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Legal Analysis of Custody Rights and Their Impact on Gender Equality in Sri Lankan Family Courts

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Abstract: The paper examines whether family court practice in Sri Lanka implements the statutory provision on 'gender-neutral custody' as a legal norm, or whether ingrained behavioural and evidentiary practices in custody hearings reflect the socially constructed norm of mothers as custodial parents and fathers as economic providers. Using a multilayered methodology involving doctrinal research, comparative analysis of case law, and fieldwork research comprising qualitative interviews, the paper presents a critical analysis of 50 familial custody judgments from family court judiciaries (2015-2022). It draws on qualitative interviews with twelve family court judges, eight family law practitioners, and six probation officers responsible for preparing social welfare reports. This research identifies a significant law–practice gap: in the majority (84%) of the sample verdicts, sole custody was granted to the mothers, with rare instances of joint custody. The reasoning in the judgments often relied on stereotypes of mother-centric care and emphasised fathers' financial contributions. Social welfare reports, being the main evidence input, predominantly outlined mothers' day-to-day care in the reports, but appraised fathers predominantly in terms of occupation. Interviewees reported a scarcity of specialist training in family law and gender-sensitive decision-making, with judges frequently defaulting to cultural scripts in ambiguous situations. The paper contends that such procedural and cognitive dynamics entrench gender biases in the face of ostensibly neutral statutes. This paper recommends four intersecting reforms: mandatory gender-inclusive adjudicative training; a presumption of joint custody with limited exceptions; template-based, equal welfare-assessor forms; and public information campaigns aimed at breaking the cultural custom of patriarchal parenting. These policies propose aligning court practice with evidence-based, child-centric standards and more equitable parenting outcomes.

Keywords- Custody; Family law; Gender equality; Parental roles; Sri Lanka

Introduction

Sri Lanka's family legislation, particularly the Guardianship of Infants Ordinance of 1890 and the Maintenance Ordinance of 1999, enshrines the "best interests of the child" as the primary consideration in child custody cases [1]. In court, judicial officers must weigh the rights of parenthood against the welfare of the child, considering factors such as the child's age, health, and emotional needs, as well as each parent's ability to care [1]. Whilst, in theory, the law is gender-neutral, treating mothers and fathers similarly, it contradicts a strong cultural convention: mothers are seen as "natural" caregivers and providers, while fathers are providers. The stereotype might, in subtle ways, act upon judicial determination.

This paper examines Sri Lanka's custodial arrangements in an international context. Globally, there is much consensus that when children have shared parenting arrangements, whereby they spend a considerable amount of time with both parents, better outcomes are generally observed than in sole custody arrangements [2], [3]. Most studies show that children raised within a joint custody setting compare equally to, or better than, those within a sole arrangement setting [2], [3]. An example of this is a study conducted by Clark (2023), which shows that children in a joint physical custody setting display higher self-esteem, fewer emotional difficulties, and better educational attainment than those in a sole custody setting [2]. Likewise, a summary of 60 empirical studies found that, in 34 of them, kids in joint custody

performed better across all measures of well-being than kids in sole custody [3]. This kind of evidence has led to policy shifts across many regions, including a presumption in favour of shared parenting arrangements, except where safety is a concern, as indicated by the United Nations Convention on the Rights of the Child (CRC), which concerns child welfare [1], [4].

Notwithstanding such global trends, the Sri Lankan law of custody has not been similarly reformed. Commentators note that, although Sri Lankan law, by statute, allows for joint custody, it remains exceptional in practice [1]. Observers abroad caution that abstract gender neutrality in law can conceal entrenched bias. Even Sri Lankan judges have agreed that equal treatment of parents on paper alone is insufficient if root stereotypes are left intact. In one international workshop of jurists, it was concluded that, "stereotypical attitudes among justice actors...result in gender discrimination," and so suffocate substantive equality [1], [4]. This paper examines whether Sri Lankan courts truly apply gender-neutral standards favouring equal parental responsibility, or whether they continue to uphold traditional norms of so-called "maternal preference." This research systematically examines Sri Lanka's family court rulings on custody and investigates how gender norms influence these decisions.

Theoretical frameworks

This discussion is based upon two related theoretical frameworks: formal gender neutrality of law versus substantive equality, and empirical underpinnings of the theory of shared parenting.

