



LAW, DEMOCRATIC INSTITUTIONS **AND SECURITY CHALLENGES IN NIGERIA**

ESSAYS IN HONOUR OF
HONOURABLE JUSTICE AHMAD OLAREWAJU
BELGORE, PJCA (RTD), F.DRI, LIFE BENCHER

EDITED BY:-

PROF. K. I. ADAM
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EDITED BY

**PROF. KAYODE I. ADAM
LL.B, LL.M, Ph.D, B.L. UNIVERSITY OF ILORIN, ILORIN,
NIGERIA**

**ASSOC. PROF. HANAFI A. HAMMED
NCE, LL.B, LL.M, Ph.D, B.L, KWARA STATE UNIVERSITY,
MALETE-ILORIN, NIGERIA**

**NIGERIA BAR ASSOCIATION, ILORIN BRANCH IN
COLLABORATION WITH FACULTIES OF LAW,
UNIVERSITY OF ILORIN, ILORIN-NIGERIA, KWARA
STATE UNIVERSITY, MALETE-ILORIN AND AL-HIKMAH
UNIVERSITY, ILORIN**

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CHAPTER SEVENTEEN

COMPARATIVE REVIEW OF LITERATURE ON PROTECTION OF DATA PRIVACY RIGHT UNDER SHARI'AH AND NIGERIAN LAWS

By

IMAM – TAMIM, Muhammad Kamaldeen*

and

MUSTAPHA, Abdul-Basit Adetoyebi**

Department of Islamic Law Faculty of Law, University of Ilorin.

ABSTRACT

As a result of the constant state of flux of information and communication technology around the globe, its integration, especially in the use of personal data, in almost every sector has demonstrated to be indispensable for improved service delivery. However, this has also heralded in a lot of legal issues and has further propelled the need to provide adequate protection for the personal data of individuals under a newly developed right to data privacy. This has attracted the attention of policy makers, scholars and governments globally. Despite the novelty of the right, there is a dearth of authorship on this area from both Islamic Law and the Western-style legal orders. This work comparatively reviews literature on data privacy right under Shari'ah and Nigerian laws.

* Department of Islamic Law Faculty of Law University of Ilorin. Email: imamtamim@unilorin.edu.ng.
Tel: +234703 44 999 44.

Keywords: Personal data; Data privacy; Data protection; Shari'ah; Nigeria

1. INTRODUCTION

Perhaps, the largest revolution in the 21st century is the explosion in technological advancement.⁹⁴⁶ Not only has digital and internet technology totally and rapidly transformed our lives and our traditional ways of behaviour, it has also radically impacted politics, public opinion and civic participation. The development in computer technology has had an ever-growing effect on the society and the way people conduct their affairs.⁹⁴⁷ The employment of computer technology has penetrated every professional, commercial and industrial activity and that, in fact, it has become a tool of survival for various entities.⁹⁴⁸ This explosion is majorly noticeable in Information and Communication Technology. What is more disturbing is that the internet is so liberal to the extent that it allows any computer to access information kept on other computers on the internet.

On the one hand, the integration of the information and communication technology in almost every sector has proven to be useful and efficient for improved service delivery. The advent of computer technology by its peculiarity and volatility has also raised novel and complex problems⁹⁴⁹ like having real impacts on the privacy of data subjects especially with respect to the collection, storage and processing of their personal data.⁹⁵⁰

Therefore, this current revolution in information technology has brought issues of data privacy to the fore. Owing to this development, protection of data privacy

⁹⁴⁶ Lukman Adebisi Abdulrauf, *The legal protection of data privacy in Nigeria: Lessons from Canada and South Africa*. (Being a PhD thesis of the Faculty of Law, University of Pretoria 2015), 109.

⁹⁴⁷ H. Akin Ünver and Grace Kim, 'Data Privacy and Surveillance in Turkey: An Assessment of the Draft Law on the Protection of Personal Data', [2016] Centre for Economics and Foreign Policy Studies, 3 <<http://www.jstor.com/stable/resrep14052>> accessed on 2nd July, 2021.

