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**| RESEARCH ARTICLE**

## **Democracy and Martial Law in the Philippines: A Misconception that Leads to Misinformed Citizenry**

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**| ABSTRACT**

The most precious among all the rights and freedom accorded to a human is the right not to be restraint by anyone, including the State. When there are restrictions to a person, the presumption always ends up in violation of these rights accorded under the fundamental law and the law of the United Nations. The objective of the study is to inquire into the true intention of democracy and martial rule if they are inconsistent or one of them is really a tool to keep one's rights and freedom, or there is only one that should exist, and they may not be both exist in one system, meaning the existence of one is high and in contrast with the other. Specifically, it aims to discuss the following: What is the meaning of Democracy and Martial law? What are the effects of Martial Law in a Democratic system of government? Why do people fear Martial Law? What are the instances of the declaration of Martial Law? Is Martial Law a means or tool or a system of government? The study will present the legal bases of Democracy and Martial Law through the available data, primarily government documents. The scope of the research concentrates on the laws and policies affecting the government and the people to compare and analyze through the records and jurisprudence. A case study is appropriate for this study because researchers have used the case study research method for many years across a variety of disciplines. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods. The study pointed to the fact that the people must be informed of the effects and benefits of martial law through government agencies and the media. The local government must also do martial law education for their constituents and by utilizing the barangays. The Dept. of National Defense, The Dept. of Interior and Local Government and the Commission on Human Rights must come out with a clear handbook or guidelines about the effects of martial law on the people. The Dept. of Education and the Commission on Higher Education must devise a curriculum or subject that tackles and discusses martial law effects.

**| KEYWORDS**

Democracy, Martial Law, Human Rights, Fundamental Law, Writ of Habeas Corpus, Invasion, Rebellion, Public Safety

**| ARTICLE DOI:** [10.32996/jhsss.2019.1.1.3](https://doi.org/10.32996/jhsss.2019.1.1.3)

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### **1. Introduction**

The most precious among all the rights and freedom accorded to a human is the right not to be restraint by anyone, including the State. When there are restrictions to a person, it always ends up in violation of these rights accorded under the fundamental law and the law of the United Nations. In this study, it will look into the true intentions of democracy and martial rule if they are inconsistent or one of them is really a tool to keep one's rights and freedom, or there is one only that should exist, and they may not be both exist in one system, meaning the existence of one is high and in contrast with the other. Humans always think and create laws that may protect and advance their well-being; in the Philippines, the 1987 constitution declares under article III the Bill of Rights sections one to twenty-two the rights of citizens, including aliens or foreigners who come in transit to visit the Philippines, thus, the set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of government as a means of securing the enjoyment of those rights. The Bill of Rights is designed to preserve the ideals of liberty, equality and security "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles. Generally, any

governmental action in violation of the Bill of Rights is void. These provisions are also generally self-executing (PBM Employees Org.v. Phil. Blooming Mills, 51 SCRA 189).

The Bill of Rights is the sanctuary of protection for all persons, citizens or non-citizens, against any and all kinds of abuses of power and authority by the government, or any of its officials and employees, or even against any unwarranted violation of such rights by any other person. In other words, the Bill of Rights serves not only as a limitation but also as a deterrent to further violations of fundamental liberties, which is the essence of constitutional democracy (Suarez, Political Law Reviewer, 2002 ed.). Democracy is a system of government wherein its citizen may freely act and criticize their government without fear of being persecuted and prosecuted within limits allowed under the law. The constitution declares under Article II, section 1. "*The Philippines is a democratic and republican State. Sovereignty resides in the people, and all government authority emanates from them*".

A republican government is a government that is run by the people through their chosen representatives, who, in turn, are accountable to the people's sovereign will. They derive their mandate from the people who elect them for a period of a term that is fixed by law. (Suarez, Political Law Reviewer, 2002 ed. p56).

This establishes our government's democratic and representative nature and proclaims our hostility to autocratic or totalitarian regimes. Thus the people are declaring supreme. It is affirmed that every citizen is an individual repository of sovereignty. As Justice Laurel put it, "*an enfranchised citizen is a particle of popular sovereignty and is the ultimate source of established authority*". The citizenry and not officialdom is recognized as the origin and, therefore, the restriction of all government authority (Justice Cruz supra). Martial law is a tool or strategic action to preserve and restore democracy, the constitution declares under Article III *Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it*". The writ of habeas corpus is directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention, to do, to submit to, and receive whatever the court or judge awarding the writ shall consider in his behalf.

