

ISLAMIC UNIVERSITY IN UGANDA

JOURNAL OF COMPARATIVE LAW

IUIUCLJ,Vol 6 Issue 2 , 2019

ISLAMIC UNIVERSITY IN UGANDA

COMPARATIVE LAW JOURNAL

IUIUCLJ

IUIUCLJ. VOL 6, ISSUE 2, 2019

COMPARATIVE LAW JOURNAL

© 2019 Islamic University in Uganda Journal of Comparative Law

(IUIUJCL. 2019)

Journal of Faculty of Law, Islamic University in Uganda, Mbale, Uganda

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ISSN: 2519-951X

Published by

FACULTY OF LAW
ISLAMIC UNIVERSITY IN UGANDA
P.O. BOX 22555
MBALE, UGANDA

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Citation: This journal may be cited as IUIUJCL Vol 6, Issue 2, 2019

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BODY SCARIFICATION UNDER THE CHILD RIGHT ACT AND *SHARI'AH*: BETWEEN CULTURAL WEIGHT AND CONTEMPORARY REALITY

ABDULRAHEEM TAOFEEQ ABOLAJI, Ph.D [1], FOLORUNSHO AHMAD HUSSEIN, (Ph.D) [2] & OLAGUNJU-IBRAHIM R.O. (P.h.D.)[3]

Absrtact

Prohibition of Tattoo and Skin marks are certainly provided for under the Child's Right Act (CRA) 2003 and the Shari'ah. Notwithstanding the available provisions, scarification, Tattoos and skin marks are still rampart among tribes. Scarification, tattoos and skin marks are influenced by superstition or traditional conviction. This research argues that scarification, tattoos and Skin marks have health implications for the children and also amount to child abuse and degrading treatment. Therefore, this paper examines the position of Child Right Act and Shari'ah on scarification, Tattoos and Skin marks. The research is carried out through doctrinal method by considering various enactments and Shari'ah provisions on scarification, tattoos and skin marks. The research found that scarification, tattoos and skin marks are prohibited under the Nigeria laws as they are considered as abuse children.

Key words: Scarification, *Shari'ah* Cultural Weight, Contemporary Reality.

Introduction.

Scarification is one of the most important practices in African tradition. In Nigeria for example, ethnic groups such as the Hausa, Yoruba, Nupe, Kanuri, Jarawa in Plateau and Igala are known to have some of the most invasive scars. Interestingly, the marks range from three horizontal marks on each cheek to identify the Oyo people; to vertical marks (one on each cheek for Ondo people) all of Yoruba extraction.[4] The Nupe have tiny cat-like whiskers beside the lips while the Jarawa people are known to draw many tiny incisions from the head to the chin. Marks are also found on other parts of the body apart from the face.[5] Tribal marks in the olden days were interesting

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[4] Samuel Johnson.1921. *The History of Yorubas from Earliest Times to the Beginning of the British Protectorate*. Nigeria: C.M.S.p.15.

[5] Alabi, G. O., & George, A. O. 1989. "Cutaneous sarcoidosis and tribal scarifications in West Africa'. *International journal of dermatology*. Vol.28. No.1.p. 31.

features used to adorn the faces. However, they are becoming extinct because of civilization and laws that forbid parents or anyone from marking a child's face.[6] The primary reason for the advent of tribal marks in Nigeria was the slave trade, although it became a fashion trend over time. Tribal marks became a necessity in the old days as a result of the incessant communal wars and slave trade experienced then.[7] Families became separated as people were often taken away as slaves and to avoid completely losing their folks, they decided to mark their faces, hoping it would help to withhold family ties.[8] When these wars ceased, the act of marking the face did not stop, because people then realised that besides the initial purpose for tribal marks, it also beautified the face. Aside causing discomfort and embarrassment to carriers, most of marked people had, in many times, been exposed to lethal danger. During the Nigeria civil war from 1967 to 1970, troops used tribal marks to identify their enemies. Carriers were easily sold out by the marks in their faces.[9]