⁹⁴⁸ David I. Bainbridge, *Computers and the Law* (Pitman London, 1990), 1.

⁹⁴⁹ David I. Bainbridge, (n.3), 1.

⁹⁵⁰ H. Akin Ünver and Grace Kim, (n.2), 1.

has attracted the attention of international human rights and economic organisations and it has dominated their policy agenda. In the same vein, the traction and momentum with which data privacy is attracting the attention of policy makers, scholars and governments of the world is also on the increase.

The novel issues brought by the mysteries of the internet have therefore moved countries to create legal and administrative responses to these challenges. The most dominant and most popular legal frameworks are tailored along the western perception of these issues. However, there have been debates as to the effectiveness of these legal instruments to ensure the much-needed protection of the rights of data subjects. Due to this, it has been argued that Shari'ah may possess a potent cure to this misery by providing a more effective and all-rounder framework for the protection of data privacy rights.⁹⁵¹

The issue of data privacy is now a matter of concern for countries of the world. It is even of greater concern to Nigeria with the present state of flux of the Internet penetration in the country. As of 2015, it was recorded that about 51% of the Nigerian population have online presence⁹⁵² making it one of the countries with the largest internet penetration in the world⁹⁵³. As lofty as this fact appears to be, this realization has brought with it a lot of issues shaping the country's governance and policies. Chief among these issues is the protection of data privacy rights. This is even more important due to Nigeria's reputation about preparation for new issues in terms of legislations and policies. Although, Nigeria has adopted certain legal instruments, which are tailored to the General Data Protection Regulation (GDPR) in attempts to protect the data privacy rights of citizens, there have been

⁹⁵¹ Ayesha Rasheed, 'Prioritizing Fair Information Practice Principles Based on Islamic Privacy Law', 2020](11)(1) Berkeley Journal of Middle Eastern & Islamic Law, 11.

⁹⁵² Lukman Adebisi Abdulrauf, (n.1), 109.

⁹⁵³ Beryl A. Ehondor and Silk Ugwu Ogbu, 'Personal Data Protection and Facebook Privacy Infringements in Nigeria', [2020](17)(2) Journal of Leadership Accountability and Ethics, 143; Lukman Adebisi Abdulrauf and Charles Manga Fombad, 'Personal Data Protection in Nigeria: Reflections on Opportunities, Options and Challenges to Legal Reforms', [2016](38)(2) The Liverpool Law Review, 105-134.

criticisms as to the effectiveness of these legal frameworks to adequately ensure that the personal data of data subjects are protected.⁹⁵⁴ Therefore, this has led authors to suggest some mechanisms that should be adopted for the protection of data privacy rights.

It is often said that Islamic law is a complete system of laws that has catered for everything and always has a response to new issues that may arise till the end of time. Hence, the question is whether the Shari'ah protects data privacy rights and can suggest a potent alternative to the conventional data privacy protection regime. The aim of this work is therefore to conduct a survey of literature on the existing legal mechanisms in Nigeria and under the Shari'ah with a view to evaluating the interconnectedness of the rules of data privacy protection under the two legal cultures. The objectives of this work upon which the review was anchored are as follows:

1. To examine Nigerian comprehensive laws and regulations on data privacy;
2. To determine the challenges inherent in the application of the Nigerian laws on data privacy; and
3. To examine the Shari'ah rules on privacy as it relates to the protection of personal data.

2.0 METHODOLOGY

The relevant literatures were gathered by adopting the approach of stratifying the areas of focus. Being a comparative literature survey, the areas of the study were stratified into Nigerian regulations and Islamic law. These rubrics were used as the bases for the discussions and evaluation of the ideas presented in the emerged literatures. The relevant works were collected using a simple literature search method. The Research Objectives were used to develop appropriate search words

⁹⁵⁴ Beryl A. Ehondor and Silk Ugwu Ogbu, (n.8), 151.

cum phrases and their synonyms. As a result, search words such as data privacy, information privacy, privacy in information age, data protection were identified and used. To collect the relevant works for the Islamic law strata, the aforementioned search words were interpolated with “Shari'ah” and “Islamic law”.

