Panjab University Law Magazine (MAGLAW)
ISSN: 2582-3507, Volume IV Issue II, pp 250-272

REINTERPRETING ELECTORAL SILENCE: SECTION 126 OF THE REPRESENTATION OF THE PEOPLE ACT AND CONSTITUTIONAL PROPORTIONALITY

Adamya Rawat[*]
Aadesh Singh[**]

ABSTRACT

This paper interrogates the viability of India's 48-hour "silence period" under Section 126 of the Representation of the People Act, 1951 in an electoral environment where algorithmic recommender systems continue to resurface campaign content after formal canvassing has ceased. Anchored in Indian constitutional jurisprudence on prior restraint, proportionality, and Article 324, it proposes the Foreseeability-Control-Mitigation (F-C-M) standard: resurfacing constitutes a prohibited "display" where it arises as a foreseeable effect of platform design, is traceable to an actor exercising proximate control, and persists notwithstanding available mitigation. The Election Commission of India is positioned to enforce ex ante obligations through circulars and process codes, while courts retain ex post proportionality review. Interdisciplinarily, Bourdieu's field theory explains why silence operates as an equalisation device, temporarily dampening the conversion of economic capital into symbolic dominance at the moment of voter decision. Comparative frameworks from the EU, OSCE, and Australia reinforce the defensibility of short, process-oriented reflection windows when operationalised through transparency requirements, archival access, algorithmic demotion, and narrowly confined takedowns. The conclusion advanced is that S126 is not a relic but, with judicial reinterpretation, remains enforceable, rights-compatible, and technologically attuned.

Keywords: *Electoral silence; Algorithmic recommender systems; Section 126 RPA; Constitutional proportionality; Election Commission of India.*

1. INTRODUCTION

Section 126 of the Representation of the People Act, 1951 (RPA) creates a 48-hour "silence period" that shuts down last-mile persuasion before polling closes in a constituency; its purpose is voter quietude, equality of electoral opportunity, and the integrity of the poll.[1] The provision evolved from a limited, meeting-focused

[*] B.A.LL.B (Hons.), Rajiv Gandhi National University of Law, Patiala.
[**] B.A.LL.B (Hons.), Rajiv Gandhi National University of Law, Patiala.

[1] The Representation of the People (Amendment) Act, 1961 (Act 40 of 1961); The Representation of the People (Amendment) Act, 1996 (Act 21 of 1996).

ban in 1961 into the present media-aware blackout in 1996, adding a definition of "election matter" and moving India toward a technology-neutral cooling-off window.[2] Parliament and the Election Commission of India (ECI) have consistently justified this pause as a content-agnostic, time-bound restraint that levels the field and protects deliberative autonomy at the decision point.[3]

The digital turn complicates these premises. Algorithmic recommenders on large platforms "surface" and re-amplify political content without any fresh act by a candidate, campaign, or broadcaster; users in a constituency under silence can still be nudged by recirculated clips, auto-queued videos, or microtargeted boosts produced upstream[4]. ECI's media handbooks and FAQs instruct broadcasters and online intermediaries to avoid "election matter" in the blackout, but the statutory text still names "cinematograph, television or other similar apparatus", a TV-era formulation that creates frictions when applied to recommender-driven feeds.[5] The Law Commission's Report No 255 flagged this under-inclusiveness a decade ago and urged media-neutral drafting; ECI's own 2019 committee acknowledged enforcement gaps in multi-phase and digital conditions.[6]

Doctrinally, Indian free-speech law starts from a heavy presumption against prior restraint (Brij Bhushan; Romesh Thappar), admits narrowly tailored, time-bound controls where necessity is shown (Virendra; K.A. Abbas), and. most recently, requires structured proportionality, temporariness, and least-restrictive alternatives for speech-impairing measures (Sahara India; Anuradha Bhasin).[7] Read with Article 324 jurisprudence (Mohinder Singh Gill; ECI v Ashok Kumar; Kanhiyalal Omar), these lines sustain S126 as a process-protecting, time-place-manner rule—if enforced with precision and technological realism.[8]

---

2 *ibid.*

3 Election Commission of India, *Compendium of Instructions on MCC and Section 126* (various circulars).

4 Election Commission of India, *Handbook for Media* (2019).

5 The Representation of the People Act, 1951 (Act 43 of 1951), s. 126(1)(b); Election Commission of India, *FAQ on Media Coverage and Section 126/126A* (2023).

