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THE WRIT OF AMPARO: A REMEDY TO ENFORCE FUNDAMENTAL RIGHTS

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I. INTRODUCTION

The writ of *amparo*¹ originated in Mexico, where it was provided for in the Constitution of the State of Yucatan in 1841 and later in the Federal Constitution of 1857.

Noteworthy it is that it was also in Mexico that the modern trend of incorporating fundamental social and economic rights in the Constitution started. The Mexican Constitution of February 5, 1917, which is still basically in force, opened up new perspectives. It was more advanced than even the German Constitution of October 1919, thus antedating the latter by two years in establishing as constitutional a number of fundamental social rights.²

The social transcendence of human rights was thus constitutionally recognized. And in addition to those rights that have traditionally been granted to the individual, others have arisen that put him in a new dimension: his integration into the various social groups of which contemporary society is made up. Speaking on the new Constitutions of the world, B. Mirkins Guetzevitch aptly observed that, in the 20th century, the social purpose of law is not only a doctrine or a school of legal thought but the very essence of life.³

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¹ "*Amparo*" is a word meaning protection, from *amparar* meaning "to protect".

² P. ROUSIX, *GENESIS DE LOS ARTICULOS 27 Y 12 DE LA CONSTITUCION POLITICA DE 1917* 27 ET. SEQ. (2D ED. 1959).

³ *LAS NUEVAS CONSTITUCIONES DEL MUNDO* 34 (1931).

Recently, however, contemporary jurists as well as facts of history have shown that human rights cannot be effectively safeguarded merely by incorporating them in the Constitution. And many constitutional lawyers today consider that human rights can only be effectively guaranteed by specific procedures for their protection.

Now among the different procedures that have been established for the protection of human rights, the primary ones that provide direct and immediate protection are *habeas corpus* and *amparo*. The difference between these two writs is that *habeas corpus* is designed to enforce the right of freedom of the person, whereas *amparo* is designed to protect those other fundamental human rights enshrined in the Constitution but not covered by the writ of *habeas corpus*.⁴

Amparo, therefore, has been said to have done for the social and economic rights what *habeas corpus* has done for the civil and political rights. Speaking of the effectiveness of *amparo*, the Director of the Institute of Legal Research at the National University of Mexico says: "*Amparo* is, in my view, the most effective remedy for the specific protection of the human rights set out in the Constitution."⁵

After Mexico, the first country to introduce *amparo* was El Salvador, in its Constitution of August 13, 1886. It was followed by Honduras, in its Constitution of 1894, Nicaragua on November 10, 1911, Guatemala on March 11, 1921, Panama on January 2, 1941, Costa Rica on November 7, 1941, Argentina in the Constitution of the Province of Santa Fe of August 13, 1921, and more recently, Venezuela in its Constitution of 1967.

It has also spread to other parts of the world, such as India, whose Constitution of 1965 -- considered a model in progressive and modern constitution-making -- provides in Part III, Sec. 32, subsections 1-4, a "Right to Constitutional Remedies" to enforce "Fundamental Rights" embodied in said portion of the Constitution.

Finally, the writ of *amparo* was raised to the international level by its inclusion in Art. XVIII of the Inter-American Declaration of

⁴ Zamudio, *Latin American Procedures for the Protection of the Individual*, J. Int'l. Com. Jurists 86 (1968).

⁵ *Id.* at 77.

Human Rights, a regional convention approved at Bogota on May 2, 1948. These landmark provisions state:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect ("*amparo*" in Spanish) him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Finally, *amparo* first found expression in a multilateral instrument of universal application in the Universal Declaration of Human Rights, which was approved by the General Assembly of the United Nations on December 10, 1948. Article 8 of the Universal Declaration states:

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

II. DIFFERENT FORMS OF AMPARO

The nature and time-tested role of *amparo* has shown that it is an effective and inexpensive instrument for the protection of human rights enshrined in the Constitution.

As practised, *amparo* has been found so flexible to the particular situations of each country that, while retaining its essence, it has developed various procedural forms. There is therefore a Mexican *amparo*, an Argentinian *amparo*, a Chilean *amparo*, and so on.

The forms of *amparo* mainly differ according to the scope of protection given. Briefly, these are as follows:

(a) In some countries, *amparo* is regarded solely as an equivalent to *habeas corpus*, being available only to protect the individual from unlawful acts or from irregularities in criminal proceedings. This is the meaning it has in Chile, and the same holds in the transitional provision 5 of the 1951 Venezuelan Constitution which uses the term *amparo de la libertad personal* as a synonym of *habeas corpus*.