The literature search was conducted on general Google search engine but the main loci of the search were “Google Scholar”⁹⁵⁵ and “Zed Books Library”⁹⁵⁶ which are both literature databases housing hundreds of thousands of literature materials. Several literatures were harvested during this exercise; however, only very few were related to the Research Objectives of this study. Those few were set aside; then, their reference citations were also scavenged for further materials that are relevant to the objectives. It is only the literature materials that fulfil this inclusion/exclusion criterion (relevancy) that were eventually used in this work. The review was done thematically by identifying themes that would explain the Research Objectives.

3.0 THE REVIEW

The right to data privacy and its protection has attracted the attention of scholars from around the world, especially with the noticeably high penetration and advancement of Information and Communication Technology. AbdulRauf⁹⁵⁷ and Malikulo⁹⁵⁸ observed the scantiness of literature in respect of data privacy in Nigeria. Also, the right to data privacy or protection of personal data under the Shari'ah is usually discussed in literature on the right to privacy and its protection in the digital age. These literatures interrogated the question of whether the protection of data privacy right is accommodated within the existing right to privacy in Shari'ah. This work will review the works of scholars that have

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www.scholar.google.com

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<https://www.libraryeverything.com/profile/ZedBooks> (These are incomplete citations)

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Lukman Adebisi Abdulrauf, (n.1), 380.

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Alex Boniface Malikulo, 'Privacy and data protection in Africa: a state of the art', [2012](2) (3) International Data Privacy Law, 178.

contributed to the debate from the conventional legal systems and the ones from the Shari'ah perspective.

3.1 Works on Nigerian Legal Regulation of Data Privacy Rights

Although, this review is aimed at assessing the relevant literature on data privacy rights in Nigeria, literatures from other African jurisdictions are also referenced. This is because the situation in every part of the continent is similar (although with South Africa as an exception) in terms of the development of the data privacy as a right and even its protection. It is also observed that the data privacy laws of the majority of African countries are similar, having the same source of influence. Hence, literatures from other African countries are reviewed to complement the Nigerian literature on this subject.

3.1.1 *Definition and Appropriateness of the Terms adopted to describe the Concept*

The right to data privacy is a relatively new concept thereby opening up several debates on the appropriateness of the terms adopted to describe the phenomenon, the meaning of the concept, its relationship with the traditional right to privacy, its recognition as a distinct fundamental human right as well as its current status in Nigeria.

Unlike the debates on 'privacy', the definition of the term 'data privacy' is not so contentious.⁹⁵⁹ Nonetheless, various terms have been suggested to describe the phenomenon such as data protection, privacy, information privacy and data privacy. The European jurisdiction appeared to have favoured the term 'data protection' which dominated the region's laws on protection of personal data since the 1970s while 'privacy' seems to be the terminology adopted in USA,

⁹⁵⁹ Gloria Gonzalez Fuster, 'Privacy and the Protection of Personal Data Avant la Lettre' in Gloria Gonzalez Fuster (ed.), *The Emergence of Personal Data Protection as a Fundamental Right of the EU*, (Springer Switzerland, 2014) 21-54.

