

COLONIAL ENCOUNTER AND ISLAMIZATION THROUGH LEGISLATURE IN THE NORTH WEST FRONTIER PROVINCE 1932-37

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ABSTRACT

This study focuses on the evolution and development of Islamic laws under the English legal system by investigating the various Shari'ah bills in the first legislative council in British NWFP (now Khyber Pakhtunkhwa). It will analyze the British parliamentary system, their democratic standards and role of various stake holders in the pre-independent era from 1932 to 1937. This province was kept aloof from the constitutional reforms and it was administered through special laws under (*Rewaj*). Shari'ah laws and British implemented (*Rewaj*) had unpredictable features for the Muslims of frontier. Ulama role, British democratic way and other communities had key role in this regard that contributed in legislative council. The study finds that Shari'ah laws were the product of the interaction, cooperation and pluralistic approach of the various stake holders. It is very important to conduct a research on the challenge of colonial encounter on one side, and response of the British administration for Shari'ah laws on the other side. The legislative members were not from ulama's class, the British were not to emphasize on Shari'ah laws. However, this alliance of ideologically inconsistent groups could not be predictable unless there is a mutual agreement. In this study, that mutual agreement and cooperation will be studied. The study will help in finding the historical roots of the process of socio-political discourse of Islamization of laws in the modern times and the parliamentary politics with special reference to ulama within the time frame work of the legislative council 1932-1937. The research will be conducted by using historical and analytical methods and the main sources will be consulted from the archival materials as legislative council debates and police abstracts of Intelligence of British N.W.F.P.

Key words, British, law, Ulama, Shari'ah, Muslims, Hindu.

INTRODUCTION

British Colonialism commenced in India from the beginning of the 17th century and

continued under different charters. The British East India Company started the collection of revenues of Bengal, Bihar and Orissa in 1765.¹ The supervision of the judicial administration also falls on to British officer and under the company supervision set up a new judicial system. The role of the *Qadis* became one of the assisting British judicial official, and later on that was abolished. Shari'ah laws had been in practice in India since the establishment of *Sultanat-i-Delhi* in the 13th century. The Colonial rule brought challenges for the Muslim of India in the socio-political spheres of life specially when preserved their judicial system and the rules of Common Law.² They wanted to renovate frontier society on their own desire and *Riwaj* was consented on to civil affairs in the frontier province.

Ulama demanded political reforms in 1927 in all India Annual session of jamiyyat-ul-ulama-i-Hind/Sarhad in Peshawar. The British replaced Muslim personal laws by *Riwaj* (custom) made by British officials with the help of local elites.³ After the establishment of legislative council in 1932 in NWFP, Shari'ah Bill Agitation was started in 1933 that had concerns to the history of the laws of this province in accordance with the shariah.

After that, Ulama strengthened their coordination with other political parties and Several Bills were presented in the Council like, Opium Smoking Bill, Usurious Loans Bill, Juvenile Smoking Bill, Muslim Personal Laws Shari'ah Application Bill, Anti-Prostitution and Suppression of Brothels Bill etc. These Bill were passed by the First Provincial legislative Council of NWFP from 1932 to 1937. It had significance for the people and politics of the frontier and Indian-sub-continent.⁴ Pukhtun had dominance over the other non-pakhtun people of the province⁵ and during the 19th and 20th century pakhtun resisted due to religious passion.⁶ The province was divided in two parts, the settled districts and the agencies comprised on tribes, the total population of the province according to the census report of 1921 was 5076476 among them 93% were Muslims.⁷

Constitutional Developments in NWFP

The East India Company seized frontier areas after the second Sikh war 1848-49. The civil and criminal laws were not suitable and effective. In 1901, Frontier province was separated from Punjab and new province was set up. From 1901 to 1932, this province had no legislative authority as the other provinces of India had. Maulana Muhammad Ali Johar called this province (*Sarzamini be Ayeen*) the land without law.⁸ The province was kept aloof from the reforms and such developments as the other provinces were enjoying under the Montague-Chelmsford

Reforms of 1909. The local and personal cases were decided by the council of elders according to custom. When the lieutenant Governor of the Punjab felt some need, he made amendments to make it more effective for the maintenance of law and order.⁹ The new province NWFP consisted of five settled districts¹⁰ of Bannu, D. I. Khan, Kohat, Hazara, Peshawar, and five political agencies of Malakand, Khyber, Kurram, North Waziristan and South Waziristan. The province remained under the control of the central government until 1932 because the Act of 1919 was promulgated in N.W.F.P in 1932. The Chief Commissioner had a double duty, as an agent to the governor general, he controlled the political relations with the border tribes and as Chief Commissioner exercised the civil powers as the other heads of the province did in their charge. Chief Commissioner led the new province along with a judicial commissioner and revenue commissioner.

First Legislative Council 1932

The third and fourth decades of twentieth century were the most decisive periods in the history of the Frontier province. Legislative council was initiated on April 28, 1932 and the province was brought onto the stage as a full-fledged province. The council was consisting of 40 members; 28 elected and 12 nominated. Out of 28 elected members, 22 were Muslims, 5 Hindus and 1 Sikh. Among the 12 nominated members 5 Europeans, 1 Muslim and 1 Sikh was official; 4 Muslims and 1 Sikh were non-official. Sahibzada Abdul Qayum Khan was appointed as minister of the Transferred subject and Abdul Ghafur Khan of Zaida as the first president (speaker) of the council.¹¹

The first meeting was held to conduct regular business on the 12th May 1932, in the Town Hall, Abbottabad while the second was held in Peshawar between 9th to 25th October.¹² The perception of the Frontier people focused on economic grievances and the political, social and economic developments. The council contained judicious and qualified persons of that time. The new members were devoted to legislation and had an extraordinary quality of the legislation under Sahibzada Abdul Qayum Khan as a premier.¹³ Although the council was made on the non-party bases, yet the members were split up in four different groups that were: Liberal party had nine members and most were Khans and landlords, Independent party contained the elected members. Minority party constituted of 7 members belonging to Hindu and Sikh communities and the Progressive party contained nine members. Apart from these groups, there was also an official group that contained the official and non-official nominated members of the councils.

