PROTECTING THE RIGHT TO LIFE AND RIGHT TO HEALTH THROUGH THE RULE-MAKING POWER OF THE SUPREME COURT*

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ABSTRACT

Law has always played an important role in the way population is controlled. Different governmental policies are implemented to incorporate the population of a country in the economic and long-range development goals of any government. There are various laws in the Philippines discussing contraception and its distribution. A review would show that there are apparent inconsistencies on the laws relating to the distribution of contraceptives in the country. These inconsistencies pose a threat to the right to life, one of the most important rights, if not the most vital.

To resolve the apparent inconsistencies in the laws relating to the use and distribution of contraceptives in the Philippines and to protect the right to life, the paper discusses the rule-making power of the Supreme Court. Following the Writ of Amparo *and the Writ of* Kalikasan, *the paper proposes the creation of a new writ which would primarily focus on the protection of the right to life and right to health of the Filipino people, that is, the Writ of* Vita *or Writ of Life. This is an innovation and a novel development in the Philippine legal field.*

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INTRODUCTION

The discussion on the much-contested RH Law focused on the various laws already being implemented in the country with regard to population control through the use of contraceptives. There is the Tariff and Customs Code (Republic Act No. 1937), the Act regulating the sale, dispensation, distribution of contraceptive drugs and devices (Republic Act No. 4729), Pharmacy Law (Republic Act No. 5921), and the 1972 Population law (Presidential Decree 79).

Looking at these laws would show that there are apparent inconsistencies and seemingly conflicting mandates. The paper would try to identify and resolve these inconsistencies, by examining in the 1987 Constitution and determining how these laws relate to the different rights found in the Constitution. The paper would also look into the changing positions of the different past administrations with regard to population policies. The paper would discuss the susceptibility of the right to life to each administrations' position and how the rule-making power of the Supreme Court could be utilized to resolve this apparent inconsistency.

The precautionary principle would also be discussed together with the rule-making power of the Supreme Court. Both are legal concepts which are rarely discussed in legal works, thus the paper aims to increase the limited literature on these legal concepts because the study aims to see the broader application of the precautionary principle in the preservation and protection of the right to life operationalized through the rule-making power of the Supreme Court.

I. POPULATION POLICIES IN THE PHILIPPINES

A review of the historical background of the different population policies in the Philippines would give a better appreciation and understanding on the legal dimension of the Philippine population issue.

In the 1935 Constitution, there was no policy that tackled and discussed the population of the Philippines. It is believed that the framers of the 1935 Constitution had not yet considered the eventual "population explosion" in the 1960s and the different issues and challenges spawned by it; the population issue was not yet in the consciousness of the delegates of the 1935 Constitutional Convention.[1]

It was only in the 1973 Constitution that the population issue was constitutionally recognized for the first time through Article XV, Section 10. Writers and legal experts believe that this particular provision conveys the idea of flexibility that would enable the State to

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[1] S. Carlota, *Law as an Instrument of Population Control: The Philippine Approach*, PHIL L.J. 67 (1992).

take appropriate measures to encourage either the decrease or increase of fertility depending on the requirements of the national welfare.[2] Article XV, Section 10 of the 1973 Constitution states, "It shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare."

There were policies which took into consideration the population of the Philippines even prior to the 1973 Constitution. As early as 1964, there was the Population Institute which was established as an academic unit in the University of the Philippines to undertake population studies. However, it was only in 1967 that the government launched its first action which eventually led to the establishment of a national population program.[3] Also, in 1967, the Philippines signed the United Nations Declaration on Population which emphasized that "the population problem must be recognized as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people.

After the signing of the UN Declaration on Population, the Tehran International Conference on Human Rights came out with a proclamation on Human Rights, which the Philippines is a signatory to. In this document, family planning was seen as a basic human right and it declared that parents had a basic human right to determine freely and responsibly the number and spacing of their children.[4] In this conference, it was seen that population growth had a negative impact on a country; the conference noted that the rapid rate of population growth then present in some areas of the world hampered the struggle against hunger and poverty and in particular reduces the possibilities of rapidly achieving adequate standards of living, including food, clothing, housing, medical care, social security, education, and social services, thereby impairing the full realization of human rights.[5]

Following the signing of the UN Declaration on Population and the Tehran Proclamation on Human Rights, the Philippine government formed the Commission on Population (POPCOM) through the issuance in 1969 of Executive Order No. 174. POPCOM was primarily tasked to conduct population studies and look into policies and programs in line with the social and economic development plan of the government.[6]

One of the landmark achievements of the POPCOM was the Philippine Population program that was officially launched in 1970 through Executive Order No. 233. The main thrust of this program was

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[2] Cortes, *Population and Law: The Fundamental Rights Aspects in the Philippines Setting*, 48 PHIL L.J. 307 (1973).

[3] *Supra* note 1.

[4] Proclamation, par. 16, U.N. DOC. A/CONF, 32/41. 1968.

[5] Res. No. XVIII, May 12, 1968.

[6] *Supra* note 1.

the reduction of fertility because the policy makers during that time determined that a large population in the long run would not be economically advantageous to the country. The POPCOM was at the same time reorganized and mandated to act as the central coordinating, planning, and policy making body on matters pertaining to population and family planning.[7]

Looking at these policies closely, it can be seen that the creation of the POPCOM in 1969 and the adoption of the population program in the following year were all effected at the level of the executive branch, thus the need for legislative action with regard to these policies. In 1971, Congress enacted Republic Act (RA) 6365, known as the Population Act, which established a national population policy and gave legislative statutory recognition to the POPCOM. After the declaration of martial law, Presidential Decree No. (PD) 79 was issued to revise the Population Act of 1971 and strengthen POPCOM's organization structure.[8]

PD 79 saw that the population program was an integral and vital part of social reform and economic development and that family planning and responsible parenthood assure greater opportunity for each Filipino to reach his full potential and to attain his individual dignity.[9] It was determined that to further national development, there was a need to increase the share of Filipinos in the fruits of economic growth, thus the need for a national program of family planning involving both public and private sectors.[10] Thus, the policy of undertaking a national family planning program which was earlier enunciated in Republic Act No. 6365 was reiterated in the presidential decree with the emphasis on the involvement of both public and private sectors.

Under the decree, the powers and function so of the POPCOM were vested in a Board of Commissioners composed of the Secretary of Education and Culture, Secretary of Health, Secretary of Social Welfare, Dean of the University of the Philippines Population Institute, and the Director-General of the National Economic Development Authority.

It is important to note that in PD 79, the government recognized the adverse impact of rapid population growth on national development. This was the reason why since 1971, the government has consistently taken into consideration the population dimension in its development plans.[11]

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7 *Id.*
8 *Id.*
9 Pres. Decree No. 79 (1972).
10 *Id.*
11 *Supra* note 1.