Scarification and Tribal Marks: Fantasy Means of Identification

Scarification is a permanent body modification that transforms the texture and appearance of the surface of the skin. Although scarification operates as a controlled injury, it is not the result of an accident or health-related surgery. Branding, cutting and some tattoo practices are types of scarification. In the practice of scarification the dermis and epidermis of the skin are cut, burned, scratched, removed or chemically altered according to the desire designs, symbols or patterns. The result is a wound, which healed creates raised scars that are formed on the skin's surface from increased amounts of collagen. Persons with darker skin tones have typically chosen scarification designs, because scar is more visible than tattoo.[10] In Nigeria, scarification was originally for identification and medication. It involves a long and painful process where the skin is cut or pierced with a sharp object or hot instrument, leaving scarce on the affected area. This ritual is performed by members of different ethnics groups in Nigeria.[11]

The supposed means of identification is patent in some Nigerian public figures, mostly politicians, from Nigeria's first republic to date, it is observed that some distinctive or peculiar marks reveal their origin. Thus, even when these politicians are

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[6] See for example, Osun State Child Rights Law.

[7] Ogunbiyi, A. O ,Omigbodun, Y., &Owoaje, E. 2009. "Prevalence of Skin Disorders in School Children in Southwest Nigeria." *International Journal of Adolescent Medicine and health*, Vol.21. No. p.242.

[8] Ogunbiyi, A. O., Owoaje, E., &Ndahi, A. 2005. "Prevalence of Skin Disorders in School Children in Ibadan, Nigeria." *Pediatric dermatology*. Vol. 22 .p.10.

[9] LanreOlutayo is a Professor in the Department of Sociology, University of Ibadan (UI), Ibadan, Nigeria.

[10] Ejiofor O.S. et (2009), ' The Role of Blood Transfusion on the Prevalence of Hepatitis C virus antibodies in Children with Sickle cell anemia in Enugun, South East , Nigeria." *Nigeria Journal of Clinical Practice*. Vol 12 (4),p 1.

[11] Adekanle, O. et. 2010. " Sexual Transmission of the hepatitis B virus among blood donors in tertiary hospital in Nigeria." *Singapore Medical Journal*. Vol 51 (12) . p. 944

from different ethnicities, many of them share one thing in common, tribal marks.[12] Examples of such tribal marks are visible on the cheeks of Chief Samuel Ladoke Akintola, a respected opposition politician in Western Nigeria under the first Republic, Alhaji Attairu Bafarawa, former governor of Sokoto State (North-west, Nigeria), Senator Ifeaniyi Ararume, a former Senator from Imo State (South-east, Nigeria). In many cases, these are inflicted from childhood not minding the amount of blood that is lost in the process of making the tribal marks.[13] Tribal marks have a long history in the African tradition, most important of which was the era when having a sense of identity was paramount to an individual. However, with civilization and the trend dwindling over time, individuals who wear such marks nowadays often become victims of ridicule among their peers.[14]

Cultural weight vs. Contemporary Reality

The significance of the scarification process and resulting scars varies from culture to culture. In some area in Nigeria, scarification has been used to emphasize the permanency of social and political role, ritual and cultural value; rites of passage age-grades; eroticizing and enhancing sexual pleasure; group and cultural identity; spiritual, spiritual relationships; and aesthetic values.[15] This practice therefore, rampart in Nigeria among the youth and gradually extends to the children. For instance in Ilorin, Kwara state, some family are engaged in the practice and thousands of children are part of the practice because of their belief and some of the aforementioned socio-cultural effect.[16] *Efidan* is one of the types harmful traditional incision carried out in Nigeria and it translates as cutting. This tradition is still used in some rural area of Nigeria. For this tribes, cutting is a part of adolescent tradition. Parents cut their children during childhood or when they reach puberty as the tradition and custom of their tribe demands. In Edo state of Nigeria, an ancient scarification tradition, which is still practice till date, is referred to as *Ude*. The tradition here holds that children, who suffer strange illnesses at infancy, are marked with these ritual incisions to cure them from the ailment and ward off future attack.

