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To Riot or Not to Riot? A Sectional Analysis of Section 153 IPC with Section 192 BNS

AKSHANSH PANDEY¹, LUKSHITA NAYYAR² AND NISHKAM NAGAR³

ABSTRACT

Purpose of Comparative Analysis: How the Ashes of Macaulay's IPC Saw the Phoenix of BNS Rise

-Lukshita Nayyar, Akshansh Pandey, Nishkam Nagar

The Indian Penal Code (IPC) was established in 1860 by the British colonial administration to serve as a comprehensive criminal code for India. It was designed to cover all substantive aspects of criminal law and was applied uniformly across the country. Following India's independence in 1947, the IPC remained in force, but it underwent various amendments over the years. These amendments were made to reflect the changing social, political, and legal landscape of the country, addressing issues such as gender justice, human rights, and the emergence of new forms of crime.

As India continued to evolve, particularly in the late 20th and early 21st centuries, there were growing calls for a more contemporary legal framework. The IPC, despite being a robust code, was increasingly seen as outdated. Legal experts, lawmakers, and civil society began advocating for the creation of a new criminal code that would better address the needs of a modern India, including new challenges such as cybercrime, terrorism, and other emerging forms of criminal activity.

In response to these calls for reform, several committees were formed, and the Law Commission of India produced reports recommending comprehensive changes to the IPC. These reports emphasized the need to modernize the criminal code to effectively deal with the complexities of contemporary society. Building on these recommendations, the Indian government initiated the drafting of a new criminal code, known as the Bharatiya Nyay Sanhita (BNS), in the early 2020s. The Bharatiya Nyay Sanhita (BNS) was introduced in 2023 as a replacement for the IPC. The BNS was designed to be a more progressive and comprehensive legal framework, better suited to address the justice needs of India in the 21st century. It focuses on modernization, procedural efficiency, and tackling issues that were either inadequately covered or absent in the IPC. The transition from the IPC to the BNS marks a significant

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shift in India's legal landscape, reflecting the nation's growth and the need for a legal system that is in tune with contemporary realities.

Keywords: *Indian Penal Code, New Criminal Code, Reform Committees, Bharatiya Nyaya Sanhita.*

I. INTRODUCTION

The Indian Penal Code (IPC) was established in 1860 by the British colonial administration to serve as a comprehensive criminal code for India. It was designed to cover all substantive aspects of criminal law and was applied uniformly across the country. Following India's independence in 1947, the IPC remained in force, but it underwent various amendments over the years. These amendments were made to reflect the changing social, political, and legal landscape of the country, addressing issues such as gender justice, human rights, and the emergence of new forms of crime.

As India continued to evolve, particularly in the late 20th and early 21st centuries, there were growing calls for a more contemporary legal framework. The IPC, despite being a robust code, was increasingly seen as outdated. Legal experts, lawmakers, and civil society began advocating for the creation of a new criminal code that would better address the needs of a modern India, including new challenges such as cybercrime, terrorism, and other emerging forms of criminal activity.

In response to these calls for reform, several committees were formed, and the Law Commission of India produced reports recommending comprehensive changes to the IPC. These reports emphasized the need to modernize the criminal code to effectively deal with the complexities of contemporary society. Building on these recommendations, the Indian government initiated the drafting of a new criminal code, known as the Bharatiya Nyaya Sanhita (BNS), in the early 2020s.

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II. NEED FOR S. 153 IPC AND S. 192 BNS

The democracy that India is, prides itself in its provision of a string of rights that are bestowed

to every citizen, along with protection of these rights to the greatest extent. These rights are the fundamental rights, taught to every child upon commencement of education, known by every individual in this nation, and demanded by every citizen to protect their acts and omissions. Fundamental rights are the result of great deliberation of the constituent assembly, and the unequivocal consensus that they must be placed in the highest honor. Chapter III of the Indian Constitution holds these rights from Article 12-35, and among these rights, the most sacred ones have been recognised to be the right to life (Article 21)⁴ and right to equality (Article 14).⁵

However, an unsung hero of these rights which is ironically quoted most often, is the right to freedom of expression (Article 19)⁶. It is a fact universally acknowledged that the most prized possession of any individual is his/her liberty. It is the feeling of going out in the world knowing that they hold autonomy and power over their thoughts, words, and opinions, and can express them freely without fear of judgment, restriction, and most adversely, persecution.

However, like the economic principle goes, “there is no free lunch,” no right comes in isolation. Any and every right is accompanied by a duty, and for the purpose of the right to freedom of expression, there comes a corresponding duty of exercising this right lawfully and with the duty to exercise caution, without causing harm to another. It is essential that a balance is struck between free expression and responsible expression, to prevent any misuse of this right.

