

Article

Cultural Contextualization of Paternity Disputes Resolution in Nigeria: Integrating Traditional and Modern Approaches

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Abstract: This study explores the synthesis of traditional and modern methods, highlighting potential benefits of integrating cultural practices with legal frameworks in paternity disputes resolution in Nigeria. The specific objectives were to investigate traditional approaches to paternity dispute resolution in Nigerian cultures, analyse the strengths and limitations of modern approaches to paternity dispute resolution in Nigeria, explore the potential for integrating traditional and modern approaches to paternity dispute resolution, identify the challenges and opportunities for implementing culturally contextualized paternity dispute resolution mechanisms in Nigeria and, propose recommendations for effective paternity dispute resolution strategies in Nigeria. The theoretical framework for this study is the Social exchange theory (SET). The study embraced the qualitative designed approach as it focused on analyzing secondary data sourced from articles, journals, documents and relevant texts. The study findings revealed that by adopting a culturally sensitive approach, the model aims to enhance access to justice, promote sustainable resolutions, and prioritize the well-being of the children and families. The study has implications for policy and practice, contributing to the development of more effective and culturally responsive dispute resolution mechanism in Nigeria that is indigenous and not foreign.

Keywords: Cultural contextualization, paternity disputes, family mediation, traditional and modern approaches, disputes resolution.

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1. Introduction

In Nigeria, paternity disputes have been documented to be in existence for centuries, predating modern legal systems. The traditional societies in Nigeria have long dealt with family, marriage, and child birth related issues, which most times involved disputes over paternity and other related disputes rooted in customary law and cultural practices. In pre-colonial Nigeria, for instance, customary law and traditional practices regulated family relationships, these includes paternity disputes, which often were resolved through community leaders (CLs), elders, or family heads, who applied customary laws and cultural norms in the adjudication of cases [1][2][3].

The emergence of modern legal system in the colonial era between 1914-1960, brought new frameworks for resolving paternity disputes, which most times conflicted with the known traditional practices pass down to the next generation by our ancestors. Despite these abrupt changes, paternity disputes persist in Nigerian society. The origin of paternity in Nigeria can be classified into three eras: First, the pre-colonial era which pre-dates 1914, paternity disputes were resolved through customary law and traditional practices, Second, colonial era, spanning from 1914-1960, modern legal systems were introduced, and as such, paternity disputes were resolved through formal courts, Last, post-colonial era, ranges from 1960 till date; the legal system continued to evolve, with

paternity issues remaining a complex and sensitive issue, known to be of ethical consideration. Nonetheless, it is influenced by social, psychological, cultural and economic indices [4][5].

Nigeria has a diverse cultural landscape, consisting of over two hundred and fifty (250) ethnic nationalities, each presents a unique challenge in addressing paternity disputes. The traditional perspectives most times prioritizing family harmony and community cohesion, do clash with the modern legal frameworks that places emphasis on individual rights, privileges and the best interests of the by-product of the fraud (Child). The tension between the both approaches can exacerbate tension leading to prolonged cases and emotional trauma for all parties concerned [6][7].

This paper seeks to explore the cultural contextualization of paternity dispute resolution in Nigeri, with a focus on integrating the traditional and modern approaches, examining the strengths and limitations of both approaches, the study aims to contribute to the development of effective, culturally sensitive, and rights-based solution for resolving paternity disputes. The research advocate for legal policy framework on paternity fraud.in Nigeria [8].

Statement of the Problem

The thesis statement of this study is that, it been argued that with regards to a culturally contextualized approach to paternity dispute resolution in Nigeria, by integrating traditional and modern practices can provide a more effective and sustainable solutions for families and communities. When examining the intersection of both approaches, studies proposes a framework for paternity dispute resolution in Nigeria that balances cultural sensitivity with legal efficacy and prioritizing child welfare [9][10].

