

The Rights of the Accused in Criminal Cases: Japan and Philippine Constitutional Viewpoint

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要 旨

本稿は、適正手続きの保障、自己負罪拒否特権、二重の危険、裁判を受ける権利、無罪推定原則等、刑事被告人の憲法に定められた基本的人権に関して、日本とフィリピンの比較検討を行うものである。

両国は、基本的にアメリカ憲法の影響を受けており、刑事被告人の憲法上の規定においては、ほぼ同様の規定を有しているが、その運用・解釈には違いが見られる。

運用・解釈の相違は、両国の政治的・社会的背景の違い及び司法制度並びに刑事手続きの違いにその原因があるが、それと同時に、諸原理・諸原則の理解に関する違いにも、その原因があると思われる。そこで、本稿においては、まず、諸原理・諸原則の理解の違いを俯瞰したい。

Keywords: Rights of the Accused, Criminal Cases, Japan, Philippines, Constitutional Viewpoint

Table of Contents

I. Introduction

II. Discussion

A. Prologue: The Constitutional Democratic Principles of Japan and the Philippines

B. Rights In General Perspective: As a Concept, Legal Terms, Rules, Principles and Theories Regarding the Exercise of Rights by the Accused

1. Rights as a Concept

2. Definition of Rights

3. Bill of Rights

a. Classification of Rights

1. Natural Rights

The Rights of the Accused in Criminal Cases (Manalo)

2. Constitutional Rights

- a. Political Rights
- b. Civil Rights
- c. Social and Economic Rights
- d. Rights of the Accused

3. Statutory Rights

- 2. Due process of Law
 - a. Procedural Due Process
 - b. Substantive Due Process
- 3. Probable Cause
- 4. The Right of Self-Incrimination
- 5. Presumption of Innocence

C. Constitutional Provisions on the Rights of the Accused

- 1. Japan
- 2. Philippines

III. Summary and Conclusion

IV. Endnotes

V. References

I. Introduction

In a democratic polity, every individual has certain rights provided by the constitution. Everyone is regarded as a citizen and sovereignty is their vital instrument for exercising such rights, but they also have a shared responsibility to work with the others to continue to move towards fundamental values and self-governance.

To this end, the Constitution is a basic law of the land, and is the most important mechanism in society to determine to whether or not a situation is proper, constitutional or legal. It is lead guidance for governance, social order, and serves as a restriction on conditions wherein the social welfare and common good is in question, to avoid abuses and disorder. The Constitution is the main basis of the other laws recognized by the state such as Criminal Law, Civil Law, and Labor Law etc.

Japan and the Philippines, even though different in terms of economic standards and structure of government, (Japan, parliamentary in practice and Philippines as presidential,) both are democratic in the form of government as determined by their Constitutions. Both constitutions uphold democratic values, norms and principles for the enjoyment and well being of every individual.

One of the most significant features of the Constitution in both countries is the provision regarding the rights of the accused in criminal cases. For instance, the essence of due process of law, speedy trial, right against torture, forcible testimonies, rights against double jeopardy, access to the courts, right to impartial trial etc. However, both nations follow their own legal doctrines, philosophies and procedures.

This paper, provides an overview of the rights of the accused in criminal cases in both countries as described and prescribed by their constitutions through general principles and rules of law.

II. Discussion

A. Prologue: The Constitutional Democratic Principles of Japan and the Philippines

Japan and the Philippines, as I mentioned earlier, are both democratic countries based on statements of their respective constitutions. Both deal with the supremacy of the rule of law, equality, sovereignty, the enjoyment of every citizen on the rights and freedom, preservation of peace and security, promotion of justice, truth and faith, recognition of the existence of the common good and welfare of the state. Therefore, they strongly oppose slavery, oppression and tyranny. (*Preamble of the Constitution of Japan, November 3, 1946 p. 2, Chapter 3 Rights and Duties of the People, Constitution of Japan, Preamble of the 1987 Philippine Constitution, Article 2 and 3, Declaration of Principles and States Policies and the Bill of Rights, 1987 Philippine Constitution*)

More so, Japan and the Philippines subscribe to equality under the law, *Chapter 4 Article 14* stated, “All the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin”, in the former; *Article 3 Section 1* stated, “No

The Rights of the Accused in Criminal Cases (Manalo)

person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied of the equal protection of the laws”, in the latter.

