A CONCEPTUAL FRAMEWORK FOR UNDERSTANDING LIBERTY AS AN ENFORCEABLE RIGHT FOR PERSONS DEPRIVED OF LIBERTY*

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ABSTRACT

In theory, Persons Deprived of Liberty (PDLs) are only restricted in their physical liberty, but are otherwise unrestricted in their other "liberties." Simply, deprivation of physical liberty does not render entirely inoperative Article III, Section 1 of the Constitution. This theory is supported by understanding liberty in the Philippines as two-pronged, containing both positive and negative obligations, with both prongs protecting the liberties of those detained in facilities, penological or otherwise. Substantive law also supports this framework. This Article explores existing procedural vehicles that may be utilized or repurposed to create a framework in understanding the rights and remedies available to PDLs who languish in deplorable conditions.

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> *"[The Manguianes], according to the court's opinion under the present law, may be taken from their homes and herded on a reservation at the instance of the provincial governor, with the prior approval of the department head. To state such a monstrous proposition is to show the wickedness and illegality of the section of the law under which these people are restrained of their liberty. But it is argued that there is no probability of the department head ever giving his approval to such a crime, but the fact that he can do it and has done it in the present case is what makes the law unconstitutional. The arbitrary and unrestricted power to do harm should be the measure by which a law's legality is tested and not the probability of doing harm."*
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> —Justice Percy M. Moir[1]

INTRODUCTION

On March 16, 2020, the Philippine government imposed a lockdown in response to the coronavirus disease 2019 (COVID–19) pandemic.[2] Amidst all the uncertainty and fear brought about by the surging pandemic, another issue plaguing our justice system was once more placed on the

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[1] Justice Percy M. Moir dissented from the majority that upheld the validity of reservation camps for the Mangyans. Rubi v. Provincial Board of Mindoro [hereinafter "*Rubi*"], 39 Phil. 660, 730–31 (1919) (Moir, *J., dissenting).*

[2] Reuters, *Philippines' Duterte announces 'lockdown' of Manila to fight coronavirus*, Mar. 12, 2020, *at* https://www.reuters.com/article/us-health-coronavirus-philippines-idUSKBN20Z22P; Ana P. Santos, *Coronavirus: Philippines quarantines island of 57 million people*, AL JAZEERA, Mar. 16, 2020, *at* https://www.aljazeera.com/news/2020/03/16/coronavirus-philippines-quarantines-island-of-57-million-people/; *See also*, Philippines confirms first case of new coronavirus, ABS-CBN NEWS, Jan. 30, 2020, *at* https://news.abs-cbn.com/news/01/30/20/philippines-confirms-first-case-of-new-coronavirus

spotlight—what would be of the rights and remedies of persons deprived of liberty, whose lives were suddenly endangered by a virus that thrives in congested, closed areas?[3] The "subhuman prison conditions"[4] and overwhelming prison congestion[5] extant in our detention centers would only serve to fuel a virus that did not discriminate among its victims. It is worthy to note that by then, all the prisons under the control of the Bureau of Corrections (BUCOR) were congested, with the occupancy rate at 453% and the congestion rate at 353%.[6] Likewise, the remaining facilities under the Bureau of Jail Management and Penology (BJMP) had, as of 2019, a total occupancy rate of 438%, with the total jail population of 130,667, exceeding the ideal population of 24,306.[7] It was all a disaster waiting to happen, with fearful and helpless detainees stuck in the confines of their detainment facilities, since the terms and duration of their detention were outside their hands. Worse, in all likelihood, these detainees were not cognizant of all the rights they enjoy and ought to enjoy, and were thus at a loss for remedies available to them.

With all these circumstances coalescing with the onset of COVID–19, it was only a matter of time before a question of novel importance—involving the rights and remedies available to detainees in exceptional circumstances like a pandemic—reached the Supreme Court. True enough, on April 6, 2020, twenty-two (22) petitioners sought provisional relief from

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[3] Coronavirus, WORLD HEALTH ORGANIZATION, *at* https://www.who.int/health-topics/coronavirus1

[4] Almonte v. People [hereinafter "*Almonte*"], G.R. No. 252117, July 28, 2020, at 9 (Perlas-Bernabe, *J., separate opinion*). This pinpoint citation refers to the copy of this separate opinion uploaded to the Supreme Court website.

[5] Human Rights Watch, *Philippines: Prison Deaths Unreported Amid Pandemic*, Apr. 28, 2020, *at* https://www.hrw.org/news/2020/04/28/philippines-prison-deaths-unreported-amid-pandemic; Bong Lozada, *Recto: Congested PH jails are petri dishes for coronavirus*, .NET, July 22, 2020, *at* https://newsinfo.inquirer.net/1310365/recto-congested-ph-jails-are-petri-dishes-for-coronavirus; Ana P. Santos, *'Waiting to Die': Coronavirus enters congested Philippine jails*, AL JAZEERA, May 4, 2020, *at* https://www.aljazeera.com/news/2020/5/4/waiting-to-die-coronavirus-enters-congested-philippine-jails.

[6] Bureau of Corrections Statistic on Prison Congestion as of January 2020, BUREAU OF CORRECTIONS, *at* http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf. These facilities would include the New Bilibid Prison, CIW Mandaluyong, Iwahig Prison & Penal Farm, Davao Prison & Penal Farm, CIW Mindanao, San Ramon Prison & Penal Farm, Sablayan Prison & Penal Farm, and Leyte Regional Prison.

[7] Commission on Audit Annual Audit Report of the Bureau of Jail Management and Penology – Executive Summary, COMMISSION ON AUDIT , *at* https://www.coa.gov.ph/wpfd_file/bureau-of-jail-management-and-penology-consolidated-annual-audit-report-2019/ (last modified Aug. 28, 2020).

detainment in light of the pandemic. The title of the petition was self–explanatory: "*In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic*," and this case was later docketed as *Almonte v. People of the Philippines, et al.*[8] The petitioners were individuals either riddled with multiple illnesses or were elderly.[9] Of note and specific relevance would be 22-year-old Reina Mae Nasino, who was also pregnant.[10]

On July 28, 2020, the Supreme Court denied the immediate provisional relief sought by petitioners, but it also relaxed the applicable remedial rules and treated the petition for provisional relief as an application for bail or recognizance.[11]

From this point on, Reina Mae Nasino's story as a PDL is of illustrative importance to this Article. As a consequence of *Almonte*, the petitioners remained as Persons Deprived of Liberty ("PDL") under the aegis of the Bureau of Corrections Act of 2013,[12] pending resolution of the aforementioned summary hearings. Reina Mae thus continued being a detainee.[13] It was during her detention in the Manila City Jail that she found out that she was pregnant. Because of this, the counsel of Reina Mae filed a motion praying for her release even before the birth of the child. However, such was denied, to public outrage and clamor.[14]

On July 1, 2020, River Nasino was born, and for a brief period the baby was allowed to stay with his mother in a makeshift room in the city jail. However, on August 13, the baby was separated from her mother, and Reina Mae was only allowed to reach her child by phone. The separation was not helpful for the child, as throughout that period the baby's condition deteriorated.[15]

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[8] *Almonte, supra* note 4.

[9] *Id.* at 4. (Zalameda, *J., separate opinion).* This pinpoint citation refers to the copy of the separate opinion uploaded to the Supreme Court website.

[10] *Id.* at 3. This pinpoint citation refers to the copy of the separate opinion uploaded to the Supreme Court website.

[11] *Id.* at 7. This pinpoint citation refers to the copy of the decision uploaded to the Supreme Court website.

[12] Rep. Act No. 10575 Rules & Regs. (2016), Rule III, § 3(u).

[13] BBC News, *Philippines: Anger over death of baby separated from jailed mother*, BBC NEWS, Oct. 14, 2020, *at* https://www.bbc.com/news/world-asia-54519788. Nasino was arrested in November 2019 and charged with illegal possession of firearms and explosives.

[14] *Id.*

[15] *Id.*

She was never to see her baby alive again.

On September 24, the baby was hospitalized, and two weeks after, he passed away.[16] As a final insult to injury, after granting Reina Mae 3 days to leave detention and grieve, the Manila RTC revised its initial order and gave Reina Mae only 6 hours out of prison to attend the wake of her child and grieve.[17] Incomprehensibly, she was also accompanied by a disproportionate number of BJMP personnel and police officers, which accompanied the harmless mother all the way to the burial of the child.[18]

Her harrowing story resonates with many PDLs in the country. Was Reina Mae entitled to some form of provisional liberty along with her co–petitioners, provided the exigency of a pandemic never before seen? Were Reina Mae's rights to be with her family, to grieve for the death of her child, and to have burial in peace, available to her despite being a PDL? Were these rights "diminished" along with the limitation on her personal liberty as a result of the charge against her? These inquiries are those that this article explores, to create a framework in understanding the rights and remedies available to PDLs all over the country.

I. THE LEGAL FRAMEWORK CONCERNING PERSONS DEPRIVED OF LIBERTY IN THE PHILIPPINES

> *"39. No free man shall be taken, imprisoned, disseised [deprived], outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.*

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[16] *Id.*

[17] Lian Buan, *From 3 days, jailed activist gets only 6 hours to say goodbye to baby River*, RAPPLER, Oct. 14, 2020, *at* https://www.rappler.com/nation/activist-reina-mae-nasino-gets-6-hours-per-day-wake-burial-baby-river-october-2020.

[18] Kristine Joy Patag, *'Short-handed' Manila jail brings detained activist to baby's wake under heavy guard*, PHILSTAR.COM, Oct. 14, 2020, *at* https://www.philstar.com/headlines/2020/10/14/2049552/short-handed-manila-jail-brings-detained-activist-babys-wake-under-heavy-guard.

> *"40. To no one will We sell, to none will We deny or delay, right or justice."*
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> —Magna Carta of 1215[19]

A. The Concept of Liberty

1. The Bill of Rights

The concept of liberty is rooted in Article III, Section 1 of the 1987 Constitution:

> 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.[20]

For a full understanding of the nature and operation of this provision, it is necessary to first provide a brief historical context of the Article wherein it is found—the Bill of Rights.

To begin, the character and nature of our Bill of Rights has its origins from the American Bill of Rights, which, in concept, fundamentally adheres to the principles laid down in the Magna Carta of 1215:

> Being substantially a copy of the American Bill of Rights, the history of our Bill of Rights dates back to the roots of the American Bill of Rights. *The latter is a charter of the individual's liberties and a limitation upon the power of the state which traces its roots to the English Magna Carta of 1215*, a first in English history for a written instrument to be secured from a sovereign ruler by the bulk of the politically articulate community that intended to lay down binding rules of law that the ruler himself may not violate. "*In Magna Carta is to be found the germ of the root principle that there are fundamental individual rights that the State—sovereign though it is—may not infringe.*"[21]

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[19] JOHN J. PATRICK, THE BILL OF RIGHTS: A HISTORY IN DOCUMENTS 22 (2003), *citing* MAGNA CARTA OF 1215.

[20] CONST., art. III, § 1.

[21] Republic v. Sandiganbayan [hereinafter "*Republic*"], G.R. No. 104768, 407 SCRA 10, 101, July 21, 2003 (Puno J, *separate opinion*) (emphasis supplied). *See also* WINSTON

From this historical mooring, we can see that the Magna Carta of 1215, the American Bill of Rights, and our own Bill of Rights follow the same general concept—that these are fundamental rights that the State cannot infringe upon.

In the Philippines, the emergence of a codified Bill of Rights divergent from Spanish law was first attempted in the 1899 Malolos Constitution—the "blueprint of the First Philippine Republic."[22] The Malolos Constitution specifically recognized, among others, the Filipino's right to freely exercise civil and political rights,[23] the right to believe and freedom thereof,[24] right to be secure in one's home,[25] right against a warrantless arrest,[26] and the right to not be "denied of his property and rights thereof whether temporarily or permanently, or be disturbed in the possession of the same, except by virtue of a judicial sentence."[27] During this time, the concept of a Bill of Rights protecting individual liberty was fairly novel in the Philippines, given that under 300 years of Spanish rule, enjoyment of liberty was not extended to Filipinos and was perceived as vested only by a prior royal grant.[28] "Rights" were then viewed a mere

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CHURCHILL, THE BIRTH OF BRITAIN (1958). Churchill also opines, in relation to the Magna Carta, that "[t]hroughout the document[,] it is implied that here is a law *which is above the King and which even he must not break*. This reaffirmation of law and its expression in a general charter is the great work of Magna Carta/ and this alone justifies the respect in which men have held it."

[22] SPENCER C. TUCKER, THE ENCYCLOPEDIA OF THE SPANISH–AMERICAN AND PHILIPPINE–AMERICAN WARS 364 (2009).