Paternity disputes in the country presents considerable challenges to families, communities, and the legal system. This divergence between both approaches to resolve disputes result to protracted conflicts that exacerbate emotional trauma and psychological distress for parties concerned, the inconsistent decisions that compromises the rule of law and hinder access to justice, inadequate protection for children's rights, potentially leading to long term impacts, and cultural disconnect and mistrust of modern dispute resolution mechanisms [11][12]. This study is targeted to answer the following questions: How do modern approaches to paternity dispute resolution address the needs of families in Nigeria? What are the strengths and limitations of integrating traditional and modern approaches to paternity disputes resolution in Nigeria? How do cultural and societal factors influence paternity dispute resolution in Nigeria, and how can these factors be addressed? What role do mediation play in resolving paternity disputes in Nigeria, and how can it be effectively implemented? And, what do you propose for effective paternity dispute resolution strategies in Nigeria?

Study Objectives

The study aim is to achieve the following:

1. Investigate traditional approaches to paternity dispute resolution in Nigerian cultures,
2. Analyse the strengths and limitations of modern approaches to paternity dispute resolution in Nigeria,
3. Explore the potential for integrating traditional and modern approaches to paternity dispute resolution,
4. Identify the challenges and opportunities for implementing culturally contextualized paternity dispute resolution mechanisms in Nigeria
5. Propose recommendations for effective paternity dispute resolution strategies in Nigeria.

Conceptual Clarification: Literature Review

Dispute Resolution

Disputes are basically universal and inevitable aspect of human social- interaction, occurring in homes, workplaces, marketplaces, places of worship, on the streets and during business transactions. Marriage, like any other relationship is also not immune to

disagreements and disputes. Dispute resolution has to do with the processes and methods used to resolve conflicts, disagreements, or disputes between parties. These processes can be informal (negotiation, mediation, or facilitation), and formal (arbitration, litigation, or adjudication). The essence of dispute resolution is to resolve paternity conflict effectively, preserve relationships, find mutually beneficial outcomes, and reduce stress and financial cost.

Adekunle and Azeezat, in their work titled: Legal and institutional framework for effective application of ADR in marital disputes, asserts that statutory provisions such as the Matrimonial Causes Act, the Child Rights Act, the Arbitration and Mediation Act 2023, and various rules of court which permit or encourage mediation and reconciliation in matrimonial proceedings. Their study explores the functions of key institutions, including family courts, customary and religious dispute resolution forums, and government-established bodies such as the Citizens' Mediation Centres and the Multi-Door Courthouses [13].

Having identified the strengths and limitations of the existing frameworks, their study highlights the potential of ADR in promoting privacy, preserving familial relationships, and ensuring outcomes that are more tailored to the interests of the parties especially in matters involving children and shared property. The study also addressed the challenges such as cultural resistance, lack of awareness, insufficient training of mediators, and the need for gender-sensitive approaches. Their work submits that by advocating for enhanced legal reforms, capacity-building programs, and stronger institutional synergy to make ADR a more accessible, trusted, and effective tool in the resolution of marital disputes [14].

It is crucial to note that on the other hand, legal resolution has to do with the process of resolving a dispute or conflict through the legal system. This adjudication typically involves the court or tribunal. It also has to do with using legal mechanisms such as litigation, mediation, or arbitration, to resolve disputes and provide a binding decision on parties involved [15].

Paternity Disputes

Paternity disputes can be seen as conflicts or disagreements regarding the identity of a child's biological father, and this disagreement can arise in the context of marital disputes, child support claims, inheritance, assisted reproduction among others. Paternity disputes create emotional, psychological, and economic instability, leading to family breakdown and neglect, which in turn push many children into the streets. It is often involving a complex emotional, social, economic, cultural and legal issues, in view of this it may require DNA analysis, mediation, or court proceedings to resolve the matter.

Similarly, Perkins, paternity disputes, is a case in which the identity of the biological father of a child is unknown. He further maintained that it is not necessarily about custody right or the rights of the child, but establishing the biological father of the child [16][17].

On the other hand, paternity fraud otherwise known also as "*paternity deception or falsification*" is broadly defined as the deliberate misrepresentation of a child's biological father, often leading to emotional, financial, social and legal consequences. While the phenomenon exists globally, its prevalence varies significantly across countries due to differences in legal frameworks, cultural norms, and accessibility to paternity evaluation. In Nigeria, recent reports indicate that twenty-seven (27%) of men who undergo paternity testing discover they are not the biological fathers of their children [18][19].

