

**CASE COMMENTARY: “A” THROUGH HER FATHER “F” V. STATE OF
U.P. AND ORS.**

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CASE: A v. State of U.P. and Ors. 2016(1) ALJ 625

COURT: Allahabad High Court (Lucknow Bench)

DATE OF DECISION: November 3, 2015

BENCH: Hon’ble Justice Shabihul Hasnain and Hon’ble Justice D.K. Upadhyaya

ABSTRACT:

This case commentary focuses upon "A" through her Father "F" v. State of U.P. decided by the Allahabad High Court, Lucknow Bench, on 3rd November 2015. It dealt with a 13-year-old rape victim who conceived and as termination of pregnancy was no longer viable, the court was called upon to liberate its time and energies to the rehabilitation of both the victim and the child to be born, rather than determining the guilt or otherwise of the accused and fixing punishment, which was left to the trial court. The court used Article 21 to find that both the minor victim and her newborn child had a fundamental right to life with dignity, and in this regard, issued wide directions including those relating to compensation, free education, adoption, and police protection. Of utmost importance was the observation of the Court that the newborn child was also a "second victim" of the crime, entitled to protection in her own right, not as an aftereffect of the crime suffered by her mother. The right of the child to be adopted, including her right to the property of her biological father, was left to the legislature to appropriate a suitable law. This case commentary examines the

facts, issues, arguments, and findings of the court that led to the aforesaid directions. It also critically analyzes the case's positives and shortcomings, as well as recent developments and legislative initiatives pertinent to the case.

Keywords: Rape victim rehabilitation, child born of rape, second victim, Article 21, adoption, inheritance rights, and victim compensation scheme.

INTRODUCTION¹:

This judgment is related to the rights of rape victims as well as the children who are born out of rape. A divisional bench was formed in this case in order to determine various legal issues that are been formulated by the Court in order to reach to a decision that will provide justice to both the primary and secondary victims in the present case. The court ruled on all the legal issues which are related to the rehabilitation of the minor rape victim, status of a child who is born as a result of rape and the rights given to him or her under Article 21 of the Indian Constitution, adoption of the child of the minor rape victim, right of inheritance of such child in the property of biological father, rights of rape victims under Article 21 of the Constitution and the duty of the society towards such rape victims as well as the children who are born as a result of rape.

FACTS OF THE CASE:

This case arose when the petition was filed by the father on behalf of minor rape victim who was aged 13 when she was been raped by the accused. The victim had narrated the incidents that lead to her rape after being found that she is already 21 weeks pregnant. On 17th February, 2015, the victim was been raped by the accused while returning from Tilak ceremony when he dragged her to the back of the temple and forcibly raped her, due to which she became pregnant. The filing of FIR was delayed as the victim has received death threats from the alleged accused. Finally, the matter came to Court on 7th September, 2015.

PROCEDURAL HISTORY:

¹ "A" through her Father "F" v. State of U.P. and Ors., 2016 (1) ALJ 625 (Allahabad High Court, Lucknow Bench, decided 3 November 2015).

On 3rd September, 2015 the rape victim had filed writ petition through her father being a minor in Allahabad High Court, months after she was been raped. Then after three days, the High Court had passed an interim order for the medical examination of the minor rape victim in order to determine whether her pregnancy can be safely terminated or not at this point of time. On 23rd September, 2015, the counsel from the side of petitioner informed the Court that the biological father of the child does not have the willingness to keep the child with him after birth and also the counsel urged to the Hon'ble Court to look at the present case in relation to Article 21 of the Indian Constitution.

Senior Advocate Jaideep Narain Mathur was appointed as Amicus Curiae after it has been found out by the Court that the termination of pregnancy is not at all possible now and also legal notice was issued to the Avadh Bar Association and the State Legal Services Authority. On 9th October, 2015 the consent of the rape victim was taken in order to put up the child for adoption. Finally, the judgment was passed on 3rd November, 2015 which determined the rights of the minor rape victim as well as her child.

LEGAL ISSUES RAISED:

The Divisional Bench had formulated the following key legal issues:

1. What are the various types of measures that can be taken for the rehabilitation of the minor rape victim and how much compensation will be granted to her?
2. What is the status of a child born as a result of rape, and what rights can be given under Article 21 of the Indian Constitution to such child?
3. What are the legal measures that can be taken in order to put up such a child for adoption if the rape victim does not want to raise the child by herself?
4. Does the child who is born out of rape would have any inheritance rights in the property of the biological father?
5. What are the rights of the rape victims under Article 21 of the Indian Constitution?