People will always think of curtailment of their rights when they hear the word Martial law or worst thinking that they will be subjected to government persecution if they will criticize the government. The Philippines had experienced martial rule during the time of former president Ferdinand E. Marcos. People are divided in their beliefs and understanding about martial rule and democracy. Some will denounce that it is somehow a government constitutional device to curtail their rights and often lead to abuses by those who called upon to preserve and protect the people and the society; however, other people will say and claim that the imposition of martial law will restore peace, security and the citizen will follow the law. Needless to state, careful study and research must be done in order to educate the people about the implications of martial rule in a democratic society. Government and its agencies should be very careful in dealing with the people, especially during the time that the president imposed martial rule. It is about time that people understand and be well versed in why the president declared such an emergency. The government and the people must be fully aware of the imposition and outcomes of the declaration to avoid abuse by an official who is called, appointed and elected to protect and preserve the society.

## **2. Method**

The research used a case study method to determine the implications of Democracy and Martial Law to the government and people. The objectives of the study are the following:

1. What is the meaning of Democracy and Martial Law?
2. What are the effects of Martial Law in a Democratic system of government?
3. Why do people fear Martial Law?
4. What are the instances of the declaration of Martial Law?
5. Is Martial Law a means or tool or a system of government?

The study will present the legal bases of Democracy and Martial Law through the available data, primarily government documents. The scope of the research concentrates on the laws and policies affecting the government and the people to compare and analyze through the records and jurisprudence.

A case study is appropriate for this study because researchers have used the case study research method for many years across a variety of disciplines. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods. Researcher Robert K. Yin defines the case study research method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident. Multiple sources of evidence are used (Yin, 1984, p. 23).

### 3. Results and Discussion

#### 3.1 Democracy and Martial Law; meaning.

Democracy is a system of government by the whole population or all the eligible members of a state, typically through elected representatives: a system of parliamentary democracy. A government in which the supreme power is vested in the people and exercised directly or indirectly through a system of representation usually involves periodically held free elections. The constitution of the Philippines defined democracy Article II, section 1. "*The Philippines is a democratic and republican State. Sovereignty resides in the people, and all government authority emanates from them.*" thus, Cruz (2002) declares the people supreme. It is affirmed that every citizen is an individual and repository of sovereignty. As Justice Laurel put it, "an enfranchised citizen is a particle of popular sovereignty and is the ultimate source of established authority."

#### 3.2 Martial Law

A system of complete control by a country's military overall activities, including civilian, in a theoretical or actual war zone, or during a period of emergency caused by a disaster such as an earthquake or flood, with the military commander having dictatorial powers. In the United States, martial law must be ordered by the President as commander-in-chief and must be limited to the duration of the warfare or emergency. It cannot result in a long-term denial of constitutional rights, such as habeas corpus, the right to a trial, and to free press. Martial law was ordered in contested areas during the Civil War (but the Supreme Court ruled President Abraham Lincoln's suspension of the writ of habeas corpus was unconstitutional), and during the San Francisco earthquake and fire in 1906 when the city was in ruins, tens of thousands were homeless, and looting and disease posed great dangers to the public. Misuse of martial law, such as destruction of the veteran's encampment in Washington D. C. under President Herbert Hoover, has proved unpopular in the United States. In many foreign countries, martial law has become a method to establish and maintain dictatorships either by military leaders or politicians backed by the military. Martial law is not to be confused with "military law", which governs the conduct of the military services and applies only to servicemen and women.

Martial law is an extreme and rare measure used to control society during war or periods of civil unrest or chaos. According to the Supreme Court, the term martial law carries no precise meaning (*Duncan v. Kahanamoku*, 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 [1946]). However, most declarations of martial law have some common features. Generally, the institution of martial law contemplates some use of military force. To a varying extent, depending on the martial law order, government military personnel have the authority to make and enforce civil and criminal laws. Certain civil liberties may be suspended, such as the right to be free from unreasonable searches and seizures, freedom of association, and freedom of movement. And the writ of *Habeas Corpus* may be suspended (this writ allows persons who are unlawfully imprisoned to gain freedom through a court proceeding).

Although the habeas corpus petition had been suspended, the Supreme Court accepted Milligan's petition for a writ of *habeas corpus*. The Supreme Court held that neither the president nor Congress could give federal military forces the power to try a civilian who lived in a state that had federal courts. Milligan firmly established the right of the U.S. Supreme Court to review the propriety of martial law declarations.

Martial law is usually used to restore and maintain peace during civil unrest. Martial law is generally an act of last resort. Courts will uphold a decision to use troops only if it is necessary and proper.

