

# Completion of the Law in Order to Protect the Right to Privacy in the Current Social Environment of Vietnam

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**ABSTRACT** Privacy is exceptionally important to each individual in the society. With the promotion of technology and digital media, information exchange in all aspects of life has been promoted to a new level, and the issue of protecting personal privacy needs more and more attention. However, it seems like society does not care about these problems. Based on current law protecting people's privacy, the alarming issue of "right to privacy and protection of privacy" will be deeply discussed in this article and also giving out the recommendation for changes in order to strengthening the power of protecting people's privacy.

## 1. INTRODUCTION

In the broadest sense, the social environment is understood as a collection of all non-natural elements such as politics, history, economy, culture, society, sport... It revolves around people, takes people as center point. Throughout life, people interact with the social environment, taking it as a source of life, as a motivation to develop themselves and the whole society. People influence the social environment, but people are governed by the social environment as well ("*No one is born kind or cruel/ much is due to education*" – by Ho Chi Minh). Therefore, with the development of human and human society, social environmental factors play a particularly important role.

However, due to the particularities of privacy in legal sciences, the concept of the social environment in this article will not cover the specific social environments such as workplace, school environment, health environment... Interaction between staff and leaders, between students and teachers, between health workers and patients are also relationships in the social environment, which is in need of ensuring the privacy of each individual involved in those relationships. Even though, the above-mentioned relationships have very specific characteristics within the article and cannot be touched in depth.

Among human rights, the right to privacy is considered the most difficult right to define [1]. Because "in some mean, all human rights have an aspect of privacy" [2]. Indeed, ensuring privacy is closely linked to the guarantee of autonomy right. In a country where the law-governed the State, citizens are allowed to do everything that is not prohibited by law. However, besides the law, social relations are governed by other factors such as morality, tradition, doctrine ... In many cases, an individual's behavior is not a violation of the law, but it is contrary to doctrine, such as eating pork with Muslims, eating beef with Hindus, abortion for Christians ... In such religious communities, eating and drinking the food forbidden by doctrine; abortion, even though they are legal, but if this behavior's privacy is not guaranteed, the individual who practices it will often be subject to discrimination and assaults from the public. As a result, this may invisibly limit their rights, even control the freedom of thinking of each individual in the community. Certain laws only prohibit certain acts, but a society without privacy will ban both freedom of thought and freedom of speech. A typical example stated by Dr. Dang Hoang Giang in his book – "Goodness, evil and smartphones": "A favorite tactic of those who oppose abortion in the United States, often called the "for life faction", is to gather in front of clinics that provide abortion services, causing service users to wriggle to find their way through the crowd of hundreds of people unfurling banners and bloody

pictures of abandoned fetuses, shouting slogans or calling a woman to compassionate for the baby in her belly - such a thorn journey” [3]. Dr. Dang Hoang Giang judged: “Regardless of whether the laws in your country permit abortion or not, the objection is your right, no one is allowed to take away your right to speak up and to request changes to the law” [4].

The example above has shown an enormous role, as well as the wide coverage of privacy to all aspects of social life. Basing on the sum up of views through centuries about privacy, contemporary human rights theory defines privacy in four basic areas: (i) protecting personal data, (ii) body privacy, (iii) communication privacy, (iv) digital space privacy [5]. Some countries only restrict the protection of privacy to the protection of personal data - the most important content of privacy. However, in broadly speaking, privacy should be understood in the sense that the right to limit social interference into the private life of each person, which means "the right of not to be interfered", "the right to be let alone" [6].

A theoretical issue that needs to be considered is to clarify the limits between the right to privacy and the right to personal confidentiality. In Vietnam, the Civil Code 2015 has just begun to have regulations on protecting private life, but in terms of personal confidentiality, it was mentioned right from the Civil Code 1995. Colombian writer Gabriel García Márquez (1928-2014) said: “Everyone has three lives: a public life, a private life and a secret”. Dr. Le Dinh Nghi stated that with information belonging to personal secret, the information owner will have to apply security measures such as putting it in safe, locked cabinets, in sealed letters, etc., and others are obligated to respect this confidentiality. But for the right to privacy, individuals may not have security measures for their activities and habits, however, it is not because of that reason that others can violate one’s private life. For example, the life of each individual and family in the house, even if the door is not locked, is still a private life that others cannot invade without permission. However, even when visitors are invited to the house, observing the furnishings of the homeowners, the habits of the family members, visitors are not allowed to read the diary or eavesdrop phone call, because it’s an invasion of privacy. In other words, privacy involves the notion of personal secrets [7].

