Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

West Bengal.—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(v) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 276, for the words "of either description for a term which may extend to, "six months, or with fine which may extend to one thousand rupees, or with both", substitute the following:

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

COMMENT.—

The offence constituted by this section does not involve the idea of any adulteration or inferiority in the substituted medicine. It is sufficient that it is not in fact what it purports to be; for e.g., supplying savin instead of saffron.[26.]

This section is connected with section 275 in the same way as section 274 is connected with section 273.

[s 276.1] Possession as evidence of intention.—

Dealing with an Act for prevention of drug trafficking, the Privy Council observed in a case in which the accused was found in possession of the banned drug and there was nothing in the Act to exclude the common law rule that facts could be established by inference from proven facts; therefore, the judge had applied the appropriate standard of proof. The accused had given no evidence to explain his possession.[27.]

For local amendment, see Comment under section 272 *ante*.

26. *Knight v Bowers*, (1885) 14 QBD 845 .

27. *Sabapathee v State (Mauritius)*, (1999) 1 WLR 1836 (PC).

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 277] Fouling water of public spring or reservoir.

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it he commits a public nuisance.

[s 277.1] Ingredients.—

The section requires—

(1) voluntary corruption or fouling of water;

(2) the water must be of a public spring or reservoir; and

(3) the water must be rendered less fit for the purpose for which it is ordinarily used.

As a general rule, a place is a public place if people are allowed access to it, though they may have no legal right to it.

[s 277.2] Section 277 and Water (Prevention and Control of Pollution) Act, 1974.—

The contention that the provisions contained in the Water Act take away the effect of section 277 cannot readily be assumed especially when there is nothing in the Water Act to hold that the provisions therein are intended to nullify section 277 from the Penal Code. The argument that the non-obstante clause in section 60 has the effect of repealing section 277 of IPC, 1860, also is unsustainable. The non-obstante clause in section 60 cannot be assumed to supersede or extinguish such provisions in the General Law. If the non-obstante clause in section 60 was intended to exclude or nullify section 277 of IPC, 1860, then there would have been strong indication available in the specific provision itself.[28.]

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28. *Prasad v State*, 2012 (1) Ker LT 861 .

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5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 278] Making atmosphere noxious to health.

Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

COMMENT.—

Though concepts of air and ecological pollution are rather new, it must be said to the credit of the first Law Commission that they too, drafting the code as they did in the first half of the nineteenth century, were not oblivious of these social needs.

[s 278.1] Smoking in public places.—

There can be no doubt that smoking in a public place will vitiate the atmosphere to make it noxious to the health of persons who happened to be there. Therefore, smoking in a public place is an offence punishable under section 278 IPC, 1860.[29.]

29. *Ramakrishnan v State*, AIR 1999 Ker 385 [LNIND 1999 KER 234] .

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 279] Rash driving or riding on a public way.

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent [1] as to endanger human life, [2] or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

[s 279.1] Ingredients.—

The section requires two things—

1. Driving of a vehicle or riding on a public way.

2. Such driving or riding must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

1. 'Rash or negligent'.—Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. The preliminary conditions, thus, are that

(a) it is the manner in which the vehicle is driven;

(b) it be driven either rashly or negligently; and

(c) such rash or negligent driving should be such as to endanger human life.[30.] The criminality lies in running the risk of doing such an act with recklessness and indifference to the consequences. The words "rashly and negligently" are distinguishable and one is exclusive of the other. The same act cannot be "rash" as well as "negligent".[31.] Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. Simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law, a very high degree of negligence is required to be proved.[32.]

There is a distinction between a rash act and a negligent act. A reckless act has to be understood in two different senses—subjective and objective. In the subjective sense, it means deliberate or conscious taking of an unjustified risk, which could be easily foreseen and in the circumstances of the case was unreasonable to take. In the objective sense, the accused is not conscious of the result though he ought to be aware that it might follow and in this sense, it is almost equivalent to negligence. In other words, negligence involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid. Negligence is an omission to do something, which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. As between rashness and negligence, rashness is a graver offence.[33.] Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence, or lack of it, can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.[34.] Absence of high speed itself cannot absolve the petitioner from the culpability.[35.]

There are several offences in the Code in which the element of criminal rashness or negligence occurs, viz.,—sections 279, 280, 283–289, 304A, 336, 337, 338.

2. 'Endanger human life'.—It must be proved that the accused was driving the vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person.[36.] It is not necessary that the rash or negligent act should result in injury to life or property.[37.]

[s 279.2] Reasonable care.—

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for e.g., a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.[38.]

[s 279.3] *Mens rea.*—

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.[39.]

[s 279.4] *Res ipsa Loquitur*.—

This doctrine serves two purposes–one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Second, to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.[40.] The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence.[41.] This doctrine operates in the domain of civil law especially in the cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed 'in service for determining per se the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.[42.] Where a vehicle was being driven on a wrong side, accident resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.[43.] In the case of *Thakur Singh v State of Punjab*,[44.] the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down.