Formal Gender Neutrality and Substantive Equality

Despite Sri Lankan family codes, such as the law of child custody, being drafted in gender-neutral terms, legal commentators and practitioners also urge caution that neutral drafting in law on paper does not guarantee that results in practice will be similarly fair [1]. The deeply entrenched stereotypes regarding gender roles, as the International Commission of Jurists (ICJ) and Sri Lankan judicial officers themselves pointed out, can continue to lurk beneath the radar of neutral enactments, particularly if legal practitioners are not equipped with tools to detect, much less reverse, such bias [7]. The theory of gender also proposes that courts might inadvertently resort to social scripts of mothers as caregivers and fathers as providers. Such stereotypes, it is shown, have been responsible in the past for custodial adjudication being dictated by a so-called "maternal preference" in awarding custody—an inference that women are by nature better parents, despite personal circumstances [6]. The tendency is not exclusive to Sri Lanka, although it is particularly strong in cultures that strongly support traditional roles for women as caregivers and men as earners.

The standard of best interests of the child is conceived as a child-centred, neutral test in determining custody. Yet research and judicial commentary disclose that in application, consideration of best interests will usually be displaced by presumptions of a gendered kind [6], [2]. The space in between procedural egalitarianism and substantive results is key to explaining why Sri Lankan courts, in spite of a law that is gender-neutral, will, by a vast measure, grant principal custodies to mothers—the pattern that emerges in case law as in empirical research [1].

Shared Parenting Theory and Best Global Practice

The second theoretical foundation is that of the shared parenting model, with a strong international empirical evidence base. Multiple decades of research show that kids do best when they have significant, frequent relationships with both parents following separation, as long as conflict between the parents is tolerable [2], [7]. Joint physical care, as denoted by children spending considerable time residing with both of their parents, has been linked to higher self-esteem, reduced behavioural issues, and stronger educational performance in comparison with sole care arrangements [4]. In reaction, jurisdictions worldwide have tended to move toward a policy presumption in support of shared parenting, seeing it as being most in line with the child's best interests and in line with international norms of law, such as the United Nations Convention on the Rights of the Child [7].

In spite of such world trends, Sri Lanka's institutional and cultural setting remains averse to reform. The persistent prevalence of maternal custody awards betrays not only statutory stagnation but also the persistent impact of cultural norms and nonstandard, evidence-based evaluation of both parents' caregiving potential [1]. This theoretical approach, therefore, guides our examination of whether Sri Lankan courts can translate genuinely child-centred, gender-equal custodial choices, or whether institutional and cultural dynamics continue to yield traditional notions of gender roles in the name of neutrality.

Literature review

Introduction

The determination of child custody is one of the most contentious and decisive fields of family law. While courts of most jurisdictions purport to follow the "best interests of the child," it is shaped by societal norms, legislation, and

empirical data about child well-being to a degree-dependent extent. For several decades now, there has been a body of comparative research contrasting outcomes for children with shared and sole custody arrangements, with corresponding strong evidence supporting shared parenting. Nevertheless, its implementation in judicial practice is by no means uniform, especially in cultures with enduring gendered assumptions about parental responsibility. This literature review synthesises international and Sri Lankan studies about custody orders, implications of gender norms, and the implementation gap between legislation and courts of justice.

Joint Custody and Child Well-being: International Evidence

A huge body of empirical work—including meta-analyses, longitudinal studies, and systematic reviews—confirms that children who have joint custody do much better than children who have sole custody in a number of different areas. Bauserman's seminal meta-analysis [8] collated data from a large number of studies and concluded that children with joint custody have greater self-esteem, reduced behavioural and emotional difficulty, and superior performance at school. These are not insignificant advantages: effect sizes are large enough to justify influencing policy at the family courts level.

Nielsen's exhaustive summary [9] of 60 studies further supports this consensus by demonstrating that, in most instances, children who are involved in joint custody are better adjusted than those who are involved in sole custody. Significantly, no study reviewed by Nielsen consistently concluded adverse child outcomes for children who are involved in joint arrangements. Rather, there were consistently observed benefits regarding psychological health and social and physical relationships. Other meta-analyses, like those by Baude et al. [10], confirm findings like these and point out that children who are involved in shared custody are closer to each respective parent and are less compromised by shifts at home.

The advantages of joint parenting are not restricted to non-conflicted families alone. Numerous studies have discovered that, even with modest parental conflict, joint custody plans are generally superior to sole custody [2], [11]. Kelly (2007) observes that children's adjustment to divorce is more closely related to the quality of their relationship with each parent than to the incidence of parental conflict itself, provided that conflict is not raised to the level of abuse or chronic hostility [11]. This research has serious implications for legal standards: it critiques the belief that sole custody is necessarily less disruptive for conflicted families and endorses policies to maintain strong connections to each parent to the greatest extent possible.

Professional associations, such as the American Psychological Association and the National Council on Family Relations, have reacted to this evidence by supporting shared parenting as a default assumption, in the absence of clear evidence of harm or safety risk [12]. Practically speaking, this trend has shaped legal reforms in some Western states, with default joint-custody regulations and binding plans to co-parent being increasingly standard practice [13].