This is where the legislations like the Indian Penal Code (IPC) or the new replacement of the same, Bharatiya Nyay Sanhita (BNS), come into the picture. By providing penalties and punishments, it keeps a check and balance mechanism intact and protects the general harmony of the nation, while promoting lawfulness.

In this regard, the relevant provisions of these statutes are Section 153 (IPC)⁷ and Section 192⁸ (BNS). These sections are aimed to penalize the people in society who take the umbrella protection of the right to freedom of expression and propagate hate and violence.

This sectional analysis, as elaborated further in this paper, includes but is not confined to, discussion of these two sections and the offense they cover in detail, their comparative analysis as in the two statutes, case laws that cover this section and give a glance into judicial review of these sections, and finally conclude with the findings and suggestions (if any) of the authors.

III. SCOPE OF S. 153 IPC AND S. 192 BNS

⁴ INDIA CONST. art.21.

⁵ INDIA CONST. art.14.

⁶ INDIA CONST. art.19.

⁷ The Indian Penal Code, 1860, §153(2), Act No. 45 Of 1860.

⁸ Bhartiya Nyaya Sanhita, 2023, §192, Act No. 45 Of 2023.

Section 153 reads: ***“Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.***

Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

Similarly,

Section 192 BNS reads: ***“Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed.***

Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

It is clear from the language of both sections that the original provision has been adopted verbatim in the new statute, without so much as modification of a conjunction. But before delving into a detailed analysis of these sections, it is important to consider the scope of these sections by understanding the nature of offense they cover. Both these sections cover the offense of intentionally provoking the causation of a riot, and it is immaterial whether the provoked riot ultimately occurs or not. Therefore, this section pertains to curtailment of freedom of expression to a reasonable extent, by preventing such acts that are intended to and likely to provoke riots. India has witnessed an unprecedented number of riots, like the 1984 Anti-Sikh Riots that were triggered by the assassination of Indira Gandhi by her two Sikh bodyguards, the 2002 communal Gujarat Riots, the 2013 Muzaffarnagar Riots between the Jat and Muslim communities in this district of Uttar Pradesh, and a plethora of others. To combat this problem of communal disharmony and inter-belief hatred and violence, provisions like S. 153 IPC and S. 192 BNS are of utmost importance. They aim to punish the roots of this problem, by punishing the people who cause or instigate riots, so that the perpetrators can be nipped in the bud.

IV. NATURE OF S.153 IPC AND S.192 BNS

Upon further reading of these two sections, there are five important characteristics that are identified which pertain to the nature of these sections. They are:

- Offense
- Punishment
- Cognizance
- Bail
- Triable by

Offense

S.153 IPC and S.192 BNS do **not** mandate punishment for wantonly provoking a riot only in a situation wherein a riot occurs, rather, it also punishes the act of intending to cause a riot even if it does not occur. This means that it is an inchoate crime, since even an attempt to cause riot is punishable by these sections, and whether the riot actually happens or not is immaterial.

Punishment

S.153 IPC and S.192 BNS provide for two separate punishments depending on whether the provoked riot actually happened or not. In the first case, i.e. the actual happening of a riot, the punishment is prescribed to be imprisonment that may extend to one year, or fine, or both. In the second case wherein provocation to cause riot was made but the riot did not actually happen, the punishment is prescribed to be imprisonment that may extend to six months, or fine, or both. This means irrespective of whether the riot actually happens or not, the intention to cause the riot, if proven, is sufficient to be subjected to punishment.

Cognizance

Cognizance of an offense, as defined in Schedule I of CrPC⁹, is of two types. Cognizable offenses are those that allow police officers to make arrests without a warrant, and non-cognizable offenses require a warrant for arrest. It is therefore, explanatory that cognizable offenses are more grave in nature since they do not require a warrant for arrest. S.153 IPC and S.192 BNS fall in the category of cognizable offenses, which means that individuals booked under these sections can be arrested without production of a warrant.

⁹ Criminal Procedure Code, 1973, Schedule 1, Act No. 2 of 1973.

Bailable

S.153 IPC and S.192 BNS are bailable offenses.

Triable By

The first situation described u/S. 153 IPC and 192 BNS, i.e., the actual happening of a riot, is triable by any magistrate, whereas the second situation described u/S. 153 IPC and 192 BNS of no riot actually happening, the case is triable by a magistrate of first class only.

This summarizes the broad introduction to the two sections, their purpose, scope, and nature. Further, this paper aims to provide a detailed sectional analysis of the same, provide relevant case laws, and wrap up with conclusions and suggestions, if any.