6. What is the duty of the society towards the rape victims as well the children who are born out of rape?
7. Does the child who is born as a result of rape would be considered as the second victim of rape?

ARGUMENTS OF PETITIONER:

The following arguments are given by the counsel for the petitioner who has been assisted by the Amicus Curiae, Senior Advocate Jaideep Narain Mathur:

- The rape victim who is a minor, aged 13 cannot be forced to carry such child who is born as a result of rape and not under normal circumstances. Further, the victim does not have the mental as well the physical strength to carry the child in womb.
- If the minor is been forced to carry the child in her womb against her will, then there will be infliction of unnecessary psychological as well as social harm upon her as the society would not accept her as well as her child as a common person which would lead to long term trauma as the child is an outcome of the horrific incident that has been happened to her not as a result of her own will.
- That the termination of pregnancy must be done in order to gather the evidence against the accused by performing DNA test on the foetus.
- The minor rape victim as well as the unborn child, who will become the citizen upon birth shall have rights under Article 21 of the Constitution which guarantees them to live a dignified life in the society.
- It is the duty of the State to provide compensation under the Victim Compensation Scheme as rape is a heinous crime as well as the crime against the State, and not only against an individual.
- The father of the child is not willing to take care of the child as well as the family of the victim is also unable to do so which can result into abandonment of the child.

ARGUMENTS OF THE RESPONDENT (STATE GOVERNMENT):

The following arguments were given by the Additional Advocate General Mrs. Bulbul Godiyal on behalf of the State of Uttar Pradesh:

- The State had pointed out that the Uttar Pradesh Victim Compensation Scheme is already present in order to provide financial support to any person who is a victim of crime or has suffered loss/injury from such crime.
- It was stated the definition of victim given under Section 2(d) under the Uttar Pradesh Victim Compensation Act only includes the person who has directly suffered any harm or injury as a result of crime and his or her dependent family members. The State highlighted that the scheme does not treat unborn child as independent or separate victim which means the child is not eligible to receive any monetary support from the State separately.
- The question of terminating the pregnancy of the victim must be seen in lines with the Medical Board. The Board had confirmed that in the light of present circumstances, it is unsafe to abort the child as it will pose risk on the life of the minor rape victim as well as the child.
- The State argued that if the pregnancy is not terminated and the child is born alive as well as the family of the victim is not willing to keep the child, then in such case the Child Welfare Committee will undertake the duty to put up the child for adoption in accordance with the guidelines of the Central Adoption Resource Authority.

JUDGEMENT:

The Court began by limiting its observations to the welfare of the victim and her child, and not affecting the pending criminal trial against the accused to be decided by the trial court independently on its own merits.

The first issue before the Court was whether the minor rape victim was entitled to compensation and rehabilitation. The Court relied upon *Chairman, Railway Board v. Chandrima Das (2 SCC 465)*, in which the Supreme Court has held that interpretation of the meaning of "life" under Article 21 has to be read in accordance with international human rights instruments like the Universal Declaration of Human Rights, and upon *Kharak Singh v. State of U.P. (AIR 1963)*, which held that "life" is something more than the animal existence²,

² Kharak Singh v. State of U.P., AIR 1963 SC 1295.

to conclude that the right to life under Article 21 necessarily includes the right to a human dignity, and that the rape victim's rehabilitation forms part of fulfilling this right; and upon Sections 357 and 357-A of the Code of Criminal Procedure, which allow for compensation to a crime victim irrespective of the accused being convicted or acquitted, and upon **Suresh v. State of Haryana (2015 (2) SCC 227)**, which held that punishing the accused is not enough, rehabilitating the victim is equally the Court's duty³. The Court held that the victim was entitled to compensation and rehabilitation independent of the outcome of the criminal trial.

Having thus secured this right for the victim, the Court then turned to whether the same protection could extend to the child about to be born. In reasoning this over, the Court held that the newborn would be forced into a life of shame and stigma through no fault of her own, denied her father's name and could be even be abandoned by her mother for social reasons, she too had been injured in much the same fashion as the principal victim, and accordingly that the child should be treated as a "second victim" of the crime and directed that the definition of "victim" under the Uttar Pradesh Victim Compensation Scheme, 2014 be read to include a child born out of the sexual abuse of a minor, though the Scheme did not originally cover such a child. Since neither the victim nor her family wished to raise the child, the Court had to decide how the child would be cared for.

