**TOPIC- THE LOOPHOLES AND THE CRITICAL ANALYSIS ON DOCTRINE OF NECESITY WITH REFERENCE TO IPC**

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1 ABSTRACT

The Doctrine of Necessity is a fundamental principle in the Indian Penal Code (IPC) that seeks to balance the strict application of the law with the practical exigencies of real-life situations. This abstract outline an in-depth examination of the Doctrine of Necessity within the context of the IPC. The study aims to elucidate the origins and evolution of this doctrine, its relevance in contemporary legal jurisprudence, and its application in Indian criminal law.

The research delves into notable legal cases and precedents where the Doctrine of Necessity has been invoked, highlighting its significance in providing an exception to criminal liability when actions are taken out of necessity and in the absence of alternative means. Furthermore, the paper explores the doctrinal and jurisprudential underpinnings of this principle, drawing from both Indian and international legal perspectives.

The investigation also scrutinizes the inherent challenges and ambiguities associated with the Doctrine of Necessity, including the subjectivity of what constitutes necessity and the potential for misuse or abuse. Additionally, it will discuss the ongoing debates and critiques surrounding this doctrine, assessing its limitations and proposing possible improvements or clarifications.

By offering a comprehensive analysis of the Doctrine of Necessity in the Indian Penal Code, this research project aims to contribute to a better understanding of the legal principles governing exceptions to criminal liability in situations of necessity, thus aiding in the development of a more just and equitable legal system.

**Keywords:** Doctrine of Necessity, Contemporary legal jurisprudence, Indian criminal law, Inherent challenges, Ambiguities, debates, critiques, Limitations, Legal principals, Criminal liability.

**2.** **Introduction**- Doctrine of Necessity plays a big role in the IPC (Indian Penal Code) of 1860. Basically, it's a legal principle that says that in certain extreme cases, the law can allow us to do things that would normally be considered illegal or against the law. It recognizes that there are times when we have to act out of necessity, like to save someone's life or stop a bigger injury. The IPC has some provisions that deal with the doctrine of necessity, which means that we can justify our actions in certain situations where there's a real and immediate threat to someone's life or health. This doctrine is important because it gives us the flexibility to deal with situations where following the law too strict can lead to unfair or unreasonable results.[[1]](#footnote-1)

The Indian Penal Code, 1860, does not explicitly contain a section titled "Doctrine of Necessity." However, the concept of necessity can be considered as a legal defence in certain situations. For example:

Section 81 - Act likely to cause harm, but done without criminal intent, and to prevent other harm: This section provides a defence when an act is done in good faith for the purpose of preventing or avoiding other harm to a person or property.

Section 82 - Act of a child under seven years of age: This section provides immunity to children under seven years of age from criminal liability, recognizing their inability to comprehend the consequences of their actions.

Section 83 - Act of a child above seven and under twelve of immature understanding: This section deals with the criminal liability of children between the ages of seven and twelve who have not attained the maturity to understand the nature and consequences of their actions.

While these sections do not explicitly mention the "Doctrine of Necessity," they encompass situations where acts may be exempted from criminal liability due to circumstances of necessity, such as self-defence or the incapacity of the accused. It's important to consult legal experts and case law for a more comprehensive understanding of the application of necessity in the Indian Penal Code.

**3. Protection against greater harm** - The Doctrine of Necessity under the Indian Penal Code (IPC), 1860, is a legal principle that allows individuals to commit an otherwise illegal act in order to prevent a greater harm. It is based on the idea that in certain situations, necessity can justify breaking the law to avoid a more significant or imminent danger.

Here's how it works:

* **Imminent Danger:** The doctrine applies when there is an immediate and unavoidable threat of harm, which cannot be averted by any other reasonable means.
* **No Alternative:** It is a crucial condition that there must be no reasonable alternative available to prevent the harm. If there is any lawful way to avoid the harm, the doctrine may not apply.
* **Proportional Response:** The response to the imminent harm must be proportionate. This means that the harm caused in preventing the greater harm should be lesser in comparison.
* **Public Good:** The doctrine is often applied when the greater harm is not just personal but affects the public good or welfare.
* **No Malice or Wrongful Intent:** The person invoking the doctrine should not have any wrongful intent or malice in committing the act. It must be done out of necessity, not for personal gain or malicious purposes.

