



# Jus Corpus Law Journal

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## General Criminal defences: Accident and Necessity

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*The Indian Penal Code, 1980 has provided various defences under “Chapter IV” which would discharge the criminal liability of the accused who has been charged under this code. However, the individual has carried out wrongdoing then likewise he would not be responsible on the grounds that at the hour of the commission of wrongdoing Mens Rea was missing. This does not mean all the acts are not punishable there are still certain acts that are punishable when it is done with a criminal intention. Certain defences are provided under Section 76 to 106 of the Code, such as accident, necessity which are available to a person when an act is done under mistake without any criminal intention. However, the burden of proof lies on the accused as per Section 105 of the Indian Evidence Act, 1872.*

**Keywords:** *good faith, mens rea, intention.*

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## INTRODUCTION

### ACCIDENT

Section 80 of the Indian Penal Code, 1860<sup>1</sup> gives an overall exemption of an accident. To comprise wrongdoing, there has to be a guilty mind, i.e., mens rea and guilty act, i.e., actus reus they both must occur during the commencement of the crime. Any act is not per se

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<sup>1</sup> Indian Penal Code, 1860, s 80

criminal act, it also requires criminal intention. Such that the act has done unintentionally and unexpectedly in the ordinary course such that no man of ordinary prudence could predict it. "Accident in doing a lawful act - Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."<sup>2</sup>

### THE ESSENTIALS OF ACCIDENT ARE

- An act did coincidentally or setback.
- The act should be managed with practically no criminal expectation or information.
- The accident should be in doing of a legitimate demonstration legally and by legal means.
- The demonstration should be finished with legitimate consideration and alert.

IN ACCIDENT- HERE  
IS INJURY TO THE  
OTHER PARTY

IN MISFORTUNE- HERE THE INJURY  
IS ON THE DOER OF THE ACT AND  
THE OTHER PARTY

### ABSENCE OF CRIMINAL INTENTION OR KNOWLEDGE

When an act is done it should be without any criminal intent such that it is done unexpectedly without any guilty mind. As in the case of the *State of Orissa v Khora Ghasi*<sup>3</sup>, it was held that the death was brought about by an accident as there was the shortfall of criminal goal or information with respect to the accused in light of the fact that here the denounced didn't expect to kill the deceased rather he thought it was bear who is obliterating his maize field, so in real conviction, he shoots the bolt which brought about the demise of deceased. In *Tunda v State*<sup>4</sup>, here the court held that "when both agreed to wrestle with each other, there was implied consent on the part of each to suffer accident injuries" as there was no treachery with respect to the accused and the act was accidental as it was done unintentionally without any criminal intention.

<sup>2</sup> Prof. S.N. Mishra, *Indian Penal Code* (22<sup>nd</sup> Edition 2021) 176

<sup>3</sup> *State of Orissa v Khora Ghasi* [1978] Cr LJ 1305

<sup>4</sup> *Tunda v State* [1950] AIR 1953, All 95

## LAWFUL ACT IN A LAWFUL MANNER BY LAWFUL MEANS

To get the protection under Section 80<sup>5</sup> of the Code, the act must be lawful in a lawful manner by lawful means. In the case of, *Jogeshwar v Emperor*,<sup>6</sup> the court held that although the child was hit by accident when the latter's wife interfered in a fight such that it resulted in the death of the child. Here, it was held that the denounced was not legitimately doing a legal demonstration by legal means. So, he will not get protection under this section. "*An act performed deliberately is not accidental and the accused cannot benefit from the section.*"<sup>7</sup> The protection provided under Section 80 applies only to lawful acts, performed lawfully, by lawful means. "*Acts lacking lawfulness are not considered within the scope of this section.*"<sup>8</sup>

## PROPER CARE & CAUTION

The act should not only be done lawfully in a lawful manner by lawful means but it should also be done with proper care and caution. In *Bhupendrasinh A. Chaudasama v State of Gujurat*<sup>9</sup> here, the victim and the appellant were posted in the same platoon at the Khampla Dam site which was in danger. The engaging party who was an outfitted constable shot his chief, the head constable who achieved his death. One evening when the denounced noticed that the casualty was strolling close to the tower of the dam at which he pointed his rifle and fired the victim. Here the accused didn't get the security under Section of the Code as the demonstration was finished with appropriate consideration and alert. How much consideration taken by an accused should be to such an extent that a man of standard judicious and sensible would do during the given conditions of a specific case.