Clearly, privacy and respect for privacy are manifestations of a civilized and progressive society. Lawyer and Judge Louis Brandeis said: “Privacy is the most expected freedom of democracy”. However, although a civilized society is indispensable for protecting privacy, on the other hand, it also promotes exchanges that promote the risk of privacy infringement. People are indispensable for the “right to be let alone”, but cannot live alone for a lifetime due to the fact that people must always participate in social relationships - which carry the risk of losing their privacy. In addition to the “8-hour golden hour” in the workplace and 8 hours of resting every day, a large part of human life is devoted to social relationships and interactions: Walking on the street, hanging out at entertainment areas, eating at restaurants, participating in unions ... All of these social activities are an integral part of human life, however, there is still a risk of disclosing private information, making the life, hobbies, privacy habits of each person to be violated.

## **2. Research Method**

This research used different study methods including analysis, comparison, interpretation, generalization, dialectical materialism. These methods aims to explore the following three basic aspects: (1) social and environmental characteristics of Vietnam that affect the assurance of the right to privacy; (2) reality of Vietnam’s laws on protecting privacy in social environment; (3) proposing solutions to ensure the right to privacy in the social environment of Vietnam nowadays.

## **3. Findings and Discussion**

### **3.1. Social and Environmental Characteristics of Vietnam that Affect the Assurance of the Right to Privacy**

Different from advanced countries, where there is a legal science as well as a legislative and executive process in development, Vietnam is still in the process of developing and completing the

legal system. This “running and queuing” makes Vietnamese Civil Law after “Doi Moi”(12/1986 - which introduced reforms intended to facilitate the transition from a centrally planned economy into building and developing the “Socialist-oriented market economy”), only focus on economic relations, related to property rights, but not on personal rights, which includes privacy. Since the Constitution 2013, when human rights issues started to be focused and earned great progress, the right to privacy then began to be included in Article 38 of the Civil Code 2015 with the name “right to private life”. The construction of the legal framework for privacy in Vietnam can not only be borrowed from foreign legal provisions but also need to be aware of the reality of the country. Especially with regard to privacy issues in the social environment, it is necessary to assess some specific characteristics of Vietnamese society to serve the construction and ensure law enforcement:

*Firstly*, Vietnamese cultural traditions imbued with the traits of Eastern Asia culture, influenced by Confucianism. Vietnamese culture has a village nature, on the one side, people are very supportive and love each other, but in the negative aspect, it will show some actions of monitoring, looking furtively and digging into other’s lives “Family members are still vague, but in alley-people are all well understood”. Vietnamese people not only live as individuals but also as part of their families and villages. The part of private life is often considered as not important as the part of living together. Moreover, a long period of war fighting for independence has made many social relationships to be distorted in the direction of deep intrusion into other people's lives. People are propagandized about the prevention and confidentiality to prevent espionage and enemy commandos invading, including habits of paying attention to the activities and life of the people surrounding them. In the name of the attention of the state, the community, in many places and at times, officials and mass organizations such as the Youth Union, the Women's Union, the neighborhood group ... are digging too deep into private life of family and individual. Relationship between men and women, instead of being kept private, must be made public and even require permission from organizations and agencies where both sides are studying and working to start talking and dating each other. Even love among unmarried people, without a clear report to the organization, is considered "perverted". Many times, the way of life, the standard of living of each individual and each family is monitored and used as a basis of assessment to determine their moral qualities and political qualities. This situation is so extreme that: Police agencies monitor people's food and drink; a family carrying rice stamps to eat and drink at the trading shop until the third day was discovered and inquired by the police [8]. Of course, such policies are necessary in the context that the whole country is focusing its efforts on the resistance to national construction, to ensure the mobilization of human strength, strength of the frontline, prevention, security and anti-sabotage of the enemy in the rear. However, after the peace was restored, that way of thinking and way of living was deeply ingrained in the minds of many people, greatly affecting the guarantee of privacy, and beyond that, human autonomy.