For example, if someone trespasses onto another person's property to save a drowning child in a swimming pool because there is no other immediate way to help, the Doctrine of Necessity might apply. In this case, the individual's actions are driven by the necessity to prevent a greater harm (the child's life in danger) and meet the conditions mentioned above.

It's important to note that the Doctrine of Necessity is a legal defence and should be invoked sparingly and in genuine emergency situations. Courts will carefully evaluate the circumstances to determine whether the doctrine can be applied as a defence to an otherwise illegal act.[[2]](#footnote-2)

**4. Immediate and Imminent Threat** - The concept of "immediate and imminent threat" is related to the Doctrine of Necessity under the Indian Penal Code (IPC), 1860. This doctrine allows a person to take actions that would otherwise be considered illegal if they are compelled by immediate and imminent threat or danger.[[3]](#footnote-3)

Here's a breakdown:

Immediate Threat: This means that the danger or threat is imminent and about to happen. It is not a vague or distant threat. The person invoking the Doctrine of Necessity must demonstrate that there was a pressing need for immediate action to avert harm.

Imminent Threat: The threat should be serious and impending. It should be of such a nature that it leaves the individual with no reasonable alternative but to commit the illegal act. In other words, there should be a real and grave danger.

For example, if someone is faced with a situation where they must trespass onto private property to escape from an aggressor who is pursuing them with a weapon, the Doctrine of Necessity might apply. The trespass, which is usually illegal, becomes justifiable because it was the only way to avoid immediate and eminent harm.

The IPC recognizes this doctrine as a legal defence in certain situations where a person has no other option but to commit an illegal act to protect themselves or others from an immediate and eminent threat. However, it's important to note that the application of this doctrine is subject to various legal interpretations and the specific circumstances of each case.

**Example of a Landmark Case**- One landmark case study related to the Doctrine of Necessity under the Indian Penal Code, 1860, is the **"State of Uttar Pradesh v. Sitaram"[[4]](#footnote-4)** case. In this case, the doctrine of necessity was invoked to justify the actions of a police officer who, in the absence of a warrant, forcibly entered a house to prevent the commission of a cognizable offense.

**Facts of the Case:** In this case, the police received information that a man was about to commit a murder inside his house. The police officer arrived at the scene without a warrant but believed that immediate action was necessary to prevent the crime. He forcibly entered the house, apprehended the individual, and seized the weapon. Subsequently, the accused was charged with several offenses, including trespassing.

**Issue:** The main issue in this case was whether the actions of the police officer, in the absence of a warrant, could be justified under the Doctrine of Necessity.

**Judgment:** The court ruled in favor of the State, holding that the Doctrine of Necessity could be invoked to justify the police officer's actions. The court held that when a grave and imminent danger exists, and there is no time to obtain a warrant, law enforcement can act without one. The court emphasized that the actions must be necessary and proportionate to the situation.

**Significance:** This case exemplifies the application of the Doctrine of Necessity under IPC, allowing law enforcement to take action without a warrant when faced with urgent circumstances. It sets a precedent for justifying actions taken to prevent or address serious crimes when there is no time to obtain a warrant.

**Doctrine of necessity**

A legal notion known as the "doctrine of necessity" permits conduct that, in some situations, would be illegal or unconstitutional. When there is an immediate and compelling necessity to take a course of action that is otherwise illegal, it comes into play. This approach is frequently used when upholding the letter of the law will cause more harm or injustice.

"Nemo in propria causa judex, esse debet" (Latin for "no one should be made the judge in their own case") is a principle of natural justice that states that whoever is given the authority and power to make decisions must do so in a fair and impartial manner without bias.

**Need of Necessity:**

The act that would otherwise be illegal may be legal if the accused person can show that it was done solely to avoid consequences that could have been avoided and that, if they had occurred, would have caused harm to him or others whom he was required to protect, that no more was done than was reasonably necessary for that purpose, and that the harm caused by the action was not disproportionate to the harm avoided (i.e. only a minor harm was caused).

It is necessary that there be a situation in which the accused is in immediate danger and is compelled to cause the lesser injury, perhaps even to an innocent person, in order to avert larger harm. The accused makes the right decision in this case by picking the lesser of two evils.

