

Research

Intersectional racial and gender bias in family court

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Abstract

Custody cases characterized by conflict may involve allegations of abuse or parental alienation, necessitating a thorough examination of the situation for the child's wellbeing. This case series describes stereotypes and biases faced by three racialized fathers, resulting in problems in the processes and outcomes of the family court system. Occurring at the intersection of race, culture, religion, and gender, social myths about these fathers of South Asian and MENA (Middle Eastern, North African, Arab) descent led to inequities in parental rights and harm to their children. Biases experienced by fathers included racism, sexism, Islamophobia, and xenophobia, which manifested as presumptions that such fathers espoused outdated gender roles, exerted excessive authority in the home, and were unwilling to adapt to mainstream culture—which can bias the decision-making of custody evaluators, child advocates, lawyers, and judges. This paper presents the relevant facts of each case, critical errors made by the court—such as ignoring the voices of the fathers, delayed verdict delivery, inadequate assessment of abuse, and failure to prioritize the children's welfare. This article discusses stigma, abuse, interracial dynamic, and the mental health toll of this process on fathers, despite having respected professions and financial resources. Also addressed is the challenge of differentiating parental alienation from estrangement due to child abuse when children reject a parent. It is hoped that by recognizing and addressing these biases outcomes in parental disputes can be greatly improved.

Keywords South Asian · MENA · Abuse · Family court · Racism · Islamophobia · Fathers · Child custody · Stereotypes · Bias · Trauma

1 Intersectional racial and gender *Bias* in family court

Most custody arrangements are peacefully resolved (about 80%), with another 10% resolved in mediation, meaning 90% of cases are settled by parents without a judge's ruling [1]. But about 10% of custody cases are contentious, often with one or both parents claiming the other is unfit—most prominently with accusations of abuse. In these high-conflict cases, to guarantee the child's safety and well-being, claims of abuse must be taken seriously because they are often found to be true [2]. It is crucial to prioritize the wellbeing of the child, as outlined in the UN Convention on the Rights of the Child (UNCRC), which emphasizes that all actions concerning children should consider their best interests as a primary consideration [3].

However, implementing this mandate can be challenging, as child custody proceedings are not immune to broader societal biases. While gender bias has long been recognized as a pervasive issue in custody decisions, the intricacies of

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intersectionality—how multiple aspects of identity converge and impact experiences—are increasingly coming to light [4, 5]. Within this context, the role of racial and cultural bias in custody determinations gains prominence. Although custody issues impact people from all ethn racial demographics, there is little to no data available about racialized parents who are of South Asian (Indian, Pakistani, Nepalese, Bangladeshi, Bhutani, Maldivian, and Sri Lankan) or MENA (Middle Eastern, West Asian, North African, and Arab) heritage in the United States or Canada. However, emerging research underscores the substantial influence of stereotypes and prejudgments in the assessment of these individuals.

The three cases that will be presented in this study originate from distinct ethnicities within the broader South Asian and MENA classifications. It is important to understand the critical difference between race and ethnicity. Race, an external categorization typically imposed by societal perceptions, should not be conflated with ethnicity, a self-identified categorization that can encompass various cultural, familial, and heritage factors [6]. Despite their diverse ethnic backgrounds, the stark reality of structural racism becomes evident as these individuals are consistently treated similarly by society and the courts under prevailing racial groupings. Our aim is to shed light on the flaws of this system, which unjustly homogenizes diverse ethnicities, perpetuating a distorted perception of individuals before the law. There is no evidence to suggest that South Asian or MENA fathers are less capable caregivers as custodial parents or in general, and yet stereotypes (tied in part to Islamophobia) present these men as abusive and controlling. Despite prevailing myths, fatherhood is not a risk factor for abuse [7] and neither should be perceived culture or ethnicity. Nonetheless, societal stereotypes that may lead the court, lawyers, psychologists, and law officers to make adverse or negative judgments about South Asian and MENA heritage fathers to the detriment of their children, are the subject of this paper.

1.1 Gender bias

The U.S. Census Bureau reported that in 2018, there were approximately 12.9 million custodial parents, which represented about 4% of the total U.S. population [1]. According to this report, over a quarter of all children under the age of 21 (26.5%) had one parent living outside their household, which amounted to approximately 21.9 million children. Nearly four out of every five (79.9%) of the 12.9 million custodial parents were mothers, while fathers accounted for one-fifth of custodial parents (20.1%) as shown in Fig. 1. Notably, compared to White fathers and mothers of all ethn racial group, fathers of color are least likely to be custodial parents.

In Canada, the only available statistics are from surveys recorded by the court, representing cases with a court order. Further studies would be needed to determine the actual child custody statistics by gender. However, according to a report by the Department of Justice, in cases where a court order existed (47.5% of all cases), while 79.3% of children under the age of 12 were placed under the exclusive custody of the mother, only 6.6% of fathers had sole custody, and shared physical custody was granted in 12.8% of cases [8]. Finally, it should be noted that in cases of common-law union dissolution, the majority of children tend to remain under the care of their mothers, with 84% of them being placed in their mother's custody [8].

As evidenced by the skewed placement of children based on the gender of the parent, gender stereotypes play a major role in child custody decisions. Research has noted biased attitudes toward mothers for custody allocations, believing them to have greater “friendliness, generosity, or trustworthiness” [9]. This is all despite the fact that mothers are more likely to be abusive to their children than fathers. Data from the US Department of Health and Human Services [7] shows that, in 2021, the majority of children who experienced abuse from one parent were victimized by their mothers, accounting for 44.3% of cases. In contrast, only 25.1% of cases were fathers the perpetrator. In Canada, biological mothers were also the primary perpetrators of maltreatment, accounting for 86% of substantiated cases, while biological

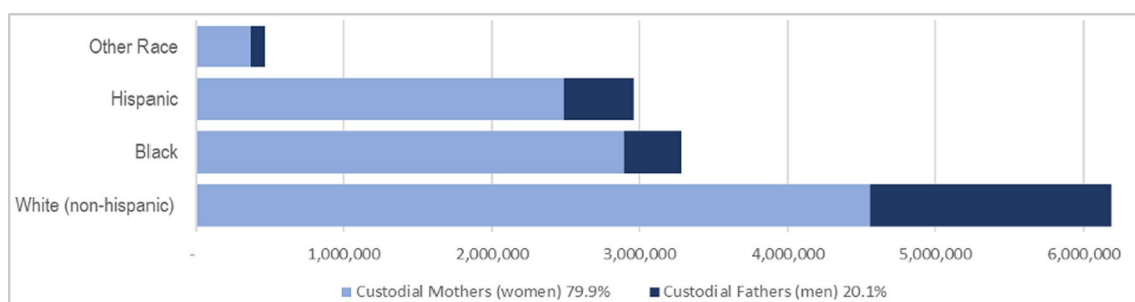


Fig. 1 Race/Ethnicity and Gender of the 12.9 Million Custodial Parents in the United States. Source: US Census (2018).

fathers were identified as the perpetrator in only 8% of cases across all categories of maltreatment [10]. As such, gender biases blindly favoring mothers can lead to custody decisions that put children in danger. In custody cases, people of all genders, races, and faiths may be abusive, and therefore each case must be considered on its merits rather than the parents' ascribed identities.

1.2 Stereotypes and racial bias

On September 11, 2001, a series of airline hijackings and suicide attacks were committed by 19 Saudi militants associated with the Islamic extremist group al-Qaeda against targets in the United States, which was the deadliest terrorist attack on American soil in American history (9–11) [11]. As a result, the experience of many innocent people around the world would be changed forever. In the US, 1200 Muslims of Middle Eastern and South Asian descent were summarily arrested and interrogated by the FBI or local law enforcement agencies. Not one terrorism conviction resulted from the tens of thousands of police interviews in the aftermath of 9–11. Nonetheless, programs of surveillance, detention, and deportation were rolled out, all premised on the logic that Brown Muslims were a suspect population guilty until proven innocent [12]. As such, members of large and diverse cultural and ethnic groups became a racialized security threat, even though they had not done anything wrong. These communities continue to experience racism in the form of ongoing harassment and surveillance by law enforcement in the US and Canada [13, 14]. The negative stereotypes and biases emerging from these events continue to color perceptions of South Asian and MENA men today, over twenty years later.

