

Pre human rights act jurisprudence law constitutional administrative essay

[Law](#)



**ASSIGN
BUSTER**

Evaluate section 10 and its case law in light of the above statement.

introduction
In Attorney-General -v- Mulholland; CA 1963
The court rejected the notion that a journalist has a privilege by law entitling him to refuse to give his sources of information' and The only profession which is given the privilege from disclosing information to a court of law is the legal profession, and then it is not the privilege of the lawyer but of his client. Lord Denning M. R. in Att.-Gen. v Clough [1963] 1 Q. B. 773; Att.-Gen. v Mulholland, Att-Gen v Foster [1963] 2 Q. B. 477 at p. 490; " If the judge determines that the journalist must answer, then no privilege will avail him to refuse". It was however accepted that should the circumstances be of a pressing social issue, then in refusing to answer he should not be held to be guilty of an offence. The basis of the privilege is that it is in the public interest that journalists should be protected from disclosing the source of their information. The court did not accept that journalist is entitled to a protection under Law but my mere discretion vested in the court. After the enactment of the Section 10 of the contempt of court act of 1981 it specified when a journalist can be ordered by a court to reveal a source. Usually, when a person refuses to answer a question directed upon them in court, they will be in contempt of court. However, under the protection of Section 10 of the contempt of court act of 1981, if that person were to be a journalist he would not be in contempt except where the issue is necessary in the interest of; national security, justice and the prevention of crime or disorder. It might seem like adequate protection for the media on the face of it; However, it is unclear what satisfies the necessity factor or what qualifies as one of the three situations above. In order for us to get an idea into what necessity is

we will first look into Article 10 of the European Convention on Human Rights which provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas. Necessity of disclosure was discussed in *Sunday Times v United Kingdom* (1979) 2 EHRR 245, 275 the European Court commented: "The court has noted that, whilst the adjective "necessary", within the meaning of article 10(2), is not synonymous with "indispensable" neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable" and that it implies the existence of a "pressing social need". The court had to consider not merely whether the a "pressing social need" existed but whether it was "proportionate to the legitimate aim pursued" and whether the reasons given to justify it were "relevant and sufficient under article 10(2)"

Pre-Human Rights Act jurisprudence

In *The Insider Dealing* case (1988) a journalist was prima facie entitled to protect his source of information unless it was really needed for the prevention of crime. In the instant case he was bound to reveal his source to D. T. I. Inspectors investigating insider dealing. Held, dismissing the appeal, that it was in the public interest that a journalist should be entitled to protect his sources of information unless one of the other matters of public interest required it to be revealed. He had been prima facie entitled to refuse to reveal his sources and it was for the inspectors to satisfy the court that identification of those sources was necessary for the prevention of crime. Lord Griffiths stated that necessary "has a meaning that lies somewhere

between 'indispensable' on the one hand, and 'useful' or 'expedient' on the other". necessity was understood as a question of fact, in the Insider Dealing case Lloyd L. J. rejected a two-stage approach, asserting that "the case should be decided on a simple consideration whether the disclosure had been shown to be necessary as a question of fact"; if a discretion does exist, "it is a discretion which should in practice be exercised only in one way" The journalist is protected unless it is proved ... that disclosure is necessary ... Whether it is necessary or not is a question of fact for the judge. It is no longer a matter for the exercise of his discretion." So if necessity was not established, the court had no power to order disclosure. at this stage, the court had to determine the relative weight of the particular exception and of the public interest in the maintenance of source anonymity to resolve whether to exercise the discretion not to order disclosure. The judge has to direct himself as he would a jury and ask: "Is this name really needed in order that justice may be done to the plaintiff in this case, having regard to the interest we all have as members of the public in sometimes giving information to the press without fear of being exposed, having regard also to the interests we all have as members of the public in justice being done to those of us who have to ask for the protection of the court?" The aim is to avoid a two stage approach to what Parliament had intended to be a simple test. Secretary of State for Defence v Guardian Newspapers [1984] 3 All ER 601 In *37 the instant case, the plaintiffs have shown that unless this source is disclosed by Mr. Goodwin, they will be deprived of a remedy and, as a result, suffer quite devastating damage. Although the conduct of the journalist is irrelevant, conduct is relevant insofar that the information has

been taken and supplied to the press in circumstances that do not deserve protection. Where a party sought disclosure relying on the exception to s. 10 'in the interests of justice', lack of a remedy against the source was not of itself sufficient. The phrase meant 'in the interests of the administration of justice generally' which did not call for complete effectiveness in all cases but enabled the court to right serious wrongs or give effective assistance. If satisfied that the needs of justice test was met, the court would then balance the general public interest in maintaining the confidentiality of journalistic sources against the general interests of the administration of justice. In the present case, the balance favoured disclosure. In discussing the section generally Lord Diplock said in *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339: 'The exceptions include no reference to 'the public interest' generally and I would add that in my view the expression 'justice', the interests of which are entitled to protection, is not used in a general sense as the antonym of 'injustice' but in the technical sense of the administration of justice in the course of legal proceedings in a court of law.' Necessity in the interest of justice was further reviewed in *X Ltd v Morgan-Grampian* [1991] 1 AC 1 in a case where a contemnor not only fails wilfully and contumaciously to comply with an order of the court but makes it clear that he will continue to defy the court's authority if the order should be affirmed on appeal, the court must have a discretion to decline to entertain his appeal against the order. '[T]o contend that...a journalist...has a right of "conscientious objection" which entitles him to set himself above the law if he does not agree with the court's decision is a doctrine which directly undermines the rule of law and is wholly unacceptable in a democratic

society.' (Lord Bridge, at 48 - 49). Lord Bridge of Harwich agreed that interpreting 'justice' as the antonym of 'injustice' in section 10 would be far too wide. But to confine it to 'the technical sense of the administration of justice in the course of legal proceedings in a court of law' seems to be too narrow. According to him, 'in the interests of justice', in the sense in which this phrase is used in section 10, that persons should be enabled to exercise important legal rights and to protect themselves from serious legal wrongs whether or not resort to legal proceedings in a court of law will be necessary to attain these objectives. *Ashworth Hospital Authority v MGN Ltd* [2001] 1 All ER 991A Case concerning unauthorised disclosure of a patient's medical records to the press. Lord Phillips MR considered Lord Diplock's interpretation of 'the interest of justice' in *Secretary of State for Defence v Guardian Newspapers Ltd*), which confined the phrase to its technical sense of court proceedings, as against the wider meaning of the exercise of rights and self-protection against wrongs preferred by Lord Bridge in *Morgan-Grampian* (above, at 43). His judgment, which draws extensively on the judgment of the European Court of Human Rights in *Goodwin* , includes these passages:" 84. In *Goodwin v United Kingdom* (1996) 22 EHRR 123, 140 the European Court recorded the fact that Lord Diplock's interpretation had been replaced by that of Lord Bridge without adverse comment. It seems to me that both interpretations are consistent with article 10, but that the interpretation of Lord Bridge accords more happily with the scheme of article 10. Thus "interests of justice" in section 10 mean interests that are justiciable. I cannot readily envisage any such interest that would not fall within one or more of the catalogue of legitimate aims in article 10. In the

present case Ashworth could argue that its claim for identification of the source is in the interests of the protection of health, the protection of rights of others and preventing the disclosure of information received in confidence." Necessary" The implications of disclosure and a more favoured view towards protection was shown in Ashworth Hospital Authority v MGN Ltd [2001] 1 All ER 991: The 'chilling effect' of disclosure orders is not reduced where 'the source is a disloyal and greedy individual, prepared for money to betray his employer's confidences.' (Laws LJ at 1021)