*Secondly*, besides the law, one of the important tools to regulate social relationships and adjust the behavior of each individual effectively in Vietnam is public opinion, with ethical standards. Each Vietnamese person is not only responsible before the law for his actions and deeds, but also for his moral judgment. Vietnamese people are often curious about the lives of others, and often make comments based on behavior. For example, a girl who goes to the market for some snack will have to hide it because if she is caught by an acquaintance, she will be considered as “a mouth that can eat a mountain”; an individual who goes to entertain in discotheques and dance floors will be considered as “keeping up with the Joneses” and “playboy”; If a couple enters a hotel or motel, if they are found out, it will be considered an unhealthy sexual relationship ... Obviously, eating junk food, going to the disco, or the relationship between unmarried people are not prohibited by law, but are greatly limited by traditional moral concepts. Another example, the traditional views on “choosing partner must see his/her origin, family”, about “choosing a friend to play”, “birds of a feather flock together”... On one hand are people's experiences through time, but it also makes the Vietnamese tend to bias an individual through their social relationships. Not only that, this also creates isolation for individual who is different in society: It may be offenders who have served their prison sentences, those who have lost their way but have turned over a new leaf, it can also be

talented individuals, excellent but does not gain the popularity among people. Many employers even excessively consider the social relations outside the work of the candidate to consider hiring. Many organizations require the applicant's social network account as a requirement when registering to participate, in order to observe social relationships, interests of the candidate. All of these negative phenomena are derivative consequences of infringing on the privacy of others. Thus, the invasion of each person's private life invisibly leads to the restriction of other freedoms.

*Thirdly*, the situation of privacy invasion in Vietnam is particularly serious in the context of rapid digital technology development. Since the start of the internet service in Vietnam in late 1997, the cost of internet access has been declining, the quality of the service and the bandwidth are increasing. The number of internet users in Vietnam has skyrocketed from over 800,000 in 2003 to 45 million in 2015. Statistics also showed in 2015 that the number of Facebook social networking accounts in Vietnam reached 35 million [9]. According to the latest data by STATISTA (2019), Vietnam was seventh among the countries with the highest number of Facebook users as of July 2019 (see *Figure*). It can be affirmed that the speed of development of internet and social networks in our country is very fast compared to the region and the world.

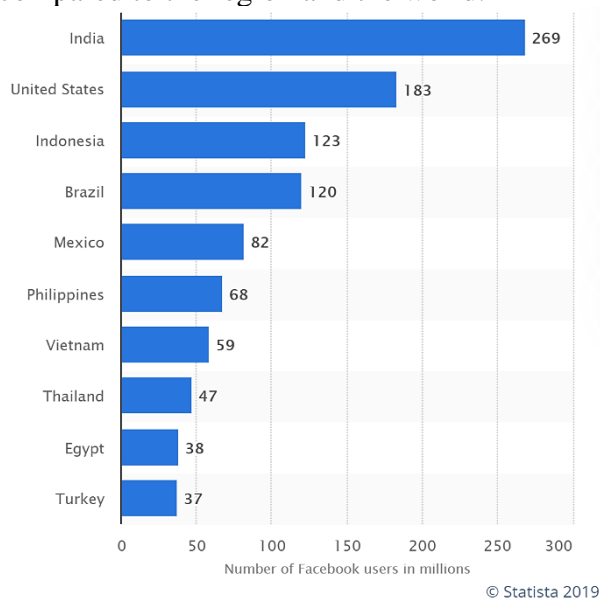


Figure Countries with the most Facebook users 2019 (in millions).