V. COMPARATIVE ANALYSIS

The following table illustrates a comparative study between S.153 IPC and S.192 BNS in detail, however, it must be noted that **there is no change as such in the new section, rather, it is a reproduction of the previous law.**

S.No.	Title	Section 153 IPC	Section 192 BNS
01	Short Title	Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.	Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed.
02	Section	Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and	Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one

		if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.	year, or with fine, or with both; and if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
03	Brief Analysis	The wording of sections in the erstwhile statute and the new statute remain the same.	The wording of sections in the erstwhile statute and the new statute remain the same.
04	Analysis of Terminology (definitions according to the Merriam Webster dictionary)	<p>Malignantly- in a manner that is harmful or destructive</p> <p>Wantonly- in a reckless or malicious manner</p> <p>Illegal- not according to or authorized by law</p> <p>Provocation- the act of provoking</p> <p>Intending- having a plan or purpose in mind</p> <p>Knowing- having knowledge or awareness</p> <p>Cause- to make something happen or exist</p> <p>Rioting- taking part in a riot</p> <p>Committed- carried out or accomplished</p> <p>Not committed- not carried out or accomplished</p>	<p>Malignantly- in a manner that is harmful or destructive</p> <p>Wantonly- in a reckless or malicious manner</p> <p>Illegal- not according to or authorized by law</p> <p>Provocation- the act of provoking</p> <p>Intending- having a plan or purpose in mind</p> <p>Knowing- having knowledge or awareness</p> <p>Cause- to make something happen or exist</p> <p>Rioting- taking part in a riot</p> <p>Committed- carried out or accomplished</p> <p>Not committed- not carried out or accomplished</p>
05	Understandin	This section relates to the offense	This section relates to the offense

	g the Sections	of intentionally and knowingly provoking such acts that are intended to or known to be likely to cause public unrest and violence in the form of a riot. This section punishes both cases- in case of actual happening of a riot, and the other case of not happening of the riot as well. So here, the punishable offense is not just provoking the causation of a riot, but also the intent of causing the riot no matter whether it actually takes place. Hence, the intention or mens rea is punishable.	of intentionally and knowingly provoking such acts that are intended to or known to be likely to cause public unrest and violence in the form of a riot. This section punishes both cases- in case of actual happening of a riot, and the other case of not happening of the riot as well. So here, the punishable offense is not just provoking the causation of a riot, but also the intent of causing the riot no matter whether it actually takes place. Hence, the intention or mens rea is punishable.
06	Discussing prescribed punishments	Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.	Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed, shall, if the offense of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offense of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with

		Herein, there are two forms of punishment prescribed under the section. Depending upon the completion or incompleteness of the provoked riot, the punishment is prescribed as imprisonment upto one year, or fine, or both; or imprisonment upto six months, fine, or both, respectively.	fine, or with both. Herein, there are two forms of punishment prescribed under the section. Depending upon the completion or incompleteness of the provoked riot, the punishment is prescribed as imprisonment upto one year, or fine, or both; or imprisonment upto six months, fine, or both, respectively.
07	Intent of the Section	This section is in consonance with the aim of any government to promote peace, order, and stability in the state and identify and uproot the anti-social elements that come in the way of maintaining such state of affairs.	This section is in consonance with the aim of any government to promote peace, order, and stability in the state and identify and uproot the anti-social elements that come in the way of maintaining such state of affairs.

Dissecting the Topic: Sub-Divisions Within the Section

Components Identified in the Topic:

- Rioting
- Mens Rea- Intent and Knowledge
- Provocation
- Related Sections

1. Rioting

Under Section 146 of IPC¹⁰, rioting is defined as:

“Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.”

¹⁰ The Indian Penal Code, 1860, §146, Act No. 45 Of 1860.

Also, under Section 191(1) of BNS¹¹, rioting is similarly defined as the same, i.e.,

“Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting”

Since the topic of this project is heavily focused on the punishment for wantonly or malignantly causing provocation that is intended to or known to cause a riot, it is imperative to understand what rioting actually constitutes according to Indian criminal law.

2. *Mens Rea- Intent and Knowledge*

Based on the maxim of ‘*actus non facit reum nisi mens sit rea*’, which means that the act does not render one guilty unless the thought is also guilty. There are many components of mens rea, which include intention, motive, knowledge, etc. In these sections, two terms have been used- intention and knowledge. Intention, though not clearly defined in the criminal law, can be understood contextually as an action done wherein one seeks to achieve or successfully complete a goal or mission. On the other hand, knowledge is something that can be defined as the consciousness of a person, i.e., the person’s awareness of his/her acts, surroundings, and omissions.

To act with intention, therefore, means having a goal in mind to be achieved at the end of the acts of the person which guide his/her behavior. Knowledge, on the other hand, refers to the consciousness of a person that what s/he may be doing or not doing has the capacity to constitute an offense.

In the context of S.153 IPC and S.192 BNS, however, the distinction between these two has been made blur, and both are used synonymously with each other. To conclude, both these elements, though etymologically different, have applications depending on the situation.

