

has been disturbed up to now and there is no reason to apprehend such disturbance in future. On the other hand the action of the petitioners may be said to have attempted to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will amongst different religions, i.e., Muslims on the one hand and non-Muslims on the other within the meaning of [section 153A, IPC, 1860](#). Forfeiture of Koran would go against the Preamble of the [Constitution](#) and violate [Article 25 of the Constitution](#) which guarantees freedom of conscience and religion to one and all.

3. Evidence of hatred, etc., not needed.—A Special Bench of the Bombay High Court has held that under this section it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. Intention to promote enmity or hatred, apart from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for a person must be presumed to intend the natural consequences of his act. If a writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under this section that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under this section.^{206.}

Immediately after the demolition of Babri masjid and violent riots in Bombay, editorials appeared in the Marathi newspaper 'Samna' which were in high flown and caustic language but were not directed against the Muslim Community as a whole but only against anti-national elements amongst them and also against the attitude of police, army and Government. The articles were held to be not coming within the mischief of section 153-A and section 153-B.^{207.}

[s 153A.2] **Previous Sanction:**

Previous sanction under [section 196 Cr PC, 1973](#), is a must before taking cognizance of the offences under [section 153](#) and [153B IPC, 1860](#).^{208.}

^{177.} Subs. by Act 35 of 1969, sec. 2, for section 153A (w.e.f. 4-9-1969). Earlier section 153A was substituted by Act 41 of 1961, sec. 2 (w.e.f. 12-9-1961).

^{178.} Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

^{179.} Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

^{180.} *The Trustees of Safdar Hashmi Memorial Trust v Govt of Nct of Delhi*, [2001 Cr LJ 3689](#) (Del).

^{181.} *Manzar Sayeed Khan v State of Maharashtra*, [\(2007\) 5 SCC 1 \[LNIND 2007 SC 437\]](#) : [AIR 2007 SC 2074 \[LNIND 2007 SC 437\]](#) : [2007 Cr LJ 2959](#) .

^{182.} *Balwant Singh v State of Punjab*, [AIR 1995 SC 1785 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 3 SCC 214 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 1 SCC \(Cr\) 432](#).

^{183.} *Ram*, (1924) Kant 31. *Mens rea* is a necessary requirement of this offence. *State (Delhi Admn) v Shrikanth Shastri*, [1987 Cr LJ 1583](#) .

^{184.} *Maniben Kara*, [\(1932\) 34 Bom LR 1642](#) ; *Nepal Chandra Bhattacharjya*, [\(1939\) 1 Cal 299](#) .

^{185.} *Narayan Vasudev Phadke*, [\(1940\) 42 Bom LR 861](#) .

^{186.} *Banomali Maharana*, (1942) 22 Pat 48.

^{187.} *Express Publications (Madurai) Ltd v State of Orissa*, [2006 Cr LJ 2548](#) (Ori).

^{188.} *Hardik Bharatbhai Patel v State of Gujarat*, [2016 Cr LJ 225](#) (Guj) : [2015 \(4\) Crimes 462](#) (Guj).