(b) In Argentina, Venezuela, Guatemala, El Salvador, Costa Rica, Panama, and very recently, in Bolivia, Ecuador, and Paraguay, as well as in Mexico, *amparo*, has come to mean an instrument for the protection of constitutional rights with the exception of freedom of the person, which is protected by the traditional *habeas corpus*.

(c) A third group of countries also uses *amparo* as a petition for judicial review to challenge unconstitutional laws, as in Mexico, Honduras and Nicaragua.

III. SURVEY OF PROVISIONS OF AMPARO IN MODERN CONSTITUTIONS

The Venezuelan Constitution of January 1961 provides for *amparo* in Article 49:

The courts shall protect ('*ampararan*' in Spanish) all inhabitants of the Republic in the exercise of the rights and guarantees established by the Constitution, in accordance with law. The procedure shall be brief and summary...

Article 48(3) of the Constitution of Costa Rica, of November 7, 1949, lays down rules for *amparo*:

To maintain or restore the enjoyment of the rights laid down in this Constitution (other than freedom of the person which is protected under par. 1 of the Article by *habeas corpus*) everyone shall also have the right of *amparo* in such courts as the law may determine.

Article 19 of Bolivia's Constitution of February 2, 1967 provides:

In addition to right of *habeas corpus*, to which the preceding article refers, *amparo* lies against illegal acts or omissions of officials or private individuals that restrict or deny the individual rights and guarantees recognized by the Constitution and the law.

The Constitution of Ecuador, of May 25, 1967, provides for *amparo* in Article 28 (15) in the following terms:

Without prejudice to other inherent rights of the individual, the State shall guarantee... the right to demand judicial *amparo* against any violation of constitutional guarantees, without prejudice to the duty of the public power to ensure the observance of the Constitution and the laws.

The Constitution of Paraguay, of August 25, 1967, provides for *amparo* in Article 77:

Any person who considers that a right or guarantee to which he is entitled under this Constitution or under law has been or is in imminent danger of being seriously injured by an individual and

who, because of the urgency of the case, cannot have recourse to the ordinary remedies may file a petition for *amparo* with any judge of first instance. The proceedings shall be short, summary, free and held in public, and the judge shall be empowered to safeguard the right or guarantee or to restore immediately the legal position infringed. Regulations governing the procedure shall be laid down by law.

Since the Revolution of 1955, *amparo* has found a place in a large number of Argentinian provincial Constitutions.

Article 58 of the Constitution of Honduras, of June 3, 1965, in paragraph 1 states that *amparo* may be sought by an aggrieved party or by any person on his behalf, for the following purpose: "(a) to maintain or resotre the enjoyment of the rights and guarantees established by the Constitution..."

As stated, the Constitution of India provides for a writ of *amparo* in its Part III, Section 32, Subsection 1-4.

The success of the land reform program of Mexico was due in large measure to the writ of *amparo*, which, under the Constitution of Mexico, is available to challenge decisions of agricultural authorities that effect the rights of their farming cooperatives there, called *ejidos*, or rights of their farming members, called *ejidatarios*, under the Constitutionally-established agrarian reform system of said country.⁶

Professor Zamudio attests: "An examination of the various procedures for protecting fundamental human rights, shows, it is submitted, that no other institution has the prestige, roots and traditions of *amparo* (or its equivalent, the Brazilian *mandado de seguranza*) to provide a coherent procedure with uniform bases for the protection of fundamental rights set forth in various... Constitutions."⁷

IV. CONSTITUTIONAL BASIS OF THE WRIT

As earlier mentioned, constitutional lawyers around the world believe that human rights can be effectively safeguarded only if, in addition to their being embodied in the Constitution, a specific

⁶ See *Id.* at 86.

⁷ *Id.* at 89 (emphasis supplied).

procedural device to protect them is likewise provided for in the Constitution. The reason is obvious. By including in the Constitution a right to an effective remedy to protect social and economic rights, we spare them from the possible curtailment or destruction by the vagaries of shifting political majorities in the legislature. After all, these are human rights, deemed to spring from and adhere to the very nature, person, and dignity of man. They are not within the competence of society to abrogate – even by majority vote; they are in fact sometimes called “rights over society.”

Furthermore, there can be no clearer way of showing the degree of seriousness and determination to see the realization and fulfillment of the social and economic rights enshrined in the fundamental law than to provide for an effective procedural remedy to enforce them.

The Philippine Constitution provides the basis for the Philippine writ of *amparo*, by introducing a new provision in Article VIII, Section 5(5), that empowers the Supreme Court to: “Promulgate rules concerning the protection and enforcement of constitutional rights...” This formulation was the idea of former Chief Justice Roberto Conception, Chairman of the Judiciary Committee of the Constitutional Commission, in connection with the proposal for a writ of *amparo*.