Family Mediation

Family mediation is a process in which a separate independent, professionally trained mediator helps to work out arrangements for children and finances following separation, or divorce. It usually involves a neutral third-party facilitates discussions between family members to resolve conflicts related to child custody and visitation, property division and financial support. Mediation aid families to communicate effectively, identify common goals, find mutually acceptable solutions, thereby reducing conflicts [20].

Theoretical Underpinning

The theoretical framework in the study is the Social Exchange Theory (SET), this theory is associated with the works of George Homan, Peter Blau, Richard Emerson, John Thibaut and Harold Kelly. The theory provides a framework for the understanding of paternity fraud as a calculated decision made by individuals often women, to maximize benefits and cost [21].

Applying this theory to paternity fraud is that: First, the individual decision is targeted at financial gain, the notion is that financial advantage is the reason most women commit paternity fraud to secure monetary gain from their male victims. Second, women prioritize emotional connection and intimacy over biological paternity (Social satisfaction). Third, women engage in these act for the maintenance of class status, relationship, or family ties [22].

Scholars believes that this theory is relevant reason being that one would better comprehend the motivations and decision-making process underlying paternity fraud, by informing strategies for control and intervention. However, this theory has been criticized for oversimplification as it overlooks complex emotional and psychological factors, and for neglecting socio-cultural dynamics [23][24].

2. Materials and Methods

The study embraced the qualitative designed approach as it focused on analyzing secondary data sourced from articles, journals, documents and relevant texts. The data collected is analysed using descriptive and content analysis to draw inferences.

3. Results and Discussion

Traditional Approach to Paternity Dispute Resolution in Nigerian Cultures: A Comparative Analysis

Civilization started in Egypt, Africa, therefore one can deduce that African traditional approach to paternity dispute resolution is as old as human existence, it predates the western approach of dispute resolution which relies scientific method (the use of DNA testing). To juxtapose the above assertion, Mandabva in her work titled: *"Cultural panorama: Social implications of paternity tests"* opines that in Zimbabwe's Shona African culture, socio-cultural intervention strategies were effectively used to address fecundity and paternity related issues. The scholar notes that traditional healers were consulted to determine paternity disputes, but the processes were sometimes manipulated by some healers. She further maintained that the ancestors of the child in paternity fraud will plague the child with incurable diseases to expose to truth. The traditional approach most times is precise but very brutal [25].

In Nigeria for instance, Ajonumah, & Dublic-Green, in their work titled: *"Paternity, illegitimacy and customary acknowledgment in Nigeria: A re-evaluation"*, argues that finding paternity in itself do not confer legitimacy, as the father must give legitimacy to such paternity by declaration [26].

Cultural Insights from the South-West: Yoruba Traditional Perspective

Adebayo, asserts that in ancient Yoruba culture, paternity test (Ore ile) is basically determined by ensuring the woman in question sit on the stool known as *"apoti"* in the Yoruba language, the senior wives in the extended family will then fed her with a specially prepared amala from a clay pot. Prayers and invocation are made, while water is poured on the room roof. The woman will be soaked as a result of the roof top water in the room, while going out and in out of the sacred room alongside the baby. The baby would die automatically if the mother lied about the child's paternity. This was considered as the test of paternity to determine who the actual biological father was as proclaimed by the child's mother [27].

Cultural Insights from the South-South: Izon Traditional Perspective

According to Ebimiebo & Enock-Etimighan, in their work titled: *"Paternity dispute resolution mechanism among Izon people of Niger Delta, Nigeria"*, opined that paternity dispute resolution in the Izon land is centered around four levels namely: The family

(wari), extended family (pilei), quarter/area (egede/edumu), and the community (ama). Furthermore, they maintained that they exist two types of dispute resolution mechanism in izon land namely: the pre-natal ordeal and the post-natal ordeal [28].

For the pre-natal ordeal, this practice involves the invocation of the gods/spirits of the ancestors of the izonland, this happens when humans fail to determine the biological father of the disputed child in question. This sacred exercise is carried out both in private and public. It can be private first, when the aggrieved parties confront the pregnant women in question and invoke the gods on her to proclaim or declare either of the disputant the biological father of the unborn seed she carries, before she can deliver the child safely. Second, it is public when the act is conducted at the family or community mediation level. At this juncture, libation is a crucial element of the process. This means the woman in question will experience protracted labour for several days until she proclaims the name of the biological father responsible for the pregnancy. And where she chooses privacy, or determines to conceal her sinful act, she may die due to exhaustion by the protracted delayed child birth. The sudden child birth happens once she let the cat out of the bag, and sudden death happens when she chooses to remain quiet on the paternity of the unborn child. In view of these occurrence, this now serves as a proof that the gods can be summoned to dispense justice in paternity related issues [29].

