

**JOURNALISM AND THE LAW: EMERGING TRENDS\***

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At a time when the need for investigative journalism is being felt acutely in many parts of the world, especially in the developing countries of Asia and Africa, it is useful to assess the adequacy of legal principles and mechanisms to serve the interests of modern society. If journalists are to set about their work effectively and to perform a social function of value, it is increasingly necessary that they should have some awareness of the manner in which the law will have an impact on what they attempt to achieve. Contemporary developments in areas like the law of defamation with particular reference to the defences of justification, fair comment and qualified privilege, the scope of liability for contempt of court and the evolving doctrine of public interest immunity in relation to the confidentiality of sources of information, are of crucial importance to journalists in their day to day work.

The greatly increased sophistication of mass media and their significant role in moulding public opinion at the present time make it necessary for traditional principles of law to be refined and developed to ensure protection for the individual in the light of his greater vulnerability. The power of the printed word in the press, the image conveyed by television and the dissemination of information and comment by radio has today assumed unparalleled proportions in shaping the attitudes of individuals to one another and to broad social questions. In societies where standards in public life are not consistently high, and where the opportunity for corruption is rampant, there is naturally a great deal which investigative journalism can accomplish to identify existing evils and to promote acceptable solutions. Lack of information often facilitates the perpetuation of vice, in spheres of public as well as private morality, so that exposure to public scrutiny often acts as an incentive for adherence to more exacting norms of integrity. These are contexts in which it is the duty of journalists committed to the ideals of their profession to ferret out information which is in the public interest and to give it suitable publicity in order to put problems in their proper perspective. There are many instances in which dishonourable acts connected with the use of public power or the exercise of administrative discretion have come to light as a result of the fearless

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initiative of journalists. With regard to the administration of justice and the suppression of crime, investigative journalism has a valuable role in making known to the public the facts of undetected crimes, so that information which may culminate in the discovery of the offender may be forthcoming. Risks attendant upon the use of drugs or certain forms of sexual behaviour may be emphasised in the public mind in consequence of the investigations of journalists and the publication of their findings. Fuller information in respect of such matters as patterns of unemployment, the causes of violent crime, problems connected with law enforcement and the value of custodial sentences in controlling the spread of crime can frequently provide a basis for the formulation of sound policy. Where legislative action is contemplated in significant sectors of the economy, or in relation to particular industries or organizations, it has generally been the practice to appoint Commissions of Inquiry with a view to informing the mind of government in regard to the character and magnitude of existing problems. The fact finding function which is a necessary prelude to the devising of approaches to a solution depends for its effectiveness on the free flow of information. Commissions which have been appointed in our country in recent years to probe matters like the problems of the film industry, the conduct of public examinations, the efficiency of the public transport system and the activities of Airlanka are examples of this.

The dramatic transformation of the structural framework of mass media, and the rapidity and accuracy with which information can be disseminated today because of unprecedented technological advances, are not merely a feature of life in any particular country but an international phenomenon. While these advances have placed in the hands of journalists the potential to do enormous good for society by encouraging the purity of social institutions, it is undeniable that there is also unlimited scope for the abuse of this potential. The power engendered by the complexity and sophistication of mass media can certainly be used for malicious purposes, or with ulterior motives, so as to inflict grievous harm on individuals and social groups. This reality enhances, to an extent unparalleled in the progress of civilization, the social responsibility of professional journalists. The law pays an important part in enforcing this responsibility in the interest of safeguarding the reputation and the wellbeing of the individual against unwarranted attack.

Modern social circumstances have made necessary a revamping of the principles of the law of defamation to afford the individual the requisite degree of protection. The Roman-Dutch Law of defamation,

as it has been developed in its traditional mould, has steadfastly emphasised the concept of fault. The underlying premise was that the defendant was liable to compensate the plaintiff for injury to his reputation only if the defendant had reason to anticipate the likelihood that the plaintiff would be lowered in the esteem of society in consequence of words uttered or published by the defendant. Fault was therefore identified with moral blame, and the foundation of the law was that the defendant's duty to pay compensation depended on the imputation of culpability to him. This analysis was found to serve society adequately in regard to defamatory material contained in private communications.

