

Traditional Arbitration Institutions and Conflict Resolution Approaches in Nigeria: The Efficiency and Rhetorical Fallacy

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doi: <https://doi.org/10.37745/bjmas.2022.0295>

Published September 15 2023

Citation: Falusi F.S., Owoeye J.D. and Olabamiji A.A. (2023) Traditional Arbitration Institutions and Conflict Resolution Approaches in Nigeria: The Efficiency and Rhetorical Fallacy, British Journal of Multidisciplinary and Advanced Studies: Arts, Humanities and Social Sciences 4 (5),1-11

ABSTRACT: *Before the advent of colonialism and its attendant degradation of African culture, Africans have had a concrete knowledge about what conflicts are, what causes conflicts and how conflicts are resolved. Prior to western education, the Africans have developed a robust knowledge about the dynamics of conflicts and they have had institutionalized means of resolving their conflicts. In the present dispensation, however, the phrase 'Traditional Arbitration Institutions' has been given prejudiced responses by the westerners who dominated the study of peace with their scholarly works and claimed a monopolized knowledge of peace. Premised on this background, this paper focuses attention on exposing the systematic knowledge of Africans about disputes and conflicts resolution, using Nigeria as area of study; the paper discusses the conceptual meaning of Traditional Arbitration Institutions (TAI) and conflict resolution; the study seeks to identify and examine the roles of Traditional Arbitration Institutions in promotion of conflict resolution in Nigeria society. In addition, it examines various Traditional Arbitration Institutions (TAI) conflict resolutions mechanism and approaches put in place in resolving disputes and conflicts in Nigeria. The research methodology employed in the study is mixed methods which involves qualitative and quantitative research technique. This work adopted Traditional Arbitration Theory. The paper observes that there is a need for engaging Traditional Arbitration Institutions in resolving community and industrial based disputes and separatist's agitation in Nigeria. The paper concludes by recommending various Traditional Arbitration strategies that can be adopted to complement existing efforts of promoting peace and stability in Africa.*

KEYWORDS: Traditional, Arbitration, Institution, Conflict, Resolution

INTRODUCTION

Before the advent of colonialism and its attendant degradation of African culture, Africans have had a concrete knowledge about what conflicts are, what causes conflicts and how conflicts are resolved. Prior to western education, the Africans have developed a robust knowledge about the dynamics of conflicts and peace and they have had institutionalized means of resolving their conflicts. In the present dispensation, however, the phrase 'Traditional Arbitration Institutions' about conflict resolution has been given prejudiced responses by the westerners who dominated the study of peace studies with their scholarly works and claimed a monopolized knowledge of peace studies (Nwosile, 2005). The process of colonizing Africa led to significant transformations in the traditional methods of resolving disputes and administering justice within African societies. These changes have become so pronounced that effectively addressing conflicts through the utilization of indigenous African knowledge systems has become a complex issue that merits further investigation (Ndiaye, 2012). The western approaches to disputes resolution and justice system are upsetting Africa means of resolving conflict, disputes and justice system. Re-surfacing of various protracted disputes and conflicts in Africa needs emergency approach by peace scholars, advocates and practitioners on what can be done to achieve sustainable peace in the society (Wunch & Olowu, 2009).

Man are created to co-exist by God, therefore, conflict is inevitable through the process of social and professional interaction which is usually the source of conflict and dispute on the daily basis either among individual, corporate organization and comity of nation. However, man has made law to regulate this but over time, it has been discover that the judiciary process strictly has not been the best. A recent survey conducted in Ekiti State, Nigeria on effect of legal billing on the litigant, the survey show that legal billing increase on the average of 13% per year 1, also, same survey in united states show that legal billing increase on the average of 23% per year, all are due to unawareness of alternative dispute resolution program by the lager percent of the litigant and there is no sign that the situation will improve later except proper thing is done (Jemilohun, 2019).

Familugba and Adedayo (2020) are of the view that conflict resolution encompasses a range of strategies aimed at effectively resolving conflicts by addressing underlying issues. Consequently, traditional arbitration strives to bring conflicts to a close through unconventional approaches. The implication of the aforementioned is that the concept of traditional arbitration revolves around seeking the application of non-traditional peaceful techniques for resolving disputes and managing situations of conflict. These methods are designed to be cost-effective and to meet the satisfaction of the involved parties, while also preserving relationships even after a resolution has been achieved. In this context, traditional arbitration serves as an alternative to the formal conventional methods of conflict resolution, which primarily involve legal proceedings and courts, but with a distinct emphasis on nonviolent means.

