

THE PROTECTION OF CIVIL LIBERTIES AND THE REMEDIES FOR THEIR VIOLATIONS*

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THE THEORY OF OUR CONSTITUTION

By adopting a constitution, we established a government and invested it with a plenitude of powers to enable it to accomplish the purposes for which it was set, which are no less than the *summum bonum*. But so the government will not abuse its powers but will be both responsive and responsible to our will, we divided its powers among its several departments and erected a Bill of Rights over which those powers cannot rise.

This, quite simply, is the theory of our Constitution. In this lecture, I propose to consider the entire field of civil liberties – the conditions for their viability, their safeguarding, and their vindication – and how these liberties make government of, for, and by, the people possible. It will be helpful to begin by classifying these rights and describing their nature and purposes.

CLASSIFICATION OF CONSTITUTIONAL RIGHTS

Constitutional rights, or as they are sometimes called, civil liberties, are generally classified into civil and political rights. Civil rights are those intended to keep the government off the back of people. They are

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pointed out in his dissent in the *Myers*² case, the purpose of the American principle of separation of powers, from which ours has been derived, is "not to promote efficiency but to preclude the exercise of arbitrary power, . . . not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy."

Instead, efficiency is promoted by "partial agency" which allows a department of the government to participate in some of the functions of the others, such as the veto power of the President and his pardoning power, the power of Congress to confirm certain appointments made by the President and participate in the treaty making power of the President, the power of courts to determine the constitutionality of the acts of the other departments of the government, etc.

Moreover, there has been a relaxation by courts in the application of the principle of non-delegation of legislative power. After the early cases finding a violation of this principle,³ the trend has been toward greater delegation in view of "the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws."⁴ This has been accomplished by distinguishing between "the delegation of the power to make law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter there can be no valid objection."⁵ Today, the effort of courts is to determine whether a statute contains a sufficient "standard" to guide administrative discretion.⁶ If it does, it is allowed to pass constitutional muster.

² *Myers v. United States*, 272 U.S. 52, 293, 71 L.Ed. 242 (1926) (dissenting).

³ See, e.g., *Compania de General de Tabacos de Filipinas v. Board of Public Utilities Commissioners*, 34 Phil. 136 (1916) (delegation of power to an administrative agency to require public utilities to submit a "detailed report of finances and operations"); *United States v. Ang Tang Ho*, 43 Phil. 1 (1922) (delegation of power to the Governor General to impose price control whenever, "for any cause" there in his judgment is an "extraordinary rise" in the price of rice and corn).

⁴ *Pangasinan Transit Co. v. Public Service Commission*, 70 Phil. 221 (1940).

⁵ *Cincinnati, W. & Z. R. Co. v. Commissioners of Clinton County*, 1 Ohio St. 77, 88 (1852), cited in *Rubi v. Provincial Board of Mindoro*, 39 Phil. 661 (1919) and *People v. Vera*, 65 Phil. 56 (1937).

⁶ For modern cases upholding delegation, see, e.g., *Edu v. Ericeta*, G.R. No. 32096, 35 SCRA 481 (1970); *Free Telephone Workers Union v. Minister of Labor*, G.R. No. 58184, 108 SCRA 757 (1981); *Tablarin v. Gutierrez*, G.R. No. 78164, 152 SCRA 730 (1987); *Eastern Shipping Lines v. Philippine Overseas and Employment Agency*, G.R. No. 76633, 166 SCRA 533 (1988); *Tatad v. Secretary of Energy*, G.R. No. 124360, 281 SCRA 330 (1997).

It is through these devices – the partial agency that each branch of government exercises over the others and the avoidance of a mechanical application of the checking and balancing device – that the powers of a strong government are controlled without rendering it incompetent to accomplish the great purposes for which it has been established.

Judicial Review

The second safeguard of liberty is found in the power of courts to enforce constitutional limitations. This role of the judiciary is well nigh established in history and in our tradition.