Custody evaluators, lawyers, and judges are influenced by the racial, ethnic, and cultural identities of parents in child custody disputes [15]. Psychologists and other mental health professionals may have important roles in these cases as custody evaluators, parental fitness evaluators, evaluators of child abuse, mediators, expert witnesses, and/or treatment providers. Even psychologists, who by virtue of their training, should be more aware of bias and its potential impact on decision-making, are not immune from these same biases, which can affect their judgement [16–18].

Men of South Asian and MENA heritage are subject to racist stereotypes which lead to differences in how they are treated. These stereotypes include being overly traditional and conservative—loyal to foreign cultural and religious beliefs and adherent to antiquated patriarchal gender roles [19]. For example, they may be depicted as controlling husbands or participants in arranged marriages, with the notion that they lack personal agency in choosing their own partners. These types of stereotypes contribute to the perception that South Asian and MENA men are unwilling to adapt or accept more progressive ideas. Narratives from the news, media, and popular films compound these biases that promote racism and Islamophobia against more broadly to “Brown men” (South Asian or MENA; [20, 21]). Notably, Islamophobia is fueled in part by stereotypes that Muslims are non-White [12].

South Asian and MENA men also experience colorism, which means that more negative biases are attached to those with darker skin, although South Asian and MENA individuals may have any shade of skin, from pale to dark brown. For political and historical reasons, MENA have been classified as White in the US, although they may not have fair skin [22]. The majority of MENA Americans will not identify as White if given racial choice options that include MENA [22, 23].

People may assume that those of South Asian and MENA heritage are foreign-born, especially if they have non-Anglo names. In the media, they are often portrayed with strong accents or difficulty speaking English fluently. This can contribute to the perception that they do not understand others and are not well-integrated into mainstream society. It also prompts questions like, “Where are you really from?” or “What’s your nationality?” which implies that people of South Asian and MENA origin do not belong, even if born and raised in the US or Canada [24]. Xenophobia is common, meaning they receive worse treatment due to assumptions about being foreigners.

South Asians are subject to the Model Minority stereotype. They may be assumed to be high achievers, particularly in the fields of science, technology, engineering, and mathematics [21, 25]. As such, people may assume they work as IT professionals or medical professionals. This overlooks the wide range of careers and skills that they have, which may be counter-stereotypical.

MENA men are often stereotyped as being prone to conflict, deceitful, inherently violent or war-like, and more likely to be viewed as misogynistic. They are considered controlling, abusive, and a threat to women, as the perception of their faith and culture is perceived to be “barbaric.” As such, media that furthers those stereotypes is thought to reflect reality. *Not Without My Daughter* [26]. Is a film that has perpetuated those false generalizations, but is often relied upon as an almost documentary for the experiences of being married to MENA and Muslim men [12, 27]. For example, in a 1997 Michigan child custody proceeding involving a White American mother and an Arab American father, the presiding judge permitted the mother’s attorney to show the film, depicting the escape of a White mother from an abusive Persian father, as evidentiary material to support claims of the father’s parental unsuitability, despite the fact that the family

portrayed in the film is not of Arab descent [28]. It could be considered a story about a woman who survived domestic abuse, but the abuse she suffers is not merely attributed to her spouse, but to Iran and Islam, even though spousal abuse is against the Islamic faith.

Further, due to extremist groups and high-profile terrorist attacks such as 9–11, MENA men may be stereotyped as terrorists, and South Asian men may be likewise stereotyped this way by proxy due to ignorant beliefs that all Brown people belong to the same ethnic and cultural group [24, 25]. Orientalism is the Western perception of Asia, especially the Middle East, a stereotyped approach that embodies a colonialist attitude and conflates many cultures. As such, it was noted that post 9–11 hate crimes included attacks against Sikhs as they were misperceived to be Arab and Muslim [29].

The concept of the Model Minority forces people of color to be complacent about the stereotypes they experience, because if they stand up for their rights, they are seen as more likely to fit negative stereotypes of dangerousness in accordance with dark-skinned men and Islamophobic biases. Sadly, in legal proceedings, this promotes false perceptions of them being distant, alienating, or even abusive parents. Relevant assumptions about South Asian and MENA men may include not being involved in caregiving, housework, cooking, or other domestic tasks. People may also assume that such fathers are strict, controlling, or overly focused on their children's academic success, and as such, are unlikely to be a nurturing presence [21].

1.3 Parental alienation

Due to stereotypes about these fathers, they are especially vulnerable to accusations of child maltreatment. Parental alienation is said to occur when a child is intentionally manipulated or coached by one parent to turn against the other non-abusive parent and resist contact with him or her [30–32]. This alignment with one parent and rejection of the other can arise during child custody disputes following divorce or separation proceedings, particularly when cases are prolonged or there is significant antagonism between the parents [33].

Parental alienation is more common and debilitating for children than was previously believed [34]. In extreme cases, parental alienation is a form of emotional child abuse [35]. However, there is still a need for more research to better understand this problem, as what has been termed “parental alienation syndrome” is often accepted in family court but less so in the scientific community [36, 37]. Further, it is important to note that alienation is not necessarily more common than physical child abuse, as rates of child abuse by parents remains quite high. Although obtaining accurate figures on child abuse and parental alienation can be challenging for various reasons including variations in definitions, reporting procedures, and data gathering techniques across sources [38], it is estimated that each year, 1 in 7 children experience abuse in the US [39]. The rate for parental alienation is estimated to be around 1% of all children, however over 30% of parents in the U.S. and Canada who are no longer partners feel they are potentially being alienated from a child by the other parent [40].

There has been little study of parental alienation and people of color. However, in a statewide study of North Carolina residents, Harman and colleagues [34] found that Black and Native American parents were more likely to report being victims of parental alienation than other groups. Neither South Asian nor MENA parents were represented.

1.4 Context and positionality

The authors of this paper are experts in racism with substantial experience in legal issues. The first author is an African American and Canada Research Chair at a major metropolitan university with expertise in mental health and discrimination. She is the clinical director of outpatient clinics in the US and Canada and regularly serves as an expert witness for the courts in both countries. The second author is a German woman of color and experienced neuroscientist with expertise in clinical trials, racism, and organizational systems of injustice. The third author is a MENA Muslim woman and doctoral student in experimental psychology, with degrees in law and child development, and an interest in gender issues affecting Muslims. The fourth author is a White Canadian registered marriage and family therapist in private practice. The senior author is a clinical and consulting clinical psychologist of color and a Muslim, with clinical training and expertise in trauma, childhood mental health and trauma, and anxiety, with expertise in cultural competence, inclusion, and bias.

1.5 Purpose of this study

Stereotypes and bias have been noted in cases involving Black fathers and child support, but very little literature addresses racial or ethnic biases in custody decisions for any racialized group [4, 41, 42]. To date, the experiences of South Asian and MENA heritage fathers have not been examined at all. Here we share case studies of three such fathers and their racialized experiences of bias in family court, two in Canada and one in the US. We recognize that the South Asian and MENA labels are broad and imperfect, covering a variety of ethnic groups. It is important to understand that this paper is not about the culture, religion, or ethnic origin of the fathers, but rather the interpretation made about them, the implications on their ability to parent, and the resulting outcomes affected by these biases. These case studies are intended to illustrate the experience of being racialized, based on our society's biases and assumptions about people from certain groups. These biases are based on appearance and assumed ancestry, not any of the actual qualities, beliefs, or worldviews of the actors.