The Tenacity of Gendered Presumptions about Custody Determinations

Despite an empirical consensus regarding the benefits of shared parenting, actual custody is still significantly influenced by gender norms and gender stereotypes. The Western system of family law has a past with the "tender years" doctrine applied to it, by virtue of which it was presupposed that young children are best cared for by their mothers. The majority of legal jurisdictions have ritually denounced this doctrine and enacted gender-neutral ones, yet research shows implicit biases continue to direct judicial decision-making and societal assumptions.

Costa et al. [14] conducted a cross-cultural study to present evidence that when there is a request to assign custody to equally qualified mothers and fathers through vignettes describing them, participants assigned greater custody to mothers. Statistical analysis revealed that stereotyping associating women with care and nurturance led to greater allocations to mothers, irrespective of whether legal guidelines emphasised gender neutrality. This finding demonstrates that gendered cultural scripts continuously dictate custody outcomes regardless of statutory guidelines. Several studies have reviewed the enforcement of apparently gender-neutral legislation and discovered a durable maternal bias in adjudicative practice. For instance, Maccoby and Mnookin's pioneering investigation of California custody cases discovered that, irrespective of reforming legislation, mothers were granted primary physical custody in an overwhelming majority of cases [15]. More recent Canadian and Australian studies are similarly confirmatory: even with legislative efforts towards shared parenting, adjudicative reasoning frequently evokes outdated ideas about paternal provision and maternal care [16], [17]. These latent biases are moreover reinforced by social workers, guardians ad litem, and mediators' practice to unconsciously favour maternal demands by virtue of cultural assumptions.

Emery, Otto, and O'Donohue [18] offer a critical examination of child custody evaluations by noting their sparse scientific foundation and enduring gendered presuppositions of professional judgments. They posit that although the "best interests of the child" criterion is legally neutral at its core, its operation is extremely vulnerable to subjective

determination and thus open to stereotyping, defining outcomes. This is extraordinarily troubling, considering the extremely large implications of custody judgments for children's later life prospects.

Legal and Policy Developments: Towards Shared Parenting

As a response to this accumulating body of evidence, several Western societies have adopted legal reforms relating to joint parenting. These include the introduction of statutory assumptions about joint custody in Sweden and Belgium, and Australia's Family Law Amendment (Shared Parental Responsibility) Act 2006, which specifies that equal shared parental responsibility is to be taken as a starting assumption [19]. Evaluations of these reforms have demonstrated that although there has been a significant increase in joint custody arrangements, joint parenting can occur only if judges adopt innovative approaches that redistribute traditional gender norms [19, 20].

Melli and Brown [13] examine the growth of "the shared time family" ideal, suggesting that legal change cannot by itself surmount cultural opposition. They highlight the role of process reforms, such as mandatory mediation, model parenting plans, and judicial training, in advancing legal aspirations. Such observations are echoed by policy analyses conducted by both the European Commission and the United Nations, suggesting a comprehensive change involving legal reform, education, and institutional change [21].

However, it is argued by opposing groups that joint parenting should not be imposed across all situations, especially those involving intimate partner violence, serious violence, or parent disability. The literature clearly states that child safety is paramount and joint parenting is not appropriate for all situations [12], [21].

Custody Law and Practice in Sri Lanka: Statutory Ideals vs. Judicial Reality

Compared to the copious writings in the West, there is still scant work on research related to Sri Lankan and, more generally, South-Asian contexts on the issue of joint/custody matters. Sri Lankan law follows Roman-Dutch and English common law, which is formally gender-neutral and considers "each parent to be the natural guardian of the child," with "the welfare of the child" taking primacy [22], [23]. Regarding the Guardianship of Infants Ordinance and similar legislation, fathers are entitled to joint custodianship on the same terms as mothers, with the 'best interests principle' to be applied to court decisions.

The United Nations Convention on the Rights of the Child (UNCRC), which Sri Lanka has ratified, further commits the state to ensure that the provisions on parents' rights to share in the care of the child are respected [22]. In accordance with international best practices, current law supports the view that joint parental responsibility has replaced the traditional parental role accorded to the father as the natural guardian [23].

Nevertheless, side by side with these statutory laws are other personal law codes, such as Kandyan law, Muslim law, and Tesawalamai law, that take into account traditional laws that are more in favour of mothers taking care of children [23]. For example, according to Kandyan personal law, sons and daughters below the age of seven are normally entrusted to the mother if she is found to be fit to care for them. These laws are reminiscent of the "tender years" rule.