The original Constitution of the United States drafted in Philadelphia in 1787 contained no Bill of Rights on the theory that Congress had not been granted powers which such a Bill would prohibit. Constitutional government means a government of limited powers. Nonetheless, those who objected to the ratification of the American document believed that an affirmation of individual rights was necessary and made the absence of a Bill a major issue. Even among those who campaigned for the ratification of the original Constitution there were some who thought that such a Bill, when enforced through courts, would afford greater protection to the rights of the people. Thomas Jefferson, who campaigned for the ratification of the Constitution, later urged its amendment to include a Bill of Rights. His stress on the “legal check which [such a Bill would put] into the hands of the judiciary . . . which merits great confidence for their learning and integrity” carried the day for the inclusion of the Bill of Rights, which comprise the first ten amendments to the U.S. Constitution.⁷

The American practice of entrusting to the courts the determination of the constitutionality of the acts of the other departments of the government was instantly accepted in the Philippines. Without an express grant of the power, the Philippine Supreme Court regularly passed upon the constitutional claims of litigants, so that by 1935, when the first Constitution was adopted, the Court had already invalidated 13 acts of the

⁷ See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 4 n. 7 (2nd ed. 1988).

legislative department.⁸ Indeed, while in the United States the consistency of judicial review with democracy occasionally arises in the resolution of constitutional questions, in the Philippines the institution of judicial review received instant approval by the people upon the establishment of American rule in this country. As Claro M. Recto, president of the constitutional convention which framed the 1935 Constitution, noted in his valedictory speech, "It is one of the paradoxes of democracy that the people at times place more confidence in the instrumentalities of the State other than those directly chosen by them for the exercise of their sovereignty."⁹ Acknowledgment by the legislative and executive departments of the power of judicial review is found in Art. 7 of the Civil Code which provides that "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall prevail."

In the emerging democracies of Africa and the former Russian republics, following the collapse of the Berlin wall, judicial review has been adopted as a means of protecting newly won freedoms. Today, fifty-six countries have judicial review in one form or another. Only Great Britain and the Netherlands, in Europe, and Lesotho, Liberia, and Libya, in Africa, do not have judicial review. The global rise of constitutionalism led *The Economist* to remark in 1999:¹⁰ "Established and emerging democracies display a puzzling taste in common: both have handed increasing amounts of power to unelected judges. . . . Despite continued attacks on the legitimacy of judicial review, it has flourished in the past 50 years. All established democracies now have it in some form, and the standing of the constitutional courts has grown almost everywhere. In an age when all political authority is supposed to derive from voters, and every passing mood of the electorate is measured by pollsters, the growing power of judges is a startling development."

It is indeed true that, as Holmes said, the other branches of the government are the guardians of the liberties of the people in as great degree as are the courts. None, however, is more decisive in our understanding and defense of our rights than the courts.

⁸ II LORENZO M. TAÑADA & ENRIQUE M. FERNANDO, CONSTITUTION OF THE PHILIPPINES 1135 n.3 (4th ed. 1953).

⁹ Claro M. Recto, *Valedictory Address* (Feb. 8, 1935), in 1 JOSE M. ARUEGO, THE PHILIPPINE CONSTITUTION: ITS ORIGIN, MAKING, AND APPLICATION 537, 539 (1969).

¹⁰ THE ECONOMIST, Aug. 7, 1999, p. 47.

What then are the conditions for invoking the judicial power of review, and in what form may action in which such power may be invoked be brought?

Art. VIII of the Constitution provides in pertinent parts:

SEC. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

....

SEC. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, *quo warranto*, and habeas corpus.

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or rules of court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

It will be useful at this point to distinguish three terms used in Art. VIII, namely: "judicial power," "jurisdiction," and "judicial review."

"Judicial power," which appears in Art. VIII, Sec. 1 ("The judicial power shall be vested in one Supreme Court in such lower courts as may be

established by law.”), has been defined in *Lopez v. Roxas*¹¹ as “the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for the violation of such rights.” With slight modification this definition is now incorporated in the second paragraph of Art. VIII, Sec. 1. “Jurisdiction,” on the other hand, is the authority of a court to hear, try and decide a case,¹² while “judicial review” is the power of a court to determine the constitutional validity of the acts of the other departments of the government.¹³

“Judicial power” is, as it were, the high-tension voltage, which must be transformed into reduced current (“jurisdiction”) in order to be serviceable. Consequently, although all courts are vested with “judicial power”, they cannot exercise that power so as to decide cases until a law is made apportioning the judicial power among them and defining their jurisdiction.¹⁴ In the case of the Supreme Court, its jurisdiction is defined not only by the Constitution but also by law. Insofar as its jurisdiction is derived from the Constitution, it cannot be taken away by Congress.¹⁵ On the other hand, judicial power does not include the power of judicial review, or the power to decide a question of constitutionality, unless it is granted by the Constitution.