Canada and Asia-Pacific.⁹⁶⁰ However, the use of these terms has been faulted as being problematic and misleading; and 'data privacy' has been proposed as a more appropriate definition for being more accurate.⁹⁶¹ Despite this, it has been noticed that scholars have been inconsistent with the use of the terms.⁹⁶² It is observed that there are debates regarding the meaning of data privacy among scholars. De Hert and Gutwirth perceive data privacy as a series of ideas regarding the processing of personal data.⁹⁶³ This definition has been faulted for being vague as it fails to state the exact objectives of data privacy.⁹⁶⁴ However, that vacuum has been filled in the definition advanced by Neethling *et al*⁹⁶⁵ and Roos⁹⁶⁶ that data privacy is the "protection of persons from harm resulting from the processing of their personal information by data controllers"⁹⁶⁷. By necessary implication, this definition excludes the other rights of data subjects (such as right to update information, right to be forgotten) so long the actions of data controllers do not cause injury to the data subjects. This perception negates the idea of data privacy as a human right. Filling this definitional gap, Abdulrauf advanced his own definition of data privacy as the right of an individual to determine the destiny of their personal information with respect to the processing of the data which has become a valuable commodity being sought by different entities (governments and individuals) "since it is a significant aspect of the personality of such individual"⁹⁶⁸. Abdulrauf's perception is similar to that of Miller⁹⁶⁹ on the meaning

⁹⁶⁰ Monika Zalnieriute, 'An International Constitutional Moment for Data Privacy in the Times of Mass Surveillance', [2015](23)International Journal of Law and Information Technology, 6.

⁹⁶¹ Lee Andrew Bygrave, 'Data Privacy Law in Context' in Lee Andrew Bygrave, *Data Privacy Law: An International Perspective*, (Oxford University Press Oxford, 2014) <DOI:10.1093/acprof:oso/9780199675555.003.0001> accessed on 1 December 2021.

⁹⁶² Lukman Adebisi Abdulrauf, (n.1), 18.

⁹⁶³ Paul De Hert and Serge Gutwirth, 'Data Protection in the Case Law of Strasbourg and Luxembourg: Constitutionalisation in Action', in Serge Gutwirth and others (eds), *Reinventing Data Protection?* (Springer New York, 2009), 3.

⁹⁶⁴ Lukman Adebisi Abdulrauf, (n.1), 19.

⁹⁶⁵ J. Neethling and J. M. Potgieter and P. J. Visser, *Neethling's Law of Personality*, (LexisNexis Butterworths Durban, 2005), 267.

⁹⁶⁶ Anneliese Roos, 'Data Protection' in Dana Van der Merwe and others (Eds), *Information and Communications Technology Law*, (LexisNexis Durban, 2008), 313.

⁹⁶⁷ Lukman Adebisi Abdulrauf, (n.1), 362.

⁹⁶⁸ Lukman Adebisi Abdulrauf, (n.1), 362.

⁹⁶⁹ Arthur Raphael Miller, *The Assault on Privacy: Computers, Data Banks and Dossiers* (University of Michigan Press, Ann Arbor, 1971), 40.

of data privacy. Their definitions appear to be more accurate when compared with the one suggested by Neethling *et al* and Roos in that the authors' definition encompasses more objectives of data privacy as against the opinion of duo which are restricted to protection from harm arising from the processing of personal data.

3.1.2 *Relationship between Data Privacy and Right to Privacy*

Another discourse in respect of data privacy is its relationship with the right to privacy. AbdulRauf⁹⁷⁰ argued in support of the views of De Hert and Gutwirth⁹⁷¹, that the right to data privacy is a distinct right on its own, different from the right to privacy as guaranteed in the constitutions of the different countries (especially the Nigerian Constitution), common law, legislations and extant international legal instruments and in fact broader in scope than right to privacy in terms of protection of personal information which are not necessarily private, secret or confidential. In fact, Abdulrauf and Fombad argued that the right to data privacy is recognized as a distinct legal right because the existing framework for the protection of data privacy is not sufficient to cover the protection of personal data or information.⁹⁷² De Hert and Schreuders also share AbdulRauf's perception that although, the rights to data protection (data privacy) and privacy share certain characteristics, they are not identical.⁹⁷³ The authors opined that data protection does not necessarily raise privacy issues.

Contrary to privacy rules, the right to data privacy is not prohibitive but is merely concerned with the way personal data ought to be processed. However, Malikulo sees the idea that the right to data privacy is not prohibitive as illusive because

⁹⁷⁰ Lukman Adebisi Abdulrauf, (n.1), 362.