Generally speaking, all over the world the judiciary process is an expensive adventure. Litigation most of the time is vexatious, other than litigation. expensive, time wasting and sometime making parties that were hitherto friend (before the dispute) enemies for life! it is the reality of the foregoing that has give more room to some form of extra judiciary creativity generally known as Alternative Dispute Resolution(ADR), e.g. Arbitration, Mediation, Conciliation, and mini- trial and even Negotiation.All these procedures are usually less expensive and more expeditious than court litigation⁴. Among the methods for Alternative Dispute Resolution (ADR) mentioned above, arbitration will herein be consider for scrutiny. Traditional arbitration is a dispute resolution technique that involves submitting a dispute to a third neutral party (arbitrator) who makes a binding decision. It is often used in commercial disputes and has been popular for many years.

Rhetorical fallacy, on the other hand, is a type of argument that is logically incorrect but may be persuasive. It is a strategy used to manipulate the audience's emotions or opinions, rather than using sound logic or evidence. Therefore, if someone were to claim that the efficiency of traditional arbitration is a rhetorical fallacy, they would be arguing that the belief that traditional arbitration is effective is based on a faulty argument. They might argue that people tend to believe in the effectiveness of traditional arbitration because of their emotional attachment to the idea, rather than objective evidence.

However, it is crucial to note that it is not clear whether the efficiency of traditional arbitration is a rhetorical fallacy or not. There is evidence to suggest that traditional arbitration can be effective, but there are also criticisms of the method, such as issues with the arbitrator's impartiality and concerns about the enforceability of awards. So whether the efficiency of traditional arbitration is a rhetorical fallacy or not is a matter of debate, and there is no clear-cut answer.

The negligence of traditional arbitration institutions in Africa societies over years has caused hindrance to the promotion of justice, societal values and norms, which is the one of the major factor for sustaining justice, peace and social order and transformation in the society. It is noted that the use of traditional arbitration to inculcate culture of peace, social order and true justice from generation to generation has been diminished and eroded over time in the society. These unfortunate situations have led to decadence societal values.

This paper concerns an all-important quest, the quest for the realization of effectiveness of traditional arbitration. Several law has being enacted to ensure that individual conflict are amicable resolved, as man has come to understand that even conflict among nation at time first start with individual conflicts. When private rights are infringed, the first natural inclination is to desire the wrong being made right as soon as possible. Society would have been doom long ago if it were left to individual to decide show perceived right are to be righted.

Consequently, it is in line with these aspects of the study examines how traditional arbitration influences and facilitates peace education, social transformation and justice in modern society. This paper focuses

attention on the interconnection and relationship between traditional arbitration and conflicts/disputes resolution in attainment of disputes resolution, justice and social transformation; the study also investigates the impacts of traditional arbitration institution on conflict resolution, social transformation and justice.

Conceptual clarification

In the quest to understand and able to examine the topic before us, there is need to closely examine the following concepts;

Arbitration

Arbitration constitutes a legal procedure through which disputes or differences between involved parties are settled by an arbitrator or a group of arbitrators, bypassing the need for a court trial. Typically, this procedure entails the presentation of written and spoken evidence and viewpoints, culminating in a conclusive decision that holds legal weight for both parties involved (Bello, 2014). Arbitration is commonly used in commercial disputes, labour disputes, and international matters, among others. It can be a useful alternative to litigation, especially when the parties involved are not interested in the cost and time involved in a trial. Advantages of arbitration include confidentiality, flexibility, and the opportunity for parties to choose an arbitrator with expertise in the relevant field (Stephen, 2006). Arbitration can be either voluntary or mandatory. In a voluntary arbitration, the parties involved agree to have their dispute resolved through arbitration, while in a mandatory arbitration, the parties are required to arbitrate their dispute as part of a contract or government regulation (Jemilohun, 2019).

Arbitration can be conducted according to specific rules, such as those set by the American Arbitration Association, or according to procedures agreed upon by the parties. The arbitrator's decision is usually final and binding, and can only be challenged in limited circumstances such as fraud or misconduct. In essence, arbitration is a useful tool for resolving disputes outside of court, and is becoming an increasingly popular option for parties looking to resolve their disagreements in a timely and cost-effective manner (Gadzama, 2004).

Traditional Arbitration

Traditional Arbitration stands as a prominent approach for addressing conflicts through informal means. It characterizes the informal procedures for settling disputes, where the involved parties convene with a neutral third party to amicably resolve their differences or disagreements in a manner that is less rigid and frequently more mutually agreeable compared to the formal court process. While mediation represents the prevalent form of traditional conflict resolution, a variety of other methods exist, including dialogue, negotiation, cooperation, discussion, third-party intervention, and collaborative problem-solving. (Familugba & Adedayo, 2020).

