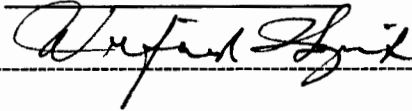


**G.R. No. 187417 – CHRISTINE JOY CAPIN-CADIZ, *Petitioner*, v.
BRENT HOSPITAL AND COLLEGES, INC., *Respondent*.**

Promulgated:

February 24, 2016



CONCURRING OPINION

JARDELEZA, J.:

Liberty is a right enshrined in the Constitution. However, as a testament to the impossibility of determining what it truly means to be free, neither the Constitution nor our jurisprudence has attempted to define its metes and bounds. This case challenges this Court to ascertain the extent of the protection of the right to liberty. This Court is called to answer the question of how free a woman is in this country to design the course of her own life. The Constitution must be read to grant her this freedom.

Petitioner Christine Joy Capin-Cadiz (Christine Joy) worked as the Human Resources Officer of respondent Brent Hospital and Colleges, Inc. (“Brent”). In the course of her employment, she met and fell in love with another Brent employee. Both Christine Joy and her boyfriend were single and with no legal impediment to marry. While in the relationship but before their marriage, Christine Joy became pregnant with her boyfriend’s child. This prompted Brent to issue an indefinite suspension against her. Brent cited as a ground her unprofessionalism and unethical behavior resulting to unwed pregnancy. Brent also told Christine Joy that she will be reinstated on the condition that she gets married to her boyfriend who was, at that time, no longer a Brent employee. Christine Joy eventually married her boyfriend. This notwithstanding, Christine Joy felt that Brent’s condition that she get married first before it reinstates her is unacceptable and an affront to the provision of the Labor Code concerning stipulations against marriage.

Claiming that this indefinite suspension amounted to constructive dismissal, Christine Joy filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC). The Labor Arbiter (LA) found that while the indefinite suspension was indeed a constructive dismissal, there was just cause for Brent to terminate Christine Joy’s employment. According to the LA, this just cause was that Christine Joy engaged in premarital sexual relations with her boyfriend resulting in pregnancy out of wedlock. The LA also ruled that she was not entitled to reinstatement until she marries her boyfriend. Christine Joy appealed the LA decision before the NLRC. The NLRC affirmed the LA. Christine Joy then filed a special civil action for *certiorari* under Rule 65 of the Rules of Court

before the Court of Appeals. However, the CA dismissed her petition on procedural grounds.

Brent and the labor tribunals argue that there was just cause for Christine Joy's dismissal because Brent's Policy Manual identifies acts of immorality as a ground for disciplinary action. Brent also invokes Section 94 of the Manual of Regulations for Private Schools (MRPS) which lists disgraceful or immoral conduct as a ground for terminating an employee.

I agree with my esteemed colleague Justice Bienvenido L. Reyes' application of the doctrine in *Leus v. St. Scholastica's College Westgrove*.¹ I take this opportunity to contribute to the analysis for cases similar to this and *Leus* where women's fundamental rights are pitted against an employer's management prerogatives. While the *ponencia* views the issue from the perspective of public and secular morality, there is also a constitutional dimension to this case that should be considered. This is a woman's right to personal autonomy as a fundamental right.

The Constitution protects personal autonomy as part of the Due Process Clause in the Bill of Rights. Indeed, the Bill of Rights cannot be invoked against private employers.² However, the values expressed in the Constitution cannot be completely ignored in the just adjudication of labor cases.

In this case, Brent's reliance on laws and governmental issuances justifies the view that the Constitution should permeate a proper adjudication of the issue. Brent invokes the MRPS to support Christine Joy's dismissal. The MRPS is a department order issued by the Department of Education (DepEd) in the exercise of its power to regulate private schools. It is thus a government issuance which the DepEd is authorized to issue in accordance with law. Further, the labor tribunals also invoke the Labor Code which provides for the just causes for termination. The Labor Code is a presidential decree and has the status of law. The Constitution is deemed written into every law and government issuance. Hence, in the application of laws and governmental regulations, their provisions should not be interpreted in a manner that will violate the fundamental law of the land.

Further, the relationship between labor and management is a matter imbued with public interest. The Constitution accords protection to labor through various provisions identifying the rights of laborers. This Court has also persistently emphasized the constitutional protection accorded to labor. In *Philippine Telegraph and Telephone Company v. NLRC*,³ this Court held that the constitutional guarantee of protection to labor and security of tenure are "paramount in the due process scheme."⁴ Thus, in that case, this Court

¹ G.R. No. 187226, January 28, 2015, 748 SCRA 378.

² *Serrano v. NLRC*, G.R. No. 117040, January 27, 2000, 323 SCRA 445.