The independent members usually played the role of opposition.

The council had 11 sessions and 105 sittings.

During the lifetime of the council 1800 questions were asked by 28 members. Twenty two Bills were introduced in which 15 were Government bills and seven were private bills, one of the private bills was lapsed due to absence of the mover. The Punjab Opium Smoking (Amendment Bill 1935, The Usurious Loan Amendment Bill 1935, The NWFP Juvenile Smoking bill, 1933. The NWFP Muslim personal Law (Shari'ah) Application bill 1936, and the NWFP Anti-Prostitution and Suppression of Brothels Bill. These bills were passed in the legislative council during the time under review.¹⁴

Shari'ah Related Bill

There were several bills moved that were included on the spirit of Shari'ah although they were not moved by Muslims. The usurious loan bill was moved by British official member to abolish excessive rate of loan. In the initial stage Muslim members deliberated that it is forbidden in the Islamic faith, however Hindus members opposed the idea and Muslims did not effort for its total eradication, they however, amended and moved it for less percentage for the poor zamindars of the province. As for as the other bills like opium smoking bill and tobacco smoking particularly of children were also prohibited in the Islamic laws. Anti-prostitution and brothels bill was important of all, because, the family and communal system was based on the purity of blood as accomplished by Islamic teachings. So all these bill were according to the Islamic teachings and their implementation improved the social and economic uplift of the Muslim society. 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 socio-economic benefit of the people.

Muslim Personal Law Shari'ah Application Bill

The religious leadership were willing to eliminate *Riwaj* (the custom) and put in force Shari'ah laws in the province.¹⁵ Jam'iat-ul-Ulama Sarhad district Bannu session, talked about the preparation of Shari'ah bill that was to be moved in the legislative council. The elected member from Bannu Habibullah Khan moved it in the legislative council to replace the provisions of the special powers of the ordinance of 1932.¹⁶ Shari'ah application bill was the first among all British India.

The following points were included in the bill.

1. This act may be called the Muslim personal law Shari'ah 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, Dower, Adoption-Guardianship, Minority Bastardy Family Relations, Will, Legacies, Gifts or Any Religious Usages or Institution Including Waqf, (trust and trust property) the rule of decision shall be the Muslim Personal Law (Shari'ah) in case, where the parties are Muslims.¹⁷

Mobilization by Ulama for Shari'ah

Jam'iyyat ulama held a huge meeting on 21st and 22nd September 1932 at Peshawar. The masses demanded for Ulama representation in the legislative council, right to vote and Cases should be decided according to Shari'ah.¹⁸

The other Ulama like Maulana Abdul Hakeem Popalzai, Maulana Abdul Qahar Marwat and Maulana Shakirullah worked hard and prepared Shari'ah Bill in 1933.

The Shari'ah bill movement spread throughout the province. In Peshawar district, meetings were held for the awareness about Shari'ah laws. In Swabi, on July 18, 1933 Bacha Sahib Bamkhel stressed on the maintenance of customs and laws according to Shari'ah. He also discussed that it would be raised in the coming meeting of Jam'iat Ulama at Bannu.¹⁹ The intelligence report of those days says "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".²⁰

Ulama visited different areas such as, in Peshawar Maulana Abdul Wadood and Maulana Mir Sahib of Shahab Khel, in Charsadah Maulavi Muhammad Israel, in Sawabi Maulavi Muhammad Yunas, in Nowshera Maulavi Abdul Rauf and Maulavi Abdul Hanan, in Pabbi area, Maulavi Fazli Haque and Hafiz Abdul Qayum visited the villages in the province and started getting support for Shari'ah Bill. Maulavi Ghulam Yahya went to Hazara for seek the help of Faqira Khan and Abdul Qayum Khan.²¹ On October 24th 1933, a meeting was held at Peshawar by the Jamait Ulama Sarhad. The Ulama, discussed the parliamentary affairs of the province and the existing methods of election. They suggested that Maulana Muhammad Daud should be

elected to the council at the next election to support Shari'ah.²²

Legislative Council Debates

Muslim Personal Law (Shari'ah) bill was introduced in the legislative council on 13 March 1934. Khan Habibulla Khan²³ said, "It is a very important bill and it will affect all the Muslims of this province." He shed light on the previous efforts of Frontier Muslims as, "Just a few years ago in 1927 the Jam'iat-ul-Ulama in their Annual meeting at Peshawar passed a resolution demanding that the Muslim Personal Law should be applied to all Muslims throughout the country. Various public meetings, Muslims organizations and societies demanded Shari'ah for this province. Shari'ah conference was the first campaign which started in NWFP. Jam'iyyat ulama successfully raised up the public support through *Shari'at* day and *Shari'at* conference."²⁴ He also explained the misconception about the bill that it deals merely with the women share. As a matter of fact it deals with fifteen other questions including divorce, marriage, gift, dower, inheritance, will and various other personal laws. He called down the *Riwaj* and draw the attention of the house to the historical fact that when *Riwaj* was settled as Muslim personal law only a few Khans were asked and other people were not involved. He gave example of the Bannu and produced a copy of "*Riwaj-i-Aam*" in which 35 Khans were consulted at the time of the preparation of the *Riwaj-i-Aam* as a law of the district Bannu. He further added, "The custom is a law which differ not only in its application to different districts but which changes from tribe to tribe and village to village. The Mohmand, the Peshawaries, the Marwats, Khalils, the Khattaks and the Afridies all have different customs. The result was complications for the lawyers, courts, and also for the parties." He also discussed various conferences and gathering of the Frontier Muslims held in different districts. He gave the example of a huge gathering of Jam'iat at the Shahi Bagh (Peshawar). It was the representative of all classes, the resolution that was passed by 12000 people, contained a request to the members of the council to support this Bill. The government will not place obstacles in our way.

