
The Emergence of Islamic Sharia and the Legal Structure of the Muslim Community in South Africa

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Abstract

Every society needs law and for various reasons, the legal rules of countries are more or less different from each other. For comparative studies and comparison between the laws of countries with each other, it is not enough to measure the laws and legal regulations of those countries, but the legal systems should be studied and examined. The last religious legal system, which influenced other legal systems of the world and was welcomed by all nations, is the Islamic legal system. This article, after explaining the concept of "legal system" and its classification, briefly introduces the Islamic legal system. The article is devoted to the history of the spread of Islam in the world, in particular the appearance of Islam at the Cape of Good Hope starting from the 17th century, and subsequently received powerful development throughout South Africa. The article examines in detail the structure of the Muslim community of South Africa, consisting mainly of the so-called Malays, immigrants from Malaysia, Indonesia and Singapore, beginning from the 17th century; Indians, immigrants from Gujarat, India, starting from the 19th century; Zanzibarians, starting from the 19th century; and other Africans. All Muslims here are Sunnis. The main religious schools in South Africa are represented mainly by the Shafiites (90%) and the Hanafites (about 10%), and a few Shiites. Islam in South Africa emerged during the expansion of the Dutch East India Company, when exiled Muslim prisoners began to be brought from the shores of the Malay Archipelago to the southern coast of Africa. Therefore, here came the hitherto unknown Muslim culture. A little later, Indian Muslim traders began to arrive in South Africa. Freed Muslim slaves were brought from Zanzibar. At first, Islam existed in South Africa in the form of Sufism, that is, Muslim institutions were created around prominent personalities revered by the people. Then, with the growth of urban culture and the release of prisoners and slaves, mosques and madrassas began to be built, and thus Islam from Sufism smoothly flowed into the "book form", that is, the form of urban communities. Certain religious schools in South Africa established themselves; Muslim literature appeared, first in Malay, then in Afrikaans, and subsequently in other languages. Today in South Africa there are up to 1 million Muslims, a large number of mosques have been built, the Muslim community lives a full-fledged cultural, economic and political life.

Key words: Islamic law, Islamic sharia, legal system, history of Islam, South Africa, Cape Malays, Shafiites, Hanafites, Zanzibaris, Indians

Introduction

In South Africa today there are between half a million and a million Muslims, according to the census in various parts of South Africa [3]. When visiting major cities such as Cape Town, Durban, Port Elizabeth, Johannesburg and many others. The large number of mosques is striking, the number of which is hardly inferior to the Protestant or Catholic churches. A large number of so-called *karamats*¹, that is, the graves of Sufis, revered by local Muslims to this day, are also found. Muslims in South Africa can be roughly divided into several subgroups: Malays, Indians, Africans and Zanzibarians. This article provides only a brief overview of the history of the emergence of Muslims in South Africa, general information about the structure of the Muslim community based on those sources that were obtained in the course of our research in South Africa.

Materials And Research Methods

When working on this article, we relied on the works of South African researchers of the history of Muslims in this country. In particular, we studied the fundamental work "History of Muslims in South Africa" by Ebrahim Magomed Mahida [6], who chronologically detailed all the milestones in the life of Muslims in the Cape Colony and in South Africa in general, from 1652 to our time. The study by Ursula Stevens "Bo-Kaap and Islam" [9] devoted to the history of the Muslim quarter Bo-Kaap in Cape Town, in which the main milestones in the history of Cape Town Muslims are covered in some detail, was of great help in writing our work. Important information about

¹ Karamat (Arabic كرامة, pl. كرامات) is the Islamic term used to name miracles that occur to or performed by righteous Muslims.

the modern cultural and socio-political life of the Muslims of Cape Town and its environs is contained in the book of Habiba Baderun "Concerning Muslims" [1].

