



FREEDOM OF EXPRESSION

K.Y.ENRIQUEZ





- This is the first right that is always curtailed when a free society falls under a repressive.
- Every citizen has a right to offer his views and suggestions in the discussion of the common problems of the community or the nation. This is not merely a right, but a duty.
- The scope alone of the options, let alone the latitude with which they are considered, can insure a far better choice than that made by the heedless dictator in the narrow confines of his mind and the loneliness of his pinnacle.
- Schools of thought that strengthen the basic right to freedom of expression:
 - Deliberative Democracy
 - Marketplace of ideas
 - Self-expression enhances human dignity
- The ideas that may be expressed are not confined to those that are sympathetic or acceptable to the majority. It likewise permits the articulation of even those which are unorthodox, hostile, or derided by the majority.





- The freedom to speak includes the freedom to be silent.
- This freedom includes the right to an audience, the right to listen, and the right to ignore.
- Speech is not limited to vocal communication. There may be several modes of expression, such as language, gestures (clenched fist, the bended knee, salute to the flag, bended knee,), and illustrations.
- Diocese of Bacolod vs. Commission on Elections, G.R. No. 205728, January 21, 2015 (Team Buhay/Team Patay tarps)
- Disini vs. Executive Secretary, G.R. No. 203335, February 11, 2014 (Freedom of Expression extends to commercial speech and political satire.
- Elements of Freedom of Expression:
 - Freedom from previous restraint; and
 - Freedom from subsequent punishment.





- Prior restraint: Content-based regulation (compelling state interest) vs. Content-neutral regulation (intermediate approach).
- *Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, July 26, 1996 – INC's criticisms of other religions are part of their freedom of expression and religion.
- *Adiong v. Commission on Elections*, G.R. No. 103956 March 31, 1992 – election decals and stickers on cars, tricycles, and other vehicles fall within the ambit of freedom of expression. It is merely an exercise of the right of ownership.
- *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008 – threats of the Secretary of Justice to prosecute and threats of the National Telecommunications Commission of cancellation of licenses against television and radio stations who will air the *Hello Garci* tapes is a form of prior restraint.
- Freedom of Expression does not cover ideas offensive to public order or decency or the reputation of persons.





- Subsequent Punishment: Inciting to Sedition, Inciting to Rebellion, Libel and Cyberlibel, Obscenity.
- *Disini v. Executive Secretary* – “Liking”, “Commenting”, or “Sharing” on social media are a valid exercise of the freedom of expression.
- Clear and Present Danger Rule – whether the words used are used in such circumstances are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the State has the right to prevent.
- Clear and Present Danger Rule vs. Dangerous Tendency Rule
- Criticisms of Official Conduct of Public Officers is generally acceptable
 - The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; [but] the wound may be relieved by the balm of clear conscience. A public official must not be too thin-skinned with reference to comment upon his official acts. (*US v. Bustos*, G.R. No. L-12592, March 8, 1918)





- The official acts, and now even the private life, of a public servant are legitimate subjects of public comment. As long as the comments are made in good faith and with justifiable ends, they are insulated from prosecution or damage suits for defamation even if such views are found to be inaccurate and erroneous.
- Same principle applies also to public figures.
- Ayer Productions Pty. Ltd. v. Judge Capulong, G.R. No. 82380, April 29, 1988 – the immortal Juan Ponce Enrile objected to the production of the movie “Four Days of Revolution” contending that his inclusion in the said film on the People Power Revolution violated his right to privacy. He was rejected by the Supreme Court, recalling that Enrile was one of the leaders of that historic event.
- *When does art end and indecency begin?*
 - US v. Kottinger – sale of pictures of half-clad members of non-Christian tribes presented in their native attire falls under freedom of expression.
 - People v. Padan – live exhibition of sexual intercourse was construed as obscene which was not constitutionally protected.





- Tests of Obscenity:
 - Whether the average person would find that the work appeals to the prurient interests;
 - Whether the work depict or describes, in a patently offensive way, sexual conduct; and
 - Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- ABS-CBN Broadcasting Corporation v. Commission on Elections, G.R. No. 133486. January 28, 2000 - The holding of exit polls and the dissemination of their results through mass media constitute an essential part of the freedoms of speech and of the press. Hence, the Comelec cannot ban them totally in the guise of promoting clean, honest, orderly and credible elections. Quite the contrary, exit polls -- properly conducted and publicized -- can be vital tools in eliminating the evils of election-fixing and fraud. Narrowly tailored countermeasures may be prescribed by the Comelec so as to minimize or suppress the incidental problems in the conduct of exit polls, without transgressing in any manner the fundamental rights of our people.





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THANK YOU AND STUDY WELL

