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# The Writs of Habeas Corpus, Amparo, and Habeas Data

by

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## Preliminary

The three writs are quintessentially remedial in nature. Their reason for being and mode of practical enforcement should be keenly appreciated.

They are pure actions and not "substantive rights". They give life to the ancient principle "Ubi jus, ibi remedium."

## The Writ of Habeas Corpus (you have the body)

Our first brush with the Great Writ of Liberty starts in the first year of law school, in the subject of Constitutional Law and the Bill of Rights. Art. III, Sec. 15 proclaims that its protective mantle shall never be lifted, except in cases of invasion or rebellion when public safety requires it. It applies to "all manner of involuntary restraint". It is only in the third year when we study its implementing Rule 102, in Special Proceedings, and see that it is indeed a "highly prerogative" (special, pre-eminent, extraordinary) writ, which originated in the English Habeas Corpus Act of 1671. For among all remedies it is the most expeditious. It may be granted by the Supreme Court, Court of Appeals, or Court of First Instance on any day and at any time and shall be enforceable anywhere in the Philippines or within the judicial district (Sec. 2), when a petition is filed it shall be granted forthwith (Sec. 5), the person ordered shall produce the person deprived of his personal freedom before the judge and shall make a sworn return (Secs. 8, 9, 10, and 11), and there shall be an immediate hearing (Sec. 12). Appeal must be taken within 48 hours after notice of judgment (Rule 41, Sec. 3) and appellate memoranda shall be filed within a non-extendible period of thirty days (Rule 44, Sec. 10), meaning that it is one of the cases which have priority among those awaiting decision.

While it is concerned with personal liberty, the most important right under the Constitution, resourceful counsel have utilized it for securing custody of minors and in the process ignore Rule 99 on the same subject. Its prescribed procedure does not allow dilly-dallying. It was used by parents to regain custody of minor children, and in guardianship, even the Supreme Court itself issued a rule on the matter (A.M. No. 03-04-04-SC effective May 15, 2003). It was also used against deportation proceedings of aliens.

Uneasy with the implication that the writ of amparo (discussed next) is more efficacious than *habeas corpus* because it has interim reliefs like an inspection order and a production order, it is commented that discovery procedures are also available in *habeas corpus* proceedings, such as interrogatories, admission by adverse party, production or inspection of documents, and physical and mental examination of persons. The U.S. case of Harris v. Nelson was cited. Here the use of interrogatories was allowed to prove that the arrest and search of the accused was based on unreliable information (Mendoza, A Note on the Writ of Amparo, Lawyers Review, November 20, 2007).

The trouble is that, in the Philippines, it was lamented that too many lawyers (and not a few judges) are unfamiliar and even outrightly ignorant about discovery (Republic v. Sandiganbayan, 204 SCRA 212 [1991]) and this refrain crops up even today, despite numerous circulars since then extolling the benefits of discovery. This is a situation where duplication, and even superfluity, can serve a useful purpose. Regrettably, this will only be in the limited field of human rights.

## The Writ of Amparo

There is a street in the Jaro District in Iloilo City, and perhaps elsewhere in the country, which their residents call "Desamparados." Their old folk may correct them, and perhaps the parish priest, and tell them that the full name is Nuestra Señora de los Desamparados, or Our Lady of the Defenseless and Oppressed. Her title is eloquent of the anguish, misery, and terror suffered by the powerless and disadvantaged, and their piteous cry for help.

"Amparo" is Spanish and means shelter, protection, or refuge. Many women in our country bear the name in honor of Our Lady.

The Writ of Amparo is found in A.M. No. 07-9-12-SC issued on September 25, 2007 and amended on October 16, 2007 effective October 24, 2007, *United Nations Day*.