Unfortunately, empirical studies on the practical issue of custody allocation in Sri Lankan courts are rare. It appears from various commentaries and practitioner accounts that, contrary to the norm, judges tend to grant sole custody to mothers in cases involving younger children without hesitation [23]. Few statistics are to be found on joint custody cases and the rationale behind the courts' allocation of either joint or sole custody to parents.

The existence of joint custodies has been affirmed by other legal analyses, such as that carried out by Ekaratne Associates [1], indicating that joint custodies are possible but that they rarely do occur. These are mostly preceded by reports that highlight the mother's capacity to take care of the child rather than evaluating the capacity that fathers can offer to these families. These observations are similar to those reported in international research [18].

The Gender-Neutral Promise and the Gendered Reality

The gap that exists between the gender-neutral promise contained within Sri Lankan legislation and the gendered reality that emerges within child custody decisions has been identified within other regions across the globe. Whilst on one level, Sri Lanka's legislation is reflective of gender-neutral ideas concerning both parental responsibility and child welfare, these ideals continue to remain channelled into gendered narratives concerning child custody decisions [22], [23], [1].

International literature strongly asserts that there is more to closing this gap than implementing legislative change. The training of judges on gender-neutral decision-making approaches, issue-specific evaluation instruments to assess parenting qualities, and mass educational programs to shift long-held mindsets are identified as necessary steps to make this change happen [21], [1]. The relevant literature indicates that the processes involved within child custody

dispute adjudication need to receive special attention to ensure both parents' nurturing capacities are appropriately assessed, social welfare staff are adequately trained, and judges can counteract their own subconscious biases.

Summary and Research Gap

To sum up, there is strong evidence showing that shared parenting is generally positive for children's welfare, while contemporary child custody laws tend to treat both mother and father more equally [8], [9], [10], [2]. Nevertheless, both historical narrative and contemporary studies indicate hidden gender biases remaining active within child custody arrangements, which may lead to what could be termed a de facto maternal preference, regardless of any formal legal provision to the contrary [14], [15], [16], [17].

Although extensive research from Western contexts demonstrates the positive effects of joint custody and highlights the risks of gendered judicial reasoning [8], [10], there is a paucity of systematic, data-driven studies examining how Sri Lankan courts interpret and apply custody laws. Existing Sri Lankan legal analyses tend to focus on statutory provisions rather than empirical outcomes or judicial reasoning processes [22], [23]. There is only a little published evidence on the actual distribution of custody awards, the content of judicial opinions, the evidentiary role of social welfare assessments, or the influence of cultural narratives on legal decision-making. This study addresses this gap by providing the first comprehensive, qualitative analysis of custody outcomes, judicial reasoning, and institutional practices in Sri Lanka.

Research Questions and Objectives

Research Questions

4.1. Research questions

Based on the above background and literature, the following are the research questions that this study seeks to explore:

R1: How are awards of custody distributed in Sri Lankan family courts?

Specifically, what are the rates of sole parental custody, joint custody, and split custody arrangements for children?

R2: How do the judges defend their decisions on child custody in their judgments?

Do the judges apply objective standards that are sexlessly focused on the best interest of the child, or apply sex-based presumptions (for instance, presumptions about mothers as nurturers and fathers as breadwinners)? [10], [14]

R3: How are social welfare evaluations utilised as evidence in the context of custody disputes?

Are the parental care abilities of fathers objectively assessed, or are assessments biased towards the mother [18]?

R4: How do social norms affect the decisions of the judiciary? In what ways do or do not judges refer to or reject local sex norms in relation to fathers' rights and children's needs? [23], [2]

Objectives

The primary objective of this study is to offer a rigorous empirical and jurisprudential evaluation with regard to the manner in which the practice of the Family Court of Sri Lanka currently lives up to the statutory ideal of gender-neutral custodial decision-making, and based upon that analysis, the development of evidence-based reform recommendations aimed at making the practice of the Family Court more child-centred and equitable.

Methodology

This study employs a qualitative socio-legal research design to empirically examine the gap in Sri Lanka between child custody law in practice and its ideal statutory foundations. Using best practices in conducting socio-legal studies [24], for example, the proposed project will utilise a combination of doctrinal research analysis, qualitative content analysis of case law, and qualitative analysis of interviews with stakeholders in child custody disputes to facilitate comparison between law, reasoning, and practice in child custody disputes [25], [22].

Case Law Analysis

To understand actual outcomes in custody disputes, we carried out a qualitative content analysis of 50 documented custody awards from Sri Lankan family courts, from 2015 to 2022.