3. *Provocation*

To explain provocation, a simple example may be taken. To hypothesize a situation within a real-life occurrence, one may take the current situation of Bangladesh. Due to reinstatement of quotas for relatives of veterans from Bangladesh’s war for independence from Pakistan in 1971, university students took to the streets to protest against these reservations. Soon, these protests turned violent and hostile, resulting in the resignation of their long serving Prime Minister Sheikh Hasina and her fleeing to India. Hypothetically, we are to assume that the time is such that these protests have not yet turned so violent and destructive, and this situation occurred

¹¹ The Indian Penal Code, 1860, §191(1), Act No. 45 Of 1860.

within the jurisdiction of India.

Now, there is an individual who is making speeches that incite the students by telling them that the government is snatching their rightful jobs and opportunities and leaving them without any respite or relief. He is further encouraging them to take to the streets and start a movement for their rights, doing whatever it takes, even if it means sacrificing lives for this. Clearly, this is provocation to indulge in riotous activity that would be covered under the ambit of S. 153 IPC or S.192 BNS.

4. *Related Sections*

There are several related offenses to S.153 or S.192 BNS that address public disorder, incitement to violence, and unlawful assembly. These include:

1. S. 153A IPC or S. 196¹²: Promoting Enmity Between Different Groups

These sections deal with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and acts prejudicial to the maintenance of harmony. It punishes acts that disrupt public tranquility by promoting hatred or enmity.

2. S. 153B IPC or S. 197 BNS¹³: Imputations, Assertions Prejudicial to National Integration

These sections pertain to making or publishing assertions or statements that are prejudicial to national integration, such as denying the legitimacy of the government or constitution.

3. S. 505 IPC or S. 353 BNS¹⁴: Statements Conducive to Public Mischief

These sections criminalize the making, publishing, or circulating of any statement, rumor, or report with the intent to incite any class or community to commit any offense against another class or community, or that could lead to public mischief or alarm.

4. S. 147 IPC or S. 191 (2) BNS¹⁵: Punishment for Rioting

These sections define and prescribe punishment for the offense of rioting. It focuses on the unlawful use of force or violence by an assembly of five or more persons.

5. S. 148 IPC or S. 191 (3) BNS¹⁶: Rioting, Armed with a Deadly Weapon

These sections apply to individuals involved in rioting who are armed with deadly weapons or objects that can cause death. It enhances the punishment for those participating in such acts.

¹² The Indian Penal Code, 1860, §196, Act No. 45 Of 1860.

¹³ The Indian Penal Code, 1860, §197, Act No. 45 Of 1860.

¹⁴ The Indian Penal Code, 1860, §353, Act No. 45 Of 1860.

¹⁵ The Indian Penal Code, 1860, §191(2), Act No. 45 Of 1860.

¹⁶ The Indian Penal Code, 1860, §191(3), Act No. 45 Of 1860.

6. S. 149 IPC or S. 190 BNS¹⁷: Every Member of Unlawful Assembly Guilty of Offense Committed in Prosecution of Common Object

These sections hold every member of an unlawful assembly liable for any offense committed in furtherance of the common object of that assembly.

7. S. 295A IPC or S. 299 BNS¹⁸: Deliberate and Malicious Acts, Intended to Outrage Religious Feelings

These sections criminalize deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs.

8. S. 120B IPC or S. 61(2) BNS¹⁹: Criminal Conspiracy

These sections cover criminal conspiracy, which is relevant if the provocation is part of a larger conspiracy to incite rioting or public disorder.

9. S. 117 IPC or S. 57 BNS²⁰: Abetting Commission of an Offense by the Public or by More Than Ten Persons

These sections are related to the abetment of an offense by the public or by a group exceeding ten persons, which could overlap with provocation leading to rioting.

All these sections collectively cover various aspects of incitement, provocation, and public disorder, addressing different ways in which public peace can be threatened or disrupted.

VI. CASE ANALYSIS OF RELEVANT CASE LAWS

It is never appropriate to analyze any statute in isolation. Being a common law country, India places utmost importance in the judiciary as an organ, and judicial precedents as a medium of interpretation of the letter of law. It is one thing to pen down a law, and another to implement it in the practical world, suiting real life situations and circumstances. Contextual application and practical implementation are the real test of the particular law and its interpretation, hence, herewith is the segment of the paper that analyzes and studies the relevant case laws to the sections at hand.

1. Sanjeev S. Petitioner/accused v. State of Kerala,

Citations	2023 SCC ONLINE KER 1948
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¹⁷ The Indian Penal Code, 1860, §190, Act No. 45 Of 1860.

¹⁸ The Indian Penal Code, 1860, §299, Act No. 45 Of 1860.

¹⁹ The Indian Penal Code, 1860, §61(2), Act No. 45 Of 1860.

²⁰ The Indian Penal Code, 1860, §57, Act No. 45 Of 1860.

