

Judicial Considerations of Parental Attitudes in Child Custody Disputes: An Empirical Analysis in Ghana

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Abstract

The complexity of child custody disputes in family law has a significant impact on all parties involved, particularly the children. The effect of parental attitudes on custody decisions is substantial; however, very few empirical studies have focused on this issue. This paper examines the influence of parental attitudes on custody outcomes. Using the mixed-method approach, data were gathered from divorced parents, lawyers, and a judge. The analyzed data, through the lens of the Parental Responsibility Model, the Best Interests of the Child Standard, and established legal frameworks, emphasize the significance of emotional ties, daily care, and guidance on judicial outcomes in custody cases. It also emerged that parents who jointly prioritized their child's needs were more likely to receive favourable custody decisions. The study concludes by emphasizing the need for a holistic approach to judicial decisions that accommodates the intricate relationship between parental emotional ties, daily care, and guidance.

KEYWORDS *Parental attitudes, Child custody, Judicial Consideration, Emotional ties, Daily Care*

Introduction

This study aims to examine judicial considerations of parental attitudes in custody decisions. Child custody disputes are a common and intricate issue in family law, with significant consequences for all parties involved, especially the children.¹ The work of Hayes and Higgins² indicates that family disputes influence parenting arrangements, custody outcomes, and, to some extent, financial settlements. These disputes arise when parents cannot agree on the care and upbringing of their children, often in the context of separation, divorce, or other family breakdowns.³ These disputes often involve high levels of conflict, emotional distress, and uncertainty for all parties, particularly the children.⁴ Given the high stakes, the outcomes determine the child's primary residence, parental responsibilities, and the nature of parent-child relationships.⁵ Some scholarly studies suggest that child custody disputes can have long-lasting effects on children's emotional and psychological well-being, underscoring the need for informed and effective judicial decision-making.⁶

Judicial decision-making plays a critical role in resolving child custody disputes, requiring judges to balance competing interests and make decisions in the child's best interest.⁷ Research suggests that judicial decisions in child custody cases can have a profound impact on children's emotional and psychological well-being, as well as their long-term adjustment to family

¹ Jackson, Margaret, and Donna Martinson. *Risk of future harm: Family violence and information sharing between family and criminal courts*. FREDA Centre for Research on Violence Against Women and Children. A similar position is held by Harris et al, in *Family Law*. Aspen Publishing, 2023.

² Hayes, Alan, and Daryl J. Higgins, eds. *Families, policy and the law: Selected essays on contemporary issues for Australia*. Melbourne: Australian Institute of Family Studies, 2014.

³ This position is articulated in the 2018 doctoral thesis of Collett on the topic "*The mediation of family disputes in terms of the Children's Act 38 of 2005: Experiences and views of social workers*." The argument that conflict emanates from partners who fail to agree during divorce or separation has also been documented in the work of Target et al., in 2017 when they examined parents' experience of child contact within entrenched conflict families following separation and divorce.

⁴ DiFonzo, J. Herbie. "From the rule of one to shared parenting: Custody presumptions in law and policy." *Family Court Review* 52, no. 2 (2014): 213-239.

⁵ Bartlett, Katharine T. "Prioritizing past caretaking in child-custody decision-making." *Law & Contemp. Probs.* 77 (2014): 29.

⁶ Ledger, Matthew. "The best interests of the child and the potential of collaborative family law: a critical analysis of collaborative lawyers' perspectives on important issues in collaborative practice." PhD Diss., University of British Columbia, 2017.

⁷ Widjaja, Angela Melani, Ike Yeni Kartika Sari, Hasna Firaz Isza Fadhillah, and Devi Sukma Ayuningtyas. "The Application of the Best Interest of the Child Principle as a Basis for Determining Child Custody." *Unram Law Review* 4, no. 2 (2020): 163-173.

changes.⁸ Kleinschlömer and Krapf⁹ documented that children's emotional problems after parental separation are linked to conflict levels with the primary caregiver, with higher conflict associated with more emotional issues and lower conflict with fewer issues. Moreover, it was also found that judicial decisions can influence parental cooperation and conflict resolution, shaping the quality of co-parenting relationships.^{10,11} In making these decisions, judges consider various factors, including parental capacity, child development needs, and family dynamics.¹² Parental attitudes, specifically, have been identified as a crucial factor influencing judicial decisions, as they can impact parental cooperation, conflict resolution, and ultimately, the child's well-being.^{13,14}

Parental attitudes play a pivotal role in shaping child custody decisions, influencing the well-being and adjustment of children in the aftermath of parental separation or divorce.¹⁵ Cao et al.¹⁶ revealed that interparental conflict before and after divorce plays a crucial role in shaping children's parental affiliation and adaptation trajectories during the parental divorce process. Studies have shown that parents who exhibit authoritative parenting styles, characterized by warmth, responsiveness, and demandingness, are more likely

⁸ Amato, Paul R. "Children of divorce in the 1990s: an update of the Amato and Keith (1991) meta-analysis." *Journal of Family Psychology* 15, no. 3 (2001): 355.

⁹ Kleinschlömer, Pauline, and Sandra Krapf. "Parental separation and children's well-being: Does the quality of parent-child relationships moderate the effect?." *Journal of Social and Personal Relationships* 40, no. 12 (2023): 4197-4218.

¹⁰ Guida, Austin M. "The Effect of an Acceptance and Commitment Therapy Co-Parenting Education Intervention: An Analysis of Co-Parenting Self-Efficacy, Self-Regulation, and Psychological Flexibility Amongst High Conflict Co-Parents." PhD diss., The University of Arizona, 2023.

¹¹ Maccoby, Eleanor E., and Robert H. Mnookin. *Dividing the child: Social and legal dilemmas of custody*. Harvard University Press, 1992.

¹² Knowlton, Natalie Anne. "The modern family court judge: Knowledge, qualities, and skills for success." *Family Court Review* 53, no. 2 (2015): 203-216.

¹³ Azar, Sandra T., and Linda R. Cote. "Sociocultural issues in the evaluation of the needs of children in custody decision making: What do our current frameworks for evaluating parenting practices have to offer?." *International Journal of Law and Psychiatry* 25, no. 3 (2002): 193-217.

¹⁴ Azar, and Linda.

¹⁵ Azar, and Linda.