The sample size was based on the need for a representative cross-section of such decisions in the recent past, covering a period of seven years. Having fifty cases was deemed appropriate to obtain the depth needed to observe patterns in the decision-making process. It was also considered feasible for qualitative research.

The sample size also conforms to the best practices in qualitative research, which emphasise the need for depth rather than breadth in the research. These cases were found through keyword searches on online legal databases, including custody, guardianship, and parental rights. Care was taken to include regional variation, with rural, urban, and varied family circumstances, such as dissolution due to divorce, separation, or relationship dissolution.

Every decision was independently assessed and coded, with a structured coding process. These were some of the dimensions assessed:

Type of custody arrangement: Sole mother, sole father, joint custody, split custody, or other.

Language and reasoning: Any references to similarities between each parent's roles in caring for the children and their economic role, the "best interests" concept being statutory law, and the cultural or gendered assumptions (e.g., mothers "naturally" are creators).

This finalised the social welfare assessments and the evidentiary weight attached to the reports.

Cited as legal authority: Statutes, judgments, and international treaties (e.g., The UN Convention on the Rights of the Child).

Qualitative data, such as reasoning of judges, stereotypes, and legal references, were analysed thematically [24], [8]. Differences in coding were resolved through discussion, and examples from judgments were selected to illustrate key traits.

Semi-Structured Interviews

To complement the legal analysis and probe underlying institutional dynamics, we conducted semi-structured interviews with 26 key stakeholders:

I, 12 family court judges

II 8 family law practitioners (attorneys)

III 6 social welfare officers involved in custody evaluations

This sample was selected to include voices from all major professional groups involved in custody decisions, as well as regional and experiential diversity. The sample size has been determined by the principle of thematic saturation; that is, the interviews have been conducted in such a manner that no further themes are emerging. This is standard in qualitative research.

The interviewees have been selected using purposive sampling to ensure that the interviews encompass a variety of regional and experience-related aspects. Interviews have been conducted in person or via video calls between October and December 2022.

The interview guide examined:

I The way judges construe and practically implement the custodial standards laid down under the statute,

II The assumed evidentiary worth and nature of the content of social provision reports,

III The views of the professionals towards the roles of parents and the impact of culture on those views,

IV Institutional obstacles and prospects for change.

To protect the sensitivity of the interviews with judicial and legal professionals, they were not recorded. Instead, contemporaneous written notes were taken during and after the interviews. These were then developed into a full record of the interviews on the same day to minimise recall bias. Thematic analysis was conducted based on the six-phase process described by Braun and Clarke (2006). [26] Recurring themes included "mothers as default custodians," "institutional inertia," and "tensions between tradition and child welfare."

Legal Framework Analysis

Concurrently, we conducted a doctrinal analysis of the relevant Sri Lankan statutes, namely, the Guardianship of Infants Ordinance, the Maintenance Ordinance, as well as any subordinate legislation or court protocols [1]. Influential international conventions (especially the UN Convention on the Rights of the Child) and Sri Lankan literature were also analysed in this context to outline the formal parameters within which the practice of law and case law were measured. Doctrinal literature analysis remains remarkably important in determining formal precepts on gender neutrality, joint parental responsibility, and the best interests of the child [22], [21].

Integrative Approach

This approach, utilising a triangulation of case law analysis, stakeholder interviews, and doctrinal research on the formal requirements, effectively compares the “law in the books” with the “law in action” [25], [9]. The mixed-methods design measures the custody statistics and patterns whilst providing an in-depth qualitative understanding of the underlying decision-making logic and institutional factors. This is critical given the socio-legal research pointing to a significant “law in action” and “law in the books” gap in Sri Lanka [22], [23], [1]. These methods allow us to provide a descriptive overview of the custody award patterns alongside justifiable recommendations for policy and further action.

Minimising bias, reflexivity and rigour

To reduce internal biases related to the collection of qualitative data, several precautions were taken. Interviews were conducted using a semi-structured approach to ensure that all participants were asked similar questions, yet at the same time, the nuances of the profession were taken care of. As the participants were judicial and legal professionals, it was decided that the interview questions would be written down contemporaneously rather than using any electronic recording device. The written questions were then developed into interview reports on the same day to reduce recall bias. Analytical bias was reduced through the use of iterative coding and constant comparison between different participant groups.

Results

Predominance of Maternal Custody

An analysis of 50 documented family court judgments established an alarming gender disparity in the allocation of custody to mothers (84%) and fathers (6%), whereas joint custody was extremely uncommon in the pool of studied cases, and there were no cases found for the issue of split custody in the sample. These facts come despite legislative provisions regarding joint custody under Sri Lankan law [1], [22], [23]. All these facts tend to support the long-established observation in Sri Lankan family law literature regarding the “deep-seated preference” in mother care [1] [5] [26].

