

SAVAGE-VICTIM-SAVIOUR AND THE VEIL

Written by *Rishabh Bajoria*

4th Year BA LLB Student, Jindal Law School

Abstract

In this paper, I critically analyse the debate in Western Democracies around the Burqa/ Islamic Veil through Kenyan scholar, Makau Matua's Savage-Victim-Saviour Prism. In the first section, I will briefly describe Matua's argument that the human rights corpus is marked by the SVS metaphor and is in historical continuum with two 18th century European projects, Enlightenment and Orientalism. In the second section, I look at the debate surrounding the ban on the Islamic veil in the public space, particularly in Europe and the in the United States of America. In the last section, I argue that this debate is deeply steeped in the SVS metaphor-Islamic culture, represented by a rigid Sharia is the savage culture oppressing the helpless Muslim women by either forcing them to wear the veil or by indoctrinating them from birth into "consenting" to wear the veil. Since this veil "strips women of [their] identity", the saviour (European man/woman) must intervene to protect Islamic women from the clutches of the barbaric, Muslim man seeking to uphold his "savage culture". Lastly I argue that this debate is part of a larger historical trajectory which can be traced back to the birth of the Enlightenment, where the (Western) European man has attempted to civilise non-European cultures by saving the non-European women from the grasp of the non-European man.

Kenyan legal scholar, Makau Matua's central argument is that piercing through the universal claims of the international human rights corpus by placing the corpus in its political and intellectual historical trajectory, we see that the regime is in continuum with the 18th century European Enlightenment empowered Oriental civilising project.¹ This latest instalment in the 300-year-old civilising project is marked by the Savage-Victim-Saviour metaphor. In the Enlightenment tradition, history is often viewed as a universal (read European-largely Western European) march of progress from the Dark Ages of barbarism to the coming of civilised modes

¹ Makau Mutua. "Savages, victims, and saviors: the metaphor of human rights." *Harvard International Law Journal* 42 (2001): 201.

of living.² This teleological understanding of history undergirds the use of terminology like ‘progressive’ to describe social justice movements.

The arrival of this *Civilisation* is said to be evidenced by the emergence of the nation-state and the accompanying rights discourse. Human rights are meant to limit the power the nation-state can exercise upon the main subject of Liberal thought, the individual. This is meant to safeguard the freedoms and liberties of individuals. As American political scientist, Francis Fukuyama said after the disintegration of the Soviet Union in 1991, the nation-state form is the ultimate form of political organisation and indicates the “end of history”³. 44 years earlier, the rhetoric around the Universal Declaration of Human Rights was similar. The UDHR bestowed a “naturalness, transhistoricity, and universality to rights”⁴, thereby negating the historical contingency and burdens of this rights discourse. Further, such universality sanitises the rights discourse of its status as the legatee of a violent, both physical and epistemological⁵, historical process, that is, European Enlightenment.⁶ The universality of these Western European ideas is sought to be achieved by transforming non-Western societies/ cultures in the former’s mould.⁷

Matua argues that the Savage-Victim-Saviour metaphor of the human rights corpus is pivotal for this transformational project. Human rights are often conceptualised as tools in the hands of the saviour (European) to protect the helpless victim (non-European) from the savage culture (non-European). The savage is constructed as an abhorrent negation of humanity, inflicting human rights abuses on the defenceless victim. Usually, formerly colonised States are the savage. However, Matua argues that the State is simply an empty vessel which contains the savage culture. So, the human rights corpus is really attacking the cultural deviation from its own, supposedly transhistorical, universal norms.

² Pankaj Mishra. *AGE OF ANGER: A HISTORY OF THE PRESENT*. Macmillan, 2017.

³ Francis Fukuyama. *THE END OF HISTORY AND THE LAST MAN*. Simon and Schuster, 2006.

⁴ Makau Mutua. “Savages, victims, and saviors: the metaphor of human rights.” *Harvard International Law Journal* 42 (2001): 201.

⁵ See Michel-Rolph Trouillot. *Silencing the past: Power and the production of history*. Beacon Press (1995).

⁶ See Ikechi Mgbeoji. “The Civilised Self and the Barbaric Other: imperial delusions of order and the challenges of human security.” *Third World Quarterly* 27.5 (2006): 855-869.

