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'Living Together' or Freedom of Religion and Belief: Ban on Face Covers by European States

'Hidup Bersama' atau Kebebasan Beragama dan Berkeyakinan: Larangan Penggunaan Penutup Wajah di Negara-Negara Eropa

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ABSTRACT: Many European States introduced general or specific bans on face covers and religious symbols in public schools, universities and public places. The ban on religious symbols and face covers in public places and educational institutions has escalated the tensions, disbelief and mistrust between adherents of different religions and beliefs. This paper applies a doctrinal legal research methodology mixed with desk research, analyzing international human rights instruments and important landmark judicial precedents to assess the legal scope and limitations on freedom of religion and belief and its consequences. Although limitations to freedom of religion and belief are permitted in human rights law, European States justified the limitations on the basis of 'living together' contrary to the provisions of the International Covenant on Civil and Political Rights. The acceptance of the conditionality of 'living together' by the European Court of Human Rights set a disturbing precedent and it is applied in different societies in enforcing the majoritarian view and undermining the rights of minorities. Although the Human Rights Committee determined that Article 18(3) of the International Covenant on Civil and Political Rights must be strictly interpreted and the term 'living together' is a vague concept and made recommendations, the European State parties have not taken any action to implement the recommendations. Since the Human Rights Committee has no power to enforce the recommendations, the mere essence of the treaty is negated, and it provides a dangerous precedent for other States around the globe to follow introducing limitations on the freedom of religion and belief.

ABSTRAK: *Negara-negara Eropa memperkenalkan larangan umum atau khusus pada penggunaan penutup wajah dan simbol keagamaan di sekolah umum, universitas, dan tempat-tempat umum. Larangan penggunaan simbol keagamaan dan penutup wajah di tempat-tempat umum dan lembaga pendidikan telah meningkatkan ketegangan, dan ketidakpercayaan antara penganut agama dan kepercayaan yang berbeda. Artikel ini menerapkan metodologi penelitian hukum doktrinal yang dilengkapi dengan kajian pustaka, menganalisis instrumen-instrumen hak asasi manusia internasional dan preseden-preseden peradilan penting untuk menilai ruang lingkup hukum dan pembatasan kebebasan beragama dan berkeyakinan serta konsekuensinya. Meskipun pembatasan kebebasan beragama dan berkeyakinan diizinkan dalam hukum hak asasi manusia, Negara-Negara Eropa membenarkan pembatasan tersebut atas dasar 'hidup bersama' yang bertentangan dengan ketentuan Kovenan Internasional tentang Hak-Hak Sipil dan Politik. Penerimaan persyaratan 'hidup bersama' oleh Pengadilan Hak Asasi Manusia Eropa menetapkan preseden yang mengganggu dan diterapkan di berbagai Masyarakat dalam menegakkan pandangan mayoritas dan merongrong hak-hak minoritas. Meskipun Komite Hak Asasi Manusia menetapkan bahwa Pasal 18(3) Kovenan Internasional tentang Hak-Hak Sipil dan Politik harus ditafsirkan secara ketat dan istilah 'hidup bersama' merupakan konsep yang samar serta telah memberikan rekomendasi, Negara-Negara Eropa belum mengambil tindakan apa pun untuk mengimplementasikan rekomendasi tersebut. Karena Komite Hak Asasi Manusia tidak memiliki wewenang untuk menegakkan rekomendasi tersebut, esensi perjanjian tersebut menjadi tidak berlaku dan menjadi preseden berbahaya bagi negara-negara lain di seluruh dunia untuk menerapkan pembatasan kebebasan beragama dan berkeyakinan.*

Keywords:
European; face cover; freedom; living together; religion

Kata Kunci:
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1. Introduction

Many European States introduced general or specific bans on face coverings and religious symbols in public schools, universities and public places. France, Belgium, Bulgaria, Austria, Denmark and Switzerland have introduced a nationwide general ban while Spain and the Netherlands have introduced nationwide specific bans. Belgium, Bulgaria and Spain have imposed both national and local level specific or general bans and Germany and Italy have imposed bans in the local provincial or municipal level only.[1] The ban on face covers made many controversies among Muslim women as it imposed restriction on their face veil which they believe it is a part of their religious practice and expression. Finland, Germany, Latvia and Luxemburg are States which are considering on a ban and there are many States from the European Union with failed proposals on enacting a similar law in prohibiting the face cover.[2]

The bans were imposed citing different reasons and different legal mechanisms of enactment and enforcement. For example, Switzerland introduced the general ban on face covers through a majority of 51.2% votes in a referendum.[3] Only 51.4% of total voter turnout was seen at the referendum and it has enabled the amendment of the Swiss Constitution by including the new Article 10 (a) prohibiting the covering of one's face in public places.[4] The cantons are given a period of two years to enact the new laws and the laws are effective from January 2025.