Entering the XXI century, Vietnamese society still exists popular habits that violate other people's private lives, as well as use private information to judge and evaluate an individual, a family, but the harmful effects of these behaviors have multiplied when they are brought on by digital technology. The private life of an individual is not only compromised by prying eyes but can also be cameras, recorders, smart phones, etc. Private information can be distributed not only by word of mouth, hand transmission, but also can be shared uncontrollably over the internet. The incident that revealed a sex video clip between actress Hoang Thuy Linh (famous for her role in the television series for young people "Vang Anh's Diary") and Vu Hoang Viet (the son of an officer in Hanoi City Police) in 2007 can be seen as a classic example of an internet invasion of privacy in Vietnam. Sex between an unmarried adult male and an unmarried adult woman is not prohibited under Vietnamese law, but the disclosure of their sex clip has caused both to pay dearly in the very new years of their adult life. Actress Hoang Thuy Linh immediately apologized to viewers on VTV3, and Vietnam Television immediately stopped broadcasting the movie "Vang Anh's Diary" from 15/10/2007, this shows the great influence and pressure of public opinion on traditional ethics on individuals. Not a serious incident like the distribution of the aforementioned clip, but occupying a very large number and happens really often are acts of accidental or intentional invasion of privacy via social networks. Awareness of the people is not high, leading to acts that inadvertently harm the privacy of oneself and others. A significant part of social network users has a habit of "check-in", which means constantly updating their travel, shopping, eating ... on social networks

like Facebook. This not only affects their own private lives, but also those who participate in activities with them. The technology also helps for a range of privacy breaches, such as the use of journey monitoring software, location monitoring, and telephone surveillance ... to track others. In 2014, Hanoi Police broke the case of Viet Hong Co., Ltd. that provided phone monitoring software - Ptracker. Ptracker has basic functions of viewing messages, contacts, voice recording, ambient recording, locating the phone, filming, taking pictures, turning on/off 3G. It also allows the user to remotely control the phone with installed surveillance software by texting it. All data taken from the phone will be sent to Viet Hong's servers, so the technical staff of this company has the right to view, delete, exploit that data content without the need for an account or password of the person who purchased the Ptracker software. The danger is that whether you buy the software or not, right after installing the trial version, the phone with Ptracker software has been officially taken over, and all data will be taken and sent to the server. If customers pay, Viet Hong will provide an account for customers to view and exploit content stored on that server. In case the customer does not pay, of course there is no data mining account, but Viet Hong's technical staff can control and exploit data from Ptracker installed devices [10]. It is worth mentioning that many people perform this monitoring action without being aware that they are violating the law: The wife "allows" herself to monitor her husband to protect the happiness of the family, the parents give themselves the right to monitor children ... It can be seen that: In the context of citizen consciousness and the legal corridor have not kept up with the development of technology, ensuring privacy in Vietnam is posing a series of very serious, urgent and difficult issues.

### **3.2. Reality of Vietnam's Laws on Protecting Privacy in Social Environment**

For a long time, the protection of privacy has been widely acknowledged in the international political-legal documents on human rights, the most typical and important one is the Universal Declaration of Human Rights (UDHR) [11] in 1948 and the International Covenant on Civil and Political Rights (ICCPR) [12] in 1966 of the United Nation. As a participant in UDHR and ICCPR, from the 2013 Constitution, Vietnam has recognized and guaranteed the widespread implementation of human rights committed to the international community, including the right to privacy. Concretizing the spirit of Article 21 of the new Constitution, the Civil Code 2015 (effective from January 1, 2017), provides for the right to privacy, personal and family secrets. at Article 38:

“Article 38. Right to private life, personal secrets and family secrets

1. The private life, personal secrets and family secrets of a person are inviolable and protected by law.

2. The collection, preservation, use and publication of information about the private life of an individual must have the consent of that person; the collection, preservation, use and publication of information about the secrets of family must have the consent of all family's members unless otherwise prescribed by law.

3. The safety of mails, telephones, telegrams, other forms of electronic information of an individual shall be ensured and kept confidential.

The opening, control and keeping of mails, telephones, telegrams, other forms of electronic information of an individual may only be conducted in cases provided by law.