However, modern courts, when confronted with problems arising from dissemination of defamatory statements on a far larger scale through the medium of newspapers or other similar publications, have felt the need to modify their approach basically. It is today an established principle in the modern Roman-Dutch Law as applied in Sri Lanka as well as in South Africa, that the proprietor of a newspaper is liable for defamatory statements embodied in his newspaper, whether he had knowledge of the existence of such defamatory material or not. It is no longer a defence, as it was in some situations in the classical law, that the proprietor of a newspaper was entirely free from moral blame since he neither knew, nor had reason to suspect, that the newspaper carried defamatory matter. Modern judges have gone so far as to suggest that even the absence of negligence on the part of newspaper proprietors or editors makes no difference. This is, in substance, a form of strict liability which has been recognised by the prevailing law of defamation in respect of those who own or control mass media of communication. The basis of the modern law is that there is an absolute duty devolving on the proprietor of a newspaper to make certain that his publication is free of defamatory or other offensive material. It is incumbent upon him to adopt all necessary measures to achieve this result. If the precautions he takes, in the form of control mechanisms and delegation of responsibility to subordinate staff such as sub-editors, prove insufficient, the law holds him personally liable to compensate the party defamed for the wrongful impairment of his reputation.

The concept of strict liability is one which the Roman-Dutch Law regards with suspicion and even hostility. The philosophic foundations of the Roman-Dutch civil law are inextricably interlinked with ideas of moral and ethical culpability. However, the development which has taken place in the modern law of defamation represents a departure from this coherent pattern and is all the more significant because it is incompatible with values sustaining the traditional law. The reluctant

acceptance of strict liability in relation to newspaper proprietors, editors and others in a comparable situation represents acknowledgment by the modern law that the exceptional power they wield should carry with it a correspondingly onerous responsibility. Any principle which falls short of acceptance of this conclusion leaves the individual without the protection to which he is entitled. The decisive modification of legal values which this development entails can be explained only on the footing that a protective principle vis-a-vis the individual has been considered desirable in terms of social policy because of the virtually unlimited power which the media are capable of exercising today in respect of the individual.

The law of defamation is constructed on the basis of a compromise between competing social interests. On the one hand, the cultural tradition of the Roman-Dutch Law recognizes that an individual's interest in the integrity of his reputation is just as worthy of protection as his interest in his bodily wellbeing and in the possession of his property and assets. The entrenchment of personality, sentiment and feeling is an objective to which great importance has been attached by the principles of our law throughout their development. But there is another side to the coin. The law recognizes that the interest of society is placed in jeopardy if the individual's right to his reputation is protected to such an extent that freedom of expression and communication is significantly inhibited. The essential function of the law of defamation is to hold the balance between these conflicting interests so as to bring about a satisfying equilibrium.<sup>(1)</sup> There is no social value in exposing the foibles or scandals of individuals to the public gaze for no other reason than catering to the curiosity of the public or the baser instincts of human nature. At the same time, however, there are situations in which material which reflects adversely on individuals may properly be published and commented upon in the public interest in order to serve some legitimate interest of the community in general.

The law attempts to strike the required balance by admitting a series of exceptions to liability under the action for defamation. These assume the character of defences which are open to a defendant as instruments for relieving himself from liability for defamation, even though the elements of the action for defamation have been established initially by the plaintiff. Justification, fair comment and qualified privilege are instances of such defences which, in effect, enable a defamatory statement to be made with impunity because the court accepts that the statement is made for a worthwhile social purpose.

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(1) *Union Govt. v. Sykes* 1913 A.D. 156 at 161.

The essence of the defence of justification does not consist simply of the submission that a defamatory statement is true in its purport. The law would have little to commend it if spiteful persons had an unfettered licence to tarnish the reputations of others by pulling skeletons out of their copboards and then arguing blithely that no one is entitled to complain because every word they spoke was demonstrably true. The law of defamation does not take kindly to the waging of fruitless vendettas which can only bring ill-will and potential violence in their wake. This explains why public benefit, quite apart from truth, is a crucial component of the defence of justification. The defendant will be exonerated from liability only if he establishes to the satisfaction of the court not merely that the statement was true in substance but also that the publication of the statement was of direct benefit to the public.<sup>(2)</sup> It is the latter element which makes the publication of the statement socially valuable. If, for example, a crime had gone undetected for years, and a civic-conscious individual were to take it upon himself to impute responsibility publicly to the perpetrator of the deed, so that the way is prepared for the offender to be brought to justice, a worthwhile social purpose would have been achieved by the defamatory publication. On the other hand, if the offender, upon conviction, had served a sentence of imprisonment and had subsequently achieved rehabilitation as a useful and law abiding member of the community, then the attitude of the law is that no useful purpose is served by resurrection of a previous scandal even though there is nothing false in the defamatory statement which the plaintiff has thought it proper to make. Insistence upon public benefit as a requirement of the defence of justification reflects the balance struck by the law between the interest of the individual and the collective interest of the community.

