
DIGITAL SPEECH, SOCIAL MEDIA, AND TERRORIST PROPAGANDA UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

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ABSTRACT

Advancement in internet technologies and online social media networks has proved beneficial to society in contemporary times. In the traditional times where it took a long time for information to transmit, today it can spread widely within a short span of time. Social media platforms have become a space for people to express themselves and navigate their thoughts to the entire world. It provides room for people to express their views, conduct political debates, and express dissent. However, there is a dark side to this technological expansion. These social media platforms are misused by several individuals to spread hate speech, violence, and objectionable propaganda. The digitalisation of technology and speech has given an extended arm to extremist and terrorists organisations. These social media platforms are now used by terrorist or extremist groups to spread propaganda, glorify violence, and recruit members which can threaten the national security. This dual use has led to many legal and constitutional challenges. To address the issue of arising threats to national security because of digital speech, social media, and terrorist propaganda, India has invoked the provisions of Unlawful Activities (prevention) Act, 1967 (UAPA) several times. In the recent times, UAPA has emerged as principal counter- terrorism legislation in the country. Although the act was enacted in pre-digital era, but, the provisions of the act are broadened over time by several amendments and can be extended to apply on digital speech and online activity. The research paper examines the provisions of UAPA and analyses the application of these provision for regulating digital speech and terrorism on social media platforms. The paper also draws the reference of how the stringent provisions of the act undermine the constitutional guarantees provided under Article 19 (1)(a) and provides for a balanced approach by requiring combined effective legal enforcement, judicial oversight and greater public awareness.

Keywords: Digital speech, terrorist propaganda, social media, UAPA, national security, freedom of expression

Introduction

The rapid expansion of digital communication and social media platforms has transformed the way people interact and participate in public discourse. Article 19(1)(a) of the Constitution of India provides every citizen of the country with a fundamental right to freedom of speech and expression. This right guaranteed by the constitution is exercised by people on digital and social media platforms as well. Today, people share their views, thoughts, and engage in political discussions on such platforms. These platforms have enhanced the exercise of freedom of expression.¹ It allows the citizens to participate in social and political matters which were once considered to be impossible. However, this openness and accessibility have also raised several concerns regarding the opportunities of misuse as terrorist organizations depends on digital networks for spreading their radical thoughts, glorifying violence, recruitment etc².

The increase in use of digital tactics by individuals or organisations for the spread of terrorism can pose a serious threat to the security of the nation. With the use of digital technologies, these organisations can spread their thoughts and networks rapidly which can sway the vulnerable audiences, unlike the traditional methods like physical distribution of leaflets which was slower and limited in reach. Because of this advancement in the use of technology by such groups, information can reach millions of people and affect the constitutionality of several democratic governances. Due to this, the government and law enforcement agencies have become concerned about the misuse of digital platforms.

In India, the danger of digital extremism has led to a greater dependence on counter-terrorism laws. The Unlawful Activities (Prevention) Act, 1967, has emerged as a principal legislation in curbing the evils of terrorism in the country. The act was introduced initially to address the activities that endangered India's sovereignty and unity. However, the law has gone through multiple amendments over time which has broadened its reach to cover different types of terrorist acts, support for terrorist organizations, and the funding of terrorism. With the increased use of digital platforms by extremist and terrorist groups, the provisions of this Act are now often applied in cases related to objectionable online speech, social media content,

¹ Gautam Bhatia, "Freedom of Speech and the Constitution," *National Law School of India Review* (2013).

² Anup Surendranath, "Counter-Terrorism Laws and Civil Liberties in India," *EPW* (2015).

and digital communications.

The application of anti-terror legislation has led to rise of constitutional issue concerning safeguarding the right of freedom of expression guaranteed by the constitution of India under Article 19(1)(a). This has resulted in difficulty for legal institutions in differentiating between acceptable speech and statements that actually encourage violence or support terrorism. This research paper aims to examine the connection between social media communication, and counterterrorism legislation in India. It analyses the relevant provisions of the Unlawful Activities (Prevention) Act, 1967 to establish a balance that needs to be preserved between ensuring national security and upholding constitutional freedoms, especially in a time when digital platforms have a major influence on public discussion.

Research Methodology

This study adopts a doctrinal and analytical methodology with analytical examination of legal provisions and judicial decisions.. Primary sources include statutory provisions of the UAPA, relevant constitutional provisions, and judgments of the Supreme Court of India and High Courts.