#### 3.3 The effects of Martial Law in the Democratic system of government

##### 3.3.1 The Writ of Habeas Corpus

The Writ of *habeas corpus* is a prerogative writ of liberty employed to test the validity of a person's detention. If he is restrained of his liberty, he or someone acting on his behalf may file a petition for *habeas corpus* to secure his release. The writ "is directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, to submit to, and receive whatever the court or judge awarding the writ shall consider in his behalf. It is a high prerogative common-law writ of ancient origin, the great object of which is the liberation of those who may be in prison without sufficient cause."

##### 3.3.2 Grounds for Suspension

The President is entrusted with the power to suspend the privilege of the writ of habeas corpus. However, this power is not absolute and without limitations and may be revoked by Congress or the Supreme Court in proper cases declared under Article VII Section 18. *The President shall be the Commander-in-Chief of all armed forces of the Philippines, and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when public safety requires it, he may suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law for a period not exceeding sixty days. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of habeas corpus, the President shall submit a report in person or in writing to Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which*

*revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress if the invasion or rebellion shall persist and public safety requires it.*

*If not in session, Congress shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without the need of a call.*

*The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must its decision thereon within thirty days from its filing. A state of martial law does not suspend the operation of the Constitution, supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over where civil courts are able to function, nor automatically suspend the privilege of the writ.*

*The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offences inherent in or directly connected with invasion.*

*During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days; otherwise, he shall be released.*

To settle once and for all the extent of the President's military powers, the new constitution has provided for the following significant changes in the original authority of the commander-in-chief:

1. He may call out the armed forces to prevent or suppress lawless violence, invasion or rebellion only.
2. The grounds for the suspension of the privilege of the writ and the proclamation of martial law are now limited to invasion or rebellion.
3. The duration of such suspension or proclamation shall not exceed sixty days, following which it shall be automatically lifted.
4. Within forty-eight hours after such suspension or proclamation, the President shall personally or in writing report his action to Congress.
5. If not in session, Congress shall convene within 24 hours following the proclamation or suspension.
6. The Congress may, by a majority vote of all its members voting jointly, revoke his action. The revocation may not be set aside by the President.
7. By the same vote and in the same manner, Congress may, upon the initiative of the President, extend his suspension or proclamation for a period to be determined by Congress if the invasion or rebellion shall continue and the public safety requires the extension.
8. The action of the President and the Congress shall be subject to review by the Supreme Court, which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question and may be raised in an appropriate proceeding. Moreover, the Supreme Court must decide the challenge within thirty days from the time it is filed.
9. The challenge may be filed by any citizen.
10. Martial law does not automatically suspend the privilege of the writ of *habeas corpus* or the operation of the constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdictions over civilians where the civil courts are functioning.
11. The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of rebellion or offences inherent in or directly connected with invasion.
12. Any person arrested for such offences must be judicially charged within three days. Otherwise, he shall be released.

From the above requirements, it is unthinkable for the President to use martial law to advance and preserve his own interest. Aside from him, Congress and the Supreme Court may inquire into the declaration of martial law and has the power to annul or revoke the acts of the President. The President will only be justified in the declaration of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in two instances such as *to prevent or suppress lawless violence, invasion or rebellion*. In the case of *Aquino v. Enrile*, 59 SCRA 183, the Supreme Court ruled, the declaration of martial law and the delimitation of its duration and consequences, we may now say again with Willoughby that martial law in its strict sense refers to that law which has application when the military arm does not supersede civil authority but is called upon to aid it in the execution of its civil function. The declaration of martial law continues, has no further legal effect than to warn the citizens "that the military powers have been called upon by the executive to assist him in the maintenance of law and order and that while the emergency lasts, they must, upon pain of arrest and punishment, not commit any act which will in any way render difficult the restoration of order and the enforcement

of the law. When martial law is declared, no new powers are given to the executive, no extension of arbitrary authority is recognized, no civil rights of individuals are suspended. The relation of the citizens to their state is unchanged. Whatever interference there may be in their personal freedom or property rights must be justified, as in the case of police power, by necessity actually existing or reasonably presumed. During the times of disorder as will lead to a call upon the military for assistance, necessity naturally demands the commission of acts which in more tranquil times are not demanded, and thus, in fact, those in authority may control the individual in his property in ways which they could not legally do at other times. But the principle still holds good that necessity, and necessity alone, will justify an infringement upon private rights of persons and property."

The martial rule will only be used to install public order and obedience to the law. This does not include the arbitrary whims and caprice use. This is also designed to forewarn criminals and people with evil intentions not to push through with their evil designs because the government will not hesitate to use its iron hands to counteract the turbulence for the protection of the weak and the defenceless citizens and society.