A similar analysis is appropriate with regard to the rationale underlying the other defences to an action for defamation. Fair comment is a defence which allows wide scope for the conscientious journalist whose aim is to protect society by directing attention to acts which would attract condemnation by right thinking persons and, by so doing, to uphold standards and values which are beneficial for the life of the community. If a public enterprise is being grossly mismanaged with cosequent damage to the economy, if an irrigation scheme is likely to prove futile in the long-term because its conception or implementation is not financially viable, or if there are flagrant irregularities in connection with the award of a tender by a public corporation, it is right and

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(2) *S. v. Revill* 1970(3) SA 611 at 616

*Mohamed v. Kassim* 1973 (2) SA 1.

proper that the public should have the fullest access to information in regard to these improprieties, so that remedial action could be taken to ensure that public life is cleansed and the economy effectively managed. The defence of fair comment comprises two major elements. The first is that the comment is based on a sequence of events which is narrated accurately and dispassionately. The facts must be presented in their true light without distortion and without any attempt to divulge selectively only a part of the story.<sup>(3)</sup> If the description of the events, as they took place objectively, is marred by half-truths or by obscurity, the defence of fair comment fails on the basis that the facts on which the comment is predicated are not fairly placed before the public. The second element of this defence is that the comment itself must be substantially balanced and that it should be made without malice or vindictiveness.<sup>(4)</sup> The law will not allow a public situation to be made use of as an ostensible pretext for ventilating a private grudge. So long as these two requirements are fulfilled, a conscientious journalist who has no other objective than to expose a public scandal and to ensure the application of standards of public rectitude will find the defence of fair comment a welcome instrument which the law has placed in his hands to enable the effective discharge of his professional duty.

In the case of qualified privilege, the crux of the defence conceded by the law is the legitimacy of the purpose for which the defamatory statement is made.<sup>(5)</sup> The applicability of qualified privilege as a defence is conditional upon propriety of the motive which governs the defamatory publication.<sup>(6)</sup> The law excuses the defamatory publication because the person responsible for it is under a legal duty to make the statement to another.<sup>(7)</sup> For example, an executive in a corporation who has discovered that the accounts of a department within the corporation has been falsified by an employee may be under a duty recognised by the law to convey this information to the Chairman or General Manager of the Corporation. The making of the defamatory statement entails no liability, since the statement is made on a privileged occasion. The maker of the statement is legally obliged to speak,

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- (3) *Marais v. Richard* 1981(1) SA 1157  
*Davies v. Lombard* 1966(1) SA 558 at 585
- (4) *Cramford v. Albu* 1917 A.D. 102 at 113  
*Warming v. Mervis* 1969(4) SA 542
- (5) *Benson v. Robinson & Co. Ltd.* 1967(1) SA 420
- (6) *Borgin v. De Villiers* 1980(3) SA 556
- (7) *Borgin v. De Villiers* op cit.  
*Maskowitz v. Pienaar* 1957(4) SA 195  
*Young v. Kemsley* 1940 A.D. 258  
*De Klerk v. Union Govt.* 1958(4) SA 496

and the person to whom the statement is made has a reciprocal interest in receiving the information. It is this coalescence of interest as between speaker and hearer, which is directly linked to the attainment of a socially desirable purpose, that places the statement beyond the pale of legal liability. The important consideration, however, is that any improper or extraneous motive on the part of the person making the defamatory statement defeats the protection which the law ordinarily confers upon him. The crucial feature of this limitation is that the defence may be availed of by the defendant only so long as he does not resort to the defamatory statement for some reason of his own which the law does not identify as being relevant to the protection of a viable social interest.<sup>(8)</sup> Any such motive as personal enmity, jealousy or hatred will furnish adequate ground for withholding the defence of qualified privilege, even if the statement is in other respects made under cover of a privileged occasion. In this area the propriety or impropriety of the motive actuating the defamatory publication is treated by the law as the decisive factor in holding the scales evenly between the individual interest and the social interest.<sup>(9)</sup>