For the post-natal ordeal, this do happen when paternity disputes begin after child-birth. Paternity dispute can be triggered at any time irrespective the age of the disputed child in question, and this happens in the case of lawfully wedded women or the single women. This concluding phase involves the use of a traditional mini coffin otherwise known as the "ekpade,". The ekpade in question is made of an agbein and ogba. The Agbein is derived from dried palm tree branch of raffia palm, the same is used to produce palm wine and can be used to manufacture dry gin known as the ogogoro, this is derived through the process of distillation. Ogba on the other hand is a unique cane found in the forests of the swampy Niger delta region, the disputants are then directed to scoop the soil of the community (ama) and make enchantments invoking the gods of the land, they swear and put the soil in the small coffin. This act is performed in turns, thereafter, the coffin will be interred in the community cemetery as a normal human should be interred. It is believed in the izon culture that the wooden small coffin depicts the deadly nature of the act. And the associated consequences are usually deadly, the guilty party suffers sudden death and severe health complications [30].

Based on the above line of thought, it is crucial to know that the role of traditional institution in the dispensation of justice cannot be underestimated, even as it relates to paternity disputation. In whatever culture in Nigeria, authority rest on the family, ward, or clan, community led by respected elders grounded with the customs and traditions, and the adjudication of paternity cases. Though the traditional method of paternity determination is still potent, people hardly submit themselves to such practices in the modern time. Despite being labelled as satanic, devilish or archaic in nature, modern genetic testing and by extension foreign influence has undermined the traditional approach to paternity dispute resolution in most African cultures [31].

Cultural Insights from the North: A Perspective on Islam

According to Rahim and Abeebllahi, in their studies titled: *"Marital Infidelity and Paternity Dispute in Nigeria: An Islamic Perspective"*, they assert that in Islam, the child is only attributed to the one on whose bed it is born, and the fornicator is deprived of any right. Nonetheless, there is no dispute about the fact that a DNA test is one of the modern scientific ways of establishing genealogy that no prohibitive proof has been recorded whether from the Quran and Sunnah or the scholars' consensus. Therefore, the default verdict on DNA is permissibility and it can be adopted in situations where any classical legal proofs, such as bayyina, firash, iqrar are not involved, or else, the employment of DNA test would be rendered invalid, since the verdict that is established based on the Qur'an, Sunnah or (Ijmā') supersedes the one that is established based on the technical or scientific proof [32].

Therefore, their study further maintained that the employment of DNA tests is restricted to the disputed matters which cannot be established by one of the means approved by the classical proofs. The Islamic stance that only recognizes the paternity of

the legal husband and totally denies the adulterer and places on him capital punishment is the balance and logical solution to such a social problem. They assert that the verdict serves as a severe punishment for the adulterer, otherwise should be considered as promoting adultery. Moreover, the legal husband would not be deprived of his right, as he is the right person to benefit from the child born under his matrimonial custody. Thus, it is obviously clear that the rampant phenomenon of claiming children under another household's roof by other men outside the marriage is totally condemned in Islam. The legal husband under whose roof the baby was born is only recognized and legit father of the child regardless of the result of the DNA test or any other proof. Such an outsider that dares to claim another person's child should be punished accordingly under Islamic law [33].

Cultural Insights from the South-East: Igbo Traditional Perspective

In the Igboland, paternity disputes are often resolved through traditional mechanisms that incorporates cultural values and custom. These mechanism focuses on family unity, respect, and reconciliation. Generally, the Igbo traditional approaches to paternity dispute resolution rely on the family council, customary law and oath taking, the key consideration in this cultural perspective is respect for tradition, community involvement and balancing individual rights. Under the Igbo ontology, paternity bothers on who is the father of the child, but not necessarily who fathered the child.

