

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2026 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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From Suspicion to Scrutiny: Adoption, Gender, and Constitutional Equality

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Received 21 May 2026; Accepted 20 June 2026; Published 23 June 2026

*Adoption law operates at the intersection of child protection, family autonomy, and constitutional equality. While the “best interests of the child” standard remains the guiding principle of adoption frameworks, it cannot function outside the discipline of constitutional guarantees. This article examines the constitutional legitimacy of structural or normative barriers that restrict or discourage single men from adopting girl children based on generalised societal anxieties. It argues that gender-based presumptions, even when framed as protective measures, risk violating Articles 14 and 21 of the Constitution of India by substituting stereotype for individualised assessment. Drawing upon Indian constitutional jurisprudence, particularly *Anuj Garg v Hotel Association of India* and *Navej Singh Johar v Union of India*, alongside comparative decisions such as *Stanley v Illinois* and *E.B. v France*, the article demonstrates that constitutional democracies consistently reject blanket exclusions grounded in identity rather than evidence. These decisions collectively affirm that protective intent cannot justify discriminatory effect, and that heightened scrutiny is required where identity-based classifications burden access to fundamental social institutions such as family life. The article further contends that the “best interests of the child” standard, though central to adoption law, must be applied through individualised and evidence-based evaluation rather than categorical suspicion. By exposing the dangers of collective guilt and structural stereotyping, the paper proposes a shift from suspicion to scrutiny. One that strengthens child protection without compromising constitutional equality. In doing so, it situates adoption law within the broader constitutional commitment to dignity, fairness, and substantive equality.*

Keywords: *adoption law, constitutional equality, gender-based presumption, best interests of the child, substantive due process.*

INTRODUCTION

Adoption law stands at one of the most sensitive intersections of constitutional governance and human emotion. It is a domain where the State acts not merely as regulator but as guardian, shaping the futures of children who have already experienced abandonment, loss, or displacement. At the same time, adoption law determines who may step into the intimate and life-defining role of parenthood. Because of this dual character, adoption frameworks must balance vigilance with fairness. They must protect children rigorously, yet remain faithful to constitutional commitments of equality and dignity. The tension between these objectives becomes particularly visible when examining the position of single men who seek to adopt girl children.

In contemporary discourse, heightened awareness of child abuse has justifiably led to stronger protective measures. However, this vigilance sometimes evolves into generalised suspicion. A narrative often emerges, implicit rather than explicit, that men, as a class, represent a potential risk to girl children. This narrative can influence adoption regulations, administrative attitudes, and evaluative processes. The result is not always a formal statutory prohibition, but rather a structural hesitation or discouragement rooted in fear. The central constitutional question, therefore, arises: can the State justify limiting or structurally restricting the adoption rights of single men in relation to girl children based on generalised societal anxieties? This question does not deny the existence of crime, nor does it minimise the need for child protection. Instead, it interrogates the constitutional method through which protection is pursued. When suspicion is attached to identity rather than conduct, constitutional principles demand scrutiny.

The Indian Constitution does not permit governance by stereotype. It insists upon reasoned classification, individualised assessment, and proportional response. If crimes committed by a minority within a group become the basis for structural barriers imposed upon the entire group, equality is compromised. Adoption law, despite being guided by the “best interests of the child,” cannot operate outside this constitutional discipline. The purpose of this article is to examine whether gender-based presumptions in adoption policy can withstand constitutional scrutiny and whether the logic of collective suspicion aligns with modern equality jurisprudence.

THE CONSTITUTIONAL FRAMEWORK: EQUALITY BEYOND FORMALISM

Article 14¹ of the Constitution of India guarantees equality before the law and equal protection of the laws. Over time, the Supreme Court has interpreted this guarantee not merely as a prohibition on explicit discrimination but as a safeguard against arbitrariness and stereotype. Equality jurisprudence has evolved from a narrow classification test to a broader doctrine that interrogates the substantive impact of state action. It is no longer sufficient for the State to articulate a rational objective; the means adopted must also withstand scrutiny in terms of fairness, proportionality, and effect.

The decision of the Supreme Court in *Anuj Garg v Hotel Association of India*² represents a significant development in this trajectory. In that case, the Court examined the constitutional validity of a statutory provision that prohibited the employment of women in establishments where liquor was served. The State defended the restriction as a protective measure intended to safeguard women from potentially unsafe environments. The Court, however, refused to accept protection as a sufficient justification. It is observed that legislation must be assessed not merely by its stated aims but by its implications and effects. The Court further noted that laws grounded in stereotype morality cannot be sustained and that heightened scrutiny is required when identity-based classifications operate.