But there are other situations in which the law, for paramount reasons of policy, is prepared to confer protection on the maker of a defamatory statement, notwithstanding that his motive in making the statement is wholly malicious. These are cases in which the setting or occasion for the making of the statement is such that not even the unreservedly spiteful quality of the motive is regarded as a counter-vailing element which makes the defence unavailable. Parliamentary privilege is the clearest example of such a situation.<sup>(10)</sup> Whatever the degree of malice accompanying a statement which is made on the floor of Parliament, there can be no liability for defamation. The reason for this is that it is considered supremely important for the functioning of representative democracy that members of the elected legislature should feel free to express their views without being intimidated by the prospect of legal liability. The attitude of the law is that the protection available to the maker of the defamatory statement in the public interest is quite independent of the purpose for which the defamatory statement is made.

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(8) *Monckton v. British S.A. Co.* 1920 A.D. 324 at 331

*Lalaram v. Le Kay* 1970(4) SA 306 at 314

(9) *Pogrand v. Yutar* 1967(2) SA 564 at 574

(10) eg - sec 2 (2)5, Powers and Privileges of Parliament Act 91 of 1963 - South Africa

A similar attitude has been adopted by the modern law in regard to defamatory statements made by judges of the established courts, parties to legal proceedings, counsel representing them and witnesses who are called upon to testify. In these contexts the classical Roman-Dutch law recognised only a qualified privilege.<sup>(11)</sup> In keeping with this approach legal protection existed only if the making of the defamatory statement was sufficiently connected with the scope and objective of the legal proceedings. However, the modern law of Sri Lanka which has modified the attitude of Roman-Dutch law in order to accommodate rather different assumptions underlying English law, has dramatically expanded the ambit of the protection granted. In our country today, in the setting of judicial proceedings, privilege is not restricted by the nature of the motive which lies behind the defamatory statement, and the protection conferred by the law is consequently not defeasible by the clearest proof of malice. What is involved here, at bottom, is a fundamental policy judgment. The philosophy of the law is that the aim of providing the participants in judicial proceedings with the unfettered opportunity to speak without fear is of such central concern that it prevails against the right of an individual that his reputation should not be violated. In the light of all these instances it is clear that the right of an individual to the integrity of his reputation is not looked upon by the law as an absolute or sacrosanct right. On the contrary, the parameters of this right need to be circumscribed in order to cater to other social values which are upheld in competition.

Some of the most difficult problems connected with investigative journalism in modern times involve controversial value judgments in respect of conflicting priorities. For instance, in sensational murder trials such as those of Pauline de Croos,<sup>(12)</sup> Jayalal Anandagoda<sup>(13)</sup> and Matthew Peiris the wide publicity that was given in mass media, particularly the newspapers, to the details of the crimes during the stage of the police investigation elicited public responses which shed light on the circumstances of the crimes and the identity of the probable criminals. In the Shyama Dedigama murder case the relative obscurity of some of the matters connected with the slaying disappeared as a sequel to fuller evidence which was obtained largely in consequence of the initiative taken by the newspapers. However, in all these cases, the widespread publicity, while assisting the course of justice, is also

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(11) Voet, Commentaries 47.10.20

*Pogrud v. Yutar* op. cit.

(12) (1968) 71 NLR 169

(13) (1960) 62 NLR 241 (C.C.A.)

(1962) 64 NLR 73 (P.C.)

fraught with an unfortunate danger. This is the risk that the person who is eventually indicted for the crime may not have the benefit of a fair and impartial trial because of the intensity of the prejudice which is generated against him. This risk was thought to be so great in the Matthew Peiris case that the Chief Justice thought it proper to order that the accused should be tried not by a jury but by three judges of the High Court at Bar. The anticipated danger was that members of the public who would ultimately serve on the jury would not bring open minds to bear on the case because of preconceived notions which they would have formed in consequence of what they had read in the Press. This highlights the delicate balance which needs to be struck in these circumstances. On the one hand, mass media have an essential task to perform in regard to the discovery of facts which make the administration of justice effective. On the other hand, it is equally important to ensure that speculation and comment in the Press before or during a criminal trial does not result in the essential legal issues being obscured by emotional overtones. The desirable balance between these objectives is essentially a matter of journalistic ethics and responsibility, but the enforcement of the relevant standards is assisted by principles and mechanisms of the law.

