

INDIA: FGM: Court should not decide validity of religious practice on PIL: Dawoodi Muslim group

Business Standard (26.08.2018) – <https://bit.ly/2LE3nZ6> – A group of Dawoodi Bohra Muslim community members today told the Supreme Court that the courts should not decide the constitutionality of a centuries-old religious practice of female circumcision through the public interest litigation (PIL) route.

The group said said female circumcision is practised by a few sects of Islam including the Dawoodi Bohra community and the validity of this be examined, if at all, by a larger Constitution bench.

A bench headed Chief Justice Dipak Misra, hearing a PIL filed by a Delhi-based lawyer challenging the practice of female genital mutilation (FGM) of minor girls of the Dawoodi Bohra Muslim community, was told by senior advocate A M Singhvi that the validity of a religious practice cannot be examined in a PIL jurisdiction.

“The object of female circumcision (FC) and male circumcision (MC) is a religious practice in Islam and they are related to purity aspect,” Singhvi, appearing for over 70,000 Dawoodi Bohra Muslim women, told the bench which also comprised

justices A M Khanwilkar and D Y Chandrachud.

He said though male circumcision (MC) is followed by all sects of Islam, the FC is being observed by few sects including the Dawoodi Bohra community and the validity of this be examined, if at all, by a larger Constitution bench.

He said that if the government would have brought a legislation banning the FC then it could have been challenged on the grounds of violation of Article 14 (right to equality), but this recourse, would not be available to the community if the court decides to examine the validity of the practice.

He also referred to the apex court's judgement on right to privacy and said that the PIL petitioner has been entering into private area of the community.

Singhvi said that no affected Bohra Muslim woman has come to the court challenging the practice and to allege that it has harmed her emotionally and physically.

The advancing of arguments remained inconclusive and would resume on August 30.

Earlier, the apex court had said that the female genital mutilation (FGM) of minor girls of the community leaves a "permanent emotional and mental scar" on them and the practice may be held as violative of dignity of women as prescribed in the Constitution.

The apex court had also said that the fact that the FGM is being practised from tenth century is not “sufficient” to hold that this formed part of the “essential religious practice”, which cannot be scrutinised by court.

Attorney General K K Venugopal, appearing for the Centre, had reiterated the government’s stand that it was opposing the practice and said that this has been banned in many countries like the US, the UK, Australia and around 27 African nations.

The practice causes irreparable harm to girl children and has many health repercussions, the top law officer said and referred to Article 25 to highlight the point that a religious practice can be stopped if it was against “public order, morality and health”.

The bench was hearing the PIL filed by Delhi-based lawyer Sunita Tiwari against the practice in the community.

Tiwari, in her plea, sought a direction to the Centre and the states to “impose a complete ban on the inhuman practice” of ‘khatna’ or “female genital mutilation” throughout the country.

Female genital mutilation is performed “illegally upon girls (between five years and before she attains puberty)” and is against the “UN Convention on the Rights of the Child, UN Universal Declaration of Human Rights of which is India is a

signatory”, the plea said, adding the practice caused “permanent disfiguration to the body of a girl child”.

HRWF note: As stated in our report *Women’s Rights and Religion*, there is no legitimate justification – religious, health, or otherwise – for FGM/c. It is a dangerous and sometimes deadly practice and illegal under international law. Religious leaders are key in movement to change community mindsets and end the practice.

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