⁷ Makau Mutua. “Savages, victims, and saviors: the metaphor of human rights.” *Harvard International Law Journal* 42 (2001): 201.

The “victim” in the human rights corpus has a specific meaning, distinct from its colloquial meaning. The victim is that individual whose human rights have been violated. So, if X’s Facebook status is arbitrarily taken down due to a Government order, X is a victim because his freedom of expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) has been violated. However, if Y dies due to starvation caused by forces of global capitalism, Y is arguably not a victim because socio-economic rights are secondary to civil and political rights.⁸ Thus, history does not recognise the 10 million who died in the Great Bengal Famine between 1769 and 1773-which Mike Davis has called a Late Victorian Holocaust⁹-as “victims”. That category is reserved for the Jewish subjects of Hitler’s Final Solution.¹⁰ The deviant savage culture thus violates the human rights of the victim.

The stage is set for the White “Saviour” to swoop in and protect the victim from the savage culture through the discourse of human rights. This saviour is usually either an agent of a Western European State/United States of America or an International NGO like Amnesty International. Matua argues that through their zealotry in enforcing human rights, they are the latest carriers of Eurocentrism and the Christian Missionary zeal, in the footsteps of European colonialists¹¹ like Thomas Macaulay in British India and Cecil Rhodes in contemporary South Africa.

In this section, I briefly look at the debate surrounding the Islamic veil in Europe and USA. Specifically, I focus on the rhetoric surrounding the need for banning the veil to strive towards gender equality. A Report “on the wearing of the full-face veil on national territory” compiled by the French Government characterised the veil as a “*form of subservience and, by its very existence, negated both the principle of gender equality and that of the equal dignity of human beings*”¹². Therefore, to “release women from the subservience of the full-face veil”¹³, the report argued for a tripartite approach: “*to convince, [and] protect women and envisage a*

⁸ Makau Mutua. “Savages, victims, and saviors: the metaphor of human rights.” *Harvard International Law Journal* 42 (2001): 201.

⁹ Mike Davis. *LATE VICTORIAN HOLOCAUSTS: EL NIÑO FAMINES AND THE MAKING OF THE THIRD WORLD*. London: Verso, 2002.

¹⁰ I recognise that there are other reasons for this historical amnesia, such as the skin colour of the victims. However, I would argue that the mode of deprivation of life is also a relevant factor in this process of forgetting.

¹¹ Makau Mutua. “Savages, victims, and saviors: the metaphor of human rights.” *Harvard International Law Journal* 42 (2001): 201.

¹² *Case of S.A.S. v France*, Application No. 43835/11, ECtHR, para 17.

¹³ *Case of S.A.S. v France*, Application No. 43835/11, ECtHR, para 17.

ban”¹⁴. In a similar vein, then First Lady of the United States, Laura Bush, emphasised the important role of US Military intervention in Afghanistan in liberating the women of Afghanistan, particularly from behind the veil.¹⁵ This rhetoric was echoed in American popular culture, with extensive airtime given to the Revolutionary Association of Women of Afghanistan’s (RAWA) criticism of the burqa, from the popular news channel, CNN, to talk-show host and author, Oprah Winfrey.¹⁶

In the European Parliament, the debate around banning the burqa witnessed similar arguments. The German Representative to the Parliament called for a “*Europe-wide ban on face-covering veils*” to achieve gender equality.¹⁷ On 13 March 2007, the Parliament adopted Resolution 2006/2132 (INI) calling for its member States to take measures to protect women from “*deprivation of (their) identity*”¹⁸ caused when “*women are forced to wear the burka, the niqab, or a mask*”¹⁹. One could argue that this Resolution restricts itself to instances where women are being “*forced*” to wear the veil, and hence does not contemplate a blanket ban.

However, the White European of the 21st century, just like his ancestors of the last three centuries, does not afford much agency to the Muslim woman thereby rendering her “*consent*” meaningless. For instance, in two cases before the European Court of Human Rights²⁰, well-educated, independent women argued that they wore the burqa of their own volition, and did not see the burqa as oppressing their gender identity. However, the Court held that the burqa “*appears to be imposed on women by a precept which is laid down in the Koran and which . .*

¹⁴ *Case of S.A.S. v France*, Application No. 43835/11, ECtHR, para 17.