Similarly, in the traditional Yoruba society every child is born into patrilineal a kindred (Idi ile Baba) who shares a particular tribal marks.[17] These marks, which are usually facial, are worn by each child born in to the extended family and it assigns the child full kindred membership rights. Members, who do not bear or carry these tribal

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[12] Adekanle, O. et. 2010. " sexual Transmission of the hepatitis B virus among blood donors in tertiary hospital in Nigeria." *Singapore Medical Journal*. Vol. 51 (12).p.944

[13] The marks with different design, are used to easily identify the orifin of the carrier and are awfully crafted that in most cases, become embarrassing features to the recipient-even to others. Apart from tribal identification the marks are also used to initiate people into age grades, cults, among others.

[14] Ogunbiyi, A.O. et. (2005) " Prevalence of Skin Disorder in School children in Ibadan, Nigeria." *Pediatric dermatology Journal*. Vol. 22(1).pp 6-10

[15] Olusola O.A. et. (2017) "Growing Trend of Tattooing and Its Complications in Nigeria." *International Journal of Dermology*. Vol.56(7), 709-714,

[16] Personal Interview with Oloje 2019. "Our tribal mark is unique and is a symbol emulated from our fore father. The tribal mark usually put on the child when it is born as means of identification of our tribe".

[17] Orie, O.O. (2011). "The Structure and Function of Yoruba Facial Scarification." Muse.jhu.edu, 5.

marks, are not considered as full-fledged elements of Yoruba community. They would also not be respected, greeted accordingly or regarded as their age or social contribution require.

Psychological Implication of Tribal Mark on a Child

The procedures used for this (scarification) surgical operation makes it entirely inhuman. Starting with the equipment, traditional experts do not really see the importance of sterilizing their surgical tools. The sad thing is that this singular act predisposes the innocent child to series of infections that could lethal.[18] Imaging for example imaging what will happen if this surgical operation is done on an HIV carrier and the same equipment is used on another person.[19] Also, since the world has become more civilized, even the woman embryo is covered by crucial civil and health rights. Before now, most people actually had the belief that they could do anything with the development embryo and get away it.[20] Well, it is not so, any more. As a matter of fact if the embryo is entitled to so many amazing rights, how much more a child. That is the major reason why many parents who once suffered from the aftermath of tribal mark frowns so much on the inscription done on the faces of children. They describe this act as archaic and an infringement on the child's fundamental human rights.[21]

Medical Effect of Scarification

Tattoo or scarification has been a continuous exercise among the Nigeria youth in fact it has been extended to the innocent children. Tattoos have becoming increasingly mainstream, dermatologist are more and more often consulted by patients who are considering getting ornamental, cosmetic or even a medical tattoo and who subsequently ask for advice.[22] The practice of tattoo, scarification or skin marks on the body particularly on a child may have resultant effect which is termed as complications.[23] These complications may arise from the procedure as well as removal, and how to manage them. Most times, tattoos are obtained through unsafe means by unauthorized personnel, and this is associated with numerous health risks. Of particular importance to the dermatologists are the hypersensitivity reactions, granulomatous skin disease, and formation of both keloid and hypertrophic scars.[24]

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[18] Owoeye Ogunbiyi Et 2005 "Prevalence of skin disorders in school children in Ibadan, Nigeria Journal of pediatric dermatology Vol 22(1) p 6-10

[19] Ejiofor, O S et (2009) " The role of blood transfusion on the prevalence of hepatitis C virus antibodies in children with sickle cell anemia in Enugu, south East Nigeria Journal of clinical practice Vol 12(4) p 1

[20] Ugwu E I et 2010 " Seroprevalence of hepatitis B surface antigen and Liver function among tests adolescent in Abakaliki, south Eastern Nigeria " The International Journal of Tropical Medicine Vol 6 (2) 1726-1732

