



# Jus Corpus Law Journal

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## Case Comment: Regina vs Dudley & Stephens

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### INTRODUCTION

The doctrine of Necessity is a general exception that works on the premise that law may be broken to achieve the greater good. Section 81<sup>1</sup> of the Indian Penal Code, 1860 defines the exception as an “Act likely to cause harm but done without criminal intent, and to prevent other harm. –Nothing is an offence because of its being done with the knowledge that it is likely to cause harm if it is done without any criminal intention to cause harm, and in good faith to prevent or avoid other harm to person or property.” This implies that the law permits offenders to commit a crime to prevent greater harm. The risk averted by the commission of an offence must be significant enough to justify or excuse it. The degree of *men’s rea* associated with this section is ‘knowledge’, however, the section contemplates a situation where the accused knows that they are likely to cause harm, but such knowledge shall not be held against them.

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<sup>1</sup> Indian Penal Code 1860, s 81

## **FACTS OF THE CASE**

On July 5, 1884, there was a destructive storm at the sea which led the crew of a ship with no option but to abandon it. Thomas Dudley, Edwin Stephens, Richard Parker, and Brooks were four sailors who got into a lifeboat together. They were stuck at sea with the bare minimum of supplies. The sailors had to live on two cans of turnip and a turtle which they fished from the sea to make it to twelve days. There was no potable water and drinking from the sea was not viable however they managed to drink rainwater occasionally. The crew starved for another week and there was no rescue for them. After surviving for almost three weeks at the sea, Dudley and Stephens suggested that one of the members must be killed to save the others, which Brooks denied. Then, they decided to kill Parker who was a boy aged around seventeen or eighteen as he had already become too frail and had no family as such to return to. Brooks again refused to the reasoning and none of it was discussed with Parker.

Subsequently, Dudley and Stephens grew extremely desperate and settled to wait for another day to see if a rescue ship arrives for them failing which they would kill Parker. Unfortunately, no ship arrived and while Brooks was taking a nap, the boy was killed by the other two members who died in an instant as his health has already deteriorated and had left him severely malnourished. The sailors then ate the relished the deceased and were rescued four days later when they were in a poor state. The rescue ship then took them to the mainland where they were charged with the murder of Parker. The jury too was perplexed at the trial and could not decide whether or not an exception would apply to this case. It was further agreed that the sailors would have died had they not taken the life of the boy and eaten him. It was understood that Parker would have any which ways died first. The trial court could not conclude and was forced to appeal to the Queen's Bench Division to take this case under their jurisdiction.

## **ISSUES RAISED**

Considering the extraordinary circumstances in which the young boy Parker had to be killed, whether necessity could be a valid defence to the charge of murder?

## **RULE**

This case pertains to the Doctrine of Necessity to attract which, it is important to show that the act complained of was done in good faith and was done to avoid greater or avoid harm to persons or property. The explanation that even the section in the IPC provides that the justification for the harm caused and whether the risk caused should be excused is a question of fact that must be determined on a case-by-case basis. Even when this defence is to be taken, it does not give an absolute blanket immunity from liability in all circumstances. It is only available in exceptional circumstances and must contain the following ingredients –

- The act must have been done without any criminal intention to cause harm.
- The act must be done in good faith for preventing or avoiding other harm to person or property.
- Harm must be done to avert greater harm.

## **ANALYSIS**

It was admitted by the defendants that they had deliberately and intentionally killed the boy. Lord Coleridge CJ then went on to deliver the judgement of this case. He stated that a gruesome crime like the killing of a person can only be justified or excused under cases falling in the category of necessity. That Dudley and Stephens were not acting out of necessity, but only out of desperation and temptation which the law condemns. The CJ also dismissed their choice of killing Parker who was the weakest and the youngest because that would still not amount to an appropriate reason for the sailors to murder him. There was no yardstick to measure the need of the hour and there was no set permissible levels of crimes that could be condoned under the Doctrine of Necessity.

The court said that the doctrine of necessity would not apply here, though the sailors argued that they did it to preserve their life and the boy being much weaker would have died anyway. An important paragraph containing the ratio of this judgement has been cited below verbatim:

*“It must not be supposed that in refusing to admit the temptation to be an excuse for the crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners’ act, in this case, was wilful murder, that the facts as stated in the verdict are no legal justification of homicide; and to say that in our unanimous opinion, the prisoners are upon this special verdict guilty of murder.”*

There was no apparent necessity to kill anyone onboard let alone the youngest boy. It might have happened that the men could have ended up being rescued the next day had they waited for some more time, or that may not have happened. However, that did not give them a reason to kill someone. Even if this was an act of ‘self-preservation’, the killing could still not be justified as acts of self-defence are practised against people with malicious intent or the person who may harm oneself and not against innocent beings. Thus, the court held that –

- Self-preservation is not an absolute necessity.
- No man has the right to take another’s life to preserve his own unless it is done in self-defence (private defence).
- no necessity justifies private homicide (to conserve one’s life), as distinguished from public necessity or even necessity when it is a justification.
- A temptation to murder cannot be held to be legal according to the court and therefore the sailors were held guilty of murder.
- The defendants were sentenced to death but were later granted a pardon by the Crown and their sentence was commuted to 6 months of imprisonment.

## **RATIONALE AND FURTHER DISCUSSION**

The Court’s decision was appropriate because this exception was meant for cases wherein there was no other alternative left for a person to avert greater harm than the one that could have

otherwise occurred. In a case like this, there was no lesser or greater harm i.e., the prospect of death, as the lives of all the people on the boat was equally important and it would have been unfair to sacrifice one to preserve another. Following this case, the doctrine of necessity was defined more clearly and was later adopted in India under Section 81 of the Indian Penal Code in the year 1860 and it remains as it is. 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. This case was one of its kind and there were no precedents to take inspiration from to decide this case which consequently made it the precedent for the cases to come.

Even in Professor Lon Fuller's "*The Case of Speluncean Explorers*", a similar reasoning was adopted along with the theses of law, morality, and justice being explored in depth. But as legal persons, it is important to keep in mind that all decisions which have the power to set precedent for upcoming cases must be taken from a mostly objective perspective so that they can serve as a guide to other cases. There is no room for subjective reasoning in cases like these as it can make the law quite unstable. The Court adequately justified its reasoning in the judgement and did interpret the law suitably and appropriately as was possible and in the best interests of the society considering all the arguments put forward by the defendants. The reasoning provided was satisfactory in my view and there were no alternate approaches that could have been taken as acquitting the defendants, in this case, would imply that certain individuals' lives are more valuable than that of others, which would not be the right reasoning to kill another.

## **CONCLUDING REMARKS**

Going back to the definition of this general exception of necessity as per the IPC whereby an act must be done by a person which that person knows is going to cause harm to another person or property but without the criminal intent or done in good faith constitutes an act which can be granted this exception in Courts. We learn from this specific case that what Stephens and Dudley did may be in their view something done in the furtherance of "self-preservation", however, the intent behind their actions was mala fide and this was the juncture where they lost their case. An act done in 'self-defence' is permissible wherein an exception may be granted when

apprehension of threat is proved. However, it is different from an act done for “self-preservation” at the cost of someone else’s life wherein no harm is anticipated. Irrespective of the greater number of lives that may benefit in certain circumstances, the law promises to protect even the life of an individual, a minority, who is disadvantaged by such acts of the majority.