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**Constitutional Law, The Media And Electoral Process In Asean**

**By**

**Dario C Rama**

CONSTITUTIONAL LAW, THE MEDIA AND  
ELECTORAL PROCESS IN ASEAN

Ladies & Gentlemen and fellow participants of this seminar.

I wish to tell you how very delighted I am to be here today, and to have the opportunity of being a little part of this very significant gathering. I certainly want to express my personal word of thanks to Asia Foundation for giving me this opportunity. I also would like to express my personal appreciation to the organizers of this seminar/conference/meeting for their efforts in bringing us together for the better understanding of ourselves and our roles as members of the free family of nations. I am sure that as a result of this genuine concern, we have a better Asia today and I am sure will have a better Asia tomorrow with your continued endeavor.

The recent events in many parts of the world especially in Eastern Europe have proven that man's aspiration for self determination, freedom and equality and justice and democracy is strong and constant, and transcends all barriers of territory, race and creed.

My country has also contributed its fair share to the continuing struggle for justice and democracy when the Filipinos triumphed over a dictatorship in a bloodless revolution in 1986. It is more popularly known as the EDSA Revolution. The eyes of the world were focused on the Philippines at that time. Cory Aquino became president and she introduced sweeping reforms by virtue of the Freedom Constitution. She reinstalled the democratic institutions into place and appointed 50 men and women of proven ability from a wide spectrum of sectoral representations including the political opposition to frame a new

constitution. The rest is history.

The present Philippine Constitution is our country's fourth, not counting the Freedom Constitution. It was ratified by the people with the overwhelming vote of 76.3% in February 1987. This 1987 Constitution is the basis and the framework of the present government now being administered by the administration of President Corazon Aquino.

Let me take you on quick glance at our past constitutions in order to have a better perspective of the present one.

The first Philippine Constitution was the Malolos Constitution of 1898 which though promulgated by President Emilio Aguinaldo, was never actually put in force for the Philippines was then at war with the United States. It was eventually overtaken by the American occupation of the Philippines.

The second was the 1935 Constitution. It was framed and adopted during the American regime. It was the same constitution that Ferdinand Marcos used to impose Martial Law.

The third was the 1973 Constitution - the most controversial because it was the child of martial law. Its ratification was by virtue of a presidential proclamation. That constitution installed a parliamentary form of government which granted Mr. Marcos more powers than when he was martial law administrator - so that it was better known as the Marcos Constitution.

It is significant to note that the Filipino people ratified the present constitution as a free and independent people, not laboring under the yoke of a dictatorship or foreign domination.

Compared to the previous constitutions, it is more reflective of the aspirations of the Filipino people for the establishment of a government promotive of the common good.

The present Constitution provides for a presidential system of government. The legislative and the judicial departments act as the built-in systems to check and balance the executive department. I will not go into much detail of the Philippine Constitution which my good friend Mr. Christian Monsod being one of the Commissioners is in a better position to do so.

I will confine myself to the Commission on Elections, otherwise known as the COMELEC, the constitutional body to which I belong. The Constitution devotes only eleven (11) sections to the Comelec out of the total of 306 provisions in the Constitution. The brevity of the provisions does not detract from the pivotal role it plays in preserving the fledgling democracy that the present constitution has established. The Comelec exists to ensure the holding of free, orderly, honest, peaceful and credible elections. The Comelec sees to it that ballots, not bullets, will determine who the political leaders of the country are. It is sad to note that in the past, the Comelec was used as an instrument of control by the dictatorship to give the elections during martial law a semblance of legality and legitimacy. The credibility of the Comelec was at its lowest during martial law. It became the object of mockery and contempt, along with many other agencies of the government. Now I am proud to say that the present Comelec is living up to the Constitutional mandate and the expectations of the people as fair, honest and efficient. After the holding of several electoral exercises these past three (3) years, the Comelec has regained the respect and confidence it once enjoyed. Even the

political opposition has conceded the present Comelec to be fair and honest.

## MEDIA

In theory and in practice, press in the Philippines is one of the freest in the world. But it had fallen on evil days too.

During the martial law only a chosen few daily papers, radio and TV stations were allowed to flourish and those few ones were beholden to the dictatorship. The rest were either stifled or forced out of circulation, their publishers, editors and writers incarcerated, banished or simply made to disappear permanently. It was a case of either you praise the martial law regime or perish.

Today, the media practitioners enjoy complete press freedom. This is borne out by the fact ~~not~~ that <sup>not</sup> only have the morning dailies proliferated (there are more than 20 now compared with less than 5 during Martial Law) but their quality also improved. The press is so free in my country that not a few practitioners have become too strident and unfair in their criticism of the government. I am sure you have read about one columnist who was sued by President Aquino for libel. With the advent of the newly regained freedom, the law on libel has come to life again in the Philippines.

Press freedom as practiced in my country is not a mere happenstance. It is the direct and logical result of policies of the present government to insure democratic space in all facets of human endeavor.

These government policies promotive of press freedom find support in the present constitution.

The following provisions of the Constitution on the role of media read:

ART. II - State Policies

x x x ;

Sec. 24. The State recognizes the vital role of communication and information in nation-building.

ART. III - Bill of Rights

Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

The participation of media in the conduct of a political exercise is provided for under Sections 90 and 92 of the Omnibus Election Code (BP Blg. 881) which state:

Sec. 90. Comelec space. - The Commission shall procure space in at least one newspaper of general circulation in every province or city: Provided, however, that in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which

shall be known as "Comelec Space" wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated.