Each country’s constitution stresses the importance of the constitutional rights of the accused for the purpose of protecting and safeguarding their rights, which are accorded by the constitution. Having such provisions, as much as possible, prevents abuses, maltreatment, misconception and violation, however, these are relative in nature.

B. Rights In General Perspective: As A Concept, Legal Terms, Rules, Principles and Theories Regarding the Exercise of Rights by the Accused

Rights As a Concept

Thomas Jefferson In the American Declaration of Independence states, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments is instituted among men, deriving their just powers from the consent of the governed.” (***Howard Cincotta et al., Educational Excellence Network American Federation of Teacher’s Education for Democracy/International, US Department of State International Information Programs***)

In the case ***American com. vs. Douds, 339 US 382 421*** stated by ***Joaquin Bernas (1996)***, “in a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.”

Steven Gifis (1998) defined “rights as individual liberties in a constitutional sense. It is a constitutional right wherein the individual liberties granted by the state and protected for governmental interference. He added “In relation to constitutional guarantees, a broad shield of protection that consists of a vested interest, the government should be in equity, recognize and protect the individual and could not be deprived arbitrarily without justice.”

Rights in a democratic society basically defined by the Constitution in the “*Bill of Rights*” wherein the declaration and enumeration of a person’s rights and privileges has been designed by the constitution, to protect against violations by the government, or by an individual or groups of individuals, a charter of liberties for the individual and limitation upon power of the State.”(*1 Cooley 534; Black, Constitutional Law, 3rd Edition, pp. 9-10*)

Prof. Hector de Leon (1999) cited that “the basis of *Bill of Rights* is the social importance accorded to the individual in a democratic or republican state, the belief that every human being has intrinsic dignity and worth which must be respected and safeguarded.”¹

“A *Bill of Rights*, as cited by *Nolledo (1999)* in the case entitled *16 Am. Jury. 2d, p. 636; United States vs. Cruikshank, 92 U.S. 542*, is to a large extent declaratory of fundamental principles and of the basic rights of citizenship. It enumerates some of the private and inalienable rights of the people, and it has been said that the rights protected by the *Bill of Rights* are those that inhere in the great and essential principles of liberty and free government.” Also, the case of *Allen vs. Pioneer Press Co. 40 Minn. 117* states “the rights in the *Bill of Rights* are sometimes referred to as natural laws and as being founded as natural right and justice.”

Hector de Leon (1999) and Benjamin Paulino (1995) explained, “The rights that a citizen of a democratic state enjoys may be classified into:

- (1) *Natural rights* – the rights possessed by every citizen without being granted by the State for they are given to man by God as a human being created to His image so that he may live a happy life such as the right to life and the right to love.

- (2) *Constitutional rights*- the rights which are conferred and protected by the Constitution and as part of the fundamental law, they cannot be modified or taken away by the law-making body. The constitutional rights may be classified into:

(a) **Political rights**- the rights of every citizens which give them the power to participate, directly or indirectly, in the establishment or administration of the **government** (*Vera vs. Avelino, 77 Phil. 221*).

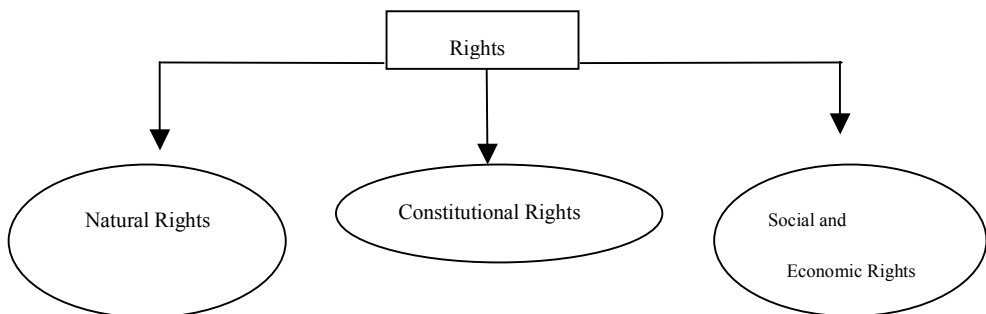
(b) **Civil rights** – the rights which the law will enforce at the instance of private individuals for the purpose of securing to them the enjoyment of their means of happiness (*Malcolm and Laurel, p. 378*).