Child custody courts in the USA and Canada share similarities in their approach to addressing domestic violence and the well-being of children in separation and divorce cases [43], and people living in these societies (Canada and the US) have been socialized to treat Brown men of South Asian heritage in the same way. Although these cases span two different countries, we demonstrate the similarity of discriminatory experiences which is explained by common stereotypes about these fathers that traverse national borders, including that South Asian men most likely to be considered foreign [44, 45]. This paper is intended to document and explain these experiences to help psychologists and others involved better understand the problems faced by such parents. This is followed by a discussion of the commonalities of their experiences and considerations for professionals in family court.

2 Case studies

2.1 Methodology

The cases presented here are individuals the authors or their associates have extensively worked with in the course of their professional roles. In each case, substantial case materials were reviewed, including court records, assessment reports, email correspondence, and affidavits, and, as such, all information presented here is documented. Names and some non-relevant details of the cases presented here have been changed to preserve the anonymity of the individuals involved. This study was deemed exempt by the University of Ottawa Ethics Review Board. Nonetheless, all fathers involved gave informed consent for their cases to be included. The study was performed in accordance with the Government of Canada's Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans [46], as well as recommendations by CARE Guidelines for case studies regarding inclusion of participant perspectives and informed consent [47].

Each case highlights biases the fathers experienced in the custody process, which includes discrimination due to race, culture, gender, perceived religion, xenophobia/immigrant status, nationalism, and mental health stigma/disability. (For an example of how each type of bias impacted the cases, please see Table 1 at the end of this section.)

2.2 Case study 1: parental alienation (Kiran)

2.2.1 History of the case

Kiran, who identified as a midwestern American, had parents who were first-generation immigrants to the US from Nepal with an intercaste and interfaith Hindu upbringing. Emily's mother was White American Jewish, and her father was a White American Mormon. Although they came from very different cultures, they married and had twin children, a boy and a girl, now aged 11. Emily had a third child from a previous marriage who was already over 18 and had moved out. Kiran had degrees in health technology and business and had worked for over 15 years as a project manager in the software industry.

When the children were 4 years old, Emily and Kiran got divorced and an initial custody agreement divided the care of their two children 50/50, with time spent in each household. At this time, due to accusations by the mother,

Kiran's mental health was assessed by professional psychologists, and bipolar disorder was ruled out. Rather, he was diagnosed with depression and OCD. Emily was, however, not satisfied and began to undermine the separation and custody agreement by gradually increasing the level of alienation. Emily had a larger social network, which included members of Kiran's family, and used her time with the children to disparage the father. This came to a head during the COVID-19 lockdown, when Emily unlawfully stopped allowing the children to visit their father in person, claiming that the children did not wish to see him and making accusations that the father was unfit and may be suffering from debilitating mental disorders.

Emily had hired separate lawyers for each of the children who spoke for them at hearings and maintained that they did not wish to see their father. Kiran found it difficult to press his case, that children need their father, in the face of the children's age-inappropriate requests for him to sign various legal documents that would restrict his custody rights. Two years had gone by with only telephone calls as the children started to enter adolescence. Although Kiran's custody rights remained intact, Emily controlled access to the children and justified the lack of meetings as in accordance with the desires of the children. There were no allegations of abuse from the children nor the mother. Although the lawyer for the children asserted that the children did not want to see their father, these assertions were not based on reason, as the children had no face-to-face visits with their father for approximately three years, and the weekly calls were monitored by the mother.

Emily then fabricated a narrative of Kiran of being abusive and having a serious personality disorder. She fed this story to their son's therapist, and also wrongly told her that Kiran did not have legal rights to the children. When Kiran tried to get updates on his son's care, the therapist refused to recognize him as the father. When he pressed the matter, the therapist terminated treatment. Emboldened, Emily's attorney informed the court that Kiran had disrupted the child's mental health care, and then obtained a restraining order against him. For two years, Kiran agonized about what his son's fears or trauma might be that required therapy, and repeatedly requested the therapists' report from Emily. Emily finally produced the therapist's report, revealing that no mental illness had actually been identified.

2.2.2 Key errors by the court

Overall, the court made several errors that allowed for the escalation of parental alienation and the deterioration of the children's relationship with their father. Although the court system does not normally move with speed, a three-year delay in judgment for custodial time with a child entering adolescence can become an irreparable chasm in regard to alienation. With the onset of the COVID-19 pandemic, in this case, the court was slow to adapt and carry out hearings by video conference, as for many jurisdictions there was a long lag while putting these modern tools into place.

Kiran's lawyer filed a motion for interim parental visitation (therapeutic supervised visitation) since his custody rights were intact, and the court should have followed up on this to prevent the difficult-to-repair harm done in alienating the children during their formative pre-adolescent phase. The attorney actively filed opposition papers contesting the original order that included a provision for mediation, but the judge denied the petition. The attorney repeatedly emphasized Kiran's innocence, the absence of harm to the children, and the lack of abuse, neglect, police reports, or substance abuse. However, the judge's decision to decline ordering a visit for the children, particularly when therapeutic supervised visitation was sought, was a point of contention due to opposition from the opposing parent and subsequent confusion created during Kiran's direct examination. In the absence of evidence, the court showed bias by believing the story of the White mother over the Brown father.

The court essentially failed to ensure that the initial custody agreement, which granted both parents equal custody rights, was followed. The court furthermore did not identify the signs of coercive control, as Emily undermined the agreement, gradually increasing the level of parental alienation without facing consequences for those actions.

The court did not take the children's best interests into account when allowing such a long period of time to elapse in which Kiran had no access to his children. In this case, the best interests of the child would involve implementing measures that ensure children's well-being and development by allowing them to have regular and meaningful contact with each parent. The nature of the children's requests and the involvement of lawyers for each child should have raised concerns about whether the children's wishes were truly their own or the result of manipulation by the custodial parent. The fact this was not considered is another indication of bias against the importance of the role of the father and indicates a devaluation of his rights.

2.2.3 Experiences of bias

Kiran suspected that because he was not White, there may have been biases affecting the lack of urgency in terms of the court implementing his parental rights. However, because he did not have any proof, and did not know what if anything he could actually do to mitigate bias, he was reluctant to raise this as an issue and be dismissed as “playing the race card.” Nonetheless, it was clear that Emily was highly favored by the court, which is in alignment with American racism where White people are tacitly valued over people of color. Indeed, a White woman being aided by the court in protecting herself and her children from a putatively dangerous dark-skinned male is an enactment of one of the foundational purposes of the legal system in America, and this race-specific form of benevolent sexism continues to unbalance the scales of justice against people of color [48–50].

Most significantly, however, Kiran felt stigmatized after being accused of being psychologically unfit as a father, which has been identified as an issue in some South Asian communities [25], and it was immediately accepted as truth by a collection of social workers due to perceived biases. Emily made this accusation after he sent pressed flowers to the children at the mother’s house in a misguided attempt to reach out to them. She interpreted these letters as harassment and asserted that she found the letters threatening. These actions were motivated by trauma surrounding his fear of losing access to his children. Kiran had been a devoted father since the birth of his children and fatherhood was a significant part of his self-identity. He experienced identity trauma from being unable to fulfill his traditional paternal roles of protector, provider, and role model and felt discriminated against due to his perception that he was assumed to be a poor father. This led to internalized feelings of shame and failure because of his inability to carry out his parenting obligations [51].

Kiran obtained an assessment from a psychiatrist during the initial separation who diagnosed him with mild OCD, possibly originating in childhood. OCD is very treatable [52], and as soon as Kiran was diagnosed, he entered therapy, also obtaining therapy for the ongoing trauma of being separated from his children. Kiran could at times be unkind to his ex-partner and abrasive during his supervised calls with the children, which unsettled them, as he grappled with his own fractured upbringing, frustration around the separation from his family, and attempts to forgive. The OCD diagnosis should not infringe on his parental rights; however, Emily continued to make accusations of “psychosis,” in and out of court long after the initial diagnosis and treatment as an excuse to deny access. This caused a bias whereby the judge felt the need to keep hearing arguments from Emily’s attorneys about Kiran’s mental health issues, leading to ordering more evaluations of Kiran, which continued to delay his access to his children and increase his stigma.