189. *Shiv Kumar*, 1978 Cr LJ 701 (All).
190. *Baburao Patel*, 1980 Cr LJ 529 : AIR 1980 SC 763 [LNIND 1980 SC 84] .
191. *Gautam*, (1937) All 69 (SB).
192. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (FB) (Bom); *Gopal Godse v UOI*, AIR 1971 Bom 56 [LNIND 1969 BOM 50] .
193. *Harnam Das*, (1957) 1 All 528 (FB).
194. *Azizul Haque*, 1980 Cr LJ 448 (SC).
195. *Rex v Lemon*, (1971) 1 All ER 898 .
196. *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 (Bom—SB); *Nand Kishore Singh v State of Bihar*, 1985 Cr LJ 797 (Pat-SB).
197. *Kanchanlal Chunilal*, (1930) 32 Bom LR 585 .
198. *Shib Sharma*, (1941) 16 Luck 674 .
199. *Ghulam Sarwar*, AIR 1965 Pat 393 .
200. *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 ; *Sajjan Kumar v CBI*, (2010) 9 SCC 368 [LNIND 2010 SC 892] : (2010) 3 SCC (Cr) 1371 : (2010) 11 SCR 669 : 2011 AIR (SCW) 3730, Anti-Sikh Riots charges framed against Sajjan Kumar upheld by the SC. In *S Khushboo v Kanniammal*, JT 2010 (4) SC 478 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : (2010) 5 SCR 322 : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299, it is found that [section 153A IPC, 1860](#), have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.
201. *State of Maharashtra v Sangharaj Damodar Rupawate*, (2010) 7 SCC 398 [LNIND 2010 SC 1557] : 2010 AIR (SCW) 4960 : (2010) 8 SCR 328 [LNIND 2010 SC 1557] : 2010 Cr LJ 4290 : (2010) 3 SCC (Cr) 401. In *Anand Chintamani Dighe v State of Maharashtra*, 2002 Cr LJ 8 (Bom), the Government of Maharashtra issued notification under section 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification, *inter alia*, stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquillity and that it was written with a deliberate and malicious intention to outrage the feelings of the followers of Mahatma Gandhi, The publication would be punishable under [sections 153-A and 295-A of IPC, 1860](#). The challenge to the notification was repelled by the Bombay High Court.
202. *Ramesh Chotalal Dalal v UOI*, AIR 1988 SC 775 [LNIND 1988 SC 74]
203. *Bhagvati Charan Shukla v Provincial Government*, AIR 1947 Nag 1 .
204. *Bilal Ahmed Kaloo v State of AP*, (1997) 7 SCC 431 [LNIND 1997 SC 1060] .
205. *Chandanmal Chopra v State of WB*, AIR 1986 Cal 104 [LNIND 1985 CAL 180] , 1986 Cr LJ 182 (Cal).
206. *Gopal*, (1969) 72 Bom LR 871 (SB).
207. *Joseph Bain D'Souza v State of Maharashtra*, 1995 Cr LJ 1316 Bom. The court **relied** on *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 but **distinguished**; *Babu Rao Patel v State (Delhi Admn)*, AIR 1980 SC 763 [LNIND 1980 SC 84] : 1980 Cr LJ 529 . *Trustees of Safdar Hashmi Memorial Trust v Govt of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the object of the provision is to prevent breaches of public tranquillity which might result from excited feelings of enmity between classes of people. Malicious intention or *mens rea* has to be proved. *Mohd Khalid Hussain v State of AP*, 2000 Cr LJ 2949 (AP), offence of promoting enmity between people on the ground of religion. There was nothing to show the actual words uttered or acts committed. There were only vague allegations. FIR quashed. *Bilal Ahmed Kaloo v State of AP*,

[1997 Cr LJ 4091](#) : [AIR 1997 SC 3483](#) [[LNIND 1997 SC 1060](#)] , inciting the feelings of one group without any reference to another, attracts neither section 153A nor section 505.

208. *Swaraj Thackeray v State of Jharkhand*, [2008 Cr LJ 3780](#) (Jhar); *Shailbhadra Shah v Swami Krishna Bharti*, [1981 Cr LJ 113](#) (Guj).

THE INDIAN PENAL CODE

CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

209.[s 153-AA] Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under [section 144-A of the Code of Criminal Procedure, 1973](#) (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation.—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire - arms, sharp edged weapons, *lathis*, *dandas* and *sticks*.]

COMMENT.—

Cr PC (Amendment) Act 2005—clause 44.—This clause amends **IPC** as follows, namely:—

Clause 16 is intended to enable the District Magistrate to prohibit mass drill (or training) with arms in public places. A new section 153-AA is, therefore, being added to the **Indian Penal Code** to prescribe punishment with imprisonment upto six months and fine upto two thousand rupees for the contravention of the prohibitory order. [*Notes on Clauses*].

209. Ins. by **Cr PC (Amendment) Act, 2005** (25 of 2005), section 44(a).

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
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- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

210. [s 153B] Imputations, assertions prejudicial to national integration.

- (1) **Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—**
 - (a) **makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious,**

racial, language or regional group or caste or community, bear true faith and allegiance to the [Constitution of India](#) as by law established or uphold the sovereignty and integrity of India, or
 - (b) **asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or**

- (c) **makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,**

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

- (2) **Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]**

COMMENT—

Prejudicing national integration.—This section has been newly added by Act 31 of 1972. This is a cognizable and non-bailable offence.

[s 153B.1] Sanction for prosecution.—

The allegation was that of instigating Hindus to convert to Christianity. The Court said that the previous sanction of the Central Government was necessary. But it was necessary for the court to take cognizance of the offence. The bar of sanction does not apply against registration of a criminal case or investigation by a police agency. The police asserted the accused and produced him before the Magistrate. The Magistrate remanded him to judicial custody. The passing of order of remand did not amount to taking of cognizance.^{211.}

^{210.} Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

* Effective date yet to be notified.

^{211.} *State of Karnataka v Pastor P Raju*, [2000 Cr LJ 4045 SC](#).

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