Similarly, Uhuo, in his work titled: *"Child ownership under Igbo customary law: Resolving the paternity conundrum"*, asserts that to prove paternity using traditional approach or under customary law, what is needed is evidence of a subsisting marriage. Thus, nothing else is needed to prove paternity if there is a clear evidence of a valid and subsisting marriage under customary law. The underlying reason for this custom is to protect the marriage institution, protect family bond, privacy rights and to guide against promiscuity in the society.

To buttress the above assertion, Ikegbo, in his study titled: *"Ethics of African-Igbo paternity in the wake of DNA politics"* opined that in the social milieu, especially among the Igbo, the eventual result of a scientifically tested DNA does not really count if the marriage between the man and his wife was dully consummated traditionally. There are ways to pacify either the man whose wife is accused of infidelity or the woman whose husband is accused of same as the case may be. The children are never in contention as traditionally in the Igbo culture they belong to the man. In the case of infidelity against a woman, once it is verified that the woman is culpable, the husband stops eating her food and also stops performing every conjugal right with her until certain things are done, or else it can cause the death of the man. The husband will invite the Umuada and Umunna (woman's family and man's family) into the matter and specify things the woman must provide to pacify him and the gods of the land. Some of the items for appeasement include a goat, a cock, eight pieces of kola nut, four gallons of palm wine and a choice cooked food according to the demand of the husband. These items can change depending on the interest of the man.

It is also worthy to note that, this is also applicable to the woman if she caught her husband in the act not on the basis of hearsay or rumors. The marriage continues and the children gotten through the unfaithful means automatically becomes bonafide children of the man; and on no account should any member of the community use that scenario against the man, his wife and/or the children. But in the case where the man vehemently rejects the children and their mother who is his legally married wife, the Umunna (the mans' family) will mandate the man to give the woman and her children a portion of land where they will erect their own building because they are full members of the community.

However, in some extreme cases, the man may refuse to honor the mandate, and then the onus is now on the mans' family to remind the man that even illegitimate children can get at least a portion of land where they build their houses within the community. Then if after the persuasions and negotiations, the man still remains adamant, Umunna will ask the woman and her children what they want, with the option of if they still desire to live among the community or to go to the woman's side. If they desire to leave among the community, two things are involved; First, the husbands' family may give them a portion of land from the community owned land or someone especially the woman's brother-in-law for the pain of losing his 'brother's' family may adopt them and offer a hand of

fellowship to them. Second, if the woman choice to go back to the woman's side was made, her people will gladly welcome and settle their daughter and her children. In conclusion from the Igbo cultural perspective, the philosophy of Umunna wu ike and Onye aghana nwanne ya (Ubuntu)-you are because we are. Even though, this extreme case of a man rejecting both wife and children is rarely seen in Igbo community for some obvious reasons, but has happened. One of the challenges with the woman taking her children back to her father's family is that the children may lose their right to any traditional Ozo or Nze title because they have been uprooted from their own land.

Strengths and Limitations of Modern Approaches to Paternity Dispute Resolution

The modern approaches to paternity dispute resolution include the Alternatives Disputes Resolutions (ADR) method such as mediation, conciliation, and collaborative law. These approaches have the following strengths.

First, encourages open dialogue and mutual understanding, the mediation and conciliation facilitates constructive communication between disputants, thereby promoting mutually beneficial consensus. Second, the ADR method prioritizes preserving family relationship, especially children related cases. Third, it is time effective and cost-effective than the traditional litigation. Fourth, modern approach is flexible and adaptable by allowing for creative, customized solutions beyond legal remediation. Last, the ADR method focuses on the best interests of the child, ensuring their needs are met, unlike the traditional approach.

However, this approach has the following limitations or setback, these includes: First, the modern approach has limited access to reliable DNA testing especially among the rural poor, testing can be restricted, thereby making it challenging to establish paternity. Second, issues of cultural and religious influences, in Nigeria, customary and Islamic laws may conflict with statutory laws, affecting the acceptance and implementation of ADR methods or techniques. Third, in the modern approaches, the ADR methods might not be fit for cases involving domestic victimization as the issue of power imbalance come to play. Fourth, the absence of standardized procedure for ADR methods leading to inconsistencies in paternity determinations. Last, the issue of limited awareness and education by the Nigerian masses.