6 Law Commission of India, *255th Report on Electoral Reforms* (2015); Election Commission of India, *Sinha Committee Report on Section 126* (2019).

7 *Brij Bhushan v. State of Delhi, AIR 1950 SC 129; Romesh Thappar v. State of Madras, AIR 1950 SC 124; Virendra v. State of Punjab, AIR 1957 SC 896; K.A. Abbas v. Union of India, (1970) 2 SCC 780; Sahara India Real Estate v. SEBI, (2012) 10 SCC 603; Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.*

8 *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405; *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216; *Kanhaiyalal Omar v. R.K. Trivedi*, (1985) 4 SCC 628.

This paper's novelty is doctrinal and interpretive, not techno-regulatory. It centres the legal question that current literature gestures at but does not resolve for India: whether algorithmic "fresh display" within the silence window constitutes prohibited "displaying … election matter" under S126, and, if so, what judicially manageable standards follow for courts and the ECI without collapsing into overbroad censorship.[9] It proposes an India-specific proportionality-and-fit test for the silence window that treats recommender-driven resurfacing as a form of last-mile influence, while preserving bona fide news, civic information, and non-persuasive content.[10] The account is anchored in Indian doctrine and institutional practice; it does not design a national "model" or rely on heavy econometrics.

Interdisciplinarily, the argument draws on Bourdieu's field theory and the extension to "media/meta-capital": during the final 48 hours, the capacity of actors to convert economic capital into symbolic dominance via mediated visibility spikes, and algorithmic systems now function as a new layer of meta-capital that can tilt the competitive field absent any fresh speech act. Recognising this dynamic helps justify a narrow, time-boxed constraint on *delivery* (not ideas) to secure equality of opportunity at the moment of choice—precisely the aim S126 historically served in broadcast media.[11]

The contemporary stakes are practical. ECI has issued platform-facing advisories (including AI/deepfake cautions) and coordinated expedited takedown practices during elections, but courts have only sporadically engaged with S126 in digital settings; high-court skirmishes expose textual gaps and uneven charging.[12] Comparative guidance from the Venice Commission and OSCE continues to defend short "reflection" windows while warning against overbreadth online—an equilibrium India's doctrine can reach by construing S126 to target algorithmically delivered *persuasion* in the blackout, subject to strict necessity and carve-outs.[13]

1.1 Objectives of Study

First, to articulate an Indian doctrinal test that maps S126's "displaying … election matter" to recommender-driven resurfacing during the 48-hour window,

---

9 Law Commission of India, *255th Report on Electoral Reforms* (2015): *supra* note 6.

10 *Sahara India Real Estate v. SEBI*, *supra* note 7; *Anuradha Bhasin v. Union of India*, *supra* note 7.

11 Pierre Bourdieu, *Language and Symbolic Power* (Polity Press, Cambridge, 1991).

12 Election Commission of India, *Advisory on Use of Social Media and Deepfakes* (2019); *Association for Democratic Reforms v. Union of India*, W.P.(C) 441/2019 (Del HC); *Ravindra Gaikwad v. Election Commission of India*, (2014) (Bom HC).