Bench	Bechu Kurian Thomas
Facts	As a result of a post that was made in a WhatsApp group that was comprised of individuals who were members of a local Municipal ward, the accused is currently facing an indictment for the offence that is outlined in Section 153 of the Indian Penal Code, 1860 (IPC) and Section 120(o) of the Kerala Police Act, 2011 (Police Act). This post was about a board that was preserved by a Marxist branch committee of the Communist Party of India. It was located in front of a temple in Puthiyadam, and it included a photograph of the soul of the deceased person.
Issues	Whether the scope and extent of the penal provision of Section 153 of IPC is required to be considered in the present case and whether the offence under Section 153 IPC and Section 120(o) of Police Act is made out in the peculiar circumstance of the case?
Ruling	The court decided that even if the charges in Crime No. 942/2022 of the Paravoor Police Station in Kollam are accepted, they do not constitute an offence under either Section 153 of the Indian Penal Code or Section 120(o) of the Police Act. An abuse of the procedure of the court has resulted in the registration of the crime, and as a consequence, the First Information Report (FIR) No. 942/2022 of the Paravoor Police Station has been annulled. Therefore, the criminal miscellaneous case can proceed as described above.
Relevance of section	- <i>“if the act done by the accused is not ex facie illegal, however wanton or deplorable or undesirable or done with malice, unless the act by itself is an offence, it cannot be held to satisfy the penal provisions of Section 153 IPC.”</i>

The judgment delivered by Justice Bechu Kurian Thomas addresses the application of Section 153 of the Indian Penal Code (IPC) and Section 120(o) of the Kerala Police Act, 2011, in a case involving an edited photograph circulated in a WhatsApp group. The case arose when the accused allegedly modified a message about the late former Home Minister of Kerala, Sri

Kodiyeri Balakrishnan, and shared it within a local WhatsApp group. The prosecution argued that this act was intended to defame and provoke, thereby violating Section 153 IPC, which pertains to provoking riots, and Section 120(o) of the Kerala Police Act, which deals with causing a nuisance through communication.

The court began by analyzing the requirements under Section 153 IPC, which necessitates that the accused's actions be illegal, done with malignancy or wantonness, and likely to provoke riots. The terms "malignantly" and "wantonly" were emphasized, with the court clarifying that these terms imply a higher degree of ill will or deliberate harm. Furthermore, the act in question must be illegal, as defined broadly under IPC Section 43. However, the court found that the edited word circulated by the accused, which merely referred to a food item in Malayalam, was not illegal, defamatory, or capable of provoking rioting. Thus, the court ruled that Section 153 IPC was not applicable.

The court also examined the applicability of Section 120(o) of the Kerala Police Act. This section penalizes causing a nuisance through communication. However, the court noted that the modified word circulated in the WhatsApp group did not meet the criteria for being considered a nuisance or defamatory. Therefore, the allegations did not satisfy the requirements for prosecution under this section either.

In conclusion, the court found that the allegations, even if accepted as true, did not constitute offenses under either Section 153 IPC or Section 120(o) of the Kerala Police Act. The court deemed the registration of the FIR as an abuse of legal process and quashed the FIR. This judgment highlights the importance of strict interpretation of penal provisions, ensuring that only actions meeting all statutory requirements are subject to criminal prosecution.

Conclusion - The Court evaluated the scope and extent of the punitive provision of Section 153 IPC and determined that, in the circumstances of the case, the offence under Section 153 IPC is not applicable. The Court further determined that in the circumstances described above, the crime under Section 120(o) of the Police Act is not made out. The attorney contended that even if the claims in the FIR are admitted, they do not establish an act committed maliciously, wantonly, or for the purpose of provoking a riot, and so the prosecution should be dismissed.

2. Dr. Anbumani Ramadoss vs State Of Tamil Nadu

Citations	Criminal Original Petition No.30394 of 2015
Bench	Justice A.D. Jagadish Chandira
Facts	In this recent case, The Dharmapuri police registered a case against the Pattali Makkal Katchi (PMK) candidate for Lok Sabha poll and former Union Minister, Anbumani Ramadoss, and two others on charges of distributing compact discs (CD) allegedly containing video/audio clips that could promote hatred between two communities, containing statement given by a petitioner resulting in communal tension. This results in significant property destruction. The social strain had eventually resulted in a riot. The statement expressed discontent with the current government for not taking action on a specific subject.
Issues	The primary legal issue revolves around the dismissal of an application by the learned Trial Court that sought exemption from personal appearance for the petitioner, allowing him to participate in proceedings via video conferencing.
Ruling	The court found in favour of the petitioner, holding that simply expressing discontent with the government for failing to take essential steps on specific issues does not mean that the individual who makes such a statement wants to provoke or cause a disturbance among the populations leading to riot
Relevance of section	Not only does this recent ruling repeat the essence of Section 153 of the Indian Penal Code, but it also reiterates the reach of that section

This case involves the quashing of criminal proceedings against the petitioner, a Youth Wing Leader of Pattali Makkal Katch (PMK) and a former Union Minister of Health and Family Welfare. The petitioner was accused under Sections 153, 505(ii)²¹, and 188²² of the Indian Penal Code (IPC), along with Section 125 of the Representation of the People Act, 1951²³. The charges arose from allegations that the petitioner, along with two other party members, distributed CDs containing audio and video materials aimed at inciting disharmony and violence between two communities during an election campaign.