The modern approaches to paternity dispute resolution in the country offers a promising option to traditional litigation, but addressing the limitations and challenges associated with the method is crucial for their effectiveness.

Synthesis of Traditional and Modern Approaches to Paternity Dispute Resolution in Nigeria

Synthesizing the traditional and modern approaches to paternity dispute resolution in Nigeria, it is key to understand that the traditional approach to paternity dispute resolution may at the contemporary time involve litigation where the judge of a competent court of law determines paternity, custody and support, adversarial (parties on opposite sides seeking to prove their claims), legal representation. Traditional approach may tend to prioritize legal right over emotional well-being, potentially leading to prolonged conflict, alternative approaches such as mediation and family counselling are presently recognized as valuable options. The modern approach to paternity dispute resolution on the other hand, involves Alternatives Disputes Resolutions (ADR), child-centered, this approach emphasizes emotional supports, communication and flexibility. It reduces conflicts, preserves relationships and promotes co-parenting, minimizes emotional trauma for children.

Therefore, integrating traditional and modern approaches to paternity dispute resolution, both approaches can over a holistic solution when combining traditional values with modern legal frameworks these will lead to more comprehensive and effective dispute resolutions. Second, it brings about increased accessibility to community rural poor when both approaches are integrated. Third, it is culturally sensitive. Fourth, both approaches bring about an improved outcome that lead to some more sustainable relationships. Notably, the following strategies are key these include: Collaboration with community leaders, training and capacity building, public awareness campaigns, and integration with existing structures.

Challenges and Opportunities for Implementing Culturally Contextualized Paternity Dispute Resolution Mechanisms in Nigeria

The following challenges abound implementing culturally contextualized paternity dispute resolution mechanisms in Nigeria. First, Nigeria is a multicultural and multi-religious society, therefore by the application of both approaches in handling paternity disputes may lead to varying interpretations and expectations regarding paternity disputes. Second, is the issue of limited awareness and understanding of the benefits and processes of a culturally contextualized paternity dispute resolution mechanisms. Third, issue of inadequate access to reliable DNA testing, legal representation, and professional mediators do hinder effective implementation. Fourth, issue of resistance to social change as some individuals or groups may resist both approaches. Last, the challenge of power imbalance as cultural and societal norms may create power gap between the affecting women and their children.

Despite the challenges, the following opportunities includes: First, by incorporating cultural values and norms into paternity dispute resolution mechanisms may bring about increased acceptance and effectiveness. Second, involving community leaders and traditional authorities' participation into dispute resolution can fast-track awareness and the adoption of culturally contextualized approaches. Third, culturally contextualized mechanisms can provide options, accessible and affordable solutions for paternity disputes. Fifth, by incorporating both approaches can help preserve family relationship and promoting co-parenting, and, Last, the adoption of culturally contextualized approaches can lead to creative, customized solutions that address unique family needs.

4. Conclusion

In conclusion, by integrating traditional and modern approaches to paternity disputes resolution in Nigeria offers a promising path forward, it can leverage the strengths of both approaches to create a more effective, sustainable and family-centered solutions, culturally contextualized approaches can enhance access to justice, preserve family-relationships, and promote the well-being of children. In the long run, a culturally sensitive and hybrid approach can help Nigeria address the complexities of paternity disputes, thereby fostering a more harmonious and supportive family setting.

Recommendations

Based on the findings in this study, the following are recommended:

- a. The need to encourage the collaboration with community and religious leaders in promoting and supporting culturally contextualized paternity dispute resolution mechanism,
- b. Provide training and capacity building for traditional leaders, legal professionals, mediators on culturally contextualized paternity dispute resolution, emphasizing collaborative effective communications,
- c. The need to conduct public awareness campaigns targeted on sensitizing Nigerians on the gains and processes of culturally contextualized paternity dispute resolution mechanism,
- d. The need for the development of hybrid dispute resolution frameworks,
- e. The need to reform the existing laws and policies to accommodate both approaches to paternity dispute resolutions,
- f. Establish mechanisms to monitor and evaluate the effectiveness of integrated approaches, making adjustment where necessary and,
- g. Foster partnerships between traditional institutions, bodies, and community organization to support the development and implementation of culturally contextualized paternity dispute resolution mechanisms.

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