4. Contracting parties of a contract may not disclose information about each other's private life, personal secrets or family secrets that they know during the establishment and performance of the contract unless otherwise agreed”.

(Extracted from Civil Code 2015)

Compared to Article 38 of the 2005 Civil Code, which only stipulates the right to privacy, Article 38 of the 2015 Civil Code has a change in both its content and structure. In addition to expanding the scope of protection from the right to privacy to right to private life, secret of individual and secret of family, Article 38 of the 2015 Civil Code also has a structural change: Clause 1 acknowledging the principle of “inviolability” of the private life, personal secrets and family secrets; Clause 2 provides for cases of information storage; use and disclosure of information must be accepted first; Clause 3 anticipates the protection of privacy, confidentiality of

correspondence, telephone, telegraphs and electronic databases to suit the context of the digital age; Clause 4 provides for information protection in the process of contracting.

However, the provisions of Article 38 of the 2015 Civil Code are only framework provisions, primarily of principle, Clause 2 and 3 of the law still recognize provisions “except the case if law provides other provisions”, “in the case stipulated by law”. With the right to privacy, the law has a certain number of stipulations for exceptions. But with a new right recorded in the Constitution and the Civil Code as the right to private life, there is still a lack of detailed regulations, which makes it difficult for the law to put into practice in life. Reality requires urgently building laws that provide exceptions for the use, storage, and disclosure of information related to private life. However, this process will take a long time, because these exceptions must be recorded in the legal document - a type of legal document with a very strict and complex process of elaboration and revision, which must be approved in the National Assembly - the highest level of state authority. Currently, there are only regulations on protecting personal secret in some laws such as the Electronic Transaction Law 2005 [13], the Law on Protection of People's Health 1989 [14] ... but there are not many provisions on protecting private rights. Meanwhile, the scope of privacy protection is much larger than personal secret.

Decree 56/2017/NĐ-CP guiding Law on Children is such a rare document that give out regulations about right to privacy of children: Chapter IV: Responsibility to protect children in the internet environment

“Article 33. Private information of children

Private information of a child is information on name, age and characteristics for personal identification; information on health status and privacy written in health records; personal images; information on family members and caregiver of the child; personal property; telephone number and mail address; address of and information on residence place and native place; address of and information on school, class, learning result and friends of the child; and information on services provided for the child” (Extracted from Decree 56/2017/NĐ-CP).

Defining the definition of privacy is difficult, controversial and not really important; but it is imperative that the concept of scale of privacy information be clarified, as well as clarification of violations of privacy rights. The provisions of Even though Article 33 of Decree No. 56/2017/NĐ-CP is only for children, and is limited to the cyber environment, these are still remarkable steps.

Particularly with privacy in the social environment, the need for law development is even more urgent, due to: For the office, school, hospital environment ... - the provisions on protection of privacy rights can be quickly detailed in the code of behavioral system, rules, working regulations ... as an additional tool besides the privacy law, while waiting for specific regulations from the law. In the social environment, the protection of privacy is mainly based on law and morality, but there are almost no additional tools. The rules, regulations... of social organizations such as Clubs, Youth Union ..., village conventions, regulations of residential areas ... have not focused on regulations on privacy. And even if there are privacy regulations in these documents, the enforcement is not high. Because, if a worker who does not comply with the privacy policy in workplace will face the risk of losing a job, a teacher, a student who violates the privacy policy will be punished, but a club member or neighbor who violates the right to privacy will not be subject to such severe discipline. Specialized environments such as offices, health care, schools have their own principles, associated with the career, livelihood and requires seriousness in people, but the social environment is a place to live and relax ... Therefore, the implementation of the rules and regulations is mainly voluntary and based on morality. In such a context, raising people's legal awareness of privacy is especially important.