The ban on face covers and religious symbols including religious clothing in public schools, universities, workplaces and public places have led to many controversies regarding upholding the right to freedom of religion and belief. The limitations imposed by States on the manifestation of religious practices and discriminatory laws and regulations have further escalated the tensions, disbelief and mistrust between adherents of different religions and beliefs. There have been incidents of violence and hostilities against women wearing the veil in the streets, public transport, markets and public spaces in many European States including France, Netherlands and Belgium, while witnesses to such incidents are not intervening against such intimidation.[5] Furthermore, there have been incidents of deprival of employment opportunities and assault due to the wearing of face covers in European Countries as well as some other countries around the globe.[6] There has been opposition by the victimized persons and the public against the ban and some women sought justice from both domestic and regional courts.[7]

This paper discusses the limitations imposed by European States on freedom of religion and belief through the introduction of bans on face coverings contradicting the States' obligations under the International Covenant on Civil and Political Rights. The research methodology adopted a desk analysis of the existing literature and a doctrinal analysis of the International Covenant on Civil and Political Rights [8] and the protocols, General Comments to the International Covenant on Civil and Political Rights and European Convention on Human Rights.[9] Additionally, the article employs legal analysis of European Court of Human Rights decisions, relevant European legislation, and recommendations of the Human Rights Committee related to the topic.

2. Method

The research methodology adopted a desk analysis of the existing literature and an analysis of the International Human Rights Instruments including the International Covenant on Civil and Political Rights and its protocols, General Comments to the International Covenant on Civil and Political Rights and European Convention on Human Rights. Decided cases of the European Court of Human Rights, recommendations of the Human Rights Committee are analysed with other research articles related to the topic.

1 Open Society Justice Initiative, *Briefing Paper: Restrictions on Muslim Women's Dress in the 28 EU Member States* (2018).
2 Ibid.
3 Al Jazeera, "Swiss Vote to Outlaw Facial Coverings in 'Burqa Ban' Poll," March 2021.
4 Jenny Gesley, "Switzerland: Burqa Ban Approved by Voters," Library of Congress, April 2021.
5 UN Office of the High Commissioner for Human Rights, *Human Rights of Women Wearing the Veil in Western Europe* (2019).
6 Pew Research Centre, *Restriction on Women's Religious Attire* (2016).
7 Case of S.A.S. v France (Application No. 43835/11) (European Court of Human Rights 2014).
8 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171 (1966).
9 European Convention on Human Rights, European Treaty Series, No. 5 (1950).

3. Findings and Discussion

3.1 Freedom of Religion and Belief under the International Covenant on Civil and Political Rights and European Convention on Human Rights

Every human being is entitled to freedom of religion, including the right to change their religion or belief and to manifest one's religion or belief with other members in community or in private and to teach the religion and belief.[10] The freedom of religion and belief is recognized in the International Covenant on Civil and Political Rights. Article 18 of the International Covenant on Civil and Political Rights states that a person's freedom of religion includes 'freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching'. The Covenant also provides provisions for the limitations in Article 18(3) of the Covenant, prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' The General Comment No. 22[11] adopted by the Human Rights Committee interprets freedom of religion and belief ensured by the International Covenant on Civil and Political Rights. The Committee interprets the scope of Article 18 to include 'theistic, non-theistic and atheistic beliefs and stresses that the State parties should broadly interpret the terms "belief" and "religion" and not to limit the scope of the Article 18 only to traditional religions or beliefs.

Article 9 of the European Convention on Human Rights[12] ensures freedom of religion and belief, the right to change one's religion or belief and freedom to manifest one's religion or belief, including the right to worship, teaching, practice and observance. The particular Article of the European Convention on Human Rights is a reconstruction of Article 18 of the International Covenant on Civil and Political Rights[13] and Article 18 of the UDHR.[14]

3.2 Limitations under International Covenant on Civil and Political Rights and the European Convention of Human Rights

The International Covenant on Civil and Political Rights and European Convention on Human Rights permit the limitation of freedom of religion and belief in specific situations. Article 18 (3) of the former[15] and Article 9 (2) of latter[16] contain identical provisions on limitations. Freedom of religion and belief cannot be derogated on national security grounds as stipulated in Article 4 of the Covenant. General Comment No. 22,[17] adopted by the Human Rights Committee, is important in understanding the possible limitations to the right. General Comment No. 22 does not permit any limitations to the freedom to adopt a religion or belief. It is the internal faith that a person formulates in their religion or belief. However, Article 18 (3) of the International Covenant on Civil and Political Rights[18] permits the limitation of the freedom of manifestation of the religion as 'prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The State parties are not permitted to impose restrictions apart from the grounds specified above, including on the grounds of national security. The General Comment recognizes various forms of manifestation including customary practices, ceremonial acts, dietary regulations, wearing distinctive clothing, etc. The Committee has adopted various approaches in considering the proportionality of the limitations. On certain occasions it has adopted a strict interpretation of the text and in certain occasions it has adopted an outcome approach, and it is difficult to identify a consistent approach by analyzing the jurisprudence of the Committee.[19] The different approaches adopted by the Committee indicate that it has considered each case in its merits.

