

Facebook Privacy: A Review of Cases

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Since 2014, the Supreme Court has pronounced two leading cases about the constitutionally-guaranteed right to privacy. In both cases, the petitioners claimed their right to privacy over their activities in cyberspace. They averred that their Facebook posts were private remarks on their individual Facebook accounts, meant to be shared only with their circle of friends of which their opposing parties are not part.

In particular, this empirical report reviews the cases in *Vivares v. St. Theresa's College* and *Belo v. Guevarra*, the recent leading cases involving Facebook informational privacy. In light of court rulings, this article explores the space in which the right to privacy exists amid the technological advances in the contemporary world and suggests practices to protect the right to privacy in this modern day.

Facebook is one of the leading social networking sites in the world. As of June 30, 2018, Facebook had 2.23 billion monthly active users worldwide (CNN, 2018). In the case of *Vivares, et al. v. St. Theresa's College*, the Supreme Court explained that through a Facebook "friend request," the user may invite another to connect their accounts so that they can view all "Public" and "Friends Only" posts of the other. The Supreme Court further discussed in *Belo-Henares v. Guevarra* that restricting the privacy of one's Facebook posts to "Friends Only" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends. Both the cases of *Vivares* and *Belo* are novel decisions reflecting the development of new media.

Cyberspace is a borderless world. Hence, with the shrinkage of constructed self-boundaries, activities in cyberspace become a potential challenge to every individual's right to privacy. This claim dates back to the case of *H v. W*, penned on January 30, 2013, where the South African High Court cautioned the netizens that, although Facebook's policies make every effort to protect users' information, its privacy settings are not "foolproof."

One of the constitutional rights afforded to all individuals is the right to privacy. The essence of the right to privacy is the "right to be left alone" (*Ople v. Torres*, 1998). Under the Philippine laws, the right to privacy is enshrined and protected in a few provisions of the 1987 Philippine Constitution, as follows:

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

“Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”

“Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.”

Even before the 1987 Constitution, a 1968 ruling of the Supreme Court first introduced a jurisprudence on the right to privacy. Here, the Court recognized that:

The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal lives of the citizen. This is indeed one of the basic distinctions between absolute and limited government. (Morfe v. Mutuc, 1968)

Privacy Before the Age of Facebook Era

Before the foundation of Facebook in February 2004, the right to privacy barely received attention. Though it first appeared in the 1968 Morfe case, the right to privacy has not gained favorable judgment from the highest tribunal. In the words of Justice Enrique Fernando, the compulsory revelation of a public officers’ assets and liabilities, including the statement of the amounts of his personal and family expenses, and the amount of his income taxes paid for the next preceding calendar year provides no unconstitutional intrusion into an individual’s private sphere.

Moreover, the right to privacy was again tested under Ople v. Torres. In this 1998 case, Justice Reynato Puno invalidated the adoption of a National Computerized Identification Reference System (NCIRS) on the primary ground of usurpation of legislative power. The right to privacy issue was entertained less, being premature, speculative, or conjectural pending issuance of the NCIRS’ implementing rules. However, after 20 years, Congress passed a similar bill which was signed by President Rodrigo Duterte on August 6, 2018 as R.A. No. 11055, otherwise known as “Philippine Identification System Act.” A possible judgment on privacy rights is again set on the table, waiting to be penned for another historic court decision.

Upon closer inspection in the *Ople v. Torres* case, the ponencia took cognizance of the dangers that can come from biometrics – especially when the government pressures people to surrender their privacy by giving information about themselves on the pretext that it will facilitate the delivery of basic services (*Ople v. Torres*, 1998). In the same case, the Court noted in its closing statement that the right to privacy was not engraved in our Constitution for flattery. This pronouncement is a reminder to future legal battles under the recent law.

In Fairness with the Zulueta Case

Who would not forget the case of *Zulueta v. C.A.*? This 1996 Decision decided by Justice Vicente Mendoza at the Second Division of the Supreme Court is a relief in the effort to protect the privacy of communications.

Under this case, petitioner Cecilia Zulueta forcibly opened the drawers and cabinet in her husband's clinic and took 157 documents consisting of private correspondence of her husband's alleged paramours, greetings cards, canceled checks, diaries, her husband's passport, and photographs. Zulueta seized the papers and documents for her evidence in a legal separation case she filed against her husband.

The Zulueta case is a clear picture of the marital right to privacy. As enunciated by the Supreme Court, “intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her” (*Zulueta v. C.A.*, 1996).