(c) **Social and economic rights** – the rights which are intended to insure the well - being and economic security of the individual.

(d) **Rights of the accused** – the (civil) rights, which intended for the protection of a person accused of any crime.

(3) **Statutory rights**- the rights which are provided by laws promulgated by the law-making body, and consequently, may be abolished by the same body such as the right to receive a minimum wage and the right to inherit property.”²

Figure 1



Due Process of Law

In a democratic society “**due process of law**” is a very important rule to be observed. **John P. Frank**, a constitutional expert pointed out that“ in every society, those who administer the criminal justice hold power

with the potential for abuse and tyranny. In the name of the state, individuals have been imprisoned, had their property seized, and been tortured, exiled and executed without legal justification and often without any formal charges ever being brought. No democratic society can tolerate such abuses. Every state must have the power to maintain order and punish criminal acts, but the rules and procedures by which the state enforces its laws must be public and explicit, not secret, arbitrary, or subject to political manipulation by the state.”
(Howard Cincotta et al., Educational Excellence Network American Federation of Teacher’s Education for Democracy/International, US Department of State International Information Programs)

In the case of “*Fiehe v. R.E. Householder Co., 125 So. 2,7*” it is stated, “that the essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in an orderly proceeding. Also in *Mayor of Baltimore vs. Scharf, 54 Md. 499,519 (1880)* states that “ To dispense with notice before taking property is likened to obtaining judgment without the defendant having ever been summoned. In *Kazubowski vs. Kazubowski, 45 Ill.2d 405, 259, N.E. 2d 282, 290; Blacks Law Dictionary, 6th Edition, page 500* defined “*due process of law* as an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case”.

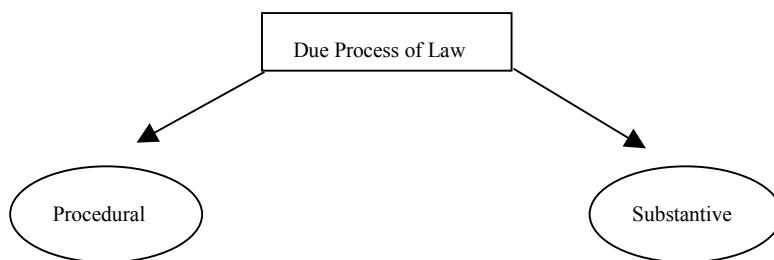
According to *State vs. Green, 232 S.W. 2d 897,903 (Mo. 1950)*, “due process of law implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in competent tribunal possessing jurisdiction of the cause and proceeding upon justice. It is founded upon the basic principle that every man shall have his day in court, and the benefit of the general law which proceeds only upon notice and which hears and considers before judgment is rendered.”

In *Petit vs. Penn., La.App, 180 So.2d 66, 69;Black Dictionary, 6th Edition, page 500*, “ the meaning of the phrase mentioned above is that no person shall be deprived of life, liberty, property or, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.”

In the introductory part of the book *Treatise on Historical Development and Highlights of Amendments of Rules on Criminal Procedure of Justice Oscar M. Herrera*, the importance of procedure has been quoted, which is taken “*In the Matter of the Application of Paulk I. Gault, 387 U.S., 1.18 L ed., 87 S CT 1428*”, is that “ Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact, which defines the rights of the individual and delimits the powers, which the State exercises. In *Vaughn vs. State, 3 Tenn. Crim. App. 54, 456 S.W.2d 879,883, Black Dictionary, 6th Edition, p. 500*, “ aside from all else, due process means a fundamental fairness and substantial justice. In 16 Am. Jur. 2nd,p.939 stated that, “due process has to do with the denial of fundamental fairness, shocking to the universal sense of justice; it deals neither with power nor with jurisdiction but with their exercise.”