[23] CONST. (1899), art. 19. The Spanish version of the provision is as follows: "*Artículo 19—Ningún filipino que se halleen el pleno goce de sus derechos civiles y 830retext830830 podrá ser impedido en el libre ejercicio de los mismos.*"

[24] Art. 5. The Spanish text of the provision is as follows: "*Artículo 5—El Estado reconoce la 830retext830 e igualdad de todos los cultos, así como la separación de la Iglesia y del Estado.*"

[25] Art. 10. The Spanish text of the provision is, in part, as follows: "*Artículo 10—Nadie puede entrar en el domicilio de un filipino o extranjero residente en filipinas sin su consentimiento, 830retex en los casos urgentes de incendio, inundación, terremoto u otro peligro o de agresión ilegítima procedente de adentro o para auxiliar a persona que desde allí pida 830retext…*"

[26] Art. 9. The Spanish text of the provision is as follows: "*Artículo 9—Ningún filipino podrá ser preso sino en virtud de mandamiento de Juez competente.*"

[27] Art. 16. The Spanish text of the provision is as follows: "*Artículo 16—Nadie podrá ser privado temporal o perpetuamente de sus bienes y derechos, ni turbado en la posesión de ellos sino en virtud de sentencia judicial. Los funcionarios que, bajo cualquier 830retext, infrinjan esta prescripción, serán personalmente responsables del daño causado.*"

[28] Robert Aura Smith, *The Philippine Bill of Rights*, 4 THE FAR EASTERN Q. 170, 170 (1945). According to Smith, the concept of a Bill of Rights is "essentially an occidental product. For a number of centuries in British, French, and American political thought, there has grown the conviction that the rights of the individual just be preserved and safeguarded

accommodation by the kingdom, and not inherently protected by constitutional fiat:

> *The adoption of this concept in the Philippines was not as easy as might be supposed.* There were traditional modes of thought influencing the Filipino in other directions. The concept in the beginning was alien, and political experience and education had to be added to the characteristic Filipino outlook before the Bill of Rights concept could become second nature to the Filipino in his approach to the problems of group organization.
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> *The political history of the Philippines since the middle of the seventeenth century was not conducive to this type of growth.* Whatever the Filipino came to know of the liberty and the dignity of the individual under three centuries of Spanish domination was provoked rather than inspired. *Spanish rule was absolute, and under it, the liberty of the individual became a matter of the grant of the ruler rather than the right of the ruled. It was a government of men, not of laws.* The rights of the Filipinos, as rights, were no conspicuous part of Spanish political thought.[29]

Groundbreaking as it may be, the 1899 Malolos Constitution was eventually rendered ineffective in 1902, after the defeat of the Filipinos in the Philippine–American War. However, even before this war was concluded, American influence in the codification of a Bill of Rights was already taking root. The First Philippine Commission was already sent by President William McKinley as early as 1900, and it reported "that the Filipino people wanted above all a 'guarantee of those fundamental human rights which Americans hold to be the natural and inalienable birthright of the individual but which under Spanish domination in the Philippines had been shamefully invaded and ruthlessly trampled upon.'[30] With that initial observation, President McKinley, in his Instruction of April 7, 2000, authorized the Second Philippine Commission to create a civil government and impose "inviolable rules," which would stand as the precursor to our

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not through the authority of an individual, not through membership in a particular group or party, not through reliance upon force of arms, *but rather through the accepted processes of declared constitutional law."*

[29] *Id.* (Emphasis supplied).

[30] *Republic, supra* note 21, at 94 (Puno, *J., separate opinion*), *citing* JOAQUIN BERNAS, A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS 2–3 (1971), *citing* 1 REPORT OF THE (SCHURMAN) PHILIPPINE COMMISSION 84–85 (1900)

Bill of Rights.[31] These included, among others, the following rights that exist until today in our present Bill of Rights:

- That no person shall be deprived of life, liberty, or property without due process of law;
- That no person shall be twice put in jeopardy for the same offense or be compelled to be a witness against himself,
- That the right to be secure against unreasonable searches and seizures shall not be violated;
- That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for redress of grievances."[32]

These were adopted, with additions thereafter, in the Philippine Bill of 1902, the Jones Law, and then in the Tydings McDuffie Law of 1934.[33] Eventually, these protections found their way in the Bill of Rights of the 1935 Constitution, which had one (1) section and twenty-one (21) subsections.[34] In essence, as opined then by Senator Claro M. Recto, the 1935 Bill of Rights was a reproduction of the Charter of the United States.[35] Specifically, with regard to the right to liberty as textualized in the 1935 Bill of Rights, the Supreme Court interpreted the protection of liberty and individual freedom under the 1935 Constitution as one held in the highest regard.[36]

The 1935 Constitution was then controversially replaced almost four decades later by the 1973 Constitution, as affirmed by the Supreme Court in the case of *Javellana v. Executive Secretary*.[37] With it came the 1973 Bill of Rights

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[31] *Id.*, *citing* JOAQUIN BERNAS, A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS 13–14 (1971), *citing* GEORGE MALCOLM, CONSTITUTIONAL LAW OF THE PHILIPPINE ISLANDS 223 (2ND ED. 1926).

[32] *Id.*

[33] *Id.* at 95.

[34] CONST. (1935), art. III.

[35] *Republic*, *supra* note 21, at 96 (Puno, *J.*, *separate opinion*), *citing* ENRIQUE FERNANDO, POLITICAL LAW 42 (1953).

[36] People v. Hernandez [hereinafter "*Hernandez*"], 99 Phil. 515, 551–52 (1956). (Emphasis supplied.)

[37] G.R. No. L-36142, 50 SCRA 30, 141, Mar. 31, 1973. The Dispositive of that case infamously held the following: "ACCORDINGLY, by virtue of the majority of six (6) votes of Justices Makalintal, Castro, Barredo, Makasiar, Antonio and Esguerra with the four

that was almost a reproduction of its predecessor, but with two new additions. These were "the recognition of the people's right to access to official records and documents and the right to speedy disposition of cases."[38] In total, there were twenty-three (23) sub-paragraphs.[39] The 1973 Bill of Rights also theoretically strengthened the right against unreasonable searches by adding the phrase "that evidence obtained therefrom shall be inadmissible for any purpose in any proceeding."[40] This was the codification of the "fruit of the poisonous tree doctrine," first established in the case of *Silverthorne Lumber Co. v. United States*,[41] and eventually coined as such by U.S. Supreme Court Justice Felix Frankfurter in *Nardone v. United States*.[42] This doctrine, alternatively known as the "exclusionary rule," was first adopted in our jurisdiction in the landmark case of Stonehill v. Diokno,[43] prior to its codification in the 1973 Constitution.

Thirteen years later, Ferdinand Marcos was ousted from office; President Corazon Aquino assumed office after the bloodless "People Power Revolution," and the 1973 Constitution was abrogated. During the interim and before the drafting and ratification of the 1987 Constitution, a revolutionary government was established, one "bound by no constitution or legal limitations, except treaty obligations that the revolutionary government, as the *de jure* government in the Philippines, assumed under international law."[44] Three months later, President Aquino then formed the 1986 Constitutional Commission and appointed its fifty-five (55) members.[45] The crafting of the 1987 Constitution was done with "a conscious effort to place legal obstacles to dictatorship,"[46] moreso since it was a "reaction to the country's martial law experience."[47] Thus, the existing

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(4) dissenting votes of the Chief Justice and Justices Zaldivar, Fernando and Teehankee, all the aforementioned cases are hereby dismissed. This being the vote of the majority, there is no further judicial obstacle to the new Constitution being considered in force and effect."

[38] *Republic*, *supra* note 21, at 98 (Puno, *J., separate opinion*), .

[39] CONST. (1973), art. IV.

[40] CONST. (1973), art. IV, § 4(2)

[41] 251 U.S. 385 (1920).

[42] 308 U.S. 338 (1939). *See also* Legal Information Institute, *Fruit of the Poisonous Tree,* CORNELL LAW SCHOOL, *at* https://www.law.cornell.edu/wex/fruit_of_the_poisonous_tree.

[43] G.R. No. L-19550, 5 SCRA 466, June 19, 1967.

[44] DANTE GATMAYTAN, CONSTITUTIONAL LAW IN THE PHILIPPINES: GOVERNMENT STRUCTURE (2015), *citing Republic*, *supra* note 21.

[45] *Id.*

[46] *Id.*

[47] Maria Ela L. Atienza, *The 1986 Constitutional Commission and the 1987 Constitution: Backgrounds, Processes, and Outputs in* CHRONOLOGY OF THE 1987 PHILIPPINE CONSTITUTION

Bill of Rights in the 1987 Constitution was strengthened, intended to provide greater protection from government, given that Philippine society at the time was reeling from a Marcos dictatorship.[48] Specifically, Sections 8, 12 and 18(1) were added to the 1987 formulation of Bill of Rights. Section 12 is one example of the reactive nature of the 1987 Constitution—it is a prohibition on incommunicado detention, one that was rampant during the dictatorship. In the words of Constitutional Commission delegate Fr. Joaquin Bernas, S.J., the 1987 Bill of Rights "more jealously safeguards the people's 'fundamental liberties in the essence of a constitutional democracy."[49]

From this brief historical analysis of the Bill of Rights, we see that the concept of liberty contained therein is liberty from government restraint. It is a protection "against arbitrary and discriminatory use of political power" and it "guarantees the preservation of our natural rights, which include personal liberty and security against invasion by the government or any of its branches or instrumentalities"[50] Through the years, the Bill of Rights grew and adapted to the excesses committed by past iterations of Philippine government—the adoption of clauses codifying the fruit against the poisonous tree doctrine and prohibiting all forms of incommunicado detention is evidence of this growth. However, an indispensable nuance must be highlighted: it is liberty *only from* government restraint. The Court clarified this rule in the landmark case of *People v. Marti*, as follows:

> *That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals* finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:
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> > First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. *Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals.* What the Bill of Rights does is to declare some

10 (Maria Ela L. Atienza ed., 2019), *at* https://www.idea.int/sites/default/files/publications/chronology-of-the-1987-philippine-constitution.pdf.

[48] *Id.* at 10-11.

[49] *Republic*, *supra* note 21, at 99 (Puno, *J., separate opinion*),

[50] Allado v. Diokno, G.R. No. 113630, 232 SCRA 192, 209–10, May 5, 1994.

> forbidden zones in the private sphere inaccessible to any power holder.[51]

In sum, the Bill of Rights consists of rights afforded to an individual which are in turn, limitations solely against government, not against private individuals.

2. The Right to Liberty

The text of Article III, Section 1 of the Constitution is nearly identical to the due process clauses found in the Fifth Amendment and Section 1 of the Fourteenth Amendment of the US Constitution.[52] The US Supreme Court has interpreted this clause as one "universal in [its] application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality."[53] It is a right available "to all within its reach, a liberty that includes certain specific rights that allow persons within a lawful realm, to define and express their identity."[54] According to our own Supreme Court, it is an expansive concept providing "opportunity to do those things which are ordinarily done by free men."[55]

The analysis of constitutionalist and former Chief Justice Enrique Fernando in *An Inquiry into the Constitutional Right to Liberty* is instructive in

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[51] People v. Marti, G.R. No. 81561, 193 SCRA 57, 67, Jan. 18, 1991, *citing* Sponsorship Speech of Commissioner Bernas, I RECORD CONST. COMM'N 674 (1986). (Emphasis supplied.)

[52] U.S. CONST. amend. 5 & 14. The 5th Amendment provides the following: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation." Section 1 of the 14th Amendment to the United States Constitution provides the following: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*." *See also 14th Amendment*, HISTORY.COM, Nov. 9, 2009, *at* https://www.history.com/topics/black-history/fourteenth-amendment (last accessed Feb. 21, 2020).

[53] Yick Wo v. Hopkins, 118 U. S. 356, 369 (1866).

[54] Obergefell v. Hodges [hereinafter "*Obergefell*"], 576 U.S. 644, 644 (2015).

[55] *Rubi*, *supra* note 1, at 705, *citing* Cummings v. Missouri, 4 Wall. 277 (1866), Wilkinson v. Leland, 27 U.S. 627 (1829); Williams v. Fears, 179 U. S. 274 (1900); Allgeyer v. Louisiana, 165 U. S. 578 (1896); State v. Kreutzberg, 114 Wis. 530 (1902).

expounding on the nature of the right to liberty as found in our Constitution.[56] He defined liberty as "the right to exist and the right to be free from arbitrary personal restraint or servitude."[57] From this definition, Justice Fernando divides the right to liberty into two aspects: (1) a positive aspect that presents liberty as expansive, consisting of freedoms that are necessary for existence, and (2) a negative aspect that presents liberty that may be limited by government regulation, provided that it is not done arbitrarily.

i. The Positive Aspect of Liberty: Expansive and Necessary for Existence and Self–Actualization

As to this positive aspect, Justice Fernando makes reference to an exercise of liberty that is wide in scope and generally beyond government restraint, anchored on the principle that liberty "mean[s] more than just the right to be let alone…it has a positive meaning as well, opportunity or capacity or ability to do something, freedom to achieve."[58] The right to liberty thus encompasses the most basic "right to exist."[59] An individual is therefore "not to be deprived of that opportunity for the development of his personality."[60] Ultimately, the positive aspect of liberty refers to "the maintenance of such an atmosphere that men can be their best selves."[61]

Therefore, inasmuch as liberty can be limited when public order, public health, safety, or the general welfare demand it, the positive view presents an aspect of liberty that cannot be interfered with—a "domain of free activity that cannot be touched by government or law at all, whether the command is specially against him or generally against him and others."[62] Thus, while government may restrain liberty when necessary and in proper cases, "it should not be carried so far as to deprive an individual of the free play of thought, of opinion, and of action."[63] It can be seen therefore from

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[56] Enrique M. Fernando, *An Inquiry into the Constitutional Right to Liberty*, 26 PHIL. L.J. 178 (1951).