¹⁶ Cao, Hongjian, Mark A. Fine, and Nan Zhou. "The divorce process and child adaptation trajectory typology (DPCATT) model: The shaping role of predivorce and postdivorce interparental conflict." *Clinical Child and Family Psychology Review* 25, no. 3 (2022): 500-528.

to receive joint custody.^{17,18} In contrast, authoritarian or permissive parenting styles can negatively impact child well-being and custody decisions.^{19,20} Specifically, authoritarian parents who are overly restrictive and punitive may be viewed as less capable of providing a nurturing environment, while permissive parents who are overly indulgent may be seen as failing to provide necessary boundaries.²¹ Nevertheless, cooperative co-parenting, characterized by open communication, collaboration, and mutual respect, is crucial for promoting child well-being and facilitating successful joint custody arrangements.^{22,23}

A parent's attitudes toward the other parent also significantly influence child custody decisions.²⁴ It is also revealed that parents who facilitate a positive relationship between the child and the other parent are more likely to receive joint custody. In other words, a conciliatory parental relationship in managing children's affairs correlates with the likelihood of gaining joint custody.²⁵ Conversely, parental alienation or hostility can lead to sole custody awards.²⁶

¹⁷ Mosier, Ryan L. "The Effect of Parenting Styles Adolescents Experience in Single-Mother Versus Single-Father Families on Juvenile Delinquency." PhD diss., The Chicago School of Professional Psychology, 2021.

¹⁸ Ware, LaTrenda N. "Exploring Experiences of African American Single Mothers Raised with Permissive and Authoritative Parenting Styles." PhD diss., Capella University, 2024.

¹⁹ Sundvall, Jamie R. "The Assessment of Permissive Parenting on Children's Expression of Shame in Divorced Families." PhD diss., Capella University, 2023.

²⁰ Pires, Mónica, and Mariana Martins. "Parenting styles, coparenting, and early child adjustment in separated families with child physical custody processes ongoing in family court." *Children* 8, no. 8 (2021): 629.

²¹ Sanchez, Jessica Hernandez. "Lived experiences of young adults exposed to negligent and permissive parenting styles." PhD diss., Walden University, 2024.

²² Eikrem, Trine, and Kari Sjøhelle Jevne. "I do it for the children, and it's not a walk in the park: Parents' stories about how to maintain cooperative co-parenting during the divorce process." *Child & Family Social Work* 27, no. 4 (2022): 815-824.

²³ Reho, Antonella, Paola Corsano, and Laura Fruggeri. "Co-parenting in families with an imprisoned parent: A systematic review." *Ricerche di psicologia: 3, 2021* (2021): 1-30. Similar findings have also been documented by Nouman et al., (2016) in the paper titled "The role of parental communication, child's wishes and child's gender in social workers' custody recommendations.

²⁴ Sanders, Leslie, Robert Geffner, Steven Bucky, Neil Ribner, and Angela J. Patino. "A qualitative study of child custody evaluators' beliefs and opinions." *Journal of Child Custody* 12, no. 3-4 (2015): 205-230.

²⁵ Chen, Yiyu, and Daniel R. Meyer. "Does joint legal custody increase child support for nonmarital children?" *Children and Youth Services Review* 79 (2017): 547-557.

²⁶ Mercer, Jean, and Margaret Drew. *Challenging parental alienation*. Routledge, 2021.

Lorandos and Bone,²⁷ and Meire²⁸ showed that parental hostility or acrimoniousness can influence judicial outcomes. High levels of parental conflict and poor psychological adjustment can also negatively impact child well-being and custody decisions.^{29,30,31} Assessing parental psychological adjustment and conflict resolution skills is essential in child custody evaluations. The work of Nielsen³² further shows that parents with poor psychological strength are less likely to receive favourable judicial custody decisions.

A study conducted by Lev-Wiesel³³ and Kelly³⁴ found that high levels of parental conflict were associated with adverse child custody outcomes, including decreased parental cooperation and increased child psychological distress. Another study by Sanders et al.³⁵ examined the impact of intimate partner violence on child custody decisions. The study revealed that parents who demonstrated cooperative co-parenting attitudes were more likely to receive joint custody, while parents exhibiting hostile or uncooperative attitudes were more likely to receive sole custody. Kruk's³⁶ study similarly revealed that shared parental responsibility plays a role in joint custody outcomes. Steinbach³⁷ and Kruk³⁸ found that parents who jointly prioritized their child's needs and

²⁷ Lorandos, Demosthenes, and J. Michael Bone. "Child custody evaluations: In cases where parental alienation is alleged." *Handbook of child custody* (2016): 179-232.

²⁸ Meier, Joan S. "Parental alienation syndrome and parental alienation: Research reviews." *National Online Resource Center on Violence Against Women* (2013): 1-21.

²⁹ Augustijn, Lara. "The relation between joint physical custody, interparental conflict, and children's mental health." *Journal of Family Research* 33, no. 3 (2021): 613-636.

³⁰ Nielsen, Linda. "Re-examining the research on parental conflict, coparenting, and custody arrangements." *Psychology, Public Policy, and Law* 23, no. 2 (2017): 211.

³¹ Gould, Jonathan W., and David A. Martindale. *The art and science of child custody evaluations*. Guilford Press, 2007.

³² Gould, and Martindale, p. 31.

³³ Lev-Wiesel, Rachel, Ayelet Gur, Tamar Hamish, Michal Noked, Shir Levy, Mor Cohen, and Gila Chen. "High-conflict custody disputes as perceived by young adults who were the child in dispute." *Journal of Family Trauma, Child Custody & Child Development* (2024): 1-14.

³⁴ Kelly, Joan B. "Psychological and legal interventions for parents and children in custody and access disputes: Current research and practice." *Va. J. Soc. Pol'y & L.* 10 (2002): 129.

³⁵ Kelly, p. 25.

³⁶ Kruk, Edward. "Shared parental responsibility: A harm reduction-based approach to divorce law reform." *Journal of Divorce & Remarriage* 43, no. 3-4 (2005): 119-140.

³⁷ Steinbach, Anja. "Children's and parents' well-being in joint physical custody: A literature review." *Family process* 58, no. 2 (2019): 353-369.