Also, the decree aimed to curb rapid population growth and to do this, fertility control was resorted to and family planning was the chosen strategy to attain this. Although the family planning program was voluntary and non-coercive in character, and guaranteed respect for religious beliefs and values, the declared policy clearly encouraged efforts to reduce fertility when it adverted to family planning, as a means to meet the grave social and economic challenges of high rate of population growth. Thus, under the law, POPCOM is mandated to make available all medically and legally approved methods of contraception, except abortion, to all Filipinos who want to engage in family planning.[12]

During this period, there was the Tariff and Customs Code[13] and this law classified contraceptive "articles, instruments, drugs, and substances", as well as "any printed matter which advertises or describes or gives information" about contraception, as prohibited articles of commerce that are detrimental to public health and morals.

After the 1973 Constitution, there were also notable developments with regard to population policies. The family planning program which at the start was predominantly clinic-based shifted to a combined clinic-based and community-based approach in 1976. This was done to meet the needs of the rural communities. This was done in the belief that the program would yield better results if family planning services would be extended to rural communities and non-medical personnel would be utilized to maximize the delivery of the services.[14]

Also, the National Population and Family Planning Outreach Project was launched in 1976 which enlisted the services of outreach personnel and different barangay service point officers to motivate married couples of reproductive age to engage in family planning, provide contraceptive materials, and refer clients to clinics.[15]

There was also the Special Committee to Review the Philippine Population Program in 1978, and upon its recommendation, the family planning program was reoriented to stress on family welfare rather than just contraception or fertility control. At the same time, a closer integration of population concerns into development plans was emphasized.[16]

It is important to note that population policy statements were also found in the Philippine Development Plans during the time of Marcos. It was discussed in the Development Plan for 1974-1977 that if rapid population growth was not checked, then development efforts would be

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12 *Id.*
13 Rep. Act. No. 1937.
14 *Supra* note 1.
15 *Id.*
16 *Id.*

doubly difficult. It was seen that a high population growth rate imposed needs that eat up vital and critical development resources; and that a high population growth rate magnified the unemployment problem that generated an additional pressure on the economy to provide more jobs and raise income levels.[17]

It was further discussed in a chapter in the 1974-1977 Development Plan that the magnitude of population growth was important to a developing country like the Philippines because a high population growth rate posed needs that took away vital and critical resources from the economic development effort. A high population also magnified problems of unemployment, the supply and quality of social services, poverty, income distribution and urbanization. Also, the achievement of the desired level of social and economic development became a more difficult task.[18]

The increase in population of the Philippines was also discussed in the Philippine Development Plan for 1978-1982. It was believed that there would be heavy pressure on the economy from rapid population growth. It stated that social and economic costs of absorbing the addition to the country's population would be large, and unless it was reduced to a more manageable level, the rapid population growth would compound the problems faced by the country and would make solutions for these problems more difficult to reach.[19] Thus, the development plan targeted an increase in family planning activities, it also set a contraceptive prevalence rate at a higher rate.

Then, the 1986 EDSA revolution occurred and a new administration entered. Together with the new administration was the new Constitution which was ratified in February 1987. The provision on population in the 1973 Constitution was discarded in favor of new provisions under the 1987 Constitution.

Some of the pertinent constitutional provisions relating to the right to life and right to health under the 1987 Constitution are:

> Article II
> Declaration of Principles and State Policies
>
> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.
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> Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of

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17 A. Herrin, *Population Policy in the Philippines 1969-2002*. PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (2002).

18 *Id.*

19 *Id.*

> the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.
>
> Sec. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.
>
> Article XIII
> Social Justice and Human Rights
>
> Sec. 1. 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.
>
> Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Article XIV
> Education, Science and Technology, Arts, Culture, and Sports
>
> Sec. 9. The State shall protect consumers from trade malpractices and from substandard or hazardous products.

These new Constitutional provisions show that there have been changes in the policies that have been elevated to the constitutional level. The new constitutional protection given to the life of the unborn from conception has the practical effect of foreclosing the possibility of legalizing any policy that allows abortion as a method of fertility control.

There were also various population policies seen in the development plans during the Aquino administration in 1987. There were efforts to improve women's education, health, and increased socio-economic opportunities to promote the overall welfare of women and bring about reduction in fertility.[20] But in describing these plans and activities, it can be seen that family planning was viewed mainly as a means to improve maternal and child health, while the inculcation of the value of a small family size norm was targeted only to adolescent groups rather than to couples of reproductive age.

It was also stated that family planning promotion shall be firmly rooted on the basic principle of respect for the right of couples to determine their family size and voluntarily choose the means of family planning which conforms to their moral and religious convictions; thus,

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[20] *Supra* note 18.

full and sustained information shall be provided in the delivery of medically approved, morally and legally acceptable, more effective and affordable family planning methods.[21]

The POPCOM also issued a policy statement during this period that its ultimate goal was the improvement of the quality of human life in a just and human society. It called for a broadening of population concerns beyond fertility reduction to include concerns about family formation, the status of women, maternal and child health, child survival, morbidity and mortality, population distribution and urbanization, internal and international migration, and population structure.[22]

It can be seen that there were already differences in policies during the administration of Ferdinand Marcos under the 1973 Constitution, and during the Corazon Aquino administration under the 1987 Constitution. The POPCOM statement, improvement of the quality of human life in a just and human society, aimed to provide support to efforts directly towards achieving consistency between the Philippines' population growth rate and the state of her resources. The statement during the period of Corazon Aquino did not explicitly say that the population growth should be moderated to achieve this consistency unlike the policy statements under the Marcos administration.[23]

The basic principles governing population policy during the time of Corazon Aquino included (1) orientation towards overall improvement of family welfare, not just fertility reduction; (2) respect for the rights of couples to determine the size of their family and to choose voluntarily the means which conform to their moral convictions and religious beliefs; (3) promotion of family solidarity and responsible parenthood; and (4) rejection of abortion as a means of controlling fertility. The policy statement, however, although broad in scope, did not contain a strong and explicit fertility reduction objective.[24]

Then came the change of administration in 1992 with the coming of President Fidel Ramos. During this period, support for the family planning program from the executive branch of government was much stronger, and the fertility reduction objective was again emphasized. There was promotion between a balance between and among population levels, resources, and the environment.[25] During the administration of President Ramos, there was a return to the objective of reducing the population growth and fertility rate, and to the policy that family planning program would be implemented vigorously.[26]

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21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.*
26 *Id.*

Under the administration of President Joseph Estrada, there was the emphasis on the need to achieve balance among population, resources, and environment. President Estrada himself did not make any official pronouncement regarding his administration's policy on population growth and family planning. He was quoted in the newspapers as against family planning and talked about the advantages of a large family. So, during Estrada's presidency, the development plan did not articulate a strong policy to moderate population growth and to implement a family planning with fertility reduction objective[27].