Some of the governing rules of law find their setting in the notion of contempt of court. It is a well-known principle that any behaviour or comment which is likely to impair in any way the integrity of pending judicial proceedings would involve liability for contempt of court. The objective underlying this form of liability is that witnesses should have every opportunity to present their version of the facts without any type of hinderance, direct or oblique, and that the court or jury should be free to evaluate the evidence adduced clearly and objectively, and to come to a conclusion on the basis of that evidence alone.<sup>(14)</sup> The very idea of a form of penal liability for an attempt to interfere, even unwittingly, with the proper course of the administration of justice underscores the need for journalists to resist the temptation to have recourse to sensationalism, notwithstanding the pecuniary incentives which may reward such an approach. The principles governing contempt of court in this area underline the gravity of the responsibility which devolves on those who take it upon themselves to ascertain the facts relating to matters which are likely to culminate in litigation, and to essay comment on these matters.

The work of journalists in situations such as these may sometimes

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(14) *Reginald Perera v. R.* (1951) 52 NLR 293  
*Veerasingh v. Stenart* (1941) 42 NLR 481

involve a conflict between moral values and economic interests. The perils attendant upon the use of particular drugs, especially if they have been put on the market recently, have frequently been exposed as a result of vigorous investigative journalism. For example, the risk that the use of thalidomide by pregnant women may result in injury to the foetus, and that the child could be born without limbs, came to light in England largely as the product of persevering attempts by journalists to evaluate the attributes of the drug and the potential consequences of its use. Wide publicity given to the possible hazards of use of the drug will obviously entail substantial economic loss to the manufacturers of the drug in view of the disincentive offered to the public in regard to purchase and consumption. There is, accordingly, the likelihood that a publication which seeks to denigrate a commercial product by pointing out the dangers of its use will involve those responsible for the publication in litigation instituted by the makers of that product. However, scientific evidence meticulously garnered to establish in a convincing manner the reality of the hazards warned against will serve to exonerate those initiating the publication from liability, on the ground that the disclosure of these dangers was necessary for the protection of the public interest.

The initiative of journalists is of great value in circumstances such as those surrounding the Union Carbide disaster in India. For a long period there had been adverse comment in the Indian Press regarding the inadequacy of the precautions which had been adopted by the local management of Union Carbide Ltd. to guard against the danger of escape of noxious fumes from their chemical plants. It was naturally in the interest of the owners and managers of the plants to belittle these initiatives, since it was to their advantage to endeavour to persuade the administrative authorities as well as the public that the existing precautionary measures were sufficient and so to avoid the necessity for enhanced investment on more satisfactory protective measures. An aggressive journalistic campaign which highlights the possible danger to human life, to ecology and to environmental conditions could well arouse the hostility of powerful vested economic interests, so that expensive litigation is always a possibility. But there are situations in which the evolving law has necessarily to reconcile economic interests with more fundamental interests involving life and the natural habitat of posterity. In structuring a coherent response to this challenge, modern courts have understandably accorded precedence to the latter group of values which are basic to the preservation of life, health and security.

Techniques of modern journalism have played an important part, particularly in the West, in alerting the public to certain categories of industrial risks and the mechanical unreliability of commercial products. An example may be taken from civil aviation. Companies like Boeing and Rolls Royce which are active in turning out new models of engines and aircraft parts may sometimes tend, for reasons connected with commercial profit, to be experimental in their approach to production. It had often fallen to the lot of journalists, on the basis of their own investigations, to alert the public that the history of use of a particular type of machine suggests, even tentatively, some inherent defect which aggravates the degree of risk. For instance, it has been largely as a result of the work of journalists that the realization has dawned on the international community that the Lear jet may not be a dependable mode of air transport because of its chequered history. Journalists have pointed out persuasively that a series of accidents in the United States, and also in recent years in South Asia, envelope in serious doubt the commercial acceptability of the machine. While an enterprising journalist would be ill-advised in these circumstances to rush into print with his incipient convictions at a time when the evidence in support of these convictions is slender, the law certainly sees to it that if the exposure which he is resolved to make is buttressed by evidence of demonstrable strength, the journalist's communication to the public enjoys the fullest protection of the law.