10 Universal Declaration of Human Rights (1948).
11 UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, CCPR/C/21/Rev.1/Add.4 (1993).
12 European Convention on Human Rights, European Treaty Series, No. 5.
13 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
14 Universal Declaration of Human Rights.
15 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
16 European Convention on Human Rights, European Treaty Series, No. 5.
17 UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*.
18 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
19 Gehan Gunatilleke, "Criteria and Constraints: The Human Rights Committee's Test on Limiting the Freedom of Religion or Belief," *Religion & Human Rights* 15, nos. 1–2 (2020): 20–38.

3.3 Limitations Imposed by the European States

The Human Rights Committee in *Raihon Hudoyberganova v Uzbekistan*[20] affirmed that the headscarf and face cover are religious clothing and restrictions made by the State party were disproportionate under Article 18 (3) of the International Covenant on Civil and Political Rights. The Committee has reaffirmed that wearing a face cover or headscarf or head cover is a manifestation of religion and it cannot be restricted in an abstract manner. In Yaker v France[21] and *Hebbadj v France*[22] Human Rights Committee reaffirmed the right to wear the niqab which consists of the face cover and held that a law enacted to ban the face cover is disproportionate and violates the rights of the applicant. Apart from Muslim women, the Jewish skullcap or kippah and Sikh turban are also considered religious clothing. In *Bikramjit Singh v France*[23] the Human Rights Committee decided that the ban introduced by the French authorities in prohibiting religious symbols and clothing in public schools violated the freedom of religion and belief under the Covenant.[24] In addition to the Human Rights Committee the European Court of Human Rights and domestic courts on certain occasions in the region has upheld the right to wear religious clothing. In *Lachiri v Belgium*[25] the European Court of Human Rights held that Belgium violated her rights under Article 9 of the European Convention on Human Rights, by excluding her from the courthouse for wearing the hijab.

It is evident that many European States are following one another and introducing bans on face covers and specific bans are also imposed at workplaces, educational institutes and public places. Although communications are made to the Human Rights Committee and other UN mechanisms alleging violations, the States have established their own reasons in an abstract manner. France and Belgium are two States which have enacted laws in 2010 and 2011 imposing a general ban of face coverings. Analysis of the decisions of the Human Rights Committee and European Court of Human Rights on the bans in France and Belgium shall enlighten the grounds in which the Committee and the European Court of Human Rights and the States makes their decisions on the subject matter.

3.4 Analysis of Decisions of the Human Rights Committee and the European Court of Human Rights on Face Cover Bans in France and Belgium

France enacted the Act No 2010-1192 of 11 October 2010[26] and Belgium enacted the Law of 1 June 2011[27] imposing a general ban on wearing any articles to conceal the face in public spaces. A comparison of both the sections in the French and Belgian Laws illustrates the legislatures' intentions.

Sections 1 to 3 of the French Law No. 2010-1192 of 11.10.2010, illustrate the prohibition of concealment of face in public places in France. Section 1 states, that *"No one may, in public places, wear clothing that is designed to conceal the face"*. Section 2 states that the face coverings shall be justified for "…..*health, or occupational reasons or if it is worn in the context of sports, festivities or artistic or traditional events."* Section 3 of the Law imposes a fine on whoever breaches the law.

In contrast, in Belgium the ban was introduced initially at the municipal level in 2008. Three Municipalities adopted the following provisions to ban the face cover. *"….. wearing a mask or using any stratagem whatsoever for the purposes of concealing personal identity shall be forbidden at all times, at any public meeting and in all public places and in public thoroughfares".* And the by-law provided an exception to cover the face in public spaces on certain occasions. The by-laws consisted of the following wording *"…., a helmet, balaclava or other headgear may be worn where authorized by the legislation on the safety of workers or other legislation".*

Subsequently, amendments were introduced to the Criminal Code in 2011 and the relevant Article stated that *"….. persons who appear in a place that is accessible to the public with their faces completely or partially covered or hidden, such as not to be identifiable, shall be liable to a fine ……"*

20 Raihon Hudoyberganova v. Uzbekistan, "UN Human Rights Committee, Communication No. 931/2000," 2004.
21 Sonia Yaker v. France, "Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Communication No. 2747/2016," 2016.
22 Miriana Hebbadj v. France, "UN Human Rights Committee, Communication No. 2807/2016," 2016.
23 Bikramjit Singh v. France, "Communication No. 1852/2008: Human Rights Committee: Views Adopted by the Committee at Its 106th Session, 15 October–2 November 2012," 2012.
24 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
25 Affaire Lachiri c. Belgium (Requête No 3413/09) (European Court of Human Rights 2018)."plainCitation":"Affaire Lachiri c. Belgium (Requête No 3413/09
26 Act No 2010-1192 of 11 October 2010 Prohibiting the Concealing of the Face in Public, Unofficial Translation (2010).
27 Belgian Law of 1 June 2011 (2011).