It is said in *Ex parte Wall cited by Nolledo (1999), 107 U.S 265*, “one of the most famous and perhaps the most often quoted definition of due process of law is that Daniel Webster in his argument in the Dartmouth College Case (*Dartmouth College vs. Woodward, 4 Wheat (P.S.) 518*) in which he declared that by *due process of law* is meant a law hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.”

Figure 2



He also (1999) explained, “ *Due Process* covers *procedural* as well as *substantive due process*.”

A. Procedural Due Process

The requirements for procedural due process are the following:

- (1) The existence of an impartial court or tribunal that will hear the case;
- (2) The court or tribunal has jurisdiction over the person and over the subject matter of the proceedings;
- (3) The defendant or one sued must be given an opportunity to be heard; and
- (4) The judgment is rendered only after lawful hearing.

B. Substantive Due Process

The requisites of substantive due process of law are

- (1) A law which is in harmony with the general powers of the legislature;
- (2) Such law must be reasonable in its operations;
- (3) Such law is enforced according to regularly prescribed methods; and
- (4) Such principle is applicable to all of the people, or of all of a class.”

Probable cause

“***Probable cause***”, on the other hand, is a very important concept especially in the issuing of a warrant of arrest, arrest and search warrant. In the note of *Joaquin Bernas (2000)*, “***probable cause*** means such facts and circumstances antecedent to the issuance of a warrant that are in themselves sufficient to induce a cautious man to rely upon them. Specifically, ***probable cause*** must be defined in relation to the action, which it justifies. ***Probable cause*** for an arrest or warrant of arrest would mean such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. Furthermore, it should be

The Rights of the Accused in Criminal Cases (Manalo)

emphasized that what is required is not proof beyond reasonable doubt but merely probable cause.³ In *Henry v. United States*, 361 U.S. 98,102 (1959) states that “Evidence required to establish guilt is not necessary.”⁴

The Right of Self-incrimination

“*The Fifth Amendment of the Constitution of the United States* granted “*the right of self-incrimination*”, which *Miranda case* was based. *Lexicon Dictionary (2000)* defines “*the right of self-incrimination*” as allows a person to refuse to answer questions or give other evidence that would subject him or her to criminal prosecution.

In *U.S. vs. Luzon*, 4 Phil. 343; *Chavez vs. Court of Appeals*, 24 SCRA 663, “The Constitution guarantee protects as well as the right of the accused to silence, and his silence, meaning, his failure or refusal to testify, may not be used as a presumption of guilt or taken as evidence against him.”

Presumption of Innocence

“*Presumption of innocence*” as been defined in *Nolo Legal Dictionary(2002)* as “the most sacred principles in criminal justice, holding that a defendant is innocent until proven guilty. In other words, the prosecution must prove, beyond a reasonable doubt, each of the element of the crime is charged.”

In support of the aforementioned statement, *Nolledo(2001) and de Leon (1999)*, stated “ Presumption of innocence until guilt is proven is co-existent with the requirement that no one shall answer for a crime until afforded due process of law.”

Double Jeopardy

Law Library's Lexicon cited the *U.S vs. Halper*, 490 U.S. 435,440 (1989) definition of *double jeopardy* as “being tried twice for the same offense; prohibited by the 5th Amendment of U. S. Constitution. *The Double Jeopardy Clause* protects against three distinct abuses:

- (1) A second prosecution for the same offense after acquittal;
- (2) A second prosecution for the same offense after conviction;
- (3) Multiple punishments for the same offense.”