A vexed problem in modern times concerns the confidentiality of sources of information which are made use of by journalists. It often happens that the facts relating to public scandals can be discovered and exposed only if journalists have access to information emanating from sources wishing to remain anonymous. There may be credible information available to a journalist that illicit felling of timber is taking place on a large scale at the instigation or with the connivance of some powerful personage. It could happen that a newspaper company receives information relating to the incidence of enforced child labour in a fishing village dominated by an influential personality from the area. In this type of case it is often part of the reality of the situation that only "inside" information is reliable information; and, naturally, "inside" information will be provided by persons who will speak at all only on the firm condition that their identity is kept a closely guarded secret. The reason for this is that authentic information is available only within a narrow circle and any person within that circle who chooses to speak, is himself readily identifiable as a tainted source. Quite often the desire to provide information stems from quarrels and rivalries among those involved in criminal or socially harmful activities. A crime that is

committed or concealed by an influential police officer may be exposed by a subordinate officer who has had a disagreement with his superior. Especially in a rural setting, information relating to crime, corruption or other dishonourable behaviour may be forthcoming from persons in the village who are motivated by jealousy or ill-will for some petty reason. In these cases no information will be available at all if there is a risk of disclosure of the identity of the source. Among other reasons, a person who may otherwise be prompted to speak in order to assuage wounded feelings or to ventilate a grievance may hesitate to do so for fear of retribution, since there is the probability that the person against whom the information is supplied, particularly if he occupies a prominent station in life, will decide to retaliate. These are very relevant considerations of social psychology in a community such as ours.

All this underlines the need for the law to confer some degree of protection on the provider of information to the extent of furnishing him with a guarantee that his anonymity will be scrupulously preserved. This is an aspect of the legal doctrine known as privilege. The overall function of the doctrine of privilege in the law of evidence is to fortify the confidentiality of relationships which are thought to be of value to the community as a whole. The identification of relationships which attract this degree of protection under the law is influenced by social and cultural factors which vary from time to time in keeping with prevailing values. The relationship between husband and wife and that between legal adviser and client exemplify situations in which the law, by resorting to the mechanism of privilege, is prepared to uphold total confidentiality. The practical effect of application of the doctrines of marital privilege and legal professional privilege is that a wife cannot be compelled in legal proceedings to disclose any communication made to her in confidence by her husband during the subsistence of their marriage, any more than a legal adviser can be compelled under oath in a court of law to divulge an admission made to him by his client within the framework of the professional relationship. The question for us is whether a similar privilege should be conceded by the law, enabling a journalist to refuse to disclose in civil or criminal proceedings, the identity of the source from which he has obtained his information. If a journalistic privilege, so conceived, were to be withheld and if the journalist were compellable to name the party from whom the information has been elicited, there is a real danger that sources of valuable information will dry up with irretrievable damage to the vigour and effectiveness of investigative journalism.

Does this mean, then, that confidentiality of the sources of infor-

mation used by journalists should be protected by the law as an absolute value in the interest of free flow of information? Unfortunately, there are dangers inherent in this course of action as well. This will enable persons inspired by petty or malicious motives to supply false or misleading information to journalists and, after the defamatory material is communicated to the public by the journalist, the person from whom the information proceeds will be protected in civil proceedings by the cloak of anonymity in which he remains enshrouded as a result of the privilege which is successfully claimed by the journalist responsible for the publication. This form of blanket immunity available to persons providing information to journalists cannot, in the ultimate analysis, serve the interest of the community, since it could encourage irresponsible attacks on individuals by persons lacking the courage to come forward and to identify themselves. It follows that the law must be cautious and discriminating in demarcating the circumstances in which the protective mechanism of privilege is recognised in respect of information provided by members of the public for journalists to make use of in their work. The nature and social value of the information that is supplied, the reason why it is disclosed and the purpose sought to be achieved by the person making the communication are all relevant factors which ought to be taken into account by the law in deciding whether invocation of privilege by journalists is warranted in a particular case.

The interplay of these elements as part of the fabric of the law is made clear by the facts of a case which was decided by the Courts of England a few years ago. The case concerned the publication by the Society for the Prevention of Cruelty to Children in England, of some alleged facts relating to abuse and ill-treatment of a child. The substance of the statement published by the defendant was that the child's mother had been guilty of ill-treatment of the child in circumstances which could not but arouse public indignation. The Society for Prevention of Cruelty to Children, in making this statement, made use of material which had been communicated to the Society in confidence by persons who purported to have first-hand knowledge of the facts of the case. The child's mother suffered a nervous breakdown in consequence of the public reaction to the publication of the Society's statement. Claiming that persons who had reason to dislike her and to hold her up to public ridicule and contempt had conveyed substantially false information to the Society, the child's mother sought in civil proceedings to compel the Society for the Prevention of Cruelty to Children to disclose the identity of its sources of information, so that she could institute appropriate proceedings against them.