³ G.R. No. 118978, May 23, 1997, 272 SCRA 596.

⁴ *Id.* at 604.

found that the employer's dismissal of a female employee because of her marriage runs afoul of the right against discrimination afforded to women workers by no less than the Constitution.⁵

Finally, *Leus* and the *ponencia* explain that in determining whether a particular conduct may be considered as immoral in the public and secular sense, courts must follow a two-step process. First, courts must consider the totality of the circumstances surrounding the conduct and second, courts must assess these circumstances *vis-à-vis* the prevailing norms of conduct or what society generally considers as moral. I propose that in ascertaining whether the public holds a particular conduct as moral, the Constitution is a necessary and inevitable guide. The Constitution is an expression of the ideals of the society that enacted and ratified it. Its bill of rights, in particular, is an embodiment of the most important values of the people enacting a Constitution. Values that find expression in a society's Constitution are not only accepted as moral, they are also fundamental. Thus, I propose that in ascertaining whether an act is moral or immoral, a due consideration of constitutional values must be made. In Christine Joy's case, her decision to continue her pregnancy outside of wedlock is a constitutionally protected right. It is therefore not only moral, it is also a constitutional value that this Court is duty bound to uphold.

It is within this framework of analysis that I view the issue in this case.

Due Process and the Constitutional Right to Personal Liberty and Privacy

Section 1 of Article III of the Bill of Rights provides that no person shall be deprived of liberty without due process of law. The concept of the constitutional right to liberty accepts of no precise definition and finds no specific boundaries. Indeed, there is no one phrase or combination of words that can capture what it means to be free. This Court, nevertheless, as early as the case of *Rubi v. Provincial Board of Mindoro*,⁶ explained that liberty is not merely freedom from imprisonment or restraint. This Court, speaking through Justice George Malcolm, said –

Civil liberty may be said to mean that measure of freedom which may be enjoyed *in a civilized community*, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are

⁵ *Id.* at 605.

⁶ 39 Phil. 660 (1919).

necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.⁷

In *Morfe v. Mutuc*,⁸ this Court held that the constitutional right to liberty includes the concept of privacy. Quoting US Supreme Court Justice Louis Brandeis, this Court explained that the right to be let alone is “the most comprehensive of rights and the right most valued by civilized men.”⁹ Justice Enrique Fernando, in his *ponencia*, even went a step further and adopted the ruling in the US Supreme Court case *Griswold v. Connecticut*.¹⁰ He said that the right to privacy is “accorded recognition independently of its identification with liberty.”¹¹ He also added that “[t]he concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect.”¹²

*Ople v. Torres*¹³ reveals how this Court has come to recognize privacy as a component of liberty under the Due Process Clause and as a constitutional right arising from zones created by several other provisions of the Constitution. Chief Justice Reynato S. Puno, for this Court, explained that privacy finds express recognition in Section 3 of Article III of the Constitution which speaks of the privacy of communication and correspondence. He further stated that there are other facets of privacy protected under various provisions of the Constitution such as the Due Process Clause, the right against unreasonable searches and seizures, the liberty of abode and of changing the same, the right of association and the right against self-incrimination.

Jurisprudence directs us to the conclusion that the constitutional right to liberty does not merely refer to freedom from physical restraint. It also includes the right to be free to choose to be, in the words of Justice

⁷ *Id.* at 705; citations omitted, emphasis in the original.

⁸ G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

⁹ *Id.* at 442.

¹⁰ 381 U.S. 479 (1965).

¹¹ *Morfe v. Mutuc*, *supra* at 444.

¹² *Id.* at 442.

¹³ G.R. No. 127685, July 23, 1998, 293 SCRA 141.

Fernando, a “unique individual.”¹⁴ This necessarily includes the freedom to choose how a person defines her personhood and how she decides to live her life. Liberty, as a constitutional right, involves not just freedom from unjustified imprisonment. It also pertains to the freedom to make choices that are intimately related to a person’s own definition of her humanity. The constitutional protection extended to this right mandates that beyond a certain point, personal choices must not be interfered with or unduly burdened as such interference with or burdening of the right to choose is a breach of the right to be free.

In the United States, whose Constitution has heavily influenced ours, jurisprudence on the meaning of personal liberty is much more detailed and expansive. Their protection of the constitutional right to privacy has covered marital privacy, the right of a woman to choose to terminate her pregnancy and sexual conduct between unmarried persons.

In *Griswold v. Connecticut*,¹⁵ the US Supreme Court held that privacy is a right protected under the US Constitution. Griswold explained that the US Constitution’s Bill of Rights creates zones of privacy which prevents interference save for a limited exception. Thus, Griswold invalidated a statute which criminalizes the sale of contraceptives to married persons, holding that marital privacy falls within the penumbra of the right to privacy under the US Constitution’s Bill of Rights.