[21] Paalmer F M (2015) " Recapturing Tradition Culture- A Survey of Uvinmi Body Tattoo as a Curative Procedure in Esaland, Edo State " p 1

[22] Nicolas K & Christa D 2018 " A practical Guide About Tattooing in Patients Wit Chronic Skin Disorders and other Medical Conditions " American Journal of Clinical Dermatology 167

[23] Jude, C E., et 2014 "Prevalence and risk factors for hepatitis C and human immunodeficiency virus co infection among children in Enugu, Nigeria. *African Journal of infectious diseases* 8(1) p 5-8

[24] Olusola O A et (2017) "Growing Trend of Tattooing and Its Complications in Nigera " *International Journal of Dermology* Vol 56(7), 709-714.

Prohibition of Tattoos and Skin Marks under the CRA

Scarification of body includes Tattoos and skin marks and these are categorized as part of harmful traditional practices that affect children in Nigeria. The CRA prohibits and makes it an offence for any person who engages in this abusive act. No person shall tattoo or make a skin mark or cause any tattoo or skin mark to be made on a child.[25] A person who tattoos or makes a skin mark on a child commits an offence under this Act and is liable on conviction to a fine not exceeding five thousand Naira or imprisonment for a term not exceeding one month or both fine and imprisonment.[26]

In order to give effect to the CRA, some states in Nigerian have promulgated laws prohibiting tattoos and skin marks. For example, Osun state has banned marking of facial to children and whoever fails to observe the provision of this law risk a fine of N5, 000 or imprisonment of one month or both.[27]It has been observed that Tattoos and skin marks are responsible for viral hepatitis. According to the Nigerian Federal Ministry of Health, over 18 million Nigerians are carriers of this virus and it keeps spreading amongst the populace as a result of ignorance of its symptoms, treatment and prevention.[28] Enhancing the spread of this disease is the fact that most carriers are asymptomatic [29] until several decades later. Meanwhile, during the period of asymptomatic, the liver is silently being damaged.[30] This disease is said to be 50-100 times more infectious than HIV caused by circumcision, tattoos or tribal marks as well as skin and body piercing.[31] Evidence from the first hepatitis sentinel survey conducted in Nigeria in 2013 shows that many healthy looking people carry the virus and do not know until screened. It also shows that cultural practices such as local circumcision, scarification (tribal marks) and local cutting of the tonsils (*belu-belu*), encourage its spread.[32]

Position of *Shar'iah* on Tattoos and Skin Marks

Tattoos have become more main stream in society, and people from all walks of life, regardless of gender, culture or religion. Sport at least one example of body art. Islam prohibits tattoos and warns all human beings to desist from this act. The majority of

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[25]Section 24 (1) of CRA 2003.
[26]Section 24(2) of CRA 2003.
[27] See section 24 of the Osun state Child Rights Law 2009.
[28] Some 80 per cent of victims are unaware that they are carriers. See generally, AbioseAdelaja Adams, Circumcision, Tattooing, Fuel Spread of Hepatitis available at http://icirnigeria.org/circumcision-tattooing-fuel-spread-of-hepatitis/ Accessed on 15/03/15.
[29] That is, do not show symptoms character.
[30] This according to Professor Innocent Ujah, Director General of the Nigerian Institute of Medical Research, on the occasion of World Hepatitis Day, in Lagos, available at http://icirnigeria.org/circumcision-tattooing-fuel-spread-of-hepatitis/ accessed on 15/03/15.

[31]Patric David et al. 200., "Public Health and Hepatitis C." *Canadian Journal of Public Health*.pp.18-21.
[32] The research was conducted by Professors C.N. Obionu and B.S. C. Uzochukwu, in conjunction with thSe Nigerian Federal Ministry of Health. See generally Abiose Adelaja Adams.