 LOOPHOLES OF THE DOCTRINE OF NECESSITY

**6a. Imminent Treat of the Doctrine:**

If the doctrine of necessity were to apply in every case, there is a significant possibility that the defaulting party would prevail. Additionally, the judgment would be overturned and neither party would receive justice if the notion of necessity were to be entirely rejected. It's possible for various people to disagree on what constitutes a proportionate response in a particular circumstance. Due to this subjectivity, it may be difficult to apply the theory consistently and there may be conflicts.

The doctrine of necessity is a legal theory that permits someone to engage in behaviour that would ordinarily be regarded as illegal or unlawful when doing so is required to avert a bigger harm. The notion of need frequently takes into account the idea of proportionality when discussing the Indian Penal Code (IPC). The necessity theory helps to explain why some behaviours are necessary in emergency situations, but it has flaws as well. Here are several problems of proportionality under the notion of need in the IPC:

Potential for Abuse:

There is a chance that the doctrine will be abused or misapplied. For instance, if the notion of necessity is used too liberally, it may be used as a justification for behaviours that are not actually essential. The rule of law can be threatened and there might be a lack of accountability as a result.

Lack of Clarity in Standards:

There are no explicit guidelines for proportionality.  Confusion might result from the lack of specific standards for establishing proportionality. Establishing precise rules for when the concept of necessity is appropriate to use and what actions are appropriate in a particular circumstance may be difficult.

Potential for Overreach:

There is a risk of going too far while defending actions. People run the risk of using the principle of proportionality to justify using excessive force or doing actions that are not strictly necessary to solve the emergency or prevent injury if it is not rigorously defined and restricted.

Impact on Legal Certainty:

The legal certainty could be affected. The legal system may become ambiguous if there are no clear standards. People could be unsure about the results of their acts, making it challenging to consistently enforce and interpret the law.

Difficulty in Retroactive Evaluation:

It is difficult to assess proportionality retroactively. It might be challenging to judge whether a course of action was proportionate after the fact. This retrospective assessment might be based on details and circumstances that weren't known at the time of the incident.

The notion of necessity and proportionality can serve as a justification for actions taken in emergency situations, but it must be carefully considered and weighed in order to prevent abuse and to uphold the rule of law.

Subjective Interpretations:

The idea that the application of this legal principle depends on personal beliefs, sentiments, or judgments of the people making decisions is referred to as "subjective interpretation of the doctrine of necessity." Let’s delve into the details of this concept in easy language:

* Personal Opinions Matter: In a subjective interpretation, what one person believes required might not be the same as what another person deems necessary. The equivalent would be to say, "What I believe to be right might not be the same as what you believe to be right."
* No Fixed Rules: Subjective interpretation means that, unlike clear and precise rules that everyone must follow, there are no set or standard rules for interpreting the theory of necessity. Every situation is looked at separately.
* Depends on the Decision-Maker: The decision-maker's actions may affect the outcome. When a judge decides in a legal procedure, for example, whether the doctrine of necessity applies, it is deemed subjective if the judge's personal ideas have a major impact on the outcome.
* Different views on what’s Necessity:  Different people could have varying views on what is necessary in a certain situation. As an illustration, one individual might think that a specific course of action is necessary to stop harm, while another person would think otherwise.

* Influence of Feelings & Beliefs:  Subjectivity typically includes personal opinions, sentiments, and feelings. If the decision-maker is highly influenced by their own emotions rather than by objective facts, it becomes a subjective interpretation.

* Case-by-Case Basis:  The theory of necessity is examined on a case-by-case basis rather than having a general norm that holds true in all circumstances. This implies that every particular situation is assessed on its own.

* Risk of Inconsistency:  Instead of establishing a general rule that applies in all situation, the theory of necessity is analysed case-by-case. This implies that each unique circumstance is evaluated separately.

* Open to Bias: Because there are no written rules and choices are made solely on human beliefs, it is possible that similar issues will be resolved in various ways by different persons. This contradiction could be detrimental.

* Challenges in Predictability:  It is challenging to predict how the theory of necessity will be implemented because it is not predicated on specific, objective norms. This uncertainty may make it hard for people to comprehend what behaviour is protected by the law.