These tendencies have been supported in the interviews with the judges and lawyers; many reported that in cases where the mother was not found to be unfit, “almost always” custody was awarded to her alone. “We always assume in our society that mothers will nurture, so we grant her custody by default,” reported one judge. These tendencies operate in line with global literature in terms of gender-neutral law not necessarily leading to gender-neutral outcomes [14], [15].

Gender based Reasoning in Judicature

A thematic analysis of judicial reasoning found that traditional gender roles are very much the base. Mothers are often presented as the “natural caregivers” or the “emotional attachment figure”, while fathers are put forward as the breadwinners which including comments on “professional duties” or “heavy work schedule” as a reason for not giving physical custody. For instance, in the case of *Weragoda v. Weragoda* [27], the judgment put forward that “a mother’s constant presence and natural caregiving ability make her the more fit custodial parent.

Additionally, a small number of judges base their decisions on what is best for the child, which includes factors like psychological well-being, educational continuity, or the quality of each parent’s relationship with the child. But many judgments which do bring up best interest criteria still fall back on cultural norms, which say that “in this culture children look to mothers for care and fathers for financial support.” In the case of *Fernando v. Fernando* [28], we see the play of the tenderness years doctrine, which has been very much put to question in global literature [14], [10]

Joint custody is a rare discussion topic and when brought up is very often shot down as impractical rather than looked at meritly. This gendered approach, which puts forth stereotypes over evidence, we see played out in other jurisdictions, where it may present formal neutrality but in reality, is a maternal preference [14], [15], [10]

Social Welfare Reports and Evidentiary Bias

Social welfare reports in the majority of cases were key; they served as the main evidence for the child’s home environment and parental fitness. Also, these reports had a strong tilt in that they paid great attention to the mother’s caregiving giving which in turn left the father’s assessment very brief and narrow, often to do with issues of income and home. In one example a case study report dedicated 12 pages to what the mother did and just 2 paragraphs on the father.

In what we found out from our interview with social workers, it was clear that they were trained to follow certain report templates that focus on the custodial home -- mostly the mother— that did not look at the father and his role in the child's life. As one worker said, "Our training is around the environment the child lives in, and that is usually the mother's home." Also, this sets in stone a gender biased idea in the reports and at the same time feeds into judicial decisions favouring mothers [26],[18].

Also, Judges played right along with the reports, more so that the reports told them what to see as true. As a result, what we see is a model that plays up the role of the mother over the father in every decision and goes against the statute that calls for gender neutral laws [5].

Cultural and Institutional Issues

These findings indicate that instead of using the tool of the best-interest analysis in children objectively, the judiciary applies children's welfare through societal expectations.

Also emerging from the interview data was a clear judicial predisposition towards sidestepping any custody ruling that might appear controversial or at odds with societal norms. Several interviewees held the conviction that custody cases ought to reflect "how things are" from a cultural point of view, without any apparent critical analysis regarding potentially gender-biased attitudes embodied in such norms. This corresponds with the concerns voiced by the International Commission of Jurists, who state that "stereotypical attitudes of justice practitioners lead to gender discrimination and suffocate substantive equality" [5].

These combined attitudes help to maintain the systemic inertia of gendered outcomes in custody decisions in Sri Lanka despite the formally gender-neutral legal policy in place. [29], [5], [26].

Summary

These combined findings reveal that the Sri Lankan family courts operate in such a manner that they tend to consistently apply a mother-preference model of custody under the ostensibly gender-neutral statute. While such a pattern of course does not exist in isolation in other jurisdictions, there would seem to exist an especially strong contradiction based upon the Sri Lankan legal mandate regarding gender equity in child custody arrangements. The presumption and operation outlined above would seem to contraindicate well-established global data regarding child development based upon both parental influences [10], [15], [9].

Discussion

The findings of this research show how large the disparity is between child custody legal systems under Sri Lankan law and actual judicial practice. On paper, with laws like the Guardianship of Infants Ordinance and Sri Lankan Constitution ensuring equal parenting rights with joint custody possibilities, actual child custody awards still strongly favour mothers at an overwhelming rate (84%), with joint custody even being rarely entertained or awarded [1], [22], [23].

The disparity between apparent legal impartiality and actual discrimination can well be described using the example provided in this study with supporting citations [5], [14]. "The distinction between formal and substantial or actual equality has been characterised differently at different times and under different statutes. It has been described as only requiring actual equality in individual cases if the legal system is formally equal, or alternatively, where there is substantial actual inequality. The actual scheme need not actually treat persons differently."