We also studied the work of Gerhardus S. Osthuizen "Islam among the Zanzibari of South Africa" [7], which details the history and modern life of Muslims from Zanzibar who settled in South Africa. Ridwan Lacher's article "The Politics of Malay Identity in South Africa: Thinking through Transition and the Diaspora" [4], which we also studied, tells about the contemporary fate of South African Malays, who have managed to preserve their identity. Having gathered important information from the above works, in our work we tried to create a coherent generalized picture of the life of Muslims in South Africa from the moment of their first appearance to the present day. For world African studies, this topic seems relevant, since our knowledge about the history of the spread of Islam in the world and the peculiarities of its development in such a remote part of it as South Africa is being replenished.

Results

Muslim Malays

About half of all Muslims in South Africa are Muslims who come from the Malay Archipelago and the Malay Peninsula (present-day Indonesia, Malaysia, Singapore, etc.). The first Malay Muslims began to appear at the Cape of Good Hope in South Africa, at the same time as the Dutch in the first decades of the 17th century. The fact is that the East India Company, led by the Dutch, began to take convicts to the southern tip of Africa. These convicts were needed for various jobs in agriculture, construction, and ports [9]. In addition, political prisoners from Batavia (now Indonesia) were exiled to the Cape of Good Hope. These were, as a rule, prominent politicians, respected sheikhs, and authoritative teachers who were disagreeable to local rulers.

Therefore, a brief chronology of the appearance of the first Muslims on the Cape is as follows:

Around 1656, one of the four Asians sentenced by the Batavian court for inciting an uprising against the Dutch was exiled to the Cape Colony, his name is unknown.

In 1658 free Muslims, known as *Maridikers*, arrived from the island of Ambon (Indonesia) to protect the newly established white settlement from the indigenous population. They were forbidden to openly practice their religion on pain of death, but the conversion to Christianity was welcomed.

In 1667, the first political exiles from the Malay Archipelago began to arrive; they were called *orang-kaya* (translated from Malay "rich people"). The Dutch authorities feared their political influence in their homeland. The first political exiles were the rulers of Sumatra, Sheikh Abdurahman Matahe Sha and Sheikh Mahmud.

In 1694 the most famous exiled "rich man" arrives, Sheikh Yusuf from Makassar (born in 1626 in Goa in the East Indies, died in 1699). He arrived on April 2 aboard *De Voetboog* with his 49-member retinue, which included his 2 wives, 2 slaves, 12 children, 12 imams and several friends with their families. The Governor of the Cape Colony, Simon van der Stel, greeted him. They were settled near Cape Town. Sheikh Yusuf not only did not find himself in isolation, but also became the founder of the first Muslim community in South Africa. The place where Sheikh Yusuf lived was named Makassar in memory of his distant homeland, the city of the same name. The place of the alleged burial of the sheikh is now considered a *karamat*, that is, a miraculous place, revered by local residents to this day.

In 1697, another person significant for the history of South African Islam arrives Raja Tambora Abdul Basi Sultani. Brought to the cape in chains, he was sentenced for opposing the Dutch East India Company. Upon arrival at the cape, he was placed in a stable in the Cape Town Fortress, but at the request of Sheikh Yusuf, the authorities of the Cape Colony transported him to the town of Vergelegen near Stellenbosch (40 km from Cape Town) to live in isolation from other political exiles. Raja Tambora was a Hafiz of the Qur'an, and in the same 1697, he wrote down the first Qur'an from memory in the Cape Colony and presented it to the Governor of the Cape Colony, Simon van der Stel.

Another prominent Muslim leader at the Cape was the famous Tuan Guru (translated from Malay as "Master Teacher"), whose full name was Abdullah ibn Qadi Abd-al-Salam. At one time, he was the prince of the principality of Tidore. He was imprisoned on Robben Island, near Cape Town. While in captivity, he wrote several copies of the Qur'an from memory. As it turned out later, after the appearance of the printed Koran, there were very few errors in the handwritten copies of the Qur'an Tuan Guru. He is also the author of the work on Shafi'i fiqh (Muslim jurisprudence) "*Marifat al-Islami wa-limani*", written in Malay in Arabic script, the manuscript is now kept by the descendants of Tuan in Cape Town.