When Khan Habib ullah Khan concluded his speech, G. Cunningham (Home Member) moved an amendment. He told that this bill would be circulated for public opinion until 20 February 1935. He also told the Muslims had taken 18 months on the preparation of the Bill and it was not possible for this house to decide within one day. JUS condemned the Cunningham proposal of sending the bill for the plebiscite in the public and they decided to hold meetings in all districts of the province for the dissemination of the bill. Ulama published a poster to celebrate the Shari'ah day on the 4th of January of 1935.²⁵

Malik Khuda Bakhsh member from Dera Ismail Khan, pointed out that there was no controversy over the Bill between the treasury bench and the mover but as the mover has cleared that it was an insult to a Muslim to be asked whether he prepared to the application of the law of God. The Bill is about the application of those provision which constituted the divine law. Moreover, Muslim throughout India felt that it was a crying shame that only Muslim province in India should be slave to custom.²⁶

Khan Bahadur Ghulam Haider Khan (member from Bannu) told, "It was necessary to ask the people whether they want the Shari'ah or not. It is an admitted fact that no Muslim can reject the laws of Shari'ah, 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. However, I have studied the provisions; there is hardly any material for the Select 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. We should find out what is the opinion of the public and Ulama about the matter."

He also explained that Shari'ah comprises of all the provisions of the Holy Quran, Traditions (Ahadith) and 'Fiqh' However, the Bill before the House does not deal with all of them. If the Bill is to be called the Shari'ah Bill, the following terms should be defined. Shari'ah, law of *Shara*, Dar-ul-Qaza, Qazi-ul-Quza, Qazi, Mufti, *vakil* and Hakam etc. He told that it was necessary to ask the Ulama and other men of wisdom whether they will be contented with a partial enforcement of Shari'ah. Therefore, I support the motion for the circulation of the Bill. Pir Bakhsh responded to The "Dar-ul-Qaza" question and told 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.

Khan Muhammad Abbas Khan said 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. Sahibzada Abdul Qayum Khan discussed different aspects of the bill and made suggestions. He declared, "I may also point out that I am a Muslim and I consider Shari'ah to be a perfect and complete law, obligatory on every Muslim to follow it. Shari'ah is the perfect code of all the juridical theses that the world has been able to produce. Unlike temporal laws, it does not require

any amendment or modification to suit the needs of time. Shari'ah is the word of God and it is one divine attribute and that it is unalterable and immutable. Its integrity will remain intact until the Day of Judgment. Therefore as far as the essentials of Shari'ah are concerned, no one has the right to mend or amend them.”²⁷

He further explained, “Almost all the speeches that have been delivered from the opposition benches have dealt with the beauties of Islam. Customs have so entered into the routine of our everyday life and our minds have been so covered with the clouds of sinful practices that at present the light of Shari'ah hardly reaches there. If Government wishes to circulate this Bill, they probably are aware of the disease that is eating 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 Shari'ah in these parts.” He defined the contrast of Pakhtun religiosity and culture giving the example of the past religious mobilization in Frontier by a great religious leader Sayed Ahmad Sahib, the head of the ‘Mujahedin Movement’. “He enforced the laws of Shari'ah in this region, but our thankless people, the Yusufzais, not only opposed, but also conspired against them.” He gave another example of the Haji Sahib of Turangzai, who tried to follow to Shari'ah, but after four or five years there was not a sign of what he did.

He confidently said, “Sir, this Bill claims to enforce Shari'ah, 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. However, 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 Shari'ah Bill. He also told on another occasion that *Shari'ah* is a sacred mandate and is always in force. This bill has introduced to abolish the system of “Rivaj” therefore it would have been more suitable if this bill were called “A bill for the cancelation of the custom” instead of *Shari'ah* Bill.”²⁸

Khan Ghulam Rabbani Khan non-official member raised some technical questions and said, “I wish to make it clear that this bill has been given a wrong name by calling at Shari'ah bill as it does not contain fundamentals of Shari'ah.” According to him, the word Shari'ah comprised all those institutions, which constitute the fundamental principles of Islam, i.e. prayer, fasting, hajj, zakat, etc. The draft should have comprised all the principals that form the foundations of

our religion. He gave the example of Sarda Act and told 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.²⁹

After a long discussion in the council on the different aspect of the bill, it was decided by voting³⁰ to circulate the Bill for producing public opinion. In the house, 22 members favored the suggestion while 10 were against and the bill was circulated for the public opinion. In the next

session, the bill was referred to a select committee and they gave their report on 20 July 1935.³¹ Sir George Cunningham decided to ask some Ulama who had some questions and those Khans who were opposing the bill. Jam'iat Ulama struggled for the approval of the select committee. Maulana Shakirullah sought guidance from the Central Jam'iat and Mufti Kefayatulla of Deoband was consulted on various aspect of the bill.³² Maulana Shakirullah along with the Marwato Mulla met the select committee and after discussion, some amendments were suggested and a detailed report was submitted in the next session of the Council.³³