The Estrada administration was short-lived, President Estrada was replaced by President Gloria Arroyo in 2001. President Arroyo's stand on population was considered to be ambiguous. On rapid population growth, the President was quoted to have said in a radio interview on June 2, 2002 that she was not worried about forecasts that the Philippine population would double in 29 years) "because the world's population will also more or less double, and it is not only our problem, but it's the whole world's." In a meeting with Inquirer editors and staff, she was asked about her views on family planning. Her response was that in line with the constitutional provision which respects the right of every couple to determine the size of the family and the number of their children, the government's policy on family planning is "to respect the right of every couple to make decisions for themselves and choose their preferred method of family planning." On the provision of artificial contraceptives, the President was quoted as saying that in the event that bilateral and multilateral donors would stop funding the purchase of contraceptive supplies for distribution to public health facilities, she expected the NGOs to take up the lack of contraceptives rather than the government.[28]

Under the administration of Benigno Aquino Jr., there was again a push for reduced population. Studies during this period pointed to an increase of the Philippine population beyond the one hundred million (100,000,000) mark. Thus, the push of the Aquino administration for the control of the population growth. One of the landmark contributions of President Benigno Aquino's administration in terms of population policy was the eventual passage of the Reproductive Health Law.[29]

What sets the presidency of Aquino apart from the other administrations was its vigorous drive for the passing of the RH Law. President Benigno Aquino himself certified the RH Bill as urgent[30] which fast tracked the measure's approval. This development was significant for the advocates of a reproductive health law since similar bills had been

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[27] *Id.*

[28] *Id.*

[29] N. Gutierrez, *As population grows, Aquino pushes anew for RH law*, RAPPLER, http://www.rappler.com/nation/47427-aquino-rh-law-population-growth. 2014.

[30] N. Gonzales, K. Tubadeza. *Aquino certifies RH Bill as urgent*, http://www.bworldonline.com/content.php?section=Nation&title=aquino-certifies-rh-bill-as-urgent&id=62972

stuck for around fourteen (14) years in Congress. The eventual passage of the RH Law during the administration of Aquino was considered to be a huge leap for the Philippines towards achieving its commitment to the International Conference on Population and Development Programme of Action. [31] For the United Nations Population Fund (UNFPA), family planning is considered to be integral in the development of a nation because family planning has a positive multiplier effect on development; not only does the ability for a couple to choose when and how many children to have help lift nations out of poverty, but it is also one of the most effective means of empowering women; women who use contraception are generally healthier, better educated, more empowered in their households and communities and more economically productive and this boosts nation's economies.[32]

Passing the law was also considered to be an important development for the Philippines' Millennium Development Goals. In September 2000, member states of the United Nations, including the Philippines were gathered at the Millennium Summit and they adopted the Millennium Declaration which affirmed each nation's commitment to the Millennium Development Goals (MDGs), which are: (1) eradicate extreme poverty and hunger, (2) achieve universal primary education, (3) promote gender equality and empower women, (4) reduce child mortality, (5) improve maternal health, (6) combat HIV/AIDS, malaria and other diseases, (7) ensure environmental sustainability, (8) develop a global partnership for development.[33] The RH law was considered to fast-track the achievement of the goals on gender equality and women empowerment, reducing child mortality, improving maternal health, and combating HIV, Aids, and other diseases.[34]

The administration of President Duterte also seeks the full implementation of the RH Law in the Philippines. He signed on January 9 Executive Order (EO) No. 12 which aims to intensify and accelerate the implementation of critical actions necessary to attain and sustain "zero unmet need for modern family planning" for all poor households by 2018. This comes after the issuance of the Supreme Court of a temporary restraining order (TRO) with regard to some provisions of the RH law. Socioeconomic Planning Secretary Ernesto Pernia said that with the issuance of this EO, there might be some municipalities or local governments that can get around the TRO by letting non-governmental organizations (NGOs) implement the RH Law.[35]

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[31] WHO, *The Philippines passes Reproductive Health Law*, THE PARTNERSHIP FOR MATERNAL, NEWBORN & CHILD HEALTH, http://www.who.int/pmnch/media/news/2013/20130107_philippines_reproductive_health_law/en.

[32] *Id.*

[33] R. Manasan, *Financing the Millennium Development Goals: The Philippines*, PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES, Discussion paper series 2007-06.

[34] Philippine Commission on Women, *PCW, NAPC, POPCOM lead RH mobilization*, http://www.pcw.gov.ph/article/pcw-napc-popcom-lead-rh-mobilization.

[35] N. Corrales, *Duterte signs EO backing modern family planning*, PHIL. DAILY INQUIRER,

II. APPARENT INCONSISTENCY IN PHILIPPINE LAWS RELATING TO CONTRACEPTION

Republic Act (RA) 4729, or the Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices[36] states:

> Sec. 1. It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.
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> Section 2. For the purpose of this Act:
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> (a) "Contraceptive drug" is any medicine, drug, chemical, or portion which is used exclusively for the purpose of preventing fertilization of the female ovum: and
>
> (b) "Contraceptive device" is any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception.

The provision in RA 4729 allowing the dispensation and distribution of contraceptives with the need for a prescription of a qualified medical practitioner and by a duly licensed drug store or pharmaceutical company is supported by another law, the Pharmacy Law[37] which reinforced the requirements of physician prescription and pharmacy dispensation. The specific provision states that:

> Sec. 37. Provisions relative to dispensing of abortifacients or anti-conceptional substances and devices. No drug or chemical product or device capable of provoking abortion or preventing conception as classified by the Food and Drug Administration shall be delivered or sold to any person without a proper prescription by a duly licensed physician.

There is also Presidential Decree 79 (Population Law of 1972). This law has the following relevant provisions:

> Sec. 4. *Purposes and Objectives.* The POPCOM shall have the following purposes and objectives:
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http://newsinfo.inquirer.net/861437/duterte-signs-eo-backing-modern-family-planning

[36] Rep. Act. No. 4729.

[37] Rep. Act. No. 5921.

> f) To encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth control such as abortion by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies;
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> * * *
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> h) To provide family planning services as a part of over-all health care;
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> i) To make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.
>
> Sec. 5. *Duties and Functions of the POPCOM.* The POPCOM shall have the following duties and powers:
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> a) To employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines desirous of spacing, limiting or preventing pregnancies: Provided, That the above-mentioned health workers, except physicians, for the purpose of providing, dispensing and administering acceptable methods of contraception, have been trained and authorized by the POPCOM in consultation with the appropriate licensing bodies;

Confusion arose when then Secretary of Justice (Vicente Abad Santos) issued another opinion[38] stating that RA 4792 which imposed place of sale restriction and requiring physician prescription for dispensation of contraceptives, had been impliedly repealed by PD 79.

For the Secretary of Justice, PD 79 meant that dispensation and use of contraceptives no longer needed physician prescription and no longer needed to be issued from a registered pharmacy. There is further inconsistency because the said legal opinion did not mention or take into consideration another law consistent with RA 4792 which is the Pharmacy Law [39] which reinforced the requirements of physician prescription and pharmacy dispensation.