13 OSCE/ODIHR, *Handbook on Media Monitoring during Election Observation Missions* (2020); Venice Commission, *Code of Good Practice in Electoral Matters* CDL-AD(2002)023rev.

distinguishing passive hosting from algorithmic *delivery* that foreseeably reaches voters in a constituency under silence.[14]

Second, to synthesise Sahara India and Anuradha Bhasin into a calibrated proportionality framework for election-silence enforcement online: legitimate aim; real and proximate risk; medium-neutral narrow tailoring; least-restrictive alternatives; transparency and reviewability.[15]

Third, to specify institutional roles: what ECI may lawfully require by circular during the silence window (content-agnostic demotion/label/takedown of persuasive appeals; rapid-response channels) and what courts should scrutinise (necessity, neutrality, carve-outs for news/civic information).[16]

Fourth, to integrate Bourdieu's field-theory lens to justify the equality-of-opportunity rationale for a narrow delivery-focused restraint in the final 48 hours, without building statistical "models".[17]

Fifth, to delineate remedies that are enforceable and speech-respecting in India's institutional setting (e.g., constituency-scoped measures in multi-phase polls; ECI-authorised cognizance), avoiding blunt infrastructure shutdowns or indefinite orders.[18]

2. RESEARCH METHODOLOGY

This is a doctrinal–interpretive study and tt interrogates how S126 RPA should be construed in the algorithmic delivery context, and it derives a judicially manageable test from Indian constitutional doctrine on prior restraint, proportionality, and Article 324.[19] The analysis proceeds in four tracks which are described below.

First, the analysis of black-letter sources is done to study the statutory text and amendment history of S126, ECI circulars/handbooks, and Law Commission

---

14 The Representation of the People Act, 1951 (Act 43 of 1951), s. 126.

15 *Sahara India Real Estate v. SEBI*, *supra* note 7; *Anuradha Bhasin v. Union of India*, *supra* note 7.

16 Election Commission of India, *Compendium of Instructions on MCC and Section 126* (various circulars), *supra* note 3.

17 Pierre Bourdieu, "The Forms of Capital" in J. Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education* 241 (Greenwood Press, New York, 1986).

18 Election Commission of India, *Sinha Committee Report on Section 126* (2019), *supra* note 6; Law Commission of India, *255th Report on Electoral Reforms* (2015), *supra* note 6.

19 *Brij Bhushan v State of Delhi* AIR 1950 SC 129; *Romesh Thappar v State of Madras* AIR 1950 SC 124; *Virendra v State of Punjab* AIR 1957 SC 896; *KA Abbas v Union of India* (1970) 2 SCC 780; *Sahara India Real Estate Corp Ltd v SEBI* (2012) 10 SCC 603; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637; *Kaushal Kishor v State of UP* (2023) 4 SCC 1.

materials which supply the positive-law baseline and reveal the medium-neutral purpose of the 48-hour pause.[20] The doctrinal core is drawn from Supreme Court jurisprudence on prior restraint (Brij Bhushan, Romesh Thappar, Virendra, K.A. Abbas, Rangarajan), postponement orders (Reliance Petrochemicals, Sahara India), and modern proportionality and infrastructure cases (Shreya Singhal, Anuradha Bhasin, Kaushal Kishor).[21]

Second, technical mapping is performed to identify and analyse platform-facing literature on recommender systems which are used to distinguish *passive hosting* from *algorithmic delivery* (ranking, auto-queue, notifications) and to operationalise "fresh display" during the silence window as a delivery event attributable to the intermediary's system rather than a speaker's new act.[22] This mapping grounds the paper's central interpretive move: construing "displaying … election matter" to include recommender-driven resurfacing that foreseeably reaches voters in a constituency under silence.[23]

Third, comparative soft law. Guidance from OSCE/ODIHR and the Venice Commission on "reflection" or "silence" windows is used only as persuasive authority to test narrow tailoring online—supporting deliverance-focused, time-boxed measures and cautioning against overbroad content bans.[24] EU Regulation

---

[20] The Representation of the People (Amendment) Act, 1961 (Act 40 of 1961), s. 6; The Representation of the People (Amendment) Act, 1996 (Act 21 of 1996), s. 10; Election Commission of India, *Compendium of Instructions on MCC and Media* (2020), *available at*: https://ceotripura.nic.in/sites/default/files/2024-01/Compendium_of_ Instruction_on_ Media_ Related_ Matters_2020_19022021.pdf (last visited Sept. 28, 2025); Law Commission of India, *255th Report on Electoral Reforms* (2015) ch. 8, *available at*: https://cdnbbsr.s3waas.gov.in /s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081635.pdf (last visited Sept. 28, 2025).