As highlighted by interview evidence and previous research findings, judges strongly recognise this dilemma. "The Constitution offers equal rights for all," said a high-ranking judge; however, "indeed, women feel themselves to be at a disadvantage when dealing with justice access" [5]. The pattern continues with regard to parents' rights; supposedly equal laws intersect with culture to originate different outcomes based on gender [14], [26]. The pattern found in this research has been reproduced internationally; studies found that unless deliberate action was taken, injustice among genders in making custody decisions would still occur [15], [10].

Factors Perpetuating Gendered Outcomes

Entrenched Gender Roles and Judicial Decision-Making

The reason why these differences persist is due to these deep-rooted societal norms. Since there was no judicial presumption or standard strongly favouring joint or shared custody access, defaulting to "natural mother" prevailed within these judicial circuits. Although prior to this, Roman-Dutch Law was child-centred and viewed paternal rights more importantly, in Sri Lankan case laws, afterwards, "the welfare principle," with "the best interests of the child" given highest importance [28]. It has been found that "welfare" was equated with motherhood instead of actual

practice. Citations emanating from this research study strongly pointed to mothers' virtue and maternal ties ([26], [28]). It was not found to exist only within Sri Lankan case laws; "good mothers" were favourably treated while access was denied when there was no specific judicial guidance to favour otherwise. [10], [9]

Thus, stereotype-based thinking could adversely affect real child welfare. Contemporary studies on child development emphasise the importance of continuous parent-child relationships even if the parents are to be separated [29], [18]. Children denied meaningful access to either parent, commonly the father, experience an increased risk of experiencing anxiety, low self-esteem, and poor well-being outcomes [18], [11]. Conversely, Sri Lankan courts showed little sensitivity to these findings. Rather, it was commonly held that the mother's actual parenting role remained the clinching element irrespective of actual or potential paternal engagement [23], [10]. It ironically contradicted the actual legal requirement to benefit the child's welfare interests.

Institutional Practices and Evidence Bias

Institutional factors combine to reify maternal preference, too. The judicially imposed high probative value of reports submitted by a Social Welfare Officer (SWO), which predominantly concentrate on mothers' nurturing circumstances, leaves judges with an inequitable set of facts [26], [30]. The reports tend to go into considerable detail about mothers' domestic circumstances, with fathers' contributions, moreover, narrowly circumscribed within the evidence by economic or residential circumstances alone. The consequent inequity inherent within the probative process tends to institutionalise sexist stereotypes in deciding fathers' status as co-parents [30], [26].

The lack of judicial training or even awareness about joint custody or the legal basis for joint custody makes this problem worse. Unlike Western countries like Australia and England, which mandate joint custody or best interests' tests for custody determination, the Sri Lankan judiciary functions in a policy void [31]. Most of these interviewees confessed a lack of knowledge or knowledge at all about joint custody research, while none had ever encountered joint custody before.

Cultural Politics and Social Expectations

Cultural factors: There are also cultural expectations that define judicial conduct. Accessing joint custody against the wishes of the mother would "threaten family harmony," which is part of Sri Lankan culture's emphasis on unity [5]. The importance of this balanced discussion can be found under ICJ's dialogue summary: "While equality is guaranteed by law, women still feel they're at a disadvantage when it comes to enjoying their rights," [5]. Notice how inversely these circumstances apply to joint custody orders when fathers find themselves at an unfair disadvantage because of perceptions of mothers' superior nurturing or trustworthiness qualities [10], [14].

Unless corrected by positive institutional incentives and training to overcome these biases, well-meaning judges fall prey to these subconscious tendencies to conform to societal stereotypes. Reflecting other countries' studies too, rarely would courts opt for joint custody unless forced by government policy or legislation [10], [31], [13]. For instance, in Australia, joint custody agreements emerged only when positive statutory changes were brought about with corresponding judge education programs [31].

Implications for Policy and Practice

These results imply numerous important consequences for Sri Lankan family laws and gender justice:

Recognition of the Law Practice Gap: The evidence substantiates concerns expressed by advocates of gender equality that even with neutrality under the law, the custody system is not free of sexism [14], [5].

Standardisation of SWO Reports: Given that SWO reports function like "the eyes and ears" of the court [30], it becomes necessary to standardise these assessments to achieve balanced interviews and evaluate parenting on both sides effectively. Best practice guidelines based on worldwide practices (such as the Community Legal Information systems in Hong Kong) could easily be adopted [30].

Judicial Training and Education: There is an urgent need for training judges on unconscious bias, child development, and joint parenting benefits. Familiarisation with psychological knowledge and overseas legal systems could stimulate more evidence-based practice [29], [31].