Shari'ah Conference

When the official members pinned down some technical issue in the bill, ulama were disheartened and decided to hold a Shari'ah conference in Peshawar. The Khanate of the province and landlords boycotted.³⁴ Mufti Kefayatullah, Maulana Zafar Ali Khan, Maulana Habib-ul-Rahman and others arrived in Peshawar.³⁵

Abdul Rahman Khan, M.L.C., gave details of the conference and called for attention to the collective support for Shari'ah Bill.³⁶ Mufti Kefayatullah in his Presidential address, said that the objects of the Shari'ah Bill were to legislate for enforcement of certain religious duties, which had been neglected since the fall of the Moghul Emperors. The British Government had promised not to interfere in religious matters and to allow all communities complete religious freedom. After the passing of the Shari'ah Bill steps would be taken to legislate for the application of other principles of Shari'ah law, not mentioned in the Bill. He appealed to the Muslim and non-Muslim members of the Legislative council to support the Bill. The first two sittings were dedicated to Shari'ah affairs. Maulana Hussain Ahmad Madani spoke on Shari'ah affairs and emphasized on the necessity of the Shari'ah Bill. Among the others ulama Maulana Zafar Ali Khan, Maulana Abdul Haq of Akora, Maulana Habib-ul-Rahman of Ludhiana and Maulana Ghulam Ghaus delivered lectures in favor of Shari'ah laws. The crowd passed the following resolutions:

1. Supporting the Shari'ah Bill

2. Demanding that section 27 of the law and Justice Regulation should be repealed, and
3. Requesting members of the Legislative Council to support the Bill.³⁷

Following the acceptance of the resolution Ghulam Muhammad Khan of Lundkhwar leader of red shirts requested Hindu members of the council to support the Shari'ah Bill and advocated that Muslim Members, who opposed it, should not be supported at the next elections.

Select Committee Report

Khan Habibullah Khan presented the report of the select committee. The committee held two meetings at Abbottabad and few amendments were suggested. After discussion, some of the amendments were withdrawn while some were rejected and the bill emerged in its original form. Afterwards there was another meeting of the select committee and a procedure was adopted, previously that had never been adopted in the case of any other bill. Khan Habibullah Khan consulted all classes of the society i.e Khans, landowners, Ulama and representatives of various associations. After recording the evidences, the majority of the committee declared themselves in favor of the bill.³⁸ We wanted to improve the moral, political and educational condition of our society. He removed the fear of those who were anxious about the new laws and told, "There are some who fear that their properties will lose. 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."

Khan Hidayatullah Khan of Peshawar, supported the bill and said, "Shari'ah law is relate to the Muslims alone, no other community is going to affect by it therefore it is the right of the Muslims only to decide how far it is necessary for them to follow it in the country." *Riwaj* was a human made law while Shari'ah is the word of God conveyed to us through his Prophet for the better conduct of the affairs of humankind. "The *Riwaj* has not allow any share to women. It would be extremely unfair to deprive the women folk from their share. I therefore keep up that it was necessary that the Shari'ah bill should be passed into law so that the nation may improve and the future generations should be happy, contented and live in peace and harmony."

Khan Bahadur Abd ul Rahim Khan of Dera Ismail Khan, expressed his views and said that it was his duty as the representative of his constituency³⁹ to state the whole position with respect to the bill as clearly., there were many Zamindars who were opposed to the bill. They think their properties would be ruined. He told the honorable leader of the opposition that his sympathies lay with the fair sex but he requested him to consult the provision of Muhammadan law about the deceased person and his debt.⁴⁰

Khan Bahadur Nawab Hamidullah Khan Mardan said, “Sir, we believe in complete Shari’ah. You have taken into account only one part. It is of the utmost importance that cases should be referred; only a Mullah can be an authority on religious matter under the provisions of the present bill. However pleader and other people equally ignorant of Shari’ah will have to conduct cases. There should be complete Shari’ah and everything should be in accordance with it. Only one part of the laws of Shari’ah has been introduced while we desire complete Shari’ah.”⁴¹

Malik Khuda Bakhsh replied to the remarks and said, “Sir, at this time no speech would be required and every aspect of the bill has been explained. Now the only point is that, whether the bill should be proceeded with or dropped, and should not be taken into consideration.”

The select committee has taken the opinion of the Ulama that the one who inherit property will be liable to pay the debts of the deceased. This is British law and this is also what the Shari’ah says. I request that instead of making any lengthy speeches the bill should be considered a blessing and should be unanimously passed.

Mr. President: The question is “That the North West Frontier Province Muslim personal law Shari’ah application bill as reported by the select committee be taken into consideration” The motion was carried. Khan Habibullah Khan said, “Sir, I beg to move that the North West Frontier province Muslim personal law Shari’ah application bill be passed”. Mr. President: the motion is “That the North West Frontier Province Muslim Personal Law Shari’ah Application Bill be passed.”

Malik Khuda Bakhsh Khan expressed his opinions as, “Sir, today is a lucky day. It is a great distinction for this day. This council of early stage has completed a task that could not be accomplished by many older and prominent legislatures in India. It took up a right cause and determination promoted it to its present stage and has justified the respect that Muslims have for their Shari’ah”.⁴² The house should accept the bill and pass it into law with all respect. After long series of debates in the session the President of the council announced that the North West Frontier Province Muslim personal law (Shari’ah) application Bill be passed.”⁴³

The Influence of Shari’ah on Socio-Economic life of the Frontier Province

Shari’ah bill had a vital importance for the Frontier that was the Muslim majority province of India. This Bill was the first practical link of Shari’ah that would affect the social, economic, religious fabric of the society of a large portion of entire population. Measures taken for Shari’ah

laws mobilized the masses that developed the political sense of the Pakhtuns. Ulama began to spoke in the political tone and started a parliamentary language by demanding rights in the true direction rather than in terms of agitation and reactions.