By 1875, the Colony numbered 10,817 "Malays" in the colony, most of whom lived in Cape Town, the rest in Greenpoint, Rondebosch, Newlands, Weinberg, Simonstown, etc. By 1881, seven mosques had already been built in Cape Town. This year, the first Hanafi mosque appears, thanks to the efforts of the theologian Abubakr Efendi sent from the Ottoman Empire, a little later, thanks to the efforts of "Indian" Muslims, a second Hanafi mosque appears in the same city. Before that, mosques were predominantly Shafi'i, since Malaysian Islam was predominantly Shafi'i madhhab.

Over the years, various Malay organizations appear in South Africa. In 1909, Muhammad Arshad Gamiet founded the South African Malay Association, whose mission was to help promote the education and social development of Cape Town's Muslims. From 1923 to 1945, there was the Cape Malay Association, a political organization created for the active participation of Malays in the country's politics, as well as for rapprochement with whites, but later Muslims and non-Muslims for deviating from the position of the «Muslim brotherhood» in favor of ideas of nationalism criticized this association.

Contemporary South African Malays are keenly aware of their particular identity. During the apartheid years, the Malays were legally included in the racial category of "colored", but they tried to separate themselves from the "colored", referring to their overseas origins (Indonesia and Malaysia), religion and belonging of their culture to the world of the East, not Africa [4]. Thus, the Malays wanted to get more rights for themselves in the conditions of racial division of the population, but they failed to achieve this. Nevertheless, it cannot be said that the Malays perceive themselves as a diaspora, the process of the formation of a diaspora is still ongoing, and in the future, it will obviously come to its logical conclusion.

The terms Cape Muslims, Cape Malays, and Malay Muslims, while similar in appearance, are actually three different markers. Initially, the Malays were the only Muslims on the Cape, beginning in the 17th century. Later, other ethnic groups were added to them (Gujarats, Zanzibarians, Africans, etc.), and therefore the designation "Cape Muslims" can now refer to any ethnic group professing Islam in the Western Cape. The term "Cape Malays" has a purely territorial and ethnic connotation, that is, "ethnic Malays who settled in Cape Town"; the name "Malay Muslims" distinguishes those Malays who consider themselves Muslims.

Muslims From Among the "Free Blacks" (Vryezwarten)

Their appearance is associated with 1743, when *free blacks* from the Malay Archipelago began to be brought to the Cape in large numbers to perform various works, including military service. It is believed that they all joined the ranks of Muslims and, moreover, later became teachers and imams, and played a significant role in strengthening Islam in the Cape Province [6]. The main occupation of the "free blacks" were various crafts, in which they excelled considerably. During this period, Islam on the Cape begins to actively develop; a number of reasons facilitated this:

- 1) Islam has consolidated the "non-white" inhabitants of the Cape colony in their aspiration to gain spiritual liberation and unity;
- 2) Sometimes, the slave owners themselves encouraged the conversion of a slave to Islam, since the law prohibited the sale of Christian slaves;
- 3) Muslim slaves, in view of their sober behavior, were more willingly taken as servants.

Zanzibari Muslims

In 1873, the first 113 freed slaves arrived in the South African province of Natal from the island of Zanzibar (near what is now Tanzania) to undergo training on agricultural plantations. A year later, 81 more freed slaves from Zanzibar are added to them. Gradually they become freelance workers in Natal. Since they were all Muslims, they built a room for daily prayers. Subsequently, in 1899, this room was rebuilt as a real mosque. In addition, in 1876, another 226 freed slaves arrived in Port Natal, reaching 420 Muslims. In 1880, the import of freed slaves from Zanzibar ceased [7].

Muslim Indians

Labor immigration of Indians to South Africa began in 1860, when Indian workers began to arrive on ships in Durban for mines, for plantations of sugar cane, tea and coffee.

Since 1869, Muslims from India from the states of Gujarat (Kathiawar Peninsula) have arrived in South Africa; they were called "passengers", as they themselves paid for their travel expenses. Their goal was commerce. They worked as wholesalers and retailers. They called themselves "Arabs"; apparently, they wanted to be considered Muslims. These wealthy merchants brought rice, ghee, tamarind, dried fish, etc. from India. In social terms, the Indians were not a homogeneous mass: Muslim merchants who called themselves Arabs; Farsi who called themselves Persians; and ordinary Hindu employees who mixed with "Arabs" to be taken seriously. Most of the immigrants were poor Indians [10].