Secondary sources include academic literature, law commission reports, and scholarly commentary on national security law and freedom of expression. The study relies on qualitative legal analysis and interpretation of statutory judicial materials. It focuses on doctrinal coherence, constitutional compatibility, and the practical consequences of legal interpretation.

Objectives of the Study

1. To examine the manner in which digital speech and online activities are regulated under the Unlawful Activities (Prevention) Act, 1967.
2. To analyse the application of provisions of the UAPA with respect to terrorism emanating through social media.
3. To study the constitutional implications of applying anti-terror legislation to digital speech and expression.

4. To examine the role of the judiciary in interpreting and applying UAPA provisions in cases involving online speech.

Legal Framework under the Unlawful Activities (Prevention) Act, 1967

The regulation of terrorist activities in India is primarily governed by the Unlawful Activities (Prevention) Act, 1967 (UAPA). It serves as primary counter-terrorism legislation. Several provisions within the Act provide the legal basis for prosecuting individuals involved in activities connected with terrorist propaganda and extremist communication.

Section 2(1)(o): Unlawful Activity

Section 2(1)(o) of the act defines unlawful activity as any action taken by any individual or association which is intended to bring or attempts to bring cession or secession of part of territory of India. It also covers all the disclaims, questions and, disrupts which target to disrupt the sovereignty and integrity of India. All acts intending to cause disaffection are covered as well. It can be done through action, signs, words, writing

Section 13: Punishment for unlawful activities.

Section 13 of the Act provides punishment for unlawful activities. Section 13 states that anyone who takes part in or commits or advocates or abets or advice or incites or assists any unlawful activity or association shall be punished with imprisonment for a term which may be extended to seven years and shall be liable to fine. Sub-section (2) punishes those who assist unlawful activity of any association. In the digital context, online content advocating secession, supporting banned organizations, or encouraging acts against the state may fall within the ambit of this provision. Reliance can be placed upon *Kedar Nath Singh v. State of Bihar* where the Supreme court held that only speech which incites violence can be brought under the purview of offence. It can be applied to digital speech on digital platforms as well.³

Section 38: Offence relating to membership of a terrorist organization

Section 38 deals with offences relating to membership of a terrorist organization. It may include digital associations or participation in online forums, messaging groups, or digital

³ AIR 1962 SC 955

networks. However, the section lays the proviso that no person shall be charged if he proves that he has not taken part in any unlawful activity of the organisation and such organisation is not declared unlawful or terrorist organisation. Sub-section (2) of section 38 commits offence under this section shall be punished with imprisonment for a term not exceeding ten years or with fine or with both.⁴In *Arup Bhuyan v. State of Assam*, the Court held that mere association with an unlawful organization does not automatically constitute a criminal offence unless there is evidence of involvement in violence or incitement to violence⁵. This principle was reaffirmed in *Indra Das v. State of Assam*, where the Court stressed that criminal liability must be based on active participation or incitement, rather than mere ideological sympathy⁶

Section 39: Offence relating to support given to a terrorist organisation.

Section 39 penalizes providing support to a terrorist organization. It can extend to online activities such as sharing propaganda materials, promoting extremist narratives, or assisting in recruitment through social media platforms.

Section 40 of the act criminalizes the raising of funds for terrorist organizations. This can be applied to funds through digital transactions or online crowd funding mechanisms.

Judicial Perspective on Balancing National Security and Digital freedom

India's digital landscape is vast and vibrant. In this vibrant online platform speech or certain expression can turn out to be chaotic. This calls for regulation but not at the cost of fundamental rights guaranteed by the constitution of India. The supreme court and various High Courts have given various judicial interpretations demonstrating requirement of a balanced and equilibrium situation where the freedom of expression is not curtailed under the garb of national security by these stringent provisions of the Unlawful Activities (Prevention) Act, 1967. The Supreme Court in *Shreya Singhal v. Union of India* emphasized that only speech that amounts to incitement to violence or disrupts public disorder can be restricted. Mere discussion or advocacy must remain protected.⁷ In *Kedar Nath Singh v. State of Bihar*, the Supreme Court held that expressions criticizing the government or expressing dissatisfaction with public

⁴ Unlawful Activities (Prevention) Act, 1967, s. 38

⁵ (2011) 3 SCC 377.

