

The Right to be Let Alone: A Re-Evaluation

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"The most comprehensive of rights and the right most valued by men is the right to privacy." - Mr. Justice Brandeis

The broad concept of an individual's right to privacy has become a pertinent eventuality in the society's irremediable agitated structure. This issue proceeds from the very basic privilege of every man enabling him to carry out his desired actions legitimately intended without the anxiety of being restrained by anyone.

While the determination of the scope of this right has generally been challenged, and various definitions of this expression have advanced a distinct theoretical framework such diversity of ideas commonly rallies in favor of the sustenance of this paramount prerogative when positively asserted by the individual such right being a fundamental one.

A decorous elucidation of the upshot of the people's right to privacy was fairly illustrated in the 1904 decision of the Supreme Court, which mentions:

"The King was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which

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was regarded as sacred as any of the kingly prerogatives.¹

Note, however, that like in all other rights, the State's regulatory power is not made inferior to the command of the people. The "right to be let alone" is not limitless; as it should blend with certain considerations, to the end that the State's authority to control the people's exercise of the rights conferred upon them is not impaired. No person is furnished with autocratic rights beyond the reach of anyone, especially the State that protects him.

It is not only infantile to argue on the significance of being unharmed as regards one's private affairs, but it is even a nonsensical task. It is a fundamental right of every citizen to be able to enjoy security and protection from all kinds of external interventions. With clarity, the law stretches the extent of this right and even highlights its inviolability by expressly providing so.

In the case of *Griswold vs. Connecticut*,² a 1965 case of the US Supreme Court, more substance was given to the right of privacy when it ruled that the right had a constitutional foundation. It held that there was a right of privacy which could be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments,³ viz.:

"Specific guarantees in the Bill of Rights have penumbras formed by emanations from these guarantees that help give them life and substance xxx. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth

¹ US vs. Arceo, 3 Phil 381-384
2381 U.S. 479, 141. ed. 2d 510
(1970). ³ AMENDMENT I (1791)

Amendment provides; "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. "

CONSTITUTIONAL POLICIES AND OTHER RELATED LAWS

Among the weighty provisions in the Bill of Rights, Article III of the 1987 Constitution, reliance is oftentimes placed in Section 2 thereof, which salutes not only the power of the State over a persons home and possessions, but more importantly, it protects the privacy and sanctity of the person himself,⁴ to wit :

"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 uncer 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. "

The plain import of this Constitutional mandate supports the primacy of the safeguard against searches and seizures made in violation of the requisites clearly mentioned in the law. The provision negates the notion that the State can, in all instances, intrude into the private dealings of its citizens in the guise of police power or any other form of authority. The law is very specific in providing for the task entrusted to the judge in determining whether or not a search warrant or a warrant of arrest shall be issued. What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved.⁵

Another restriction in the issuance of search warrants and warrants of arrest which needs close scrutiny is the particularity of the

⁴ Bernas, Joaquin G. *The Constitution of the Republic of the Philippines; A Commentary*, 1987.

⁵ Valmonte vs. De Villa, 178 SCRA 211

description of the place to be searched and the things to be seized. In the case of *Carro vs. Using*,⁶ it was mentioned that the evident purpose of this requirement was to leave the officers of the law with no discretion regarding what articles they should seize, to the end that unreasonable searches and seizures might not be made and abuses might not be committed.

Anchored to the right mentioned in Section II is the right to privacy of communication and correspondence. Thus, in Article III, Section III (1) of the Constitution, it is provided:

"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."

By the wordings of the provision of the law, it is evident that the right that is being safeguarded is not that all absolute. The right to privacy of communication may be validly limited and restricted. Upon a lawful court order, the State may be justified in interfering with private communications. In the case of *Material Distributors, Inc. vs. Natividad*,⁷ it was pointed out that the text of the law does not give any ground upon which the court may allow intrusion. It is submitted that the requirement of probable cause in the preceding section should be followed.

In the absence of a lawful court order, the law provides for another exception to the inviolability of the right to privacy; that is; when public safety so provides. We cannot bargain away the interests of the Filipino populace arguing that we want all our communications remain untampered with if public concern demands that such protection be lawfully withdrawn. If the secrets sought to be protected partake of a public character, the substance of which will either answer a query of transcendental importance to the interest of the people or will aid in the resolution of a case, then the right to privacy cannot be lawfully invoked.

The guarantee, which the law ensures, extends to all forms of communications. Within the mantle of its protection are included both tangible and intangible objects. By the advent of Republic Act

6 137 SCRA 541

784 Phil 127, 136 (1949).

No. 4200 known as the *Anti-Wire Tapping Act*, the coverage of the guarantee under Section II, Article III of the 1987 Constitution has been defined. It prohibits "any person not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other devise or arrangement, to secretly overhear, intercept or record the same, or to communicate thereof to any person. "

To further the sway of these rules, Article III, Section III (2) of the Constitution otherwise known as the *Exclusionary Rule* guarantees:

"Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

In various provisions of the Bill of Rights, the other facets of the right to privacy are protected,⁸ viz.:

"See. 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."

"See. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law."