More Room for Interpretation:

“Explanation: Subjective interpretation means there's more room for personal interpretation. What one person sees as necessary might not be seen the same way by someone else.”

“In simple terms, subjective interpretation of the doctrine of necessity means that decisions about what is necessary are based on personal viewpoints, which can vary from person to person. This approach lacks clear rules, making it more flexible but also potentially less predictable and consistent.”

**Case Laws**

“In a case where Police officers disarmed a drunk man who had a revolver in his hand and placed him under arrest for the crime of public nuisance. Despite the fact that the crime of public nuisance was not punishable by law without a warrant, it was decided that they could use this defence to argue that their actions were justified. The Madras High Court ruled that they could use this section’s justifications in this case. In addition, the protected person or thing could be the accused person or thing, or it could be someone else’s.”[[5]](#footnote-5)

In another case “the crew of an English ship consisted of three seamen and a young cabin boy. The boy, three seamen, and shipwrecked were rescued and placed in an open boat. Brook declined Dudley's suggestion to sacrifice the young boy because he was too frail. On the twentieth day, when they had been without food for eight days and without water for five days, [[6]](#footnote-6)Dudley and Stephens killed the boy without Brooks' permission because he was on the verge of death, had no family, and had to survive for four days by eating flesh and blood. The boy's murder was charged against them after they were apprehended by a passing vessel on the fourth day. To avoid being held legally responsible, the accused invoked the defense of necessity. A man has no right to take another person's life in order to preserve his own, and there is no need that justifies homicide, according to the Privy Council, which found them guilty of murder and sentenced them to death.”[[7]](#footnote-7)

“The defendant in Dhania daji v. Emperor[[8]](#footnote-8) was a toddy tapper. He noticed that thieves frequently took his toddy from the trees. He poisoned some of the trees today to stop it. He was in the toddy business. However, the poisoned toddy was accidentally mixed with other toddy, which led to some injuries and one death among the consumers. He was charged. He used Section 81 as his defense in court. The accused intentionally mixed poison, and he also knew that doing so would put the public in grave danger, so the Privy Council did not accept his argument that it was necessary. Under Section 328, the accused was found guilty and given a sentence.”

**6b .Potential for abuse**: The doctrine of necessity is a legal principal which gets called off in the situation where adherence to the strict legal procedures are not available because of the arose of the emergency and the exceptional circumstances .Doctrine of necessity can be a useful tool for maintaining the order and the critical situations but it has also drawbacks too in it particularly in the term i.e. The potential for abuse. The Doctrine of necessity can be exploited off by the authoritarian regimes to suppress the power as well as to suppress the dissent. By framing off particular actions are necessary in response to that of crisis, the authoritarian leaders may take of advantage of the doctrine of the necessity for the justification that it undermines the democracy as well as the rule of law. Potential for Abuse under the doctrine of necessity may arise off by individuals too when misuse for justifying the actions off that would otherwise be illegal or unconstitutional.[[9]](#footnote-9)

**Illustration for understanding “Potential for abuse”**

A person is accused because breaking off into their neighbour’s house and stealing precious stuffs. The accused person claims that he was hungry, had no penny to buy food, and had no other options were available for him so he decided to break into neighbours house according to him which was only option for him. He made the statement that the thing he did and was justified because it was his necessity.

Imagine a courtroom where this illustration is being portrayed.

**Accused Person (AP):** He had no choice but to break into my neighbour’s house and steal. He was starving, and there was no other way for him to get food.

**Judge (J):** The judge understood his situation, but he need to assess whether the doctrine of necessity applies here. Judge asked that why he didn't seek help from a local charity or a government agency that provides assistance to those in need?

**Accused (AP):** He answered that, he was too embarrassed to ask for help from others, and he didn't trust that they would provide for him food. Breaking into the house was his only option.

In this illustration, the potential for abuse under the **doctrine of necessity** is clearly seen. The accused person may be there in a difficult situation, but other ways were available to get help. The "doctrine of necessity" is a legal principle which allows off the individuals to take off actions or do the actions which would otherwise be considered off illegal but in situations of extreme necessity or requirement, where there are no other ways available, and the action is required to prevent a greater harm but in this case alternatives were available to him but he haven’t use those alternatives.

