

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 6391



Introduced by Hon. ANGELO B. PALMONES
and Hon. LORD ALLAN JAY Q. VELASCO

EXPLANATORY NOTE

Article 353 of the Revised Penal Code of the Philippines defines libel as “public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”

Furthermore Article 354 provides that “every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown”. An exception to the above takes place under the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

The penalty for libel when done by means of writings or similar means is provided under Article 355 of the Revised Penal Code. Libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, “shall be punished by prison correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party”.

Article 357 of the same Revised Penal Code imposes the penalty of “arresto mayor or a fine of from 20 to 2,000 pesos, or both, upon any reporter, editor or manager or a newspaper, daily or magazine, who shall publish facts connected with the private life of another and offensive to the honor, virtue and reputation of said person, even though said publication be made in connection with or under the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned”.

On December 16, 1966 the United Nations General Assembly ratified Resolution No. 2200A (XXI) or the International Covenant on Civil and Political Rights. The Covenant entered into force on March 23, 1976. The Covenant was signed by the Philippines on December 19, 1966 and was ratified by the Philippine Senate on October 23, 1986.

Article 19 of the International Covenant on Civil and Political (ICCPR) holds that:

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 to 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; and
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 (ordre public), or of public health or morals.

The United Nations' Human Rights Committee (UNHRC) in its 102nd Session held in Geneva on July 11-29 2011 prepared General Comment No. 34 on Article 19, Freedom of Opinion and Expression, of the ICCPR:

1. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.
2. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.
3. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.
4. Taking account of the specific terms of article 19, paragraph 1, as well as the relationship of opinion and thought (article 18), a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant.
5. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.
6. Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one's opinion necessarily includes freedom not to express one's opinion.
7. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of

communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

8. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.

On freedom of expression and the media, the UNHRC has to say:

1. A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.
2. As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.
3. States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.
4. States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.

Discussions were also made on restrictions on freedom of expression:

1. The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The term "rights" includes human rights as recognized in the Covenant and more generally in international human rights law. For example, it may be legitimate to restrict freedom of expression in order to protect the right to vote under article 25, as well as rights article under 17 (see para. 37). Such restrictions must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a non-compulsory vote. The term "others" relates to other persons

individually or as members of a community. Thus, it may, for instance, refer to individual members of a community defined by its religious faith or ethnicity.

2. The second legitimate ground is that of protection of national security or of public order (*ordre public*), or of public health or morals. Extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information. Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.
3. On the basis of maintenance of public order (*ordre public*) it may, for instance, be permissible in certain circumstances to regulate speech-making in a particular public place. Contempt of court proceedings relating to forms of expression may be tested against the public order (*ordre public*) ground. In order to comply with paragraph 3, such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court's power to maintain orderly proceedings. Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights.

A complaint was filed by a Filipino radio broadcaster based at that time in a city in the south. The broadcaster was convicted of libel and was jailed for more than two years. In his radio broadcast, the broadcaster read and dramatized a newspaper report about the indiscretion of a person of authority. In a decision rendered by the Regional Trial Court of that city, the broadcaster was sentenced to imprisonment from 5 months and one day to four years, six days and one day. In the said decision, the local court concluded: "the evidence was sufficient to prove the author's guilt beyond a reasonable doubt for a "malicious, arbitrary, abusive, irresponsible act of maligning the honor, reputation and good name of the complainant".

The broadcaster maintains that the Philippine libel law is not a reasonable restriction on the freedom of expression because it presumes malice on allegedly defamatory statement and places the burden of proof on the accused. The complainant is not required to prove the falsity of the allegedly defamatory statements. Instead such statements are considered defamatory unless the defendant can show that they fall under the exceptions provided under Article 354 of the Revised Penal Code, according to which "every defamatory imputation is presumed malicious even if true, if no good intention and justifiable motive for making it is shown, except in the following cases: 1) a private communication made by a person to another in the performance of any legal, moral or social duty, and 2) a fair and true report made in good faith, without any comments or remarks of any judicial or legislative or other official proceedings which are not of confidential nature or of any statement, report or speech delivered in said proceedings or of any other acts performed by public officers in the exercise of their functions". The broadcaster refers to regional and national jurisprudence that the plaintiff should bear the burden of proving the falsity of any facts on matters of public concern. This is also contained in Article 7 of the Principles of Freedom of Expression and Protection of Reputation which provides that "in cases involving matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements on imputations of fact allegedly to be defamatory".

The UNHRC is a body created by the Optional Protocol to monitor the application by State Parties of the International Covenant on Civil and Political Rights. The Covenant is a treaty

and the UNHRC has the power to declare that a State party to the Convention is in breach of its obligations as provided in the Covenant.

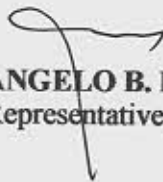
With respect to the case submitted, the UNHRC made some observations on the Revised Penal Code of the Philippines in relation to the Covenant, in particular Article 19 during its 103rd session last 26 October 2011. The Committee observed that the Revised Penal Code's provisions penalizing libel is "incompatible with Article 19, paragraph three of the International Covenant on Civil and Political Rights", or freedom of expression.

In its complaint the Complainant argued that, "the sanction of imprisonment for libel fails to meet the standard of necessity and reasonableness. Imprisonment is unnecessary since there are other effective means available for protection for the rights of others. He also argued that it was not a reasonable restriction because it does not admit proof of truth as a complete defense but only allows it under very restricted conditions."

The Committee recalls its general comment which states that "defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expressions that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties."

UNHRC ruled that the Philippine criminal libel law was inconsistent with freedom of expression, the Committee recalled its General Comment No. 34 which reads: "Defamations laws should not x x x stifle freedom of expression. ... Penal defamation laws should include defense of truth. x x" comments about public figures, consideration should be given to avoiding penalties or otherwise rendering unlawful untrue statements that have been published in error but without, malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defense. State parties should consider the decriminalization of libel"

This is the first View of the UN Committee on Human Rights that criminal liability infringes on freedom of expression.



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Introduced by **Hon. ANGELO B. PALMONES**
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AN ACT TO DECRIMINALIZE LIBEL AND FOR OTHER PURPOSES

Section 1 – Title 13, Chapter 1, Crimes against honor – libel – Title 13, Crimes against honor – libel, of the Revised Penal Code, RA No. 3815 Book 2, from Article 353 to Article 357 and from Article 360 to Article 364 shall be amended as to declare that libel is no longer considered a crime.

Section 2 – Self-policing of practitioners of mass communication – In view of the decriminalization of libel there is need for practitioners of mass communication to impose upon themselves utmost discipline in the practice of their profession. Professional organizations shall prescribe ethical standards as well as rules and regulations in the practice of their profession. Penalties for their erring members shall also be prescribed. Professional organizations must be registered with the Securities and Exchange Commission (SEC).

Section 3 – Membership to professional organizations - Practitioners of mass communication must be members of registered professional organizations. No mass media practitioner can practice his/her profession unless he/she is a member of a registered professional organization.

SECTION 4 - Implementing rules and regulations – The Department of Justice shall issue within 90 days from the date of approval of this Act, the implementing rules and regulations for this Act.

SECTION 5 - Separability clause - Any portion or provision of this Act which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

SECTION 6 - Repealing clause - All other laws, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 7 - Effectivity clause - This Act shall take effect immediately after its publication in two (2) newspapers of general circulation.

Approved