[21] *Brij Bhushan* (n 24); *Romesh Thappar* (n 24); *Virendra* (n 24); *KA Abbas* (n 24); *S Rangarajan v P Jagjivan Ram* (1989) 2 SCC 574*; Reliance Petrochemicals Ltd v Indian Express Newspapers Bombay (P) Ltd* (1988) 4 SCC 592; *Sahara India* (n 24); *Shreya Singhal v Union of India* (2015) 5 SCC 1; *Anuradha Bhasin* (n 24); *Kaushal Kishor* (n 24).

[22] Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* 41–46 (Yale University Press, New Haven, 2018); European Commission, *Regulation (EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act)* [2022] OJ L 277/1, art. 27.

[23] The Representation of the People Act, 1951 (Act 43 of 1951), s. 126 (as amended by Act 21 of 1996), *available at*: https://www.indiacode.nic.in/handle/123456789/2096 (last visited Sept. 28, 2025).

[24] OSCE/ODIHR, Election Observation Handbook 42–44 (6th edn., Warsaw, 2010), *available at*: https://www.osce.org/odihr/elections/68439 (last visited Sept. 28, 2025); Venice Commission, Code of Good Practice in Electoral Matters II.2.3, CDL-AD(2002)023rev (2002), *available at*: https://www.venice.coe.int/files/Code%20de%20conduite_GBR%202025_WEB_A5.pdf (last visited Sept. 28, 2025).

2024/900 is consulted to benchmark transparency/targeting constraints that can coexist with domestic constitutional limits without importing an alien regime.[25]

Fourth, a sociological lens is adopted; Bourdieu's field/meta-capital frame is applied as a justificatory theory, not as data science: the silence window is defended as a delivery constraint that temporarily dampens the conversion of economic capital into symbolic dominance via algorithmic visibility. This supports equality of electoral opportunity without policing ideas.[26]

Each doctrinal proposition is tested against the *Anuradha–Sahara synthesis*: legality, legitimate aim, real and proximate risk in the final 48 hours, least-restrictive means, temporariness, transparency, and reviewability.[27] Remedies are specified at the level of enforceable administration (constituency-scoped demotion/labels/takedown of persuasive appeals; rapid channels; news/civic carve-outs), avoiding blunt network shutdowns or indefinite orders.[28] The paper excludes model-building and platform internals; its claims are replicable from public law texts, ECI materials, and platform-agnostic technical literature.[29]

3. CONTENT/DATA ANALYSIS

3.1 Indian Doctrinal Baseline

Section 126 RPA is a time–place–manner restraint aimed at insulating the final 48 hours before close of poll from last-minute persuasion, extended in 1996 to cover "displaying any election matter by means of cinematograph, television or other similar apparatus," a TV-era clause whose medium-neutral spirit is clear even if its enumeration is dated.[30] The provision's constitutionality rests on two intersecting lines: (a) Article 324 cases that license narrow, process-protecting controls to

---

25 European Commission, Regulation (EU) 2024/900 on the Transparency and Targeting of Political Advertising [2024] OJ L 202/1.

26 Pierre Bourdieu, "The Political Field, the Social Science Field, and the Journalistic Field" in Rodney Benson and Erik Neveu (eds.), *Bourdieu and the Journalistic Field* 29–47 (Polity Press, Cambridge, 2005).