[s 279.5] Abetment.—

The mere fact that petitioner was the owner of the offending vehicle at the relevant time, *ipso facto* is not a cogent ground to array him as an accused under section 109

IPC, 1860. In this manner, no offence of abetment is made out against the petitioner.[45.]

[s 279.6] Difference between civil and criminal liability.—

There can be no civil action for negligence if the negligent act or omission has not been attended by an injury to any person; but bare negligence involving the risk of injury is punishable criminally, though nobody is actually hurt by it.

If actual hurt is caused the case would come under sections 337 or 338, and if death is caused, under section 304A.[46.]

In a case of collision or injury arising out of rash driving, the actual driver and not the owner of the carriage is liable under this section;[47.] whereas, in a civil suit, the injured party has an option to sue either or both of them. In a criminal case, every man is responsible for his own act; there must be some personal act.[48.]

[s 279.7] Mechanical failure.—

Poor maintenance of vehicle is itself a negligent act.[49.] In cases where the prosecution alleges that the brakes were defective, it must establish by evidence that the brakes were so defective that the driving of the vehicle endangered human life or was likely to cause hurt or injury to any other person. Merely because the vehicle swerved to the right when its brakes were pulled up, it could not be said that there was danger to human life or it was likely to cause hurt or injury to others.[50.] Failure to apply brakes at relevant time does not by itself constitute rash and negligent act for it may as well be due to error of judgment.[51.] A vehicle of which handbrake and speedometer were not in working order is a very serious hazard to the public as the driver would never know his speed. It is a danger to the traffic in general.[52.]

[s 279.8] Contributory negligence.—

The doctrine of contributory negligence does not apply to criminal actions.[53.] The deceased stood protruding his body out of the vehicle that too having his back towards the driver, which fact suggests that he himself was quite negligent and responsible for the accident.[54.]

[s 279.9] CASES.—

In a case the allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. But the evidence showed that vehicle was going in middle of road and child was also playing on road. Brake skid marks on road were duly depicted in site plan, acquittal was held proper by the High Court.[55.] Where a tractor driver was driving the tractor at a speed of six miles per hour at night and a man who was sitting on it in a careless fashion unmindful of bumps and jolts fell down and died, it was held that the driver was not guilty of any rash or negligent act within the meaning of sections 279 and 304A, IPC, 1860.[56.] Where a truck dashed against a cyclist and a cart resulting in injuries to both the cyclist and the cartman but there was no evidence to the actual dashing of the

truck against the cyclist and the cart and no evidence was either available about the mechanical fitness or otherwise of the truck as the same had been set on fire by an angry mob, it could not be presumed that the truck must have been driven rashly and negligently merely because two persons were injured. In the circumstances, the conviction of the accused under sections 279 and 304A, IPC, 1860 was set aside.[57.] Merely because the driver ran away from the spot immediately after the incident, it could not be said that he must have been driving rashly and negligently.[58.] Driving at a high speed or non-sounding of horn by itself does not mean that the driver is rash or negligent. Place, time, traffic and crowd are important factors to determine rashness or negligence.[59.] High speed at a crowded road and pressing a person against a wall in order to save accident was held to be negligence within the meaning of this section.[60.] To drive at a high speed on an empty road or at a lonely place is not the same thing as driving in a crowded city street.[61.] Crushing a school child while driving past a school was held to be *ipso facto* rashness. Everybody is expected to slow down and take extra precautions near the vicinity of an educational institution.[62.] The mere fact that there are more than two persons in a two-wheeled vehicle will not make out an offence under section 279, IPC, 1860 as it by itself does not amount to so rash and negligent an act as to endanger human life, section 279, IPC, 1860 is not attracted where the driving is ordinarily rash or negligent. Moreover, if an offence is really made out, then driver alone is responsible and not the pillion rider or riders. Therefore, the police practice of apprehending all occupants of the vehicle is deprecated.[63.]

[s 279.10] Site plan.—

Where in a case of rash and negligent driving, the site plan, recovery memo, inspection report of the offending vehicle were not proved by the prosecution and the investigating officer was also not examined, conviction of the accused was set aside.[64.] However, Supreme Court in a case held that the site plan only indicates the place where the accident happened and nothing more can be read into it.[65.]

[s 279.11] Hitting from behind.—

Where the truck of the accused, driven rashly and negligently, hit a bullock-cart from behind killing the buffalo and the cartman, the accused could not be convicted under section 429 as the *mens rea* of causing loss was absent. However, his conviction under sections 279 and 304-A was upheld.[66.] Where the accused, bus driver when attempted to overtake a lorry, on seeing one other bus coming in opposite direction swerved the bus towards the left and came in a violent contact with the victim, a cyclist, the Madras High Court held that the very act of the accused in driving the bus and dashing from behind the cyclist clearly constitutes the rashness and negligence on his part.[67.]

[s 279.12] Section 279 is not a petty offence.—

'Petty offence' within the meaning of section 206 Cr PC, 1973 is an offence which is punishable only with fine not exceeding Rs1,000 but does not include any offence so punishable under the Motor Vehicles Act. If so, section 279 IPC, 1860 which is a cognizable offence and which is not an offence punishable only with fine is not a 'petty offences'.[68.]