³⁸ Kruk, Edward. "A model equal parental responsibility presumption in contested child custody." *The American Journal of Family Therapy* 39, no. 5 (2011): 375-389.

well-being were more likely to receive favourable custody decisions³⁹. Forkuor et al.'s⁴⁰ study examined the impact of cultural factors on child custody decisions in Ghana. The study found that cultural norms emphasizing family unity and community involvement often influenced custody decisions. These cultural factors are distinctly woven into the rational-legal system.

Despite the significance of parental attitudes in child custody decisions, empirical research on this topic is limited. Existing empirical studies have primarily focused on the impact of parental conflict and parental mental health on judicial decision-making. However, the specific ways in which parental attitudes influence judicial decisions remain less researched, especially in Africa and Asia. In addition, the best interest of the child standard used in determining child custody decisions in most jurisdictions in Africa and Asia, particularly Indonesia, appears vague without its empirical operationalization. This study, therefore, aims to address this gap by empirically examining the relationship between parental attitudes and judicial decisions on child custody. This study further aims to operationalize the vague child's best interest standard by empirically identifying specific parental attitudes and behaviours that are most predictive of judicial outcomes.

The findings of this study contribute to the literature on family law, sociolegal studies, sociological jurisprudence, and the development of evidence-based guidelines for judicial decision-making in child custody cases. By examining how parental attitudes shape judicial decisions in Ghana, this research informs strategies to improve the accuracy and fairness of custody determinations. Furthermore, this study's results provide valuable insights and a practical guide for legal actors, policymakers, and mental health professionals working with families involved in child custody disputes. Ultimately, this research promotes child-centered and effective resolution of child custody disputes, ensuring the best possible outcomes for children and families. Though this study is not directly about Indonesia, it is relevant to Indonesian law because it also uses the best interest of the child standard in determining custody outcomes.

³⁹ Darwiche, Joëlle, Cindy Eira Nunes, Nahema El Ghaziri, Camille Imesch, and Séverine Bessero. "Coparenting interventions and shared physical custody: Insights and challenges." *Shared Physical Custody* 25 (2021).

⁴⁰ Forkuor, John Boulard, Alice Konadu-Yiadom, Eric Agyemang, Charles Selorm Deku, and Douglas Attoh Odongo. "Negotiating cultural and legal demands in child protection cases: Experiences and lessons from Ghanaian social workers." *Cogent Social Sciences* 10, no. 1 (2024): 2323567.

Theoretical and Legal Frameworks

The theoretical frameworks guiding this study are the Parental Responsibility Model (PRM) and the Best Interests of the Child Standard (BICS). The PRM emphasizes the importance of parental responsibility, attitudes, and capability in determining child custody outcomes. This framework posits that parents who demonstrate responsibility, stability, and a commitment to their child's well-being are better equipped to provide a nurturing environment.⁴¹ The PRM considers factors such as parental cooperation, communication, and conflict resolution skills in assessing parental responsibility. This approach prioritizes the parent-child relationship and recognizes that children benefit from meaningful relationships with both parents.^{42,43} The PRM exhibits significant limitations, warranting critical examination. Despite its intention to foster parental accountability, the PRM oversimplifies the complexities of familial relationships, neglecting power differentials, cultural heterogeneity, and socio-economic contextualities.^{44,45} The model's ambiguous and expansive definitions facilitate inconsistent implementation and enforcement, thereby disproportionately impacting marginalized populations. Moreover, the PRM's emphasis on individual parental responsibility obscures structural barriers, including poverty and resource deprivation, which constrain parents' capacity to meet expectations. A nuanced reconceptualization of PRM is necessary to accommodate diverse family configurations, address systemic inequities, and prioritize collaborative, support-oriented approaches over punitive measures, thereby cultivating a more contextualized understanding of parental responsibility. The BIC standard complements this framework.

The BICS is a widely accepted framework guiding child custody decisions.⁴⁶ The BICS is the primary criterion used for determining contested

⁴¹ Forkuor et al, p. 39.

⁴² Frosch, Cynthia A., Sarah J. Schoppe-Sullivan, and D. David O'Banion. "Parenting and child development: A relational health perspective." *American Journal of Lifestyle Medicine* 15, no. 1 (2021): 45-59.

⁴³ Masaroğulları, Nicel, and Yağmur Çerkez. "The mediating role of mothers' conflict resolution skills in the relationship between mothers' communication skills and behavioural problems of children aged 3–6 years." *Current Psychology* (2024): 1-14.

⁴⁴ Ponce, Adriana. "Invisible Work, Power, and Money: Gender Inequality in Shared Parenting within Child Custody Arrangements." PhD diss., 2023.

⁴⁵ Brinig, Margaret F. "Result Inequality in Family Law." *Akron L. Rev.* 49 (2016): 471.

⁴⁶ Uniform Child Custody Jurisdiction and Enforcement Act, 1997. The UCCJEA is a uniform State law that was approved in 1997 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to replace its 1968 Uniform Child Custody Jurisdiction Act (the UCCJA). <https://www.ojp.gov/pdffiles1/ojdp/189181.pdf>

child custody cases. It is argued that evaluating each case based on its individual circumstances and the personalized justice offered by the BIC standard is fundamental to modern family law.⁴⁷ BICS prioritizes the child's physical, emotional, and psychological well-being above all else. This framework considers various factors, including the child's age, needs, and wishes, parental capacity, and the potential impact of custody arrangements on the child's development.⁴⁸ BICS recognizes that children's interests are unique and may vary depending on their individual circumstances. In applying BICS, judges and evaluators must consider the potential consequences of custody decisions on the child's short- and long-term well-being. The ambiguity and uncertainty surrounding the BICS standard, which provides judges—often without specific training in child development and family dynamics—broad discretion, has increasingly come under scrutiny.⁴⁹ Due to its lack of clear definitions and reliance on speculation about future behaviours, there are no definitive guidelines for assessing what constitutes a child's best interests. Consequently, judges' interpretations of the BICS vary widely, resulting in unpredictable and inconsistent outcomes. The BICS standard resembles a projective test, and the absence of a clear definition or a judicial consensus on children's best interests renders it impractical.^{50,51} Courts often struggle to determine a child's best interests, leading judges to rely on personal interpretations that may be influenced by individual biases and subjective values, including gender bias.⁵²

While both frameworks prioritize child well-being, they differ in their emphasis. The PRM focuses on parental responsibility and capability, whereas BICS centers on the child's specific needs and interests. The PRM assumes that responsible parents are best equipped to meet their children's needs, whereas BICS acknowledges that children's interests may sometimes conflict with parental desires. In practice, these frameworks often intersect, as responsible parents are more likely to prioritize their child's best interests.