### **3.4 People Fear Martial Law**

The people fear martial law is not really what they understand of its effects but really what they fear, which is the wrong information or the disinformation about the martial rule. The citizen should not fear martial law because this will bring order and peace in the community as the law describes and declares under Article III Section 15. *The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when public safety requires it.* The president may not just declare martial law as the requirements must first be existed, that is, invasion or rebellion when public safety requires it. The fear of suspension, according to many, may lead to indiscriminate arrest among innocent people just according to them; what happened in the past is far from what really intended to protect the lives and property of the people. The wrong information and evil application are the real problem in society, not martial law. Martial law is usually used to restore and maintain peace during civil unrest. Martial law is generally an act of last resort. Courts will uphold a decision to use troops only if it is necessary and proper. Admittedly even assuming for the sake of argument that the president declares martial law, the operations of courts and other civil liberties accorded the citizens are there and will not be affected by its declaration. People should not fear martial law, especially those who abide by the law, but rather, those that have intentions to destroy the peace and order should be the ones to panic and be feared because the sword of martial law is aimed at them. If martial law in the past creates pain, misery, sorrow and agony among citizens, if there are such, it is not the martial law itself to be blamed but the people behind it by using it excessively in its enforcement, or the enforcers abused the directives of higher authorities. The people also may have the share in that kind of situation by not understanding and knowing the real meaning and effects of martial law. If the people then and also those leaders tasked to inform the people work to disseminate the effects of martial law, there is a big possibility that abuse may not have been committed by the authorities and their subordinates in the implementation of martial law.

### **3.5 Martial Law a means or tool or a system of government**

The invasion or rebellion when public safety requires it necessitates the declaration of martial law in order to install and secure public order and peace in the community. Martial law is an extreme and rare measure used to control society during war or periods of civil unrest or chaos. According to the Supreme Court, the term martial law carries no precise meaning (*Duncan v. Kahanamoku*, 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 [1946]). It is neither a system of government nor operations of the affairs of the government but a tool to keep that functioning. The declaration of martial law continues, has no further legal effect than to warn the citizens "that the military powers have been called upon by the executive to assist him in the maintenance of law and order and that while the emergency lasts, they must, upon pain of arrest and punishment, not commit any act which will in any way render difficult the restoration of order and the enforcement of the law. Unlike the system of government wherein, its principle and administration relied upon it. The presidential, parliamentary, monarch, communist, socialist, etc., are systems of government that carry the mandate and will of the people in their different systems of government.

## **4. Conclusion**

The objective of the study is to inquire into the true intention of democracy and martial rule if they are inconsistent or one of them is really a tool to keep one's rights and freedom, or there is only one that should exist, and they may not be both exist in one system, meaning the existence of one is high and in contrast with the other. Specifically, it aims to discuss the following, What is the meaning of Democracy and Martial law?, What are the effects of Martial Law in a Democratic system of government? Why do people fear Martial Law? What are the instances of the declaration of Martial Law? Is Martial Law a means or tool or a system of government?

The study presented the legal bases of Democracy and Martial Law through the available data, primarily government documents. The scope and limitations of the research concentrate on the laws and policies affecting the government and the people to compare and analyze through the records and jurisprudence.

We may not just say and conclude things and events as other people narrate and experience them, but rather the simple way of understanding what really the intention of that situation that brought about their misapprehension and misunderstanding of the martial law. If both sides, the government and the people, are aware of the good and bad effects of martial law, then we can avoid excessive force in its application. We can avoid the social problem that keeps on associating with the abuse of human rights by proper use and implementation of martial law. As the definition and the declaration of the courts, both the Philippines and the U.S. are in agreement that martial law is a means to install public order and bring peace in the community and warn criminals that the government will not hesitate to use its sword to them in case the circumstance so warrants. The government needs the shield and sword to protect the helpless and the weak in a manner that conforms to its laws and mandates and the use of force when it is only necessary, and no other available option is at hand. Information to the people is very important about what martial law is and its effects so that they will be informed and appreciate rather than fear it. If people are aware of it and the good outcomes of martial law, maybe it is not difficult for the government to convince the people about martial law, and people themselves will voluntarily ask the government to declare it.

The study is deemed significant to the People to become aware of their rights under the law. The government agencies must educate the people about the implications of the declaration of Martial Law.

Attention may also be invited to the researchers and scholars of public administration, political science and management to conduct a parallel study that supports and enhance the assumption about the need to study the martial law declaration.

### **5. Recommendations**

The government should immediately perform the following:

1. The people must be informed of the effects and benefits of martial law through government agencies and the media.
2. The local government must also do martial law education for their constituents and by utilizing the barangays.
3. The Dept. of National Defense, The Dept. of Interior and Local Government and the Commission on Human Rights must come out with a clear handbook or guidelines about the effects of martial law on the people.
4. The Dept. of Education and the Commission on Higher Education must devise a curriculum or subject that tackles and discusses martial law effects.

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