⁹⁷¹ Paul De Hert and Serge Gutwirth, (n.18), 3.

⁹⁷² Lukman Adebisi Abdulrauf and Charles Manga Fombad, (n.8), 109.

⁹⁷³ Paul De Hert and Eric Schreuders, 'The Relevance of Convention 108'. European Conference on Data Protection on Council of Europe Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data: Present and Future (Warsaw, 19–20 November 2001), 33-42.

data privacy law requires consent of a data subject before his data can be processed which is prohibitive equating both rights.⁹⁷⁴ On the other side of the fence are authors like Elgujja,⁹⁷⁵ Almatarneh⁹⁷⁶, Akomolede and Jemilohun⁹⁷⁷ who, although, see the right to data privacy as human right but considers the right as an off-shoot of the right to privacy. The right to data privacy, in their opinion, is predicated upon the right to privacy and right to data privacy is incapable of separate existence. Elgujja⁹⁷⁸ also argued that the right to data privacy is the keeping of the personal data to be secret or confidential as against AbdulRauf's position.

Ehondor and Ogbu⁹⁷⁹ also have the opinion that data privacy is a fundamental human right and that the Nigerian data privacy regime is inadequate to cater for the protection of the personal data on the internet as it fails to meet up with contemporary demands. The work exposes the weakness of the Nigerian data protection regime while also advocating the need for the government to serve as the 'gatekeeper' in protecting the rights of data subjects. The work observed that the failure of the government to protect this fundamental human right will have an unfavourable effect on the data subjects and even businesses. The authors buy the idea of universal and regional policies for the protection of data privacy. They also suggested punitive measures for people that infringe on the right to data privacy.

⁹⁷⁴ Alex Boniface Malikulo, (n.13), 164.

⁹⁷⁵ Abba Amsami Elgujja, 'A Synopsis on Data Protection under the Nigerian Laws: Has the Universality of Right to Privacy Trickled down to Nigeria?', [2021](5)(1) African Journal of Law and Human Rights<<https://doi.org/10.31219/osf.io/fk5xg>> accessed on 16 July 2021.

⁹⁷⁶ Akram Almatarneh, Privacy Protection in the Information and Communications Technology: A Comparative Analysis of the Laws of the United State, European Union and Jordan, (Being a PhD Thesis of the Faculty of Law, University of Wollongong 2011).

⁹⁷⁷ Timothy Ifedayo Akomolede and Bernard Oluwafemi Jemilohun, 'Data Protection and Privacy Issues in Sports Administration in Nigeria', [2019](3)(3) International Journal of Law, Humanities & Social Science, 1-12.

⁹⁷⁸ Abba Amsami Elgujja, (n. 30), 1.

⁹⁷⁹ Beryl A. Ehondor and Silk Ugwu Ogbu, (n.8), 153-154.

3.1.3 *Status of Data Privacy Protection in Nigeria*

On the status of data privacy protection in Nigeria, it appears, from existing literature especially from the works of Abdulrauf;⁹⁸⁰ Abdulrauf and Fombad;⁹⁸¹ Ehondor and Ogbu;⁹⁸² Akomolede and Jemilohun;⁹⁸³ Akindele;⁹⁸⁴ Chika and Tochukwu;⁹⁸⁵ Elgujja;⁹⁸⁶ and Nwankwo,⁹⁸⁷ that there is an agreement that the existing legal instruments and frameworks that seek to protect data privacy are not adequate and sufficient.

For instance, Abdulrauf noted the lack of coherent legal regime for the protection of data privacy in Nigeria. In fact, the only extant legal framework which merely protects secret or private information is not enough to counter contemporary threats that bedevil the personal information of data subjects. The author went further to show that even the proposed bills on the protection of data privacy in Nigeria are inherently defective and weak in comparison with the legislations in other jurisdictions. The author identified certain factors that affect this inadequacy: lack of commitment by the Nigerian government, low level of awareness on the dangers of personal data processing of personal data by both the people and policymakers, backwardness in policymakers' consciousness of the threats of personal information proliferation due to low level of their exposure to technology, poor human rights track record of Nigerian government, African culture of communalism and protection of [national] security. This position is similar to the one held by Abdulrauf and Fombad.