Therefore, both French and Belgian laws imposed fines or imprisonments for persons who appear in public places partially or completely covering or hiding their faces, making it difficult to identify them. The French law explicitly states the use of 'clothing' while in contrast the Belgian criminal code states that covering of the face partially or fully by any article is prohibited while the municipal regulation states 'using a mask or stratagem' to cover the face.

Both States exempt the wearing of any clothing concealing the face for 'health reasons or on professional grounds, or is part of sporting, artistic or traditional festivities or events.' Although the Act does not explicitly mention that it intended to ban the articles of clothing worn for religious reasons, the ban is applicable for all articles of clothing except the exempted categories. It is evident that Belgium followed the footsteps of France in enacting the legislation. But both states draw on previous bans on freedom of expression, religion and belief as expressed through clothing or jewellery.

France banned the wearing of symbols and clothing manifesting a religious affiliation in educational institutions including public primary schools, secondary schools, and *lycees* under the Act No. 2004-228 of 15 March 2004.[28] There have been instances where French schools expelled students who did not abide by the law.[29] Belgium also adopted similar internal regulations under Article 3 of the Decree of the French Community adopted on 31 March 1994 'defining the neutrality of the education in the French Community' declaring that in schools of higher education approved by the Brussels city council, where students are banned from wearing signs, jewellery or clothing that reflect a political, philosophical or religious opinion or affiliation, and they are also banned from wearing any headgear.

The ban of religious symbols by both States in educational institutes and schools escalated tensions and there were instances of discrimination. The protests by Muslim women and university students in Wallonia region in Belgium was carried out as a result of the banning of religious symbols in educational institutions and as a result of the increased opposition the students were allowed to wear the hijab at those institutions.[30]

3.4.1 The Decisions of the European Court of Human Rights on the Bans in France and Belgium

Persons who are deprived of the right to wear religious clothing challenged the law alleging that the law discriminates on the basis of religion and there were occasions where the aggrieved persons sought redress through the domestic courts in both France and Belgium. However, upon being unsuccessful at domestic levels, aggrieved parties sought redress from the European Court of Human Rights. In *S.A.S. v France*[31] the Court decided that the limitation imposed by the French Government based on public safety and gender equality could not be considered to be legitimate aims of the law, however, the "respect for the minimum requirements of life in society" or of "living together" can be linked to the legitimate aim of the 'protection of the rights and freedoms of others'. The court held that the voluntary or systematic concealment of face is problematic in French society and it is below the concept of civility since the visibility of the face is an important component for social interaction in French society. The Court analyzed other grounds submitted by the State party for the ban. The Court held that the State cannot rely on gender equality in justifying the law since there are women defending the practice. The Court denied the grounds of human dignity for the ban since there is no contempt against the dignity of others. The Court also overruled the State's contention on public safety for the ban since there is no general threat to public safety. There has been a practice in the society during security checks that the women used to remove the face veil and establish the identity and appear bear headed for identity photos.

The Court extensively analyzed the concept of 'respect for the minimum requirements of life in society' or of 'living together' in arrival at its decision. The Court considered the State's argument that showing the face is imperative in social interaction in the French society and whether the ban is necessary in a democratic society. The Court considered the State's contention that the State has the responsibility to ensure a democratic society which respects civilian values and a space where everyone can live together while embracing diversity. It was argued that there were only 1,900 women who wore the Islamic veil in the year 2009 as opposed to a French population of 65 million and whether such a blanket ban is required. Further, the Court considered the impact on such women who wore the Islamic face veil and their right to privacy and restriction of their freedom. The Court also screened the text and intention of the legislature and whether there has been an intention towards banning the

28 LOI N° 2004-228 Du 15 Mars 2004 Encadrant, En Application Du Principe de Laïcité, Le Port de Signes Ou de Tenues Manifestant Une Appartenance Religieuse Dans Les Écoles, Collèges et Lycées Publics, accessed November 20, 2025.

29 International Center for Advocates against Discrimination, *When Discrimination Masquerades as Equality: The Impact of France's Ban of Religious Attire in Public Schools* (2014).

30 TRTWorld and agencies, "Lifting of Hijab Ban in Southern Belgium Offers Hope for Muslim Women," 2021.

31 *S.A.S. v France*.

Islamic full-face veil. The Court held that the legislature intended to ban any type of clothing or material covering the face, not solely the face veil. The Court concluded that the limitation is 'necessary in a democratic society' and it preserves the conditions of 'living together'. Under Article 9 of the European Convention on Human Rights[32] the Court considered 'living together' as an element under 'protection of the rights and freedom of others.'