The Shari'ah Bill agitation influence the Pakhtun society, the outlook of the Ulama and common people began to change. The frontier people distributed due heredity shares among the heirs of a deceased persons according to the Shari'ah laws. During the debates in the council Habibullah Khan said in his speech to the council members on 5th November 1934, "This is a very important bill and It will affect all the Muslims." He further said that, "during the discussion we should not be carried away by the sentiments, nor we should indulge in inaccuracies."⁴⁴ The main effect was sensed in the family life of Pakhtuns. It was the first occasion when Muslim family laws affected the religious and non-religious families because before 1935 the Muslim society was governed by the Hindu laws in the matters of succession. Women could not own or inherit immovable properties.⁴⁵

The outlook of the Ulama was changed, until they were associating in speculative politics and agitations. Shari'ah agitation (1932-1936), produced the political awareness and the religious leaders began to think of the membership of the legislative council in the province as 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. Now the JUS began to think about the parliamentary politics. The Idea of membership to Legislative Councils rose up during the Shari'ah agitation in Peshawar.

Juvenile Smoking bill 1933

This bill was moved by Rai Sahib Mehr Chand Khanna (Memeber from Peshawar Non-Muhammadan) about the Juvenile Smoking in 1933. The purpose of the bill was to prevent children from smoking. The interesting situation came at the moment when Maulavi Nur Bakhsh; a Muhammadan member from Dera Ismail Khan opposed the bill.⁴⁶ Meher Chand Khanna surprised and said, I am shocked to see the honorable member to oppose a bill of such an innocent nature. He explained, we see in most cases people smokes as a sort of enjoyment, but it cannot be denied that smoking is on its increase. It is a vice and injurious effect on health and contains alkaloid nicotine which is very harmful for dyspeptic disorder, sore throat, blindness and heart problems. He further presented his experience and said I know its injuries.⁴⁷

Maulvi Nur Bakhsh, rejoined and said, legislation is a necessity but unnecessary legislation is a waste of time. The mover of the bill wishes to introduce the bill because tobacco

is injurious to health of children, however we must realize that it will be very difficult to act upon it because most of the people use tobacco and the fate of the act will be the same as that of the Sarda Act.⁴⁸ The bill will create administrative difficulties to the government because 70 percent of the people use tobacco. He also said that the permission to snatch tobacco from the hands of the children will lead to trouble, because there is a large number of people who send their children to buy things for them. Therefore, I strongly oppose the bill.

Maulvi Nur Bakhsh differ with the recommendations to send the bill to the select committee and made a long speech. He said, I want to remove the flaws in the Bill, otherwise it will create difficulties for poor people. Tobacco shops and smoking would be illegal and people will be arresting. The difficulties for the prosecuted and the prosecutor will be created.

He also disapproved tobacco is injurious and poisonous to health. He took his case and said, I have been using tobacco for the last 30 years and I am still alive. I assure you that according to the medical books it is not as injurious as the hon'ble member has tried to make out. You can very well see that the hon'ble mover of the Bill who smokes tobacco possesses an excellent health. If this Bill is passed into an Act you feel sorry for snatching tobacco from a little child? This Bill will be confined to cities and villages where people smoke tobacco and snuff. In every "hujra" there is "huka" and even the Mullas use snuff. The snatching of tobacco from a boy would habitually lead to provocation and bloodshed.

Mehr Chand Khanna interrupted and asked, is there no time-limit for Maulvi Nur Bakhsh?

The Deputy President, request the hon'ble member to close his speech within five minutes.

Maulvi Nur Bakhsh replied, just in a few words I finish. I was telling that difficulties will arise if the Bill was passed. The people personal hostilities will be rise and they take advantage of the Bill.

He opposed the house and said there was no need to send the bill for public opinion because there has been no demand from that a Juvenile Smoking Act should be applied here as it is in the Punjab. I am not in favor of introducing measure which is unnecessary. I believe public opinion is not prepared to accept it and the Bill.

Mehr Chand Khanna wished to refer the Juvenile Smoking Bill to the Select Committee.

In moving this Bill for reference to the Committee, I would like to meet some of the arguments that have been advanced on the floor of this House this morning. One important

argument that has been advanced came from my hon'ble friend Maulvi Nur Bakhsh. He says that he himself is a smoker and that from his own personal knowledge he can say with confidence that at least 60 to 70 per cent, of the population in this Province are smokers. In my opinion goes in favor of the Bill and is a strong argument for bringing it on the Statute Book. If such a great majority of people are indulged in this vice,(I certainly call it a vice), we must really do something to put an end to it. If we can stop it in the case of the juveniles I say that, we will be able to decrease it in the case of the adults to a great extent.⁴⁹ I expect the total support of the members that the Bill be referred to the Committee.

Mr. C. H. Gidney said, I think if there is a real demand for the Act so the house should decide whether the act shall be a part of the provincial statute book or not. After the preliminary debate the bill was moved to the select committee to report it before the autumn session of the council. The report of the select committee was presented in the council on 13th of November 1933. Meher Chand Khanna told the house that I am sure that I will have the support of the house in placing the report of the select committee for acceptance.⁵⁰

Mr Pir Bakhsh remarked: I want to move an amendment in the text that was only a verbal amendment; Meher Chand Khanna accepted that amendment. The preamble and the clause 1 to 4 stood parts of the bill and the juvenile smoking bill 1933 as amended was passed.