The legal frameworks governing child custody in Ghana primarily include the United Nations Convention on the Rights of the Child, adopted in 1990, and the African Charter on the Rights and Welfare of the Child, which Ghana

⁴⁷ Uniform Child Custody Jurisdiction and Enforcement Act, 1997

⁴⁸ Uniform Child Custody Jurisdiction and Enforcement Act, 1997

⁴⁹ Woodhouse, Barbara Bennett. "Child custody in the age of children's rights: The search for a just and workable standard." *Family Law Quarterly* 33, no. 3 (1999): 815-832.

⁵⁰ Scott, Elizabeth S., and Robert E. Emery. "Gender politics and child custody: The puzzling persistence of the best-interest standard." *Law & Contemp. Probs.* 77 (2014): 69.

⁵¹ Emery, Robert E. *Renegotiating family relationships: Divorce, child custody, and mediation*. Guilford Press, 2011.

⁵² Emery, p. 39.

ratified in 2005. The Republican Constitution of 1992 establishes children's rights and provides a framework for the passage of appropriate legislation to protect children's rights. The Children's Act, 1998 (Act 560) of Ghana protects children's rights and covers issues such as parental duties and responsibilities, maintenance, adoption, and foster care. The Act protects children from exploitative labour and child marriage, and it specifies responsibilities for childcare and protection. It also prioritizes the best interests of the child, considering factors such as parental attitudes, capability, and the child's well-being. Needless to say, all these are relative to the economic situation of the parent(s). The Children's Act, 1998, Section 2, stipulates that the best interests of the child shall be the paramount consideration in all decisions affecting the child.

Parental attitudes play a crucial role in determining child custody in Ghana. The Children's Act, 1998, Section 11, emphasizes parental responsibility, stating that parents have a duty to provide care, protection, and maintenance for their children. Courts consider parents' attitudes toward their responsibilities, including their ability to provide a stable and nurturing environment. For instance, parents who demonstrate a willingness to cooperate and prioritize their child's needs are more likely to receive joint custody.

In the context of child custody disputes, it is crucial to recognize that neither parent possesses an inherent or automatic entitlement to custody. Instead, the judiciary's paramount objective is to ascertain which parental arrangement best serves the child's interests, prioritizing their well-being and happiness. This is consistent with the theoretical framework of the BIC standard. Under common law, the father typically possessed an inherent right to custody of his minor children; however, subsequent legal developments favored maternal custody. Currently, the law acknowledges the child's best interest as the decisive consideration, also known as the Welfare Principle, as articulated in Act 560. The Welfare Principle signifies that the Court determines the best outcome for the child, regardless of the parents' intentions and conflicting desires. The term 'welfare,' considered significant, has been interpreted in various ways.

In *Re McGrath (Infants)*,⁵³ it was determined that the term 'welfare' of the child must be interpreted 'in its broadest sense.' In *R v Gyngall*,⁵⁴ the Court of Appeal, represented by Lord Esher MR, articulated: "The Court must evaluate the entirety of the case's circumstances, including the parent's status, the child's status, the child's age, and the child's well-being." Section 45(1) of Act 560

⁵³ [1893] 1 Ch 143 at 148, CA.

⁵⁴ [1893] 2 QB 232 at 243.

stipulates that in determining custody of a child, a Family Tribunal must prioritize the child's best interests and the significance of a young child residing with their mother. Consequently, the welfare of the newborn is unequivocally the foremost issue. As articulated by Harman LJ in *In re O (An Infant)*,⁵⁵ "The entirety of the child's life context must be considered, with the primary factor regarding their welfare being the identity of the parents and their willingness to fulfill their responsibilities."

It is imperative to emphasize that the notion of parental superiority or hierarchical rights is incongruent with contemporary family law. Instead, both parents possess equal rights and responsibilities towards their children. The court's responsibility is to render decisions based on a case-by-case examination of the circumstances about custody, thereafter determining the arrangement that serves the children's best interests. Through a contextual analysis, the court determines the most advantageous arrangement for the child's welfare, rather than recognizing an inherent parental right. This child-centered paradigm is reinforced by jurisprudential precedents, notably *Attu v. Attu*,⁵⁶ where the court established that, in assessing the child's welfare, "the facts must be examined from every angle, with due weight accorded to all relevant material." In *Opoku-Owusu v. Opoku-Owusu*,⁵⁷ Sarkodee J asserted that the Court's obligation is to safeguard the welfare of the children, regardless of the parents' preferences.

From the decided judicial decisions, the courts consider various factors, including parental capability and stability, the child's age, needs, and wishes, and the potential impact of custody arrangements on the child's development. The court's primary concern is ensuring the child's physical, emotional, and psychological well-being. Parental attitudes, such as hostility or uncooperativeness, can negatively impact custody decisions. Conversely, parents who exhibit a commitment to cooperative co-parenting and prioritize their child's interests are viewed favorably. The courts have demonstrated a commitment to prioritizing child-centered decision-making.

Drawing on the above, it is important to note that this study implicitly addresses the tension between the "Rule of Law" and the "Rule of Practice" in child custody decision-making. The Rule of Law requires judges to apply the BIC principles under the Children's Act, 1998 (Act 560) and related international laws, while the Rule of Practice shows the context-sensitive reasoning, interpretation, and application of these standards by judges. It is worthwhile to note that statutes and precedent do not entirely determine

⁵⁵ [1965] 1 Ch 23 at 29, C.A.

⁵⁶ [1984-86] 2 GLR 743.

⁵⁷ [1973] 2 GLR 349.

judicial decisions, but are influenced by factors such as emotional attitude, parental demeanor, and courtroom comportment. This shows how law and practice interact to shape outcomes and how judges translate the normative framework into lived justice. Examining this dynamic empirically sheds light on how the interaction between law and practice shapes child custody adjudication in Ghana and its implications for other jurisdictions such as Indonesia.