*Eisenstadt v. Baird*¹⁶ extended this right to privacy to unmarried persons. In this case, the US Supreme Court also held invalid a law prohibiting the distribution of contraceptives to unmarried persons. *Einstadt* explained that “[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”¹⁷

In the celebrated case *Roe v. Wade*,¹⁸ the US Supreme Court again explored the concept of the constitutional right to privacy. In this case, the US Supreme Court affirmed that while the US Constitution does not expressly mention a right to privacy, its provisions create such zones of privacy which warrant constitutional protection. *Roe* added to the growing jurisprudence on the right to privacy by stating that prior US Supreme Court cases reveal that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty,’ are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and [child rearing] and education.”¹⁹ In *Roe*, the US Supreme

¹⁴ *Morfe v. Mutuc, supra*.

¹⁵ *Supra* note 10.

¹⁶ 405 U.S. 438 (1972).

¹⁷ *Id.* at 454; citations omitted.

¹⁸ 410 U.S. 113 (1973).

¹⁹ *Id.* at 153-154; citations omitted.

Court held that the constitutional right to privacy also encompasses a woman's choice whether to terminate her pregnancy.

Planned Parenthood of Southeastern Pa. v. Casey,²⁰ which affirmed the essential ruling in *Roe*, added to this discussion on the right to privacy. The US Supreme Court repeated that the constitutional right to privacy means a protection from interference so that people, married or single, may be free to make the most intimate and personal choices of a lifetime. These choices, which are central to personal dignity and autonomy, are also central to the protection given under the Fourteenth Amendment of the US Constitution, the American Constitutional law equivalent of our Due Process Clause. Affirming that a woman has the right to choose to terminate her pregnancy as a component of her right to privacy, *Planned Parenthood* stated that “[t]he destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.”²¹

The US Supreme Court also ruled that the right to privacy includes sexual conduct between consenting adults. Thus, in *Lawrence v. Texas*,²² the US Supreme Court invalidated a law criminalizing sodomy. *Lawrence* held that “[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.”²³

The right to privacy as a component of personal liberty in the Due Process Clause also includes the freedom to choose whom to marry. This was the import of the US Supreme Court's ruling in *Loving v. Virginia*²⁴ which invalidated a law prohibiting interracial marriages. This was also one of the essential rulings in *Obergefell v. Hodges*²⁵ which held same-sex marriage as constitutional.

I propose that our reading of the constitutional right to personal liberty and privacy should approximate how personal liberty as a concept has developed in the US as adopted in our jurisprudence.

At the heart of this case are two rights that are essential to the concept of personal liberty and privacy, if they are to be given any meaning at all. Brent's act of dismissing Christine Joy because of her pregnancy out of wedlock, with the condition that she will be reinstated if she marries her then boyfriend, unduly burdens first, her right to choose whether to marry, and second, her right to decide whether she will bear and rear her child without marriage. These are personal decisions that go into the core of how Christine

²⁰ 505 U.S. 833 (1992).

²¹ *Id.* at 853.

²² 539 U.S. 558 (2003).

²³ *Id.* at 579.

²⁴ 388 U.S. 1 (1967).

²⁵ 576 U.S. __ (2015).

Joy chooses to live her life. This Court cannot countenance any undue burden that prejudices her right to be free.

The Right to Choose Marriage

The Labor Code contains provisions pertaining to stipulations against marriage. Specifically, Article 134 states that it is unlawful for employers to require as a condition for employment or continuation of employment that a woman employee shall not get married. This provision also prohibits the dismissal of a woman employee by reason of her marriage. This Court, in the case of *Philippine Telegraph and Telephone Company v. NLRC*,²⁶ has applied this provision and found illegal the dismissal of a woman employee because of a condition in her contract that she remains single during her employment. Christine Joy's case involves the reverse, albeit the effect is as burdensome and as odious.

In constructively dismissing Christine Joy and promising her reinstatement provided she marries her boyfriend, Brent has breached not a mere statutory prohibition but a constitutional right. While as I have already explained, there is jurisprudence to the effect that the Bill of Rights cannot be invoked against a private employer, Brent's act of invoking the MRPS and the Labor Code brings this case within the ambit of the Constitution. In arguing that immorality is a just cause for dismissal under the MRPS and the Labor Code, Brent is effectively saying that these government issuances violate the constitutional right to personal liberty and privacy. This interpretation cannot be countenanced. The Constitution is deemed written into these government issuances and as such, they must be construed to recognize the protection vested by the Bill of Rights.