The court's analysis focused on the lack of direct evidence linking the petitioner to the

²¹ The Indian Penal Code, 1860, §505(ii), Act No. 45 Of 1860.

²² The Indian Penal Code, 1860, §188, Act No. 45 Of 1860.

²³ Representation of the People Act, 1951 §125, Act no. 43 of 1951.

distribution of the CDs. While the CDs contained sensitive content related to past communal incidents, the prosecution failed to provide proof that the petitioner either produced or personally distributed the CDs. The evidence primarily implicated two other individuals, and none of the witnesses could directly associate the petitioner with the alleged distribution. This lack of direct involvement was a significant factor in the court's decision.

Additionally, the court highlighted the importance of obtaining prior sanction under Section 196(1)(a) of the Cr.P.C²⁴. before prosecuting someone under Section 153 of the IPC. In this case, there was no concrete evidence that such a sanction was obtained, which is a mandatory legal requirement. The absence of prior sanction further weakened the prosecution's case against the petitioner.

The court also referenced landmark judgments like *R.P. Kapoor v. State of Punjab*²⁵ and *State of Haryana v. Bhajanlal*²⁶, which outline the circumstances under which criminal proceedings can be quashed. The court found that this case fell into several of those categories, particularly where there was no evidence to prove the charges and where the allegations did not prima facie constitute any offense. Based on these findings, the court concluded that continuing the prosecution against the petitioner would be unjust, and accordingly, the proceedings were quashed.

Conclusion- Taking into account the breadth and depth of the punitive provision found in Section 153 of the Indian punitive Code, the Court came to the conclusion that the specific circumstances of the case do not constitute an offence that falls under Section 153 of the IPC.

3. *Manzar Sayeed Khan v. State of Maharashtra & Anr.*

Citations	AIR 2007 SUPREME COURT 2074, 2007 AIR SCW 3189, 2007 (4) AIR KAR R 310
Bench	K. G. Balakrishnan, Lokeshwar Singh Panta & D. K. Jain
Facts	Manzar Sayeed Khan and Vinod Hansraj Goyal have filed criminal miscellaneous petitions seeking clarification/modification of the judgment of this Court in

²⁴ Criminal Procedure Code, 1973, §196(1)(a), Act No. 2 of 1973.

²⁵ *R.P. Kapoor v. State of Punjab*, 1960 AIR 862.

²⁶ *Haryana v. Bhajanlal*, 1992 AIR 604.

	Manzar Sayeed Khan v. State of Maharashtra 2007 5 SCC 1. The said judgment disposed of the appeals against the order dated 6-5-2004 of the High Court of Judicature at Bombay in Criminal Writ Petitions Nos. 280 and 370 of 2004. Manzar Sayeed Khan is the constituted attorney and Managing Director of the Oxford University Press, India, the publisher of the book titled "Shivaji: Hindu King in Islamic India". Vinod Hansraj Goyal is the proprietor of Rashtriya Printing Press, Shahdara, Delhi, the printer of the said book.
Issues	Whether the judgment of this Court in Manzar Sayeed Khan v. State of Maharashtra 2007 5 SCC 1 requires clarification/modification?
Ruling	This Court, after hearing the learned counsel for the parties, concluded in para 21 of the judgment as follows: "In the result, for the abovesaid reasons, the respondents shall not proceed against Professor James W. Laine, the author of the book, for offences under sections 153, 153-a and 34 ipc being the subject-matter of FIR No. 10 of 2004 registered at Deccan Police Station, Pune."
Relevance of section	The Supreme Court held that mere publication of a book does not amount to promoting enmity unless there is a deliberate and malicious intention to promote enmity or hatred.

Manzar Sayeed Khan is the constituted attorney and Managing Director of the Oxford University Press, India, the publisher of the book titled "Shivaji: Hindu King in Islamic India". Vinod Hansraj Goyal is the proprietor of Rashtriya Printing Press, Shahdara, Delhi, the printer of the said book.

Mr Soli J. Sorabjee, learned Senior Counsel appearing on behalf of Manzar Sayeed Khan, vehemently contended that on reading of the FIR it becomes clear that it does not disclose any

offence under Sections 153, 153-A and 34 IPC²⁷ since Section 153-A requires that there should be some element of mens rea in doing acts contemplated in the section.