Navigating the field for Data

It is important to state that this study forms part of a project funded by the University of Ghana School of Law, and the project report has been formally submitted to the responsible committee. This method section is therefore teased out of the main work. The present study relied exclusively on primary data sources. Consistent with the definitions provided by Driscoll⁵⁸ and Moser and Korstjens,⁵⁹ primary data refers to original, firsthand information collected directly from participants by the researcher, specifically designed to address a particular research question or scientific inquiry. This approach enabled the gathering of novel, empirical evidence unfiltered by secondary interpretation, thereby enhancing the study's validity and reliability.

This study, therefore, made use of primary data from both quantitative and qualitative sources. For the quantitative approach, a sample of 150 was used. This sample was based on the 209 divorcees on the divorce list received from the Court. These 209 divorcees were those who could easily be reached and were also willing to participate in the study. This sample size of 150 is approximately 72% of the total number of divorcees on the list as described. While this is appreciable for a study of this nature, we do not intend to claim generalizability. However, data from such a sample size could offer insights into the issues under study. A combination of simple random and systematic sampling techniques was used in reaching our respondents. These sampling techniques were used because we wanted to give each divorcee on the list an equal chance to participate in the study. A semi-structured questionnaire was used in gathering data. The questionnaire had closed and open-ended questions. The closed-ended questions came with their respective response categories. The responses to the open-ended questions were closed after data gathering. The

⁵⁸ Driscoll, Dana Lynn. "Introduction to primary research: Observations, surveys, and interviews." *Writing spaces: Readings on writing* 2, no. 2011 (2011): 153-174.

⁵⁹ Moser, Albine, and Irene Korstjens. "Series: Practical guidance to qualitative research. Part 3: Sampling, data collection and analysis." *European journal of general practice* 24, no. 1 (2018): 9-18.

questionnaire was divided into two sections. The first section was on demographics, while the second section was on factors contributing to child custody. The second section was subdivided into parental attitudes, emotional ties, daily care and guidance, ability to provide, parental skills, etc. Some of the questions asked were: Do you think the court takes into consideration parental attitudes in determining child custody outcomes? Why do you think you/ your partner bond well with your child(ren)? Who stays home from work when the child is sick? Who arranges for and takes the child to the hospital when sick? etc. In all, we administered 150 questionnaires. The unit of analysis is divorced persons.

With the qualitative approach, participants were purposively selected because of the kind of information they had to offer. The units of analysis included divorced persons, lawyers, and judges. In all, 15 (9 females and 6 males) divorcees, 2 family lawyers, and 1 judge at the lower court were interviewed. The divorcees were interviewed because of their experiences with divorce proceedings. The family lawyers were interviewed due to their practice-based perspectives and the firsthand accounts of their experiences handling custody cases, providing insight into the practical application of laws and procedures. The judge was also interviewed because of her experiences in judicial decision-making and courtroom dynamics, taking into account witness testimony and evidence presentation. Judges can elucidate their thought processes, considerations, and factors influencing custody decisions. Even though the study intended to interview about 5 judges, however, given the sensitivity of the issue, judges were generally reluctant to participate, even though they were assured of anonymity. This explains why only 1 judge was interviewed. Interviewing lawyers and a judge allowed for cross-validation of findings, enhancing research reliability. It also helped in providing a more complete picture of custody proceedings. In gathering the data, we designed an interview guide for in-depth interviews. The guide was made up of open-ended questions only. The interview guide provides flexibility for further probing. It also allows for detailed information about the study subject.

From the data collection process discussed, this study adopted a mixed-method design, integrating quantitative and qualitative approaches through a convergent parallel strategy. The SPSS software (version 22 with a copyright license) was utilized for the analysis of the questionnaire data. Descriptive statistics, including frequencies and percentages, were utilized for the statistical analysis. Inferential statistics were also used to explain the relationship between parental attitudes and custody decisions. For the qualitative data, we transcribed the recorded interviews, identified themes and response patterns, and analyzed

them to conclude. The principle of the hermeneutic circle,⁶⁰ as articulated by McCaffrey et al.,⁶¹ was employed to analyze the contents and contexts of the transcripts. Quantitative and qualitative data were presented simultaneously. Findings from both quantitative and qualitative strands were integrated and presented in tandem, facilitating a comprehensive and multifaceted understanding of the research phenomena. In effect, the data were synthesized to create a coherent analytical framework.

We obtained ethical clearance from the Ethical Review Unit of the Centre for Legal Research at the University of Cape Coast in Ghana for this human-centered study. We placed a strong emphasis on respecting human dignity throughout our research. Our primary goal was to maintain the integrity and privacy of our participants while protecting them from harm and undue stress. We endeavored to uphold and protect the integrity and privacy of our participants, while also ensuring their safety from harm and undue stress. Participants' autonomy and the right to self-determination were considered. The participants received sufficient information regarding the data collection processes and the intended academic use of the results. All participants were informed of the consequences of their involvement in the study. For participants unable to read or write, oral consent was obtained, whereas those capable of reading and writing provided their signatures on the informed consent form. The consent was provided voluntarily and in a clear manner. Confidentiality was ultimately guaranteed. Participants' personal data were de-identified to ensure anonymity. For example, we utilized numerical identifiers for divorcees rather than their actual names, and this method was similarly applied to judges and lawyers.

Judicial Considerations of Parental Attitudes

This section examines divorced people's attitudes toward their children and how that contributes to judicial decisions on custody outcomes. The attitudes of divorced people were studied in the context of emotional ties and daily care and guidance.

⁶⁰ Hermeneutic analysis involves a continuous process where the researcher alternates between interpreting individual elements of the text and comprehending the broader context, thereby enhancing the overall understanding of the phenomenon within its specific setting.

⁶¹ McCaffrey, Graham, Shelley Raffin-Bouchal, and Nancy J. Moules. "Hermeneutics as research approach: A reappraisal." *International Journal of Qualitative Methods* 11, no. 3 (2012): 214-229.

To understand how emotional ties contribute to custody outcomes, we first sought to ascertain from respondents the factors that contribute to strong bonds between parents and their children. The data show that 50.67% of respondents cite the enduring presence of the child with them as a significant factor in fostering a strong bond, underscoring the importance of consistent physical proximity in nurturing parent-child relationships. Furthermore, 16.67% of respondents emphasize their role as a primary source of guidance and support for their child, reflected in the child's inclination to seek them out for answers to questions, suggesting a sense of trust and reliance on parental guidance. Similarly, 17.33% of respondents attribute the strong bond to their role as providers, with their children turning to them to fulfill their needs, indicating a perceived sense of security and dependability associated with the parent-child relationship. Additionally, 15.33% of respondents highlight the significance of shared recreational activities in strengthening the parent-child bond, as evidenced by the child's inclination to engage in play whenever together, suggesting the importance of shared experiences in fostering emotional connection and rapport.

