

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 196

Introduced by **Honorable Roilo Golez**

EXPLANATORY NOTE

The law of sedition came into existence in the Philippines during the Spanish colonial period. Sedition as a felony was introduced in the Philippines during the late 1800s by the Spaniards who used it as a legal restriction designed to silence dissent against Spanish rule. After the Spanish colonization, prosecution for this crime continued to be utilized as a handy instrument of repression of even legitimate political dissent first by the Americans then later by Filipino administrators. Sedition as a repressive law can no longer be tolerated. Today, in established and mature democracies, the law on sedition has been either expressly repealed or is largely defunct. In the Philippines, acts inimical to public security and national stability and integrity are addressed and adequately punished by our existing laws on coups, rebellion, and libel, thus eliminating the need for the very vague and repressive law on sedition.

In the United States, the word sedition appears to occur only in the army and navy articles. A soldier joining any sedition, does not use his utmost endeavor to suppress the same, is punishable with death or such other punishment as a court-martial shall direct. (U.S. Rev. Stats. 1342, arts. 22, 23)

As to sedition itself, Mr. Justice Stephen, an English legal luminary, does not "think that any such offence is known to English law" (Hist. Crim. Law, vol. ii. Chap. xxiv). The principal enactments now in force dealing with seditious offences were all passed during the last twenty-five years of the reign of George III. They are the Unlawful Oaths Act of 1797 prohibiting the administering or taking of unlawful oaths or the belonging to an unlawful confederacy.

Sedition in its modern meaning first appeared in the Elizabethan Era (c. 1590) as the "notion of inciting by words or writings disaffection towards the state or constituted authority". Sedition complements treason and martial law: while treason controls primarily the privileged, ecclesiastical opponents, priests, and Jesuits, as well as certain commoners; and martial law frightens commoners, sedition frightens intellectuals."

As defined by a well-recognized international legal dictionary, the Black's Law Dictionary (Seventh Edition), sedition is "an agreement, communication, or other preliminary activity aimed at inciting

treason or some lesser commotion against public authority; advocacy aimed at inciting or producing--and likely to incite or produce--imminent lawless action. - At common law, sedition included defaming a member of the royal family or the government. The difference between sedition and treason is that the former is committed by preliminary steps, while the latter entails some overt act for carrying out the plan. But of course, if the plan is merely for some small commotion, even accomplishing the plan does not amount to treason."

An English legal luminary, Edward Jenks, in his book - *The Book of English Law* 136 (P.B.Fairest ed., 6th ed. 1967) – referred to sedition in this manner: "This, perhaps the very vaguest of all offenses known to the Criminal Law, is defined as the speaking or writing of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace, or to raise discontent or disaffection, or to promote ill-feeling between different classes of the community. A charge of sedition is, historically, one of the chief means by which Government, especially at the end of the eighteenth and the beginning of the nineteenth century, strove to put down hostile critics. It is evident that the vagueness of the charge is a danger to the liberty of the subject, especially if the Courts of Justice can be induced to take a view favourable to the Government."

Today, sedition as a legal concept in the Philippines has become essentially contrary to the underlying principles of our modern democracy as expressed in the Bill of Rights, and therefore anachronistic.

In Philippine penal jurisdiction, Sedition is a crime "committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects: (1) To prevent the promulgation or execution of any law or the holding of any popular election; (2) To prevent the National Government, or any provincial or municipal government or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order; (3) To inflict any act of hate or revenge upon the person or property of any public officer or employee; (4) To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and (5) To despoil, for any political or social end, any person, municipality or province, or the National Government (or the Government of the United States), of all its property or any part thereof." (Article 139, Revised Penal Code)

On the other hand, Inciting to Sedition is a crime committed by "any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government (of the United States or the Government of the Commonwealth) of the Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community,

the safety and order of the Government, or who shall knowingly conceal such evil practices." (Article 142, Revised Penal Code)

The disparity with the international legal concept of these crimes, vagueness, as well as its over breadth is clearly apparent in these given definitions under the Revised Penal Code.

Notably, our present Constitution strongly emphasizes and guarantees due observance of fundamental bill of rights of the people including the often trampled-upon freedom of expression, of the press and to peaceful assembly. Thus, the present penal provision as it now reads is no longer consistent and responsive to the current political and constitutional setting; on the contrary it has been corrupted by years of neglect and misuse. In a democracy such as ours which gives prime importance to basic rights specially as signatory to international conventions, this law no longer serves a useful purpose, except as a repressive measure of an administration that is overly sensitive to criticism.

Article 19 of the Universal Declaration on Human Rights (UDHR), adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, guarantees the right to freedom of expression, to wit:

"Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive impart information and ideas through any media and regardless of frontiers."