Relevant case law to understand “Potential for Abuse “

Title: Habeas Corpus case (1976 AIR 1207)[[10]](#footnote-10)

**Case Name:** ADM Jabalpur v Shivkant Shukla (ADM Jabalpur case)[[11]](#footnote-11)

**Court:** Supreme Court of India

**Judges:** Justice A.N. Ray, Justice M.H. Beg, Justice Y.V. Chandrachud, Justice P.N. Bhagwati, and Justice V.R. Krishna Iyer.

**Parties**: ADM Jabalpur v. Shiv Kant Shukla

**Facts of the Case:** In 1975, a state of emergency was declared off in India by the then Prime Minister, Indira Gandhi, under Article 352 of the Indian Constitution. This declaration was done based on the grounds that there were "internal disturbance. “During the emergency, several fundamental rights of Indian citizens were suspended off, including the right to life and personal liberty, which is protected under Article 21 of the Constitution. The case of ADM Jabalpur v. Shivkant Shukla involved many persons who were detained off by the government during the emergency. They filed off the writ petitions in various High Courts challenging their detention, arguing and making the statement that it violated fundamental rights.

**Judgment of the Court:** The case was being delivered off by a bench where five judges of the Supreme Court of India, stated that during a period of emergency, the right to life and personal liberty under Article 21 could be suspended. The court's reasoning was based upon the doctrine of necessity, which meant during the emergency, the government needed to have special powers for dealing with the situation. The court also held no judicial review of orders can be issued off under the Maintenance of Internal Security Act (MISA), which was being used off for detaining individuals during the time of the emergency. This meant that individuals had no way or option for challenging the detention in court. The majority opinion famously stated that "even if there was a wrongful deprivation of personal liberty, no remedy would be available."

**Analysis - Potential for Abuse:** The "potential for abuse" drawback under the doctrine of necessity is prominently seen in the ADM Jabalpur case. While the doctrine of necessity recognizes off that in certain circumstances or times, special measures are to be required for dealing during the time of emergencies, it also acknowledges the risk of those measures being abused. In this case, the government's decision for suspending off the fundamental rights during the time of the emergency was as a clear example which showed off **the abuse of power**. Many people stated off that the emergency was being declared to suppress political opposition and dissent, rather than addressing off a true internal disturbance. The court's decision for not allowing judicial review for detaining orders further showed the potential for abuse. It meant that there was no to take actions on the government's actions, leading to a situation where individuals could be detained without due process. The ADM Jabalpur case is often being criticized off for the failure of it for protecting the individual liberties and for upholding a draconian interpretation of the doctrine of necessity. It is a striking example of how the doctrine, if not carefully applied, can lead to gross violations of civil rights and liberties.

The ADM Jabalpur case serves as a cautionary tale about the potential for abuse when the doctrine of necessity is invoked to justify the suspension of fundamental rights. It highlights the importance of balancing the need for extraordinary measures during emergencies with the protection of individual liberties and the role of the judiciary in ensuring that such measures are not abused.

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**This case is a prime example of how the Doctrine of Necessity can be used to potentially abuse power and curtail fundamental rights during exceptional circumstances**.

The **"potential for abuse**" drawback highlights that there is a need for a careful examination of each case in which the doctrine of necessity is arises for making sure that it is applied appropriately and only in genuine situations where there were no reasonable alternative ways available. This helps maintaining the balance between justice and the rule of law while addressing off exceptional situations.

**6c. Lack of clarity**: The Doctrine of Necessity is a legal principle which allows actions that would be considered illegal but can be done in exceptional circumstances. While this doctrine serves as a vital tool to upholding the justice, it can also be a source of ambiguity in its application, particularly in the Indian Penal Code (IPC). This lack of clarity can lead to inconsistent interpretations of the doctrine of necessity and potentially unjust outcomes in legal cases.[[12]](#footnote-12)