However, two judges in a dissenting opinion held that the conditions of 'living together' are a vague concept and the scope of 'the rights and freedom of others' is not adequately established by the court in making the decision. The condition of 'living together' is not a direct right that is mentioned in the European Convention on Human Rights or in any international human rights instruments and it is a new concept. In the dissenting opinion, the judges analyzed the ban on the basis of pluralism and tolerance in contrast to the maxims of liberty, equality and fraternity which was the basis for the majority decision. The dissenting judges stated that inter personal exchange is imperative in 'living together' in a democratic society and emphasized that face plays an important role in human interaction. However, they also stated that it is wrong to determine that no human interaction can be made without showing the face. They further analyzed the instances where people in Europe interact without revealing their face. For instance, in European culture in carnivals costumes are worn without showing the face, skiing, riding motorcycles with full face helmets, are other instances where people interact and communicate with each other while covering their faces. The dissenting Judges were of the view that the blanket ban is a barrier for a pluralist society and a barrier for tolerance.

The conditions of 'living together' emphasizes the social interaction among people in French society where the face plays an important role and is a fundamental element in communicating or establishing relationships among people. It is evident from the analysis made throughout the case that, although the concept is not recognized or well established in human rights discourse, the customary practice in the French society of disclosing the face in the public sphere has been well valued and respected. To preserve the customary practice that was adhered to historically in French society the law was adopted and it was defended. With migration of people to France, the composition of the French society has changed and new religious identities and practices with clothing and cultures have become embedded in the society. Although the culture is dynamic and changes from time to time and from society to society, it is noteworthy that such change is not fully accepted by the French society. The interesting fact is that subsequent to the French ban of face cover many other European States banned the face cover following the footsteps of France.

Similar challenges were encountered by Muslim women in Belgium and remedies were sought from the European Court of Human Rights. In *Dakir v Belgium*,[33] the applicant sought justice from the European Court of Human Rights after she was not able to obtain an effective remedy. The applicant was a Muslim woman who decided to wear the *niqab*, a veil covering the face except the eyes when she was 16 years. She has worn the *niqab* of her own will and without any compulsion in accordance with her religious beliefs. She argued that the introduction of the legislation on complete or partial covering of the face in places that are accessible to the public with a fine or imprisonment has limited her rights under Articles 8, 9 and 10 of the European Convention on Human Rights.[34]

The decision in *Dakir v Belgium*[35] was much influenced by the decision of *S.A.S v France*.[36] The applicant's argument was that it is important in a democratic society to respect and uphold openness and tolerance, apart from revealing the face. It was also submitted that there is evidence of dress codes that are not compatible with the principle of 'living together' apart from the face cover. Meanwhile, her contention was that the ban was not proportionate to the objective as it disregarded religious freedom or cultural values. According to the third-party intervener's contention that in the light of 'living together' a blanket ban on face covers could be stated as a "sign of selective pluralism and limited tolerance". The State parties' contention was that full face veil was not a religious precept laid down in the Qur'an and that many Muslim-majority states have banned the full-face veil stating that it is against the spirit of Islam. Furthermore, it contested that in the society it is important to segregate philosophical, cultural or religious attachments and among other things maintain the "Church and State" separately. The grounds laid down in *S.A.S. v France* by the State party was reiterated by the State party in *Dakir v Belgium*.[37] The applicant in Dakir's case requested the Court to assess the proportionality of the ban by evaluating the Belgian society and the legislative process adopted by the Belgian legislature.

32 European Convention on Human Rights, European Treaty Series, No. 5.
33 Case of Dakir v Belgium (Application No. 4619/12) (European Court of Human Rights 2017).
34 European Convention on Human Rights, European Treaty Series, No. 5.
35 *Dakir v Belgium*.
36 *S.A.S. v France*.
37 *Dakir v Belgium*.

Ultimately, the European Court of Human Rights accepted the contention of the State party as in the case of *S.A.S. v France* on the notion of 'living together.'[38] However, the concurring opinion of Judge Spano joined by Judge Karakaş reiterated that *S.A.S v France* cannot be considered as a precedent in all circumstances by States and that the concept of 'living together' is not an explicit basis to limit such freedom under Article 9 of the European Convention on Human Rights.[39] As in the dissenting opinion of *S.A.S v France*,[40] the Judges Spano and Karakaş in their dissenting opinion stated that the term 'living together' is vague and it does not encompass any objective, identifiable grounds or concrete interpretation. The Judges in the concurring opinion stated that based on 'living together' regulation of any human behaviour in a democratic society is feasible, declaring that the accepted norm or the correct way is different from a certain practice. Further, they were of the opinion that 'living together' has close ties with majoritarianism and expressed their fears that it would lead to assimilation and violation of human rights since justifications are not made in concrete terms. Using the term 'living together' the majority has the leverage of determining how individuals shall behave or act in the society. Further, the notion of 'living together' may be interpreted in different ways in different societies and it would lead to violation of individual freedoms and restricting the rights of minorities and vulnerable communities. The Judges in the concurring opinion emphasized that there are possibilities of converting majoritarian ideas into laws and marginalize a particular religious faith, view or particular idea and restrict or violate human rights.