In *Sita Ram v the State of Rajasthan*<sup>10</sup>, the accused was tunnelling the earth with a spade. The deceased came to assemble the mud. The spade hit the deceased on the head and he gave up on the injuries. The accused contended that it was an accident. The Rajasthan High Court held that the accused knew that other labourers would come and get the mud. The accused didn't

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<sup>5</sup> Indian Penal Code, 1860, s 80

<sup>6</sup> *Jogeshwar v Emperor* [1924] AIR 1929, All 932

<sup>7</sup> *Sukhdev Singh v Delhi State (Government of National Capital Territory of Delhi)* [2003] AIR 2003 7 SCC 441

<sup>8</sup> *Karali Bauri v Subhas Das Musib* [1983] Cr LJ 1474 [Cal]

<sup>9</sup> *Bhupendrasinh A Chaudasama v State of Gujurat* [1998] Cr LJ 57

<sup>10</sup> *Sita Ram v State of Rajasthan* [1998] Cr LJ 287 [Raj]

take appropriate consideration and proper care and acted carelessly. He was sentenced under s 304A<sup>11</sup>, IPC.

## BURDEN OF PROOF

To get the protection under Section 80, proof of no criminal intention or consideration or motive is very necessary such that the act is being done unintentionally. The court will assume the shortfall of conditions bringing the case inside the special case of "Section 105 of the Indian Evidence Act<sup>12</sup>". In the case of, *K.M. Nanavati v the State of Maharashtra*<sup>13</sup>, it was held that the burden of proof lies upon the accused, such that he has to prove that there was no mens rea during the commencement of the act. \

## NECESSITY

Section 81 of the Indian Penal Code, 1860<sup>14</sup> provides a general exception of the necessity. It states that "when the act is done with the knowledge that it is likely to cause harm, to prevent or avoid other harm to a person or property, will not be considered as an offence if it is done without any criminal intention and in good faith"<sup>15</sup>. Lesser harm can be done to prevent any substantial/larger harm but not vice versa. The exception of necessity is based on the dictum "*salus populi supreme lex*" means that "the welfare of the people is the supreme law"<sup>16</sup>. Whenever a person is given a choice to choose between the welfare of the community and individual welfare, then he must choose the welfare of the community to prevent greater harm by causing lesser harm.

## ESSENTIALS OF NECESSITY

- An act was done with the knowledge that it is likely to cause harm.
- The act is done without any criminal intention.
- The act was done in good faith

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<sup>11</sup> Indian Penal Code, 1860, s 304A

<sup>12</sup> Indian Evidence Act, 1872, s 115

<sup>13</sup> *K.M. Nanavati v State of Maharashtra* [1962] AIR 605, SCR (1) 567

<sup>14</sup> Indian Penal Code, 1860, s 81

<sup>15</sup> Prof. S.N. Mishra, *Indian Penal Code* (22<sup>nd</sup> Edition 2021), 184

<sup>16</sup> 'Necessity: As a defence in Law of Torts' (*Lexpeeps*, 13 June 2020) <<https://lexpeeps.in/necessity-as-a-defence-in-law-of-torts/>> accessed 12 January 2022

- The act was done to avoid any other harm to a person or property.

### **DEFENCE OF NECESSITY WHEN NOT APPLICABLE**

- The defence of necessity is not applicable to impulsive acts such that good faith is not there.
- The defence of necessity is applicable when the act is done with proper care and caution with bona fide without any malice prepense.
- The defence of necessity is applicable to public necessity and not to private necessity.