[57] *Id.* at 178, *citing Rubi*, *supra* note 1.

[58] *Id.* at 179.

[59] *Id.* at 178.

[60] *Id.* at 186.

[61] Augusto Caesar Espiritu, *Constitutionalism and the Positive Concept of Liberty,* 31 PHIL. L.J. 654, 657 (1956). Both Fernando, *supra* note 59, and Espiritu refer to Laski in their presentation of a positive formulation of liberty.

[62] Fernando, *supra,* at 179.

[63] *Id.* at 186.

these concepts that within the positive aspect alone, the right to liberty is expansive in nature, embracing any and all means that allow an individual to maximize existence—limitations, if any, cannot infringe upon one's right to exercise liberties that come part and parcel with existence. To briefly contextualize this view, reference can be made to 14th Amendment substantive due process jurisprudence in the United States, which reached its "crescendo" in 2015 with the US Supreme Court's decision in *Obergefell v. Hodges*.[64]

According to Smith and Robinson, it is from this line of jurisprudence, culminating in *Obergefell*, from which the "base value of liberty is understandably most visible."[65] Through Justice Anthony Kennedy, *Obergefell* has underscored the value of liberty, as the decision "promotes and protects human dignity itself, or in other words, the intrinsic rights of every human being."[66] For this reason, "liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."[67] Therefore, in line with this conception of liberty, the U.S. Supreme Court in *Obergefell* famously ruled in favor of same sex marriage, because undeniably "choices about marriage shape an individual's destiny," with marriage generally beyond the ambit of government, and safely ensconced as an immutable individual liberty.[68] For Smith and Robinson, *Obergefell* is thus the penultimate moment of this evolution to a positive concept of liberty in the United States:

> With this, Kennedy signaled that liberty, and the synonymous concept of dignity, was something more than a list of discrete activities. *Instead, the constitutional promise of liberty embodies a concept of human good that enables the citizenry to "define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."* By the time of the Court's decision in *Obergefell*, then, Kennedy fully embraced the value of constitutional liberty not only as formative for the scope of investigation of fundamental rights, *but as an end goal in and of itself*. As Kennedy noted, "while *Lawrence* confirmed a dimension of freedom that allows individuals to engage in intimate association without criminal liability, it does not follow that

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[64] Robert J. Smith & Zoe Robinson, *Constitutional Liberty and the Progression of Punishment*, 102 CORNELL L. REV. 413, 458 (2017)

[65] *Id.* at 458. According to Smith and Robinson, this body of jurisprudence went through a significant evolution upon the arrival of Justice Anthony Kennedy in the U.S. Supreme Court.

[66] *Id.* at 457.

[67] *Id.* at 458, *citing Obergefell*, *supra* note 54, at 654.

[68] *Id.* at 458, *citing Obergefell*, *supra* note 54, at 657.

> freedom stops there. Outlaw to outcast may be a step forward, but it does not achieve the full promise of liberty." *Liberty, then, is both formative and conclusory; a starting point and the goal.*[69]

In the Philippines, the Supreme Court has its own string of jurisprudence that characterizes liberty in this positive view. The Court mentioned in the 1919 case of *Rubi v. Provincial Board of Mindoro* that civil liberty is indeed broad enough to encompass rights of the following nature:

- 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.[70]

In *Rubi*, Justice Malcolm further opined that "[t]he 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."[71] To this, Justice Marvic Leonen, almost a century later, in his separate opinion in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, said "[i]t is in this sense that the constitutional listing of the objects of due process protection *admits amorphous bounds*."[72] This characterization implied that the exercise and scope of the right to liberty is broad and flexible.

Consistent with this framework, the Court noted in *People v. Hernandez* that multiple provisions in the Bill of Rights exist to further protect one's right to liberty—it effectively states that the right to liberty is not only lodged in Section 1, but also in the other provisions of the Bill of Rights.[73] Former Chief Justice Concepcion in that case explained the

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[69] *Id.* at 461. (Emphasis supplied.) This landmark decision presented the peak of this positive conception of liberty. This conception evolved from a string of cases, starting from Justice Harlan's dissent in Poe v. Ullman (1961) from the majority that upheld the ban of contraceptives in Connecticut and the prohibition on doctors from recommending the same. *Lawrence* here refers to Lawrence v. Texas [539 U.S. 558 (2003)], where the U.S. Supreme Court held that by virtue of the due process clause "a state cannot criminalize consensual intercourse between two people of the same sex."

[70] *Rubi*, *supra* note 1, at 705.

[71] *Id.*

[72] Samahan ng mga Progresibong Kabataan v. Quezon City [hereinafter "*SPARK*"], G.R. No. 225442, 835 SCRA 350, 447, Aug. 8, 2017 (Leonen, *J., separate opinion).* (Emphasis supplied.)

[73] *Hernandez*, *supra* note 36, at 551–52. (Emphasis supplied.)

transcendental nature and importance of the right to liberty as found in the 1935 Constitution, *viz.*:

> Furthermore, individual freedom is too basic, too transcendental and vital in a republican state, like ours, to be denied upon mere general principles and abstract consideration of public safety. *Indeed, the preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights*, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the *protection of several aspects of freedom*.[74]

This same theory, originally articulated by Chief Justice Concepcion in 1956, was relied upon by the Court, or by its members in concurrence or dissent, in multiple cases.

First, it was cited by former Chief Justice, then Justice, Enrique M. Fernando in his 1969 dissent in *Baking v. Director of Prisons*, where he disagreed with the ruling of the majority that the petitioners' "continued detention for more than eighteen years, after the penalty had been reduced to ten years imprisonment" was valid under the law.[75] In this case, the majority ruled that Baking could not avail of the writ of habeas corpus because the good conduct and time allowance rule in Article 97 of the Revised Penal Code (RPC) did not apply to Baking as he was a detainee without a conviction, therefore the 18 years in detention would not be credited.[76] The majority held that there is "no doubt that Article 97 does not embrace detention prisoners within its reach."[77] In effect, "the allowance for good conduct 'for each month of good behavior' then unquestionably refers to good behavior of a prisoner while he is serving his term as a convict and not otherwise."[78] Justice Fernando dissented from this reasoning, since Baking's detention essentially "*constitutes a denial of liberty without due process*" and was thus prohibited by the Constitution.[79] He presented his argument as follows:

> Instead, the decisive question for me is whether the admitted fact of continued detention for more than eighteen years, after the

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[74] *Id.* (Emphasis supplied.)

[75] Baking vs. Director of Prisons [hereinafter "*Baking*"], G.R. No. L-30364, 28 SCRA 850, 863, July 28, 1969 (Fernando, *J.*, *dissenting*).

[76] *Id.*

[77] *Id.* at 856.

[78] *Id.*

[79] *Id.* at 863 (Fernando, *J.*, *dissenting*).

> penalty had been reduced to ten years imprisonment, constitutes a denial of liberty without due process. That the Constitution prohibits. *The historic role of due process as a safeguard of freedom cannot be sufficiently stressed. It bears repeating that freedom is the rule and restraint the exception.* The eloquent language of the Chief Justice Concepcion in *People v. Hernandez* comes to mind...[80]

It is worthy to note that as of today, the ruling of the majority of the Court in *Baking* was rendered inapplicable by the passage of Republic Act No. 10592, which repealed Article 97 of the RPC.[81] This law changed the word "prisoner" in Article 97 of the RPC to "offender." Now, Justice Fernando's dissent is the proper application of Article 97 of the RPC, as amended.

Second, Justice Fernando reiterated his dissent in *Baking* in his 1973 concurring and dissenting opinion in *Aquino Jr. v. Enrile*, a case involving multiple petitions for habeas corpus and the question of whether or not the validity of Proclamation No. 1081 was justiciable. In this case, the petitioners, which included Benigno "Ninoy" Aquino Jr., Ramon Mitra Jr., Francisco Rodrigo, and Jose "Pepe" W. Diokno, were arrested pursuant to the aforementioned proclamation.[82] The Supreme Court dismissed all the petitions on the basis of the political question doctrine, as five of the justices voted that the validity of Proclamation No. 1081 was not a justiciable issue.[83] Then Justice Fernando concurred with the ruling of the court in denying the petition only with respect to Ninoy Aquino Jr. for the sole reason that charges have already been filed against him, but dissented on the dismissal of the petitions for habeas corpus on the rest of the petitioners and the non–justiciability of Proclamation No. 1081.[84] Of note is his dissent in relation to petitioner Francisco Rodrigo, whom he believed should have been able to avail of the writ of habeas corpus. For him, despite the release of Rodrigo from detainment, the conditions imposed upon him were not tantamount to "liberty in a meaningful sense":

> There is novelty in the question raised by petitioner Rodrigo. Nor is that the only reason why it matters. It is fraught with significance not only for him but also for quite a number of others in a like predicament. They belong to a group released from confinement.

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[80] *Id.* at 863–64 (Fernando, *J.*, *dissenting*).

[81] Rep. Act No. 10592 (2013), § 3. "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code."

[82] *In re* Aquino, Jr. v. Enrile, G.R. No. L-35546, 59 SCRA 183 (1974).

[83] *Id.*

[84] *Id.* (Fernando, *J.*, *concurring and dissenting*).

> *They are no longer detained. Ordinarily that should suffice to preclude resort to the remedy of habeas corpus.* Offhand, it may be plausibly asserted that the need no longer exists. The prison wall, to paraphrase Chafee, is no longer there; it has fallen down. What is there to penetrate? That is just the point, petitioner Rodrigo complains. That is not really true, or only true partially. *There are physical as well as intellectual restraints on his freedom. His release is conditional. There are things he cannot say, places he cannot go. That is not liberty in a meaningful sense. This great writ then has not lost its significance for him, as well as for others similarly situated.*[85]

Third, the decision *in Hernandez* was referenced by former Chief Justice, then Justice, Hilario Davide Jr. as *ponente* in *People v. Donato*. In this case, the Court ruled that inasmuch as bail is available as a matter of right to an accused charged with a bailable offense, accused Rodolfo Salas had waived his right to bail.[86] The *ponencia* cited *Hernandez* in support of the argument that bail was a matter of right in cases where the offense charged is lower than *reclusion perpetua* vis-à-vis liberty as a transcendental right:

> Therefore, before conviction bail is either a matter of right or of discretion. It is a matter of right when the offense charged is punishable by any penalty lower than *reclusion perpetua*. To that extent the right is absolute.
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> *And so, in a similar case for rebellion, People vs. Hernandez, et al., 99 Phil. 515, despite the fact that the accused was already convicted, although erroneously, by the trial court for the complex crime of rebellion with multiple murders, arsons and robberies, and sentenced to life imprisonment, We granted bail in the amount of P30,000.00 during the pendency of his appeal from such conviction.* To the vigorous stand of the People that We must deny bail to the accused because the security of the State so requires, and because the judgment of conviction appealed from indicates that the evidence of guilt of Hernandez is strong, We held: "…Furthermore, individual freedom is too basic, too transcendental…"[87]

Fourth, Justice Marvic Leonen in his separate opinion in *SPARK* reiterated this principle from *Hernandez* when he concurred with the result of the majority, which struck down curfew ordinances in multiple cities in

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[85] *Id.* at 299 (Fernando, *J., concurring and dissenting)* (Emphasis supplied.)
[86] People v. Donato, G.R. No. 79269, 198 SCRA 130 (1991).
[87] *Id.* at 144.

Metro Manila, except that of Quezon City. The ratiocination was used as an illustration by Justice Leonen when he asserted the following:

> "Life," then, is more appropriately understood as the *fullness of human potential*: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence. "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the *duty of the government to facilitate this empowering existence*. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions. As Justice George Malcolm, speaking for this Court in 1919, articulated…
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> It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty *encompasses a penumbra of cognate rights that is not fixed but evolves—expanding liberty—alongside the contemporaneous reality in which the Constitution operates. People v. Hernandez illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause*.[88]

Fifth, Justice Leonen also cited his separate opinion in *SPARK* in his dissent in *Zabal v. Duterte* (2019) and in his separate opinion in *Almonte v. People* (2020). In *Zabal*, Justice Leonen disagreed with the majority that upheld Proclamation No. 475 as a valid exercise of police power.[89] Proclamation No. 475 was issued by President Duterte, declaring a state of calamity in several barangays in Boracay and ordering a temporary closure of the same from April 26 to October 25, 2018, in order to initiate the rehabilitation of Boracay Island.[90] Justice Leonen referred to his separate opinion in *SPARK*, including the portion citing *Hernandez*. In this dissent, he explained the relationship of the rights to life and liberty as follows:

> The rights to life and liberty are inextricably woven. *Life is nothing without liberties*. Without a full life, the fullest of liberties protected by our constitutional order will not happen.[91]

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[88] *SPARK*, *supra* note 72, at 446–47 (Leonen, *J., separate opinion)*.