Throughout the process, Kiran also felt he was being judged in accordance with negative stereotypes about absent fathers, which in turn contributed to the court’s blind acceptance of Emily’s allegations and lack of active intervention to enforce his parental rights.

2.2.4 What should have happened

The court failed to intervene when Emily restricted Kiran’s access to the children, despite his legal custody rights. According to the UNCRC, children have the right to access both parents and parents have the right to access their children [3]. The court should have taken steps to ensure that the children had meaningful contact with both parents, especially considering the importance of maintaining a relationship with both parents during childhood and adolescence [53]. Devaluing the importance of contact with the father illustrates bias by the court.

Further, although parents of color are not automatically best suited for primary custody of children of color, it is key for any parent seeking custody to demonstrate their ability to foster the healthy development of a child’s racial identity [54]. In this case, the children were non-White (dark complexioned), and as there was no termination of Kiran’s parental rights, evaluators could have asked the court to consider access to the father in regard to the importance of parental role models in the development of a healthy racial identity [6]. In the case of *Jones v. Jones* [55], the court recognized that “it is proper for a trial court, when determining the best interests of a child in the context of a custody dispute between parents, to consider the matter of race as it relates to a child’s ethnic heritage and which parent is more prepared to expose the child to it.” Racial biases prevented the court from addressing the children’s need for a parent with shared experiences of racialization.

The court did not properly investigate and adjudicate on the accusations made by Emily that Kiran was unfit due to his OCD, which was deliberately mischaracterized as “psychosis”. Studies have shown that adolescents who shared physical custody with both parents had fewer psychological problems compared to those who lived primarily with one parent, despite the mental health situation of either parent [56]. The potential for Emily’s accusations to unnecessarily stigmatize Kiran above and beyond his existing visible stigmatized identities should have been considered, along with its

influence regarding the restriction of access in the custody arrangement. At the intersection of race and mental health, people of color with mental illness are unjustifiably considered far more dangerous than White people with the same diagnosis [57, 58].

These events exacted an emotional toll on Kiran. In the aftermath, he said: "I am destroyed. To become a devoted father is to sublimate yourself into something larger, to surrender yourself to a cause. One fine day you are removed from that cause—taken from a place of love and self-sacrifice and thrown into a world of war and denigration. Who, even, *am I now?*".

2.3 Case study 2: physical abuse (Omar)

2.3.1 History of the case

A Muslim Canadian family was going through a separation and the couple had one son. Both parents were MENA immigrants to Canada, with the father, Omar, a mixed-raced naturalized citizen from childhood. Omar asked the court for primary custody and a psychological evaluation of both parents on the grounds that the mother was physically abusive. Omar was a mental health professional and had witnessed acts of violence by Asha that included hitting, choking, and dragging the child. He had also personally experienced violence from her during their marriage, and on one occasion during their separation she became so aggressive he had to call the police. Their son corroborated that he was being abused by his mother, reported this to several professionals, and expressed his wish to reside with his father. Further, there were clear signs of physical abuse, such as bruises, and the child manifested symptoms of psychological trauma that included anxiety, depression, self-harm, nightmares, and suicidal ideation.

Asha denied being abusive and claimed that she was the target of parental alienation as retaliation for emancipating herself from her controlling husband who was a 'practicing Muslim'. There was no evidence that he was controlling or harming her, despite an investigation, but the claim was recorded regardless. The mother explained that the child was making up stories of abuse at the behest of his father. The court awarded joint custody, with the child splitting the week between each parent, over Omar's objections. The judge told Omar, "You may disagree with the policy behind Canadian law on this point, but a six-year-old's wishes don't matter, okay? They are too easily coached at six," assuming without any evidence that Omar had deceitfully coached his son to say his mother was harming him. The judge denied the father's subsequent request for a psychological evaluation as unnecessary, but instead suggested therapy for the child and a family assessment to help better determine custody. The family assessor concluded that although the father believed the mother was abusive, his anxieties were untrue (i.e., he was delusional).

Numerous additional concerned parties contacted Child and Family Services (CFS) over the next few years to make reports of child abuse against the mother, including the boy's pediatrician and counselors. The child's psychologist eventually diagnosed him with PTSD. Despite the mounting evidence of abuse by Asha, the problems were continuously ignored, year after year. A parental coordinator was selected to help the couple make decisions about their child, but when the father informed him that he witnessed Asha beating their son on a video call one evening, the coordinator did not report this incident and abruptly quit his role. The judge in the case consistently sided with the mother, ignored instances where she violated court orders, and openly stated his opinion that the father was causing the child to reject his mother. The father's lawyer told Omar to stop reporting the abuse or documenting it (e.g., photographing his son's bruises), as it was making him look like an alienator.

2.3.2 Key errors by the court

In this case, there were several errors made by the court, those appointed by the court, and child protective services in terms of their handling of the custody dispute, which prevented the child from receiving the protection he needed. Notably, an assumption that mothers are less likely to abuse and that their abusive behaviors are less damaging to child victims [9, 59] contributed to a failure to adequately investigate abuse allegations, resulting in a disregard for the child's best interests, and a lack of intervention to protect him from harm. The judge wrongly assumed the father had been coaching the son and disregarded the evidence of abuse by the other parent.

In complicated and conflictual cases, it can be simpler and easier for the court to believe that a child is lying or being coached and then order shared custody, placing the victim with their abuser. Further, in family court, some research suggests that greater weight is placed on claims of alienation than abuse, even though child abuse is the more serious problem [60, 61].

2.3.3 Experiences of bias

The father noted that he felt ignored and stereotyped throughout the legal process. Although Omar was a credentialed mental health professional with expertise in child psychology, he was not deemed as knowledgeable, and in fact, his profession was used against him as if he was attempting to manipulate those involved in the case for his own benefit. This is consistent with stereotypes of MENA men being dishonest or scheming [62].

Asha would appear in court wearing a hijab and maintained that Omar was angry that she left him and that this bruised his ego and dominance. Although it is normal to be upset when a relationship ends, Omar's distress was pathologized as anger over a desire to control Asha and possess their child. These are again common stereotypes about Muslim men popularized by films such as *Not Without My Daughter*, mentioned previously. Notes taken by a CFS worker showed that the mother's claims of being controlled by Omar were treated as a fact due to the bias to believe that Muslim women are victims and Muslim men are abusers [63]. This led to ignoring mounting evidence of abuse presented by the child, the father, and numerous professionals in the family's life.

The judge's statements about child coaching demonstrated his preconceived biases against Omar. When joint custody was awarded, the judge made it clear he believed Omar was oppressing Asha in accordance with negative Muslim stereotypes, and scolded him by saying, "We don't do this in Canada," which is a xenophobic assertion. At subsequent case conferences the judge freely shared his opinion that Omar was the cause of the problems, despite evidence to the contrary, which included reports and letters from health professionals who had seen the child. He would refer to the situation as "that terrible alienation case," referring to Omar as the alienator.

After a second episode of suicidality by the child, that included a plan to kill himself if returned to his mother, CFS temporarily put the child in the father's care, but nonetheless claimed to be unsure as to why the child was suicidal, despite his disclosures of physical abuse to numerous health professionals, including emergency room staff. A second parent coordinator revealed her bias by making the baffling and potentially dangerous suggestion that Omar should appease the mother by allowing the child to spend some time with her, despite the child now being in the father's care for his safety; the parent coordinator went so far as to suggest therapeutic exposure to the abusive mother would reduce the child's mental health difficulties.

2.3.4 What should have happened

In this case, acceptance of stereotypes and good intention to help the mother interfered with the safety and wellbeing of the child. The idea that Muslim women need saving from Muslim men and stereotypes about MENA women being quiet and oppressed [19, 64] led to acts of White saviorism by many involved, including the judge. White saviorism is when Western notions about what is good for people of color are inflicted upon them in an attempt for the savior to be recognized as benevolent and morally superior [65]. Further, biases against recognizing mothers as perpetrators made it difficult for the father to reveal the extent of the domestic violence he himself experienced [9, 66]. This abuse is salient because those who need to control and abuse their intimate partners are also unlikely to provide the loving, nurturing, and disciplined behavior required for good parenting [67, 68].