The inconsistency involves RA 4729 and the Pharmacy Law which allows the dispensation and distribution of contraceptives with the need for a prescription of a qualified medical practitioner and sale by a duly licensed drug store or pharmaceutical company, and PD 79 which according to Secretary of Justice Abad Santos meant that dispensation and use of contraceptives no longer needed physician prescription and no longer needed to be issued from a registered pharmacy.[40]

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38 Opinion No. 82, June 6, 1975.
39 *Supra* note 36.
40 *Supra* note 37.

The paper believes that the opinion[41] of the Secretary of Justice, that there is no longer a need for physician prescription and a need for a contraceptive to come from a licensed drug store or pharmaceutical, is erroneous. The wording of PD 79 itself does not support the opinion of the Secretary that there is no longer a need for prescription of a qualified medical practitioner and sale by a licensed drug store. The provisions in PD 79 state that:

> f) To encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth control such as abortion by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies;
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> * * *
>
> i) To make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.

What the Secretary fails to note is that there is another provision in PD 79 which states that there is indeed a need for qualified physicians and health workers to administer the law:

> Sec. 5. *Duties and Functions of the POPCOM.* The POPCOM shall have the following duties and powers:
>
> a) To employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines desirous of spacing, limiting or preventing pregnancies: Provided, That the above-mentioned health workers, except physicians, for the purpose of providing, dispensing and administering acceptable methods of contraception, have been trained and authorized by the POPCOM in consultation with the appropriate licensing bodies;

This shows that the opinion of the Secretary of Justice is erroneous because the law itself states the need to employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines. The only difference with PD 79 and RA 4729 is that the duty to administer the dispensation of contraceptives was also assigned to nurses and midwives unlike RA 4729 which only mentioned licensed physicians.

Also, the opinion of the Secretary of Justice that PD 79 removed the need for prescription of a qualified medical practitioner and sale by a duly licensed drug store or pharmaceutical did not take into consideration the Pharmacy Law (RA 5921).

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41 *Id.*

This shows that the second opinion[42] of the Secretary of Justice, that there is no longer a need for physician prescription and no longer a need for a drug store or pharmaceutical to have a license before it sells a contraceptive, is erroneous.

In *Imbong v. Ochoa*,[43] the Supreme Court has made significant pronouncements with regard to contraceptive use and the protection given to life. In that decision, conception has been interpreted to mean fertilization and the Supreme Court stated that there is already life at conception or fertilization. Thus, the State has the constitutional duty to protect equally the life of the mother and the life of the unborn since there is already life at conception/fertilization and no contraceptive that harms or destroys the life of the unborn from fertilization shall be allowed.[44] Furthermore, the State has the duty to make sure that only contraceptive drugs and devices that are non-abortifacient and safe are procured by the government and distributed or sold to the public. Thus, government agencies like the Food and Drug Administration (FDA) must test and evaluate all contraceptive drugs and devices and make sure that they adhere to the standards made by the Supreme Court, *i.e.*, only contraceptives which do not harm or destroy the life of the unborn from conception/fertilization shall be allowed and contraceptives must have no post-fertilization mechanism that destroys or prevents the fertilized ovum from reaching and being implanted in the mother's womb.

Taking into consideration the discussion on the different population policies of the past administration and the opinion of the Secretary of Justice that RA 4729 repealed the provision in RA 1937 regarding the use and distribution of contraceptives, the paper believes that the correct interpretation should have been that RA 1937 is impliedly included in the meaning of RA 4729 in that contraceptives are allowed but the original two requirements placed under RA 4729, which are the dispensation/sale by a licensed drug store or pharmaceutical together with the prescription of a medical practitioner, there is a third requirement which is that the said contraceptive itself should not be abortifacient. The requirement of the contraceptive not being abortifacient stems from the wording of RA 1937 that it is prohibited to use articles, instruments, drugs, and substances which produce unlawful abortion.

There be now three requirements for the use and dispensation of contraceptive drugs, namely: (1) prescription of a medical practitioner; (2) the contraceptive must be dispensed/sold by a licensed drug store or pharmaceutical, and (3) the said contraceptive must not be abortifacient.

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[42] *Supra* note 45.

[43] G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720,206355, 207111, 207172, 207563, April 8, 2014.

[44] *Id.*

This interpretation is in accordance with the intent of the framers of the 1987 Constitution. This interpretation is also in accord with the decision of the Supreme Court in the RH Law.[45] This third requirement, that the contraceptive drugs and devices must not be abortifacient, was further supported by the 2016 Decision of the Supreme Court[46] where it maintained that the contraceptive drugs and devices must be proven by the government to be safe and non-abortifacient (it does not harm or destroy the life of the unborn from conception/fertilization) before it is distributed to the public and contraceptives must have no post-fertilization mechanism that destroys or prevents the fertilized ovum from reaching and being implanted in the mother's womb. The Supreme Court also stated that there is a need for hearings to be conducted with all stakeholders and further screenings of the drugs is needed following the basic requirements of due process which was further emphasized by the Supreme Court in the 2017 decision.[47]

III. RULE-MAKING POWER OF THE SUPREME COURT

A development in the 1987 Constitution is the addition of a provision discussing the rule-making power of the Supreme Court, a provision not included in the past Constitutions on the powers of the Judicial Department. This provision is Article VIII, Section 5 of the 1987 Constitution and reads as follows:

> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[48]

The 1935 Constitution and 1973 Constitution did not provide this rule-making power of the Supreme Court to - protect and enforce the constitutional rights of the people.

In the 1935 Constitution, Article VIII, Section 13 which discussed the powers of the Supreme Court, provides:

> SEC. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules

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45 *Id.*
46 ALFI v. Garin, G.R. 217872, 221866, Aug. 24, 2016.
47 *Id.*
48 CONST. art. VIII, §5.

> shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.[49]

In the 1973 Constitution, Article X, Section 5 which discussed the powers of the Supreme Court, provides:

> (5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.[50]

The inclusion of a provision in the 1987 Constitution on the rule-making power of the Supreme Court, particularly on the rules concerning the protection and enforcement of the constitutional rights of the people, is a significant development that strengthens the enforcement power of the Supreme Court insofar as constitutional rights are concerned. The 1987 Constitution has given to the Supreme Court authority to promulgate rules concerning the protection and enforcement of constitutional rights. Such rule-making authority was the basis for the Rule creating the Writ of *Amparo*.[51]

The Writ of *Amparo* aims mainly to protect human rights. It is viewed to be a result of the Supreme Court's re-examination of its constitutional mandate under the 1987 Constitution, and with its creation, the Supreme Court is seen to have taken a definitive stance on issues of constitutional rights.[52] The mandate to promulgate rules to enforce constitutional rights has been vested by the Constitution itself in the Supreme Court precisely to more effectively check abuses against human rights.[53]

A similar creation is the Writ of *Kalikasan*. It draws its mandate from Article II, Section 16 of the 1987 Constitution, which says that the "state shall protect and advance the right of the people to a balanced and

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49 CONST. (1935), art. VIII, §13.

