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How Police Misused the Law to Arrest Ashoka University Professor

By: Vineet Bhalla

Ali Khan Mahmudabad's social media posts do not meet the standards or even definitions of the stringent provisions invoked against him.

Endangering India's sovereignty and unity, causing disharmony between religious communities, outraging religious feelings – Haryana Police invoked a wide sweep of legal provisions on Sunday morning to arrest academic Ali Khan Mahmudabad for a social media post. Later in the day, he was charged with insulting the modesty of women and [remanded](#) to two-day police custody.

However, none of his remarks meet the definitional requirements of these provisions, *Scroll's* analysis shows.

In a Facebook post on 8 May, Mahmudabad, an associate professor at Ashoka University, had highlighted the irony of Hindutva commentators praising Colonel Sofiya Qureshi, who had represented the Army during media briefings on Operation Sindoor, India's military offensive against terrorist infrastructure in Pakistan and Pakistan-occupied Kashmir.

“Perhaps they could also equally loudly demand that the victims of mob lynchings, arbitrary bulldozing and others who are victims of the Bharatiya Janata Party's hate mongering be protected as Indian citizens,” he had said.

Even a superficial or mechanical reading of these sections shows that Mahmudabad's post does not contain the elements necessary to establish these offences.

Ten days later, the police in Bharatiya Janata Party (BJP)-ruled Haryana arrested him under two first information reports. One is based on a complaint by Yogesh Jathedi, a BJP Yuva Morcha leader who is also the sarpanch of a village near Ashoka University in Sonipat. The other is based on a complaint by Renu Bhatia, the chairperson of the Haryana State Commission for Women.

The sections of the Bharatiya Nyaya Sanhita invoked in the FIRs seek to punish acts intended to insult a woman's modesty and those likely to cause disharmony and public disorder; incite secession, armed rebellion or subversive activities; cause public mischief; and insult religious beliefs.

But there is nothing in Mahmudabad's [social media posts](#) that even superficially meets the high thresholds required by these sections.

In March, the Supreme Court had [criticised](#) the tendency of the police to use some of these sections indiscriminately and held that “the police machinery is [...] bound to honour and uphold freedom of speech and expression conferred on all citizens”.

The post

In his Facebook post, Mahmudabad had commended Operation Sindoor and criticised Pakistan for responding militarily to India's strikes on terrorist infrastructure. He described the loss of civilian lives on both sides as “tragic” and called for a de-escalation.

On the optics of the press briefings by Qureshi and Wing Commander Vyomika Singh, he said the “grassroots reality” faced by Muslims was “different from what the government tried to show.” But the press briefings showed that “an India, united in its diversity, is not completely dead as an idea,” he added.

Three days later, in [another post](#), Mahmudabad criticised the [online abuse](#) against Foreign Secretary Vikram Misri for announcing the ceasefire.

Quoting Prophet Muhammad and from the Gita, he suggested that true justice and honour lies in ethical restraint. War mongering “disrespect[s] the seriousness of war and dishonour[s] the lives of soldiers whose lives are actually on the line,” he wrote.

The complaints

On 14 May, the Haryana State Commission for Women summoned Mahmudabad, claiming that his remarks had “disparaged women officers in the Indian armed forces and promoted communal disharmony.” Mahmudabad submitted a written response through his lawyers. In a public statement, he said, “There is nothing remotely misogynistic about my comments that could be construed as anti-women.”

Bhatia claimed that Mahmudabad ignored the summons and did not appear before the commission when its members visited Ashoka University on 15 May. The next day, the women’s commission wrote to Haryana’s Director General of Police recommending the registration of an FIR against Mahmudabad.

On the evening of 17 May, the sarpanch of Jathedi village, Yogesh Jathedi, lodged a police complaint against him. The complaint misrepresented the 8 May post, alleging that Mahmudabad “said that due to some crazy military personnel in both countries, there is tension on the border like this, and people are being thrown to their death arbitrarily, unexpectedly and unnecessarily.”

Criticism of the state – even strong criticism – does not automatically meet the high threshold of disturbing public tranquility required by law.

Jathedi claimed that Mahmudabad worked “to incite people against the country at such a sensitive time” and “benefit external or foreign forces in the name of religion.”

The complaint also claimed that Mahmudabad had said “these things” in person to Jathedi and four or five other people. The complaint does not disclose what “these things” were.