A similar judgement was made by the European Court of Human Rights in *Belcacemi and Oussar v. Belgium*[41] stating that the law banning the face cover did not violate the Rights enshrined under Articles 8,9,10 and 14 of the European Convention on Human Rights.[42] However, Judge Spano joined by Judge Karakaş reiterated in the concurrent opinion of the particular case iterated three reasons to not to set a precedential value of the findings of the judgement. Judges reiterated the fact that 'living together' is not mentioned clearly in the particular Articles 8 and 9 of the European Convention on Human Rights, and that in S.A.S. v France[43] it was justified under 'protection of the rights and freedoms of others.' Judges stated that the drafters of the Convention have intended to restrict human rights in the Convention for the enjoyment of the established human rights principles which are established in the Convention. As the second reason Judges stated that 'living together' is fictitious and uncertain and definite rights enshrined in the Convention cannot be limited by such vague notions. As the third reason Judges emphasize that it has links to majoritarianism, where it provides the opportunity for the majority of the population or the Governments to control people. Thereby, the Judges were very clear that the particular Judgement must not be used as a precedent. Furthermore, it was emphasized that restriction of human rights must be limited or restricted proportionately with proper analysis and identifying the reasons for such restrictions. Reasons such as intolerance, hostility or incompatibility with the practices of a certain society cannot be the basis of such restrictions on human rights.

In this background of prohibitions and restrictions imposed by France, Belgium and other European States in wearing religious symbols, in *Lachiri v Belgium*[44] the European Court of Human Rights held that excluding a woman from the Court of Appeals in Brussels for the reason of wearing an Islamic headscarf or *hijab* amounted to the violation of Article 9 of the European Convention on Human Rights.[45] A careful analysis of the judgment of the European Court of Human Rights emphasizes that the Court has considered the intention of the legislature in enacting the Article 759 of the Belgian Code of Civil Procedure which was adopted in 1967.[46] The Court considered the cultural context during the time of enacting the legislation. Headgears or head covers were removed as a sign of respect. However, in that context there were Catholic nuns who wore the headscarf and decided that such procedure is established for the smooth functioning of the courthouse and to remove disrespectful behavior. Further, the State had no intention of safeguarding secularism or protecting democratic values introducing the law, but the law was introduced to maintain proper order before the Judge.

Therefore, it is not appropriate to state that the European Court of Human Rights has adopted a uniform approach in the cases that came before it on religious freedom and attire and it can be argued that it has tried to make its decisions based on the facts and merits in each case. The judges' concurring or dissenting opinions in

38 *S.A.S. v France*.
39 European Convention on Human Rights, European Treaty Series, No. 5.
40 *S.A.S. v France*.
41 Affaire Belcacemi et Oussar c. Belgique (Requête No 37798/13) (European Court of Human Rights 2017)."plainCitation":"Affaire Belcacemi et Oussar c. Belgique (Requête No 37798/13
42 European Convention on Human Rights, European Treaty Series, No. 5.
43 *S.A.S. v France*.
44 *Lachiri v Belgium.*
45 European Convention on Human Rights, European Treaty Series, No. 5.
46 Civil Code (1967).

most of the cases established the fears or concerns of imposing majoritarian ideologies in society and promoting assimilation. There are States in all parts of the globe that try to enforce particular religious clothing, and it limits individual freedom and leads to discrimination.

Subsequent to the Judgments of the European Court of Human Rights there have been many discussions by Scholars on the concept of 'living together'. It is argued that the European Court of Human Rights must have given more weight towards proportionality and justification test under Article 9 (2) and that it is the duty of the Court to protect the "minorities against disproportionate interferences" and the Court accepted in Moscow Branch of the Salvation Army v. Russia[47] European Court of Human Rights accepted that ""pluralism is … built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions … [and] religious beliefs.[48] Thereby, it can be witnessed that the European Court of Human Rights has negated from its own determinations and adopted the vague concept of 'living together'. While European countries becoming more polarized in every aspect it is important to understand the concept of pluralism since there is every possibility for tensions in a pluralist society as it encompasses diverse values and identities.[49]

As discussed above, the European Court of Human Rights has failed to give its reasons for the acceptance of the term 'living together' and how it came to the decision that the ban on face cover is not a violation of the right to religion and the Courts ruling provides opportunity to political and other actors to impose further restrictions on pluralism.[50]

The term 'living together' has been introduced to the Human Rights disclose through the aforementioned case laws. The term living together has not been developed into a concept through enriched literature and its novelty to limit a very well recognized right emanates more arguments and debates. Two interpretations of the term are argued and democratic principles and the links between human rights protection requires to be considered in interpreting the term.[51] Therefore, the international community and the UN have more responsibility to explore more about the term and establish clear benchmarks for recognition or denial of the terminology.