Evaluators, judges and other professionals must refrain from relying on their intuition when determining the credibility of family members. Campbell [34] suggests that courts consider a range of resources when making decisions, such as testimony from family members or acquaintances, service providers, counselors, police reports, criminal case records, restraining order records, medical records, and school records. The child's reports of abuse should have been believed by all involved.

In cases where there is a consistent occurrence of coercive abuse, it is recommended that the non-abusive parent be granted sole decision-making and primary parenting time, while the abusive parent should be subjected to protective restrictions on parenting time [34, 69]. But when stereotypes of Muslim and Arab men are that they are always the coercive abusive person, it is easy to understand how the opposite custody recommendation can happen.

In contemplating the toll of these events on his outlook, Omar said, "It has felt like screaming into the darkness without a single soul hearing your cries for help for your child. I feel gaslit, I feel unsafe, and have lost trust in our justice system to provide safety to children and Muslims in general due to the blatant bias and racism my child and I have experienced. It is clear to me now there is a two tier system of justice in our country. Because of how people saw me as a Muslim man of color, I have been prevented from the natural ability to protect my child and am continuously viewed with suspicion."

2.4 Case study 3: parental alienation (Alex)

2.4.1 History of the case

Alex's parents immigrated from Pakistan in the mid 1970's, and he was born and raised in Canada. He grew up in a Muslim family with the "ideal that one person can make a difference in society, and if one is not part of the solution, one is part of the problem." Alex obtained a university degree and had a career in law enforcement with the Royal Canadian Mounted Police (RCMP) when he met Sandra, an attractive White Christian woman from a small Midwest town. After a few months of dating, Sandra became pregnant. They planned to marry; however, the relationship was tumultuous and ended prior to the child being born. Sandra smoked excessively while pregnant and was prone to mood swings and histrionic behaviour. Alex very much wanted to be a father, but throughout the pregnancy Sandra made several threats to terminate the pregnancy or give the child up for adoption. After the baby was born, Sandra made it difficult for Alex to see his child. This continued until a custody evaluation was ordered when their son was approximately 8 years old. Although the final order was for joint custody, with the father having weekly access, Sandra continued to make this difficult for him.

For example, en route to the father's weekend access, Sandra would have Alex on speaker phone, while the child sat in the back seat, and argue for extended periods about how the child did not want to see him. When they arrived at the location where the transfer was to take place she continued to engage in argumentative behaviors. Out of concern for the child seeing the conflict, most often Alex would agree to a brief visit instead of his regular access. Eventually on his lawyer's advice, the father brought his sister to accompany him and video recorded the transfer, but this did not change Sandra's behavior. She even made calls to the police with false complaints of domestic abuse by Alex.

Sandra's husband, the stepfather in this case, was also a participant in the abusive alienation of the child. On one occasion, he accosted Alex and made serious threats, such as, "One phone call and you're dead" and "I'll smash the teeth out of your mouth." Alex recorded these threats and made a report to the police. The stepfather was arrested and then released on a promise to appear in court. There was to be no contact, but the stepfather was in breach of this order and continued his threats. Alex reported the threats but nothing was done.

Eventually, the interactions between Sandra and Alex got so heated, they exchanged emails that included derogatory language. When Alex arrived at the mother's house to pick up the child one weekend, she refused to relinquish him, called the RCMP for assistance and provided them with Alex's heated emails. The officers were not interested in what Alex had to say about this and was told, "In Canada we do not treat our women like this." Alex was suspended from his job pending an investigation. Sandra then used this situation to obtain a three-year Protection Order. The charges were eventually dropped, however, serious damage had occurred in the intervening time and the child was further alienated from his father. Their young son came to believe that his father wanted to kill him, his mother, and his stepfather. This is a racial stereotype in accordance with the notion that dark-skinned people are more dangerous and violent.

The child started seeing a psychologist for play therapy. Alex contacted the psychologist, asking to speak with her, but she refused. The psychologist only listened to the mother's version of the situation and, in accordance with biased stereotypes, decided that Alex was dangerous and abusive.

A comprehensive forensic assessment took place, and the evidence showed that Sandra had weaponized the child throughout his life, starting in utero. The evaluator found it to be a case of very severe alienation that rose to the level of abuse [31], and determined that the child needed to be protected from Sandra and removed from her care. The mother's attorney tried to get the evaluator's report expunged. That did not happen, however, the court did not intervene. Eventually, the father could no longer financially fight this battle and became completely alienated from his child. The child remained with the emotionally abusive, alienating parent.

2.4.2 Key errors by the court

Alex' rights to see his son were not enforced throughout his son's childhood, which allowed the alienation to deepen. This illustrates a bias by the court against the father on the side of the mother. Despite a well-documented history of alienating behaviors, Sandra took complete control of their son's situation.

The child's psychologist showed her bias by excluding the father from the mental health intervention, or even speak to him. She refused to listen to the evaluator's concerns that the child was being tormented into believing

heinous things about his father. The psychologist was adamant that Alex was an abusive parent, although she had never met him, which was unprofessional and clearly demonstrated her bias, and she continued to blindly support Sandra, the parent actively engaged in emotional abuse. Further, no consideration was given to the child's critical need to develop a positive ethnoracial identity, which is an important role for the non-White parent.

The court did not intervene despite the evaluator's report recommending placement with the father. The evaluator's investigation revealed Sandra had a turbulent childhood and suffered from emotional instability, with some of Sandra's collaterals even describing her as unstable. Whereas the father's collateral sources were all highly credible individuals who knew the father well, including childhood friends who were well-educated and respected in the community. None of this was deemed relevant by the court.

2.4.3 Experiences of bias

The court, law enforcement, and the child's psychologist all tended to side with the White mother over the darker-skinned Muslim father. There were several sources of bias that were evident in this process. One important factor is that Sandra was an attractive White woman who was manipulative and adept at presenting herself as the victim to get what she wanted. She was able to use these skills to weaponize systems controlled by White men against Alex to center her own priorities. As seen in the case of Kiran and Emily, systems of law enforcement were historically designed to secure the interests of White people at the expense of people of color, and there is an unspoken social mandate to protect distressed White women from men of color who may be potential rivals [70]. This dynamic was observed when the RCMP officers sided with Sandra in the couple's conflict, made xenophobic statements to Alex, and attempted to punish him.

Additionally, Sandra used false stereotypes about Muslims to further discredit Alex. She told a mental health professional that "Muslim men spit on their wives," which was believed and subsequently repeated by the clinician to other professionals involved in the case, including the assessor.

When Sandra's husband threatened him, Alex could see that his safety was ignored because the courts stopped taking action to protect him. Alex being a dark-skinned Muslim man working in federal law enforcement contributed to the perception that he did not need protection or help in his struggle for access to his child. Due to the biases present in the court, law enforcement, and the child's psychologist, Alex faced an uphill battle to assert his rights and protect his child. Due to his ethnic identity and appearance, he experienced a lack of recognition for the legitimate assistance he required, with assumptions made based on his career in law enforcement and societal stereotypes about masculinity.

Due to the extreme alienation he experienced and the false claims of abuse he endured, a psychologist eventually diagnosed Alex with PTSD. However, he had to keep this a secret as he was concerned it would be used against him by Sandra and cause more problems on his job.

2.4.4 What should have happened

Given the non-disputed evidence provided by a social worker, the court should have taken immediate action to enforce Alex's visitation rights from the early stages of the child's life. By allowing the alienation to deepen and not enforcing regular access, the court failed to protect the father-child relationship for the child's well-being.

Given the threats made by Sandra's husband towards Alex and the breaches to court orders, the court should have taken immediate and decisive action to ensure the safety of both Alex and the child. Restraining orders or protective measures should have been put in place to prevent further harm and ensure a secure environment for the child.