Sec. 92. Comelec Time. - The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign.

The provisions relative to the regulation by the Comelec of pre-election activities are found in Sections 84, 85 and 86.

Sec. 84. Requirements for published or printed election propaganda. - Any newspaper, newsletter, newsweekly, gazette or magazine advertising, posters, pamphlets, circulars, handbills, bumper stickers, streamers, simple list of candidates or any published or printed political matter for or against a candidate or group of candidates to any public office shall bear and be identified by the words "paid for by" followed by the true and correct name and address of the payor and by the words "printed by" followed by the true and correct name and address of the printer.

Sec. 85. Prohibited forms of election propaganda. - It shall be unlawful:

(a) To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging



voters to vote for or against any candidate unless they bear the names and addresses of the printer and payor as required in Section 84 hereof;

(b) To erect, put up, make use of, attach, float or display any billboard, tinsplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party;

(c) To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandanas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate;

(d) To show or display publicly and advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts which may be allowed as hereinafter provided; and

(e) For any radio broadcasting or television station to sell or give free of charge air time for campaign and other political purposes except as authorized in this Code under the rules and regulations promulgated by the Commission pursuant thereto.

Any prohibited election propaganda gadget or advertisement shall be stopped, confiscated or torn down by the representative of the Commission upon specific authority of the Commission.

Sec. 86. Regulation of election propaganda through mass media. - (a) The Commission shall promulgate rules and regulations regarding the sale of air time for partisan

political purposes during the campaign period to insure that equal time as to duration and quality is available to all candidates for the same office or political parties at the same rates or given free of charge; that such rates are reasonable and not higher than those charged other buyers or users of air time for non-political purposes; that the provisions of this Code regarding the limitation of expenditures by candidates and political parties and contributions by private persons, entities and institutions are effectively enforced; and to ensure that said radio broadcasting and television stations shall not unduly allow the scheduling of any program or permit any sponsor to manifestly favor or oppose any candidate or political party by unduly or repeatedly referring to or including said candidate and/or political party in such program respecting, however, in all instances the right of said stations to broadcast accounts of significant or newsworthy events and views on matters of public interest.

(b) All contracts for advertising in any newspaper, magazine, periodical or any form of publication promoting or opposing the candidacy of any person for public office shall, before its implementation, be registered by said newspaper, magazine, periodical or publication with the Commission. In every case, it shall be signed by the candidate concerned or by the duly authorized representative of the political party.

(c) No franchise or permit to operate a radio station or television shall be granted or issued, suspended or cancelled during the election period.

Any radio or television station, including that owned or controlled by the Government, shall give free of charge

equal time and prominence to an accredited political party or its candidates if it gives free of charge air time to an accredited political party or its candidates for political purposes.

In all instances, the Commission shall supervise the use and employment of press, radio and television facilities so as to give candidates equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in this Code on election spending.

Rules and regulations promulgated by the Commission under and by authority of this section shall take effect on the seventh day after their publication in at least two daily newspapers of general circulation. Prior to the effectivity of said rules and regulations, no political advertisement or propaganda for or against any candidate or political party shall be published or broadcast through the mass media.

Violation of the rules and regulations of the Commission issued to implement this section shall be an election offense punishable under Section 264 hereof.

There is a lively discussion going on in our country regarding the nature and extent of the news reporting and criticism by the press of the actuations of government and its policies. The press of course demands absolute transparency. One senator already took the press to task saying that many of them are arrogant and know-it-alls.

But the fact is that the press in our country plays its role very seriously and jealously guards its prerogatives. Its zealous reporting and ruthless criticism put the government on its toes and I think a lot of good will come out of this.

## THE ELECTORAL PROCESS

The importance of the electoral process in a democratic institution can hardly be overestimated. It is vital not only because it assures continuity and stability but also because it is the only political exercise where people at large participate directly. Elections must not only be free and credible, they must also be perceived as free and credible by the people.

The Comelec has so far conducted several elections and plebiscites - the plebiscite in February 1987, for the approval of the present Constitution, the senatorial and congressional elections in May 1987, the local elections in January 1988, the Barangay elections in March 1989 and the two plebiscites in the autonomous regions of Muslim Mindanao and the Cordilleras in the island of Luzon.

The latest political exercise conducted in the Philippines was the election for the officials of the Autonomous Government of Muslim Mindanao on February 17, 1990. There was a delay in the proclamation of the winners because of the numerous pre-proclamation protests filed by the losers.

The scheduled election for the Cordilleras is set on March 12, 1991.

Those political exercises were peaceful, honest, fair and credible, and equally important is the fact that the people perceived them to be so except some of the losers who claimed they lost because they were cheated. This phenomenon of losers blaming the electoral process for their losses is quite common in the Philippines.

Several innovations have been introduced by the Commission to assure a peaceful, honest, fair and credible elections. A proposal, though still in its planning stage, is the adoption of the system of punch card balloting, computerized counting and satellite communication of the vote tallies preparatory to the synchronization of the general elections in 1992.


**CONCLUSION:**

The efforts it took to topple down the dictatorship and to set up the present constitutional structures were not easy. The task of making constitutional democracy work is even harder. There are forces at work which seek to destroy what has already been built to install in its stead a system which is a throwback to the days of the dictatorship.

To keep democracy, we have to work harder to make it work. As the famous English novelist George Bernard Shaw puts it "Democracy is a device that insures we shall be governed no better than we deserve."

Thank you.

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