Muslim scholars consider permanent tattoos to be *haram*, based on the oral tradition *(Hadith)* of prophet Muhammad (PBUH). The *Hadith* was recorded by Bukhari, it was narrated that Abu Juhafa (May Allah pleased with him) said "The Prophet (peace and blessing of Allah be with him) *cursed the one who does tattoos and the one who has a tattoo done*."[33] The scholars have outlined various possibilities and arguments regarding the implication of tattoos on the body: A tattoo is considered as mutilating the body, changing Allah's creation. It inflicts unnecessary pain and introduces the possibility of infection. It covers the natural body and is therefore a form of deception and Non-believers often adorn themselves this way, so it is imitating the *Kufar*.[34]

Classification of Tattoo under *Shari'ah*

Tattoo as it well known has been classified in to two under the *Shari'ah*; Permanent and Temporary tattoo. The explanation on each of the classification will be explained in the course of discussion as well as the positions of the Muslim Jurists on the meaning, legality and benefit of scarification will also be emphasised.

Permanent Tattoo: The Position of *Shari'ah*

The issue of permanent tattoo under the *Shari'ah* is a serious issue as it is completely forbidden. This is the position of Islamic Scholars. Therefore, Muslims both old and young are warned to desist from this mischievous practice. In fact, Muslims are warned to do a way in the involvement of this dastard act. Permanent tattoo is regarded as regarded as *Thabit*.[35] It is a method of inscribing a symbol or any other thing on the body which cannot be removed, It is classified into various ways to wit: Classical mode of tattoo, Chemical or surgical mode of tattoo. It is agreed by the Jurists that permanent tattoo is prohibited under the *Shari'ah* and considered *Haram*.

Temporary Tattoo

The place of temporary tattoo under the *Shari'ah* can be gleaned through the position of Muslim Jurists. It the contention of Muslim Jurists that temporary tattoo can be divided into two namely: temporary that can be washed away immediately or the one that be vanished as result of stress or any other artificial. An example of it is Henna dye foe special occasions and celebrations. The other one is regarded as temporary tattoo that can stay for few like a month or six month. The later division is more less an aspect under permanent tattoo. Therefore, the rule under permanent tattoo is applicable to the latter one which *haram* (forbidden).

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[33] Abu Abdullah Muhammad Ibn Ismail.n.d. *Sahih al-Bukhari*.npl. dar-taoq al-najat.p.61

[34] Huda. n.d. Tattoo in Islam: what does
Islam say about a Muslim getting a tattoo.

[35] *Thabit is* an Arabic word which means permanent. It is regarded as permanent because such scars or tribal marks or tattoos cannot be washed away.

Distinction between Temporary and Permanent Tattoo under *Shari'ah*

It axiomatic to make a distinction between temporary and permanent tattoo as this has to do with the position of some Islamic Jurists who opined that temporary tattoo has no harm and such can be allowed but permanent tattoo is completely *haram* (forbidden) as it causes damage to body and sometimes it may result into occurrence of diseases.

Legality of Tattoo under the *Shari'ah*

Temporary tattoo under the *Shari'ah* is permitted in so far it can be removed. The permissibility of this can be linked to a situation where a person has no other means than to do. There are situations in which temporary tattoo is allowed. One of the examples is a situation it has to do with the issue of health. The act of doing tattoo will fall under the context of *daruriyyah* which means necessity. This position is in accordance with the one of the principles of *Shari'ah* which says " *Necessity renders the prohibited permissible.*"[36] Another example is that it is allowed for a woman to do it with the consent of her husband. It is warned that a woman that does temporary tattoo should not expose to the public.