The reasoning in *Anuj Garg* has profound implications beyond the context of employment. It establishes that protective discrimination, when rooted in generalised assumptions about vulnerability or risk, may in fact perpetuate inequality. If the State cannot exclude women from certain professions on the assumption that they require protection from male misconduct, it becomes constitutionally difficult to justify excluding men from parenthood on the assumption that they may pose a risk. In both situations, the classification is based not on individual conduct but on gendered stereotypes. Equality beyond formalism demands that the State move from assumption to evidence, from category to case-specific analysis.

The constitutional framework, therefore, imposes a clear discipline: where identity-based classification burdens a group, the burden lies on the State to demonstrate compelling justification and narrow tailoring. Administrative convenience or generalised anxiety cannot

¹ Constitution of India 1950, art 14

² *Anuj Garg and Ors v Hotel Association of India and Ors* (2008) 3 SCC 1

suffice. In the context of adoption, this means that suspicion attached to gender must be replaced by individualised scrutiny grounded in demonstrable factors relevant to child welfare.

PRESUMPTION VS INDIVIDUAL ASSESSMENT

The tension between presumption and individualised assessment is not unique to Indian constitutional law. It has been confronted directly in comparative jurisprudence, most notably in *Stanley v Illinois* (1972).³ In that case, the United States Supreme Court invalidated a statutory scheme that treated all unmarried fathers as unfit parents without providing individualised hearings. The Court held that the State could not presume parental unfitness merely based on marital status and emphasised that parental fitness must be established through individualised proof.

The principle articulated in *Stanley* transcends its factual context. It affirms that due process and equal protection are violated when the State substitutes generalisation for individualised evaluation. Administrative efficiency may make presumptions attractive, but constitutional governance requires precision. Where fundamental interests such as family integrity and parental rights are implicated, the insistence upon individualised determination becomes even stronger.

Transposed into the adoption context, the logic is compelling. If unmarried fathers cannot be presumed unfit without a hearing, can single men seeking adoption be presumed risky without individualised evidence? Adoption processes already incorporate background verification, home studies, psychological assessments, and continuous monitoring. These mechanisms are specifically designed to identify risk factors on a case-by-case basis. To superimpose upon this framework a structural suspicion directed at an entire gender would be to replicate the very constitutional defect identified in *Stanley*.

Presumption simplifies governance, but it distorts justice. It replaces evidence with stereotype and replaces scrutiny with suspicion. Constitutional democracies, however, are built upon the premise that liability and responsibility are personal, not collective. Individual assessment is not merely a procedural formality; it is the essence of equality.

³ *Stanley v Illinois* [1972] 405 US 645

CONSTITUTIONAL MORALITY AND THE REJECTION OF SOCIAL BIAS

The Indian Supreme Court's articulation of constitutional morality in *Navtej Singh Johar v Union of India*⁴ provides further clarity in addressing identity-based disadvantage. In that landmark judgment, the Court emphasised that constitutional morality must prevail over social morality and that dignity and autonomy are central to Article 21.⁵ The Court recognised that deeply entrenched social prejudices cannot determine the scope of fundamental rights.

The relevance of this reasoning extends beyond the decriminalisation of same-sex relations. It establishes a broader constitutional ethic that identity cannot become a ground for structural exclusion merely because social narratives attach suspicion or discomfort to it. Constitutional morality requires courts and policymakers to interrogate whether regulatory frameworks are shaped by evidence or by prejudice disguised as prudence.

In the domain of adoption, social bias may manifest subtly. Cultural assumptions about gender roles, paternal care, and vulnerability of girl children may influence regulatory preferences. However, constitutional morality demands that such assumptions be critically examined rather than passively accepted. If the apprehension surrounding single men adopting girl children is rooted in social anxiety rather than empirical necessity, constitutional morality requires the State to resist it.

The dignity of both the child and the prospective parent must be recognised. A child's welfare cannot be secured by compromising the dignity of those who seek to provide care, unless compelling and evidence-based reasons justify such compromise. The rejection of social bias does not weaken child protection; rather, it ensures that protective measures remain constitutionally anchored.

COMPARATIVE JURISPRUDENCE: ADOPTION AND IDENTITY

Comparative constitutional analysis reinforces the insistence upon individualised evaluation. In *E.B. v France*,⁶ the European Court of Human Rights examined whether the refusal of adoption authorisation had been influenced by impermissible considerations related to the applicant's

⁴ *Navtej Singh Johar and Ors v Union of India Thr Secretary, Ministry of Law and Justice* (2018) 10 SSC 1

⁵ Constitution of India 1950, art 21

⁶ *EB v France* [2008] ECHR 43546/02

identity. The Court's broader jurisprudence underscores that while States retain discretion in adoption policy, such discretion cannot be exercised in a manner that embeds discrimination.

The comparative lesson is consistent across jurisdictions: identity-based exclusion requires strict scrutiny. Adoption decisions must focus on the applicant's capacity to provide a stable, loving, and secure environment. Where refusal is influenced by generalised assumptions about identity, the legitimacy of the decision becomes constitutionally suspect.