27 *Sahara India Real Estate v. SEBI*, *supra* note 19; *Anuradha Bhasin v. Union of India*, *supra* note 19.

28 Election Commission of India, *Provisions of Section 126 of the Representation of the People Act, 1951—Prohibition of Election Campaign Activities* (Circular No. 437/6/INST/2016-CCS, 2016), *available at*: https://elections24.eci.gov.in/docs/RF5k9XoTAd.pdf (last visited Sept. 28, 2025).

29 Election Commission of India, *Handbook for Media* (2024), *available at*: https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/mar/doc2024313323301.pdf (last visited Sept. 28, 2025); CEO Tripura, *FAQ on Section 126/126A* (2023), *available at*: https://ceotripura.nic.in/sites/default/files/2023-10/f4.pdf (last visited Sept. 28, 2025).

30 The Representation of the People Act, 1951 (Act 43 of 1951), s. 126(1)(b).

secure free and fair elections; and (b) prior-restraint jurisprudence that insists on precision, temporariness, and least-restrictive alternatives.[31]

The Article 324 strand begins with *N.P. Ponnuswami* and *Saka Venkata Rao* on the self-contained election process and limited mid-process interference, proceeds through *Mohinder Singh Gill* and *Kanhiyalal Omar* on plenary, necessity-bounded ECI powers, and is reinforced by *ECI v Ashok Kumar* on process integrity. Read together, these decisions sustain a tightly cabined blackout as an administrative perimeter that protects decisional autonomy without trenching on core political discourse outside the window.[32]

The prior-restraint line starts with the heavy presumption against pre-publication restraints in *Brij Bhushan* and *Romesh Thappar*, softened by *Virendra* and *K.A. Abbas* to allow tailored and reviewable ex ante controls in specific media when necessity is shown. *Sahara India* then constitutionalises the requirements of a real and substantial risk, content-neutrality, and time-bound tailoring, while *Anuradha Bhasin* adds structured proportionality, temporariness, transparency, and the duty to prefer the least-restrictive means when speech infrastructure is impaired.[33] These guardrails map cleanly onto S126: the aim (electoral integrity and voter autonomy) is legitimate; the temporal scope is fixed; and, if construed technology-neutrally, the restraint regulates delivery in a defined window rather than ideas per se.[34]

Administratively, the ECI has long operationalised S126 through periodic "Provisions of Section 126" circulars to CEOs/DEOs and media handbooks/FAQs directing broadcasters and online intermediaries to avoid "election matter" in the blackout. These directions sit alongside the IT Act framework and intermediary due-diligence duties (traceability, expeditious takedown on lawful orders), producing a workable institutional interface: S126 supplies the time-bound

---

31 *Mohinder Singh Gill v. Chief Election Commissioner,* (1978) 1 SCC 405; *Kanhaiyalal Omar v. R.K. Trivedi*, (1985) 4 SCC 628; *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129; *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Virendra v. State of Punjab*, AIR 1957 SC 896; *K.A. Abbas v. Union of India,* (1970) 2 SCC 780; *Sahara India Real Estate v. SEBI*, *supra* note 19; *Anuradha Bhasin v. Union of India*, *supra* note 19.

32 *N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64; *Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216; *Kanhaiyalal Omar v. R.K. Trivedi*, (1985) 4 SCC 628.

33 *Brij Bhushan v. State of Delhi*, *supra* note 19; *Romesh Thappar v. State of Madras*, *supra* note 19; *Virendra v. State of Punjab*, *supra* note 19; *K.A. Abbas v. Union of India*, *supra* note 19; *Sahara India Real Estate v. SEBI*, *supra* note 19*; Anuradha Bhasin v. Union of India*, *supra* note 19.

