

# Introduction of custom and customary law

[Law](#), [Justice](#)



A Custom is any established mode of social behavior within the community. Various dimensions of human behavior which are prescribed by the community or society hint at the conceptual frame of custom. It is considered as one of the mechanisms of social control and an appropriate direction for humans to live in the community and to allow the society to perpetuate. Custom in Chamber's 20th Century Dictionary means, ' what one is wont to do: what is usually done by others: any of the distinctive practices and conventions of a people or locality, esp., those, of a primitive tribe'.

Custom has been defined and opined by various scholars, jurists and authors. " The word custom" as defined by Sapir, " is used to apply to the totality of behavior patterns which are carried by tradition and lodged in the group, as contrasted with mere random personal activities of the individual".

Radin states that " customs are regarded as habitual ways of conduct among social groups ." While Carter maintains that, custom is the " uniformity of conduct of all persons under like circumstances". According to Holland, " custom is a generally observed course of conduct."

The jurisprudence of the Nigerian legal system is replete with case laws as well as opinion of writers on the meaning of custom and customary law. In the case of Dakur v. Dapal , the Nigerian Court of Appeal per Edozie JCA (as he then was) defined custom thus: As defined in section 2(1) of the Evidence Act, custom is : " a rule which in particular district has for long usage obtained the force of law. "

Similarly other researchers defined custom thus: What then is native law and custom? Section 2(1) of the Evidence Act Cap 112 Laws of the Federation of  
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1990 defines custom as a rule which in particular district has from long usage obtained the force of law.

Generally at law, custom refers to the established pattern of behavior that can be objectively verified within a particular social setting. A claim carried out in defense of ' what has always been done and accepted by law'. It consists of customs accepted by members of a community as binding among them.

In Hur Prasad v. Sheo Dayal, custom has been defined as ' Rule which in a particular family or in a particular district or in a particular sect, class or tribe, has from long usage obtained the force of law.' Citing Hur Prasad v. Sheo Dayal, Sir Hari Singh Gour states that, ' Custom is an established practice at variance with the general law'.

According to Sir John Salmond, " Custom is frequently the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility". He further states that " The national conscience may well be accepted by the Courts as an authoritative guide; and of this conscience national custom is the external and visible sign".