¹⁵ Lila Abu-Lughod. “*Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others.*” *American anthropologist* 104.3 (2002): 783-790.

¹⁶ RAWA’s simultaneous opposition to US intervention though was conveniently left out of the narrative. Abu-Lughod, Lila. “*Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others.*” *American anthropologist* 104.3 (2002): 783-790. RAWA’s simultaneous opposition to US intervention though was conveniently left out of the narrative.

¹⁷ Kayvan Farzaneh, *Europe’s Burqa Wars*, Foreign Policy (May 11, 2010), <http://www.foreignpolicy.com/articles/2010/05/11/europe-s-burqawars>.

¹⁸ European Parliament resolution of 13 March 2007 on a Roadmap for equality between women and men (2006-2010) (2006/2132(INI)), available here < <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0063+0+DOC+XML+V0//EN>>

¹⁹ European Parliament resolution of 13 March 2007 on a Roadmap for equality between women and men (2006-2010) (2006/2132(INI)), available here < <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0063+0+DOC+XML+V0//EN>>

²⁰ *Dahlab v Switzerland* App No 42393/98, ECtHR, Admissibility decision; *Leyla Sahin v Turkey* (2007) 44 EHRR 5.

. is hard to square with the principle of gender equality.”²¹ Hence, the Court upheld the restrictions on wearing the veil in both cases stating that the three-part test (the touchstone of adjudicating the validity of a human rights restriction under the European Convention on Human Rights) had been fulfilled since the restriction was proportionate to the legitimate aim pursued.

Judge Tulkens in her dissenting opinion in *Sahin* criticised this for being a simplistic understanding of Islam. The majority does not care to furnish any further reasoning about how the burqa is “imposed” upon Muslim women.²² Is this “imposition” any different than other practices in religions? Or is it that different from social norms of clothing, enforced through the “tyranny of fashion”.²³ Furthermore, to ground this supposed imposition in the Koran is an ignorant understanding of a rich text with diverse interpretations.²⁴ I argue that the Judges were simply reproducing what are deemed to be self-evident truths in the “West”, that Islam as a religion is systematically oppressive of women. Therefore, they found no reason to substantiate this assertion further.

In this section, I will argue that the debate surrounding the veil as violative of gender equality is a classic example of Mutua’s SVS metaphor. Islamic culture is constructed as the savage culture which strips women of their identity and forces them into subservience by wearing the veil. This understanding has become increasingly common-sensical. That is why the Judges of the Grand Chamber of the European Court of Human Rights declared, in merely a sentence, that the Koran is oppressive to women, and *imposes* upon women several practices which are patriarchal. Islamic culture is thus clearly deviating from human rights norms, and since human rights is the symbol of the fruition of human progress, the culture deviating from this corpus is a negation of humanity itself.

The Muslim woman is seen as the helpless, voiceless woman being oppressed by her religion. Even if she says she wants to wear the veil, such consent is said to be “manufactured”²⁵. For

²¹ *Dahlab v Switzerland* App No 42393/98, ECtHR, Admissibility decision, para 15. (also cited in *Sahin* decision, para 111)

²² *Leyla Sahin v Turkey* (2007) 44 EHRR 5, (J Tulkens Dissent), para 12.

²³ Beverly Lemire, ed. *The Force of Fashion in Politics and Society: global perspectives from early modern to contemporary times*. Ashgate Publishing, Ltd., 2010.

²⁴ Tom Lewis. "What not to wear: religious rights, the European Court, and the margin of appreciation." *International and Comparative Law Quarterly* 56.02 (2007): 395-414.