### **PRIVATE AND PUBLIC NECESSITY**

Private necessity is a situation wherein a person causes harm for one's benefit whereas public necessity is caused for benefit of the others. Law, in general, protects public necessity, not private necessity. Public necessity serves as an absolute defence because private necessity emerges from personal responsibility rather than from a local area as huge. As in the case of *R v Dudley and Stephens*,<sup>17</sup> three grown-ups and one minor were projected mixed up in a boat following a wreck without food and water. After sailing for a few days, they ran out of food and water. Dudley suggested sacrificing the minor boy to which Brooke disagreed. On the twentieth day, Dudley and Stephens without the assent of Brooks killed the minor kid as he was near death, had no family, and was exceptionally feeble. It was held that they were guilty of murder as you can't take the life of others to save yourself. So, here the defence of necessity will not be given.

Three principles have been deduced from the above judgment:

1. Self-protection is anything but an outright need.
2. No man has the privilege to end one more's life to safeguard his own.
3. There is no necessity that legitimizes crime (no private necessity justifies homicide except when homicide is committed in self-defence)

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<sup>17</sup> *R v Dudley Stephens* [1884] 14 QBD, 273 DC

## NECESSITY WHY A DEFENCE

A demonstration which some way or another be wrongdoing may now and again be pardoned assuming the individual denounced can show that it was done distinctly to keep away from results which couldn't, in any case, be stayed away from, and which in the event that they had followed, would have incurred upon him or upon others whom he will undoubtedly ensure, inescapable and hopeless underhanded that something like was sensibly vital for that man, and that the evil caused by it was not lopsided to the evil stayed away from him.<sup>18</sup> Section 81 of the Code exempts the doing of evil so that good may result. It allows causing lesser harm to prevent the greater harm but not vice versa. At whatever point necessity forces a man to do an unlawful demonstration he will be defended because no man can be at a real fault for wrongdoing without the will and criminal intention. E.g. pulling down of the house to prevent fire from spreading. The defence of necessity is based on the two Latin maxims: "quod necessitas non-habit leegem means necessity knows no law" and "*necessitas vincit legem*" means "*necessity overcomes the law.*"<sup>19</sup> As in the case *Cope v Sharpe*,<sup>20</sup> the defence of necessity was granted. As to burn a ship of heather to prevent a fire from spreading.

## WITHOUT ANY CRIMINAL INTENTION

In order to get the defence under necessity, the act must be done without any criminal intention such that there exists a necessity to act in a particular manner in order to save the person or property. Intentional wrong-doing cannot be justified. Assuming an individual makes hurt to another by doing a demonstration with next to no criminal goal except for with the knowledge that some damage might be caused, he won't be liable for the unsafe outcomes of his demonstration, given the demonstration was done in good faith without any evil intention such that to avoid or prevent any harm to any other individual or property.

**For e.g.** 'X' sees a lion attacking 'Y' and he feels sure that the lion will be on him in a minute, 'X' shoots the lion fully knowing that 'Y' and the lion are close that he might kill 'Y' and not the lion. Here if 'X' kills 'Y', he would be guilty of no offence because he had no criminal intent

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<sup>18</sup> Stephen, *Digest of Criminal Law* (8<sup>th</sup> Edition, I) 157

<sup>19</sup> P S A Pillai, *Criminal Law* (12<sup>th</sup> Edition, Lexis Nexis) 83

<sup>20</sup> *Cope v Sharpe* [1912] 1 K.B 496

to kill 'Y' instead he wanted to save 'Y' by killing the lion, here 'X' acted in a bona fide without any malic intention.

### **AN ACT WAS DONE TO PREVENT HARM TO A PERSON OR PROPERTY**

This section is mainly based on avoiding substantial harm to a person or property by causing subsidiary harm but not vice versa, if not prevented it is likely to cause harm. When the individual is acting in necessity he should have the knowledge of causing harm to another person or property but without any criminal intention and malice.

### **CONCLUSION**

The overall safeguards revered under IPC are of central significance in setting up the boundaries of criminal offences. Criminal obligation makes an individual commit acts that are disallowed by law. Indian Penal Code took an understanding of truth that all acts are not to be repelled. So, the exceptions are given in the Code to the accused when the act is done without any criminal intention and malice. Here the accused will not be held liable for the offence he has committed because he has been given protection under the Code.