34 *Anuradha Bhasin v. Union of India*, *supra* note 19; *Sahara India Real Estate v. SEBI*, *supra* note 19; *K.A. Abbas v. Union of India*, *supra* note 19.

substantive rule; Article 324 supplies authority and rapid coordination; and IT-Rules-based processes supply the procedural channel for execution without blanket censorship.[35] *Shreya Singhal*'s insistence on precision and post-publication accountability remains a hard constraint: election-period measures must be definitional and reviewable, with carve-outs for bona fide news and civic information.[36]

Finally, the legislative history supports a medium-neutral reading. Parliament's 1996 move from meetings-only controls to a media-aware clause shows an intent to chase functional equivalence across technologies in service of the same reflection-rationale; the later insertion of exit-poll and opinion-poll provisions confirms that the blackout targets persuasion at the decision point, not general political speech.[37]

3.2 Mechanism of Algorithmic Afterglow

Modern recommender systems do not merely host content; they rank, resurface, and route it, producing *afterglow*—a long tail of visibility for high-performing items that continues well after posting ceases. In practice: (i) historical engagement (watch-time, dwell, click-through, reshares) becomes part of a persistent ranking profile; (ii) rediscovery surfaces (Home, Up-Next, Explore, "For You") periodically reintroduce older assets to "similar viewers"; and (iii) cross-platform

---

35 The Information Technology Act, 2000 (Act 21 of 2000), s. 79; Ministry of Electronics and Information Technology, "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" (Gazette Notification, 25 February 2021), *available at*: https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf (last visited Sept. 28, 2025); consolidated text of s. 79, *available at*: https://www.indiacode.nic.in/showdata?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=105(last visited Sept. 28, 2025); PRS Legislative Research, "The IT Intermediary Guidelines and Digital Media Ethics Code Rules, 2021" (2021), *available at*: https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021 (last visited Sept. 28, 2025).

36 *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, *available at*: https://api.sci.gov.in/jonew/judis/9588.pdf (last visited Sept. 28, 2025).

37 The Representation of the People Act, 1951 (Act 43 of 1951), s. 126 (as amended by The Representation of the People (Amendment) Act, 1996 (Act 21 of 1996)), *available at*: https://www.indiacode.nic.in/bitstream/123456789/2096/9/A1951-43.pdf (last visited Sept. 28, 2025); The Representation of the People (Amendment) Act, 2009 (Act 41 of 2009) (inserting s. 126A); Press Information Bureau, "Ban on Exit Polls" (25 November 2010), *available at*: https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=67587 (last visited Sept. 28, 2025); Election Commission of India, "Ban on Exit Poll—General Elections 2024" (28 March 2024), *available at*: https://ceodelhi.gov.in/PDFFolders/2024/Lok_Sabha and_Legislative_Assemblies29Mar2024.pdf (last visited Sept. 28, 2025).

spillovers re-ignite items via embeds and re-uploads. The net effect is periodic re-amplification without any fresh act by a speaker.[38]

Empirical and platform-disclosed evidence underwrite this account. Audits of X/Twitter's Home feed have observed systematic political amplification patterns attributable to network structure and engagement-seeking rankers; YouTube reports material reductions in borderline/election-misinformation reach when it demotes such content—demonstrating that de-amplification via policy-aligned re-ranking is both technically feasible and routinely executed; Meta's "system cards" confirm predictive personalisation with policy demotions for borderline content.[39] These are delivery choices, not neutral conduits.[40]

Two distinctions matter for S126 analysis. First, *residual circulation* (organic views from prior shares) is analytically different from *engineered resurfacing* (fresh delivery because the model re-presents an asset to new cohorts during the window). The former looks like passive hosting; the latter is new "display" caused by algorithmic agency and therefore cognisable under a technology-neutral reading of "display by any other means." Second, *user-pull* (explicit search/click into an archive) is distinct from *system-push* (auto-queued "Up-Next," Home feed inserts, auto-play). Silence-period doctrine, concerned with last-mile persuasion, can focus

---

38 Paul Covington, Jay Adams and Emre Sargin, "Deep Neural Networks for YouTube Recommendations" (2016) *Proceedings of the 10th ACM Conference on Recommender Systems (RecSys '16)*, *available at*: 45530.pdf (last visited Sept. 28, 2025); doi: https://dl.acm.org/doi/10.1145/2959100.2959190 (last visited Sept. 28, 2025).