[89] Zabal v. Duterte, G.R. No. 238467, Feb. 12, 2019 (Leonen, *J., dissenting*).

[90] *Id.*

[91] *Id.* at 5. This pinpoint citation refers to the copy of this dissenting opinion uploaded to the Supreme Court Website.

In *Almonte*, Justice Leonen in his separate opinion agreed with the Court in unanimously treating the petitions for provisional release as applications for bail or recognizance.[92] He referred once more to his separate opinion in *SPARK* when he stated that "the right to life and liberty under the Bill of Rights evolves and expands to our current realities."[93]

The opinions in these cases re–affirm the characterization of the right to liberty in *Rubi*, *Hernandez*, and other cases: amorphous and expansive, emanating from Article III, Section 1, and encompassing the inherent right to exist and maximize opportunity. This view of liberty establishes "a zone of protection, a line that is drawn where the individual can tell the Government: [b]eyond this line you may not go."[94] Through this view, limitations on any of the multiple liberties enjoyed by a PDL cannot go beyond infringing the right of one to exist and enjoy other rights beyond and above physical liberty.

ii. The Negative Aspect of Liberty: A Guarantee Only Against Arbitrary Restraint

On the other hand, the negative aspect of liberty is predicated on an inverse view—liberty is not a license to do anything that a person pleases. The right to liberty is "the right to be free from arbitrary personal restraint or servitude"[95]:

> The Supreme Court in the same case [of Rubi v. Provincial Board of Mindoro], however, gives the warning that *liberty as understood in democracies, is not license*. Implied in the term is restraint by law for the good of the individual and for the greater good, the peace and order of society and the general well-being. *No man can do exactly as he pleases. Every man must renounce unbridled license*. In the words of Mabini as quoted in the same case, "liberty is freedom to do right and never wrong; it is ever guided by easonn and the upright and honorable conscience of the individual."[96]

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[92] *Almonte*, *supra* note 4 (Leonen, *J.*, *separate opinion*).

[93] *Id.* at 59 (Leonen, *J., separate opinion).* This pinpoint citation refers to the copy of this separate opinion uploaded to the Supreme Court Website.

[94] Smith & Robinson, *supra* note 64, at 457.

[95] Fernando, *supra* note 56, at 178 .

[96] *Id.* (Emphasis supplied.) *See also* Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, G.R. No. L-24693, 20 SCRA 849, July 31, 1967.

At its very core, this view is based on the reality that humans exist in a community, thus, the right to liberty in our Constitution should be analyzed and applied from the context of a social organization. It is therefore "not immunity from reasonable regulations and prohibitions imposed in the interest of the community" tantamount to unbridled exercise of right, but "the absence of arbitrary restraint."[97] There is, in turn, an "ancient obligation of the individual to assist in the protection of the peace and good order of his community…recognized in all well-organized governments."[98] To further expound, Justice John Marshall Harlan provided an instructive explanation in the landmark ruling of *Jacobson v. Massachusetts*, a case where the U.S. Supreme Court affirmed the power of states to enact and enforce compulsory vaccination laws:

> [L]iberty secured by the Constitution of the United States does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.
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> *There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government—especially of any free government existing under a written Constitution—to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint to be enforced by reasonable regulations, as the safety of the general public may demand.*"[99]

Our Supreme Court has also applied or referred to this negative concept of liberty in multiple cases, similar with the ruling in *Jacobson* when it validated restrictions to liberty in view of the concerns of the community.

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[97] Fernando, *supra* note 56, at 178.

[98] United States v. Pompeya, 31 Phil. 245, 252 (1915) *citing* BOOK 1 COOLEY'S BLACKSTONE'S COMMENTARIES, 343; BOOK 4, 122.

[99] Jacobson v. Massachusetts, 197 U.S. 11, 26, 29 (1905). (Emphasis supplied.).

In *United States v. Ling Su Fan*, the Court clarified that this provision "does not prohibit the enactment of laws by the legislative department of the Philippine Government, depriving persons, of life, liberty, or property. It simply provides that laws shall not be enacted which shall deprive persons of life, liberty, or property without due process of law."[100] Thus, when the legislature exercises police power, defined by our Court in *United States v. Toribio* as the power "vested in the legislature by the constitution, to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without,"[101] it will not be in violation of the Constitution, provided that due process, and other recognized limitations in the Constitution, are afforded. The same rule would apply to the exercise of the legislative's other two inherent powers, taxation and eminent domain, which the State utilizes when it interferes with private property.[102] The limited breadth of police power by the legislature was reiterated by the Court 100 years later *Social Justice Society v. Dangerous Drugs Board* as follows:

> Thus, *legislative power remains limited* in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. *The substantive constitutional limitations are chiefly found in the Bill of Rights* and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.[103]

In *Calalang v. Williams*, the Court affirmed the rules and regulations promulgated by the National Traffic Commission pursuant to Commonwealth Act 548, over the objection of the petitioners that these

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[100] United States v. Ling Su Fan, 10 Phil. 104, 108–09 (1908).

[101] United States v. Toribio, 5 Phil. 85, 93 (1910).

[102] Churchill v. Rafferty, 32 Phil. 580, 605–06 (1915). The Court enumerated the three powers as follows: "The basic idea of civil polity in the United States is that government should interfere with individual effort *only to the extent necessary to preserve a healthy social and economic condition of the country*. State interference with the use of private property may be exercised in three ways. *First, through the power of taxation, second, through the power of eminent domain, and third, through the police power*. Buy the first method it is assumed that the individual receives the equivalent of the tax in the form of protection and benefit he receives from the government as such. By the second method he receives the market value of the property taken from him. But under the third method the benefits he derives are only such as may arise from the maintenance of a healthy economic standard of society and is often referred to as *damnum absque injuria* (loss without injury)."

[103] Social Justice Society v. Dangerous Drugs Board, G.R. No. 157870, 570 SCRA 410, 423 (2008). (Emphasis supplied.)

rules and regulations "constitute an unlawful interference with legitimate business or trade and abridge the right to personal liberty and freedom of locomotion."[104] The Court ratiocinated that such rules were made for the greater interest of public welfare and social justice:

> The petitioner further contends that the rules and regulations promulgated by the respondents pursuant to the provisions of Commonwealth Act No. 548 [limits the time kalesas are allowed on the roads] constitute an unlawful interference with legitimate business or trade and abridge the right to personal liberty and freedom of locomotion. Commonwealth Act No. 548 was passed by the National Assembly in the exercise of the paramount police power of the state.
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> Said Act...aims to promote safe transit upon and avoid obstructions on national roads, in the interest and convenience of the public. In enacting said law, therefore, the National Assembly was prompted by considerations of public convenience and welfare ... *Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations.*[105]

The principle that the right to liberty of all persons, including aliens, should be viewed in the context of a community was also applied in the case of *Ichong v. Hernandez*, where the Court affirmed Republic Act No. 1180, known as "An Act to Regulate the Retail Business." The Supreme Court affirmed the validity of this statute, which nationalized the retail trade business, because "alien dominance over the economic life of the country is not desirable."[106] The Court, in effectively limiting the liberty to contract and engage in business by aliens in the Philippines, further elucidated:

> But there has been a general feeling that *alien dominance over the economic life of the country is not desirable and that if such a situation should remain, political independence alone is no guarantee to national stability and strength*...the government as the instrumentality of the national will, has to step in and assume the initiative, if not the leadership, in the struggle for the economic freedom of the nation...thus ... it (the Constitution) envisages an organized movement for the protection of the nation not only against the possibilities of armed

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[104] Calalang v. Williams, 70 Phil. 726, 733 (1940). The Court has stated in multiple cases that the right of locomotion is included under the right to liberty. *See Rubi*, *supra* note 1, at 705; Duran v. Abad Santos, 75 Phil. 410, 431 (1945).

[105] *Id.* (Emphasis supplied).

[106] Ichong v. Hernandez, 101 Phil. 1155, 1171 (1957).

> invasion but also against its economic subjugation by alien interests in the economic field. (Phil. Political Law by Sinco, 10th ed., p. 476.)…[O]bjectionable characteristics of the exercise of the retail trade by the aliens, which are actual and real, *furnish sufficient grounds for legislative classification of retail traders into nationals and aliens*…this is the prerogative of the law-making power.
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> The seriousness of the Legislature's concern for the plight of the nationals as manifested in the approval of the radical measures is, therefore, fully justified… As the repository of the sovereign power of legislation, *the Legislature was in duty bound to face the problem and meet, through adequate measures, the danger and threat that alien domination of retail trade poses to national economy.*[107]

As a final illustrative case for the negative aspect of liberty, in *SPARK*, the Court affirmed the curfew imposed by Quezon City but rejected the curfews imposed by other cities in Metro Manila.[108] In this case, the Court reiterated that the right to travel under Article III, Section 6 of the Constitution "is a right embraced within the general concept of liberty," and therefore it must be shown that any limitations thereto: "*(1) serve the interest of national security, public safety, or public health*; and *(2) are provided by law.*"[109] Applying the compelling state interest and the least restrictive means tests, only Quezon City's curfew ordinance passed the scrutiny of the Court as a valid restriction to one's right to liberty of travel.[110] This second aspect would also apply to the concomitant protection of a person's right to *physical liberty* as provided in local and international law,[111] but one that may be limited via incarceration when the detainee stands to be a danger to society, or a flight risk, a limitation supported by the rule that in these instances bail would not be available.[112]

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[107] *Id.* at 1171–72, 1176, 1186–87.

[108] *SPARK*, *supra* note 72.

[109] *Id.* at 403, 405. (Emphasis supplied).

[110] *Id.*

[111] Froilan M. Bacungan, Universal Human Rights: A Reality in the Constitution of the Philippines 225–32 (2012).

[112] Enrile v. Sandiganbayan, G.R. No. 213847, 767 SCRA 282, 296 (2015). In this case the Court, in affirming that Sen. Enrile could avail of bail, said: "This national commitment to uphold the fundamental human rights as well as value the worth and dignity of every person has authorized the grant of bail not only to those charged in criminal proceedings but also to extraditees upon a clear and convincing showing: *(1) that the detainee will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances.*"

These two aspects of liberty—(1) the positive aspect of liberty that is tantamount to enlargement of opportunity and freedom of existence, and (2) the negative aspect of liberty that is essentially absence of arbitrary restraint—are two "broad guarant[ees]" of liberty as provided in Article III, Section 1 of the Constitution.[113] The multiple freedoms—"liberties"—that emanate from it as referred to in *Rubi, Hernandez,* and jurisprudence subsequent thereto, can be classified in two:

(1) When liberty is viewed in the *Positive Aspect*, this would involve the freedom of belief, whether secular or religious, the freedom to express such beliefs, and the freedom to associate with others of a like persuasion; and

(2) When liberty is viewed in the *Negative Aspect*, this would involve personal freedoms which includes the constitutional rights of the accused as an assurance that such liberty of the person may not lightly be interfered with by state action.[114]

This two–pronged characterization of liberty is found in the Bill of Rights of our Constitution, in that of the United States, and in other multiple state constitutions around the world.[115] How is this applied, and what are the standards used in our jurisdiction?

When what is involved is a legislative, or delegated legislative, action restricting liberty in either the positive or negative sense, the Supreme Court determines if "due process"—this being the primary constitutional safeguard—is violated in the exercise of police power. That was the principle applied in the earlier examples of *Calalang, Ichong, SPARK,* and *Zabal*, wherein the constitutionality of the exercise of police power through statutes, ordinances, and the like, was the *lis mota*. In relation to this, our Supreme Court has held that "*mere general principles and abstract consideration of public safety*," cannot immediately operate to deprive one person of liberty, implying that there must be concrete evidentiary and legal basis.[116] The relevant jurisprudential tests that have been applied by our Courts in cases where limitations are permissible

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[113] Fernando, *supra* note 56, at 179.

[114] *Id.*

[115] *Id.* at 181.

[116] *Hernandez, supra* note 36, at 551. (Emphasis supplied.)

would be the clear and present danger test, the compelling state interest test, and the least restrictive means test, to name a few.[117]

When what is involved is an executive act restricting liberty in the positive sense, the standard required by due process governs, and consequently the same tests are applicable. For instance, if the President orders the Bureau of Corrections to prevent any form of prayer and worship in a detention center under its supervision, it can be challenged by detainees on the ground that it restricts liberty, specifically freedom of belief. The Court will thus apply the strict scrutiny test, to see if the freedom sought to be exercised was unconstitutionally curtailed.