The child's psychologist should have conducted a thorough and unbiased evaluation, considering both parents' perspectives and their collaterals [71, 72]. By solely relying on the mother's version of events and refusing to listen to the evaluator's concerns, the psychologist contributed to the further alienation of the child and failed to prioritize the child's best interests. Additionally, the child should have been remanded to child-focused therapy. Recognizing the severe alienation and emotional abuse experienced by the child, it was crucial for the court to prioritize the child's well-being and provide appropriate therapy and support [30, 73]. The court should have appointed a neutral and qualified therapist to work with the child, helping him process experiences and providing guidance for rebuilding a healthy relationship with both parents.

The court should have given significant weight to the evaluator's report, which recommended placement with the father due to the severe alienation and emotionally abusive environment created by the mother. Ignoring the evaluator's findings and failing to intervene, the court missed and perhaps ignored an opportunity to protect the child. In cases

Table 1 Types of bias experienced by the fathers in family court

Type of Bias	How each bias type manifested in the family court cases	How the bias made people believe negative stereotypes about the target	Consequences on the experiences and outcomes for the individuals involved
<i>Racial</i>	Alex' son was told his father wanted to kill him, his mother, and his stepfather	This is a racial stereotype in accordance with the idea that dark-skinned men are dangerous and violent, jealous, and retaliatory	The child became afraid of his own father and did not want to see him. Courts and other professionals may restrict access based on the child's wishes, even when invalid
<i>Cultural</i>	Judge said to Omar: "We don't do that in Canada..."	This implies that other cultures are inferior or deviant, but specifically that Muslim cultures are permissive of abuse to women, and Western culture is moralistically superior	The father was perceived to be backwards and anti-Canadian, so his allegations of abuse were not believed, and the mother was able to continue abusing the child
<i>Gender</i>	Kiran's ex wife claimed that he was a danger to the children	This implies that South Asian men are unsafe or dangerous, Emily falsely claimed Kiran had disrupted the children's care and was believed by the court	Emily obtained a restraining order on false pretenses in the absence of a psych or custody evaluation, keeping Kiran from his daughter and son
<i>Perceived Religion</i>	Alex's former partner said: "Muslim men spit on their wives." Omar's wife told the court he is a "practicing Muslim."	The clinicians and assessor believed Alex treated women poorly (spit on them) This implies that practicing Muslims are deviant or dangerous	Mental health professionals did not consider Alex a good or important parent Omar, the protective parent, was evaluated to determine if he was an abuser
<i>Anti- Immigrant/Nationalism</i>	RCMP told Alex: "In Canada we do not treat our women like this." Judge told Omar: "We do not do this in Canada."	This implies that in other countries (i.e., Muslim majority countries), women are mistreated	Alex was not able to get law enforcement to protect him or facilitate his right to see his child
<i>Mental Health/Disability</i>	Kiran's ex claimed falsely that he "was treated for bipolar disorder and is mentally unstable."	This implies that those treated for mental illness are unfit parents. The children's attorney spent an hour brutally cross-examining Kiran on his typical medication dose for depression	These tactics confused the judge and made Kiran seem dangerous. The judge believed Kiran was unsafe, which resulted in him being blocked from seeing his children

like this, the non-alienating parent should be granted the sole decision-making and primary parenting time due to the abusive nature of the parental alienation, and the alienator should be restricted to supervised parenting time [34, 69].

In the aftermath of Alex' failed attempts, he said, "Due to the blatant racism, sexism, and Islamophobia committed by the judges, lawyers, and police against me, I was driven to mourn the loss of my child as if he had passed away. All while feeling guilty for feeling that way, knowing he was alive. I have lost 2 years, and 3 more trying to repair things and continue to lose, as he still will not sleep at my house. The last time he slept at my house he was 6. He is now 14."

2.5 Summary of cases

The table below illustrates the types of biases experienced by the South Asian and MENA heritage fathers in the case studies based on false stereotypes about race, culture, gender, religion, nationality, and mental health status. It also describes how these myths created biases that negatively impacted the fathers and children in each of the cases.

3 Discussion

3.1 Experiences of *Bias*

There are notable similarities between all three cases due to the shared cultures where these events took place. Notably, the mothers were believed by the judges and evidence offered by fathers to the contrary was ignored. Additionally, when the mothers failed to follow court instructions, they were not held accountable by the court. Further, all three fathers felt stigmatized and subject to unfair judgment due to their race and gender. In all cases, the fathers encountered difficulties in presenting their evidence and defending their rights as parents. Despite providing substantial proof and testimonies to support their claims, their arguments were disregarded, leaving them marginalized within the legal proceedings. Research has noted clear biases against fathers for custody allocations, and this bias persists internationally [9]. Further, in the case examples, all the fathers were professionals and had the financial means to persist in their legal challenges for a time, but their resources were not enough to overcome the effects of systemic bias. All of the fathers' mental health suffered as a result of these experiences. Bias against the fathers may have also had an impact on the children's mental health and wellbeing, since research indicates that a caregiver's experiences of discrimination can affect the child's psychological functioning and mental health [74–76].

Racial and ethnic biases against the fathers were fueled by the claims of their former partners. In all three cases, the mothers weaponized racial stereotypes about the fathers' identities to help influence important others in the custody battle [49, 70]. In Kiran's case, his partner used the words "crazy, unstable" and implied that the father was psychotic and would thereby be a danger to the children. The allegation of psychosis in this context can be considered a racist accusation, as certain racial and ethnic groups have been stereotyped this way and thereby made to appear overly dangerous and deviant [20, 57]. The argument was subsequently taken seriously by the court in the absence of evidence. In Omar's case, his partner accused him of being controlling and abusive in the context of being a "practicing Muslim." These accusations were too readily believed because they are consistent with ethnic stereotypes.

These fathers were ordinary people who excelled as parents at times and failed at other times. The problem is that when Brown fathers are accused of inflicting harm, the courts mobilize to protect the child from the accused until it can be proven he is not a danger, as we saw in Kiran's case. But when the mothers are accused of inflicting harm, the court fails to take actions until after the claims can be proven, as we saw in Omar's case, or the court takes no action at all, as seen in Alex's case. The Brown fathers were simply not recognized as credible or adequate to the degree ascribed to their former partners, irrespective of the facts of the cases. It is important to remember that men of color, in particular MENA and South Asian men are stereotypically perceived as being more aggressive and manipulative [62], which may lend itself to the belief that they are more likely to engage in abuse or parental alienation, without confirmed proof. The behavior of the court is consistent with these stereotypes.

There is no quantitative data concerning how MENA and South Asian people are treated in family court, but we can examine some nascent data from criminal court that indicates Islamophobia and colorism are factors. A criminal court bias of Islamophobia has been identified due to having a Muslim sounding name [77]. Furthermore, a 2023 US study of offenders from different Asian countries, revealed that individuals of South or Southeast Asian heritage (i.e., those with darker skin tones) faced more severe initial sentencing outcomes compared to their lighter-skinned East Asian counterparts [78]. Indian nationals had the highest odds of incarceration among Asian subgroups. These ingrained global social

patterns, where individuals with darker skin are treated more harshly, must be expected to influence outcomes in both criminal and family courts [78–80].

3.2 Bias from the bench

In regard to the reaction of the courts, it is important to understand that bias is stigmatized behavior, particularly in legal contexts, where fairness and justice are stated goals. Judges who perpetrate bias will rarely if ever come right out and say, “I am denying the fathers petition because he is a Muslim, and I don’t trust Muslim men.” This is why case studies and careful review data are critical, to demonstrate what so many people of color already know because they live it. Perpetrators of bias are socialized not to see it when it is happening around them, and also not to see it when they themselves are the agents of discrimination [81]. And because they do not directly experience this type of prejudice they are skeptical that it is even occurring. We note that in each of these cases, the errors of the court align with prevailing stereotypes about South Asian and MENA men of color.