As regards to the issue of permanent tattoo it is completely *Haram* (forbidden) under the *Shari'ah*. Haram in Islamic jurisprudence is used to refer to an act that is forbidden by Allah. Some of Maliki and Shafii Jurists considered it as Kabair (Big sin) and it is prohibited. All Muslims are therefore to move away from the act of performing permanent tattoo. The position of *Mutakharium* as regards to the issue of permanent is different to the position of the above jurists mentioned above. They opined that Tattoo is categorised as *Makruhu* (Dislike). Makruh in Islamic terminology means or offensive act. Literally it connotes a detestable or abominable act. Though a *Makruh* act is not *Haram* forbidden or subject to punishment, a person who abstains from the act will be rewarded. They relied on the provision of holy Quran which says:

> *"And I will mislead them, and I will arouse in them (sinful) desire, and I will command them so they slit ears of cattle and I will command them So they will change the creation of Allah." And whoever takes Satan as an Ally instead of Allah has certainly sustained a clear loss.*[37]

A cursory and in depth reading of the above verse reveals that in that verse " And indeed I will order them to change the nature created by Allah). According to Al-Hasan bin Abi Al-Hassan AL- Bassri, change the nature created by Allah is tattooing in his *Sahih*, Muslim recorded the prohibition of tattooing the face which in one of its wording states; "May Allah curse whoever does this." It is also recorded in the *Sahih* that Ibn Mas'ud said " May Allah curse those who have tattoos and those who do it, who pluck their (facial) hairs and the one who does it from them, and those who make

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[36] Kamali , Mohammad Hashim. (2016) " Jurisprudence of Minorities (Fiqh al-aqaliyyat)." Revisited " Islam and civilization Renewal (ICR) 7 , no.1.

[37] Al-Nisa, 199.

spaces between their teeth for the purpose of beauty, changing what Allah has created". He then said "Why should not I curse whom the Messenger of Allah has cursed, when the Book of Allah commands it. " Referring to the above quoted verse.[38] It is important at this juncture to state that Tattoo particularly permanent one has been categorised as haram the forbidden act under *Shari'ah*. This because above verse of the holy Quran has captured the implication, consequence and position of *Shari'ah* as regards to tattoo. Prophet Muhammand SAW also said in one of his Hadiths :

> *"The Prophet (SAW) cursed the woman who joins false hair to her real hair [extension] and the one who asks for it to be done to her and the woman who Tattoos(others) and the one who has it done(for her).*[39]

Allah has cursed those women who practise tattooing and those who get themselves tattooed and those who remove their face hairs and those who create a space between their teeth artificially to look beautiful and such women as change the feature created by Allah. Why then should I not cursed those whom the Prophet SAW has cursed? and that is in Allah's Book `i.e. His saying: And what Apostle gives you take it and what he forbids you abstain (from it).

As a corollary to the above, Abu *Hurairah* narrated as follows :

> *"A woman who used to practice tattooing was brought to Umar.Umar got up and said. I beseech you by Allah, which of you heard the Prophet SAW saying about tattooing? I got up and I said, " O chief of believers I heard something." He said, what did you hear? I said, "I heard the Prophet (addressing the ladies", saying. Do not practise Tattooing and do not get yourselves tattooed.*[40]

Conclusion

The issue of Scarification and permanent Tattoo are well condemned by the *Shari'ah*. This is because, it is prohibited by Allah and the Prophet. Aside from its religious prohibition, it has adverse effect on human being. It is evidently cleared from medical point of views that it may lead to occurrence of certain diseases .Socially, the practice is condemned and described as being barbaric and therefore should be stopped not among the adults the restriction should extend to the children. This act must be discouraged especially in a situation where this practices seem detrimental to the health of an individual. For instance, so many people can't go out in a day without makes up because they feel so ugly due to their facial marks. Some are even rejected by people they love because of this same mark they never bargained for.

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[38] See Ibn Kthir, Tafsir al-Quranawzi, (Riyadh Dar al-Taibah li- Nashr wa al-Tawzi,1999) vol.2,413.
[39] Al-Bukhari Muhmmd Ismail, Al- Jamiu al Musna al- Sahih al-Mukhtasar, (Beirut :Dar Tawqu al- Najat, 2001) vol.3.84.
[40] Al-Bukhari Muhmmd Ismail, Al- Jamiu al Musna al- Sahih al-Mukhtasar, (Beirut :Dar Tawqu al- Najat, 2001) vol.3.84.