*The Latin American countries, where the writ originated, constitutionally adopted the writ to provide for a remedy to protect the whole range of constitutional rights, including socio-economic rights. (Azcuna, Annotation to the Writ of Amparo. The italics here and henceforth mean that the lines are quoted from this annotation). But in the Philippines, the writ is available only for the protection of* any person whose right to life, liberty and security is violated or threatened with violation, including extra-legal killings and enforced disappearances or threats thereof (Sec. 1). The Bill of Rights specifically refers to the rights to life and liberty (Art. III, Sec. 1), security against unreasonable searches and seizures and invalid warrants of arrest (Sec. 2), and freedom from detention by reason of political beliefs and aspirations (Sec. 18).

*The Rule provides for the order of the parties who may file the petition (Sec. 2). Due to its extraordinary nature, the petition may be filed on any day, at any time (Sec. 3).*

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The protection generally accorded to life, liberty, liberty and security "including" extra-legal killings and enforced disappearances implies that the latter two are not the only grounds for the issuance of the writ.

There is, though, an emphasis on the terms "enforced disappearances" and a clear definition can be found in Sec. 1 (i), Article 7 (Crimes Against Humanity), Rome Statute of International Justice (See de Castro, Primer on the Rule on the Writ of Amparo, Lawyers Review, October 31, 2007; Pimentel, Jr. v. Office of the Executive Secretary, 462 SCRA 622 [2005]), *as well as "extrajudicial killings" or those committed without due process of law*.

The procedure laid down is reminiscent of Rule 102 on *habeas corpus* but there is less leeway for delay; the writ shall be issued upon filing (Sec. 6); the summary hearing shall be set not later than 7 days from issuance (Sec. 7); *the writ may be served upon the respondent personally or by substituted service (Sec. 8)*; the writ should be returned within 72 hours or three days (Sec. 9); the contents which the return are specified and give no room for evasion, and a general denial of the allegations in the petition is not allowed, *so as to avoid the ineffectiveness of the writ of habeas corpus* (Sec. 9).

The writ has more bite through specific interim reliefs such as a temporary restraining order for the protection of persons in a secure place, an inspection order, a production order, and a witness protection order (Sec. 14). *Considering the possibility that some petitioners may refuse to be protected by government agencies, the Supreme Court may accredit private institutions for this purpose (Sec. 14).* The court shall render judgment within ten days from submission (Sec. 18) and either party may appeal within five working days from notice of judgment to the Supreme Court (no less) under Rule 45 raising questions of fact (not commonly entertained) and law, and the appeal shall be given the same priority as in *habeas corpus* cases (Sec. 19).

*The writ of amparo being a prerogative writ, the filing of the petition shall not preclude the filing of separate criminal, civil, or administrative actions (Sec. 21).*

The hearing shall be "summary" (Sec. 13), a term which has a settled meaning in Philippine procedure (with dispatch; with the least possible delay, and in preference to regular judicial proceedings; brief and speedy method of receiving and considering evidence), dilatory moves are prohibited (Sec. 11). *But this Rule allows the filing of motions for new trial and petitions for relief from judgment, for the denial of these remedies may jeopardize the rights of the aggrieved party in certain instances and should not be countenanced.*

*Consistent with the summary nature of the proceedings, among the contents of the petition is the affidavit, which can be used as the direct testimony of the affiant (Sec. 5)*

The quantum of proof required is "substantial evidence," a concept which strangely found its way into the Rules of Evidence for ordinary courts of justice and is defined as follows: "In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion" (Sec. 5, Rule 133). It is really a principle of judicial review, in that if the ordinary courts (Judicial Department) are tasked to review the findings of fact of administrative or quasi-judicial bodies (Executive Department), the latter have the benefit of the doubt. For it has been described as more than a mere scintilla but may be somewhat less than preponderance, even if other reasonable minds might conceivably opine otherwise.

*The respondent who is a private individual or entity must prove that ordinary diligence was observed in the performance of duty, while the respondent who is a public official or employee must prove that extraordinary diligence was observed. The respondent public official or employee cannot invoke the presumption of official duty has been performed to evade responsibility or liability (Sec. 17).*

In quasi-delicts, torts, and damages, ordinary and extraordinary diligence are defenses to a complaint based on negligence and imprudence. Here the nature of the grievances to which these defenses may be interposed are not clear. But they have to do with the neglect of duty to protect life, liberty and security.