On the other hand, *when what is involved is an executive act restricting liberty in the negative sense*, there must be strict compliance with the applicable laws and/or rules before liberty is restricted, in order for the restriction to not be "arbitrary." For example, if a person is to be arrested, the arresting officers must have a warrant, or it must be strictly pursuant to recognized exceptions for warrantless arrests. Likewise, detainment can only be valid as long as it is not in an *incommunicado*, secret, or solitary detention center. Otherwise, the detainee can resort to applying for a writ of habeas corpus.

This is the concept of liberty as applicable in our jurisdiction, and the same concept that would be used to analyze the rights of a PDL. In either aspect of liberty, reasonable limitations on a PDL may be imposed, provided that there is strict adherence to the antecedent requisites and adequate evidentiary basis before liberty is curtailed in any way, except to those rights that cannot be, in any way, restricted. Proceeding from this, the next points of inquiry would now be to (1) define a PDL, (2) determine how does this concept of liberty applies to PDLs and the applicable laws in our jurisdiction constituting the legal framework in the Philippines, and (3) compare how existing legal frameworks in the European Union and the United States

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[117] The following are illustrative cases. *For Clear and Present Danger Test* in relation to free speech and right to associate, *see* Chavez v. Gonzalez, G.R. No. 168338, 545 SCRA 441, Feb. 15, 2008; David v. Macapagal-Arroyo, G.R. No. 171396, 489 SCRA 160, May 3, 2006; Gonzalez v. Katigbak, G.R. No. L-69500, 137 SCRA 717, July 22, 1985; Reyes v. Bagatsing, G.R. No. 65366, 125 SCRA 553, Nov. 9, 1983; Adiong v. Comelec, G.R. No. 103956, 207 SCRA 712, March 31, 1992; Ang Ladlad v. Comelec, G.R. No. 190582, 618 SCRA 32, Apr. 8, 2010; Bayan v. Ermita, G.R. No. 169838, 488 SCRA 226, Apr. 25, 2006. *For Compelling State Interest Test and exceptions thereto, see* Estrada v. Escritor, AM No. P-02-1651, 492 SCRA 1, Aug. 4, 2003; Ebralinag v. Division Superintendent of Schools of Cebu, G.R. No. 95770, 219 SCRA 256, Mar. 1, 1993; Islamic Dawah Council v. Executive Secretary, G. R. No. 153888, 405 SCRA 497, July 9, 2003. *For Least Restrictive Means Test, see SPARK, supra* note 72.

afford and enforce the rights of PDLs through their respective legal standards and tests.

B. The Liberties of a Person Deprived of Liberty—Definition and General Application of the Right to Liberty to PDLs

The Implementing Rules of Republic Act No. 10575, known as "The Bureau of Corrections Act of 2013"[118] define a Person Deprived of Liberty as a *detainee, inmate, or prisoner, or other person under confinement or custody in any other manner.*[119] This definition leads to three general implications with regard to its applicability.

First, it is broad enough to encompass citizens—children, men, women, PWDs, mentally incapacitated individuals— and even aliens.

Second, it does not distinguish a detainee who has been convicted from a detainee who has no conviction yet. This is supported by the fact that the Implementing Rules of Rep. Act. No. 10575 consciously departed from the term "prisoner," with Rule III, Section 3(u) stating the following:

> Person Deprived of Liberty (PDL) – refers to a detainee, inmate, or prisoner, or other person under confinement or custody in any other manner. *However, in order to prevent labeling, branding or shaming by the use of these or other derogatory words, the term "prisoner" has been replaced by this new and neutral phrase "person deprived of liberty"* under Article 10, of International Covenant on Civil and Political Rights (ICCPR), who "shall be treated with humanity and with respect for the inherent dignity of the human person."

Third, thus consequently, the availability and enforcement of rights of PDLs are available to all types of PDLs involved, regardless of the fact of conviction. Pre–trial, pre–conviction, or post–conviction detainees are entitled to all the rights and liberties provided by law. *Returning to the positive–negative framework, freedoms that are classified under liberty in the positive aspect are necessarily available to all PDLs.* This view is supported by the Constitution, specifically in Article II, Section 11, wherein it is the State itself that "values the dignity of *every human person* and guarantees *full respect for human rights.*"[120]

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[118] Rep. Act. No. 10575 (2013).

[119] Rep. Act. No. 10575 Rules & Regs. (2016), Rule III, § 3(u).

[120] CONST., art. II, § 11.

The word "every" as provided is self–explanatory, and the clause mandating full respect for human rights therein is not conditional. The state policy of the Bureau of Corrections Act reflects this constitutional mandate for PDLs, providing the following in Section 2, paragraph 1 of the law:

> Section 2. *Declaration of Policy.* – It is the policy of the State to promote the general welfare and safeguard the basic rights of *every prisoner* incarcerated in our national penitentiary [. . .]. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.[121]

International Conventions and binding instruments of international law are likewise consistent with this view. Articles 1 to 3 of the United Nations Declaration of Human Rights (UNDHR) grant the right of liberty to all persons, regardless of the status of that said person—thus including a PDL in its scope of application.[122] The International Covenant on Civil and Political Rights (ICCPR), of which the Philippines is a party, also recognizes in Article 10(1) that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." In 1992, the UN Human Rights Committee explained this provision further in a General Comment stating that it applied to *"any one deprived of liberty* [. . .] held in prisons, hospitals—particularly psychiatric hospitals—detention

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[121] Rep. Act No. 10575 (2013).

[122] UNIVERSAL DECLARATION OF HUMAN RIGHTS art. 1–3, Dec. 10, 1948, G.A. Res. A/RES/3/217 A. These provisions state:

> *Article 1. All human beings are born free and equal in dignity and rights.* They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> *Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction* of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
>
> *Article 3. Everyone* has the right to life, *liberty* and security of person.

camps or correctional institutions or elsewhere."[123] It is also opined that State–parties have the duty to ensure the following:

- That this rule of applicability is "observed in all institutions and establishments within their jurisdiction where persons are being held"[124] ;
- That PDLs "cannot be subjected to any other hardship or constraint other than that resulting from the deprivation of liberty"[125];
- That "respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons;"[126] and
- That "the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party" and be "without distinction of any kind."[127]

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[123] Human Rights Committee, General Comment 21, art. 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), *available at* http://hrlibrary.umn.edu/gencomm/hrcom21.htm. Paragraph 2 of the Comment provides the following in full: "Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to *any one deprived of liberty* under the laws and authority of the State who is held in prisons, hospitals – particularly psychiatric hospitals – detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is *observed in all institutions and establishments within their jurisdiction where persons are being held.*"

[124] *Id.*

[125] *Id.* Paragraph 3 of the Comment provides the following in full: "Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, *but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.* Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."

[126] *Id.* Paragraph 4 of the Comment provides the following in full: "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. *Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.* This rule must be applied *without distinction of any kind,* such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[127] *Id.*

The Philippines is a State–party to the ICCPR, therefore these obligations are binding. To reiterate, Rule III, Section 3(u) of the IRR of the Bureau of Corrections Act even refers to Article 10 of the ICCPR in defining a PDL.[128]

Finally, also instructive is the UN Standard Minimum Rules for Treatment of Prisoners (UNSMRTP), otherwise known as the Nelson Mandela Rules, which was adopted by the UN General Assembly on December 17, 2015.[129] It reflects the aforementioned principles found in the other instruments, but further operationalizes through Rules 1 to 5 the positive aspect of a PDL's liberty.[130] Rule 5, paragraph 1 is explicit on this point when it separates the concepts of "prison life" and "life at liberty" and emphasizes that prison life must not be so distinct from a life at liberty:

> *Rule 5.1.* The prison regime should seek to *minimize any differences between prison life and life at liberty* that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.[131]

The UNSMRTP is explicitly applicable to jails under the control and supervision of the Bureau of Corrections, as provided under Section 4(a) of the Bureau of Corrections Act[132] and operationalized by Rule II, Section 2, paragraph 1 of the Revised Rules of the Bureau of Corrections Act.[133]

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[128] It provides that the term "prisoner" has been replaced by this new and neutral phrase "person deprived of liberty" under Article 10, of International Covenant on Civil and Political Rights (ICCPR), who "shall be treated with humanity and with respect for the inherent dignity of the human person."

[129] United Nations Standard Minimum Rules for Treatment of Prisoners [hereinafter "UNSMRTP"], Dec. 17, 2015, G.A. Res. A/RES/70/175, *at* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

[130] *Id.*

[131] *Id.*

[132] Rep. Act No. 10575 (2013), § 4, ¶a. "The Mandates of the Bureau of Corrections.—The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.(a) Safekeeping of National Inmates—The safekeeping of inmates shall include decent provision of quarters, food, water and clothing *in compliance with established United Nations standards.* The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP."

[133] Rep. Act. No. 10575 Rules & Regs. (2016), Rule II, § 2, ¶1. "Declaration of Policy. It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary by promoting and ensuring their reformation and social reintegration, *creating an environment conducive to rehabilitation and*

As a final note on special vulnerable groups, this application of the positive aspect of liberty indicates that there is also no distinction if the PDL is a woman, a child, or one with disabilities. Thus, theoretically, all these rights should apply, and this seems to be the position as well in the UNSMRTP. For example, the UNSMRTP specifically mandates prison administrators in Rule 5, paragraph 2 to make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.[134] Further, under Rule 2, paragraph 2, any distinct individual needs required by these prisoners with disabilities, once afforded, will not be considered discriminatory under the principle of non–discrimination.[135] Likewise therefore, the Author submits that pursuant to the same principle of non–discrimination, if children, women, or the elderly have distinct needs while in detention, they are entitled to such needs, and the accommodation of these needs will not be considered discriminatory. This is already the principle in Section 5(d) of the Juvenile Justice and Welfare Act, which provides in part that children are to be "treated with humanity and respect, for the inherent dignity of the person, and *in a manner which takes into account the needs of a person of his/her age.*"[136]

To sum up all the points raised under this third implication, the opinion of Justice Alfredo Caguioa's in *Almonte* is instructive:

> Thus, the notion that persons deprived of liberty (PDLs) are not entitled to the guarantee of basic human rights should be disabused. While they do not enjoy the same latitude of rights as certain restrictions on their liberty and property are imposed as a consequence of their detention or imprisonment, *the foregoing international covenants and our own Constitution prove that PDLs do not shed their human rights once they are arrested, charged, placed under the*

compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP). It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services."

[134] Rule 5, paragraph 2 of the UNSMRTP provides the following in full: "Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis."

[135] Rule 2, paragraph 2 provides the following in full: "In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory."

[136] Rep. Act No. 9344 (2005).

> *custody of law, and subsequently convicted and incarcerated.* The International Covenant on Civil and Political Rights (ICCPR), in particular, to which the Philippines is likewise a party, positively requires the treatment of PDLs "with humanity and with respect for the inherent dignity of the human person."[137]

The synthesis of these three implications with the concept of liberty in the positive and negative aspects forms the general standard and legal framework in the Philippines, in relation to the applicability and availability of the rights of PDLs. There is no question that all PDLs, regardless of cause, circumstance, or nature of detainment, must be afforded humanity and consequently, human freedoms and rights.

Under the positive aspect, PDLs will forever be able to avail themselves of certain rights and freedoms, regardless of the fact of detention. A PDL will have an unbridled right free thought and expression. A PDL will have the right to associate within the confines of the facility, and the freedom to maintain associations outside the facility. Referring to the examples presented earlier, a PDL cannot be prevented from praying, writing letters to his or her family, or restricted unreasonably in their physical movement in the detention center, unless the State can show, with clear evidentiary and legal basis, that the limitation complied with "due process." To reiterate the Nelson Mandela Rules, there must be the smallest difference possible from a "prison life" and a "life at liberty."

Under the negative aspect, the personal liberties of a PDL can be limited, provided such limitation is not arbitrary, i.e., there is compliance with the limitations and requisites in the Constitution, and other applicable laws and rules. Referring again to the examples earlier, this would be the necessity of either having a warrant or compliance with the strict requisites of a warrantless arrest, before any person can be detained,[138] a right to humane and dignified prison conditions,[139] a right to not be placed in any *incommunicado*, secret, or solitary detention centers,[140] a right to bail, when

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[137] *Almonte*, *supra* note 4, at 11–12 (Caguioa, J., *separate opinion*). This pinpoint citation refers to the copy of the separate opinion uploaded to the Supreme Court website.

[138] RULES OF COURT, Rule 113, § 5.

[139] CONST., art. II, § 11.