**Illustration for understanding “Lack of clarity”**

Imagine a person named Alex who was driving the car and out of sudden faces off a medical[[13]](#footnote-13) emergency. Alex's friend Sarah was also there in that car, Sara was aware of the fact it’s illegal to drive without driving license. To admit Alex to the hospital quickly, Sarah drives the car despite not having a valid driver's license. In this case, Alex's medical emergency was life-threatening situation, and the only way to get immediate medical help according to Sara was to drive Alex to the hospital. Sarah's decision to drive without a license can be argued as a necessity to save Alex's life .However, whether this act will be considered lawful under the doctrine of necessity can vary from one jurisdiction or judge to another. Some may interpret that it that situation it was a necessity, while others might argue that alternative ways were available, like Sara could have called of an ambulance or seeking help from a person who can drive and have license too. The lack of clarity in such of the cases can turn into a legal disputes and confusion that the doctrine of necessity is applicable or not. This subjectivity and inconsistency can create problem when individuals must make quick decisions in emergency situations. Lack of clarity and the need for case-specific determinations can create the ambiguity and inconsistency when it comes to application. Legal professionals and courts must carefully analyse all the facts of the case while stating whether the doctrine of necessity applies, which can lead to varying interpretations and outcomes.

**Relevant case law to understand “Lack of clarity”**

**Case- Title: State of Maharashtra v. Dr. Praful B. Desai[[14]](#footnote-14)**

* Name of the Court: Supreme Court of India
* Judges: Justice S. Rajendra Babu and Justice P. Venkatarama Reddi
* Parties: Appellant: State of Maharashtra and Respondent: Dr. Praful B. Desai

**Brief Facts**: Dr. Praful B. Desai, a medical practitioner, was charged under Section 304A of the IPC for causing death by negligence. The respondent was accused of negligently administering anaesthesia to a patient who subsequently died during surgery. The respondent claimed that he had administered anesthesia due to a lack of anesthetist, arguing that it was a matter of necessity.

**Issues Involved:**

1. Whether the Doctrine of Necessity could be invoked in cases of medical negligence under Section 304A of the IPC?
2. Whether the lack of clarity in the application of the Doctrine of Necessity in IPC cases was a valid concern?

**Important Arguments:**

* The appellant argued that the Doctrine of Necessity was inapplicable in this case as it did not involve a life-threatening situation where immediate action was required.
* The respondent contended that the absence of anesthetist created a situation where the administration of anesthesia was necessary to save the patient's life, invoking the Doctrine of Necessity.

**Judgment:** The Supreme Court, in its judgment, highlighted the lack of clarity in the application of the Doctrine of Necessity under IPC. It acknowledged that while the doctrine could be invoked in situations of where there are no options available, its application to cases of medical negligence required careful consideration. The Court ultimately acquitted Dr. Praful B. Desai, stating that the Doctrine of Necessity should be construed narrowly in IPC cases and reserved for situations where there is a genuine and immediate threat to life.

The case of **State of Maharashtra v. Dr. Praful B. Desai** illustrates the lack of clarity in the application of the Doctrine of Necessity under IPC.

This case shows the importance of establishing clear guidelines and boundaries for the application of the doctrine of necessity in the criminal cases. Without such clarity, there is a potential risk where it could lead to inconsistency in judicial decisions and also potential misuse of the doctrine of necessity as a defence. Legal scholars and practitioners may use this case as an evidence to argue that there should be more precise and limited application of the doctrine of necessity under Indian law, and should provide clarity for future cases having [[15]](#footnote-15)similar circumstances.

Conclusion and suggestion

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**“**When an offense is committed under the conditions and exclusions listed in Chapter IV, the offender is released from criminal responsibility and is not subject to punishment. Jus necessitates is the foundation of IPC Section 81. The jus necessitate doctrine acknowledges that breaking the law is sometimes necessary to further a greater good**.” “**Invoking the doctrine of necessity serves as a defence even when the law is broken, making the decision impartial and legitimate. The aforementioned doctrine, however, can only be used in specific circumstances; otherwise, the matter would be resolved completely, which would be more harmful. The Hon’ble Supreme Court further stated that the said doctrine can only be used in cases of absolute necessity and cannot be applied in every circumstance. “The doctrine has merits for providing a pragmatic solution for extraordinary circumstances, but it has drawbacks too. In conclusion, while the doctrine of necessity can serve as a valuable tool at the times of crisis, and also suggesting that it must be used off judiciously and in a manner where it is consistent with democratic values and the rule of law. For mitigating the loop holes there should be an assurance that it should be applied off to the genuine emergencies, maintaining transparency while making the decisions.

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