Excommunication within Dawoodi Bohras

Why in news?

A Supreme Court bench has decided to examine whether the practice of ex-communication in the Dawoodi Bohras community can continue as a protected practice.

Who are Dawoodi Bohras?

- The Dawoodi Bohras are members of the Muslim community's **Shia** sect.
- The Dawoodi Bohra community have inherited a distinguished heritage and rich historical legacy which traces to the **Fatimi imams**.
- Their leader is known as the **Al-Dai-Al-Mutlaq**, who first operated from Yemen and then, for the last 450 years, from India.
- The current and the 53rd leader is His Holiness Dr Syedna Mufaddal Saifuddin.
- The main language of the community is **Lisan al-Dawat**, a dialect of Gujarati with inclusions from Arabic and Urdu.
- The leader of the community has the right to excommunicate its members.
- Excommunication includes the action of
    - not being allowed to access a mosque belonging to the community
    - not being allowed to a burial dedicated to the community
- **The Bombay Prevention of Excommunication Act, 1949** was enacted to stop the practice of excommunication prevalent in certain communities.
- This is because, excommunication is said to deprive the legitimate rights and privileges of its members.

Fatimi imams are direct descendants of the Prophet Mohammed through Imam Ali bin Abi Talib, son in law of the Prophet, and Fatima, daughter of the Prophet.

How about the legal validity of excommunication?

- **Legal challenge**- The 51st leader of the community challenged the constitutional validity of the act in 1962 stating it violated fundamental rights guaranteed in the Constitution under
    - **Article 25** - Freedom of conscience and free profession, practice and propagation of religion
    - **Article 26** - Freedom to manage religious affairs
- It was submitted that the power of excommunication was part of the management of community affairs in matters of religion.
- It was also submitted before the SC that the power to excommunicate is not absolute or arbitrary.

    - The expulsion from the community can be effected only at a meeting of the Jamat
    - The person concerned will be even given due warning and an opportunity of mending.
- The practice was also claimed to be essential.
- **Contentions-** Respondents to the petition said that Quran does not permit excommunication and that it went against the spirit of Islam.
- They also contended that the right to regulate religious communities does not include the right to excommunicate.
- **SC's view**- The SC held in 1962 held that the Dai's position is an essential part of the community.
- The power to excommunicate is to enforce discipline and preserve the denomination and not to punish.
- The judgment came on a challenge to the Bombay Prevention of Excommunication Act of 1949.

What is the plea now?

- **The 2016 Act**- The Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016 prohibits social boycott of a person or a group of persons describing it as "inhuman".
- The act defines 16 types of social boycott– including preventing members of a community from having access to facilities including community halls, and burial grounds, among others.
- It is termed as a violation of fundamental rights punishable with imprisonment for upto 3 years.
- **SC's consideration**- The Supreme Court has said that it would consider whether the practice protected by the 1962 constitutional bench order can continue.

References

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