On the question of adoption, the Court relied upon the Hindu Minority and Guardianship Act, 1956⁴ and the Supreme Court's ruling in *Githa Hariharan v. Reserve Bank of India (AIR 1999)*, which had clarified that a mother, and not only the father, was able to act as a natural guardian, and held that even a minor mother was legally competent to give her child in adoption, and further that the newborn was a "child in need of care and protection" under the Juvenile Justice (Care and Protection of Children) Act, 2000⁵ and was a "surrendered" or "orphan" child under the Guidelines Governing Adoption of Children, 2015 since her mother and grandparents were unwilling to raise her, and upon **Lakshmi Kant Pandey v. Union of India (1994 (2) SCC 244)**, which had laid down the basic rules and procedure for adoption in India⁶, and confirmed that there already was a valid legal mechanism to place the child in adoption for her welfare.

³ Suresh v. State of Haryana, (2015) 2 SCC 227.

⁴ The Hindu Minority and Guardianship Act, 1956, Sec-6

⁵ The Juvenile Justice (Care and Protection of Children) Act, 2000.

⁶ Lakshmi Kant Pandey v. Union of India, (1994) 2 SCC 244.

The Court then considered whether the child would have any right to inherit the property of her biological father, and held that the manner of a person's birth was irrelevant to the right of inheritance governed by personal law, and that the child would be treated as an illegitimate child of her biological father for this purpose. However, in light of these circumstances, namely that the child would in any case have lost any claim to the father's property when given in adoption, that she would still inherit under ordinary personal law if not, and that a specific direction could allow for the accused to later claim visitation or custody rights, or use it as a defence during his pending trial, the Court chose judicial restraint. It reasoned that framing a general rule on this issue would amount to judicial legislation on a complex subject, and accordingly left the question open for the legislature to address.

Alongside these findings, the Court took note of the medical concept of "Rape Trauma Syndrome" to explain the victim's psychological condition, treating it as a natural response to trauma and not as a mental illness, which indicates that the victim required emotional and medical support rather than just legal help.

Putting these findings together, the Court issued a comprehensive set of directions. The Child Welfare Committee, Lucknow was directed to take charge of the adoption process under the supervision of the State Legal Services Authority. The State was directed to provide free education to the victim with the school principal being responsible for ensuring she was faced with no discrimination and that her past was not disclosed; a fixed deposit of Rs. 10,00,000 was ordered in her name, payable only on reaching the age of 21. The Superintendent of Police of the district where the family resides was directed to ensure their safety, security and dignity, and to prevent social discrimination, while preference in vocational training and future government employment was also directed, along with continued supervision by the amicus curiae even after the judgment.

Finally, the Court made a broader observation beyond the legal directions: the rehabilitation of a rape victim could not be achieved through legal directions alone, and it had done all it could legally to do within its powers, but the question of how society treated rape victims and their children could only be answered by society itself, a question it left "open to the masses." The Court also expressed concern that no proper data or study exists in India on the number of rapes or children born of rape, and referred to an article by Shauna R. Prewitt on similar

studies carried out in the United States, and called upon the government to conduct a proper socio-psychological study so that comprehensive legislation could eventually be framed.

ANALYSIS AND CRITIQUE:

The most significant strength of this judgment lies in its recognition of the newborn child as an independent "second victim", entitled to compensation and protection in her own right rather than as a byproduct of the crime committed against her mother. This is important because, although the State had argued that the Scheme did not treat the unborn child as a separate victim, the Court extended this protection to her. A similar concern was later raised by the Supreme Court in *Nipun Saxena v. Union of India (2018)*, where the Court held that there is no adequate compensation scheme at the national level for child victims of sexual offences and directed NALSA to create the same. This shows that the gap in compensation and protection schemes which the Allahabad High Court identified in this case, was later recognized by the SC and actual steps taken to address this at the national level.

The judgment also shows sensitivity in balancing the competing interests: the minor mother did not want to raise the child and rather than forcing the family to keep a child no one was prepared to care for, the Court directed that a lawful adoption process be followed which protected the child's own right to a life of dignity.

This is strengthened by the Court's decision to appoint an amicus curiae and to involve the Child Welfare Committee and State Legal Services Authority, and to continue monitoring even after the judgment - it is a welcome departure of the non-adversarial and cooperative approach of the State Government which released compensation even while the case was still pending, which itself acknowledged and appreciated by the Court.