⁹⁸⁰ Lukman Adebisi Abdulrauf, (n.1), 168.

⁹⁸¹ Lukman Adebisi Abdulrauf and Charles Manga Fombad, (n.8), 23.

⁹⁸² Beryl A. Ehondor and Silk Ugwu Ogbu, (n.8), 151.

⁹⁸³ Timothy Ifedayo Akomolede and Bernard Oluwafemi Jemilohun, (n.32), 10.

⁹⁸⁴ Roland Akindele, 'Data Protection in Nigeria: Addressing the Multifarious Challenges of a Deficient Legal System', (26)(4), *Journal of International Technology and Information Management* <<https://scholarworks.lib.csusb.edu/jitim/vol26/iss4/4>> accessed on 7th August 2021.

⁹⁸⁵ Diyoke Michael Chika and Edeh Stanley Tochukwu, 'An Analysis of Data Protection and Compliance in Nigeria', [2020](IV)(V) *International Journal of Research and Innovation in Social Science*, 377-382.

⁹⁸⁶ Abba Amsami Elgujja, (n. 30), 47.

⁹⁸⁷ Iheanyi Samuel Nwankwo, 'Information privacy in Nigeria', in; Alex B. Malikulo (ed.) *African Data Privacy Laws, Law, Governance and Technology Series*, 33 (Springer Switzerland, 2016), 47.

In the same manner, Chika and Tochukwu also observed the inadequacy of the current data privacy regime in Nigeria. In the view of the authors, data protection and compliance in Nigeria is being hampered by inappropriate legislations on data protection. Besides the provision of section 37 of the constitution, there is no dedicated general enactment on data privacy and the provision of the constitution has not offered any particular usefulness in respect of protection of personal data. Although, NITDA has promulgated the Nigeria Data Protection which is fashioned in the GDPR style, it falls short of international standard and this is a result of the lack of understanding of stakeholders on the subject. To Ehondor and Ogbu, the NDPR fails to meet contemporary social media protection realities for failure to provide for the obligations of social media platforms as data controllers, absence of punitive measures and demand for compliance is weak and blur. These observations were further supported by Akindele who perceived the provision of section 37 and the second schedule to the constitution as mere cosmetic designs without any means of enforcement. Furthermore, a careful review of the various instruments purporting to protect data privacy reveals that they are either fundamentally defective or irrelevant to the subject at all. However, Nwankwo conceded that while there is no comprehensive law protecting data privacy in Nigeria, there is a semblance of its protection scattered in various laws. Notwithstanding the presence of these laws, the author admitted to the weakness of the data privacy regime.

Likewise, Elgujja observed that even while the European Convention of Human Rights does not apply to Africa or Nigeria, the recent update in the European Union data protection law to affect extra-territorial jurisdictions including Nigeria, it is important for Nigeria to revisit her own data privacy laws. Furthermore, the author observed that Nigeria has not enacted the various elaborate provisions relating to data privacy under the African and ECOWAS conventions and several attempts to domesticate these laws have been futile. Therefore, there is a vacuum in our law which provides an opportunity for individuals and organizations to use data of subjects for illegal purposes.

Akomolede and Jemilohun in their examination of challenges of data protection to sports administration in Nigeria also found that the current legal atmosphere is not capable of effectively protecting data privacy. That authors found lack of comprehensive laws, absence of legal framework dealing with ownership of private and sensitive data, lack of definite storage and processing procedure, lack of standards to ensure data integrity and absence of legislation regulating cross-border flow of data as problems of the current data privacy regime in respect of sports administration in the country.