Ordinary diligence is usually that of a bonus paterfamilias (Civil Code, Art. 1173), while extraordinary diligence is the taking of precautions as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances (Art. 1755).

*The denial of the presumption that an official duty has been regularly performed is in accord with current jurisprudence on custodial investigation and search warrant cases.*

The writ is enforceable in an ordinary court of justice, but the adoption of summary hearing and the substantial evidence policy would encourage one to argue that this bias in favor of the petitioner also frees the court from the technical rules of evidence, a liberalizing policy which is usually found in the statutes creating quasi-judicial bodies. One rule which comes to mind is the Hearsay Rule.

## The Writ of Habeas Data (you have the data)

The writ is found in A.M. No. 08-1-16-SC issued on January 22, 2008 effective February 2, 2008. The procedure outlined is similar to that of the writ of amparo. The constitutional right protected is the privacy of communication and correspondence (Art. III, Sec. 3 [1]). But the language takes into account the present age of IT, or "information technology." For the respondents specifically targeted are those "engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party." This extends to "public data files of government offices." The relief prayed for may include the "updating, rectification, suppression or destruction of the database or information or files kept by the respondent," as well as injunction. As in the case of the writ of amparo, the respondent is required to file a verified return the contents of which are specified and a general denial is not allowed.

The interim relief of an inspection order and a production order, which are available in the writ of amparo, appear to be inadequate and led to this new writ. For there is a clear intention for this new writ to be utilized in cases of "extralegal killings and enforced disappearances."

Indeed, it was reported that Chief Justice Puno explained -

> "... the writ of habeas data complements the writ of amparo by helping produce or correct data that is relevant to protect the rights of a person who disappeared or is the victim of an extrajudicial killing.
>
> If the police or military, for instance, conduct a haphazard investigation or one with "illegal or malicious" intent, they could hide

or disregard data relevant to the solution of the killing or the disappearance.

The writ can be used to produce information so that the families of the victims, especially those of the disappeared, will have a better picture of his fate despite the perpetrators' efforts to hide the details.

"This writ entitles the families of disappeared persons to know the totality of circumstances surrounding the fates of their relatives and imposes an obligation of investigation on the part of governments. This writ is particularly crucial in cases of political disappearances, which frequently imply secret executions of detainees without any trial, followed by the concealment of the bodies for the purpose of erasing all material traces of the crime and securing impunity for the perpetrators,"

In the same public forum, it was also elaborated that there are more dimensions to this writ, which can protect the right to privacy against the government and other information collectors.

The passage of the last two writs came in the heels of persistent reports of killings and disappearances, which rose to a crescendo in July, 2007. What is significant is that these writs are, to borrow the words of a Mexican jurist, designed to have the flexibility, speed or rapidity, concentration, and effective means for the legal protection of human freedom.

## Confluence of the three writs

If we lay the template of the writ of amparo over that of the writ of habeas corpus, we will see that the former is more detailed, focused, and concentrated on its object and purpose. Since the former also covers personal freedom, it can even be said that it supersedes the latter. Without any clear qualification, it can hardly be said that it is not an independent action, or that it is merely auxiliary to a main case, or that it is ancillary to civil and criminal prosecutions, or to the writ of habeas corpus.

Absent any safeguards against dilatory tactics and devious stonewalling, counsel would not dare to resort to leaden-footed criminal and civil actions in usually urgent situations.

The writ of habeas data, on the other hand, could very well be considered as a duplication of the interim reliefs of an inspection order and a production order in Sec. 14 of the writ of amparo, which is copied from the mode of discovery in Rule 27 of the Rules of Court. But considering that it is designed to meet a special situation, as already adverted to, and may perhaps be expanded to other constitutional areas in the future, it can be appreciated as an independent remedy.

