), Official Report, (Peshawar: Manager Government Stationary and Printing NWFP, 1935), 112-120.

²⁸ Ibid.

²⁹ He took the example of the Bannu and produced a copy of the certificate by the settlement officer about "*Rivaj-i-Aam*" in which he admitted that no one else except 35 Khans were consulted at the time of the preparation of the *Rivaj-i-Aam* of the district and the rest of the population was neglected. LCD, 112-120.

³⁰ Ibid.

³¹ Legislative Council Debates of the NWF Province from 2nd November to 8th November 1934, Volume-Vi No. (1-5) Official Report, (Peshawar: Manager Government Stationary and Printing N.W.F.P., 1935), 112-120.

³² Ibid.

³³He was an official/nominated member in the legislative council of 1932. There were seven nominated members in this council.

³⁴Debates, 119. When the JUS and religious workers were informed about the remarks of Cunningham, they decided to hold processions about the Sharia bill. JUS decided to hold meetings in all the districts and tehsils of the province for the information and recognition of bill. In that connection they published a poster to celebrate the Sharia day on the 4th of January of 1935. JUS condemned the Cunningham proposal of sending the bill for the plebiscite in the public. (Bundle No. 55, Serial No. 945. D. O. A. Peshawar. K. P.)

³⁵ He was born in Dera Ismail Khan in 1889. He was a lawyer and had a thorough knowledge of Quran and Hadiths. He took part in the *Khilaphat* movement and was sent to jail for three years. He cooperated with all the organization and political parties. He was a leader of "Azad party" at the time when Sharia bill was introduced in the legislative council. In 1937, he was elected the speaker of NWFP legislative assembly. His struggle for the Sharia bill was remarkable.

³⁶ LCD, 243-245.

³⁷ He was a non-official nominated member from Peshawar.

³⁸ He was an elected member from Bannu.

³⁹ Debates, 243.

⁴⁰ Debates, 253.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Debates, 257.

⁴⁴ He was a member of legislative council from Central Mansehra.

⁴⁵ Debates, 259.

⁴⁶ He belonged to village Topi (Sawabi) and elected from Uthman Nama and Bulaq Nama No. 13, without contesting.

⁴⁷ The speech he delivered was thought provoking not only for that time, but it is still useful to the present day.

⁴⁸ Ibid. 260.

⁴⁹ Ibid.

⁵⁰ Debate, 260.

⁵¹ Ibid.

⁵² He came to frontier in 1825 from Rai Barely (India) to defend Pashtun from the Sikhs and liberate frontier. He fought five big wars against the Sikh army. However, unfortunately the differences among the Pashtuns and Mujahedeen compelled him to draw out his fellowmen from the Peshawar valley. He fought a decisive war against Sikh leader "Ranjit Singh" at Balakot. He was martyred along with his fellowmen in 1831 at Balakot.

⁵³ LCD, 261.

⁵⁴ Ibid.

⁵⁵ LCD, 141.

⁵⁶ LCD, 262.

⁵⁷ He was a member among those, who were selected as non-official member for the legislative council.

⁵⁸ L.C. Debate, 268.

⁵⁹ D. O. A. NWFP Police Abstract of Intelligence S. No. 39/7266/1934, paragraph No. 74.

⁶⁰ The other prominent Muslims leaders of the Jamiat took part in the conference; like Mawlana Mufti Kefayatullah, Habib ur Rahman, Mawlana Zafar Ali Khan, Mawlana Ahmad Ali, Hussain Ahmad Madni, Hafeez ur Rahman and Mawlana Abdul Majid.

⁶¹ NWFP I. P. A., D. O. A. Peshawar, P. no. 212. S. no. 42/1769. 1935.

⁶² I. P. A. , NWF, no. 212. No. 42/1769. 1935.

⁶³ Ibid.

⁶⁴ The first two sittings were dedicated entirely to Sharia affairs. The third sitting was devoted to anti Qadiani affairs and was presided over by Mawlana Zafar Ali Khan of Lahore, Mawlana Abdul Haq of Akora, Mawlana Habib-ul-Rahman of Ludhiana, Mawlana Ghulam Ghaus and Abdul Salam of Hazara delivered lectures against Qadianis and opposed to the appointment of Chaudhry Zafarullah Khan as a member of the viceroy's Executive council. Following the speeches and resolutions, warning Government that Qadianis could never be accepted as spokespersons of Muslims. The activities of Mirza are very injurious to the religious, political and economic progress of Muslims.

⁶⁵ Ibid. He asked the audience whether the case was as such or not, and the answer he received was shouts of; "Khan Abdul Ghaffar Khan Zindabad, Redshirts Zindabad and Ghulam Muhammad Khan Zindabad".

⁶⁶ Ibid.

⁶⁷ CNWFPD S. No 42/1769/1935, dairy no 212.

