

ITEM NO.2

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).286/2017

SUNITA TIWARI

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 24-09-2018 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.Rakesh Khanna, Sr.Adv.  
Ms.Sunita Tiwari, in person  
Mr.T.S.Chaudhary, Adv.  
Mr.Aditya Pushkar, Adv.  
Mr.Kamal Mohan Gupta, AOR

For Respondent(s) Mr.K.K.Venugopal, AG  
Mr.Syed Shahid Hissain Rizvi, Adv.  
Ms.Madhvi Divan, Adv.  
Ms.Uttara Babbar, Adv.  
Mr.S.S.Ray, Adv.  
Ms.Bhavana Duhoon, Adv.  
Ms.Deboshree Mukherjee, Adv.  
Mr.B.V.Balaram Das, AOR  
Mr.Gurmeet Singh Makker, AOR

In I.A.No.94902/18 Mr.Mukul Rohatgi, Sr.Adv.  
Mr.Nihil Rohatgi, Adv.  
Mr.Shashank Khurana, Adv.  
Mr.Ridhi Sancheti, Adv.  
Mr.Mehak Huria, Adv.  
Mr.Tishampati Sen, AOR

In I.A.No.94913/18 Ms.Meenakshi Arora, Sr.Adv.  
Mr.Nizam Pasha, Adv.  
Ms.Anannya Ghosh, Adv.

In I.A.No.94907/18 Mr.Neeraj Kishan Kaul, Sr.Adv.  
Mr.Divyanshu Srivastava, Adv.  
Mr.Talha Abdul Rahman, Adv.

Mr.Pravin Kumar Samdhani, Sr. Adv.  
Mr.Pranaya Goyal, Adv.  
Mr.Juzer Shakir, Adv.  
Mr.Arva Merchant, Adv.  
Mr.Nidhi Ram, Adv.  
Mr.Chirag Kamdar, Adv.  
Mr.Yashesh Kamdar, Adv.  
Mr.Avishkar Singhvi, Adv.  
Mr.Shachi Udeshi, Adv.  
Mr.Abhirath Thakur, Adv.  
Mr.Priyakshi Bhatnagar, Adv.  
Mr.Utkarsh Kulvi, Adv.

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Ms.Hemantika Wahi, Adv.  
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Ms.Vishakha, Adv.  
Ms.Mamta Singh, Adv.

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Mrs.Nandini Gore, Adv.  
Ms.Sonia Nigam, Adv.  
Ms.Tahira Karanjawala, Adv.  
Ms.Niharika Karanjawala, Adv.  
Ms.Neha Khandelwal, Adv.  
Mr.Sushil Jethmalani, Adv.  
Ms.Khushboo Bari, Adv.  
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For M/S. Karanjawala & Co., AOR

Mr.C.K.Sasi, AOR  
Ms.Nayantara Roy, Adv.

Mr.S.Udaya Kumar Sagar, AOR  
Mr.Mrityunjai Singh, Adv.

Ms.Deepa M.Kulkarni, Adv.  
Mr.Nishant R.Katneshwarkar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

In the instant writ petition preferred under Article 32 of the Constitution of India, though several reliefs have been sought, the controversy basically centers around banning the practice of Female Genital Mutilation (FGM) or Khatna or Female Circumcision (FC) or Khafd. For the said purpose, reliance has been

placed on the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights. It is urged that the practice is inhuman and is violative of Article 21 of the Constitution of India. It is contended that in the present time, Female Genital Mutilation (FGM) should be regarded as an offence under the Indian Penal Code and unless such a provision is incorporated in the Indian Penal Code, appropriate directions should be issued to the Director Generals of State Police to take requisite measures so that such an inhuman act does not take place.

A counter affidavit has been filed resisting the stand of the petitioner on a number of grounds. It has been submitted that the practice has been wrongly called Female Genital Mutilation (FGM). It has previously been urged at the hearing, by Dr. Abhishek Manu Singhvi that the practice is almost 1400 years old. On the aforesaid foundation, it is seriously urged both in the counter affidavit and at the hearing that various steps, commands and directions issued by the competent religious authorities have made the said practice an integral part of the religion of the Dawoodi Bohra Community and a protection in that regard is sought under Article 26 of the Constitution.

Be it noted, on the earlier occasions, the matter was heard for some time. At that time, Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the contesting respondent submitted that the matter should be referred to a larger Bench for an authoritative pronouncement because the practice is an essential and integral practice of the religious sect. That apart, he would urge that in a case of the present nature, Article 21 would not be

attracted as the practice is voluntary showing respect to the religious beliefs and it is not done by any kind of societal imposition.

When the matter was listed today, Mr.K.K.Venugopal, learned Attorney General for India submitted that it deserves to be referred to a larger Bench. He has framed a number of draft questions to be considered by a larger Bench. Mr.Mukul Rohatgi, learned senior counsel appearing on behalf of the applicant(s) in I.A.No.94902/18 shared the same approach and submitted that he may be permitted to file draft questions in due course.

Regard being had to the nature of the case, the impact on the religious sect and many other concomitant factors, we think it apposite not to frame questions which shall be addressed to by the larger Bench. We also think it appropriate that the larger Bench may consider the issue in its entirety from all perspectives.

In view of the aforesaid, we are of the view that the matter should be placed before a larger Bench. The Registry is directed to place the papers of the instant matter before the Hon'ble Chief Justice of India for obtaining appropriate directions in this regard.

(Chetan Kumar)  
AR-cum-PS

(H.S.Parasher)  
Assistant Registrar