From this discussion, it is clear that the power of judicial review may be exercised only where there is an actual case or controversy.

1. The case and controversy requirement. “Justiciability” is the term of art which refers to the dual limitation placed upon the courts by the case and controversy requirement, first, by limiting their business to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process and secondly by limiting their function to a role consistent with the principle of separation of powers to ensure that they do not intrude into areas committed by the Constitution to the other branches of the government. Consequently, the power of

¹¹ 124 Phil. 168 (1966).

¹² *Century Insurance Co., Inc. v. Fuentes*, G.R. No. 16039, 2 SCRA 1168 (1961).

¹³ *Vicente V. Mendoza, The Nature and Function of Judicial Review*, 31 J. OF THE INTEGRATED BAR OF THE PHILIPPINES 6 (2005).

¹⁴ CONST. art. VIII, §2 provides that “The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.”

¹⁵ § 5; art. VII, §. 4, ¶ 7 and § 18, ¶ 3; art. IX, A, § 7.

judicial review cannot be invoked if the question presented is (a) political, (b) moot or academic, (c) premature, or (d) merely hypothetical, or where the party raising the constitutional question has no standing. Let us examine briefly these limitations on the power of judicial review.

First, "questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislature or the executive branch of the Government"¹⁶ are referred to as political questions. In the martial law years from 1972 to 1986, the political question doctrine was excessively used by the government to bar judicial inquiry into the validity of executive action that it fell into disrepute. The martial law government sounded so much like the boy who cried wolf that, after EDSA, it was made the courts' "duty . . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." This provision was made because of the perception of the framers of the new Constitution that the martial law Supreme Court had used the political question doctrine to avoid ruling against the authoritarian regime of President Marcos. Otherwise, the political question doctrine is much alive and can be invoked in a proper case. For instance courts will not inquire into questions touching on our foreign relations.¹⁷

Second, the Court will generally not decide a constitutional question in a case that has become moot and academic, preferring instead to defer the resolution of such question to another day.

There are exceptions, however, when a case involving a constitutional question will be decided by the Court even if the case has ceased to be a lively controversy. These are (a) where the case is capable of repetition, yet evading review;¹⁸ (b) where it has been rendered moot by the unilateral act of desistance of the defendant but there is reasonable ground to believe that the wrong complained of will be repeated; and (c) where the case has collateral legal consequences.

Third, constitutional questions may come to the Court too early, just as they may come too late. The first situation presents a problem of

¹⁶ *Tañada v. Cuenco*, 103 Phil. 1051 (1957).

¹⁷ *See, e.g., Marcos v. Manglapus*, G.R. No. 88211, 177 SCRA 668 (1989).

¹⁸ *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006.

prematurity or lack of ripeness, the second, a question of mootness. In *Pimentel v. HRET*,¹⁹ it was held that whether party-list representatives are of sufficient number to be entitled to seats in the House of Representatives Electoral Tribunal should first be raised to the House of Representatives. They may raise the question to the Supreme Court only if their request is denied.

Fourth, there is no basis for the exercise of the power of judicial review where the constitutional question is raised only by way of a request for advisory opinion. The reason for this is that, as in the case of mootness and prematurity, any opinion which the Court may render will not terminate the uncertainty or controversy which gave rise to the action.²⁰ Yet, what differentiates a request for advisory opinion, on the one hand, from a case that is either moot or premature, on the other, is the lack of adversity of interest on the part of the party requesting an opinion. A request for an advisory opinion presents nothing but a hypothetical question which is not the business of courts to determine. The business of courts is to settle actual controversies which involve, as Art. VIII, Sec. 1, paragraph 2, provides, "rights which are legally demandable and enforceable." As Professor Paul A. Freund has written:

A judge writing for the popular anthologies could readily compose an essay on the side of liberty of speech or on the side of public order, but a judge devoted to his mission will resist the temptation. When he exposes the factors that trouble judgment, strives for as particularistic a decision as he can make, he is providing a lesson in the rational solution of human conflicts that is too precious to be jeopardized through disrespect.²¹

Finally, the case and controversy requirement is not satisfied if the party bringing the action has no standing. The doctrine of standing focuses on the nature of the interest of such party. Hence, the question is whether the plaintiff has alleged "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the

¹⁹ G.R. No. 141489, Nov. 29, 2002.

²⁰ See, *Nashville, C. & St. L. Ry v. Wallace*, 288 U.S. 249 (1933).

