

TOPIC:

What's the current law and consequences for spreading fake news?

With the enactment of Republic Act (R.A.) 11469 otherwise known as the "*Bayanihan to Heal as One Act*" in the Country, a lot of discussions were focused on the constitutionality of Section 6 (f) of said law which penalizes the creation, perpetration or spreading of "*false information*" regarding the COVID-19 crisis.

"Section 6. *Penalties.* - In addition to acts or omissions already penalized by existing laws, the following offenses shall be punishable...

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(f) Individuals or groups creating, perpetrating, or spreading false information regarding the COVID-19 crisis on social media and other platforms, such information having no valid or beneficial effect on the population, and are clearly geared to promote chaos, panic, anarchy, fear, or confusion; and those participating in cyber incidents that make us or take advantage of the current crisis situation to prey on the public through scams, phishing, fraudulent emails, or other similar acts.

xxx"

Digital rights advocates, for instance, call for the repeal of said provision on the ground that it threatens the constitutional rights of every Filipino citizen to free expression and access to information. They say that since the term "*false information*" was not specifically defined in the "*Bayanihan to Heal as One Act*" or any other Philippine enacted law (for that matter), law enforcers are given unbridled discretion to determine which information are to be considered false.

While the concern of the digital rights advocates on the law's alleged failure to define the term "*false information*" and the law's seeming unconstitutionality are indeed definitive issues which are ought to be clarified; equally important for us to remember is that the so-called constitutional right to free speech and access to information was never made absolute.

There are instances where the State can lawfully limit free speech, specifically in the exercise of the State's police power or *the State's inherent authority to enact laws and prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people.*

In the case of *Chavez v. Gonzales* (G.R. No. 168338, 15 Feb 2008), the Supreme Court pronounced that the freedom of speech is not an absolute right. There are types of speeches that may be properly subjected to State regulations in the exercise of its *police power*. However, in determining the measures to undertake in limiting free speech, the State must employ certain standards in order to ensure its viability and urgency—in our jurisdiction we use the *clear and present danger test*. The *clear and present danger test* is a standard which “rests on the premise speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent.”

Meanwhile, it is not only in our jurisdiction that free speech is sometimes limited for the protection of other rights. Article 19 of the International Covenant on Civil and Political Rights, to which the Philippine is a State party signatory, emphasized the while everyone is entitled to his or her freedom of expression, the exercise of said right carries special duties and responsibilities. **The freedom of expression, under said article, may be subjected to certain restriction, specially if it is for the protection of the national security, public order, public health or morals.** Clearly, freedom of expression may at times take a back seat, specially when the limitation is for the protection of the national security, public health or morals.

To be fair, the Government did not fault in providing the *Bayanihan to Heal as One Act* with certain parameters to determine what “*false information*” are. In fact, a simple reading of the disputed provision will reveal that the Government has laid down certain parameters to determine which “*false information*” are prohibited, these are the following:

- a. *False Information* related to COVID-19 crisis;
- b. Perpetrated through social media and other platforms;
- c. Information having no valid or beneficial effect on the population, and
- d. Information which are clearly geared to promote chaos, panic, anarchy, fear, or confusion; and
- e. Cyber incidents that make use or take advantage of the current crisis situation to prey on the public through scams, phishing, fraudulent emails, or other similar acts

Now, whether the *Bayanihan to Heal as One Act* has sufficiently passed the *clear and present danger* test as pronounced in the case of *Chavez v. Gonzales*, or whether the parameters inculcated in the law are already enough to clear the definition “*fakenews*” are issues which only the Supreme Court has the authority to resolved and shall be *qued* in the meantime.

What is certain in these trying times is that there exists a great *evil* (**COVID 19**) which the Government has the duty and responsibility to swiftly and expeditiously defeat. An *evil* which we have not yet experienced in the past and which our government combats with still very limited knowledge of its full effects. While the government is still developing the perfect weapon against the **COVID 19**, we Filipinos should as well do our part and follow the measures being initially undertaken. Surely, the pandemic will be defeated sooner or later, but we cannot fight this battle alone. Let us trust our fighting frontliners and leaders who are building the ladders to our salvation.

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