3.4.2 The Decisions of the Human Rights Committee on the Ban in France and Belgium

The applicants in *Yaker v France*[52] and *Hebbadj v France*[53] sought justice by invoking the jurisdiction of the Human Rights Committee, the treaty body of the International Covenant on Civil and Political Rights. In both cases the Committee held that France has violated Articles 18 and 26 of the International Covenant on Civil and Political Rights[54] in enacting the Act No 2010-1192 of 11 October 2010[55] prohibiting the concealment of the face in public and the law is not a reasonable and a proportionate measure compatible with the Covenant.[56] The Committee rejected the contention made by the French authorities stating that there are many other means of concealing the face that exist and that Article 18 (3) must be interpreted strictly and is not to be interpreted in an abstract manner and stated that the term 'living together' is a vague concept. The Committee in both cases directed the State party to act under Article 2(3) of the Covenant and provide financial compensation, reparations, provide authors with appropriate measures of satisfaction and to take measures to ensure similar violations would not take place in the future and to repeal the Act No 2010-1192[57] in accordance with Article 18 of the International Covenant on Civil and Political Rights .[58] The Human Rights Committee in making its decision analysed General Comment No. 22[59] and held that the Act No. 2010-1192[60] is restricting the rights of Muslim women who are

47 Moscow Branch of the Salvation Army v. Russia (Application No. 72881/01) (The European Court of Human Rights 2007).
48 Kaushik Paul, "Banning Islamic Veils: Is Social Cohesion (or Living Together) a Valid Argument?," *Journal of Law and Religion* 39, no. 1 (2024): 34–53.
49 Loic Azoulai, *'Living Together' in Europe's Polarized Societies Navigating the ECtHR and CJEU Case Law*, Law Working Paper 2024/18 (European University Institute, 2024).
50 Sune Lægaard, "Burqa Ban, Freedom of Religion and 'Living Together,'" *Human Rights Review* 16, no. 3 (2015): 203–19.
51 Ilias Trispiotis, "Two Interpretations of 'Living Together' in European Human Rights Law," *Cambridge Law Journal* 75, no. 3 (2016): 580–607.
52 Sonia Yaker v. France, "Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Communication No. 2747/2016."
53 Miriana Hebbadj v. France, "UN Human Rights Committee, Communication No. 2807/2016."
54 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
55 Act No 2010-1192 of 11 October 2010 Prohibiting the Concealing of the Face in Public, Unofficial Translation.
56 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
57 Act No 2010-1192 of 11 October 2010 Prohibiting the Concealing of the Face in Public, Unofficial Translation.
58 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
59 UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*.
60 Act No 2010-1192 of 11 October 2010 Prohibiting the Concealing of the Face in Public, Unofficial Translation.

wearing the full-face veil (*Niqab*) or such religious clothing which is customary for a certain segment of Muslim women and held that the Act No 2010-1192 is a limitation of the right enshrined in Article 18 (1) of the Covenant.[61]

Meanwhile, it must be noted that in both the communications there were dissenting opinions from the committee members justifying the decision of France. The dissenting opinions analysed the meaning of 'public order' with 'protect the morals or the fundamental rights and freedoms of others' under Article 18 (3) of International Covenant on Civil and Political Rights. Committee member Yadh Ben Achour in Yaker's case[62] and both Achour and Jose Manual Santos Pais in the Hebbadj's case[63] stressed that the public order in France is republican, secular and democratic and the equality between men and women is a fundamental principal in France. The dissenting opinions emphasized wearing *niqab* is against that order where *niqab* promotes stigmatization of women and violates the rights of other women. Also, they pointed out that the Committee has failed to make the linkages between the customs and the religion since many scholars argue that covering the face is a customary practice and surfaced an argument on polygamy, inequality of inheritance, honour killings, female genital mutilation and other customary religious practices and other range of issues. They also pointed out that the concept of 'living together' has been dealt in in the preamble of the French Act No. 2010/1192 and the concealment of face is against the social contract, good manners, and 'living together'. The Law on banning of face covers does not relate to the religion and it is a general restriction which can be justified based on the increased number of terrorist attacks.

Further, the ban on religious symbols at public schools was also challenged at the Human Rights Committee. In *Bikramjit Singh v. France*[64] the expulsion of the Sikh student for wearing the turban was considered a disproportionate measure under Article 18 of the International Covenant on Civil and Political Rights.[65] The French authorities claimed that the law was introduced to ensure secularism. The law paved the way for expelling students, and the law has made Muslim girls, Sikh students and Jews voluntarily leave public schools.[66] Meanwhile, as discussed previously, subsequent to the students' protests in the Wallonia region in Belgium, the students were allowed to wear the *hijab.*[67]

It is evident that there are many challenges in the Human Rights Committee to interpret religion and belief. Modern concepts of religion and belief are emerging and it has become a difficult endeavor to provide a general definition for a religion and its practices. However, it can be argued that harmful religious practices which are in violation of human rights and freedom must be limited. In the case of face covers, head covers, and religious clothing, if it is worn voluntarily, then there can be minimum infringement of rights.