²¹ Paul A. Freund, *THE SUPREME COURT OF THE UNITED STATES: IT BUSINESS, PURPOSES AND PERFORMANCE* 190 (1962).

presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."²²

In ordinary litigation, a party's interest is seldom a problem. Whether he is entitled to relief turns on factors other than his standing. In contrast, because constitutional cases are very often public actions in which the relief sought is likely to affect parties other than the plaintiff, a preliminary question arises as to his interest in the constitutional question he raises. While his interest may not always be like that of a plaintiff in a private action, it nevertheless must rise above the level of generality of the interest of the public. Otherwise courts would be converted into forums for the airing of generalized grievances which are more proper for the political process.²³

Who then can bring public actions? The following have been found to possess the requisite standing to sue in constitutional cases:

(a) Citizens bringing suits to assert a public right. In *Tanada v. Tuvera*,²⁴ it was held that "when the question is one of public right and the object [of the action] is the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are brought need not show that he has any legal or special interest in the result, it being sufficient that he is a citizen and as such is interested in the execution of the laws."

(b) Those asserting the rights of third parties. Where it is necessary to protect the constitutional rights of parties who are not in a position to assert their right, standing *jus tertii* has been recognized. For example, in *Kramer v. Shelly*,²⁵ the U.S. Supreme Court invalidated so-called racial covenants, which prohibit the sale of real properties to non-whites. In case such a covenant is nonetheless made by parties to a sale, may the buyer, who subsequently sells the property to a non-white, assert the right of his

²² *Kilosbayan v. Morato*, G.R. No. 118910, 246 SCRA 540, Jul. 17, 1995, citing *Baker v. Carr*, 369 U.S. 186 (1962) and *Flast v. Cohen*, 392 U.S. 83 (1968); *Francisco v. House of Representatives*, G.R. No. 160261, Nov. 10, 2003.

²³ *Kilosbayan v. Morato*, G.R. No. 118910, 250 SCRA 130, Nov. 16, 1995; VICENTE V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS: CASES AND MATERIALS 137 (2004).

²⁴ G.R. No. 63915, 136 SCRA 27, Apr. 25, 1985, citing *Severino v. Governor General*, 16 Phil. 366 (1910).

²⁵ 334 U.S. 1 (1948).

non-Caucasian vendee? The Court said yes. In *Barrows v. Jackson*,²⁶ it held that —

the law will permit respondent to resist any effort to compel her to observe such a covenant, so widely condemned by the courts, since she is the one in whose charge and keeping reposes the power to continue to use her property to discriminate or to discontinue such use. The relation between the coercion exerted on respondent and her pecuniary loss thereby is so close to the purpose of the restrictive covenant to violate the constitutional right of those discriminated against, that respondent is the only effective adversary of the unworthy covenant in its last stand.

(c) Taxpayers. Taxpayers are allowed standing to challenge the validity of laws providing for the disbursement of public funds on the theory that "the expenditure of public funds by an officer of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds."²⁷ In American law, a two-nexus test is applied to taxpayers' suits: First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked, i.e., the law must be an exercise of the congressional power under the taxing and spending clause, and secondly, he must establish a nexus between that status and the precise nature of the constitutional infringement he alleges, i.e., that the law exceeds specific constitutional limitations imposed on the congressional taxing and spending power and not simply that the enactment is generally beyond the power of Congress under the legislative grant of power in the Constitution.²⁸

(d) Legislators. Members of Congress have standing to question the validity of any action which infringes upon the prerogatives of Congress since their office confers on them a right to participate in the exercise of the powers of the institution.²⁹

²⁶ 346 U.S. 249, 97 L.Ed. 1586 (1953).

²⁷ *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

²⁸ *Flast v. Cohen*, 392 U.S. 83, 20 L.Ed.2d 947 (1968); *United States v. Richardson*, 418 U.S. 166, 41 L.Ed.2d 678 (1974); *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 41 L.Ed.2d 706 (1974).

²⁹ *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, 235 SCRA 506 (1994).

(e) Finally, an association has standing to represent its members in any suit where the result will affect their interest.³⁰ However, the mere invocation by an organization of its purpose, such as an interest in the preservation of the rule of law, will not suffice to confer standing upon that organization.³¹

In addition, in his dissent in *Ashwander v. Tennessee Valley Authority*,³² Justice Brandeis adverted to certain rules which he said the U.S. Supreme Court had developed for avoiding passing upon constitutional questions even "in cases confessedly within its jurisdiction." The rules, some of which have been applied by our own Supreme Court, are:

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding declining because to decide "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals...."