4.0 Works on Data Privacy Protection under the Shari'ah

While discussing the relationship between religion and privacy, Malikulo observed that it has been argued by different authors that Islamic practices are not favourable for the protection of [data] privacy rights. The author posited that the majority of Muslim countries with population prefer to adopt Islam as a state religion and, as a result, such countries tend to adopt Shari'ah as the supreme law of the land therefore relegating any constitutional right to privacy. However, this assumption has been rebutted to reveal that the Shari'ah actually protects the right to privacy.⁹⁸⁸ Against this background, some literature discussing data privacy from the perspective of the Shari'ah and Muslim countries will be reviewed to bring the position of Shari'ah on data privacy to the fore.

4.1 Definition and Conceptualising

4.2 Data Privacy Protection under Shari'ah

There is no debate with respect to the term, definition, recognition and standing of the right to data privacy among authors that have addressed data privacy from the Shariah perspective. Also, the scholars, unlike their counterparts who have appraised the right under the conventional legal orders, did not delve into the debate as to whether data privacy is a recognized right or even its status as an off-

⁹⁸⁸ Alex Boniface Malikulo, (n.13), 172.

shoot of the right to privacy. However, the major debates are with respect to the relationship between the right to data privacy and other contending but related phenomena such as surveillance for national security and crime detection and prevention. This is evident in the work of Almatarneh⁹⁸⁹ in a study on the protection of personal privacy in the digital information age in Jordan with Shari'ah as its major source of law. The author appeared to have interrogated privacy as a human right. However, what he actually addressed is the protection of data privacy as a result of the improvement in technology and its employment in various sectors which enables the government and individuals to gain access into personal data. He considered the right to data privacy under the different legal instruments in the world and under the Shari'ah as a fundamental human right that must be protected. This opinion is also shared by Sherwani⁹⁹⁰ and Rasheed⁹⁹¹.

Rasheed⁹⁹² further argued that the recognition of the right under Islamic Law predates the conventional data privacy law. The researcher further argued that the Fair Information Practice Principles (FIPPs) are established by the Shari'ah under the Islamic law of privacy and that the assumption that the right to data privacy was first advanced by the European legal system is erroneous. He attributed this error to the lack of adequate research in cross-cultural studies in data privacy laws generally as the West is oblivious of the Islamic data privacy law scholarship which are largely unavailable in English texts. The researcher therefore examined the origin of the FIPPs, its subsequent dominance on data protection laws which he criticized for having failed to consider non-Anglo-European models of privacy that do not centre on personal control over information, and at worst,

⁹⁸⁹ Akram Almatarneh, (n.31).

⁹⁹⁰ Mariam Sherwani, 'The Right to Privacy under International Law and Islamic Law: A Comparative Legal Analysis', [2018](1)(1) Kardan Journal of Social Sciences and Humanities, 30-48.

⁹⁹¹ Ayesha Rasheed, (n.6).

⁹⁹² Ayesha Rasheed, (n.6).

might be entirely incongruous with them. Also for its failing to consider basic and fundamental concepts of Islamic Law relating to privacy protection and how the FIPPs can be brought to conform with the principles of Islamic Law to be applied in Islamic countries. The author concurred with Kamali that Islamic law only tends to lay down the bases of rights but does not specify the scopes of the rights. Therefore, the right to privacy, like other rights, is not a clearly spelt out right but came as a result of the deduction from the primary sources of Shari'ah since the standards of Sharia considers issues and meetings between people as private by default "unless and until they [were] proved to belong to the public sphere"⁹⁹³. In the same vein these bases can be extended to suit the data privacy regime especially as brought by the digital age.⁹⁹⁴ The author also noted the difficulties that may be encountered in an attempt to establish a distinct set of FIPPs which are based on the Shari'ah principles alone to stand on the same footing with the conventional FIPPs, first, due to the aspiration of Muslim jurists to "create a combined moral and legal system attempted to develop rules concerning all human acts"⁹⁹⁵ because of the all-encompassing feature of the Shari'ah and, second, the jurisprudence of Islam does not expressly recognize the connotations of private and public affairs but relying on the description given by Kadivar⁹⁹⁶ that a thing is private if it were personal or exclusive to the individual; it would be kept hidden and protected from others and; one should exercise exclusive authority and control over it. Therefore, the FIPPs in Islamic societies should identify with one of the three descriptions. The author further opined that the FIPPs agree more with the description of 'private' being secret and protected rather than exclusive authority and control upon which they are predicated.

