

# Doctrine of Necessity

Section 81 of the Indian Penal Code offers a compelling study of the legal doctrine of necessity. This provision is framed to absolve individuals from criminal liability when their actions, though potentially harmful, are undertaken without criminal intent and in a bid to prevent greater harm. This concept, deeply rooted in both moral and practical jurisprudence, is crucial for understanding the intersections of law, morality, and human survival instincts.

Historically, the justification for this exemption was notably discussed by **Lord Mansfield** in George Stratton's case, where he asserted that an act done out of natural necessity is involuntary and thus not criminal. Globally, this defence finds parallels in the legal systems of countries like the United States, Germany, and even former Soviet states, indicating its fundamental role in criminal law.

- **Good Faith:** The individual must genuinely believe that their action was necessary to avert greater harm.
- **Proportionality:** The harm caused must not be disproportionate to the harm avoided.

## Illustration

The doctrine is illustrated by the hypothetical scenario of a ship captain, 'A', who must decide in an emergency whether to collide with a smaller boat to avoid hitting a larger one, potentially saving more lives. This decision, if made without intent to harm and in good faith, could be protected under Section 81, demonstrating the legal tolerance for split-second decisions in crisis situations.

## Queen vs. Dudley and Stephens (1884)

The court's decision in Dudley and Stephens established a critical legal precedent:

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## Application and Limitations

The defence of necessity does not grant blanket immunity but applies under stringent conditions:

- **Absence of Criminal Intent:** The action must not stem from a desire to cause harm.

necessity does not justify the taking of an innocent life, even in the most extreme circumstances. The ruling emphasised several key principles:

- **Limitation of Self-Preservation:** Self-preservation, while a powerful

instinct, does not confer an absolute right to harm others to save oneself.

- Prohibition of Private Homicide: The law distinguishes between public necessity (actions taken for the greater good) and private necessity (actions taken for personal survival). The latter does not justify homicide.
- Ethical and Legal Boundaries: The court delineated the boundaries of necessity, asserting that it should not and cannot justify actions that are fundamentally against the principles of human rights and dignity.

### **Dhania Daji vs. Emperor**

In the case of Dhania Daji vs. Emperor (1868), the accused also employed a necessity defence, claiming his action of poisoning toddy was intended to catch a thief, not to harm consumers. However, the court rejected this defence, noting that the action was not proportional to the threat posed and it was not conducted in good faith concerning public safety.