As I have already discussed, the rights to personal liberty and privacy are embodied in the Due Process Clause and expounded by jurisprudence. These rights pertain to the freedom to make personal choices that define a human being's life and personhood. The decision to marry and to whom are two of the most important choices that a woman can make in her life. In the words of the US Supreme Court in *Obergefell* “[n]o union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were.”²⁷ The State has no business interfering with this choice. Neither can it sanction any undue burden of the right to make these choices. Brent, in conditioning Christine Joy's reinstatement on her marriage, has effectively burdened her freedom. She was forced to choose to lose her job or marry in order to keep it. By invoking the MRPS and the Labor Code, Brent is, in effect, saying that this kind of compelled choice is sanctioned by the State. Contrary to this position, the State cannot countenance placing a woman employee in a situation where she will have to give up one right (the right to marry as a

²⁶ *Supra* note 3.

²⁷ 576 U.S. __ (2015).

component of personal liberty and privacy) for another (the right to employment). This is not the kind of State that we are in. Nor is it the kind of values that our Constitution stands for.

*The Right to Bear and Rear a Child
outside of Marriage*

The Labor Code prohibits the discriminatory act of discharging a woman on account of her pregnancy.²⁸ Brent, in constructively dismissing Christine Joy because of her pregnancy, violated this prohibition. Brent, however, attempts to evade this prohibition by claiming that it was not the mere fact of Christine Joy's pregnancy that caused her dismissal. Rather, according to Brent, it is her pregnancy outside of wedlock that justified her termination as immorality is a just cause under the MRPS and the Labor Code. In doing so, Brent not only violated the law, it even went further and asked the labor tribunals and the judiciary to lend an interpretation to the Labor Code and the MRPS that disregards the Constitution.

Christine Joy has the right to decide how she will rear her child. If this choice involves being a single mother for now or for good, no law or government issuance may be used to interfere with this decision. Christine Joy, and all other women similarly situated, should find refuge in the protection extended by the Constitution.

The Constitution highlights the value of the family as the foundation of the nation.²⁹ Complementary to this, the Family Code of the Philippines provides that marriage is the foundation of the family.³⁰ Indeed, our laws and tradition recognize that children are usually reared and families built within the confines of marriage. The Constitution and the laws, however, merely express an ideal. While marriage is the ideal starting point of a family, there is no constitutional or statutory provision limiting the definition of a family or preventing any attempt to deviate from our traditional template of what a family should be.

In other jurisdictions, there is a growing clamor for laws to be readjusted to suit the needs of a rising class of women – single mothers by choice.³¹ These countries are faced with the same predicament that Brent confronted in this case – their rules have lagged behind the demands of the times. Nevertheless, in our jurisdiction, the Constitution remains as the guide to ascertain how new situations are to be dealt with. In Christine Joy's case, the Constitution tells us that her right to personal liberty and privacy protects her choice as to whether she will raise her child in a marriage. Brent, in dismissing Christine Joy because of her pregnancy

²⁸ LABOR CODE, Art. 135.

²⁹ CONSTITUTION, Art. XV, Sec. 1.

³⁰ FAMILY CODE, Art. 1.

³¹ See Fiona Kelly, *Autonomous Motherhood and the Law: Exploring the Narratives of Canada's Single Mothers By Choice*, 28 Can. J. Fam. L. 63 (2013).

outside of wedlock, unduly burdened her right to choose. Again, the MRPS and the Labor Code cannot be used to justify Brent's acts. These government issuances respect the Constitution and abide by it. Any contrary interpretation cannot be countenanced.

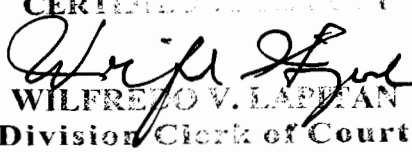
In my proposed reading of the constitutional right to personal liberty and privacy, Christine Joy and other women similarly situated are free to be single mothers by choice. This cannot be curtailed in the workplace through discriminatory policies against pregnancy out of wedlock. The Constitution allows women in this country to design the course of their own lives. They are free to chart their own destinies.

*Constitution and Public Secular
Morality*

I finally propose that in applying the two-tier test in *Leus* and in the *ponencia*, the Constitution should be considered as a gauge of what the public deems as moral. In this case, there is a constitutionally declared value to protecting the right to choose to marry and the right to be a single mother by choice. This is our people's determination of what is moral. Thus, in the incisive analysis of Justice Reyes, whenever this right to choose is involved, the Constitution compels us to find that the act is constitutionally protected, and as such, is necessarily moral in the public and secular sense.

ACCORDINGLY, I vote to **grant** the Petition.


FRANCIS H. JARDELEZA
Associate Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPAN
Division Clerk of Court
Third Division
MAR 15 2016