50 CONST. (1973), art. X, §5.

51 S.J. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2009).

52 F. M. Gozon Jr. & T. J. Orosa, *Watching the Watchers: A Look into the Drafting of the Writ of Amparo*. PHIL L.J. 82 (2008).

53 *Id.*

healthful ecology in accord with the rhythm and harmony of nature."[54] This was created because of the difficulties in the prosecution of ecology-related crimes and the huge backlog pending in courts pertain to issues affecting the implementation of environmental laws.[55]

IV. PRECAUTIONARY PRINCIPLE

The proposed creation of a writ protecting the right to life and right to health would be anchored on the precautionary principle. Thus, a discussion on the precautionary principle is needed to better understand its legal effects.

According to the precautionary principle, regulation is required in the face of scientific uncertainty—even if it is not yet clear that environmental risks are serious. A central point of the precautionary principle is to recognize the limitations of existing knowledge and to protect against harm that cannot yet be established as such.[56]

In the search for ways to make policy decisions under uncertainty, the precautionary principle has been advocated as an environmentally prudent basis for action. This principle, which holds that if the environmental consequences of an action are uncertain then those actions should be avoided, is now an official component of environmental policy in the European Union (Cameron 1994). It has been used to argue for measures to reduce pollution or other forms of disturbance when their effects are not known to be environmentally acceptable.[57]

The precautionary principle traces its roots in Germany. The concept was developed sometime in the 1960s, its origin being the German term *Vorsorgeprinzip*. Such normative idea focused on governments being obligated to 'foresee and forestall' harm to the environment. In the following decades, the precautionary principle has served as the normative guideline for policymaking by many national governments.[58] Then it was embodied in the UN Summit in Rio de Janeiro where in their final declaration it was stated that "In order to protect the environment, the precautionary approach shall be widely adopted by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not

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[54] *In the Know – Writ of Kalikasan Proudly Filipino*, PHIL. DAILY INQUIRER, http://globalnation.inquirer.net/111233/in-the-know-writ-of-kalikasan-proudly-filipino#ixzz3ppiYvY7r (2014).

[55] *Id.*

[56] C. Sunstein, *Cost Benefit Analysis and the Environment*, 115 ETHICS (2005).

[57] K. Bishop H, *Liming of Acid Surface Waters in Northern Sweden: Questions of Geographical Variation and the Precautionary Principle*, 22 TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS 49-60. (1997).

[58] International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia, G.R. Nos. 209271, 209276, 209301, 209430, Dec. 8, 2015.

be used as a reason for postponing cost-effective measures to prevent environmental degradation.[59] This concept of precautionary principle throughout history has been used for studies on ecological risk of economic developments, assessments of the survival chances of endangered species, or biosecurity risk assessments.

The principle has a prominent position in environmental policy; it is included in various international treaties, declarations, and legal systems. Its applications may include cases as diverse as approving the exploitation of natural resources, building a pipeline through a natural reserve, constructing atomic power plants, and so on. Science-based regulation must increasingly cope with situations in which the input of science concerning the extent or likelihood of some potential danger remains ambiguous. In this context, a widely-adopted approach known as the precautionary principle stipulates that one should take preventive measures right away, before and until scientific information becomes clearer.[60] The precautionary principle says that rather than await scientific certainty, we should act in an anticipatory manner to ensure that potential environmental harms do not occur in the first place. As the old adage goes, an ounce of prevention is worth a pound of cure.[61]

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.[62] Thus, the precautionary principle aims to protect both human health and the environment. Likewise, absence of conclusive scientific proof of a substance's toxicity is, therefore, no justification for failing to take decisive measures to protect health.

Also, in the recent case of *International Service for the Acquisition of Agri-Biotech Applications Inc. v. Greenpeace Southeast Asia,*[63] the Supreme Court discussed the precautionary principle and how it is applicable in the said case. There, the Supreme Court enumerated some principle where the precautionary principle could be applied: when there exists considerable scientific uncertainties, when there exist scenarios (or models) of possible harm that are scientifically reasonable (that is based on some scientifically plausible reasoning), when uncertainties cannot be reduced in the short term without at the same time increasing ignorance of other relevant factors by higher levels of abstraction and idealization, when the potential harm is sufficiently serious or even irreversible for

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[59] J. Sprenger, *Environmental Risk Analysis: Robustness Is Essential for Precaution.* 79 PHILOSOPHY OF SCIENCE 881-892 (2012).

[60] *Id.*

[61] E. B. Weiss, R. Stewart, S. Murase, D. Bodansky, M. Glennon, C. Tinker & A. Kiss. 85 PROCEEDINGS OF THE ANNUAL MEETING (AMERICAN SOCIETY OF INTERNATIONAL LAW), 401-27 (1991).

[62] B. Penrose, *Occupational Lead Poisoning in Battery Workers: The Failure to Apply the Precautionary Principle*, 84 LABOUR HISTORY 1-19 (May, 2003).

[63] *Supra* note 65.

present or future generations or otherwise morally unacceptable, and when there is a need to act now, since effective counteraction later will be made significantly more difficult or costly at any later time.[64]

In the same case, the Supreme Court stated that the precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. By applying the precautionary principle, the court may construe a set of facts as warranting either judicial action or inaction, with the goal of preserving and protecting the environment. In effect, the precautionary principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the status quo. An application of the precautionary principle to the rules on evidence will enable courts to tackle future environmental problems before ironclad scientific consensus emerges.[65]

The notion espoused by precautionary principle in erring on the side of caution can also be connected to the duty of the present generation taking care of the future generations; and such idea was also discussed by the Supreme Court in the case of *Oposa v. Factoran*[66] where the idea of intergenerational responsibility was adopted by the Supreme Court. Intergenerational responsibility pertains to the idea of the current generation protecting the environment so that the future generations can also benefit from the environment.

The Precautionary Principle primarily protects each individual from possible health hazards and this idea of protecting the health of the Filipino people has constitutional basis. First, it can be seen in Article II, Section 15 of the 1987 Philippine Constitution which states that "[T]he State shall protect and promote the right to health of the people and instill health consciousness among them."[67] Also, a similar provision can be seen in Article XVI, Section 9 of the 1987 Constitution, "[T]he State shall protect consumers from trade malpractices and from substandard or hazardous products."[68]

V. WRIT OF *VITA*

The discussions above, particularly on the apparent inconsistencies on laws relating to contraception in the country, highlight the need to further protect the right to life and right to health of the Filipino people. It can be seen that the population policies of the government have been changing since the time of President Marcos until

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64 *Id.*
65 *Id.*
66 G.R. No. 101083, July 30, 1993.
67 *Supra* note 23.
68 CONST. (1973), art. XVI, §9.

the current administration. It was also shown in the discussion above that the developmental and population plans of each administration greatly affect the policies and laws implemented by each administration.