It seems, however, that when the writ of habeas corpus is suspended during states of emergency, the latter two, being *ejusdem generis*, are also suspended.

## The Latin American writs

Habeas corpus has been expressly or impliedly adopted in virtually every Latin American Constitution - in Argentina, Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Uruguay, and Venezuela (Héctor Fix Zamudio, Latin American Remedies, Journal of the International Commission of Jurists, Vol. IX, No. 2 [December, 1968], pages 67, 78).

In Mexico, Chile, Argentina, and Venezuela, freedom of the person is protected by *amparo*, and the traditional *habeas corpus* may be said to exist within the former. This is variously called *amparo-libertad, recurso de amparo de la libertad*, and *amparo de la libertad personal* (Zamudio, Ibid., pages 68-69, 86).

They contain characteristics which happily are found in the three Philippine writs:

"A brief review of the general law on *habeas corpus*, the production of the person and *amparo de la libertad personal* in Latin American laws shows that these procedures have certain characteristics in common. Each is a remedy specifically protecting the individual's right to freedom enshrined in the Constitution of the various countries; this remedy is used chiefly to challenge arbitrary or illegal detentions, particularly arrests made by administrative authorities, which unfortunately all too often infringe the provision contained in all Latin American Constitutions that a citizen may not be detained, save in periods of emergency, except by order of a court; the procedure must be rapid and must take precedence over any other ordinary procedure; the judge must order the immediate production of the person detained so as to examine the reasons for his detention; the procedure may be initiated by anyone on behalf of the person concerned; and the order to free him must be speedily obeyed and failure to do so severely punished." (Ibid).

With respect to the Brazilian *mandado de segurança*, the procedure is based on directive principles of official action, concentration, speed, and ample powers of the courts to grant injunctions (Ibid., page 73).

In the light of the peremptory and expedient purpose of these remedies, it can hardly be imagined that a judge is permitted to waffle claiming to have a wide margin of discretion. *The writ of amparo partakes of the nature of a prerogative writ*.

Mexico was the first country to establish *amparo*. Its creators were Manuel Crescencio Rejon, Mariano Otero and the Constituent Assembly of 1857, especially Ponciano Arriaga, Melchor Ocampo, and Jose Maria Mata. The former introduced it in the Constitution of the State of Yucatán of 1841, they are said to have been influenced by the American principle of judicial review of the constitutionality of laws and designed it specifically for the protection of fundamental rights. The *recurso de casacion* was absorbed by *amparo*, resulting in *amparo-casacion*.

While in some countries, as mentioned earlier, the term *amparo de la libertad personal* is a synonym for *habeas corpus*, in others it has come to mean an instrument for the protection of constitutional rights with the exception of freedom of the person, which is protected by the traditional *habeas corpus*.

On the other hand, in the absence of other means of protecting fundamental rights, attempts have been made to extend the scope of habeas corpus to safeguard various other rights than that of freedom of the person. This is said to have led to the Brazilian *mandado de segurança*, after *habeas corpus* was restored to its traditional limits (Zamudio, Ibid., pages 70-71).

The Mexican *amparo* because of its international prestige and the deep roots of the term in Spanish law, was

adopted in various Latin American Constitutions.

According to Zamudio, it was on the initiative of the Mexican delegation that *amparo* was introduced into Article 8 of the Universal Declaration of Human Rights of December 10, 1948 (Ibid., page 89). This reads:

> "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 25 of the American Convention on Human Rights, on "Right to Judicial Protection," reads:

> "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States parties undertake:
>
> (*a*) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
>
> (*b*) to develop the possibilities of judicial remedy; and
>
> (*c*) to ensure that the competent authorities shall enforce such remedies when granted."

The prestigious institution has come to us not from Peninsular Spain, source of our Civil and Penal codes, from which we were cut off with the coming of the (North) Americans, and in the process, caused us to lose track of developments not only in Ibero-American law but also the ferment of the legal systems of Western Europe. It came across the Pacific not through Acapulco and with the Manila Galleons, but through international channels.