This convergence of constitutional reasoning suggests a shared normative commitment. Democracies recognise that family life and parenthood engage profound human interests. When access to these domains is restricted on categorical grounds, courts demand careful justification. The emphasis on individual capacity rather than group identity reflects an evolving understanding of equality that prioritises substance over stereotype.

THE “BEST INTERESTS OF THE CHILD” STANDARD: LIMITS AND MISUSE

The best interests of the child standard is the cornerstone of adoption law. It is flexible by design, allowing authorities to consider a wide range of factors relevant to a child's welfare. However, flexibility does not imply unbounded discretion. The standard must operate within constitutional limits. It cannot serve as a rhetorical shield behind which discriminatory assumptions are concealed.

If the State argues that restricting single men from adopting girl children advances the child's best interests, it must demonstrate that such a restriction is evidence-based and narrowly tailored. The existence of crime committed by some individuals within a group does not automatically justify categorical suspicion toward the entire group. To accept such logic would be to allow the best interests standard to transform into a vehicle for prejudice.

As emphasised in the *Anuj Garg* case, legislation must be assessed by its effects as well as its objectives. A blanket or structural discouragement of single male adoption may have the effect of perpetuating harmful stereotypes about male caregiving. It may also deprive children of potentially suitable homes. The best interests principle must therefore be applied through rigorous, individualised evaluation rather than through generalised exclusion.

Child protection and constitutional equality are not mutually exclusive. A system that evaluates each applicant thoroughly, regardless of gender, is both more just and more effective. By contrast, categorical suspicion risks obscuring genuine indicators of risk while unfairly burdening those who pose none.

THE DANGERS OF COLLECTIVE GUILT

The underlying logic of restricting single men from adopting girl children often rests on an unspoken premise: because a small percentage of men commit sexual offences, all men must be approached with heightened suspicion. This reasoning, while emotionally understandable, is constitutionally fragile. It shifts the burden of misconduct from individuals to an entire gender. Collective guilt has long been rejected in democratic theory. Criminal liability is personal, but Constitutional rights are individual. When governance begins to treat identity as a proxy for risk, it departs from these foundational principles.

The danger of collective suspicion lies not only in unfairness but in its corrosive effect on equality. It reinforces the stereotype that caregiving is inherently maternal and that paternal presence is secondary or suspect. Such narratives undermine the constitutional vision of gender neutrality and equal capacity. They also risk marginalising children who may benefit from diverse family structures.

The insistence on individualised proof in *Stanley* reflects this rejection of collective guilt. The Court recognised that presumptions about an entire class of fathers violated both due process and equal protection. The same reasoning cautions against treating single men seeking adoption as presumptive risks. Constitutional democracies demand evidence, not inference from identity.

REIMAGINING ADOPTION LAW

A constitutionally sound adoption framework must move from suspicion to scrutiny. Suspicion attaches to identity, but scrutiny examines conduct and capacity. Adoption processes already contain robust mechanisms for assessing suitability. Background checks, psychological evaluations, home inspections, and post-adoption monitoring are designed precisely to protect children. Strengthening these mechanisms is constitutionally preferable to imposing identity-based barriers.

Reimagining adoption law requires reaffirming that gender, by itself, is not a proxy for parental unfitness. Uniform standards must apply to all applicants. Where specific risk factors are identified, they must be addressed individually. Transparency in decision-making, reasoned orders, and avenues for review can further ensure fairness. By centring evaluation on measurable indicators rather than generalised fear, the system protects children without undermining equality.

The constitutional promise of dignity extends to those who seek to form families through adoption. It requires that they be judged on their merits, not on narratives attached to their gender. Such an approach does not weaken vigilance, but it refines it. It ensures that child welfare remains paramount while respecting the constitutional structure within which welfare policy must operate.

CONCLUSION

Adoption law reflects the moral and constitutional maturity of a society. It reveals how a community balances vulnerability with fairness, protection with principle. The impulse to safeguard girl children from harm is unquestionably legitimate. Yet constitutional governance requires that such protection be pursued through individualised scrutiny rather than collective suspicion.

The jurisprudence examined in this article, from *Anuj Garg* to *Stanley v Illinois*, from *Navtej Johar* to *E.B. v France*, converges upon a common insight: presumption cannot replace proof. Identity-based exclusion must withstand rigorous constitutional examination. Equality beyond formalism demands that the State resist stereotype, even when stereotype is cloaked in protective language.

A system that evaluates each prospective parent thoroughly, without attaching suspicion to gender, is both more just and more effective. It protects children while honouring constitutional commitments. In a democracy governed by the rule of law, fear cannot become policy, and prejudice cannot masquerade as prudence. Adoption, at its core, is about building families. The Constitution ensures that in building them, we do not erode the very principles that bind us together.