[140] Art. III, § 12(2).

warranted,[141] and a right to speedy disposition of their case, lest there be a denial of due process in the deprivation of one's liberty.[142]

Yet, despite this legal framework that protect our PDLs, the unfortunate stories of Reina Mae Nasino and many other detainees enduring harrowing conditions and prolonged confinement, seem to indicate that this framework in our jurisdiction is not adhered to. Non–compliance with this framework is also more glaring with regard to the positive aspect of a PDL's right to liberty. Is the legal framework in the Philippines—without yet invoking lapses in the enforcement of the law—insufficient or inadequate? Outside the clear and present danger, strict scrutiny, and least restrictive means tests, there are very few legal vehicles that apply specifically to PDLs in relation to the exercise, or the protection, of their liberties in the positive aspect. Stated differently, there is a dearth of jurisprudence for legal standards or tests that specifically and exclusively apply to PDLs in the Philippines, should they seek to challenge limitations on their liberty in the positive aspect. *Consequently, it will be difficult for PDLs and their lawyers to go to Court and allege a violation of their due process rights with that gap in the legal framework because there is an ambiguous standard with which the imposed restrictions to their liberties—other than detainment per se—may be measured against.* At best, there are only general policies provided by local legislation or international conventions.

On the other hand, jurisprudence, substantive law, and remedial law are rich when it comes to the applicable standards in relation to the negative aspect of liberty. For example, the legal framework is clear as to what is a valid arrest, what types of detention are permissible or not permissible, and what the duration of detention should be in relation to a charge against an accused under the aegis of a right to a speedy trial, among others. This deficiency will only serve to exacerbate lapses in the implementation of laws that ideally protect the rights of PDLs in the country.

II. POSSIBLE LEGAL REMEDIES TO ENFORCE THE POSITIVE ASPECT OF LIBERTY FOR PDLS

> *"Law in the land died. I grieve for it but I do not despair over it. I know, with a certainty no*

[141] Art. III, § 13.
[142] Art. III, § 16.

> *argument can turn, no wind can shake, that from its dust will rise a new and better law: more just, more human, and more humane. When that will happen, I know not. That it will happen, I know."*
> —Senator Jose W. Diokno[143]

Given this state of enforcement, or violation, of PDL's rights, as discussed in the preceding section, what are the legal remedies available to PDLs, as afforded by the legal framework in which their rights are found and operate?

A. Habeas Corpus as Both a Pre-Conviction and Post-Conviction Remedy for PDLs

If one is "illegally confined or detained or otherwise deprived of his liberty or where the rightful custody of a person is withheld from him, a writ of habeas corpus may be filed."[144] Thus, if the fact of detainment or its duration is the principal issue, the petition for a writ of habeas corpus will prosper.[145] The procedure relevant to filing the petition for a writ of habeas corpus is found in Rule 102 of the Rules of Court. The Court will then inspect if the person subject of the petition is "restrained of his liberty."[146] Such restraint must be physical, not moral nor nominal.[147] The petition will then be granted when "the order of judgment under which the person is detained or his liberty is restrained is a nullity for having been issued without jurisdiction."[148] However, it is also not a substitute for an appeal.[149] With that said, the Supreme Court has generally stated that the writ is granted in the following scenarios:

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[143] Jodesz Gavilan, *No cause more worthy: Ka Pepe Diokno's fight for human rights*, RAPPLER, Sept. 21, 2017, *at* https://www.rappler.com/newsbreak/iq/182775-jose-ka-pepe-diokno-human-rights/.

[144] ANTONIO R. BAUTISTA, SPECIAL PROCEEDINGS 114 (2004).

[145] *In re* Writ of Habeas Corpus of Alejano v. Cabuay [hereinafter "*Alejano*"], G.R. No. 160792, 468 SCRA 188, 215, Aug. 25, 2005.

[146] Bautista, *supra* note 144, at 116.

[147] *Id.*

[148] *Id.*

[149] Antonio R. Bautista, *Habeas Corpus as a Post-Conviction Remedy*, 75 PHIL. L.J. 553, 575 (2001).

> Consequently, the writ may also be availed of where, as a consequence of a judicial proceeding, *(a) there has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.* Petitioner's claim is anchored on the first ground considering, as he claims, that his continued detention, notwithstanding the lack of a copy of a valid judgment of conviction, is violative of his constitutional right to due process.[150]

As a pre–conviction remedy, Bautista suggests that the writ may be used in the following instances: 1) as a means to effect release from the custody of a private party;[151] 2) for the release from detention by virtue of an unlawful arrest;[152] 3) for release from confinement by immigration authorities prior to deportation;[153] 4) to question the legality of petitioner's arrest;[154] 5) to effect release from imprisonment for civil contempt,[155] or for contempt of Congress;[156] 6) as a means of challenging duration of confinement as affected by prisoner's good-conduct credits;[157] 7) as a means of attack on orders for commitment to mental institutions;[158] and 8) aliens' means of challenging exclusion and deportation orders.[159]

Meanwhile, as a post–conviction remedy, Bautista has also suggested that habeas corpus may be availed of as a post–conviction remedy akin to that allowed by the United States federal statute, even if "there is a marked disinclination in our jurisdiction to allow a re–litigation of factual issues already adjudicated upon in the original action which eventuated in the judgment of conviction under review."[160] Relevant to the discussion therein

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[150] Feria v. Ct. of Appeals, G.R. No. 122954, 325 SCRA 525, 533–34, Feb. 15, 2000 (emphasis supplied.)

[151] Bautista, *supra*, at 556, *citing* Balagtas v. Ct. of Appeals, G.R. No. 109073, Oct. 20, 1999.

[152] *Id.* at 557, *citing* Matsura v. Dir. of Prisons, 77 Phil. 1050 (1947).

[153] *Id.* at 557, *citing* Lao Tang Ban v. Fabre, 81 Phil. 682 (1948).

[154] *Id., citing* Bernarte v. Ct. of Appeals, G.R. No. 107741, Oct. 18, 1996, 263 SCRA 323.

[155] *Id., citing* Harden v. Dir. of Prisons, 81 Phil. 741 (1948).

[156] *Id., citing* Lopez v. de los Reyes, 55 Phil. 170 (1930).

[157] *Id., citing* Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct.1827, 36 L.Ed.2d 439 (1973).

[158] *Id., citing Developments in the Law - Civil Commitment of the Mentally Ill,* 87 HARV. L. REV. 1190 (1970).

[159] *Id., citing* Brownell v. Tom We Shung, 352 U.S. 180, 77 S.Ct. 252, 1 L.Ed.2d 225 (1956).

[160] *Id.* at 555.

would be Bautista's assertion that *habeas corpus* has been used to vindicate violations of constitutional rights. In relation to this mode of vindication as a post–conviction remedy, Bautista opines:

> If a violation of a constitutional right of an accused which led, or significantly contributed, to his conviction cannot be the basis for vacating this conviction on *habeas* review, then *habeas* corpus would be stripped of its essential vitality. For there can be no more serious challenge to the legality of a person's confinement, detention or deprivation of liberty than that these were obtained through unconstitutional means.[161]

This suggestion by Bautista has been reiterated in the recent case of *In the Matter of the Petition for Writ of Habeas Corpus/Data v. De Lima*, where the Court, through Justice Leonen, stated the following:

> The remedy may also be availed of even when the deprivation of liberty has already been "judicially ordained." In *Gumabon v. Director of Prisons*, petitioners were charged and convicted of the complex crime of rebellion with murder, robbery, arson, and kidnapping. After serving for more than 13 years, this Court promulgated the *Hernandez* doctrine, which held that rebellion was a single offense and cannot be made into a complex crime. Invoking the *Hernandez* doctrine, petitioners applied for a writ of habeas corpus despite the finality of their conviction, arguing that they were deprived of their constitutional right to equal protection.
>
> In granting the writ, this Court held that the retroactive application of the Hernandez doctrine would effectively render the penalty excessive, since petitioners had already served the maximum sentence of 12 years. It took note that petitioners, who were mere followers, were sentenced prior to the leaders of the rebellion, who had already been released as they were able to benefit from the doctrine. It held that the writ must be issued in order to avoid inequity, stating that:
>
> > There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction

[161] *Id.* at 599.

> and habeas corpus is the appropriate remedy to assail the legality of the detention.[162]

Consistent with this position, the Supreme Court has said that "the following areas of Constitutional rights violation had been considered on *habeas corpus* post-conviction review: denial of due process, double jeopardy, illegal obtention of evidence, speedy trial, right to prepare for trial, equal protection, and right against self-incrimination."[163] PDLs may therefore avail of this writ even if they are already convicted, if any of these constitutional violations were attendant to his or her conviction. The petition may be filed by the PDL themselves, or any person on their behalf. Should the alleged officer or institution deny that they have any knowledge as to the whereabouts of the PDL upon service of the writ, Retired Justice V.V. Mendoza opines that the Court can still conduct further inquiry through modes of discovery under the Rules of Court:

> [F]or example, as the then Justice Fernando pointed out in a case, "[the writ] is wide-ranging and all-embracing in its reach. It can dig deep into the facts to assure that there be no toleration of illegal restraint."
>
> Mere denial by the military that they have custody of a person whose whereabouts and cause of detention are sought cannot foreclose further inquiry by the court. *There are discovery procedures available under the Rules of Court which can be utilized by a party in habeas proceedings.* By express provision these rules, along with other rules for ordinary actions, apply to special proceedings such as those for *habeas corpus*. In addition, Rule 135, [Section] 6, give courts the power to issue "all auxiliary writs, processes and other means necessary to carry into effect their jurisdiction." Courts are thus given broad discretionary powers to fashion procedures for the full development of the facts.[164]

If any, the main limitation for availing the writ of habeas corpus for enforcing constitutional rights will not be available if the constitutional right concerns the conditions of detainment.[165] In *Alejano v. Cabuay*, the Court clarified that in those cases, injunctive relief or damages would be the remedy:

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[162] G.R. Nos. 215585 & 215768, Sept. 8, 2020, at 17–18. This pinpoint citation refers to the copy of the opinion uploaded to the Supreme Court website.

[163] Bautista, *supra* note 149, at 599.

[164] Vicente V. Mendoza, *A Note on the Writ of Amparo*, 82 PHIL. L.J. 1, 4 (2008).

[165] *Alejano,* 468 SCRA 188, 215. (Emphasis supplied).

> The ruling In this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford *injunctive relief or damages* to the detainees and prisoners subjected to arbitrary and inhumane conditions. *However, habeas corpus is not the proper mode to question conditions of confinement. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement.*[166]

In such cases, injunctive relief under Rule 58 of the Rules of Court, mandamus, or damages will be proper. Some of these will be discussed in the succeeding section.

B. Writ of Amparo for Violations of Life, Liberty, and Security

The Writ of Amparo is another remedy specifically available should a PDL's right to life, liberty, or security be violated by either a public official or employee, or of a private individual or entity. The procedure for this remedy is provided for in A.M. No. 07-9-12-SC. Section 1 provides that it is a "remedy available to any person whose right to life, *liberty* and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."[167] As to coverage, it covers "extralegal killings and enforced disappearances or threats thereof."[168] Theoretically, therefore, it also a remedy that may be resorted to when a PDL's right to a just and humane treatment is violated:

> [T]he writ of *amparo* covers not all violations or threatened violations of constitutional rights but only those of the right to "life, liberty, and security," that is to say, the right against unreasonable searches and seizures, the privacy of communication and correspondence, the liberty of abode and of travel, the right to counsel and other Miranda rights during custodial interrogation, the right not to be subjected to torture, force, violence, threat, intimidation or coercion, and other means of extorting confessions, or not to be placed in solitary

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[166] *Id.*

[167] AMPARO WRIT RULE, § 1.

[168] AMPARO WRIT RULE, § 1.

> confinement and held incommunicado, and *the right to just and right humane treatment of prisoners*. The writ of *amparo* is not available as a remedy for the violations, for example, of the rights of expression and religious worship and other so-called intellectual freedoms or for the violations of any of the social and economic rights. Such violations or threats of violations are beyond the scope of the Rule.[169]

A petition for the writ "may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts."[170] If granted, the writ "shall be enforceable anywhere in the Philippines."[171]

The case of *In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel H. Rodriguez*[172] is of guidance as to the extent and applicability of the writ. Here, the Supreme Court found that petitioner Rodriguez' rights to life, liberty and security were found to be violated by "his abduction, detention and torture from 6 September to 17 September 2009" by military officials, and by "the lack of any fair and effective official investigation as to his allegations."[173] The Court then explained why the rule was applicable in this case, *viz*.:

> The Rule on the Writ of Amparo explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an omission of a public official. *Moreover, in the context of amparo proceedings, responsibility may refer to the participation of the respondents, by action or omission, in enforced disappearance*. Accountability, on the other hand, may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance.[174]

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[169] Mendoza, *supra* note 164, at 1–2. (Emphasis supplied.)

[170] AMPARO WRIT RULE, § 3.

[171] AMPARO WRIT RULE, § 3.

[172] [Hereinafter "*Rodriguez*"], G.R. No. 191805 & 193160, 660 SCRA 84, 128, Nov. 15, 2011.

[173] *Id.* at 128.

[174] *Id.* at 124–25. (Emphasis supplied.)