Anti-Prostitution and suppression of Brothel Bill 1935

Ulama and political leaders always criticized Prostitution in NWFP during the colonial rule. In the civil disobedient movement in 1930, the well-known incident of 23rd April 1930 in the Qissa Khwani bazar took place in which numerous people were killed and wounded this was the result of such activities that the political workers wanted picketing on the wine shops and prostitution.⁵¹ On 6 April, Congress workers informed wine merchants to cut off business in liquor. Fifteen days were given as a deadline; if their business continued then their shops would be picketed.⁵²

Nawabzada Allah Nawaz khan moved the anti-prostitution and suppression of brothel bill in the council. He said two years ago Pir Bakhsh has brought in measures to empower the municipalities to remove the chaklas from their limits, the municipalities failed and did not find their outcome on this point. So, I have brought forward this measure before the house to eliminate adultery and Prostitution in this Province. The motion was carried and he moved the North West Frontier Province anti-prostitution and suppression of brothel bill of 1935. Later on

the bill was referred to a select committee. As it was a time need bill that was significant for the value of the Muslim society and coming generation.

Nawabzada Allah Nawaz Khan presented the select committee report on 18th November 1936. He pronounced that the select committee and public opinion has been in favor of the bill. He further explained that the purpose of the bill is to promote the welfare of the youth and to remove the menace of diseases that caused hundreds of youth. For the welfare of the future generation we have to make proper birth and thus to save them from that kind of horrible disease, so there is no controversy on the bill and I move it for the consideration. The president announced that clauses 1-11 stand part of the bill and the Anti-Prostitution and suppression of Brothel Bill 1935 was passed in the legislative council.⁵³

Khan Habibullah khan remarked that legislation on the problem of Prostitution, i.e. the Chakla Bill was first of all passed in this province.⁵⁴

Usurious Loan Bill 1934.

M. G. Cunningham finance member moved the bill for select committee. He explained that the object of the bill is to evaluate what is usury from non-usury. The aim is to fix the limits within which a loan will be considered to be within reasonable bounds. On 7th march, Mr. G. Cunningham presented the report of the select committee in the council. He explained the purpose of the bill, to spell out that the usurious bill of 1918 (Punjab) has remained more or less broken down owing to decide what usurious interest is? The purpose of this bill is to help courts to decide it might be said that an arbitrary figure should be fixed above or below which interest should be considered usurious otherwise it has appeared to the government right that a certain amount should still be given to the courts in this matter. He further said that a rate of ten or eight percent is reasonable and it must be extended to the discretion of the court and with that object a maximum and minimum rate had been fixed in this bill.⁵⁵

Lala Ladha Ram, a Hindu member from Bnnu, criticized that the provision of the bill is very harsh and excessive interest has been defined in a very illogical manner. There are many factors which go to determine the rate of the interest, such as the financial position of the debtor, the security and risk involved. He also added that, there is no such definition in the principal act and it was left to the court to determine as excessive and under what circumstances it should be taken.

Mr. G. Cunningham, Opposed the amendment moved by Lala Ladha Ram. He told the

“crucial word” in the Act was discussed in the Select Committee. The House knows that, it stands at present, owing to certain causes, the Act is practically a dead letter. Besides the question of the fixation of the maximum or minimum rate of interest. This is an integral part of the Bill and therefore I oppose the amendment moved by honorable member from Bannu.

Ghulam Rabbani Khan took part in the debate and said, the purpose of the bill was to give relief to the peasants. He argued that there are in the Hindu law some provisions according to which the creditor cannot get more than twice the amount from his debtor, keeping in view that principal in Islamic law so there should be a law to save the debtor from the external burden. He also gave an example of such extension and he mentioned from the civil and military gazette of November 1st 1934 where debt amount was 300 rupees and the interest had risen to 2 lakh. He told the house that, such are the cases we come across.

Rai Bahadur Lla Ishar Das differed with that and said we should not take views of newspapers. At this, the President interrupted and said I don't think such newspaper will put in false information about such important matter.

Abdul Qayum Khan told that it was not only in the newspapers but the books and periodicals have also dug up that fact. The bill was circulated for public opinion till the first October 1934.

Lala Ladha Ram, explained that there are two things which must combine before the courts can open previous transaction. (1) That, the rate of interest must be excessive and (2) that the transaction was largely unfair. If one of the things exists the court will have no power to reopen the previous transaction. This Bill empowers the court to reopen the previous transaction even if one of these conditions exists. My point is that unless both conditions exist, these powers should not be given. These powers are counted in section 3 of the principal Act and are very vast. If the courts could exercise these powers even when the condition of the excessive interest exists only it would work a great hardship upon the creditor. If we leave that clause to remain as it is, it will negate the effect of the Bill and the spirit of the Usurious Loans Act will be nullified. So here, we have got at least one certain thing to follow and that is; if the rate of interest is excessive the court may reopen the account. If we remove this clause which has been rightly put in, the result will be that this Bill will no longer be required and will not be helpful at all.

Khan Ghulam Rabbani Khan, said that the Usurious Loans Act, as amended by the Government, was meant to cut at the root of usury, but unfortunately the object of that was not served. It remained a dead letter. It is simply on account of this hitch that the Government has

moved this Bill. So clause 2 of the Bill be omitted and the President moved that "The clauses 2 and 3 stand part of the Bill."⁵⁶

Mr. Pir Bakhsh said the question of interest is directly subservient to my Islamic beliefs.

