



## CASE COMMENT: MS. AFREEN V. THE SUB-REGISTRAR

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### INTRODUCTION

The Karnataka High Court's ruling in<sup>1</sup> *Ms. Afreen v. The Sub Registrar*<sup>2</sup> is a very important step in changing adoption laws in India. The Court said that if a child is born from rape, and the biological father is the accused in the rape case, then his permission is not needed for the child's adoption. The Court focused on what is best for the child and respected the rights of the mother, who is the victim. This judgment breaks the old belief that both parents must always give consent. It also creates a new rule that the child's future and safety should always come first, especially in difficult family situations.

### CASE BACKGROUND

The petitioner, Ms. Afreen, went to the Karnataka High Court asking for help. She wanted the Court to tell the Sub Registrar to register the adoption papers of her child without asking for the biological father's permission. The child was born because of an alleged rape<sup>3</sup>, and the biological father was already facing criminal charges for that incident. However, the Sub Registrar refused to register the adoption because, according to the current adoption laws, the father's consent was needed. So, Ms. Afreen asked the Court to remove this requirement in her special case.

### LEGAL ISSUES

The main legal question in this case was: Is the consent of a biological father—who is accused of raping the mother—needed for the legal adoption of the child by someone else? To answer

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<sup>1</sup> *Ms Afreen v The Sub Registrar* (Karnataka High Court, Hemant Chandangoudar J, WP No 31063 of 2024, 22 November 2024)

<sup>2</sup> *Ms Afreen v The Sub Registrar* (Karnataka High Court, 22 November 2024) WP No 31063 of 2024

<sup>3</sup> *Amrik Singh and Others v Union Territory of Chandigarh* (Punjab and Haryana High Court, 2023) SCC OnLine P&H 6556

this, the Court had to look at the rules under the<sup>4</sup> Hindu Adoption and Maintenance Act, 1956, and decide how those rules should apply in this special situation.

### **COURT'S ANALYSIS AND JUDGMENT**

The Court looked carefully at Section 9 of the Hindu Adoption and Maintenance Act, 1956. This section says that both parents must agree before a child can be adopted. However, the Court said that the law should be understood in a way that keeps the child's best interests<sup>5</sup> and the mother's rights safe, especially when the child is born because of rape. Forcing the mother to ask the rapist (the accused father) for permission to adopt the child would be very painful and unfair to her. It goes against the ideas of justice and fairness.

The Court said that the most important thing is the welfare, or well-being, of the child. This should not be stopped or delayed because of strict legal rules. So, the Court told the Sub Registrar to register the adoption papers even without the father's consent. This decision respects the mother's right to make decisions and protects the child from any harm that might happen if the accused father is involved.

In this judgment, the Court held that the consent of the biological father, who is an accused in a rape case, is not required for the adoption of the child. The Court emphasised that the welfare of the child is of paramount importance and should not be compromised by procedural technicalities. The judgment was delivered by Justice Hemant Chandangoudar on November 22, 2024. The relevant paragraph is<sup>6</sup> Paragraph 18, which states:

"Accordingly, the consent of the rape-accused biological father of the child is both inconsequential and immaterial. The adoption of the subject child herein as per the Irrevocable Adoption Deed dated 11.11.2024 is in full compliance with the provisions of the JJ Act, 2015, the Rules, 2016, and the Regulations, 2017."

### **SIGNIFICANCE OF THE JUDGMENT**

This ruling is significant for several reasons:

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<sup>4</sup> Hindu Adoption and Maintenance Act 1956 (India)

<sup>5</sup> Shabnam Hashmi v Union of India and Ors (2014) 4 SCC 1

<sup>6</sup> Afreen v The Sub Registrar (Karnataka High Court, 22 November 2024) para 18

**Child Welfare:** The Court's decision makes it clear that the most important thing in adoption cases is the child's well-being. By saying the father's consent is not needed here, the Court put the child's best interests first.

**Women's Rights:** The judgment understands how painful and unfair it would be to make a rape survivor ask her attacker for permission. It supports the rights of women to make decisions about their children without being controlled by the person who hurt them.

**Legal Precedent:** This case will help future courts decide adoption cases that involve sexual assault. It tells them to think about the special situation and focus on protecting the mother and child.

### COMPARATIVE LEGAL PERSPECTIVES

In many countries, when a child is to be adopted, the law usually requires that the parents give their permission. This is to respect the rights of the parents and keep the family together when possible. But sometimes, the law makes exceptions to this rule, especially if a parent is considered unfit or could harm the child. For example, in the United States, if the court believes that a parent is not taking good care of the child or is dangerous, it can take away the parent's rights. This means the parent does not have to permit adoption if it is better for the child's safety and happiness.

Similarly, in the United Kingdom, if a parent cannot be found or is unable to give consent, the law allows adoption to happen without their permission. This helps protect children who need a safe and loving home, even if the parent is not available or willing to agree. This kind of law shows that the focus is always on the welfare of the child, meaning what is best for the child's growth, safety, and happiness. The rules about getting permission from parents should not stop the child from getting a good home, especially in special and difficult situations.

So, when a parent may harm the child or when the parent's consent would cause more harm than good, courts around the world have found ways to protect children and help them have a better future. This balance between protecting parents' rights and protecting children's welfare is very important in adoption laws everywhere.

## POTENTIAL IMPLICATIONS

**Policy Changes:** Because of this ruling, lawmakers might change adoption laws to include special rules for cases involving sexual assault. This will help make sure survivors do not have to go through more pain.

**Help for Other Courts:** Courts in India may use this decision as an example when they deal with similar cases. This will encourage kinder and fairer decisions about adoption.

**More Awareness and Support:** This case shows that people need to know more about the rights of rape survivors and their children. It will help create more support in society and push for better laws.

## CONCLUSION

The Karnataka High Court's judgment in *Ms. Afreen v. The Sub Registrar* is an important decision that mixes law with kindness and fairness. By saying the biological father's consent is not needed in such a difficult situation, the Court has protected the rights of the mother and the well-being of the child. This case shows how courts can change the way they understand laws to help society and protect people who need it the most.