⁹⁹³ Ayesha Rasheed, (n.6), 10.

⁹⁹⁴ Mohammad Hashim Kamali, *The Right to Life, Security, Privacy and Ownership in Islam*, (Islamic Texts SocietyCambridge, U.K., 2008).

⁹⁹⁵ Ayesha Rasheed, (n.6), 13

⁹⁹⁶ Mohsen Kadivar, 'An Introduction to the Public and Private Debate in Islam', [2003](70)(3) *Social Research: An International Quarterly*, 661.

4.3 *Security and Data Privacy*

On the relationship between security and [data] privacy, Sherwani submitted that the protection of data privacy is not absolute and to balance security and data privacy, the approvals should be more stringent for the government to lawfully deploy technologies that invade privacy.⁹⁹⁷ In contrast, Almatarneh emphasizes the absoluteness of the right to data privacy placing reliance on the traditions of the Prophet and account of events that happened during the caliphacy of Umar (R.A). In the same line of thought is Janah⁹⁹⁸ who examined the effectiveness of the data protection law in the financial technology sector in Jakarta, Indonesia. The author submitted that it is a breach of privacy rights to enter someone else's home without permission and also a breach of the data subjects' glory, honour and dignity which contravenes one *maqsad al-Shari'ah* on the protection of honour (*hifz al-ird*). Therefore, the government must take steps to protect the rights of data subjects against the excesses of financial service providers through the passage of law.

5.0 *Gap in Literature and Justification for the Study*

Literature abounds on discussions on the right to data privacy under the conventional laws and the Shari'ah. However, the bulk of literature (especially from Nigeria) on the subject under review have ventured into discussing the evolution, recognition and protection of the right but none has attempted to compare the legal mechanisms from the Shari'ah and the Nigerian law to propose a better framework for the protection of the right in Nigeria. Invariably, this leaves a gap in research implication which needs to be filled.

⁹⁹⁷ Mariam Sherwani, (n.45), 40.

⁹⁹⁸ Ita Wardatul Janah, Islamic Law Review against Effectiveness of Personal Data Protection of Financial Technology Consumers by Financial Services Authority. (Bachelor of Law Thesis, State Islamic University of Maulana Malik Ibrahim Malang, 2020).

This work has justified the need for scholars of Shari'ah in Nigeria to contribute to the debate on data privacy from the Shari'ah perspective and on how Shari'ah can serve as a better alternative for the protection of the right to data privacy in Nigeria through a robust comparative review of the Shari'ah rules on privacy and the Nigerian legal regime.

6.0 Conclusion

The debate on the protection of data privacy has been on the global front burner. Considering the pluralism of the world sociolegal and political environment, the need to avoid operating the international and sometimes the national legal polities in a straitjacket is pressing. While the other parts of the world have been advancing on their regulation of the internet environment while working towards balancing it with protection of privacy rights of the internet users and the netizens, the situation in Nigeria, like several other African countries, show that there is little effort in that regard. Further, the marked differences in the operation of the Shari'ah, which is considered a divine legal system, and other mundane legal systems, there was often clash of legal cavillations, which has led to cross-legal debates on the ramifications of applying the international codes on data privacy protection to Muslims. There are also debates on the effectiveness of the existing legal regimes necessitating calls for alternatives. Despite the audibility of these global debates, the contributions of Nigeria scholars to these debates are scarce. More worrying is the dearth of discussions on the issue from the shari'ah scholars in Nigeria. There is therefore the need for a more robust academic intervention that would advance the law and policy of data privacy protection under the Nigerian legal system.