Compliance with International Standards: Sri Lanka is a party to the CEDAW and UNCRC treaties that mandate countries to ensure that such gender-neutral laws cannot lead to indirect discrimination [1], [4]. Failure to enforce equal rights would lead to Sri Lanka defaulting on international agreements. Adherence to international standards related to the assumption of joint parenting would not only benefit children but would lead to progress on gender justice [18], [4].

Comparative Perspective

The Sri Lankan experience proves that equal rights cannot be achieved solely on paper but need positive judicial intervention and judicial guidance on an ongoing basis. Comparative studies carried out among US, Canadian, and Australian researchers show that joint parenting becomes common practice only when legal measures and training programs occur [31], [13]. Otherwise, stereotypes persist, and the ideal of equal rights cannot be achieved.

Summary and recommendations

In this research, it becomes evident that Sri Lankan Family Court legal systems, though supposedly equal and impartial with no bias towards either gender with regard to child custody rulings, contain considerable bias towards either gender [32]. A stark majority of child custody judgments—84% of those under study—are ruled in mothers' favour [32], and more importantly, judicial opinions tend to rest on traditional stereotypes about parenting [5]. Reports submitted by Social Welfare Officers (SWMs) add to these maternal strands of record evidence with men's roles—fathers' roles—being constructed mostly with regard to economic factors [33]. The evident consequence: absence of actual equalisation under equal legal circumstances [4].

These observations bear out concerns arising from an examination of global scholarship: Gender-Neutral Law often conceals continuities of substantive inequality unless deliberately addressed through judicial education, legal technicality, and societal transformation [34]. The interests of the child, which supposedly are at the forefront of every determination, too often utilise a gender perspective that negatively affects fathers' rights and children's access to fathers [35].

Recommendations

In an effort to close the gap between formal and substantive equality, we propose four related measures:

Judicial Training and Sensitisation

Mandated education programs for judges and judicial workers would therefore be necessary. These would need to focus on education about gender equity, implicit bias, child development, and evidence-based custody practices using worldwide best practices on joint parenting [5][36][9]. Sri Lankan judges themselves suggest they could make more balanced decisions if they were more aware of their biases and could base decisions according to child welfare rather than bias.

Presumptive Joint Custody in Law

Sri Lanka should introduce amendments to statutes to establish a presumption of joint physical and legal custody – sole custody permissible only if found justified (e.g., risk of harm or actual impossibility). There should be recognition of children's rights to access and meaningful contact with fathers,[37],[38] which was introduced in Australia and other European countries. Court practice guidelines could establish a default presumption regardless of the lack of amendments to statutes to avoid falling back into maternal custody without thorough justifications applied thoroughly.

Standardised and Balanced Social Welfare Assessments

Reports submitted by the Social Welfare Officer (SWO) will now become an important evidence-based component. There would need to be clear and established guidelines for SWOs to make well-rounded and objective assessments of both parents. These would consist of individual interviews with each parent (with and without the child), analysis of the parenting abilities of each parent, and taking into account the paternal nurturing roles [39].

Public Education and Cultural Dialogue

Public awareness campaigns, with the involvement of community leaders and media, can challenge the presumption that only mothers can be good custodians. Parenting schemes with messages stressing the advantages of shared parenting and fathers' contribution to parenting [40] would achieve this goal of bringing positive transformation to societal attitudes towards fatherhood and motherhood, which will help courts embrace societal advancements rather than opposing them.

Broader Implications

These recommendations would assist with ensuring that Sri Lanka's system of custody fosters substantive equality instead of equal formal before the law.' By taking a more evidence-based approach and pushing back against patriarchal cultural traditions, courts can more effectively honour the real best interests of children while safeguarding equal rights for both parents. Sri Lanka's experience teaches other countries with gender-neutral laws how not to fall into the traps of bias, hiding under the disguise of neutrality [34],[36],[9].

Conclusion

For true gender equity to prevail in custody rulings within Sri Lanka's judicial system, major structural, legal, and societal overhauls need to occur. It can be pointed out that there is an important need for specialised training to be provided to legal members of the judiciary, while at the same time, there must be a presumption of joint custody with specific exemptions introduced into Sri Lankan law. Of utmost importance would therefore be balanced and fair social welfare evaluations coupled with societal movement towards reshaping gender roles with regard to parenting roles and expectations.

Finally, it is also essential to understand how the results of the qualitative data were interpreted, as well as how potential biases were minimised in order to arrive at the conclusions drawn from the study. It is important to recognise that the results of the study are not based on the interpretation of individual views, as the data were triangulated, creating patterns from the data. Moreover, the potential biases of the qualitative research interviews were minimised through the use of a semi-structured interview guide, note-taking, and the expansion of the interview records on the same day.

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