Some experts recommend that high-conflict separation cases be handled by a single judge, which facilitates the court’s understanding of case dynamics and enables greater influence on parental behavior through consistent appearances [82]. This may be considered better case management, as a single-judge can reduce attempts by high-conflict parents to reargue the same issues before different judges who do not know the situation well [83]. However, in cases involving biased judges, this can leave stigmatized parents with no recourse when their cases are mishandled due to bias. Further, most cases labeled as high-conflict involve domestic violence, and so this conceptualization can be problematic and dangerous for the protective parent and children because it suggests that both parents are responsible for the conflict and neglects the danger of encounters with the abusive parent. Parents trying to gain full custody to protect themselves and their children are viewed negatively when they do not agree to shared custody arrangements recommended within the family court system [67]. This was what Omar experienced when trying to protect his son, and being tethered to the same judge for every hearing made it impossible to escape bias from the bench.

Although dissatisfied parties may make a motion for recusal of a judge on the basis of bias, this test is intentionally difficult to satisfy due to the presumption that judges are unbiased [82]. The problem is that most people (even judges) have some degree of implicit racial biases [45], but it is considered particularly offensive when brought to light, so few judges would agree to recuse themselves for this reason.

3.3 Mental health issues

Mental health issues were present in all three cases. At one point, Kiran required routine mental health care and his legitimate need was weaponized against him by his ex-wife as evidence of lack of fitness to parent. Worse yet, as mentioned above, his ailment was mischaracterized as a more serious problem (psychosis) that had negative and stigmatizing connotations. Even after Kiran presented evidence to the court of his successful therapy, his ex-wife continued to make shaming comments during cross-examination insinuating that he had “psychological issues” and purposefully implying that he was a danger to the children.

Omar was impacted by experiences of domestic violence that he felt unable to address due to stigma. It may be particularly difficult for fathers to discuss abuse they experience as they are not taken seriously as victims and their trauma is generally dismissed [66, 84]. When Omar tried to raise the issue, Asha’s lawyer shamed him by saying, “Are you telling me that you, a man, are scared of a woman that size?” However, anyone can be victimized by domestic violence, regardless of their gender or size. For example, recent research on South Asian immigrant couples underscored that men are also frequently victims of spousal abuse [85]. In fact, many men are socialized not to physically harm women, or they may feel they just need to “take it,” which can make them more vulnerable to physical abuse from female partners [84]. When someone has experienced domestic violence, it can interfere with their ability to fully advocate for themselves and their child, as they are also navigating trauma responses when having to interact with the perpetrator [34].

Alex was formally diagnosed with PTSD, which, in this case, can be conceptualized as racial trauma [42]. Racial trauma describes the mental health symptoms a person experiences as a result of racism, which is typically a combination of large and small discriminatory events that are endured until the person’s coping capacity is exhausted. Racial trauma can result in dysfunction and disability, making it difficult to advocate for ones self or one’s child in a judicial environment that is rife with systemic racism, as even small racist events can be triggering [42].

As such, the fathers in these examples were battling Western racism and cultural stereotypes on multiple fronts. Discrimination is stressful and often traumatizing [86, 87]. Experiencing oppression due to several stigmatized identities

is even more distressing and has a multiplicative effect on mental health and wellbeing [88]. Atop the aforementioned biases due to race and gender, the fathers were further stigmatized by issues such as their own mental health needs and Islamophobia. Custody disputes are inherently stressful, and as such the added stress of this intersectional discrimination can make it more difficult for such parents to enlist the emotional reserve necessary to persist in these high-stakes situations. Indeed, the lack of literature in this area may be a reflection of the inability of most South Asian and MENA heritage fathers to navigate these discriminatory systems effectively.

3.4 Alienation and abuse

In all three cases, the concept of parental alienation was a main feature. Notably, even experts can have difficulty distinguishing parental alienation from appropriate estrangement due to abuse. Judges, lawyers, family counselors, and court staff fail in case after case to discern the difference between abusive parents and loving parents, or between alienating parents and truthful parents (e.g., [89]). Due to shifting conceptualizations, a fledgling research base, and polarization, there are many misconceptions about how to identify parental alienation [37, 60, 73].

When a professional observes a child strongly reject a parent, they should not automatically assume this is due to parental alienation. In cases of alienation, children may be worried about bad things that the alienated parent might do, or they may be fixated on the alienated parent's purported negative qualities, as we saw in the cases of Kiran and Alex [32]. However, most cases involving parental rejection are complex, with many factors at play [71, 90]. And when children describe discrete abusive acts that a parent committed, as in the case of Omar's son, the child should be believed, and this should not be considered simple parental alienation unless or until proven otherwise [30, 89]. Further, children who have been abused will frequently have symptoms of PTSD, as was seen in Omar's son, especially when the abuse has been severe, whereas alienated children will not typically exhibit such symptoms. Social workers should not pressure children to have contact with a potentially abusive parent (e.g., [91]), as this is a form of psychological abuse itself that invalidates the concerns brought forward by the child. (See Polak and Saini [90] for more on this topic.) Parental alienation is certainly a useful construct to explain many cases of children rejecting a parent, but the physical safety of the child must come first [30, 60].

Unfortunately, protective parents who try to keep their children away from abusers may be disbelieved, themselves labeled as alienators and even penalized by the courts. In a qualitative paper with the title '*I was punished for telling the truth*', Birchall and Choudhry [91] describe how allegations of parental alienation can be used to disempower protective parents and domestic abuse survivors in court. And because of gender biases, it is harder for people to believe that mothers abuse as they are stereotyped as nurturing. Layering in beliefs and stereotypes that South Asian men are manipulative, controlling, and not to be trusted, and that women from these cultures are victims, it further perpetuates notions that these men do not deserve access to their children [63, 64].

3.5 Role of the clinician

It is essential for clinicians to acknowledge and address racial, ethnic, and cultural differences to reduce bias in custody proceedings [15]. In family court, psychologists and other mental health professionals play a critical role but may also have biases due to the pervasive influence of stereotypes. Implicit biases can result in the misinterpretation of parents' behaviors and make evaluators question the veracity of fathers of color. Further, they may "excuse" abusive behavior, as we saw in Omar's case, if they are trying too hard to be accepting of assumed cultural differences. However, recognizing cultural differences should not result in "irreparable harm" to members of vulnerable groups [92]. Evaluators should arm themselves with facts and critical-thinking based on their training rather than stereotypes or cultural assumptions.

In the same way that orientalist perspectives conflate the cultures of South Asian and Arab men (e.g., think of how the Disney movie *Aladdin* did this), biases about the personalities of men of color whose ancestry comes from these regions are also conflated. Stereotypical beliefs about them being abusive to women and children, controlling, and having limited parenting capabilities showed up in all three cases. We must also consider how Islamophobia contributes to these faulty beliefs and biases, as the concept of Islamophobia impacts not just Muslims but anyone perceived to be Muslim (i.e., darker skinned culturally Hindu, Sikh, or Buddhist persons). Post 9–11 hate crimes against South Asian Sikh men drastically increased because of this flawed perception of them being Muslim [29], and again, highlight the role of racist orientalist beliefs and stereotypes in the judgement of two unique and separate groups of people, conflated as one, in falsified negative perceptions [12, 27].

Additionally, in all of these examples the mother perpetrated forms of abuse against the children—Emily and Sandra in the form of emotional abuse (parental alienation) and Asha in the form of physical abuse (traumatizing violence). As purveyors of research, psychologists may be in the best place to dispel stereotypes and advance counter-stereotypical facts for the court to consider in these challenging cases. A culturally-informed evaluator can be invaluable in helping the court to understand the salient issues in such disputes and recognize sources of bias interfering with decisions that are in the best interest of children (e.g., that mothers are more likely to be abusive than fathers; [93]). Likewise, parental alienation should be assessed in a culturally-informed manner, by someone with proper knowledge and experience working with this evolving construct, however to date there is no guidance for understanding this issue across diverse ethnic, racial, or cultural groups.

Domestic violence (i.e., a pattern of multiple physical, sexual, and/or psychological actions perpetrated by an intimate partner [94]) should likewise be considered highly relevant to child custody determinations [67, 68]. It is common for parents who abuse children to also abuse their partners, as we saw in Omar's case; this should be investigated by any clinician conducting a custody evaluation [65] as a person of any gender or sex can be victimized by domestic violence [66, 85].