Omoyeni, Falusi, & Onuoha, (2023), demonstrated in their study the importance of ADR mechanisms especially Arbitration to enhance internal democracy in political parties, promoting transparency,

accountability, and fairness in decision-making within political parties, and can help in curbing disputes from escalating into legal battles in Nigeria, Stressing that the use of such mechanisms has the potential to alleviate the strain on the judiciary and promote internal democratic practices within Nigerian political parties. Contrary to Western methods of ADR (Alternative Dispute Resolution) which emerged as solutions to challenges within formal court systems, Traditional Arbitration processes did not serve as an "alternative" to any pre-existing framework (Famugba & Adedayo, 2020). When these practices were initially conceived and put into practice, there were no established courts or highly structured procedures and institutions in place. Traditional Arbitration methods essentially constituted the primary means available to communities. While they may bear resemblance to Alternative Dispute Resolution (ADR) methods, they were inherently indigenous and distinct to these specific societies (Brainch, 2006).

Traditional Arbitration Institutions

Traditional Arbitration Institutions (TAI) represent the native wisdom employed by Indigenous Africans to navigate their existence within society. It can be broadly understood as the collective knowledge that is passed down through generations within indigenous African communities as they inhabit diverse societal contexts. This definition encompasses a wide array of knowledge, beliefs, practices, skills, and technologies that empower the community to achieve consistent progress and advancement. TAI also refers to a collection of institutional structures that have been established by Africans over generations. These institutions develop within the local milieu, ensuring they are tailored to meet the specific needs and circumstances of the local populace (Johnson, 2012).

Traditional Arbitration Institutions (TAI) encompass a compilation of factual information that pertain to the entire framework of ideas, perspectives, and convictions held by the African people about their surroundings. This encompasses how African individuals perceive and assess their society, as well as the methods they employ to address issues, disputes, crises, and conflicts.

Conflict Resolution

Miller (2003) conceptualizes Conflict Resolution as a diverse set of approaches intended to bring an end to conflicts through the constructive resolution of issues, differentiating it from the management or transformation of conflict. This theory of conflict resolution suggests that fundamental causes of conflict are tackled and resolved, leading to non-violent behaviors and a shift away from hostile attitudes. This transformation is accomplished by altering the structure of the conflict. To achieve resolution, it is deemed essential for the involved parties to redefine their relationships in a manner that allows them to perceive that their goals can be achieved without conflict or to reconfigure their relationships so that their goals are no longer in conflict with each other (for instance, the conflict between herders and farmers in Nigeria). Moreover, Meha Dixit views Conflict Resolution as a discipline that has developed theoretical insights into the nature and origins of conflict, along with strategies for resolving conflicts through peaceful means in order to establish lasting settlements.

Conflict resolution is a process-oriented approach that involves the identification, analysis, and effective management of disputes or disagreements between individuals, groups, or entities. It seeks to address the underlying causes of conflicts, employing a range of strategies and techniques to reach mutually acceptable agreements or solutions. Conflict resolution encompasses various methods, including negotiation, mediation, arbitration, and diplomacy, with the ultimate goal of promoting constructive communication, reducing hostility, and achieving sustainable outcomes that prevent the escalation of tensions into further disputes or violence. (Dana, 2001; Ramsbotham, Miall, & Woodhouse, 2011)

Theoretical Framework

This section of the research addresses the theoretical foundation upon which the study is constructed. For the purpose of this study, the theory employed is the Traditional Arbitration Theory

Traditional Arbitration Theory

The concept of Traditional Arbitration Theory represents a form of social capital, characterized by the effectiveness of social norms and traditions in binding group members together, thereby establishing and facilitating the terms of their relationships and collective actions to achieve mutually advantageous outcomes (Fred-Mensah, 2005). This theory incorporates a process of consensus-building that hinges on open dialogues for information exchange and issue clarification.

In essence, Traditional Arbitration Theory leverages local individuals and the judicial and legal decision-making practices rooted in African traditional communities to settle conflicts within or between these communities. The objective of these traditional community-based judicial approaches is to resolve disputes without resorting to state-run judicial systems, external enforcement bodies, or law enforcement. In contemporary settings, Traditional Arbitration Theory continues to play a role in resolving a diverse range of disputes within Nigerian institutions, spanning from family matters and religious settings to educational institutions and inter-ethnic conflicts.