As to whether emotional bonds with the child contributed to judicial decisions on custody outcomes, the majority, comprising 74.67%, indicated that they believed the court did consider this factor, while 25.33% expressed the opposite view. This data suggests a significant portion of respondents perceive the court as taking into account the child's relationship dynamics with parents during custody determinations. Using the Pearson correlation coefficient to examine the association between the degree of emotional attachment and the likelihood of obtaining custody, the correlation between emotional ties and chances of custody was found to be significant ($r = .000$, $N = 150$, $p = .785$, two-tailed).

The findings from the quantitative study are similar to the narratives shared by the participants during the in-depth interview. According to participant 3:

As a mother, you need to develop strong emotional ties with your children. You have to love them and let them know you love them. Why call yourself a mother if you lack positive emotional attitudes? Your love for your children determines how you care for them, and it plays a critical role in custody cases. The more you are emotionally tied to your children, the more you are likely to gain custody. ...a mother who is always angry and beats the children is likely to lose custody because the children are likely to choose the less aggressive parent. Whether love or aggressiveness, it has implications for child custody.

In the words of participant 4:

Emotional ties are important in custody decisions. As you may know (referring to the interviewer), the child plays a role in arriving at who should take custody of him or her or whether the custody should be jointly granted. The way you talk to your child, smile, meet their needs, and play with them all go a long way to support their emotional needs. This promotes a strong bond between them and you, the parent. This goes a long way toward influencing judicial outcomes. No judge will grant custody to a mother or father who is unable to support the emotional needs of a child.

Sharing a similar perspective, family lawyer 1 stated:

Emotional attitude is key in determining child custody. A party's body language in court, temperament, and physiological responses are significant considerations. The court looks out for the best interest of the child and will certainly grant custody to an emotionally balanced parent. The parent who demonstrates care and guides the child toward upholding acceptable societal values is more likely to receive a favourable custody decision.

Judge 1 shared that:

As a judge, I consider many things, of which emotional ties are key. Indeed, it plays a role in my decision to grant custody to a particular party because, as is obvious in the law, the child's interest is paramount.

From the quantitative data, emotional ties play a crucial role in determining child custody decisions. This finding is consistent with the data gathered from the qualitative interviews. The narratives from participants 3, 4, Family Lawyer 1, and Judge 1 collectively emphasize the pivotal role of emotional ties in child custody decisions. They suggest that developing strong emotional bonds with children is essential for effective parenting and significantly influences custody outcomes. The importance of demonstrating love, care, and emotional support is stressed, with participant 3 asserting that a mother's love determines her ability to care for her children. Participant 4 highlights the child's role in custody decisions, underscoring the impact of parental interactions on the child's emotional needs and the subsequent judicial outcomes. Family Lawyer 1 and Judge 1 reinforce this perspective, noting that emotional attitude, body language, and physiological responses are critical

considerations in court. The consensus among these stakeholders is that courts prioritize the best interest of the child, granting custody to emotionally balanced parents who demonstrate care and promote societal values. This emphasis on emotional ties reflects a holistic approach to custody decisions, recognizing the intricate relationship between parental emotional intelligence and the child's well-being.

In the context of daily care and guidance, we first sought to understand the roles played by parents before divorce and whether such roles significantly impacted custody outcomes. The survey data reveal that most respondents, accounting for 65.33%, identified the mother as the primary caregiver responsible for preparing the child's meals, highlighting the traditional gender role expectations associated with childcare and domestic responsibilities. In contrast, only 9.33% of respondents indicated the father as the individual primarily responsible for making the child's meals, reflecting a lesser but still notable involvement of fathers in meal preparation within the surveyed population. Additionally, 8% of respondents reported the involvement of housemaids or domestic helpers in preparing the child's meals, underscoring the reliance on external assistance for fulfilling childcare duties in some households. Moreover, 17.33% of respondents identified other relatives, suggesting a collaborative approach to meal preparation involving extended family members beyond the nuclear family unit.

Collaborating with the survey data, the qualitative data also reveal that in terms of meal preparation for the children, the mothers play a significant role. According to participant 1:

In the Ghanaian family setting, the women are generally responsible for preparing meals at home. And this is what I do for my children and then-husband. It is a common thing for women to assume such roles. ...It is an important issue for the court because I remember I was asked such a question during cross-examination in court.

Participant 12 indicated:

When it comes to domestic responsibilities such as meal preparation, I generally consider that as my responsibility. In Ghana, if you are a married woman and you don't cook, society has a way of sanctioning you. As is the case for me, I believe it is the case for most homes. Let me add that there may be instances where some men cook, but there may be very few.

In the words of participant 14:

I am a man, but when it comes to meal preparation, that has generally been the role of my children's mother. I only cook when she is sick or engaged at work. But I must confess that my then-wife was the one cooking the most. ...I think this role cannot be overlooked during custody decisions because the children would have to eat to survive.

In respect of who bathes and dresses the child for school or home, the data reveal that 74.67% of respondents identified the mother as the primary caregiver for these tasks, while only 5.33% indicated the father's involvement. Additionally, 5.33% reported the assistance of housemaids or helpers, with 14.67% mentioning other relatives. This underscores the predominant role of mothers in childcare duties, alongside varying degrees of involvement from fathers, other relatives, and external caregivers. This finding is consistent with what participant 1 said:

Just like cooking, I do the bathing and dressing of the children. I don't remember any time my husband played this role. In my case, I won custody, and I believe all these roles informed the judge's decision.

Despite the significant role participant 1 felt bathing and dressing children played in custody decisions, participant 14 shared a different view. According to participant 14:

It is not about bathing or dressing children; it is also about having the resources to provide for the children. Bathing and dressing require soap and water and dresses. Who affords these things? To me, bathing and dressing are insignificant so far as judicial decisions on custody outcomes are concerned.