⁶ (2011) 3 SCC 380.

⁷ (2015) 5 SCC 1.

policies cannot be treated as an offence.⁸ In *Asif Iqbal Tanha v. State (NCT of Delhi)* the Delhi High Court held that the provisions of UAPA cannot be used to criminalize ordinary protest activity⁹. In *Devangana Kalita v. State (NCT of Delhi)*, the Court granted bail and observed that the right to protest is a fundamental democratic right¹⁰. In *Vernon Gonsalves v. State of Maharashtra*, the Supreme Court held that mere possession of literature associated with a banned organization does not automatically prove terrorist activity¹¹. In *S. Rangarajan v. P. Jagjivan Ram*, the Supreme Court held that freedom of expression cannot be suppressed unless the situation created by the speech is dangerous to the community¹². Therefore, an effective approach is required to tackle the problem of online extremism in digital speech. Legal safeguards, judicial oversight, technological cooperation with digital platforms, and public awareness initiatives should be encouraged to ensure that security concerns are addressed without eroding the constitutional commitment to freedom of expression.

Conclusion

The rapid growth of digital technology and social media has changed the landscape of communication. With increased use, complex security challenges have arisen. These platforms are no longer just used for discussions, political engagement, or social mobilization, but these have created a room for extremist organizations or groups to spread their radical thoughts and glorify violence. This requires rightful action to be taken by the constitutional authorities and government. The implementation of UAPA has helped in curbing out the dangers of terrorism in the country but it has also raised an alarm for the cautious use of the legislation as it can affect the constitutional guarantees provided under Article 19(1)(a) of the constitution of India. The judicial interpretation by the courts in recent times has reiterated that the right of freedom of speech and expression is a cornerstone of a democratic society. Therefore, the regulation of digital speech should be done with utmost caution and consciousness.

It can be concluded that addressing the challenge of online terrorist propaganda requires a balanced approach. It requires combined effective legal enforcement, judicial oversight, technological cooperation with digital platforms, and greater public awareness. Following such a comprehensive strategy can lead to effective safeguarding of national security. UAPA is an

⁸ AIR 1962 SC 955.

⁹ SCC OnLine Del 3253.

¹⁰ 2021 SCC OnLine Del 3254.

¹¹ 2023 SCC OnLine SC 885.

¹² (1989) 2 SCC 574.

efficient tool to unlawful activities including terrorism, it must be invoked judiciously with utmost care and caution.

VII. References

Books

V.N. Shukla, *Constitution of India*, 13th edn., Eastern Book Company, Lucknow (2021).

M.P. Jain, *Indian Constitutional Law*, 8th edn., LexisNexis, Gurgaon (2018).

A.G. Noorani, *Constitutional Questions in India: The President, Parliament and the States*, Oxford University Press, New Delhi (2000).

Shivani Lohiya, *Law of Sedition* (Foreword by Ram Jethmalani), Universal Law Publishing, New Delhi, 2014.

Kent Roach, *Comparative Counter-Terrorism Law*, Cambridge University Press, Cambridge (2015).

Legislation

Unlawful Activities (Prevention) Act, 1967.

Constitution of India.

Information Technology Act, 2000.

Case Laws

Shreya Singhal v. Union of India, (2015) 5 SCC 1.

Arup Bhuyan v. State of Assam, (2011) 3 SCC 377.

Indra Das v. State of Assam, (2011) 3 SCC 380.

Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

State of Kerala v. Raneef, (2011) 1 SCC 784.

Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

Vernon Gonsalves v. State of Maharashtra, 2023 SCC OnLine SC 885.

Asif Iqbal Tanha v. State (NCT of Delhi), 2021 SCC OnLine Del 3253.

Devangana Kalita v. State (NCT of Delhi), 2021 SCC OnLine Del 3254.

Journal Articles

Gautam Bhatia, "Freedom of Speech and the Constitution," *National Law School of India Review*, Vol. 25 (2013).

Suhrith Parthasarathy, "Free Speech in the Age of the Internet," *Indian Journal of Constitutional Law*, Vol. 11 (2017).

Anup Surendranath, "Counter-Terrorism Laws and Civil Liberties in India," *Economic and Political Weekly*, Vol. 50 (2015).

Lawrence Liang, "Internet Regulation and Free Speech in India," *NUJS Law Review*, Vol. 7 (2014).