

Driving the other  
hand, negligence  
involves not



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Driving any vehicle on a public way, or riding on a public way, must be established. The driving or riding must be rash or negligent. Either human life must be endangered by it, or it must be likely to cause hurt or injury to another. In addition to this section there are certain other sections in the Indian Penal Code dealing with liability based on rashness or negligence. These are sections 280, 284, 285, 286, 287, 288, 289, 304-A, 336, 337 and 338.

A rash act is opposite of a deliberate act. It is an act done in haste without due deliberation and caution. An element of indifference to consequences is present in it. An unjustified risk is unnecessarily taken by the doer of a rash act. On the other hand, negligence involves not taking of proper care while doing something. It is failure to act reasonably, and element of proper precaution and guarding against certain consequences is absent.

It is a breach of duty of a reasonable man. It is an omission to do something which a reasonable man would do. Riding a two wheeler with more than one pillion-rider does not endanger human life nor is it likely to cause hurt or injury to any other person. Section 279 of the Code is not attracted in such a case. Driving a bus slowly on a road after a light drizzle but applying the brakes suddenly taking precaution against a truck coming from the opposite side at a fast speed, does not make the driver of the bus liable under this section when it dashes against an electric pole.

Applying brakes resulting into swerving of the vehicle does not by itself prove guilt under this section. The essential requirements of the section are needed to be proved. Similarly, running away of the driver of a vehicle from

the place of an accident does not by itself mean that he is liable. A child getting nervous and confused on hearing the horn of a vehicle suddenly trying to cross a road resulting in an accident with the vehicle does not make the driver liable under this section. Driving at a high speed, or not sounding of horn, by itself is not indicative of guilt under section 279.

Time, traffic and place etc. are all important factors to determine the guilt or otherwise. Tractor being driven at a reasonable speed causing bumps and jerks resulting into another person to fall down from it, does not mean liability under this section. Not being able to control a vehicle being driven at a high speed at a turning entails liability under this section. Driving a vehicle with its speedometer and handbrake out of order is a very serious risk sometimes as the speed of the vehicle would not be known to the driver, and consequently this section is attracted. Failure to apply brakes in time does not by itself attract liability under this section as it may be a case of error of judgement only. The principle of contributory negligence is a principle of civil law and it does not apply in criminal cases.

Leaking out of brake-oil of a vehicle because of a mechanical snag developing during the journey itself cannot be held to be negligence within the meaning of section 279 of the Code. The Patna High Court holds the view that a person tried and acquitted under section 116 of the old Motor Vehicles Act of 1939 cannot again be tried and convicted under section 279 of the Code. A motor vehicle is meant to be driven with speed and, therefore, rashness or negligence does not depend merely on the speed of a vehicle. It depends on many other factors like time and place. In cases of rashness or negligence, the Supreme Court says, examination of marks of wheels on the <https://assignbuster.com/driving-the-other-hand-negligence-involves-not/>

road and evidence of traffic at the relevant time are very important factors to be taken into account. In *Francis Xavier Rodrigues v. State*, a vehicle was driven on a highway on the wrong side resulting in an accident causing death of two persons. The Bombay High Court applied the principle of *res ipsa loquitur* even though the principle is applicable in tort cases only.

In *State v. Santanam*, the accused, a military personnel, after consuming alcohol, drove a military truck in a zigzag manner and dashed against a moped rider killing him and then dashed against an autorickshaw causing damage to it. The driver of the autorickshaw chased the truck in another autorickshaw and saw the same hitting a grille and a compound wall. The Karnataka High Court held the truck driver guilty under section 279 of the Code. Since it could not be proved that the death of the moped rider was because of the injuries suffered by him in the accident, the driver was not held guilty under sections 304- A and 337 of the Code and under section 117 of the Motor Vehicles Act, 1939. In *Braham Das v. State of Himachal Pradesh*, the accused driver of a bus stopped the bus at a bus-stop.

One passenger, after alighting from the bus, went up to its roof top for unloading his luggage. Not aware about this, the driver started the bus. The conductor of the bus was not examined. No evidence was led to show that any negligence on the part of the accused was involved. The Supreme Court held that section 279 was not applicable.

The offence under this section is cognizable, bailable and non-compoundable, and is triable by magistrate of the first class.