3.5 The Concluding Observations and Other Recommendations by UN Bodies on the Bans in France and Belgium

The Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief on her visit to France in 2005 discussed the longer-term indirect consequences of the Law 2004-228.[68] She was of the view that the law mainly targets girls from Muslim backgrounds wearing the headscarf and the particular law led to abuses, provokes humiliation amongst young Muslim women and stigmatization of the headscarf has provoked instances of religious intolerance when women wear it outside school, at university, or in the workplace. Meanwhile, the Committee of the Convention on Elimination of all forms of Discrimination against Women (CEDAW Committee) made recommendations to France to conduct a comprehensive study to determine the impact of Act No. 2004-228 which banned the wearing of religious symbols at public schools and to identify remedies.

There are recommendations by the Universal Periodic Review (UPR) in 2018 requesting France to take effective steps to repeal discriminatory by-laws, including those prohibiting the hijab, stop discrimination based on religion, ensure education of girls is not hindered and to promote cultural diversity. The Human Rights committee in the 5th Concluding observations on France stressed the state party to review Act No. 2004-228 of 15 March

61 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
62 Sonia Yaker v. France, "Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Communication No. 2747/2016."
63 Miriana Hebbadj v. France, "UN Human Rights Committee, Communication No. 2807/2016."
64 Bikramjit Singh v. France, "Communication No. 1852/2008: Human Rights Committee: Views Adopted by the Committee at Its 106th Session, 15 October–2 November 2012."
65 International Covenant on Civil and Political Rights, United Nations Treaty Series, Vol. 999, p. 171.
66 International Center for Advocates against Discrimination, *When Discrimination Masquerades as Equality: The Impact of France's Ban of Religious Attire in Public Schools*.
67 TRTWorld and agencies, "Lifting of Hijab Ban in Southern Belgium Offers Hope for Muslim Women."
68 LOI N° 2004-228 Du 15 Mars 2004 Encadrant, En Application Du Principe de Laïcité, Le Port de Signes Ou de Tenues Manifestant Une Appartenance Religieuse Dans Les Écoles, Collèges et Lycées Publics.

2004[69] and Act No. 2010-1192.[70] UPR cycles on Belgium in 2016 and 2021 include many recommendations to adopt legislation to prevent discrimination, racism, extremism and xenophobia. They also stress the need to address the issue of hate speech in schools and to ensure that educational opportunities are not restricted due to the prohibition of religious symbols.

Further, in 2019, the Human Rights Committee, in its concluding observations on the sixth periodic review made recommendations to Belgium to reconsider the law on banning face covers and laws relating to wearing of religious symbols and to ensure the freedom of thought, conscience and religion. Further there have been many recommendations on the State party recommending it to take measures to ensure religious freedom to practice rituals, allowing peaceful expression of religious beliefs and wearing religious symbols.[71] However, it must be noted that France and Belgium have not considered any of the recommendations as of now and continued to streamline the withdrawal of religious freedom from European space by setting a dangerous precedent for Europe and the wider international community.

4. Conclusion

It is evident that freedom of religion or belief has been limited widely in European States contrary to the provisions of the International Covenant on Civil and Political Rights and European Convention on Human Rights and States have neglected the recommendations made by the Human Rights Committee and other UN bodies. The European Union has historically been at the forefront of protecting human rights and the approach adopted in the ban of face coverings and restriction of the use of religious symbols at public schools, at places of employment, universities and other identified places have established a wrongful precedent in the international community and many States in the European Union have already imposed general and specific bans nationally and locally. Although the term 'living together' is considered as the basis by France and subsequently by the European Court of Human Rights in legitimizing the ban, the Human Rights Committee has strictly interpreted the freedom under Article 18 (3) and held that freedom religion and belief cannot be restricted on abstract terms.

Judge Spano in *Dakir v Belgium* correctly stressed that the precedent set by *S.A.S. v France* in accepting the conditions of 'living together', without analysis of the facts and merits of the case shall establish a poor precedent which could be applied in different societies in enforcing the majoritarian view in undermining the rights of minorities and vulnerable communities. The principles of tolerance and pluralism in a democratic society may be disregarded. The Swiss ban introduced through a referendum significantly establishes the view expressed by Judge Spano where the majority decides the rights of the minorities. Entrusting the rights of minorities or marginalized communities to the hands of the majority would lead to strict violation of rights, discrimination and intolerance and to public disorder. Therefore, the Human Rights Committee and other UN bodies are obligated to take steps to ensure that the freedom of religion and belief is interpreted in accordance to the treaty mechanism and to guide state parties to ensure that minimum harm is done to the right by urging the States to suspend the ban before similar limitations are introduced in other parts of the globe.

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