In terms of who takes care of the child(ren) when sick, the survey data reveal that 58.67% of respondents identified the mother as the one who stays away from work when the child is sick, 18.67% indicated the father, 8.00% reported the assistance of housemaids or helpers, while 14.67% said relatives of either the wife or husband assisted when the child(ren) were sick. This data is not pole apart from what participant 2 said:

I always take care of the children when sick. I take them to the hospital when necessary. I sometimes pay the hospital bills.

According to participant 7:

Go to the children's ward and see the number of men who bring their children to the hospital when sick. I always take my children to the hospital when sick. It counts towards custody decisions.

Participant 15 added:

It is mostly the case that I take care of my children when ill. I stay with them until they fully recover. I have to say that my then-husband used to visit during visitation hours. But it has always been my duty.

According to family lawyer 2:

The court is very much interested in the daily care of children and generally considers that in its decision-making. The question of who takes care of the daily needs of children is generally investigated. This is where social workers come in with their social inquiry report to inform the court's decision. I make use of the social worker's report, which normally contains details of each parent's daily roles, to influence the judge's decision.

This position was reiterated by the judge:

As I said, it is in the best interest of the child. Therefore, I consider the daily welfare of the child. The committed parent to the daily care of the child is most favoured, but there are instances where the parties play complementary roles. When it happens like that, I consider joint custody since both parents represent the best interest of the child. My decision is generally informed by the law, and the law allows me to factor in these social issues before arriving at a decision.

The Judge further added that:

A parent who refuses to take care of his or her child within marriage is unlikely to take care of that child after divorce. Such a parent is not fit to grant custody of a child to. The daily routine of taking care of a child is a big task, and it is the cumulative effort of dealing with this task that protects the future of the child. Providing financial support does not necessarily bring up a child, but the daily care and interaction.

For parents' attitudes towards the educational activities of their children, the survey data reveal that a substantial proportion of mothers, 65.67%, reported being involved either very often or often, with 34.33% indicating not

often. When the fathers were asked about their involvement, 91.34% reported being involved either very often or often, with only a minority (8.66%) indicating not often. This shows that when it comes to the educational activities of children, parents demonstrated a positive attitude.

In the case of maternal involvement in their child's extracurricular activities, the data reveal that a majority of mothers, comprising 66.67%, reported being involved either very often (16.00%) or often (50.67%), while a smaller proportion (33.33%) indicated not often. For paternal involvement, the result indicates that the majority of fathers, accounting for 96.00%, reported being involved either very often (72.00%) or often (24.00%), while only a small percentage (4.00%) stated not often. As to whether issues of daily care influenced judicial decisions on custody outcome, the results show that 70.67% of mothers believed that issues related to daily care influenced the court's decision, while 29.33% disagreed. The results also indicate that 57.33% of fathers believed that issues related to daily care influenced the court's decision, while 42.67% disagreed. This suggests that a significant portion of mothers and fathers perceive the consideration of daily care issues as impactful in custody determinations, indicating their relevance in legal proceedings concerning parental responsibilities. The correlation between child care/guidance and chances of custody was found to be significant ($r = .000$, $N = 150$, $p = .697$, two-tailed).

From the above, it can be deduced that women predominantly bear domestic responsibilities such as meal preparation, childcare, and caregiving when children are sick. Survey data shows that mothers are primarily responsible for bathing and dressing children, taking care of sick children, and are more involved in daily care activities. However, fathers are more involved in the educational and extracurricular activities of their children. The qualitative responses from participants confirm these trends, with women emphasizing their roles in daily care and men highlighting their financial contributions. A significant proportion of mothers and fathers believe that daily care issues influence judicial decisions on custody outcomes, which is supported by a significant correlation between childcare/guidance and chances of custody.

The narratives from participants 3, 4, Family Lawyer 1, and Judge 1 underscore the pivotal role of emotional ties in child custody decisions. Consistent with attachment theory,^{62,63} these stakeholders emphasize the

⁶² Shaver, Phillip R., and Mario Mikulincer. "An overview of adult attachment theory." *Attachment theory and research in clinical work with adults* (2009): 17-45.

⁶³ The central theme of attachment theory is that primary caregivers who are available and responsive to an infant's needs allow the child to develop a sense of security. The infant learns that the caregiver is dependable, which creates a secure base for the child to then

importance of strong emotional bonds between parents and children, highlighting the impact on caregiving and judicial outcomes.^{64,65} The emphasis on emotional attitudes, body language, and physiological responses resonates with emotional intelligence research, suggesting that courts prioritize parents' emotional ties. Notably, the narratives converge on the principle of the "best interest of the child", implying that emotional ties serve as a critical factor in determining custody. The finding that emotional strength or balance played a role in the judicial decision on custody outcome is not pole apart from the work of Nielsen,⁶⁶ as it was found that parents with poor psychological strength were most unlikely to receive favourable judicial custody decisions. These perspectives align with family law scholarship, which recognizes the significance of emotional considerations in custody disputes. This finding also aligns with the Parental Responsibility Model, which emphasizes the importance of parents' ability to provide a nurturing environment, prioritize their child's needs, and demonstrate emotional competence.⁶⁷ This finding is also buttressed by the Children's Act, 1998, Section 11, which emphasizes that parents owe a duty to provide care, protection, and maintenance for their children. Decisions from case laws (Re McGrath;⁶⁸ Attu v Attu;⁶⁹ Opoku-Owusu v Opoku-Owusu⁷⁰) reveal that Courts consider parents' attitudes toward their responsibilities, including their ability to provide a stable and nurturing environment. The finding that parental aggressiveness had implications for custody decisions is also consistent with the work of Lorandos and Bone⁷¹ and Meire,⁷² who indicated that parental hostility can influence judicial outcomes.

The findings also reveal that a Judge interprets hostile or negative parental attitudes as a direct breach of the PRM, which emphasizes cooperation,

explore the world. This is postulated in the following work of Bowlby, John. *Attachment and loss, vol. I, II, III: Separation*. Basic Books, 1973, 1982, 1988.

⁶⁴ Bethell, Christina D., Michele R. Solloway, Stephanie Guinasso, Sandra Hassink, Aditi Srivastav, David Ford, and Lisa A. Simpson. "Prioritizing possibilities for child and family health: an agenda to address adverse childhood experiences and foster the social and emotional roots of well-being in pediatrics." *Academic pediatrics* 17, no. 7 (2017): S36-S50.