Justice Malcolm as cited in *People vs. Mencias, L-2757, Aug. 31, 1971; 40 SCRA, p.579* and discussed by *Nolledo* in the *New Constitution Explained (1999)*, summarized “the rule against double jeopardy as follows: “The prohibition is against a second jeopardy for the same offense. To entitle a defendant to plead successfully former jeopardy, the offense charged in two prosecutions must be the same in law and in fact. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. The same acts may violate two or more provisions of the criminal law. When they do, a prosecution under one will not bar a prosecution under another.”

C. The Constitutional Provisions on the Rights of the Accused

1. Japan

Minoru Shikita and Shinichi Tsuchiya (1991) noted, “The Constitution is the source of most of the rights of individuals in the settling of criminal investigation and trial.” Article 31 to Article 40 of Japan Constitution, are the constitutional safeguards provided for the accused and defendants (*Crime and Criminal Policy in Japan, An Analysis and Evaluation of Showa Era, 1926-1988, p 13*).

Chapter III, Rights and Duties of the People, Constitution of Japan, November 3, 1946, (EHS Law Bulletin Series Vol. 1 No. 1000 pp. 7-8; Constitution of Japan, Japanese Legal System Introductory Cases and Materials, p. 7; Appendix: Constitution of Japan, Japanese Constitutional Law, Percy R. Luney Jr, and Kazuyuki Takahashi (1993), University of Tokyo, Japan, pp.322-323; “The Constitution of Japan,” 1946, stated in “Criminal Law of Japan: The General Part, Publications of Comparative Criminal Law Project Vol. 19 by Shigemitsu Dando, translated by: B.J George, 1997, Wayne State University, USA.) provides the provisions on the constitutional rights of the accused:

a. Due Process of Law

Article 31 states that “No person shall be deprived of life, liberty, nor shall any other criminal penalty be imposed, except according to procedure by law.”

b. Access to the Courts

Article 32 states that “No person shall be denied the right access to the courts.”

c. Arrest

Article 33 states that “No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.”

d. Detention

Article 34 states that “No person shall be arrested or detained without being at once informed of the charges against him or without adequate legal counsel, nor shall be denied without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of the counsel.”

e. Search and Seizure

Article 35 (1) states that “The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.”

“(2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.”

f. Torture

Article 36 states that “The infliction of torture by any officer and cruel punishments are absolutely forbidden.”

g. Trial

Article 37 (1) states that “In all criminal cases the accused shall enjoy the right to speedy and public trial by an impartial tribunal.”

“(2) He shall be permitted full opportunity to examine all the witnesses and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.”

h. Self-Incrimination

Article 38 (1) states “No person shall be compelled to testify against himself.”

“(2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.”

“(3) No person shall be convicted or punished in cases where the only proof against him is his own confession.”

i. Double Jeopardy

Article 39 states that “No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he had been acquitted, nor shall be placed in double jeopardy.”

j. False Imprisonment

Article 40 states that “Any person may, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.”

2. Philippines

Article III, Bill of Rights, 1987 Philippine Constitution, (Chan and Robles Virtual law Library, 1987 Philippine Constitution, Supreme Court, pp. 6-7) enumerated the following provisions on the constitutional rights of the accused:

a. Due Process of Law

Section 1 state that “No person shall be deprived of life, liberty or property without due process of law, nor any person shall be denied the equal protection of the laws.”

Section 2 states that the “The right of the people to be secure in their houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search and warrant of arrest shall issue except upon probable cause to be determined by the judge after examination under oath of affirmation of the complainant and witnesses he may produce, and particularly describing the place to be searched and the person to be seized.”

c. Free Access to the Courts

Section 11 states that “ Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any reason of poverty.”

d. Person Under Investigation

Section 12 (1) states that “Any person under investigation for the commission on offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of the counsel.”

“(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention, places, solitary, incommunicado, or other similar forms of detention are prohibited.”

e. Bail

Section 13 states that “All persons except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.”

f. Trial

Section 14 (1) states “No person shall be held to answer for a criminal offense without due process of law.”

“(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.”

g. Self-Incrimination

Section 17 states that “No person shall be compelled to be a witness against himself.

h. Detention By Reason of Political Beliefs

Section 18 (1) states that “No person shall be detained solely by reason of political beliefs and aspirations.”

