

The Doctrine of Necessity and Compulsion – Explained!

Chapter-IV of the Indian Penal Code, 1860 contains Sections from 76 to 106. These Sections provide the provisions for General Exceptions. The actor, if commits any of the offences under the circumstances and exceptions mentioned in Chapter-IV, is excused from criminal liability. Punishment shall not be imposed upon him. One of such General Exceptions is the Doctrine of Necessity and Compulsion, which is explained in Section 81.

Introduction:

When there are two dangers causing two harms in front of a person, under unavoidable circumstances, he is put to face them; he is excused to commit less harm.

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In such circumstances, he knows what he is doing. He is compelled to do willful wrong-doing. Law excuses him for such willful wrong-doing. If he does the same thing in the ordinary circumstances, definitely the law punishes him. This is called the Doctrine of Necessity and Compulsion or Jus necessitates.

This is explained in the famous maxim “Necessitas non habet legem”. It means: “Necessity knows no laws”.

Circumstances/Examples:

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(i) Self-preservation:

A and B are drowning in the sea clinging to a plank which can support only one. There would be no mercy or love on the opposite person. Each thinks to save his own life. In such circumstances, might is right.

The strongest person throws the weaker person and occupies the plank to save his own life. The person who succeeds to throw another and saves his own life cannot be punished under the penal law.

(ii) In a shipwrecked sailors are driven in the cyclone. 30 Days passed. Due to hungry and thirsty, one or two of them died. The remaining persons kill of the co-sailor and drink the blood and eat the flesh to survive them. The law excuses them.

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(iii) Fire is spreading. To stop the spreading of fire, if someone pulls down a hut or house, he is excused.

(iv) Right of Private Defence:

If A attacks against the person or property of B, or if A attempts to commit rape against C, B can kill A to protect his person and property and also C can kill A to protect her chastity.

Hobbes in his Leviathan writes: "If a man by the terror of present death be compelled to do a fact against the law, he is totally excused; because no law can oblige a man to abandon his own preservation."

Lord Bacon says: "Necessity is of three sorts: necessity of conservation of life; necessity of obedience; and necessity of the act of God or a stranger."

The Law of Jus necessitates (Necessity knows no laws) is defined and explained in Section 81

IPC, with one Explanation and two illustrations, which runs:

Sec. 81. Act likely to cause harm, but done without criminal intent, and to prevent other harm:

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation:

It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations:

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear.

Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing, an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Ingredients of Section 81:

1. The circumstances shall compel wrong-doer to do such a criminal act and the wrong-doer shall not have criminal intention.
2. The wrong-doer shall have to do that act with an intention to prevent other harm.
3. The act must be justified under the circumstances. It is a question of fact. Killing a weak beggar, or an old woman, who enter into the house and eats food, is not justifiable under this doctrine.
4. The wrong-doer must act in good faith.

Principle:

When, on a sudden and extreme emergency one or the other of two evils is inevitable, it is lawful so to direct events that the smaller only shall occur, appended to Section 81 explain this principle.

R. vs. Dudley and Stephens (1884) 14 QBD 273)

Brief Facts:

Dudley, Stephens and Brooks all able-bodied English Seamen along with a boy of 18 years of age were compelled to put into a small boat after a shipwreck on the high seas. There was no food or water for seven days. On the 8th day, Dudley and Stephens killed the boy and fed the flesh and blood to survive them.

On 12th day, they were rescued by passing the ship. They were prosecuted for the murder of the boy. The accused pleaded that they acted out of necessity for preservation of their lives.

Judgment:

The Privy Council held that the accused were guilty of murder, as there were plenty of chances of getting rescued, and no man would die for starvation for seven days.

Problem:

In a ship wreck on the high seas A was holding a wooden plank and floating with the aid of it. B, who was also drowning caught hold of the plank. The wooden plank could support only one.

B tries to push away A. In the struggle between A and B, A pushes off B from the plank and B is killed. Is A guilty of murder?

Solution:

No. A is not guilty of murder under the Doctrine of Necessity and Compulsion.

Example:

In Titanic picture, the Titanic ship was ship-wrecked. In that incident, except, two persons, A-Hero and B-Heroine, remaining were dead. At the last moment, only one plank was available to them.

Hero scarified the plank to the heroine, and died. That is the cinema. If A was stronger than B. If A took the plank and would save his life, and left B to die, A could not be guilty under "Necessity knows no laws".

Dhania Daji vs. Emperor (1868) 5 BHC (CrC) 59) Brief Facts: The accused was a toddy-tapper. He observed that toddy was being stolen from the trees regularly.

To prevent it, he poisoned toddy in some of the trees. He sold toddy from other trees. However, by mistake, the poisoned toddy was mixed with other toddy, and some of the consumers injured and one of them died. He was prosecuted. He took the plea of Section 81.

Judgment:

The Privy Council did not accept his contention of the jus necessitates, as mixing poison was done by the accused intentionally and also with the knowledge that it would cause grave danger to the people. The accused was punished under Section 328 IPC.

Gopal Naidu vs. State (1922) 46 Mad 605)

Brief Facts:

The accused was a rich person in a village. He drank and created public nuisance and also grave danger to the public. The village Magistrate arrested him. The accused filed a case against the village Magistrate.

Judgment:

The Court upheld the act of the village Magistrate as it was necessary to protect the people from the grave danger of the drunken accused and that the village Magistrate acted with lawful authority in good faith under Section 78.

Problem:

A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. Is A guilty of any offence?

Solution:

No. A is not guilty. The given Problem is identical with Illustration (b) appended to Section 81.