During the time of former President Marcos, there was an emphasis towards the reduction of the perceived high population. A high population during Marcos' administration was seen as a hindrance in the development efforts of the country. It was also during this time that the policies focusing on increased distribution of contraceptives was emphasized by the government. In fact, it was during the administration of President Marcos that Secretary of Justice again issued an opinion[69] saying that RA 4792 which imposed place of sale restriction and requiring physician prescription for dispensation of contraceptives, have been impliedly repealed by PD 79. This legal opinion was presaged by an official government policy towards population control – from unawareness or unconcern to hostility during the period prior to the mid-sixties, then acceptance to active endorsement thereafter.

Then there was a reverse on population policies during the administration of President Cory Aquino. In the 1987 Constitution, protection was given to the life of the unborn from conception and it had the practical effect of foreclosing the possibility of legalizing any policy that allows abortion as a method of fertility control. During this period, the ultimate goal was the improvement of the quality of human life in a just and human society; it called for a broadening of population concerns beyond fertility reduction to include concerns about family formation, the status of women, maternal and child health, child survival, morbidity and mortality, internal and international migration, and population structure. This period did not explicitly say that the population growth should be moderated to achieve the policy goals of the administration unlike the policy statements under the Marcos administration.

There was again a radical change during the time of President Ramos where there was a renewed focus on population reduction. The next administrations of President Estrada and President Arroyo also placed less emphasis on population reduction while the administration of Benigno Aquino Jr. placed importance again in population reduction, as seen in the signing of President Benigno Aquino as urgent of the then RH Bill which eventually led to the passage of the RH law.

These shifting stances with regard to population management highlight the susceptibility of the right to life to the policy and developmental goals of different administrations of the country. There is susceptibility of the right to life because the use of contraceptives and other drugs and devices to limit the population is greatly influenced and affected by the population policies of the different administrations. This is potentially threatening to the right to life because political and legal

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[69] *Supra* note 45.

opinions, as seen in the case of the Secretary of Justice during the time of President Marcos, can easily affect the way laws relating to contraceptives are implemented in the country. Likewise, there are already various studies both locally and abroad which show that contraceptives have the tendency of being dangerous to a person's health, particularly to women's health.

This is where the rule-making power of the Supreme Court comes in to protect the constitutional right to life.

Protecting the right to life is considered to be of transcendental importance. The right to life is grounded on natural law, is inherent and not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men.[70]

Article VIII, Section 5 of the Constitution states that the Supreme Court can promulgate rules concerning the protection and enforcement of Constitutional rights; this provision is considered to be an innovation because it was not included in the previous Constitutions.

A look into the records of the 1986 Constitutional Commissions show the intention and purpose of the 1987 Constitution provision regarding the rule-making power of the Supreme Court. The Constitutional Commissioners state that there is a growing tendency among governments to accumulate more and more power on the pretext of general welfare, and that kind of a tendency is practically irresistible.[71]

Constitutional rights are not merely declaratory but are also enforceable. To protect such rights, the Supreme Court was given the rule-making power; the promulgation of such rules indicates that the protection and enforcement of these constitutional rights is something that the courts have to consider in the exercise of their judicial power.

Some of the constitutional rights which can be protected by the rule-making power of the Supreme Court would be the right of the spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.[72] Likewise, the provisions on the sanctity of family life and the family as a basic autonomous and social institution, the need to protect the life of the mother and the life of the unborn from conception[73] would also be protected. Similarly, the provisions on the health of the people[74] and protection from hazardous products[75] would also be protected by this rule-making power.

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70 *Supra* note 50.

71 Records of the Constitutional Commission R.C.C. No. 28; Records of the Constitutional Commission R.C.C. No. 29.

72 CONST. (1973), art. XV, §3.

73 CONST. (1973), art. II, §12.

74 *Supra* note 23.

75 *Supra* note 29.

Examples of rules made by the Supreme Court in the exercise of its rule-making power are the Writ of *Amparo* and the *Writ of Kalikasan.*

A. As Distinguished from Writ of *Amparo*

The Supreme Court of the Philippines led by former Chief Justice Reynato S. Puno sponsored the holding of the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances on July 16-17, 2007. It was attended by justices, activists, militant leaders, police officials, politicians, and prelates[76]. At the summit, Chief Justice Puno stated that "If there are compelling reasons for this Summit, one of them is to prevent losing eye contact with the killings and disappearances, revive our righteous indignation, and spur our wasted search for the elusive resolution to this pestering problem.[77]" The first proposal of the Summit was for the *Writ of Amparo* to be operationalized in the Philippines. Then, on September 25, 2007, the Supreme Court issued A.M. No. 07-9-12-SC (The Rule on the Writ of Amparo) which took effect on October 24, 2007.

Amparo comes from the Spanish word "*amparar*" meaning "to protect." The writ of amparo, "*recurso de amparo*," originated from the Mexican legal system. It was conceived and initiated by federal politician Manuel Crecencio Rejon in the drafting of the Yucatan Constitution in 1840 in his native State of Yucatun, which had then seceded from Mexico. But Senor Rejon returned to Mexico City and participated in the drafting of a new constitution. Amparo is now in Article 94 of the 1917 Constitution of Mexico and is provided in detail under Article 107.[78] The impact of the Mexican writ of amparo on Latin America is immense so that this protective remedy is now found in many Latin American constitutions. The Nicaraguans ratified a new Constitution after the fall of the Somoza regime. It contained a provision on the writ of *amparo.*

The idea of the writ of amparo was first introduced to the Philippines by Delegate Adolfo Azcuna in the 1971 Constitutional Convention and in the 1986 Constitutional Commission. Despite his best efforts, he did not succeed in convincing the two bodies to include in our fundamental law an explicit reference to the writ of amparo. In the 1986 Constitutional Commission, the committee on Judiciary headed by former Chief Justice Roberto Concepcion explained that the writ of Amparo is deemed included in the provision that empowers the Supreme Court to "Promulgate rules concerning the protection and enforcement of constitutional rights..." (Art. 8 Sec. 5[5]).[79] The Committee on the Judiciary of the Constitutional Commission of 1986 headed by retired Chief Justice Roberto Concepcion and vice-chaired by Ricardo Romulo,

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76 RENE SARMIENTO, TOWARDS MORE JUSTICE AND LIBERTY (2008).
77 *Id.*
78 *Id.*
79 *Id.*

without objection from the committee members, was unanimous in its position that the provision in the Article on Judiciary which reads "Promulgate rules concerning the protection and enforcement of constitutional rights..." included the writ of Amparo.[80]

It was the issue of extralegal killings and enforced disappearances in the country which engaged national and international observers to move towards active participation to solve such problems. The apparent inaction and silence of the Executive and Legislature, the besieged legitimacy of the Executive, and the political deadlocks stalling the legislative machinery, were all plausible independent variables that helped create an atmosphere where the proverbial referee had to take the ring and call for a recalibration of the rules of the game. The referee saw that the hits were below the belt, so to speak, and a call was made to change the rules.[81]