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it...."

3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied...."

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other grounds upon which the case may be disposed of.... [I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter....

³⁰ Philippine Constitution Association v. Gimenez, G.R. No. 23326, 15 SCRA 479 (1965).

³¹ Integrated Bar of the Philippines v. Zamora, G.R. No. 141284, 338 SCRA 81 (2000).

³² 297 U.S. 288 (1936).

5. The Court will not pass upon the validity of a statute upon the complaint of one who fails to show that he is injured by its operation....

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits....

7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided...."

In the recent case of *Lambino v. Commission on Elections*,³³ our Supreme Court invoked Rule No. 4 in the Brandeisian formulation, in holding that "courts will not pass upon the constitutionality of a statute if a case can be resolved on some other grounds."

So much then for the case and controversy requirement. The next question is, how may the power of review be invoked?

2. Forms of actions. First, the constitutionality of any statute may be raised in any action directly brought for redress in the courts, or by way of defense in any action brought against the person challenging the validity of the act. While the general rule is that such action must be first filed in the lower court and only afterward brought on appeal to the Supreme Court,³⁴ the trend is to allow such questions to be brought to the Court first hand if they are of "transcendental importance," the remedies in the ordinary course of law are not plain, speedy and adequate, and the constitutional

³³ G.R. No. 174153, Oct. 25, 2006.

³⁴ See, e.g., *People v. Vera*, 65 Phil. 56 (1937).

questions do not require for their resolution the adjudication of factual issues.³⁵ As the Court noted in *People v. Vera*:³⁶

[I]n *Cu Unjieng vs. Patstone* ([1922], 42 Phil., 818), this court held that the question of the constitutionality of a statute may be raised by the petitioner in mandamus proceedings (*see, also*, C.J. p. 783); and in *Government of the Philippine Islands vs. Springer* ([1927], 50 Phil. 259 [affirmed in *Springer vs. Government of the Philippine Islands* (1928) 277 U.S. 189; 72 Law. Ed., 845]), this court declared an act of the legislature unconstitutional in an action of quo warranto brought in the name of the Government of the Philippines. It has also been held that the constitutionality of a statute may be questioned in habeas corpus proceedings (12 C.J. p. 783; *Bailey on Habeas Corpus*, Vol. I, pp. 97, 117), although there are authorities to the contrary; on an application for injunction to restrain action under the challenged statute (mandatory, *see Cruz vs. Youngberg*, [1931] 56 Phil., 234); and even on an application for preliminary injunction where the determination of the constitutional question is necessary to a decision of the case. (12 C.J. p. 783) The same may be said as regards prohibition and certiorari. (*Yu Cong Eng vs. Trinidad* [1925], 47 Phil. 385; [1926], 271 U.S. 500; 70 Law. ed., 1059; *Bell vs. first Judicial District Court* [1905], 28 Nev., 280; 81 Pac., 875; 113 A.S.R. 854; 6 Ann. Cas., 982; 1 L.R.A. [N.S.] 843 and cases cited).

The usual vehicle for elevating constitutional questions to the Supreme Court is by means of the special action of certiorari, prohibition, or mandamus under Art. III, Sec. 5(1) of the Constitution and Rule 65 of the Rules of Court, or in special proceedings for the issuance of the writ of habeas corpus under Art. VIII, Sec. 5(1), in relation to Rule 109 of the Rules of Court. Violations of constitutional rights constitute "grave abuse

³⁵ *See, e.g.*, *Araneta v. Dinglasan*, 84 Phil. 368 (1949) (validity of exercise of emergency powers by the Presidency); *Agan v. Philippine Int'l Airport Terminal*, G.R. No. 155501, 402 SCRA 612 (2003) (validity of a build-operate-transfer contract); *Chavez v. Public Estates Authority*, G.R. No. 133250, 384 SCRA 152 (2002) (validity of contract for reclamation of public lands); *Information Technology of the Philippines v. Commission on Elections*, G.R. No. 159139, 419 SCRA 141 (2004) (validity of contract for supply of automated counting machines); *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925) (validity of Chinese Bookkeeping Act); *People v. Vera*, 65 Phil. 56 (1937) (validity of the Probation Act); *Gonzales v. Commission on Elections*, G.R. No. 27833, 27 SCRA 835 (1969) (Validity of Tanada-Singson Law limiting the campaign period); *Santiago v. Commission on Elections*, G.R. No. 127325, 270 SCRA 106 (1997) (accepting a petition for prohibition to resolve issues of public importance).