²⁵ As if there can be consent of any other kind.

instance, in *Sahin*, despite the applicant, a young university student, saying that she wore the burqa willingly, the Court deemed her to be oppressed. In her dissenting opinion, Tulkens criticised the majority's paternalism in robbing the applicant of the agency to decide for herself whether something was oppressive to her, arguing that "*Equality and non-discrimination are subjective rights which must remain under the control of those who are entitled to benefit from them.*"²⁶ However, without the Muslim woman being unable to speak for herself, it would be impossible for the White Male Judges²⁷ to be her saviour. The European Court of Human Rights is merely one example. The other instances cited above, from Laura Bush to the European Parliament, are similar instances where European/American institutions are taking up the mantle of redeeming the Muslim woman in the name of human rights-specifically, gender equality.²⁸ Even INGOs like Human Rights Watch criticised the ban on the veil as disproportionate, but still argued for the veil being against gender equality.²⁹

This saviour complex has a long historical trajectory. In 1768, when Catherin the Great invaded the Islamic Ottoman Empire, Voltaire, the great Enlightenment philosopher, justified the invasion as a liberation of Muslim women.³⁰ Colonial powers such as the British and the French furnished similar arguments to legitimate their own rule in colonies. The former in India and Egypt in the context of Sati (the frequency of which was blown out of proportion by the British to depict the savagery of Indian society)³¹ and the veil³². On May 16, 1958 French Generals who wanted to retain control of Algiers despite the widespread foment against colonial rule,

²⁶ *Leyla Sahin v Turkey* (2007) 44 EHRR 5, (J Tulkens Dissent), para 12. I understand the limitation of affording people too much agency as well, given how human choices are shaped by social structures. As Saba Mahmood puts it, "The desire for freedom and liberation is a historically situated desire whose motivational force cannot be assumed a priori, but needs to be reconsidered in light of other desires, aspirations, and capacities that inhere in a culturally historically located subject"- Saba Mahmood, 2001, "Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival". *Cultural Anthropology* 16(2):202-235.

²⁷ 12 Male judges and 4 female judges, one of whom dissented.

²⁸ In this essay, I have chosen to restrict myself to Western Liberal Democracies. However, similar arguments can be made for the debates surrounding the UCC/ Abolition of Triple Talaq in the Indian context.

²⁹ France: Submission to the National Assembly Information Committee on the full Muslim Veil on National Territory, available at < <https://www.hrw.org/news/2009/11/20/france-submission-national-assembly-information-committee-full-muslim-veil-national>>

³⁰ Pankaj Mishra. *AGE OF ANGER: A HISTORY OF THE PRESENT*. Macmillan, 2017.

³¹ Lata Mani, "Contentious Traditions: The Debate on Sati in Colonial India", in *Recasting Women:Essays in Colonial History*.

³² Leila Ahmed, 1992, *Women and Gender in Islam*. New Haven, CT: Yale University Press

rounded up several Muslim women from neighbouring areas, and in a massive public demonstration, unveiled them as a sign of liberation.³³

CONCLUSION

Locating the debate on the veil in Western democracies in the 21st centuries in continuity with debates around issues of “gender equality” framed by colonial powers in the 18th, 19th and 20th centuries demonstrates that the human rights corpus is in continuum with the European Oriental civilising projects of the past three centuries. To construct a culture as savage, one must borrow on Oriental ideas of essentialising the Oriental culture to norms which are portrayed as abhorrent violations of universal values. Thus, the Oriental Other is constructed in the mind of the Occident, in this case, the Saviour, as lacking in “civilisational values”.³⁴ These civilisational values can be imparted by the saviour. However, one must not fall into the nativistic trap of reifying culture, thereby ignoring the systems of oppression within indigenous cultures. In other words, as Mutua argues, there is a value to the human rights system.

However, to explore this value, this system must dispense with its lie of universality and acknowledge its own historical contingency. Only then can it be truly open to inputs from other cultures, which is necessary for a more inclusive human rights corpus. The everyday foot-soldiers of human rights have to be shaken out of their collective historical amnesia, and must acknowledge the (perhaps unintentional) racism/ xenophobia latent in their projects. These foot-soldiers might be well-meaning, but they have to understand the historical legacy in which they are participating. Without this self-reflection and acknowledgement, human rights theory will be stuck in the binary between universalism and cultural relativism.

³³ Marnia Lazreg, 1994, *The Eloquence of Silence: Algerian Women in Question*. New York: Routledge.

³⁴ Edward Said, 1978. *Orientalism: Western representations of the Orient*, Pantheon.