When presenting opinions to the court, psychologists and other experts may not think it is necessary to buttress their findings with research. Well-educated professionals can hide behind labels, jargon, and titles without offering proper evidence for their report and are likely to be believed because their claims fit harmful and racist stereotypes. Nonetheless, without careful attention to the data, anyone can form biased opinions. One study of custody evaluations found that when there were errors in a report, the errors tended to systemically favor one parent over the other [72]. Evaluators need to keep in mind that, like anyone else, they are subject to racial, ethnic, cultural, and gender biases that can lead to bad decisions and harm. Further, professionals should engage in self-reflection to recognize and address their own biases, which may include biases due to their identities or even their own past traumas and family conflicts [86, 95].

When analyzing cultural or identity contexts that are unfamiliar to them, psychologists and other professionals should seek consultation and conduct a thorough review of relevant research. Obtaining peer review or other professional feedback on assessments is crucial for improving diagnostic accuracy and preventing bias [72, 95]. Professionals must acknowledge their limitations in understanding all aspects of race, ethnicity, and culture, commit to ongoing learning, question assumptions, and value client feedback [86]. If a client has the courage to bring up potential bias, do not interpret this as a personality problem, but take time to determine if what they are perceiving could be accurate. Personal work, such as the pursuit of egalitarian goals, shifting focus to shared identities and interests, as well as acquiring information that challenges negative beliefs, can further mitigate biases [17, 18]. The ability to adopt the perspective of individuals from marginalized groups fosters empathy and a more positive impression [17].

Table 2 provides a checklist of practices that can reduce bias, with a focus on the different types of bias experienced in the three case studies. Although the focus of the table is considerations for evaluators, it can be useful for judicial decision making as well.

4 Limitations

These are a series of case studies intended to illustrate specific issues, with a focus on the experiences of men of color. However, it should be understood that the cases are complex, each spanning years, and included a multitude of relevant events. As such, all nuances cannot be captured here. Further, these case studies may not represent the experiences of all South Asian and MENA heritage fathers in family court; more research needs to be done to fully understand their experiences of bias to further inform recommendations and practice guidelines for psychologists and other experts.

5 Conclusion

There is no current empirical literature on the experience of people of South Asian and MENA heritage in the Western legal system. There is no coherent treatment of race in the literature or any framework for its consideration, which creates a void that enables courts to award custody based on stereotypes and racist assumptions [15]. There is almost no literature on abusive mothers in family court. Most family court research about abuse examines men as abusers and abused mothers and their children, and this imbalance in scholarship contributes to myths, gender-based stereotypes, and biased outcomes. Protecting the rights of Brown fathers does not imply that there are no instances of abusive behavior among them. Rather, it means ensuring a fair and unbiased evaluation process in court that considers factors such

Table 2 Anti-bias checklist for evaluators

Type of bias	Ask yourself	What to do
<i>Ethnic/Cultural/National</i>	Assess your positionality, as everyone has biases	If you are White, recognize there will be racial issues you have been socialized not to see. If you belong to a marginalized group, accept that you are vulnerable to bias due to media and social influences. Consider joining a diverse consultation group for ongoing learning and growth
<i>All</i>	Why do you think that a child is rejecting a parent at this time? Do you have a predetermined belief?	Check your assumptions and be sure to fully consider all possibilities, even those that you feel are unlikely. Don't let preconceived notions influence your judgement
<i>Racial</i>	What do you believe about people from the ethnic/racial group you are assessing?	Check the literature to find out if your beliefs represent real group differences or if they are false stereotypes
<i>Religious</i>	What do you believe about people from the religious group you are assessing?	Ensure you don't have biases that create a hierarchy between Christianity, and faiths like Islam, Hinduism, Sikhism, and Buddhism
<i>Immigrant Status</i>	Do you think people from certain other countries reject American/Canadian laws and values?	It is demeaning to assume that immigrants lack the ability to understand or respect the laws, customs, and morals of their host country
<i>All</i>	Are conclusions made by prior evaluators aligned with stereotypes about the person you are assessing?	Check to make sure that prior evaluations are based on facts and data rather than opinions or second-hand reports. Don't fall prey to other professionals' biases. Use evidence you can verify
<i>Cultural</i>	Are collaterals saying things about anyone that align with racial, ethnic, or xenophobic stereotypes?	Keep in mind that everyone is subject to biases based on stereotypes, even people in marginalized groups, such as women, people of color, and religious minorities
<i>Racial/Ethnic</i>	Do you have limited experience with people from the ethnic/racial group you are evaluating?	Consult with a diversity expert and have them review your report for any signs of bias—ideally someone from the same ethnic group as the target of your evaluation (e.g., MENA or South Asian)
<i>Racial/Ethnic</i>	Are your test findings aligned racial or ethnic with stereotypes?	Ensure the measures you are using have been validated on people in the group you are assessing and use those norms only
<i>Gender</i>	Are your findings aligned with gender stereotypes about abusers?	Don't assume that family violence goes only in one direction. Consider that either or both parents can perpetrate harmful abuse against each other or their children. Statistically, fathers are less likely to be abusers than mothers
<i>Racial/Ethnic</i>	Does your conceptualization of either parent fit stereotypes about people in that ethnic or racial group?	Recheck your facts about that parent to ensure your conclusions are based on actual first-hand data about this specific person. For example, if you consider a MENA father you assessed to be angry, controlling, and deceitful, this could be your own bias or the bias of collaterals
<i>Mental Health</i>	Do you have negative feelings about people with certain mental health diagnoses?	Don't assume a challenging diagnosis means a person is an unfit parent. This is at odds with the literature and the Americans with Disabilities Act. Even someone with a severe syndrome may be an excellent parent with the proper support, and in such cases, having that parent involved is in the best interests of the child(ren)
<i>Mental Health</i>	Do you have a history of trauma yourself?	Ensure your own past experiences are not projected onto the families you evaluate

Table 2 (continued)

Type of bias	Ask yourself	What to do
<i>Inter- sectionality</i>	Does the court assume that one of the parties needs rescuing or protection based on their identity?	The legal system tends to inequitably mobilize to support distressed White women who feel endangered by men of color. Likewise, this same system will mobilize to help emancipate Muslim women, automatically assuming they are oppressed or submissive
<i>All</i>	Does any person evaluated feel they have been unfairly characterized based on stereotypes?	Allow all parties to review reports before finalizing them. Collect all specific complaints about bias and re-evaluate any areas of concern for accuracy

as parenting abilities, emotional bond with the child, ability to provide a safe and nurturing environment, and actual history of abusive behavior or violence, instead of relying on racial and gender stereotypes. People of all genders, races, and faiths may be abusive or may be good parents. Even if the fathers had been unfit, such determinations should only be made based on facts and not assumptions.

Psychologists and other professionals must endeavor to engage in culturally-sensitive and unbiased practices, acknowledging their personal prejudices and those of others concerning variables such as gender, race, ethnicity, religion, and socioeconomic status. The mitigation of bias is of utmost importance to guarantee impartial assessments and recommendations that are attuned to the varied identities of the parties concerned. In child custody proceedings, professionals must do their best to provide equitable assessments by addressing biases, maintaining transparency regarding limitations in experience, and consulting with cultural experts as needed. Adopting these strategies can ensure fairer outcomes in cases involving fathers of color. However, more work is desperately needed to better understand these issues and implement solutions in the best interests of the affected parents and children.

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Public Policy Statement This case series of three fathers of color represents the first in-depth examination of the experience of racial bias in custody-related decisions. It describes a critical problem occurring at the intersection of race, culture, religion, and gender that leads to inequities in parental rights and puts abused children at risk of further harm. It underscores the need to attend to bias in the family court system.

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Data availability This case series was written using data that cannot be shared openly to protect study participant privacy, as per the University of Ottawa Research Ethics Board (REB).

Declarations

Competing interests The authors declare no competing interests.

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