On the basis of Jathedi’s complaint, the Haryana police proceeded at lightning speed, filing an FIR against Mahmudabad before arresting him on Sunday morning.

Around noon, the police received a complaint from Bhatia with even more sweeping accusations. The complaint claimed that referring to the BJP as a “hate mongering entity” and Hindutva commentators as a “class” promoted enmity and disharmony.

Unusually enough for a police complaint, it refers to four provisions of the Bharatiya Nyaya Sanhita and makes the case for Mahmudabad’s posts being covered by the offences. A police complaint typically only outlines the alleged crime and the police later books the alleged offender under the suitable penal provisions.

The FIRs

The first FIR on the basis of Jathedi’s complaint invokes Sections 152, 196(1)(b), 197(1) and 299 of the Bharatiya Nyaya Sanhita, 2023. The second FIR, based on Bhatia’s complaint, is under Sections 79, 152, 196(1) and 353(1) of the Sanhita.

Even a superficial or mechanical reading of these sections shows that Mahmudabad’s post does not contain the elements necessary to establish these offences.

[Section 152](#) punishes acts “endangering sovereignty, unity and integrity of India”. But Mahmudabad’s post uses nationalistic phrasing – “Jai Hind” – and echoes the much-touted principle of India’s unity in diversity. There is no language advocating for secession, rebellion or separatist activities.

Section 152 of the Sanhita mirrors the language of the sedition provision – [Section 124A](#) – under the now-superseded Indian Penal Code, which was put on hold by the Supreme Court in May 2022.

[Section 79](#) penalises “acts, words or gestures intended to insult modesty of a woman”. Its core, the intent to insult the modesty of any woman, is entirely unrelated to Mahmudabad’s posts. There is no language, phrasing or implication in his posts that suggests an intention to insult the modesty of any woman.

[Section 196\(1\)\(b\)](#) deals with disturbing communal harmony and public tranquility. Mahmudabad’s post refers to Muslims as victims of state-supported communalism but this can in no way be interpreted as an instigation against other groups or a direct attack on inter-group harmony aimed to cause public disturbance.

|| Mahmudabad’s arrest is the latest instance of the misuse of these sections and their previous versions in the Indian Penal Code, 1872, which the Bharatiya Nyaya Sanhita replaced last year.

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[Section 197\(1\)\(c\)](#) deals with “imputations [and] assertions prejudicial to national integration” and any assertion, plea or appeal concerning the obligation of any class of persons by religion, race, language caste, or community that is likely to cause disharmony, enmity, hatred.

Mahmudabad’s post contains no reference to an obligation of any religious group. It emphasises the state’s duty to protect citizens and criticises political and social behaviour. It has nothing to do with what a group must do or believe based on their identity.

[Section 299](#) covers “[d]eliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs”. But Mahmudabad’s post criticises political and social behaviour – “hate mongering”, “communalism” – and the actions of pro-Hindutva commentators and the BJP, rather than religious tenets or practices.

[Section 353](#) penalises “statements conducing to public mischief”. The post, while critical of social and political issues and discussing sensitive matters like communalism, fails to meet the specific requirement of intention to incite specific harms related to the armed forces, public order or inter-group conflict through false information. In fact, it explicitly calls for unity and citizen protection.

Section 152 carries a prison term of up to seven years while all the other offences are punishable with imprisonment up to three years.

Supreme Court clarifications

Mahmudabad’s arrest is the latest instance of the misuse of these sections and their previous versions in the Indian Penal Code, 1872, which the Bharatiya Nyaya Sanhita replaced last year.

Section 152 of the Sanhita is a more stringent version of the sedition provision, as *Scroll* has previously [explained](#).

Three other provisions of the Sanhita invoked against Mahmudabad are derived from similar provisions of the Indian Penal Code that were known as the hate speech provisions of Indian criminal law.

Only in March, the Supreme Court set standards for filing an FIR under Sections 196, 197(1) and 299 of the Sanhita while hearing a petition filed by Congress MP and poet [Imran Pratapgarhi](#), who was booked for a social media post on one of his poems:

The court said the police officer must read the written words or hear spoken words and “consider the meaning of the spoken or written words” to determine whether their contents disclose the commission of the offence. While doing this, the police must not rely on the standards of people “who always perceive criticism as a threat to their power or position”, it added.

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