In 1870, the first mosque in Johannesburg, the *Juma Masjid*, was founded. In 1870, Abu Bakr Amod [Javeri] from Porbandar, India, arrived in Natal in South Africa. He was a real Muslim, unlike the Gujarati "Arabs", and in Natal, he acquires a place for the construction of a *mosque* in the city of Verulam, 27 km from Durban.

In the future, the arrival of Gujarati people in Natal and other parts of South Africa continued, many Indian trade enterprises were created; mosques were built in Durban, Johannesburg, Pretoria and other parts of the country, as well as charitable institutions. In 1890, there were already up to 40 thousand Indians here. Most of the "contracted" Indians at the end of the contract decided to stay in Durban, acquired small plots of land, grew vegetables, earned a living, and raised children [10].

Indian merchants were so active that local whites had to pass legislation to restrict the growth of their trade.

Today in South Africa there are up to several hundred thousand descendants of Indians, almost as many as Malays.

Sufism, Shafi'is and Hanafis in South Africa

Chronologically, Sufism was the first Islamic movement in the Cape Colony in South Africa. Sufis made significant contributions to the rise of Islam in South Africa, created literature and introduced the teaching of Islam [6]. South African Muslims revere Sufi *karamata* to this day.

Shafi'i School. Tuan Guru, "Master", who was exiled to Robben Island near Cape Town in the 1780s, introduced this school to South Africa. While imprisoned on the island, he wrote several copies of the Qur'an from memory without error, and in 1781, a book on Islamic law in which he reaffirmed his commitment to Shafi [8]. The Shafi'i

madhhab (Arabic: المذهب الشافعي) is one of the legal schools in Sunni Islam, founded by Muhammad ibn Idris ash-Shafi'i. This madhhab developed under the strong influence of the Hanafi and Maliki madhhab and adopted their peculiarities [2]. Until now, ninety percent of Muslims on the Cape are Shafi'i, which clearly indicates the influence of Tuan Guru.

The Hanafi School, one of the oldest schools in Islam, was the official school of the Ottoman Empire. Abu Bakr Effendi, a Turkish theologian, introduced it to the Cape in 1863. He was sent to the Cape to settle religious disputes that broke out within the local Muslim community. After arriving in the Cape, Abubakr Efendi faced resistance from the Shafi'i Malays, who did not share the views of the newly arrived Turkish missionary. In particular, when it comes to eating crustaceans, the Shafi'is held the view that they, being the inhabitants of the sea, were allowed (halal), while the Hanafis considered crayfish to be scavengers and, therefore, unlawful food (haram) [9]. Under Abubakr Efendi, Turkish fez for men and headscarves for women were introduced, which were not previously available on the cape. Under Abubakr Efendi and after him, the number of Hanafis began to increase. Many young Muslims in South Africa saw Hanafism as preferable to Shafiism; this school emphasizes the role of reason and is, in comparison with other schools, more liberal and flexible in relation to other forms of belief and cultures. Hanafism was inculcated in educational institutions at mosques through the reading and study of the relevant revelatory and theological literature.

Muslims today constitute an integral part of the post-apartheid nation and are prominently represented in politics, education, business, media and the arts, although they make up less than two percent of the country's population [1].

Conclusion

Thus, we have shown that Islam appeared in South Africa because of the resettlement of exiled Muslims from the Malay Archipelago in the 17th century. This was facilitated by the activities of the Dutch East India Company, which first founded the city of Kaapstad near the Cape of Good Hope for the purpose of transit of ships with people and goods from the Netherlands to Batavia (present-day Indonesia). Then this remote point of the Earth began to be used, among other things, as a place for exile for Malay prisoners who were Muslims by religion. Thus, the global changes that took place in the 17th century in connection with the development of navigation and the discovery of new lands, contributed to the spread of Islamic culture throughout the world.

The research results will be of interest to all those who study the history of Islam, the history of Islam in Africa, the evolution of Islamic culture, its various forms and trends. The research materials can be used in universities when teaching a course in the history of Islam.

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