

Recklessness signifies a state of being mentally indifferent to obvious risk; Higher degree than negligence because there is a certain risk for which the individual decides to remain indifferent.

- **Negligence**

When there is required a certain degree of due care or caution and the individual lacks in the aspect of care and precaution is termed to be behaving negligently.

**B. Nathulal vs. State of M.P. (1986)**

In this case the accused/ a food grain dealer applied for a licence and deposited the requisite licence fee. He without knowledge of rejection of his application, purchased food grain and sent returns to the Licencing Authority, who on checking, found that it was in excess in quantity permitted by Section 7 of MP Food Granis Dealers Licensing Order, 1958. The accused was prosecuted. However he was acquitted on the ground that he had no guilty mind.

**C. Mahan Ka vs Kora Bibi Kutti (1996)**

The accused was a financier. He seized a vehicle for which he financed but did not receive the instalments. The person from whom the vehicle was seized complained to Police alleging that the accused had stolen his vehicle.

The Supreme Court held that the element of mens rea is totally wanting in this case and the accused cannot be convicted for the offence of theft under Section 378.

**Sherras V. De Rutzen**

The court held that in every statute mens rea is to be implied unless the contrary is shown.

**R v. Prince** Henry Prince was prosecuted for exactly a girl below the age of 16 years years under the belief that she was above 18 years decode you a distinction between act that were themselves innocent but were made punishable by statue(malum prohibitum) And that was intrinsically wrong (malum in se).

In cases of malum prohibitum it could be held that there can be no conviction in absence of mens rea but in cases of malum in se person can be convicted even in absence of mens rea unless the Statue has made provided otherwise.

**Queen v. Tolson**

It was held by the court that as a general rule there must be a guilty mind before there can be a crime but a statue may make an act Criminal whether there has been any intention to break the law or not.

Exceptions to mens rea include public nuisance, criminal libel, contempt of court, strict liability offences.

**MOTIVE AND INTENTION**

- Motive prompts a man to form an intention.
- Motive relates to ends & intention to means. Example: A thief has a MOTIVE to get money so he forms an INTENTION to steal.

## Why Motive is important?

- If direct evidence is there then it is not important, but when only circumstantial evidence is there motive plays important role to establish intention.

Mens Rea not required in following cases:

1. When you don't know it is illegal because of ignorance of law;
  - Ignorantia juris non excusat ignorance of law is no excuse.

### *State of Maharashtra v. M.H. George (1965)*

A pilot was transporting way more than the allowed limit of gold and when caught he gave the defence that he didn't know of the newly made regulation prohibiting such transporting. He was held liable.

2. Cases, which are not criminal in nature, but are prohibited in the interest of public at large, ex. Damaging environment, liability under consumer protection.
3. Strict Liability offences.
4. Absolute Liability offences.

In the following offences Under IPC - Mens Rea is not required:

|                             |              |
|-----------------------------|--------------|
| <b>Waging war</b>           | Section 121  |
| <b>Sedition</b>             | Section 124A |
| <b>Public Nuisance</b>      | Section 268  |
| <b>Kidnapping</b>           | Section 359  |
| <b>Abduction</b>            | Section 363  |
| <b>Counterfeiting Coins</b> | Section 232  |

## CHAPTER I – INTRODUCTION

**Section 1:** Indian Penal Code, 1860 extends to whole of India with J & K Reorganisation Act, 2019 with effect from 31.10.2019 [Section 95 (1) Table 1 of the Fifth Schedule S.no. 48]

**Section 2:** Punishments for offences committed w/n India: Intra-territorial jurisdiction of the courts

**“Every Person”**- Includes citizens, non-citizens and foreigners and relates to all persons without limitation and irrespective of his nationality, allegiance, caste, creed, rank, status and colour.

Certain persons though have been exempted from criminal proceedings and punishment under the constitution vide Article 361(2) example: President, Governor, ambassadors, foreign sovereign, diplomatic agents.