He next contended that there is no allegation in the FIR to prove prima facie that the paragraph complained of causes enmity between different classes of the society or creates any situation of hatred between or among different religions/castes/social groups as contemplated in Section 153-A, whereas Section 153 IPC is not at all attracted in this case.

It was during the review of the historical facts that the allegedly offending paragraph was written and as soon as it was brought to the notice of the appellants and the author that one section of the society had raised some objections in regard to the statement in one passage of the book, the entire stock of the book was withdrawn immediately from the market in the country. He lastly submitted that the book was written with its objective to review the historical facts of a great historical figure, therefore, the book has to be read and examined as a whole and a solitary paragraph does not provide any cogent ground to file FIR against the appellants, being publisher and printer of the book.

The observations of Vivian Bose, J. in *Bhagwati Charan Shukla v. Provincial Government*²⁸, was reiterated, “the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. ... It is the standard of ordinary reasonable man or as they say in English law ‘the man on the top of a Clapham omnibus’.”

The author thought his work to be worthy of dedication to his mother, Marie Whitwell Laine, which was purely a scholarly pursuit and without any intention or motive to involve himself in trouble.

It is the sole responsibility of the State to make positive efforts to resolve every possible conflict between any of the communities, castes or religions within the State and try every possible way to establish peace and harmony within the State under every and all circumstances.

Therefore, for the abovesaid reasons, it was held that the respondents shall not proceed against Professor James W. Laine, the author of the book, for offences under Sections 153, 153-A and 34 IPC being the subject-matter of FIR No. 10 of 2004 registered at Deccan Police Station, Pune.

²⁷ The Indian Penal Code, 1860, §34, Act No. 45 Of 1860.

²⁸ *Bhagwati Charan Shukla v. Provincial Government*, 946 SCC ONLINE MP 5.

4. Sayanth V. State Of Kerala

Citations	SCC OnLine Ker 1163
Bench	P.V. Kunhikrishnan
Facts	The petitioner filed two Criminal Miscellaneous Cases alleging offenses punishable under Sections 447 (criminal trespass) and 153 (wantonly giving provocation with intent to cause riot) read with Section 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code (IPC). Both cases arise from the same set of allegations and are therefore being disposed of by a common order.
Issues	1. Whether the actions of the petitioner constitute an offense under Section 447 IPC. 2. Whether the actions of the petitioner constitute an offense under Section 153 IPC
Ruling	The application is granted, and all charges against the petitioner are dismissed.
Relevance of section	The court examined the definitions and interpretations of the terms "wantonly" and "malignantly" as they relate to the allegations under Section 153 IPC. It noted that "wantonly" refers to causing harm or damage deliberately, while "malignantly" carries a different connotation. In light of the precedent set in the case of Sanjeev (referred to as "supra"), the court concluded that the petitioner did not meet the threshold for culpability under Section 153 IPC.

This Court considered the ingredients of Section 153 IPC in the order dated 209.09.2023 in Crl.M.C.No.1895/2023, the relevant portions,

“7. The essential ingredient to constitute the offence under Section 153 IPC are as follows:-

- 1) the accused did an illegal act.
- 2) the act was done malignantly or wantonly.
- 3) the act was done with the intention to provoke or knowing that it will provoke a person to

cause the offence of rioting.”

Both these terms convey that the two expressions 'malignantly' or 'wantonly' used in S.153 IPC indicate that there must be a higher degree of malice or evil that is projected or evident in the act alleged. The provision further requires that the act alleged to be done must be illegal. The word illegal is defined in S.43 of IPC to mean everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action.

As held in *R. Venkatkrishnan v. Central Bureau of Investigation*²⁹, 2009 (11) SCC 737, the word has to be given a wide meaning.

The case of the petitioner w.r.t this particular writ petition was that the prosecution case is that on 10.10.2015, the accused affixed a poster containing the picture of a lotus on an electric post using gum and while doing so the accused made commotion near Annamkulangara Devi Temple.

The bench failed to understand how Section 153 IPC is attracted in the facts, even if the above allegations are accepted. The only overt act attributed to the accused is that he affixed a poster of a lotus, which is a symbol of a political party, on an electric post and made commotion.

I am of the considered opinion that even if that act is accepted in toto, the offence under Section 153 IPC is not made out. Of course, it may be an illegal act to affix a poster on an electric post. But affixing a poster containing the symbol of a recognized political party on an electric post cannot be treated as an act done malignantly or wantonly.

In Sanjeev's case³⁰, this court observed that the word malignantly and wantonly are not used synonymously in the section. The word malignantly is used for the purpose of expressing a higher degree of intensity or ill-will. While the word wantonly means causing harm or damage deliberately.

It was observed that even if in the particular case all the allegations made by the petitioners is to be accepted it would still not warrant the need or meet the essentials for the application of s.153 IPC.