“(2) No involuntary servitude in any form shall exist except as punishment for a crime whereof the party shall be duly convicted.”

i. Excessive Fines

Section 19 (1) states that “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.” (*“The Constitution does not define what are heinous crimes but they can be said to cover offenses that are exceedingly or flagrantly bad or evil or those committed with extreme cruelty as to shock the general moral sense, such as treason, parricide, drug-trafficking, murder, robbery with homicide, rape with homicide, killing a person in stages, etc., especially if the crime is committed against children or defenseless people”* quoted by *Hector de Leon (1999); Ibid, R.A No. 7659 (December 13, 1993) restores the death penalty on certain heinous crimes and R.A. No. 8177 designates death by lethal injection as the method of carrying out the capital punishment of death amending for this purpose the Revised Penal Code.*)

“(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.”

j. Double Jeopardy

Section 21 states that “No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”⁵

III. Summary and Conclusion

Japan and the Philippines are both democratic countries based on the principles contained in their respective constitutions. Both are characterized the following principles: supremacy of the rule of law, equality, sovereignty, the enjoyment of every citizen on the rights and freedom, preservation of peace and security, promotion of justice, truth and faith, recognition on the existence of the common good and welfare of the state. Thus, intensely ignore slavery, oppression and tyranny. (*Preamble of the Constitution of Japan, November 3, 1946 p. 2, Chapter III Rights and Duties of the People, Constitution of Japan, Preamble of the 1987 Philippine Constitution, Article II and III, Declaration of Principles and States Policies and the Bill of Rights, 1987 Philippine Constitution*)

As democratic states, citizens of Japan and the Philippines have rights to be exercised. The respective governments have duties, obligations and responsibilities to protect and defend their vested interests, privileges and rights for their growth and development. In exercising these rights, equality must be observed as *Thomas Jefferson* stated *In the American Declaration of Independence*, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments is instituted among men, deriving their just powers from the consent of the governed.” (*Howard Cincotta et al., Educational Excellence Network American Federation of Teacher’s Education for Democracy/International, US Department of State International Information Programs*) Japan and Philippines observed equality under the law provided on their respective constitutions, *Chapter 3 Section 14 of Japan Constitution and Article 3 Section 1 of the 1987 Philippine Constitution.*)

Rights as defined by *Steven Gifis (1998)*, are individual liberties in a constitutional sense. It is a constitutional right wherein the individual liberties granted by the state and protected for governmental interference. In relation to constitutional guarantees, a broad shield of protection that consists of a vested interest, the government should be in equity, recognize and protect the individual and could not be deprived arbitrarily without justice.”

Rights according to *Hector de Leon and Nolleto (1999)* “are classified into 3 types and these are the following: *natural rights, constitutional rights* and *statutory rights*. Constitutional rights are classified, however, *into political rights, civil rights, social and economic rights and rights of the accused.*” ⁶

Moreover, in democratic states rights are specifically enumerated and defined in the *Bill of Rights, Article 3 of the 1987 Constitution* in the case of the Philippines and in Japan in “*The Rights and Duties of the People, Chapter III of Japan Constitution.*” Within these *Bill of Rights of the 1987 Constitution of the Philippines* and *The Rights and Duties of the People of Japan Constitution* explicitly declared “*the rights of the accused.*”

“*The Rights of the Accused*” can be categorized as constitutional and civil right based on its definition and purpose, which is conferred and protected by the fundamental law of the land, the constitution. Besides, it is a civil right in the sense that it also secures the enjoyment of happiness of private individuals in exercising the rights provided by the Constitution.”

Japan and the Philippines are both committed to “*due process of law, access to the courts, self-incrimination, and double jeopardy; no search, seizure and warrant of arrest shall issue except upon probable cause* to be determined by a competent judicial officer or by the judge, specifies the complaint or the offense charge, particularly describing the place, things and the person to be searched and seized; any person who is accused or under investigation must be informed of the nature of the charge or the offense committed, shall have the right to remain silent and have a competent independent counsel to represent him, shall enjoy the right to speedy trial, impartial and open trial, have the opportunity to produce and see face to face the witnesses on his behalf; torture, force, violence ,threat, intimidation or any other means that would vitiate his free will by any officer including secret detention, places, solitary, incommunicado, or other forms of detention are

absolutely forbidden; no criminal penalty shall be imposed unless otherwise provided by the law and any substandard and degrading punishment shall be dealt with law.”