This litigation, which went up to the House of Lords, indicates in a vivid form the competing considerations which the courts have found it necessary to reflect upon in resolving this difficult problem of public policy. The arguments on the side of the child's mother may seem overwhelming. She contended that she was the helpless victim of a conspiracy which was designed to alienate her from the social circles in which she moved. She pointed out that those who read and believed the version of the incident published by the Society would naturally be inclined to think badly of her and to shun her company. She argued that the excruciating pain of mind which she suffered could attract no legal remedy if the law refused to permit her access to particulars which she needed regarding the identity of those who made allegations against her. In the absence of this information, she was unable to seek a judicial remedy against those who had caused her irreparable loss in terms of her social standing and reputation.

It is interesting to note that the rival arguments of policy adduced on the opposing side were no less compelling. The Society for the Prevention of Cruelty to Children argued that theirs was an institution discharging crucial social welfare functions under the aegis of powers conferred by statute. It is plain that, if the society is to perform its task adequately, it must of necessity, rely on information reaching it through a variety of channels. Not least among these channels are neighbours, erstwhile friends and associates in places of work who acquire knowledge regarding cases of child abuse and consider it their duty to make this knowledge available to the proper public authority in order to alleviate the condition of the child. There is no doubt that such persons will have second thoughts about communicating with a public authority if they were aware that, in doing so, they incur the risk of having their identity publicly disclosed, with the accompanying peril of litigation being launched against them. The gist of the argument on behalf of the Society was that a guarantee of confidentiality relating to the sources of their information was absolutely essential if the Society were to accomplish the objectives for the fulfilment of which it was brought into being.

This argument was upheld, in substance, by the House of Lords which agreed that, if the Society could be compelled at the instance of an aggrieved individual to disclose the names of its informants, its work would be almost totally stultified. Their Lordships were mindful that this ruling allowed some degree of scope for unscrupulous persons to abuse the privilege conferred by the law, to engage with impunity in vendettas of their own. But, notwithstanding this danger, the House

of Lords was convinced, on the facts of the case before them, that the importance of the welfare functions with which the public institution was entrusted and the impossibility of gathering sensitive information without violating the confidence subject to which the information was supplied, justify recognition of the privilege claimed.

The attitude of modern courts is to attempt a case by case evaluation of the equities for and against disclosure, in order to determine on balance whether the social interest is better served by preservation of confidentiality or by revealing the identity of the sources from which the information emanates. The developing law is supportive, on the whole, of a discretionary approach which enables the courts, in the light of the facts and the setting of a particular problem, to decide imaginatively how the overall advantage of the community could best be promoted. The consistent movement in the evolving law is towards expansion of the area of disclosure and restriction of the limits within which privilege can be applied legitimately. Prevailing judicial attitudes recoil from secrecy and highlight the value of uninhibited access to information on the completeness of which the proper outcome of litigation depends. The courts are, therefore, reluctant to exclude vital information from the ambit of disclosure on such grounds as public interest immunity which are directed towards protection of particularly vulnerable State interests.

The widespread conviction today in all judicial tribunals with regard to the reception and assessment of evidence is that the quality of justice is likely to be enriched by as extended an application as possible of the principle of openness. At the same time it is undeniable that there continue to be situations in which accurate information, indispensable as the basis of decisions in important sectors of public administration, can realistically be obtained only upon the assurance of secrecy. For instance, a public authority, in deciding whether to issue a gun licence or to grant a licence for a casino or a liquor shop, may find it necessary to be guided by police reports which are themselves based largely on first hand information volunteered by persons who will not be prepared to come forward with information unless absolute secrecy regarding their identity is promised. In the area of enforcement of tax or other revenue laws, and also in regard to the detection of smuggling at airports and harbours, information which is vital for the purpose of securing compliance with the law is often available only subject to the rigid condition of confidentiality. The truth, then, is that the expanding frontiers of the principle of openness, which certainly captures the spirit of the modern law in regard to the admission of relevant evidence

in judicial proceedings, still needs to be held in check in some limited areas where an element of reserve is necessary for effective law enforcement. Subject to these inevitable constraints, there is every reason, as a matter of policy, to uphold as part of the contemporary law a form of journalistic privilege which entails inviolability of the sources of information to which journalists have recourse in their investigative work.