METHODOLOGY

The research employed a mixed methods research design, encompassing both qualitative and quantitative research methodologies. In the context of this study, the qualitative approach involved the utilization of Direct Observations (DOs), while the quantitative method encompassed the utilization of interviews. The research drew from secondary sources such as archives, books, cultural journals, magazines, and other pertinent publications related to the study. These secondary sources were employed to complement the primary data, thereby reinforcing the study's findings. The analysis of the data was conducted using a qualitative approach, involving techniques such as excerpt analysis, paraphrasing, direct quotations, and the incorporation of historical and cultural insights. Through the integration of qualitative and quantitative methods, this study offers a comprehensive understanding and evaluation of Traditional Arbitration Institutions and Conflict Resolution Approaches in Nigeria

FINDINGS AND DISCUSSION

Traditional Arbitration Approaches

Traditional arbitration stands as a well-established form of alternative dispute resolution (ADR) characterized by resolving legal conflicts outside the confines of official court proceedings. In this approach, conflicting parties willingly opt to present their dispute to impartial third parties, referred to as arbitrators. These arbitrators hold the capacity to issue a definitive ruling, known as an arbitral award, which carries binding authority.

One of the key features of traditional arbitration is its flexibility. Unlike court proceedings, parties have more control over the arbitration process, including the selection of arbitrators, the choice of procedural rules, and the timing and location of hearings. This flexibility allows for a more tailored and efficient resolution of disputes, especially in complex or international cases where parties may have differing legal systems and cultural backgrounds.

Confidentiality stands as a significant dimension within the ambit of traditional arbitration. In contrast to court proceedings, which are typically public, arbitration creates a confidential environment wherein parties can safeguard sensitive details and maintain their privacy. This attribute holds particular value in commercial conflicts, where confidentiality holds utmost importance, such as cases concerning proprietary information or trade secrets.

The enforceability of arbitral awards constitutes another crucial facet of traditional arbitration. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, established in 1958, presents a universally accepted framework for recognizing and upholding arbitral awards across international boundaries. This implies that parties have the ability to pursue the enforcement of an arbitral award in various countries, rendering arbitration an attractive avenue for resolving disputes with international dimensions.

Arbitration in Traditional African Societies

It is pertinent to know that the concept of arbitration did not start in Nigeria with the advent of the British rule. While one may agree that the Anglo-American arbitration procedure as we know it came in with the metamorphosis of our legal system from traditional into the British mould, one must know that traditional African societies practiced arbitration. In the case of *Oline & ors versus Obodo & ors*, the court laid it down that there may be a binding oral agreement to arbitrate under native law and custom and there was nothing to prevent the parties from agreeing to have their dispute settled in accordance with natives law and custom, also, In the case of *Odonigi versus Oyeleke*, the Nigerian Supreme Court ruled against a previous decision by the Court of Appeal in the case of *Okpuruwu versus Okpokam*. The Court of Appeal had stated that the legal system does not recognize the practice of elders or local leaders constituting themselves as customary arbiters to make binding decisions regarding land or other disputes. However, the Supreme Court, in the words of Justice Kaglo, found that this stance may not be universally correct.

Justice Kaglo, asserted that it is firmly established that one of the numerous methods of resolving disputes within African societies is to refer the matter to either the family head or the community's elder chief for resolution. If the arbitration grants or award is subsequently accepted by the parties, it becomes legally binding on them. Nevertheless, Justice Kaglo emphasized that the involved parties retain the freedom to retract their agreement at any stage of the proceedings, up until the point of acceptance. The court also went further to consider a line of cases and concluded that from the principle enunciated in those case, it can reasonably be deduced that Nigerian law recognizes arbitration at customary law provided the following conditions are satisfied:

- a) Both parties willingly present their conflict to a non-judicial entity for resolution.
- b) The parties express their intention to accept the outcome rendered by the non-judicial body, but also retain the option to reject the decision if they find it unsatisfactory.
- c) Neither party opposes or rejects the decision rendered.
- d) The customary arbitration functions in a judicial capacity in alignment with established customs.
- e) The decision's terms are clear, definitive, and devoid of conditions

Thus, the concept of arbitration should not be seen as an entirely Anglo- American concept or idea, but rather a time tested and proven method of resolving disputes without recourse to the courts and considering the multiple advantages when compare with litigation, it must be encouraged in all spheres of inter- relationship from rival to complex transaction.