Freedom of expression is also guaranteed in Article 19 of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, which states:

- "1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order, or of public health or morals."

Moreover, the right of peaceful assembly recognized under Article 21 of the International Covenant on Civil and Political Rights provides that "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

Similarly, Article 20 of the Universal Declaration on Human Rights (UDHR) mandates that:

- (1) Every one has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

These basic rights are deeply engrafted as well in our fundamental law. Sec. 4 of Article III of the 1987 Constitution clearly declares that "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. ".

Moreover, Section 2 of Batas Pambansa Blg. 880 declares as a state policy that "The constitutional right of the people peaceably to assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law." This avowed policy would be rendered meaningless, if the people exercising these constitutionally guaranteed rights would be daunted by unwarranted prosecution under this penal provision as a proverbial sword of Damocles.

In an attempt to reconcile the patently conflicting interest between the legitimate exercise of free speech and expression and the right of the state against seditious attacks, the highest tribunal of the land – the Supreme Court of the Philippines – has had the occasion in the past to establish, by jurisprudence, several tests to determine whether words uttered in the exercise of freedom of expression partakes of a seditious nature, i.e., transcended the limits of free speech, and thus may be subject of governmental interference.

In the landmark case of *Schenck v. U.S.* (249 U.S. 97), the US Supreme Court enunciated the Clear and Present Danger Rule, which advances that whether the words are used in such circumstances and of such a nature as to create a clear and present danger that they will bring about the substantial evils that the State has the right to prevent. The substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. This rule was embraced by our own Supreme Court in the case of *Gonzales v. COMELEC* (27 SCRA 835).

Still, as if unconvinced of the sufficiency of the application of the previously established test, the Supreme Court adopted another, the so called Balancing of Interest Test, in the case of *Zaldivar v. Sandiganbayan*, 170 SCRA 1 (1989). It is another criterion for permissible limitation on freedoms of speech and of the press which requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation.

In order to remove the opportunity for the need for construction, interpretation or misinterpretation of the law on sedition vis-à-vis the constitutional guarantees affected by it, and to emphasize and strengthen the fundamental right and exercise of press freedom and free speech, it is imperative that the present law on sedition be expressly repealed in order to make our penal law consistent to the explicit mandate under the present Constitution and existing legislation on press freedom,

freedom of expression, legitimate criticism of official conduct, and the right of the people to peaceably assemble to petition the government for redress of their grievances.

Furthermore, as enunciated in the case of *US vs. Perfecto and Mendoza* (43 Phil 58), to wit:

"The act of assembling peacefully and petitioning the government for redress of grievances is not sedition. It is a necessary consequence of republican democratic institutions and the complement of free speech. It is the particular duty of the state to zealously maintain the right to express freely, either verbally or by publication, their honest convictions regarding the acts of public officials and the governing class. If the people of a free state should give up the right of free speech; if they were daunted by fear and threats, and abdicate their convictions; if the governing body of the state could silence all the voices except that which will uphold the men in power, that we may well say "good-bye" to our liberties forever. Therefore criticism of public officials does not constitute incitement to sedition. When the citizens of the state become convinced that the administration of the affairs of the government is not carried on in accordance with the law, or is not conducted for the best interest of all concerned, they have not only a right but it is their duty to present the cause of their grievances to the public, and the free press of the state affords the best avenue for that purpose. To that end the organic laws of all modern free states have wisely provided that "no law shall be passed abridging the freedom of the press," and that no person shall be punished except for an abuse of that freedom. The interest of civilized society and the maintenance of good government demand a full and free discussion of all affairs of public interest. Complete liberty to comment upon the administration of government as well as the conduct of public men, is necessary for the free speech and free press. The people are not obliged, under modern civilized governments, to speak of the conduct of their officials, of their servants, in whispers or with bated breath. The freedom of the press consists in the right to publish the truth, with good motives and for justifiable ends, although said publication may be offensive to the government, to the courts or to individuals."

Thus, in view of the following, there is an urgent need to repeal the existing law on Sedition under Article 139 - 142 of Act No. 3815, otherwise known as "The Revised Penal Code". I ask urgent approval of this measure, if we are to uphold our freedom and the most cherished liberties that generations of Filipino patriots fought so hard to achieve, and remain true to the Constitution as well as comply with our obligations under international law.



ROILO GOLEZ

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AN ACT
REPEALING THE PROVISIONS ON SEDITION UNDER ARTICLE 139, 140, 141 AND ARTICLE 142 OF ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. Article 139, 140, 141 and Article 142 of Act No. 3815, otherwise known as the Revised Penal Code, is hereby repealed.

Section 2. Repealing Clause. - All laws, executive and administrative orders or parts thereof, inconsistent with any provision of this Act are hereby repealed or modified accordingly.

Section 3. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,