"See. 8. The right of the people, including those employed in the public and private 'sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged. "

"See. 17. No person shall be compelled to be a witness against himself. "

In support of the above-mentioned provisions, zones of privacy are likewise recognized and protected in our laws. The New Civil Code even provides that "every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. "⁹

⁸ Cortes, *The Constitutional Foundations of Privacy*, p. 18 (1970), as cited in the case of *Ople vs. Torres*

⁹ Article 26, New Civil Code.

Even the resolution adopted unanimously by the General Assembly of the United Nations in December 1948 entitled *Universal Declaration of Human Rights* proclaims the personal, civil, political, economic social, and cultural rights of humans, which are limited only by recognition of the rights and freedom of others and the requirements of morality, public order, and general welfare. The objective of this 30-day article declaration is to promote and encourage respect for human rights and fundamental freedom.¹⁰

The UN Commission on Human Rights directed its efforts to the incorporation of the main principles of the declaration into various international agreements. The Philippines, belonging to the family of nations strongly adhere to these internationally accepted standards and principles of promoting human rights.

Moreover, in a pronouncement made by the US Supreme Court regarding the controversial expansion of privacy; a woman's decision to have an abortion is a private one, and with some exceptions, cannot be interfered with by the State.¹¹ The same, however, is blatantly not true in our jurisdiction because abortion is even a crime under the Revised Penal Code. Other offenses involving the right to privacy are punished under said law like violation of secrets by an officer,¹² revelation of trade and industrial secrets and trespass to dwelling.¹⁴

With the spread of modern technology that becomes ever more sophisticated, civil liberties groups claim that the citizen's right to privacy is being eroded further. The most extreme examples of this picture are open to the public eye suggesting a disappointing scenario that is yet to be met with a legal response.

In the celebrated case of *Ople vs. Torres*,¹⁵ an extensive discussion of the right to privacy has been made by Justice Puno who penned the

¹⁰ "Civil Rights and Civil Liberties." Microsoft Encarta Encyclopedia 2000.

¹¹ *Roe vs. Wade* (1973), as cited in p. 586, *New Standard Encyclopedia*; Chicago. ¹² Article 229, Revised Penal Code, as cited in *Ople vs. Torres*

¹³ Article 290-292, Revised Penal Code

¹⁴ Article 280, Revised Penal Code

¹⁵ 293 SCRA 141

decision. The petitioner Senator Blas F. Ople prays that Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" be invalidated on two important constitutional grounds, viz.: one, it is a usurpation of the power of Congress to legislate, and two, it impermissibly intrudes on our citizenry's protected zone of privacy. The heart of A.O. No. 308 lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs." The Supreme Court in this case clarified that A.O. No. 308 cannot pass constitutional muster as an administrative legislation because it violates the right to privacy. The essence of the right to privacy is the "right to be left alone."

In addition, such pronouncement mentioned:

"In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused and a compelling interest justify such intrusions. Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny." ¹⁶

However, this case invited a contrary view from Justice Kapunan when he stressed out:

"The new identification system would tremendously improve and uplift public service in our country to the benefit of Filipino citizens and resident aliens. It would promote, facilitate and speed up legitimate transactions with government offices as well as with private and business entities. Experience tells us of the constant delays and inconveniences the public has to suffer in availing of basic public services and social security benefits because of inefficient and not too reliable means of

¹⁶ *Ibid.*

identification of the beneficiaries." ¹⁷

CONCLUSION AND RECOMMENDATION

The law is based on reason. It desires to fill the gaps of present social and economic realities. It answers the multifarious perplexities of the people, the author of the law itself. What the law says is what shapes our minds. Meaning is attached to the rules to move the people to follow. Regardless of the subject matter of the regulation, there arises a dire need to evaluate the same.

One of the pivotal issues, which are often included in the war of words in Congress, is the right to privacy. Every man is believed to be free. Freedom gears a man to move in all lengths and speak with all conviction. That is why; this right has earned its place in the Bill of Rights. However, though referred to as a right, to be enjoyed by the people, the State cannot stay quiet when, in the exercise of such privilege, the scales of justice will be unjustly tilted to the detriment of national interest.

Should there be a conflict between the individual interest of the person who seeks the right and the people's concern as a nation, the *Balancing of Interests Test* should be applied. The remedy is to harmonize and consider the positions presented by each, and with the proper appreciation of the law, the hiatus between these conflicts will be resolved.

Professor Kauper explained the Balancing of Interest Test, thus:

"The theory of balance of interests represents a wholly pragmatic approach to the problem of First Amendment freedom, indeed, to the whole problem of constitutional interpretation. It rests on the theory that it is the Court's function in the case before it when it finds public interests served by legislation on the one hand and First Amendment freedoms affected by it on the other, to balance the one against the other and to arrive at a judgment where the greater weight shall be placed. If on balance it appears that the public interest served

¹⁷*Ibid.*

by restrictive legislation is of such a character that it outweighs the abridgment of freedom, then the Court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that constitutional freedoms are not absolute, not even those stated in the First Amendment, and that they may be abridged to some extent to serve appropriate and important interests." 18

With the various revisions and amendments of the law, the cloud of doubt whether they are defective or not even seems to clearly come into view. What is wanting in the system is not sufficient laws but better ways to implement them, more effective means to enforce them and more spirited agents who will facilitate its completion.

18 Cited in *Gonzales us. Comelec*. 27 SCRA 835,899 (1969)