⁶⁸ Majority (22) of the members were in favour of circulating the bill in public, including Sahibzada Abdul Qayum Khan, Mr. G. Cunningham, Ghulam Rabbani Khan, Khan Bahadur Ghulam Haider Khan, Nawab Hameedullah Khan, Lala Ishar Das, Lala Karam Chand, Sardar Raja Singh, Khan Malik ul Rahaman, Khan Sahib Muhammad Zaman Khan, Mr. Muhammad Ayub Khan, Baba Naranjan Singh, Nawabzada Nasrullah Khan, Sardar Jaghat Singh, Khan Bahadur Sultan Muhammad Khan, Mr. Samundar Khan, Mr. J. G. Acheson and Khan Bahadur Taj Muhammad Khan. While the other 10 who were against were, Khan Habibullah Khan, Malik Khuda Bakhsh, Khan Muhammad Abbas Khan, Arbab Muhammad Sharif Khan, Mr. Pir Bakhsh, Abdul Ghafur Khan, Qayum Khan, Addul Rahman Khann, Abdul Hameed Khan, Ghulam Hasan Ali Shah. (Debate, 282).

⁶⁹ The select committee consisted of, G. Cunningham home Member, Hameedullah Khan, M. K. Bakhsh, Habibullah Khan, Abdul Ghafur, Malik ul Rahman, Abdul Rahman, Sultan Muhammad Khan, Ghulam Haider Khan, Abdul Rahim, Ladha Ram and Raja Singh. (I. O. R. L/P/J/7/667.

⁷⁰ B. L. , I. O. R. L/P/J/7/667.

⁷¹ Mawlana Shakirullah sought guidance through correspondence with Mufti Kifayatullah the president of JUH. Those letters published in the "*Kifayat ul Mufti*" under fatwa no. 507, dated 1st July 1935. Mufti Muhammad Kifayatullah Dehlavi, *Kifayat ul Mifti*, Vol. 9 (Karachi: Dar ul Isha'at, 2001), 271.

⁷² B. L, I. O. R. L/P/J/7/667.

⁷³ Debates, Official Report of the NWFP Legislative Council from 8 March, 1935, Volume-VI Nos. (1-5) (Peshawar: Manager Government Printing press, 1936), 96.

⁷⁴ Ibid. 97.

- ⁷⁵ He belonged to Umarzai Peshawar and was elected from Peshawar constituency.
- ⁷⁶ Debates, 98.
- ⁷⁷ Ibid.
- ⁷⁸ He belonged to Dera Ismail Khan (Gul Imam) and elected without contest from the NWFP constituency No. 19 of Dera Ismail Khan.
- ⁷⁹ Detailed letter of Qazi Muhammad Jan is one of the examples of those who opposed the bill on the due shares of women in the heredity. He wrote a letter to Mufti Kifayatulla in which various aspect of the bill were discussed. According to him, some people from Dera Ismail Khan were of the opinion to keep them in exception.(Mufti Muhammad Kifayatullah Dehlavi, *Kifayat ul Mifti*, Vol. 9, (Karachi: Dar ul Ishaat, 2001), 272.
- ⁸⁰ Debates, 99.
- ⁸¹ He belonged to the village Toru Mardan and elected from Razarh Amazai, constituency no. 12.
- ⁸² Debates, 101.
- ⁸³ Ibid.
- ⁸⁴ Ibid. 102.
- ⁸⁵ L. C Debates, 109.
- ⁸⁶ Ibid.
- ⁸⁷ Debates of the N.W.F.P. Legislative Council from 2nd November to 8th November 1934. Volume vi No. 1-5 D. A. O. 1751/55
- ⁸⁸ Khan, Abdul Qayum, *Gold and Guns on the Pathan Frontier* (Bombay: Hind Kitab, 1945), 23.
- ⁸⁹ Participated by the Ulama of different districts, like Mawlana Muhammad Daud, Mawlana Muhammad Yaqub, Mawlana Muhammad Yuosaf Banori, Mawlana Abdul Haye, Abdul Rahman Seraj, Mawlana Abdul Rauf and Ilahi Bakhsh. (D. O. A. NWFP, Police Abstract of Intelligence 1933, paragraph no. 819)
- ⁹⁰ D. O. A. NWFP, Police Abstract of Intelligence 1933, para no. 819.
- ⁹¹ “Jinnah lobbied to amend the bill in order to allow individuals to be governed either by Sharia or by customary law, depending on their choice, which after a debate was made applicable to the subjects of adaptations, will and legacies. Apart from his largely secular approach to the questions of religion, this move has been seen as an attempt to pacify the large landowners who were a major support group for the Muslim League, which Jinnah was trying to revive”. (Cited by Mahmood, Muslim Personal law, 30; Karin, A. Deutsch, Darwin College, *Muslim Women In Colonial North India Circa 1920-1947: Politics, Law And Community Identity*, PhD Dissertation, University of Cambridge, July 1998), 213.
- ⁹² Miyan, *Jamiat Ulama Kiya Hay*, 57-74. In the Central Assembly the bill was moved by H. M. Abdullah in 1937.
- ⁹³ Barbara Metcalf, *Makers of the Muslim World, Husain Ahmad Madani, The Jihad for Islam and India's Freedom*, (Oxford: One World England, 2009), 141.