³⁶ 65 Phil. 56, 83 (1937) (underscoring added).

of discretion”³⁷ and therefore are remediable under Rule 65, Secs. 1 and 2, while arbitrary arrests are especially vulnerable to attack on constitutional grounds in proceedings for the writ of habeas corpus. Abuses committed against detainees may also be judicially inquired into through the writ since detentions, which are legal in the beginning, may become illegal due to such abuses.

Second, an action for injunction may also be availed of to stop prosecutions under an unconstitutional statute in order to prevent the strong arm of the law from being used in despotic or arbitrary manner in violation of the fundamental rights of an individual.³⁸

Third, a civil action for damages for violations of individual rights may be brought under Art. 32 of the Civil Code. In *Aberca v. Ver*,³⁹ it was held that such action may be brought against any officer, employee or person directly or indirectly responsible for the violation of constitutional rights, even if the privilege of the writ of habeas corpus is suspended. It was explained that what is suspended in such a case is the right of the individual to seek release from detention, not the right of the detained persons to damages for the illegality of their detention. The Court held that Art. 32 does not exempt public officers from responsibility. Through Chief Justice Yap, the Court explained:

By this provision, the principle of accountability of public officials under the Constitution acquires added meaning and assumes a larger dimension. No longer may a superior official relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for the transgressions committed by the latter against the constitutionally protected rights and liberties of the citizens.

Fourth, criminal prosecution for violations of constitutional rights is also an option. The Revised Penal Code devotes a whole title (Title II) to “Crimes against the Fundamental Laws of the State.” Arbitrary detention, delay in the delivery of detained persons, delaying release, expulsion,

³⁷ *Information Technology of the Philippines v. Commission on Elections*, G.R. No. 159139, 419 SCRA 141 (2004).

³⁸ *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925).

³⁹ G.R. No. 69866, 160 SCRA 590 (1988).

violation of domicile, illegal searches and seizures, prohibition, interruption, and dissolution of peaceful meetings, interruption of religious worship and offending religious feeling are among the acts violative of constitutional rights which are punished by the Revised Penal Code.⁴⁰

The right of the people to be heard through their representatives in the legislature is also safeguarded by provisions punishing those who, by force or fraud, prevent the legislature from meeting⁴¹ or disturb its deliberations⁴² or by force, intimidation, threat or fraud prevent a member of the legislature from attending its sessions or meetings of its committees, or from expressing his opinion, or casting his vote.⁴³ Violations of these provisions are actually directed at the sovereign rights of the people.

Fifth, administrative sanctions are also available against erring public officers, such as the police. This is suggested in a number of cases holding illegally seized evidence to be admissible.⁴⁴ Of course it is now settled that such evidence is inadmissible,⁴⁵ but administrative liability of those guilty of violating constitutional rights may in addition be enforced.

ESSENCE OF CIVIL LIBERTIES: THE GOVERNMENT'S DUTY TO PROTECT PEOPLE'S RIGHTS

I have endeavored to present a synoptic view of the civil liberties of the people and the need for the government to protect them. For indeed, "the prime duty of the Government," as the Constitution declares, "is to serve and protect the people."⁴⁶ That protection, I dare say, is not limited to protection against physical harm but extends to the protection of human rights as well. As Chief Justice Marshall said in a little known passage in his famous opinion in the *Marbury* case said: "The very essence of civil liberty consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the King himself is sued in the

⁴⁰ REV. PEN. CODE art. 124-133.

⁴¹ REV. PEN. CODE art. 143.

⁴² REV. PEN. CODE art. 144.

⁴³ REV. PEN. CODE art. 145..

⁴⁴ See, e.g., *Moncado v. People's Court*, 80 Phil. 1 (1948).

⁴⁵ CONST. art. III, §3(2); *Stonehill v. Diokno*, 126 Phil. 738, 747 (1967).

⁴⁶ CONST. art. II, §3.

respectful form of a petition and he never fails to comply with the judgment of his court."⁴⁷ This indeed is the meaning of a government of limited powers such, as I trust, ours is.

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⁴⁷Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60, 69 (1803).