Looking before the rise of Facebook, the 1996 Zulueta Decision, though not decided in full court, is a novel case championing the right to privacy invoked against a private individual. In contrast, the right to privacy invoked against public officials does not yet get a favorable judgment in the Philippines as shown in the 1998 *Ople* and the 1968 *Morfe En Banc* cases.

Vivares, et al. v. St. Theresa's College

The applicants are parents of minor senior high school students enrolled in St. Theresa's College (STC) in Cebu City. Here, STC barred the concerned students from participating in the graduation rites for violations of the school's Student Handbook. The offense stemmed from the students' post in Facebook where they took pictures of themselves only in their undergarments.

In this case, the applicants argued that the privacy setting of their children's Facebook accounts was set in "Friends Only." Hence, they plead for respect of their children's privacy. The parents contended that the saving of the digital copies of their children's photos by Mylene Escudero, a computer teacher at STC, and the subsequent showing of the pictures to Kristine Tigol, STC's Discipline-in-Charge, without consent, violated their children's right to privacy.

Decided by Justice Presbitero Velasco, Jr., the Supreme Court ruled that STC did not violate petitioners' daughters' right to privacy. Further, the Court's Third Division inquired upon the manifest intention of the petitioners' daughters to keep certain Facebook posts private. Such intention was identified through the utilization of Facebook's privacy tools.

The undisputed testimony that the photos shown by the minors' Facebook "friends" to Escudero, using their own Facebook accounts, negates the minors' intention to keep the posted images within their zone of privacy. In this case, the Court reasonably assumed that the photos were, in reality, viewable by their Facebook "friends," contrary to one of the minors' contention that the subject photos were only viewable by the five of them. Therefore, the petitioners cannot invoke the right to privacy.

The Supreme Court only treated Escudero, Tigol, and other STC officials, as mere recipients of the pictures shown to them by the students. The senior high school students of STC were responsible for showing and giving the images to the officials. Thus, STC cannot be held liable for any violation of the right to privacy.

Belo-Henares v. Guevarra

This case is a reiteration of the Vivares Decision. Here, the complainant, "Vicky" Belo, is a medical doctor and the principal stockholder of the Belo Medical Group, Inc., while Atty. Roberto Guevarra is the counsel of Josie Norcio, who filed against Belo for an alleged botched surgical procedure on her buttocks, which purportedly caused her infection and illness.

In this connection, Atty. Guevarra posted on his Facebook account insults and verbal abuses against Belo. The latter filed a disbarment case against the former, whose defense was anchored on the constitutionally-guaranteed right to privacy. He contended that his Facebook posts were private remarks on his private account on Facebook, meant to be shared only with his circle of friends of which Belo was not a part of.

Decided by Justice Estela Perlas-Bernabe, the Supreme Court ruled that the defense of the right to privacy was of no moment. Atty. Guevarra failed to offer evidence that he utilized

any of the privacy tools or features of Facebook available to him to protect his posts. The Court's First Division, following the Vivares Case, inquired upon the manifest intention of the lawyer to keep certain Facebook posts private. Such intention was identified through the utilization of Facebook's privacy tools.

In this case, Atty. Guevarra insisted that his posts against Belo were set to a private view, without evidence that he utilized any of the Facebook privacy tools. Even if such is the case, the Court then, ruled that there is no assurance that the same - or other digital content that he uploads or publishes on his Facebook profile - will be safeguarded within the confines of privacy. The Court discussed that restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from another user who does not belong to one's circle of friends. The user's own Facebook friend can share said content or tag his or her own Facebook friend, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Hence, the defense of the right to privacy is untenable.

Available Protection to the Modern Right to Privacy

Given the recent Supreme Court Decisions, remedies for the protection of the right to privacy are still available.

1. Through the Facebook's "Custom" setting, a limited access to the post can be a defense of the right to privacy; however, jurisprudence was unclear as to the number of the chosen few for the user to benefit from the intention to have kept the post in private.
2. Adjusting the privacy level of a Facebook post to "Only Me" is a manifest intention to keep posts in private; though the post may be useless, disclosure of the same by another person is a violation of the user's right to privacy.
3. The Zulueta Case remains controlling; though the defense of the right to privacy is only limited to spouses and it did not include seizure of information through Facebook, the Court clearly pronounced that by contracting marriage, a person does not easily give up his/her integrity or his right to privacy as an individual.

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