The mandate to promulgate rules to enforce constitutional rights was vested by the Constitution on the Supreme Court, precisely to more effectively check abuses against human rights. Yet, the obstacle that rulemaking is exclusively the domain of Congress stood in the Court's path. But being the meaning makers of the land, the Supreme Court has adopted a meaning more conducive to judicialization – that the 1987 Constitution in Article VIII, Section 5(5) gave it the constitutional prerogative to promulgate rules concerning the enforcement of constitutional rights.[82]

B. As Distinguished from Writ of *Kalikasan*

Another product of the rule-making power of the Supreme Court is the Writ of *Kalikasan*. The Writ of *Kalikasan* mainly draws its mandate from Article II, Section 16 of the 1987 Constitution, which states that the "State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

In 2009, the Supreme Court held a forum on environmental protection in Baguio City where difficulties in the prosecution of ecology-related crimes and the huge backlog pending in the courts were identified as among the issues affecting the implementation of environmental laws. The high court then came out with the writ of *kalikasan* the following year when it issued the rules of procedure for environmental cases as a special civil action to deal with environmental damage of such magnitude that it threatens life, health or property of inhabitants in two or more cities or provinces.[83]

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80 *Id.*
81 *Supra* note 59.
82 *Id.*
83 *Supra* note 61.

Then Chief Justice Reynato Puno was proud of the development of the Writ of *Kalikasan*, he said that while the writ of *amparo* came from Latin America to address its own brush with human rights violations, the writ of *kalikasan* is proudly Philippine-made to deal with cases in the realm of ecology.[84] The Supreme Court held its widely-commended Forum on Environmental Justice last April 16-17, 2009 simultaneously through video-conferencing at the University of the Cordilleras, Baguio City, University of the Philippines-Visayas, Iloilo City, and Ateneo de Davao University, Davao City.[85]

The Forum enabled the Judiciary to receive inputs directly from the different stakeholders in the justice system, primarily aimed at determining ways on how the courts can help in the protection and preservation of the environment.[86] It was supported by various development partners which include the American Bar Association-Rule of Law Initiatives (ABA-ROLI), the Hanns Seidel Foundation, the United Nations Development Program (UNDP), the United States Agency for International Development (USAID), the United States Department of the Interior and the World Bank.[87]

Another significant aspect of the Rules that derives from the transboundary and temporal nature of ecological injury is the adoption of the precautionary principle in the Writ of *Kalikasan*. In this context, the precautionary principle finds direct application in the evaluation of evidence in cases before the courts. The precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. By applying the precautionary principle, the court may construe a set of facts as warranting either judicial action or inaction, with the goal of preserving and protecting the environment. This may be further evinced from the second paragraph where bias is created in favor of the constitutional right of the people to a balanced and healthful ecology.[88]

C. Writ Protecting Right to Life and Right to Health – Writ of *Vita*

It is important to reiterate that protecting the right to life is considered to be of transcendental importance. Also, both the right to life and right to health are enshrined under the 1987 Constitution.

The records of the Constitutional Commission and the writs made by the Supreme Court in the exercise of their rule-making power point to the possibility of creating a writ that would protect the right to life and

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84 *Id.*

85 Abigail Tze, see *http://attylaserna.blogspot.com/2010/04/writ-of-kalikasan.html.* 2010.

86 *Id.*

87 *Id.*

88 *Id.*

the right to health. It can be seen that the shifting stances on population management highlight the susceptibility of the right to life to the policy and developmental goals of different administrations of the country. This is where the rule-making power of the Supreme Court comes in, particularly to protect the constitutional right to life and right to health of the Filipino people since constitutional rights are not merely declaratory, they are also enforceable.

The paper proposes the creation of a Writ of Vita which would protect the right to life and right to health of the people. Vita in latin means life; accordingly, the Writ of Vita would mean the Writ of Life which primarily looks into safeguarding the constitutional right to life and right to health.

If the Supreme Court gives importance to victims of extrajudicial killings, enforced disappearances, and the environment, the same attention and protection should be given to the protection of the right to life and right to health. There should also be a writ that would mainly look into the protection of the right to life of the Filipinos, like those of the mother and the child.

There is a need to protect the right to life of the Filipino people from the inconclusive effects of certain drugs that could potentially be dangerous to life and their health. If a foreign substance, material, or drug is ingested or implanted in the woman's body, it may lead to threats of serious and irreversible damage to her or her unborn child.

The precautionary principle is also proposed to be factored in the creation of the Writ of Vita since some drugs have inconclusive effects on health and there is no absolute certainty that it would be safe or not. The unresolved medical issues on the potentially life-threatening effects of hormonal contraceptives and IUDs are covered by the precautionary principle, mandating policy makers to err on the side of caution.

Thus, it is proposed that a Writ of Vita protecting the right to life and right to health of the people be created and that it is anchored on the precautionary principle.

It can be seen that there were various problems facing the country when the Writs of Amparo and *Kalikasan* were made. There were extrajudicial killings and the enforced disappearances throughout the Philippines and this pushed the creation of the Writ of Amparo. Also, there were increases in the number of ecology related crimes in the country and this inspired the creation of the Writ of *Kalikasan*.

The response to these problems was the organization of different summits and conferences where the Judiciary together with various members of the government and civil society discussed their proposed solutions to the problems. For the Writ of *Amparo*, there was the National

Consultative Summit on Extrajudicial Killings and Enforced Disappearances. On the other hand, the creation of the Writ of *Kalikasan* was initiated by a Forum on Environmental Justice.

The Writ of *Vita* could mainly look into the distribution and administration of various contraceptive drugs and devices which pose serious and irreversible side effects to the lives of the mothers and the unborn. Various studies have established that the use of oral contraceptives, which is part of the implementation of the RH Law, increase the risk of breast, liver, and cervical cancer. These were some of the problems discussed during the deliberations on the RH Law because it proposed that the State fund, promote, and distribute oral contraceptive pills, IUDs and other contraceptive products. Following the legal principle of Precautionary Principle, these side effects could be avoided by the Writ of Vita which can enjoin its distribution to the public and in doing so the Constitutional mandate of protecting the life of the mother and the unborn is upheld.

Different summits were created and spearheaded by the Supreme Court for the creation of the Writs of Amparo and Kalikasan. Chief Justice Reynato Puno was also the policy champion for the creation of these writs. Therefore, for the proposed creation of a writ protecting the right to life and health, there has to be more support from the Justices of the Supreme Court and from civil society. The Supreme Court should remember that the right to life is not merely declaratory but also enforceable. Paramount importance should be given for the protection of the right to life because it precedes and transcends any authority. The Supreme Court should not be wholly dependent on the changing political moods or advances made by civil society for them to utilize their rule-making power on protecting the right to life; to do so would degrade their judicial power to promulgate rules.

D. Properties of the Writ of *Vita*

It is proposed that the Writ of *Vita* be a remedy available to any person whose right to life and right to health is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual. The protection envisioned in this writ is protection of the right to life and right to health from conception to natural death. The aggrieved party who may avail of the writ can be any individual/organization whose right to life and right to health is violated or threatened by an unlawful act or omission. The Writ shall be a form of protection from drugs, devices, or any substance that would result to potential death, risk, threat of harm, or injury of any form or degree.