Since a journalist works in a given social setting, he is necessarily influenced by the attitudes and values which pervade the social and cultural environment at any given time. While this is entirely healthy, in so far as it makes for the relevance and broad acceptability of the stance of a journalist in regard to fundamental social questions, the work of a journalist should by no means represent a mechanical reflection of prevailing values and responses. It is the aim of a journalist not merely to capture the spirit of prevailing public opinion but to fashion and mould that opinion in accordance with sound priorities as he perceives them. There are contexts in which traditional values and patterns of thought need to be departed from in order to give the fullest expression to ideas of equity and fairness which are typical of the mood of a new age. In all epochs of history, when a social transformation was taking place and when new values and standards were emerging in response to current requirements, those in the vanguard of stimulating the development of public opinion have had to use their insight and sensitivity to discharge a didactic function. This is true of all major innovative currents in the history of human ideas and institutions. The campaign for the abolition of slavery in the United States, the demand for social justice in labour relations after the Industrial Revolution in Europe and the growing international support for nuclear disarmament in our own times are examples of this continuing process.

The Social Disabilities Act in our own country was found to be necessary in order to promote social justice by repudiating in part certain traditional concepts and assumptions which govern attitudes, to castes and other social groupings. Problems of this kind are especially acute in developing societies, and sensitive social issues have arisen in litigation with which the courts of India, for instance, have had to grapple. In these areas which involve social attitudes reinforced by convention and usage among generations, it often happens that thought and reaction within the existing mould are buttressed by powerful emotions. A change in legal norms, if it is to secure acceptance with any degree of spontaneity by the community at large, must be preceded by a gradual softening of orthodox values in the wake of fresh thinking

and approaches. This calls for basic changes in the ideological and social climate. In bringing about such an environment conducive to changes in the law, journalists with perception of emerging social priorities have an essential part to play. No group in modern society possesses the potential they have to transform social thinking by exposure to the influence of novel standards. In these situations the role of the journalist is to lead rather than to comply.

At this juncture in the development of society, the most important aspect of a journalist's work, probably, is connected with the sharpening of public awareness of individual and collective rights. There has been considerable progress in Sri Lanka in recent years regarding the incorporation of fundamental rights in the constitutional instrument and the improvement of the existing machinery for the enforcement of these rights. The proposed Human Rights Commission is a valuable addition to the mechanisms which the legal order offers the community for this purpose. However, the spirit of freedom cannot be nurtured by legal concepts and by the modalities for judicial enforcement alone. The most effective guarantee of the vitality of human rights in society consists of the existence of a body of well-informed and articulate public opinion conscious of the value of the entrenched rights and showing determination to resist any attempted encroachment. In spreading this awareness so that it becomes part of the experience of as wide a section of the community as possible, there is intrinsic merit in incorporating aspects of human rights in compulsory curricula at secondary school level and perhaps also in universities. Successful attempts have been made in countries like Australia and Papua-New Guinea to popularize human rights by focusing upon their content and their implications for society. For example, in the Australian state of Victoria, an annual Law Day has been proclaimed to stimulate public discussion of fundamental issues connected with freedom and the law. Mass media have contributed significantly to the usefulness of these measures which depend on extensive participation by all sections of the community. Journalists, no less than lawyers and educationists, must make their contribution to ensure the success of such ventures. It is for them to use their ingenuity and expertise to make an impact on public opinion by presenting themes involving the application of legal principles and remedies to strengthen individual liberty, in terms which are meaningful for the vast mass of the people.

Knowledge is the key to freedom in an age of technology. In general, it is part of the business of the journalist to keep the community fully informed of all that is happening around it. But there are

circumstances in which journalists would be required to act with restraint and circumspection in reporting potentially inflammable events or developments. This dimension of journalism assumes special importance in times of turbulence. Selective reporting of news may not be inappropriate in situations where communal passions are likely to be aroused to the detriment of society as a whole. This is primarily a matter of self-regulation which is best achieved by a code of conduct which journalists, as a responsible profession, should evolve for themselves. The inclination of the modern law has been to encourage professional organizations to develop standards and criteria for the members of their respective professions and, subject to a measure of overall control which is largely procedural in form, the courts are content to allocate to representative professional bodies a generous measure of autonomy. This stems from the conviction on the part of judges that needs and realities pertinent to the work of a given profession are best assessed and catered for by the profession itself, under the general supervision of law enforcement tribunals whose role is very limited in scope. This highlights the importance of self-direction on the part of journalists which can only be assisted, but can never be supplanted, by the courts.