It is to the credit of our Supreme Court that it has the flexibility and courage to respond to the felt needs of the present. *The Committee deemed it proper that the birth of the Rule in the Philippines should coincide with our celebration of United Nations Day, to manifest our strong affirmation of our commitment towards internationalization of human rights.*

It certainly has the mandate, under Sec. 5 (5) of Art. III of the Constitution, to promulgate rules concerning the protection and enforcement of constitutional rights.

## The three writs in a state of emergency or martial law

There is a belief in Latin America, so frequently engulfed by upheavals, that the courts should be able to review the legality of measures adopted by the authorities during states of emergency (also called state of assembly, state of siege, and suspension of guarantees). The hesitation of the courts to intervene in the actions of officials, particularly executive bodies, has been criticized. It appears, however, that in the United States and Mexico, various cases of *habeas corpus* and *amparo* were entertained challenging the constitutionality of executive action.

> "State of emergency normally entail some restrictions on human rights; however the courts, through *amparo, habeas corpus* and similar procedures, must be given the power to determine whether such restrictions are reasonable. The measures taken by the competent authorities must be such as to deal with the emergency quickly and effectively. Internal disorder must not, as has all too frequently happened, be used as an excuse for taking measures that are disproportionate to the actual emergency and infringe individual rights, thereby rendering meaningless the protection provided for such rights in the Constitution." (Zamudio, Ibid., pages 87-79).

States of Suspension

## The three writs and economic and social rights

There is a modern conception that human rights are not merely individual rights. In contemporary times such rights have a social transcendence, in addition to those rights that have traditionally been granted to the individual, others have arisen that put him in a new dimension: his integration into the various social groups of which contemporary society is made up (Zamudio, Ibid., page 63).

Modern constitutions have, aside from individual rights, recognized many social rights. All taken together may be regarded as human rights, for they are ultimately intended for the human person in his two essential dimensions, as an individual and as a member of society (see for instance Article XIII of the 1987 Constitution on "Social Justice and Human Rights").

The Supreme Court in very early cases has issued *habeas corpus* where the petitioner was forced to testify and incriminate himself, in violation of his right to remain silent; where various women were placed in a boat by the Mayor and Chief of Police to unknown destinations, depriving them of their freedom of locomotion; and where a housemaid was prevented from leaving the house of her employer unless the amount advanced to her be paid first (Francisco, Rules of Court, Vol. V-B (1970), pages 667-668).

In 1996 there is a report of a Costa Rican case for discrimination of rules against women athletes insofar as they provided unequal prizes for male and female winners and for fewer categories for female competitors than for male competitors. The Government argued that the petitioner should have resorted to a writ of amparo, which can be used to nullify administrative norms and actions. There is a 1981 report of a Chilean case brought by a citizen for refusal of the government to admit him and his wife to the country, where the Government also pointed out that the decision of the Ministry of Interior to deny entry could have been reversed through a writ of amparo. There is a 1996 report of an Argentinean case were a lady and her daughter complained that vaginal searches conducted upon them when she visited her husband in prison were degrading and demeaning. And there is a 1997 report of a Peruvian case where a justice of the Supreme Court who was ousted by President Fujimori by decree questioned the decree by writ of amparo (Aquino, The Solace of Amparo: A Brief Study on the Writ of Amparo, Lawyers Review, October 31, 2007, pages 22-23).

Of recent memory is the challenge by writ of amparo of 11 broadcast journalists, led by Ces Oreña Drilon, of their arrest and detention after the siege of the Manila Peninsula. The issues that are in the forefront are the legality of their arrest and detention, and the validity of the media advisory of the DOJ, warning journalists that they may incur criminal liability if they disobeyed police orders during emergencies. Verily, these are full of constitutional repercussions.

For those who long for a wider reach and scope to the two new writs, which are not limited merely to the protection of personal freedom, the field of economic and social rights beckons. ●