At the same time, the judgment has clear limitations. The Court's reasoning on inheritance, though cautious and practical - in avoiding giving the accused any scope to claim visitation or custody rights or to use the direction as a defence during trial, ultimately leaves an important legal question unanswered for future cases of this kind. By treating inheritance as a complex Personal Law right which should not be judicially legislated, the Court showed good restraint and respect for the separation of powers, but also means that children born of rape in future

cases are left without any clear precedent to rely on. This gap identified by the Court has since found a response at the policy level. In November 2023, the Ministry of Women and Child Development notified the "Scheme for Care and Support to Victims under Section 4 & 6 of the POCSO Act, 2012"⁷, which is specially designed for minor pregnant girl victims of sexual assault and provides for education, police assistance, maternity and neo-natal care, psychological counselling and legal aid, and crucially, extends these to both the girl child victim and her newborn child under one scheme. This is a direct response to the concern raised by the Court in this judgment, that no mechanism existed to support both the victim and her child jointly, and has partially found resolution in government policy. However, this scheme has also been criticised for being ambiguously worded, particularly with regard to timelines for adoption of the newborn and being inconsistent with existing rules under the Juvenile Justice Act and CARA adoption regulations, which shows that the concerns raised in this judgment about the necessity for well-thought legislation are still a concern today.

Similarly, in light of the fact that the judgment is firmly based in the specific facts and wishes of this one family, particularly their decision to place the child for adoption, it does not provide a general, binding framework which would automatically apply to every rape victim and her child. The Court itself acknowledged this limitation in the fact of the complete absence of government data on rape victims and children born of rape, which it recognised as affecting not just this judgment but the possibility of comprehensive legislation on the subject.

In light of these circumstances, the judgment ultimately reflects the inherent difficulty of balancing the rights of the minor rape victim who wished to completely be free of any continuing connection to the pregnancy, against the rights of the innocent child born into a situation of rejection. By directing adoption rather than forcing either party to be placed into an arrangement neither wanted, and by extending State protection and compensation to both individually the Court arrived at a practical and humane solution, though it did not resolve the deeper social and legislative questions the case raised.

This is not simply an assertion. A similar issue has recently been addressed, in a slightly different context, by the Karnataka Devadasi (Prevention, Prohibition, Relief and

⁷ Ministry of Women and Child Development, Scheme for Care and Support to Victims under Section 4 & 6 of the POCSO Act, 2012 (notified 30 November 2023).

Rehabilitation) Bill, 2025 which gives children of Devadasis (women dedicated to service in temples) who themselves suffer from social stigma and lack of legal recognition of their fathers, a right to establish paternity and to inherit their father's property. This demonstrates that where the legislature is willing to take action, it can create specific rights for children in difficult social contexts, thus supporting the claim that children born of rape could and should be granted similar rights.

CONCLUSION:

The case of "A" through her Father "F" v. State of U.P. is an important judgment because it does not stop at deciding one narrow legal question, but tries to build a complete plan for the rehabilitation of a minor rape victim and the child born to her. The Court used Article 21 of the Constitution to hold that both the victim and her child have a right to live with dignity, and backed this up with real, practical directions like compensation, free education, police protection, and help with future employment.

The recognition of the child born because of rape as a "second victim" of the crime, and not just as an unfortunate outcome of it, and deserve the compensation and protection for her own right, is one of the more progressive contributions of this judgment, and reflects the Court's attempt to ensure that an innocent child is not left to bear the entire burden of the crime committed against her mother.

At the same time, the Court was conscious of the limits of judicial power. It declined to lay down a general rule on inheritance rights of children born because of rape, choosing instead to leave that question for the legislature, and it candidly admitted that the deeper question of how society should treat rape victims and their children cannot be answered by courts alone. The judgment ends not with a claim of having solved the problem, but with an appeal to society and to the legislature to build on the foundation the Court has laid, through better data, awareness and, eventually, comprehensive legislation for the rehabilitation of rape victims and children born of rape. Overall, this judgment shows a sensitive and practical approach by the Court, balancing the wishes of the victim and her family with the rights of the child, while also being honest about what a court can and cannot fix on its own.

REFERENCES

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1. "A" through her Father "F" v. State of U.P. and Ors., 2016 (1) ALJ 625 (Allahabad High Court, Lucknow Bench, decided 3 November 2015).

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2. The Constitution of India, art. 21.

Statutes:

3. The Code of Criminal Procedure, 1973, Section 357, 357-A.

4. The Hindu Minority and Guardianship Act, 1956, Sec 6.

5. The Juvenile Justice (Care and Protection of Children) Act, 2000.

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6. Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465.

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8. Suresh v. State of Haryana, (2015) 2 SCC 227.

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