5. *Aroon Purie v. H.L. Varma And Anr.*

Citations	1999 CRILJ 983
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²⁹ *R. Venkatkrishnan v. Central Bureau of Investigation*, 2009 (11) SCC 737

³⁰ *Sanjeev S. v. State of Kerala*, 2023 SCC ONLINE KER 1948

Bench	T.K. Chandrashekhara Das
Facts	A practicing advocate in Bombay, a worshipper of Chhatrapati Shivaji, filed a complaint against the petitioner, Arun Purie, for allegedly committing an offense under Section 153 read with 114 of the IPC. The petitioner had chaired a 1991 debate on "secularism" organized by *India Today*, where Mr. Khushwant Singh made derogatory remarks about Shivaji, later published in the magazine. The complaint claimed these remarks could provoke unrest among Shivaji's followers. The petitioner argued he merely presided over the debate and published a true account of the speeches, denying any offense under Section 153 IPC, and questioned the jurisdiction of the Bombay Magistrate since the events occurred in New Delhi.
Issues	Whether the act of presiding over a debate and publishing the speeches made by participants amounts to an offense under Section 153 of the IPC.
Ruling	The court held that no offense under Section 153 IPC was made out. The court emphasized that Section 153 IPC requires three elements: an illegal act, the act being done malignantly, and the act likely leading to a riot. In this case, the court found that presiding over a debate and publishing the speeches were not illegal acts. Additionally, the true publication of the debate was considered an act done in good faith and not with any malicious intent.
Relevance of section	The court determined that presiding over a debate and publishing the speeches made during it, even if they included controversial remarks, were not illegal and were done without any malicious intent

The complaint in this case was submitted by an attorney in practice in Bombay. She claimed that the petitioner, Arun Purie, had violated Sections 153 and 114 of the Indian Penal Code

(IPC). The dispute began with an India Today debate on "secularism" in 1991, during which eminent figures discussed their opinions. Mr. Khushwant Singh made comments about Chhatrapati Shivaji during the argument that were interpreted as disparaging. After these comments appeared in India Today, there were rumors that they would enrage Shivaji's devotees and cause chaos.

Whether the petitioner might be held accountable under Section 153 IPC for just presiding over the debate and publishing the statements was the main legal point.

In its analysis, the court emphasized that the petitioner's role in the debate was passive; he simply presided over the event and published a true account of the speeches made by participants. The court noted that these actions, even if they involved the publication of controversial remarks, could not be considered illegal or done with malicious intent. As such, they did not satisfy the requirements of Section 153 IPC, which necessitates an illegal act with the potential to cause a riot.

The court also addressed the broader implications of holding an individual responsible for publishing content from a debate, especially when done in good faith. It pointed out that such actions, when performed without malignancy, should not be criminalized under Section 153 IPC, as doing so would stifle free speech and the healthy exchange of ideas. The court, therefore, ruled that no offense had been made out under Section 153 IPC, leading to the quashing of the complaint and proceedings.

This ruling underscores the importance of intent and the nature of the act when interpreting provisions of the IPC. It reaffirms that for an act to fall under Section 153 IPC, it must not only be illegal but also performed with a deliberate intent to provoke violence. By exonerating the petitioner, the court reinforced the principle that the mere publication of speech, especially in a debate setting, should not be criminalized unless it is done with clear malicious intent.

VII. CONCLUSIONS AND SUGGESTIONS

"Having the freedom of speech doesn't mean saying whatever you want, it means saying what's humane, hateless and non-prejudicial." – Abhijit Naskar, Citizens of Peace

From this paper and the requisite research that went into its curation, one thing that has emerged clearly is that freedom of speech is not an unconditional or absolute right, and shouldn't be as well. There is a broad distinction between criticism and provocation. On one hand, while it is necessary to express well-founded criticism over the state of affairs in order to promote improvement and growth by pointing out the problems in any situation, however, using this

privilege as a curtain immunity to say anything and incite hatred is absolutely detrimental to any state. These sections combat exactly this. Under the garb of free speech, hate speech and violence cannot be propagated. This is a vital job of any government, since the main goal of any state is to ensure that a constant state of tranquility and law and order is maintained, and no anti-social elements cause disturbance to this state. However, like limitations on freedom of expression, there are also limitations on the state while enforcing this law.

It is a rational concern that the government may book any person who is anti-government under these sections, similar to concerns related to sedition law, however, this is where the judiciary comes in. From the analysis of previous case laws cited in this paper, it is a Herculean task to prove guilt under these sections since the courts take the limitation on freedom of speech very seriously, and is the rarest of the rare circumstances only provide punishment. Thus, although the legislative intent of the sections itself is quite understandable and even justifiable, yet curtailing the free speech by enforcing this section is a seldom seen sight by the judiciary.

VIII. BIBLIOGRAPHY**(A) Cases**

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