Thus, PDLs may avail of this writ in the specific situation when they are detained unlawfully by any public or private individual. This includes detainment by the police, military, or any private individual, even without an order or judgment commanding such detention. Likewise, PDLs can also enforce their other rights, should they be violated during the course of their detainment, or even after detainment to vindicate their rights. For example, in the case of *Rodriguez*, the Amparo was all the more supported by the fact that the petitioner was both tortured and denied due process when his initial attempts for redress were not given due course, thereby violating his right to security. The Court in *Rodriguez* in fact explained that the right to security came part and parcel with the right to liberty and it "includes the positive obligation of the government to ensure the observance of the duty to investigate," *viz.*:

> Third, the right to security of person is a guarantee of protection of on"s rights by the government. *In the context of the writ of Amparo, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution.* As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the Velasquez Rodriguez Case, *viz.*:
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> > (The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[175]

[175] *Id.* at 125, *citing* Secretary of Nat'l Def. v. Manalo, G.R. No. 180906, 568 SCRA 1, 42, Oct. 7, 2008.

The petition may be filed by (1) the aggrieved party, (2) his or her immediate family, (3) any ascendant, descendant, or collateral relative of the party within the fourth civil degree of consanguinity or affinity, in default of the immediate family, or (4) any concerned citizen, organization, association or institution, in default of those named in (3).[176] Once instituted, proceedings for a writ of amparo are summary in nature "that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner."[177] While the petition is pending, a PDL may avail of any of the following provisional remedies: (a) Temporary Protection Order, (b) Inspection Order, (c) Production Order, or (d) Witness Protection Order.[178]

As a final note on the availability of the writ of amparo to PDLs, most especially those subjected to enforced disappearances, the discussion of the Court in *Secretary of National Defense v. Manalo*, the very first petition for the writ of amparo litigated before the Supreme Court, is instructive.[179] In this case, the respondent Manalo was tortured by the military while in detention for more than three months.[180] The torture consisted of beatings, feeding of left-over or rotten food, dousing with hot water or urine, burning some parts of the body with wood, and pouring of gasoline, to name a few.[181] The Supreme Court granted the relief sought by Manalo, and had this opening statement that affirms the availability of the writ for PDLs:

> While victims of enforced disappearances are separated from the rest of the world behind secret walls, *they are not separated from the constitutional protection of their basic rights*. The constitution is an overarching sky that covers all in its protection.[182]

The Court also noted that even if Rule 65 and Rule 102 on *habeas corpus* were already extant at that time, these were insufficient to specifically deal with extralegal killings and enforced disappearances.[183] The writ of amparo, on the other hand, "borne out of the Latin American and Philippine

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[176] AMPARO WRIT RULE, § 2.

[177] Bautista v. Dannug-Salucon, G.R. No. 221862, 852 SCRA 446, Jan. 23, 2018. The Rules of Court and jurisprudence have long defined *substantial* evidence as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *See* AMPARO WRIT RULE, § 17, on Burden of Proof.

[178] AMPARO WRIT RULE, § 14.

[179] Secretary of Nat'l Def. v. Manalo, *supra* note 175.

[180] *Id.*

[181] *Id.*

[182] *Id.* at 10. (Emphasis supplied.)

[183] *Id.*

experience of human rights abuses - offers a better remedy to extralegal killings and enforced disappearances and threats thereof" is a more potent "preventive and curative" remedy, *viz.*:

> *While constitutional rights can be protected under the Grave Abuse Clause through remedies of injunction or prohibition under Rule 65 of the Rules of Court and a petition for habeas corpus under Rule 102, these remedies may not be adequate to address the pestering problem of extralegal killings and enforced disappearances.* However, with the swiftness required to resolve a petition for a writ of *amparo* through summary proceedings and the availability of appropriate interim and permanent reliefs under the *Amparo* Rule, this hybrid writ of the common law and civil law traditions - borne out of the Latin American and Philippine experience of human rights abuses - offers a better remedy to extralegal killings and enforced disappearances and threats thereof. *The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner*; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.
>
> *The writ of amparo serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances.* It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. In the long run, the goal of both the preventive and curative roles is to deter the further commission of extralegal killings and enforced disappearances.[184]

These erase any doubt as to the availability of the Writ for PDLs subject to enforced disappearances and violations of rights during such disappearance. It also functions as a legal vehicle for them to vindicate their constitutional rights.

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[184] *Id.* at 42–43. (Emphasis supplied.)

C. Human Relations Torts

The Civil Code also contains provisions that can serve as a cause of action for violations of liberty-based rights of PDLs. For example, a perusal of Article 32 shows that civil liability can be claimed from public officers or employees who violate the rights of PDLs while in detainment.[185] Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the nineteen enumerated rights and liberties therein of another person shall be liable to the latter for damages.[186]

Alternatively, Article 26 can also be the basis of a civil action for damages, the cause of action being the violation of the personal rights of a PDL.[187] In a noted work, Justice Antonio Carpio has suggested that the provision encompasses the following rights: right to personal dignity, personal security, family relations, social intercourse, privacy, and peace of mind.[188]

D. Republic Act No. 10353 for those Subjected to Enforced Disappearances

In relation to the objectives of the Writ of Amparo, the legislature also passed Rep. Act No. 10353, otherwise known as the Anti-Enforced or Involuntary Disappearance Act of 2012."[189] The state policy espoused by this law shows that it provides a substantive basis for an additional legal remedy in favor of PDLs:

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[185] CIVIL CODE, art. 32.

[186] Art. 32.

[187] Art. 26. This provision states: "Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The *following and similar acts,* though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: (1) Prying into the privacy of another's residence; (2) Meddling with or disturbing the private life or family relations of another; (3) Intriguing to cause another to be alienated from his friends; (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition."

[188] Antonio Carpio, *Intentional Torts in Philippine Law,* 47 PHIL. L. J. 649, 670 (1972).

[189] Rep. Act No. 10353 (2012).

> SEC. 2. *Declaration of Policy.* –The State values the dignity of every human person and guarantees full respect for human rights for which highest priority shall be given to the enactment of measures for the enhancement of the right of all people to human dignity, the prohibition against secret detention places, solitary confinement, *incommunicado*, or other similar forms of detention, the provision for penal and civil sanctions for such violations, and compensation and rehabilitation for the victims and their families, particularly with respect to the use of torture, force, violence, threat, intimidation or any other means which vitiate the free will of persons abducted, arrested, detained, disappeared or otherwise removed from the effective protection of the law.
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> Furthermore, the State adheres to the principles and standards on the absolute condemnation of human rights violations set by the 1987 Philippine Constitution and various international instruments such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.[190]

Under this law, any enforced or involuntary disappearance[191] instigated by agents of the State[192] is unlawful, and the agents of the State and other officials are held liable for the disappearance. Specifically, the law

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[190] Rep. Act No. 10353 (2012), § 2.

[191] *Enforced or involuntary disappearance* refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law. *See* Rep. Act No. 10353 (2012), § 3(b).

[192] *Agents of the State* refer to persons who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government, or shall perform in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class. *See* Rep. Act No. 10353 (2012), § 3(a).

imposes *reclusion perpetua*,[193] *reclusion temporal*,[194] *prision correccional*,[195] or *arresto mayor*,[196] depending on the culpability of the accused. Likewise, the commanding officer of the concerned unit of the AFP or the immediate senior official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of enforced or involuntary disappearance.[197]

Additionally, PDLs can seek civil liability under this statute as against agents of the State, and are afforded a 25-year prescriptive period within which they can prosecute their case.[198] PDL–victims are also entitled to monetary compensation, rehabilitation, and restitution of honor and reputation.[199] Restitution of honor means that any derogatory record against the PDL as a consequence of the unlawful disappearance will be erased.[200]

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[193] The penalty of *reclusion perpetua* and its accessory penalties shall be imposed upon the following persons: (1) Those who directly committed the act of enforced or involuntary disappearance; (2) Those who directly forced, instigated, encouraged or induced others to commit the act of enforced or involuntary disappearance; (3) Those who cooperated in the act of enforced or involuntary disappearance by committing another act without which the act of enforced or involuntary disappearance would not have been consummated; (4) Those officials who allowed the act or abetted in the consummation of enforced or involuntary disappearance when it is within their power to stop or uncover the commission thereof; and (5) Those who cooperated in the execution of the act of enforced or involuntary disappearance by previous or simultaneous acts. *See* Rep. Act No. 10353 (2012), § 15(a).

[194] The penalty of *reclusion temporal* and its accessory penalties shall be imposed upon those who shall commit the act of enforced or involuntary disappearance in the attempted stage as provided for and defined under Article 6 of the Revised Penal Code. The penalty of *reclusion temporal* and its accessory penalties shall also be imposed upon persons who, having knowledge of the act of enforced or involuntary disappearance and without having participated therein, either as principals or accomplices, took part subsequent to its commission in any of the following manner: (1) By themselves profiting from or assisting the offender to profit from the effects of the act of enforced or involuntary disappearance; (2) By concealing the act of enforced or involuntary disappearance and/or destroying the effects or instruments thereof in order to prevent its discovery; or (3) By harboring, concealing or assisting in the escape of the principal/s in the act of enforced or involuntary disappearance, provided such accessory acts are done with the abuse of official functions. *See* Rep. Act No. 10353 (2012), § 15(b)-(c).

[195] The penalty of *prision correccional* and its accessory penalties shall be imposed against persons who defy, ignore or unduly delay compliance with any order duly issued or promulgated pursuant to the writs of *habeas corpus, amparo* and *habeas data* or their respective proceedings. *See* Rep. Act No. 10353 (2012), § 15(d).

[196] The penalty of *arresto mayor* and its accessory penalties shall be imposed against any person who shall violate the provisions of Sections 6, 7, 8, 9 and 10 of this Act. *See* Rep. Act No. 10353 (2012), § 15(e).

[197] Rep. Act No. 10353 (2012), § 14.

[198] § 17, § 22.

[199] § 26.

[200] § 26.

Their relatives can also claim compensation under Rep. Act No. 7309, otherwise known as "An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes", and other relief programs provided by the government.[201]

As a final note, the State has the duty to ensure that the " all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including, but not limited to, the victims, their families, complainants, witnesses, legal counsel and representatives of human rights organizations and media" are safe and protected from intimidation or reprisal.[202] The law also mandates that the State rehabilitate victims, immediate relatives, and even offenders, which will be handled by the CHR, DOH, DSWD, and other concerned non-governmental organizations.[203]

E. Mandamus to Compel Enforcement of Rights or Prevent Violation of the Same

1. In General

Mandamus is a legal remedy found in Rule 65 of the Rules of Court.[204] A mandamus petition may be resorted to in compelling the administrators of facilities to make available the rights that are explicitly recognized in any of the applicable laws that govern the status of a PDL or the venue wherein he or she is detained. Theoretically, therefore, mandamus petition will lie because (1) laws provide for the duties of the State for PDLs, and (2) the availability and enforcement of the same are ministerial acts, not matters of discretion. For example, since the Bureau of Corrections (BUCOR) Act of 2013[205] mandates the BUCOR to ensure decent and adequate provision of basic necessities, such as shelters/quarters, food, water, clothing, medicine, PDLs can resort to mandamus, compelling the government to institute protocols ensuring that these be afforded.

Concurrently, a PDL may also avail of a preliminary injunction provided for in Rule 58 provided that there is (1) a right *in esse* or a clear and

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[201] § 26.
[202] § 24.
[203] § 27.
[204] RULES OF COURT, Rule 65, § 3.
[205] Rep. Act. No. 10575 (2013).

unmistakable right to be protected; (2) a violation of that right; and (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[206]

As a petition for mandamus is principally based on a law that grants a right in favor of PDLs, special vulnerable groups of PDLs have specific legal substantive bases that may serve as the anchor for a mandamus petition.

2. For Women

Aside from the rights available to Women as PDLs, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides substantive basis for female PDLs.[207] Article 1 provides the following:

> For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[208]

Note that in *Saudi Arabian Airlines v. Rebesencio*, Justice Leonen stated that the CEDAW is part of the law of the land, and that it "gives effect to the Constitution's policy statement in Article II, Section 14."[209] Simply, the CEDAW is considered in *Saudia* as the enabling law for Article II, Section 14. As an enabling law, it may be a source of an enforceable right based principally on Article II, Section 14 of the Constitution.

Therefore, given the operability of Article II, Section 14 vis-à-vis the CEDAW, any of the rights afforded to men in general must be afforded to

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[206] Medina v. Greenfield Dev. Corp., G.R. No. 140228, 443 SCRA 150, 159, Nov. 19, 2004.

[207] Convention on the Elimination of All Forms of Discrimination against Women [hereinafter "CEDAW"], Dec. 18, 1979, 1249 U.N.T.S. 13, *available at* https://www.ohchr.org/sites/default/files/cedaw.pdf.

[208] Art. 1.