Efficiency of Traditional Arbitration Institution in Conflict Resolution

Generally, consider the efficient alternative to litigation for resolving disputes. Here are some reasons behind its efficiency:

- a) **Flexibility:** Traditional arbitration allows parties to customize the arbitration process based on their specific needs and preferences. They can choose the arbitrator, establish the rules and procedures, and determine the timeline for the proceedings. This flexibility helps streamline the process and ensures a more efficient resolution.
- b) **Expertise of Arbitrators:** In traditional arbitration, the parties have the opportunity to select arbitrators with expertise in the relevant subject matter. These arbitrators are often experienced professionals with specialized knowledge in the field, which allows for a more informed decision-making process. Their expertise can lead to quicker and more effective resolution of disputes.
- c) **Confidentiality:** Arbitration proceedings are typically private and confidential, unlike court litigation, which is a matter of public record. This confidentiality can encourage parties to be more open and collaborative, facilitating faster resolution. It also eliminates concerns about damage to reputations or disclosure of sensitive information.
- d) **Streamlined Procedures:** Traditional arbitration procedures are generally less formal and more streamlined compared to court litigation. The rules of evidence and procedure are often relaxed, allowing for a more efficient exchange of information and presentation of arguments. This can

help expedite the resolution process and reduce costs associated with complex litigation procedures.

- e) Finality of Decisions: Arbitration awards are generally binding and enforceable, providing parties with a final and conclusive resolution to their disputes. This avoids lengthy appeals and further litigation, saving time and resources.

The Roles of Traditional Arbitration in Promotion of Conflict Resolution in Nigeria Societies

The traditional arbitration has been used to promote practical and positive change from the cultural, personal, rational and structural aspects and dispositions in order to build effective and cordial relations among the people in Nigeria societies.

The traditional arbitration mechanisms have powerfully and robustly support the idea of restorative justice in Nigeria, that is, various communities across the states, Both the victim and the offender participate in the process of restoring, healing, and making amends within the broader community context. Traditional arbitration holds immense importance in the governance and structure of life in Nigeria. These mechanisms play a crucial role in fostering positive connections among individuals, communities, and societies. By offering valuable perspectives, they contribute to the reestablishment of social trust and the reinstatement of harmony and order.

Efficiency of Traditional Arbitration: A Rhetorical Fallacy

The effectiveness and efficiency of traditional application and as it is very effective and active. So it is suggested that the fact 'traditional arbitration is efficient beyond fallacy' because it is very impactful and surpassing any flaws in logic that may be present. Essentially it implies that the power of persuasion (that traditional application is very effective and active) override any weakness in the argument structure of validity. However, it is worth noting that the efficiency of traditional arbitration methods can exhibit variability based on diverse elements, including the intricacy of the conflict at hand, the cooperation of the parties, and the selection of arbitrators. Additionally, arbitration is not suitable for every type of dispute, and there may be instances where court litigation or alternative dispute resolution methods might be more appropriate.

Limitations of Traditional Arbitration

Nonetheless, traditional arbitration does have its limitations. Costs linked to arbitration, encompassing fees for arbitrators and administrative charges can be substantial, making it less accessible for parties with limited financial resources. Additionally, the finality of arbitral awards can limit the possibility of appeal, except in cases of serious procedural irregularities or questions of law. In recent years, alternative forms of arbitration, such as online arbitration and expedited procedures, have emerged to address some of these limitations and offer more efficient and cost-effective options. Nonetheless, traditional arbitration remains a widely accepted and utilized method for resolving disputes, providing parties with a flexible, confidential, and enforceable means of seeking resolution outside of traditional court systems.

CONCLUSION AND RECOMMENDATIONS

Traditional Arbitration Institutions (TAI) performs a healing function in activating peace building and conflict resolution in African societies. It offers a platform for exploring alternative constructive solutions to address disagreements. Moreover, it encourages the cultivation of consensus, the mending of social divides, and the restoration of societal order. The paper concludes that Traditional Arbitration Institutions (TAI) has been a major tool in promoting peace and order in Africa from time immemorial in which the Traditional Arbitration mechanisms and approaches has aided growth and development in the Nigeria societies. The Traditional Arbitration Institutions (TAI) strategy makes significant effort in building peace across various inter-ethnic and inter-religious spheres.

There is a need for engaging Traditional Arbitration Institutions in resolving community based disputes and separatist's agitation in Nigeria. In conclusion, the paper suggests a range of peacebuilding strategies that can be embraced to supplement ongoing endeavors aimed at fostering peace and stability across Africa. To this end, the federal, states and local governments should formulate policies that could aid the reactivation of Traditional Arbitration Institutions strategies as instrument to promote peace, order and national stability in Nigeria.

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