It is envisioned that the Writ of *Vita* would be preventive and curative. Preventive because it would not allow the government or any private individual/entity to issue or offer any drug, device, or any substance which can potentially harm the life and health of an

individual; this idea can be traced from the precautionary principle. It would also be curative because it would facilitate the subsequent punishment of government officials, private individuals or entities who failed to discharge the burden of proving that the drug, device, or substance is safe and non-violative of any law.

Drugs and devices relating to contraception must be thoroughly checked and validated by the pertinent government agencies and if such drugs or devices did not go through the pertinent procedure mandated by law then they can be potentially dangerous to the health of the mother and the unborn. Here, the Writ of Vita can be utilized to prevent its distribution and in doing so, the Constitutional right of the people to be protected from hazardous products is upheld. Just like the Writ of *Amparo*, unless it is proven that extraordinary diligence was observed in making sure that the drugs and devices are safe for human consumption then they cannot shed the allegations of responsibility despite the prevailing scarcity of evidence.

Likewise, it is envisioned that the Writ of *Vita* can be used as a remedy to protect the public from individuals or entities that sell or promote counterfeit drug products. If the drug/pharmaceutical companies make false advertisements with their drugs or fail to disclose risks with the drugs they sell then the Writ can be utilized to prevent the distribution of these drugs and at the same time hold these companies liable. Also, the Writ would strengthen the Food Security Act which is aimed to strengthen food safety regulatory system in the country which includes safety standards, inspection, testing, data collection, and monitoring.

For the Writ of *Vita* to issue, an individual would have to file for a petition for Writ of *Vita*. The individual would have to attach the relevant affidavits. After the return and evidence presented in a summary hearing, the judgment of the relevant tribunal would detail the required acts from the respondents that will mitigate, if not totally eradicate, the violation of or the threat to the petitioner's life and health. The individual filing for the Writ must provide a causal link or reasonable connection between the defects or irregularities in the action of the individual or entity and the actual threatened violation to the constitutional right to life and right to health.

The Writ of *Vita* is also a special proceeding and it provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence. It is not an action to determine criminal guilt requiring proof beyond reasonable doubt or liability for damages requiring preponderance of evidence.

It is also proposed that any concerned citizen, organization, association or institution may file for the writ and it may be filed on any day and any time with the Regional Trial Court of the place of the threat,

act or omission was committed, or with the Sandiganbayan, Court of Appeals, the Supreme Court, or any justice of such courts. Thus, since the issues involved could drastically affect the constitutional rights to life and right to health, and these matters are of transcendental importance, the rule on locus standi could be relaxed.

For individual petitioners, if the aggrieved party cannot file for the writ, he/she may be represented by any member of the immediate family, namely the spouse, children, and parents; followed by any ascendant, descendant, or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity; and if there is no known member of the immediate family of the aggrieved, then any concerned citizen or organization, association, or institution. This shows that the aggrieved party need not be the immediate individual who would incur the negative effects of the drugs or devices covered by the writ.

The contents of the petition are also envisioned to be similar, more or less, with the Writ of *Amparo*, in that it shall include: the personal circumstances of the petitioner, the name and personal circumstances of the respondent responsible for the threat, act or omission, the right to life or right to health violated or threatened with violation by an unlawful act or omission, the relief prayed for. The petition may also include a general prayer for other just and equitable reliefs.

It is also proposed that the reliefs that may be granted under the writ are the following: (a) directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty resulting in danger to life and health; (b) directing the respondent public official, government agency, private person or entity to monitor strict compliance with law and/or the decision and orders of the court; (c) directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and (d) such other reliefs which relate to the right of the people to life and health.

Upon the filing of the petition or at any time before final judgment, the court, justice or judge may also grant interim reliefs such as stopping the distribution or usage of such drugs, devices, and substances by the pubic pending the hearing or inspection orders. The Writ can also include ocular inspection and production or inspection of documents or things as added interim reliefs. A motion for the production or inspection of documents or things must show that a production order is necessary to establish the magnitude of the violation of the threat as to prejudice the life and health of people.

CONCLUSION

There has been much discussion recently on the RH Law, particularly on the various laws already being implemented in the country with regard to population control through the use of contraceptives. There is the Tariff and Customs Code (RA 1937), the Act regulating the sale, dispensation, distribution of contraceptive drugs and devices (RA 4729), Pharmacy Law (RA 5921), and the 1972 Population Law (PD 79). The main purpose of the paper is to clarify and resolve the apparent inconsistencies in laws relating to the use and distribution of contraceptives in the Philippines.

With regard to the apparent inconsistencies in the laws relating to contraception, the paper recommends that there be now three requirements for the use and dispensation of contraceptive drugs, namely: (1) prescription of a medical practitioner; (2) the contraceptive must be dispensed/sold by a licensed drug store or pharmaceutical, and (3) the said contraceptive must not be abortifacient. This conclusion takes into consideration the more recent decisions of the Supreme Court in the RH Law.

With the inconsistencies of RA 4729 with PD 79, the paper concludes that the opinion of the Secretary of Justice that PD 79 removed the need for prescription of a qualified medical practitioner and sale by a duly licensed drug store or pharmaceutical is erroneous because it did not take into consideration the other provisions in RA 4729. Likewise, the opinion of the Secretary did not take into consideration RA 5921 which supported the need for prescription of a qualified medical practitioner and sale by a duly licensed drug store or pharmaceutical. The paper also posits the view that the way population policies are interpreted is dependent on the shifting stances of each administration. This highlights the susceptibility and fragility of the right to life to the policy and developmental goals of different administrations of the country. So, the paper has looked into the rule-making power of the Supreme Court, and how this power can be utilized for the possible creation of a writ by the Supreme Court which would truly protect the right to life and right to health of the Filipino people.

The paper proposes the creation of a Writ of Vita, or the Writ of Life, which would primarily focus on the protection of the unborn. There is a need to protect the right to life and right to health of the Filipino people from the inconclusive effects of certain drugs and other substances that could potentially be dangerous to life and health. An example is the Dengvaxia vaccine which is believed to have exacerbated the effects of dengue. It can be argued that if the Writ of Vita was available as a remedy, the negative effects of the Dengvaxia vaccine could have been avoided since the writ could have been availed of to protect the Filipino people from the inconclusive effects of Dengvaxia.

The Writ of *Vita* which is anchored on the precautionary principle is proposed to be created and with the protection of the Filipino people's life and health as the main focus. The Writ of *Vita* could come about through the decisive action of the Supreme Court, the collective participation of civil society and improved political mood. But the Supreme Court should not be wholly dependent on the changing political moods or influence made by civil society. To do so would not be faithful to the Constitution which it, as an institution, is duty-bound to uphold and enforce at all times; it would also degrade its power to promulgate rules for the protection and enforcement of the constitutional rights to life and health bestowed upon it by the Constitution.

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