On the contrary, the *1987 Philippine Constitution, Article 3 Section 13* also indicates that, “All persons when evidence of guilt is strong, shall before conviction, be bailable sureties, or be released on recognizance as may be provided by law except those charged with offenses punishable by reclusion perpetua.”

Previously, as stated in *Article 3 section 19 of the 1987 Philippine Constitution*, “no death penalty shall be imposed and any death penalty shall be reduced to reclusion perpetua. However due to rapid increase and rampant criminal acts in the Philippines, *December 13, 1993*, “death penalty has been restored for heinous crimes, such as treason, parricide, drug-trafficking, murder, robbery with homicide, rape with homicide, killing a person in stages etc. especially if the crime is committed against children or defenseless people; and *R.A. No.8177* designates death by lethal injection as the method of carrying out the capital punishment of death amending for this purpose the Revised Penal Code.”(See the notes of Hector de Leon (1999)).

Aside from these, *Article 3 Section 18, paragraph 1, the 1987 Philippine Constitution* states also “ No person shall be detained solely by reason of political beliefs and aspirations.”

In contrast, in the *Code of Criminal Procedure of Japan Article 90*, explained by *B.J. George on his paper entitled “The Rights of the Criminally Accused in Japanese Constitutional Law edited by Percy R. Luney and Kazuyuki Takahashi, (1993), pp. 301-302*, “the right to release on bail has been stated, but allows bail to be denied on any of the following grounds: (1) The charged offense is punishable with death or imprisonment with or without forced labor for life or minimum term exceeding 1 year; (2) the accused person has a previous conviction of a serious offense; (3) accused person habitually has committed offenses punishable by imprisonment with or without forced labor for a minimum term of 3 years or more; (4) there is sufficient reasonable basis to suspect that the accused person may destroy evidence; (5) there is a sufficient reasonable basis to suspect person may inflict personal injury or property damage on or commit a threatening act toward the victim or someone else deemed to have information needed for the trial of the case, or a relative or either; or (6) the name of the residence of the accused person is unknown.”

“As stated in Article 19, Japan Constitution,” In the case of false imprisonment, then sue the state for redress as may be provided by the law”.

To summarize, Japan and the Philippines are very similar in terms of the provisions provided by their respective constitutions for the rights of the criminal accused. (See the discussions). Both have the same influence from the United States, which is democratic, and deals principally with the procedures granted by law.

IV. Endnotes

- 1 De Leon Hector (1999), p.69.
- 2 Vera vs. Avelino, 77 Phil.221, Malcolm and Laurel, p.378, cited by Hector de Leon (1999).
- 3 Note of Joaquin Bernas (1996) in Probable Cause. Constitutional Rights and Social Demands Notes and Cases Part II
- 4 Henry vs. United States, 361 U.S. 98, 102 (1959) cited by Joaquin Bernas (1996).
- 5 Notes: Hector de Leon (1999), “The Constitution does not define what are heinous crimes but they can be said to cover offenses that are exceedingly or flagrantly bad or evil or those committed with extreme cruelty as to shock the general moral sense, such as treason, parricide, drug-trafficking, murder, robbery with homicide, rape with homicide, killing a person in stages, etc., especially if the crime is committed against children or defenseless people” quoted by Hector de Leon (1999); Ibid, R.A No. 7659 (December 13, 1993) restores the death penalty on certain heinous crimes and R.A. No. 8177 designates death by lethal injection as the method of carrying out the capital punishment of death amending for this purpose the Revised Penal Code.”
- 6 Bill of Rights, Article 3 of the 1987 Constitution, “The Rights and Duties of the People, Chapter III of Japan Constitution.”

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