BLOGS

Necessity: A General Exception to Crime under IPC

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NECESSITY

Necessity as a General Exception under IPC suggests that it is quite just and equitable that when a person is faced with some imminent danger, he shall be allowed to avert that danger by taking risk of some other harm. Herein, there is a natural kind of circumstance which causes in danger to him or others and not necessarily an offence

Principle: 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..

The defence of necessity is based on the following principles:

- Jus Necessitas– justification of necessity
- Quad Necessitas Non Habet Legam– necessity knows no law
- Necessitas vincit Legam– necessity overcomes the law

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could otherwise be avoided and which if they had followed would have inflicted upon him or others whom he was bound to protect inevitable and irreparable evil that no more was done than was reasonably, necessary for that purpose and that evil inflicted by it was not disproportionate to the evil avoided i.e. only a smaller harm can be done to prevent a greater harm but not a greater harm to prevent a smaller harm. The test is that there must be a situation in which the accused is confronted with a grave danger and he has no choice but to commit the lesser harm may be even to an innocent person in order to avoid greater harm. Here the choice is between the two evils and the accused rightly chooses the lesser one.

Under no circumstances can a person be justified in intentionally causing harm but if he causes the harm without any criminal intention and merely with the knowledge that is likely to ensue he will not be held responsible for the result of his act provided it be done in good faith to avoid or prevent other harm to person or property. Good faith will be circumstantial i.e. the act should be done in an imminent situation.

Law protects public necessity and not private necessity i.e. to save your own life you cannot take away the life of others. Public necessity refers to prevention of public harm or any threat inflicted to public which may affect the public at large on the other hand private necessity focuses more on individual interest than public interest. However, public necessity is an absolute defence but in case of private necessity one cannot take defence because in order to protect one's interest, another's interest cannot be overridden.

In the case of **QUEEN V. DUDLEY AND STEPHEN 1884** there were three people on a boat and they were not sure when it will reach shore. 20 days had been passed and they had nothing to eat. There was a weak guy who would die anyway, they took lottery and his name was there. They killed the guy and ate him. The court in this case held that the two accused shall not be given the defence of necessity as the act was not done impulsively in order to protect them but there was a planning element attached to it. The court laid down the following principles:

- Self-preservation is not an absolute necessity
- Taking another's life in order preserve his own is not a right given to anyone
- Homicide cannot be justified by any necessity



COMMUNICATION MADE IN GOOD FAITH

Principle: No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

The defence is given for the communication made in good faith is given when such communication is necessary for the benefit of the other person without any criminal intention or an intention to cause harm to that harm. This exception basically protects doctors, lawyers, agents and other professionals against the adverse effects of their unpleasant communications. This is done in order to make communication effective and free of any fear for the benefit of the persons.

The only requirement is that the communication must have been made in good faith i.e. it must be true and reasonable care must be exercised while making such communication.

For example ‘A’, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. ‘A’ has committed no offence, though he knew it to be likely that the communication might cause the patient’s death because it was necessary to

communicate the same to the patient for his benefit. However it is important that while communicating the same doctor must have exercise due care and caution by first calming him down and then communicating it in an easy manner

TRIFLES

Principle: Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Trifles means small, petty, trivial matters of which no person of ordinary sense and temper would complain. The defence of trifles is based on the principle *'De minimis non curat lex'* i.e. the law does not take notice of trifles. This is done to ensure social harmony and adjustment. Also to prevent over-burdening of already burdened courts. It intends to prevent penalisation of negligible wrongs or offences of negligible character.

The **Acts done with Consent** gives immunity to a person who causes harm to another who takes the risk of it or gives consent to it, provided that the act is not known to be likely to cause death or grievous hurt neither is intended to cause the same. This is based on the principle of *'volenti non fit injuria'* i.e. to a willing person, no injury is done. For example in a case where two persons agreed to wrestle with each other and an accidental injury was caused to one. The court held that when they agreed to wrestle there was an implied consent on their part to suffer consequential injuries.

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