⁶⁵ Loureiro, Tânia, and Leonardo da Vinci Fellow. "Child and family impact assessments in court: implications for policy and practice." *Families Outside* (2009).

⁶⁶ Loureiro, and Fellow, p. 31.

⁶⁷ Loureiro, and Fellow, p. 39.

⁶⁸ Loureiro, and Fellow, p. 54.

⁶⁹ Loureiro, and Fellow, p. 57.

⁷⁰ Loureiro, and Fellow, p. 58.

⁷¹ Loureiro, and Fellow, p. 28.

⁷² Loureiro, and Fellow, p. 29.

emotional stability, and the prioritization of the child's welfare. Within this framework, parental hostility, manifested through aggression, alienation, or an unwillingness to facilitate the child's relationship with the other parent, is viewed as evidence of an inability to uphold the core tenets of responsible parenting. The interviews, particularly with the family lawyers and the judge, reveal that daily routine activities weigh heavily in custody determinations. Judges regard such hostility or negative parental attitude as undermining the nurturing and stable environment envisaged under the PRM, since it jeopardizes the child's emotional well-being and erodes the possibility of constructive co-parenting. The convergence of stakeholder views highlights the need for comprehensive assessments of emotional ties and daily routine activities of parents in custody evaluations, underscoring the intersection of psychology, law, and family relationships.

The findings that parents who jointly demonstrate or share responsibility for providing for the needs of their children and demonstrate love are likely to receive joint custody are consistent with the work of Sanders et al.,⁷³ Steinbach,⁷⁴ and Darwiche et al.⁷⁵ who found that parents who exhibit authoritative parenting styles, characterized by warmth, responsiveness, and authoritativeness, are more likely to receive joint custody. The figures and narratives also find succor in the works of Eikrem and Jevne⁷⁶ and Reho et al.,⁷⁷ who revealed that cooperative co-parenting, collaboration, and mutual respect are useful for promoting child well-being and help in facilitating successful joint custody arrangements. Steinbach⁷⁸ and Kruk⁷⁹ also found that when parents prioritized their children's needs and well-being together, they were more likely to receive favorable custody decisions. Kruk's⁸⁰ study similarly revealed that shared parental responsibility plays a role in joint custody outcomes.

The data show that a significant proportion of mothers and fathers believe that daily care issues influence judicial decisions on custody outcomes, which is supported by a substantial correlation between childcare/guidance and chances of custody. The family lawyers and the judge shared a similar perspective. The judge indicated that many factors are taken into consideration before custody is granted, all in the best interest of the child. This finding concurs with the work

⁷³ Loureiro, and Fellow, p. 25.

⁷⁴ Loureiro, and Fellow, p. 38.

⁷⁵ Loureiro, and Fellow, p. 40.

⁷⁶ Loureiro, and Fellow, p. 23.

⁷⁷ Loureiro, and Fellow, p. 24.

⁷⁸ Loureiro, and Fellow, p. 38.

⁷⁹ Loureiro, and Fellow, p. 39.

⁸⁰ Loureiro, and Fellow, p. 37.

of Sander et al.,⁸¹ who found that the attitudes of parents – daily care and guidance - influenced child custody decisions. The findings of this study support the Best Interests of the Child Standard, which emphasizes the importance of considering children's interests in custody decisions. All these findings are further supported by the jurisprudence on child custody, as Section 45(1) of Act 560 specifies that in determining custody of a child, the court must prioritize the child's best interests and the significance of a young child residing with their mother. As articulated by Harman,⁸² *“the entirety of the child's life context must be considered, with the primary factor regarding their welfare being the identity of the parents and their willingness to fulfill their responsibilities.”*

Conclusion

This study underscores the importance of emotional ties and parental responsibility in determining child custody decisions. The findings unequivocally show that developing strong emotional bonds with children is crucial for effective parenting and significantly influences custody outcomes. The research emphasizes the courts' focus on the best interest of the child, awarding custody to emotionally stable parents who provide care, love, and emotional support. Furthermore, the study reveals a persistent gendered division of labour, with women shouldering primary responsibility for daily care activities and men playing a more significant role in educational and extracurricular activities. Notably, daily care issues and parental emotional intelligence emerge as critical factors in judicial decisions on custody outcomes. These findings have significant implications for family law, emphasizing the need for a holistic approach that considers the intricate relationship between parental emotional intelligence, daily care responsibilities, and the child's well-being. Eventually, this research promotes a child-centered approach to custody decisions, prioritizing the physical, emotional, and psychological well-being of children in the face of parental separation.

Based on the findings of the study, actionable reforms are proposed: *First*, there is a need for the Judicial Service of Ghana to develop formal and non-binding guidelines for judicial assessment of parental attitudes to introduce consistency in evaluating parental attitudes during custody proceedings. The guidelines should show positive parental responsibility indicators, while pointing out behaviours like hostility and alienation as red flags. *Second*, there is a need for a judicially supervised parenting coordination/coaching for divorcing parents involved in high-conflict custody disputes to foster the “joint

⁸¹ Loureiro, and Fellow, p., 25.

⁸² Loureiro, and Fellow, p., 56.

prioritization” found to be beneficial. And *third*, the use of multidisciplinary assessments, such as incorporating mandatory social inquiry reports and psychological evaluations, must be strengthened by the Courts. These reports should be tailored to examine emotional ties, daily routine activities, and emotional stability of parents to provide an evidence-based foundation for judicial discretion.

Aside from these proposed reforms, our methodological design offers a valuable template for Indonesian legal scholars seeking to empirically examine how the *de facto* application of the BIC principle within the *Pengadilan Agama* (Religious Courts) and *Pengadilan Negeri* (General Courts) is informed by judges’ perceptions of parental conduct, demeanor, and cooperation. Adopting this methodological framework could deepen understanding of how Indonesian judges operationalize BIC amid diverse socio-religious and cultural contexts, moving the discourse beyond abstract legal doctrine to the lived realities of family adjudication.

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Re O (An Infant) [1965] 1 Ch 23 at 29, C.A

Attu v. Attu [1984-86] 2 GLR 743

Opoku-Owusu v. Opoku-Owusu [1973] 2 GLR 349

“The future of the world lies in the hands of children. We must do everything we can to protect them, to ensure that their rights are respected, and that they grow up in environments where they are safe and can thrive”

Ban Ki-moon (Former UN Secretary-General)

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