[209] [Hereinafter "*Saudia*"], G.R. No. 198587, 746 SCRA 140, 172, Jan. 14, 2015. Article II, Section 14 of the Constitution provides the following: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

women without any discrimination. This includes rights and privileges afforded to men even while they are in detention centers. Any denial of a right of a woman by virtue of discrimination may be subject of a petition for mandamus. On the other hand, in accordance to the same principle of non–discrimination, if women have other distinct needs while in detention, they are entitled to such needs. The accommodation of these needs will not be considered discriminatory.

For example, if a woman needs additional privacy, or access to an obstetrician-gynecologist for health concerns, a woman can compel the administrators of a detention center via petition for mandamus because this is a ministerial duty. Conversely, should this service then be afforded to the woman, this will not be construed as discrimination in favor of the woman. This conclusion is supported by Rule IV, Section 4(a) of the Revised Implementing Rules of the Bureau of Corrections Act, which mandates the BUCOR to safekeep the inmates, in accordance with UNSMRTP.[210]

3. For Children

Section 5 of the Juvenile Justice and Welfare Act of 2006 (JJWA)[211] provides the substantive rights that a child is entitled to. Aside from the enumeration of rights therein, Section 5 also adopts (1) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or "Beijing Rules", (2) United Nations Guidelines for the Prevention of Juvenile Delinquency or the "Riyadh Guidelines", and (3) the United Nations Rules for the Protection of Juveniles Deprived of Liberty.[212] The plethora of rights of children in conflict with the law ("CICLs") and duties of the State may serve as the basis for a mandamus petition. Theoretically therefore, if any of the rights here are not afforded by the administrators of prison facilities, then a petition for mandamus filed by the PDL-CICL, through his or her guardian, should prosper.

For example, since children have the right under Section 5 of the JJWA to be separated from adult offenders at all times,[213] CICL who are detained with adults may file a petition for mandamus to compel the Department of Social Welfare and Development (DSWD) to relocate them or provide alternative arrangements. Since there is specific reference to

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[210] Rep. Act No. 10575 Revised Rules & Regs. (2016), Rule IV, § 4(a).
[211] Rep. Act No. 9344 (2006).
[212] § 5.
[213] § 5(d).

multiple guidelines by the UN,[214] these may also serve as a legal basis for the mandamus petition. Likewise, there is the right of privacy, protected by Rule 8.1 of the Beijing Rules.[215] If a CICL is being harassed or harangued by media because he or she is involved in a high–profile case, a mandamus petition may be resorted to, to compel the administrators in a Bahay Pag-Asa to prevent or limit media access to a PDL. Another example is the guarantee provided in Part IV.D, paragraph 37 of the United Nations Rules for the Protection of Juveniles Deprived of Liberty[216] that a juvenile is entitled to adequate food and clean drinking water.[217] Thus, if any of the living conditions of the CICL violate these rights, it can be the basis of a mandamus petition. As a final example, under the same UN Guidelines a juvenile "should be allowed to satisfy the needs of his or her religious and spiritual life."[218] Any regulation therefore imposed in a Bahay Pag–Asa that prohibits any religious or spiritual practice shall be voided, and the administrators over the same can be compelled to provide spaces for religious practice.

4. For Persons With Disabilities

As mentioned previously in Part II, the Bureau of Corrections Act adopts the standards set by the UNSMRTP. In turn, the UNSMRTP, in Rule 5, paragraph 2, specifically mandates prison administrators to make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.[219] Thus, any person with disabilities and specific needs that are necessary for a "full and effective access to prison life" may

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[214] § 5.

[215] United Nations Standard Minimum Rules for the Administration of Juvenile Justice [hereinafter *"Beijing Rules"*], Rule 8.1, Nov. 29, 1985, *available at* https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf.

[216] United Nations Rules for the Protection of Juveniles Deprived of Liberty, Dec. 14, 1990, *available at* https://www.ohchr.org/sites/default/files/res45_113.pdf.

[217] *Id.* Paragraph 37 provides the following: "Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time."

[218] *Id.* at pt. IV.G., ¶ 48.

[219] Rule 5, paragraph 2 of the UNSMRTP provides the following in full: "Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis."

file a petition for mandamus to enforce the same. This is supported by Rule VII, Section 7 of the Implementing Rules of the Bureau of Corrections mandating that "[a]ll facilities shall be in conformity with Philippine building, architectural, structural, electrical, plumbing, fire safety, flood code/standard and must be accessible to Persons With Disability (PWD) pursuant to *Batas Pambansa Blg. 344* or Accessibility Law."[220]

5. For the Mentally Incapacitated

As there is no specific law that solely caters to the needs of mentally incapacitated PDLs, the general rule provided by the Mental Health Act[221] is controlling. Under the Act, a mentally incapacitated PDL would fall under the term "Service User," which "refers to a person with lived experience of any mental health condition including persons who require or are undergoing psychiatric, neurologic or psychosocial care."[222] In turn, Section 5 provides an exhaustive, but not exclusive, list of rights of Service Users, and the general rule that Mentally Incapacitated PDLs enjoy all the rights guaranteed by law "on an equal and non–discriminatory basis:"

> Service users shall enjoy, *on an equal and nondiscriminatory basis, all rights* guaranteed by the Constitution as well as those recognizes under the United Nations Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities and all other relevant international and regional human rights conventions and declarations, including the right to…[223]

To illustrate the application of this Section in relation to a *mandamus* petition, specific reference and examples may be made of the enumerated rights therein. One, Section 5(p) grants mentally incapacitated PDLs the right to maintain "uncensored private communication which may include communication by letter, telephone or electronic means, and receive visitors at reasonable times…"[224] Therefore, if hospital officials deny this right, a mentally incapacitated PDL may file petition for mandamus allowing him or her to maintain such correspondence. Another notable example would be Section 5(h), which grants mentally incapacitated PDLs "[h]umane treatment free from solitary confinement, torture, and other forms of cruel inhumane, harmful or degrading treatment and invasive procedures not

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[220] Rep. Act No. 10575 Revised Rules & Regs. (2016), Rule VII, § 7.
[221] Rep. Act No. 11036 (2017).
[222] § 4(t).
[223] § 5.
[224] § 5(p).

backed by scientific evidence."[225] A petition for mandamus may then be had to compel staff and doctors in mental health institutions to grant this right. The same application of Section 5 in relation to a mandamus petition will also logically apply with all the rights enumerated therein in favor of mentally incapacitated PDLs.

F. As Applied

With reference to the unfortunate circumstances Ms. Nasino found herself in, how would these remedies be applied in her case? For this purpose, we revisit the questions posed in the beginning of the Article:

- Was Reina Mae entitled to some form of provisional liberty along with her co–petitioners, provided the exigency of a pandemic never before seen?
- Were Reina Mae's rights to be with her family, to grieve for the death of her child, and to have burial in peace, available to her despite being a PDL?
- Were these rights "diminished" along with the limitation on her personal liberty as a result of the charge against her?

Under the framework presented in this Article, it has been proposed that Ms. Nasino's rights were not diminished in any way. Her physical detention did not in any way reduce the effectivity and enforceability of her other rights.

For instance, therefore, if she wanted to challenge her arrest given the absence of any legal basis, a writ of habeas corpus may have been availed before the Information was filed before the court trying her case for illegal possession of firearms. Note that at the time of her arrest, the legality of the search warrant, which allegedly revealed the illegal firearms, was being questioned because the address stated in the warrant was different from the place searched.[226] A defective search warrant constitutes a constitutional violation. To quote Bautista once more: "[f]or there can be no more serious challenge to the legality of a person's confinement, detention[,] or deprivation of liberty than that these were obtained through unconstitutional means."[227] This would probably be the foremost remedy for challenging the

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[225] § 5(h).

[226] *Philippines: Anger over death of baby separated from jailed mother*, BBC NEWS, Oct. 14, 2020, *at* https://www.bbc.com/news/world-asia-54519788.

[227] Bautista, *supra* note 149, at 599.

detention of PDLs who are detained without the authority of any commitment order or information filed with the court.

On the other hand, if the information was already filed, a writ of habeas corpus would not issue "where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so."[228] The remedy this time would be a motion to quash, citing Rule 117, Section 3(h) of the Rules of Court as grounds (i.e., the information contains averments which, if true, would constitute a legal excuse or justification), with reference to the fact that the search warrant was defective, hence there was no legal basis for the arresting officers to be in Ms. Nasino's residence in the first place. Additionally, a motion to suppress under Rule 126, Section 14, may be availed of to render inadmissible the evidence obtained via the defective search warrant. Consequently, as there would be no evidence left to convict Ms. Nasino, a demurrer to evidence under Rule 119, Section 23 of the Rules of Court may then be availed of to secure release from detention.

Another aspect of relief available to Ms. Nasino would be damages, specifically those known as human relations torts vis-à-vis abuse of rights in our Civil Code as explained earlier. The relevant provisions under the Civil Code that function concurrently on this matter are as follows:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
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> Article 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In the case of *Albenson v. Court of Appeals*,[229] the Court elaborated on the nature and applicability of these provisions:

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[228] Aquino v. Esperon, G.R. No. 174994, 531 SCRA 788, 792, Aug. 31, 2007.
[229] 217 SCRA 16, Jan. 11, 1993.

Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the *performance of one's duties*. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes the primordial limitation on all rights: that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. Although the requirements of each provision is different, these three (3) articles are all related to each other. As the eminent Civilist Senator Arturo Tolentino puts it: "With this article (Article 21), combined with articles 19 and 20, the scope of our law on civil wrongs has been very greatly broadened; it has become much more supple and adaptable than the Anglo-American law on torts. It is now difficult to conceive of any malevolent exercise of a right which could not be checked by the application of these articles" (Tolentino, 1 Civil Code of the Philippines 72).

There is however, no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case. (Globe Mackay Cable and Radio Corporation vs. Court of Appeals, 176 SCRA 778 [1989]).

The elements of an abuse of right under Article 19 are the following: (1) There is a legal right or duty; (2) which is exercised in *bad faith*; (3) for the sole *intent* of prejudicing or injuring another. Article 20 speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction (Tolentino, *supra*, p. 71). Thus, anyone who, whether *willfully* or *negligently*, in the exercise of his legal right or duty, causes damage to another, shall indemnify his victim for injuries suffered thereby. Article 21 deals with acts *contra bonus mores*, and has the following elements: 1) There is an act which is legal; 2) but which is contrary to morals, good custom, public order, or public policy; 3) and it is done with *intent* to injure.

> Thus, under any of these three (3) provisions of law, an act which causes injury to another may be made the basis for an award of damages.[230]

When Ms. Nasino was permitted to attend the wake of her child, the period allowed was reduced from the initial three whole days to only two days of three hours each. Worse, her hands were handcuffed the whole time, and she was accompanied by an absurd number of jail guards—almost 20, some heavily armed.[231] Note that when the BJMP female dormitory warden requested the court earlier to reduce the initial grant to Ms. Nasino of three days, she stated that the BJMP only had 12 jail guards.[232] And yet, an inordinate number of 20 guards escorted Ms. Nasino.[233] From this factual pattern alone, it can be argued that there was an abuse of a legal duty, with the sole intent of injuring a grieving Ms. Nasino in whatever way. Simply, it is *contra bonos mores*.

Again, these remedies do not constitute an exclusive list of those available to Ms. Nasino at any point during her ordeal, nor are these remedies guaranteed to prosper every time they are invoked in a case involving a PDL who wishes to enforce their other rights. The point, however, is not to determine whether these remedies will succeed or not. The purpose of enumerating these remedies is to show that with a clear and concrete understanding of one's substantive rights, remedial vehicles can easily be crafted and applied to enforce them. These substantive rights will remain come hell or high water, and with that truism there will always be an extant procedural tool to enforce the same.

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[230] *Id.* at 24–25. (Emphasis supplied).

[231] Marc Jayson Cayabyab, *No grieving in peace for detainee at baby's wake,* THE PHIL. STAR, Oct. 15, 2020, *available at* https://www.philstar.com/nation/2020/10/15/2049630/no-grieving-peace-detainee-babys-wake; Tetch Torres-Tupas, *Nasino visits Baby River's wake wrapped in PPE suit, shackled in handcuffs,* INQUIRER.NET, Oct. 14, 2020, *at* https://newsinfo.inquirer.net/1347937/nasino-visits-baby-rivers-wake-wrapped-in-ppe-suit-shackled-in-handcuffs.

[232] *Id.*

[233] *Id.*

CONCLUSION

> *"To deny people their human rights is to challenge their very humanity."*
>
> —Nelson Mandela[234]

It is undisputed that PDLs are generally restricted only in their physical liberty—all their other liberties are extant and enforceable, regardless of the fact of detainment. However, even if this is an undisputed legal truism in our jurisdiction, the same is not true in the life of a PDL subjected to the horrors of our penological system.

With that said, given that substantive law provides sufficient legal basis, all the more must procedural remedies be tailored for our PDLs to protect their rights within a penological system that has innovated at a snail's pace.

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[234] Nelson Mandela, Speech delivered at a joint session of the United States Congress, Washington, D.C. (June 26, 1990).