A critical issue in securing privacy is the lack of punishment for privacy violations. Continuing Article 125 of the Criminal Code 1999 (amended and supplemented in 2009), the Criminal Code 2015 also has provisions of Article 159 on the Crime of violating the secret or safety of correspondence, telephone and or other forms of exchanging private information of people. The addition of the "other form of exchanging private information" has shown interest in preventing privacy breaches. However, it should be noted that: For violations of privacy rights, the use of

administrative and criminal punishment to handle is ineffective. Typically, the incident revealed the "hot" clip of actress Hoang Thuy Linh, the subjects in the case were prosecuted for the propaganda of depraved cultural products, rather than an invasion of privacy or private life secrets.

Actor Hoang Thuy Linh herself is not at fault, or at least there is no legal violation, but she had to suffer very serious losses without claiming compensation. International experience shows that: The claim for civil compensation is the main tool to overcome the consequences and damages from the infringement of privacy. According to William Prosser (1898 - 1972), the violation of privacy will take four forms: (i) infringing on the private space, private life of others, (ii) publicizing personal information that hurts others; (iii) declaring personal information that places others in a misunderstood situation, (iv) using images and names of others for self-seeking purposes. It can be seen that the forms of privacy infringement will cause damages to people who are violated of both material and spiritual rights, so the mechanism of compensation for damages outside of the contract of the civil law may be applied. However, the law on compensation for damages outside the Vietnamese contract still has many points to consider, especially on the issue of mental compensation - which is very common in cases of privacy infringement:

“Article 592. Damage caused by harm to honor, dignity or reputation

1. Damage caused by harm to the honor, dignity or reputation shall comprise: a) Reasonable costs for mitigating and remedying the damage; b) Loss of or reduction in actual income; c) Other damage as prescribed by law.

2. A person causing harm to the honor, dignity or reputation of another person must pay compensation for damage as provided in Clause 1 of this Article together with another amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum shall not exceed ten-month base salary prescribed by the State”.

The current base salary in accordance with Resolution 27/2016/QH14 dated 11/11/2016 of the National Assembly is VND 1,300,000/month, which means that the compensation for mental loss due to honor damage, dignity and prestige are violated is only a maximum of 13 million VND – such a small number. Meanwhile, actual damage is difficult to prove. Therefore, without a clear mechanism to protect rights, coordination between administrative sanctions - criminal and civil liability, regulations on protecting privacy in the social environment will be difficult to enter into reality.

### **3.3. Proposing Solutions to Ensure the Right to Privacy in the Social Environment of Vietnam Nowadays**

In order to ensure the realization of the guarantee of privacy, especially the privacy in the social environment, it is necessary to quickly implement some urgent measures as follows:

Firstly, it is necessary to quickly complete the provisions of specialized laws on the protection of privacy. In particular, it is necessary to specify the scope of information considered to be related to private life, as well as the infringements of private life. Experience from the United States shows that building the concept of privacy is less important than specifying infringements. American civil law records acts of privacy infringement as a basis for arising out of contractual liability for compensation, including: (i) intrusion upon seclusion, (ii) appropriation of name or likeness, (iii) publicity given to private life, (iv) publicity that unreasonably places the other in a false light before the public. These are valuable rules that Vietnam can study.

Secondly, based on the specification of violations of privacy rights, it is necessary to build a legal system of administrative sanctions - criminal and civil liability for acts of privacy infringement. In particular, regulations on mental damage compensation must be strongly reformed to compensate for losses and damage caused for honor, dignity and prestige when the privacy rights are violated.

Thirdly, it is necessary to raise the legal awareness of the people, build internal rules and regulations of social organizations, residential areas ... as an additional measure to protect privacy in the social environment.

#### 4. Conclusion

Within the scope of the article, research has presented basic issues related to the specific characteristics of Vietnamese society that affect the protection of privacy, as well as the lack of conceptual framework and legal framework, compensation mechanism for privacy protection. Since then, the article has given direction and specific solutions for Vietnam in the context of the Civil Code 2015 with regulations on privacy protection that took effect in early 2017, with principles of specifying forms of infringement, strengthening civil compensation mechanisms and raising people's awareness.

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- [12] Article 17 The International Covenant on Civil and Political Rights (ICCPR) stipulated: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation”
- [13] Article 46. Information Confidentiality in E-transactions
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