In accordance with the set provision of my faith, I am totally against the question of interest and for expression of my views I do not entirely depend on sentiments. I have got reasons and valid grounds to support that belief. I would like to make a few observations in support of this argument. The principle of interest has greatly increased the spirit of warfare between various classes and various communities living on the face of the earth. Great War may be due to one of the main factors was the question of capitalization. Even to-day we see that the world is not quite free from this spirit. Russia is an example to that effect. A survey of the Russian history would disclose to the hon'ble members that the capitalist class of Russia, the money-lending class carried the rate of interest so high that finally it led to an open warfare and resulted in a great disturbance of the society.

Meher Chand Khanna interrupted him and said, are you suggesting the same on the Frontier? Pir Bakhsh replied, I am not a supporter of Bolshevism. I have condemned the state of affairs prevailing in Russia. Sir; the question of excessive rate of interest goes to a clear challenge. Our intention must be to adopt measures and to create an atmosphere with a view to safeguarding against the growing sentiment, the growing idea of warfare between different classes. I think that probably it was with this intention that the present Bill was moved. In our Province Cries had been raised from various classes and especially from those living in the rural areas that they should be relieved of poverty and misery that they should be saved from the clutches of the money-lender. Those living in the urban areas are also groaning under the same difficulties. The word 'money-lender' has been misunderstood by certain gentlemen and most probably by the Hon'ble members sitting on the minority benches. This Bill does not disclose nor does it contain any provision which denotes an idea that this Bill is intended against a particular community. The term money-lender is rather a vast one. It includes who deals in money lending irrespective of the fact whether he is a Muslim, Hindu, Sikh or a Christian. Sir, there is absolutely no cause for apprehension for the Hon'ble members sitting on the minority benches because in the speeches which were delivered by some of them during the course of the debate which took place on the 13th March 1934, they themselves gave us facts and figures to the effect that the big landlords also indulged in this business. This amendment is in the interest of money-lenders also.

This amendment has been proposed with a view to impose limitations and conditions on the lending of money on exorbitant rate of interest. If there is no attraction for the money-lender he would think twice before lending money.⁵⁷ In conclusion I would draw the attention of the Government to the most important object of this Bill. If the intention of the Government is to find a clear and effective solution of the problem that can only be said to have been achieved when there is satisfactory remedy, Half-measures and lukewarm remedies are no good. If at all their intention is to upgrade the condition of the people and to lift those who have had pit falls of bad economy, the measure should be effective. A review of this clause and the provision shows that the rates are absolutely exorbitant and instead of solving the difficulty and instead of preventing people from being put to trouble it would carry them into spheres which will be full of sufferings and hardships. With these words I commend by amendment to the House."⁵⁸

Rai Bahadur Rochi Ram (Dera Ismail Khan, The money-lender has been criticized in the House, However, I differ with these points. I think the money-lender and the "money- borrower" belong to the same category and should be treated alike. In fact the offer of a loan never comes from lender. It always the borrower who makes a proposal. It is unfair to impose restrictions on the former while the latter is subject to no restrictions, so equal limits needed for both sides. Sometimes a loan is advanced for a certain period without interest but when not returned within time interest also becomes chargeable. The question involved in the amendment is whether interest should be estimated excessive if it exceeds a certain limit. In my opinion it is for the borrower to decide at the time of applying for a loan whether or not the interest demanded is excessive. If he thinks that a certain lender is demanding interest which he is not prepared to pay, he is perfectly at liberty to go and apply elsewhere. It is unfair and unreasonable that he should be allowed to knock the doors of the Government in protest after deliberately entering into a transaction with his creditor and accepting the payment of interest at a certain rate. Agreement must be faithfully kept. I therefore resume my seat with the request that the amendment should not be accepted.

Khan Muhammad Abbas Khan, Mansehra, Sir, the amendment moved by my friend Mr. Pir Bakhsh is a very necessary one. Unless this amendment is accepted the Bill will remain a mere shadow. If the money-lenders whatever be their religion, kept insisting on their objection to such safeguard after a few years they would find that one source of their income had altogether stopped. It is in the interest of their business that their customers should be able to pay them regularly.

The difficulty will not be solved simply by fixing one arbitrary rate, because the reason for the difficulty will still remain and that is that, the conditions of every loan are not identical. It is for this reason that Government have felt it an essential part of this Bill that a maximum should be fixed over which it shall be considered excessive and a minimum under which it shall not be considered excessive and that within that maximum and minimum the court shall have latitude to decide.

After a long conversation in the council the amendment to the bill was decided by voting. The president of the House saw that the Council was divided in equal numbers in “yes” there were 16 and as “no” were the same 16 numbers. The Chair has no way, but to cast its vote against the amendment because in the first place the Chair's vote is usually cast against an amendment and secondly because in this particular case if the amendment is carried the entire section will become meaningless. I therefore cast my vote against the amendment and declare it as lost.⁵⁹

Khan Muhammad Abbas Khan, It is necessary for the capitalists to reduce rate of interest to secure the continuity of the credit market. Good relations between the debtor and the creditor can only exist when the debtor has to pay at a rate at which he does not feel the pinch. The question involved in the Bill is not between the Hindus and the Muslim but purely between the creditor and the debtor. If the honorable members of the minorities prefer to give it a communal color it is only their own outlook. My friend from Dera Ismail Khan during the budget discussion made special references to the big zamindars who were unbearable the petty zamindars by charging them a rate of interest of which the latter can't pay and consequently fall a prey to the former. Only yesterday after consulting his register he told us that in the Frontier Province there were 13.622 Mussalmans who lent money on excessive rate of interest. If this is the case then he should join hands with us in this unfair exploitation of the poor.⁶⁰ With these words I support the amendment.

Mr. G. Cunningham said, we are discussing a matter which has really very little sense in it. Because if you have ruled out the Hon'ble Mr. Pir Bakhsh's amendment we are left with this suggestion, that interest shall be considered excessive on non-secured debts if it does not exceed 12 per cent. ie., if the amendment goes through as it now stands it means to say you could argue that interest will be excessive if it is even as low as Re. 1 or 8 per cent Or on the other hand, you may take the negative view that interest will not be excessive if it does exceed 10 per cent! I

think if Hon'ble members will examine this clause as I have explained it, they will see it is entirely meaningless.

Pir Bakhsh explained his position and said, I do not want to move my second amendment in view of the decision on the first one. "The clause 4 stands part of the Bill and the Usurious Loans (North-West Frontier Province Amendment) Bill was passed in the council.

Opium Smoking Bill

Sir Sahibzada Abdul Qayum Khan moved this bill in 1935. It was introduced as an amendment to the Punjab opium smoking bill 1923, that punished the owner of a place being used for opium smoking. In this act the term "owner" was not defined clearly. In such cases it is difficult to proceed against an owner who has no control over the acts of the sub-lessee from his lessee. It is with this object in view that the act is sought to be amended. The owner need not necessarily be prosecuted while the real culprit is the lessee. The president of the council took it into consideration and the preamble along with the clauses 1 and 2 stood part of the bill. So the opium smoking bill was passed without any opposition on 5th march 1935.

Conclusion

The North West Frontier Province was an exposed and different area of India during British colonial rule. It argues that, although the constitutional rights were given late but the people of frontier were first in the process of Islamization during colonial rule in India. The demand for the implementation of Shari'ah was the main concern of the Muslim's life in the Frontier society. Members of Legislative council passed useful bills and reforms and constitutional development was accelerated in NWFP.

Although Jam'iyyat 'ulama-e-Sarhad had a political vision and sometime stirring up the people on religious ground but it was not progressive at that time to go towards a parliamentary political purpose in the province. The process started by these bills open the socio-political background of colonial frontier and the growth of various religio-political parties in the province. On the Colonial side, The British attitude and democratic standard reflects a good use of democratic manners presented by British officials during debates and especially their apparent honesty and impartiality in the council. The amazing side of these bills was that every community had moved bills for the betterment and welfare of society of frontier. The juvenile smoking bill was moved by Maher Chand Khanna a Hindu banker and interestingly opposed by Muslim member of the Bunnu. The usurious loan bill was moved by British official member G. Cunningham and strictly opposed and debated by Hindu community because most of the bunnias

were Hindu while the suffering community were poor Muslims. Muslims strongly appreciated the bill that removed the excessive amount on the debit. The ant-prostitution bill was moved by Muslim member from Peshawar Malik Khauda Bakhsh and neither community opposed it. The opium smoking bill was presented by Shibzada Abdul Qayum Khan and was unanimously passed. It also instrumented the process of democratic awareness in the Pakhtun society and the procedure of understanding each conflicting communities, such as Hindu, Sikhs and Muslim. There was also a sequence of contradictory lengthy debates that were due to communal grievances like usurious loan bill was a triumph on the Hindu bunnias who were giving usury to Hindus and Muslims and gaining excessive amount in shape of usury. By limiting that amount Hindus were not happy. Despite the fact, on the other side by Juvenile smoking bills, the edicts were mostly Muslims. They wanted not to implement such laws that were banning children from smoking or other involvement of the children in such activities. Although there was none of the religious leader was a member of council, however, they played role by dialogue and held conferences for the awareness to the public.

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- ⁸ Allah Bakhsh Yousafi, *Sarhad our Jaddo Juhdi Azadi*, Lahore: Markazi Urdu Board, 1968), 97.
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- ¹⁰ The areas of the five districts now (2022) constituted 24 districts and the agencies were given the status of district after the eighteen amendment in 2010.
- ¹¹ Obhrai, 258.
- ¹² B. L., IOR L/PS/12/1341. Diary no. 21, for the week ending 25th April 1932.
- ¹³ He was called as Sir Sayed of Sarhad for his great work especially in the education sector, (established Islamia College Peshawar). Sir Olaf Caroe, declared him “as the right hand of Sir Ross Keppel”. He said that without Abdul Qayum, “Ross Keppel could have never raised to the heights he did.” (BL, MSS EUR, C. 273/1-5/ p, 70.
- ¹⁴ Obhrai, 261.
- ¹⁵ NWFP, P. A. I. S. No. 31/7258, D. O. A. Dated. 8. 4. 1924.
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- ²⁵ L.C.D, 112-120.
- ²⁶ L.C.D. November 1934, 243-245.
- ²⁷ L. C. D. 253-259.

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- ²⁹ L.C.D. 268.
- ³⁰ Majority of the members were in favour of circulating the bill for consultation in public. (L. C. D., 282).
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- ³⁴ D. O. A. NWFP P. A.I., S. no. 39/7266/1934, para No. 74.
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- ³⁹ A detailed letter of Qazi Muhammad Jan to Mufti Kefayatullah in which various aspects of the bill were discussed. It was one of the examples of those who opposed the bill on the due shares of women in the heredity and according to him some people from Dera Ismail Khan were of the opinion to keep them in exception. (Mufti Kefayatullah Dehlavi, *Kifayat ul Mifti*, Vol. 9, (Karachi: Dar ul Isha’at, 2001), 272.
- ⁴⁰ Debates, 99.
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