39 Bálint Huszár et al., "Algorithmic Amplification of Politics on Twitter" (2021) *arXiv:2102.08436*, *available at*: https://arxiv.org/abs/2102.08436 (last visited Sept. 28, 2025); YouTube Official Blog, "The Four Rs of Responsibility, Part 2: Raising Authoritative Content and Reducing Borderline Content and Harmful Misinformation" (3 December 2019), *available at*: https://blog.youtube/inside-youtube/the-four-rs-of-responsibility-raise-and-reduce/ (last visited Sept. 28, 2025); Meta Transparency Center, "Types of Content We Demote" (*Content Distribution Guidelines*), *available at*: https://transparency.meta.com/features/approach-to-ranking/types-of-content-we-demote (last visited Sept. 28, 2025).

40 Meta Transparency Center, "Our Approach to Facebook Feed Ranking" / "Facebook Feed AI System" (System Cards), *available at*: https://transparency.meta.com/features/explaining-ranking/fb-feed/ (last visited Sept. 28, 2025); Meta Newsroom, "Introducing 22 System Cards that Explain How AI Powers Experiences on Facebook and Instagram" (29 June 2023), *available at*: https://ai.meta.com/blog/how-ai-powers-experiences-facebook-instagram-system-cards/ (last visited Sept. 28, 2025); YouTube Official Blog, "Continuing Our Work to Improve Recommendations on YouTube" (25 January 2019), *available at*: https://blog.youtube/ news-and -events/continuing-our-work-to-improve/ (last visited Sept. 28, 2025).

on the push layer that predictably reaches voters in a constituency under blackout, while leaving pull intact for news/civic information.[41]

Finally, velocity and decay differ by platform. Tweets decay fast and rely on continual re-injection; YouTube-like systems produce long-tail discovery keyed to history and "similar viewers," making afterglow particularly salient for video. This heterogeneity supports tailored remedies: time-boxed demotion of persuasive appeals in recommendation slots, constituency-scoped where feasible; no blanket takedowns of archives; and rapid review channels to avoid overbreadth.[42]

3.3 Sociological Infusion

Bourdieu's field theory treats elections as a struggle over symbolic power across interacting fields (political, journalistic, now platform), in which actors convert economic capital into visibility and legitimacy. Extending this, Couldry's "media meta-capital" captures the power of media infrastructures to define what counts as salient and to set agenda hierarchies across fields. In the platform era, recommender systems function as an additional layer of meta-capital: ranking not only reflects prior power but actively *produces* it by allocating attention at scale.[43]

A short, precise silence window is thus a field-rebalancing device: it lowers the marginal return to last-minute capital conversion through orchestrated media/platform surges at the very point where those surges distort equality of electoral opportunity, while preserving news and scrutiny. Properly construed, S126 does not police ideas; it temporarily disciplines *delivery power* in a bounded temporal and spatial window to protect voters' decision autonomy and parity of influence. This sociological lens explains why a delivery-focused reading of "display" that reaches algorithmic resurfacing, with carve-outs for bona fide

---

41 OSCE/ODIHR, *Election Observation Handbook* (6th edn., Warsaw, 2010), *supra* note 24; European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report* CDL-AD(2002)023rev2-cor (2025 updated publication), *available at*: https://www.venice.coe.int/files/Code%20de%20conduite_GBR%202025_WEB_A5.pdf (last visited Sept. 28, 2025).

42 Jürgen Pfeffer, "The Half-Life of a Tweet" (2023) *Proceedings of the International AAAI Conference on Web and Social Media (ICWSM)*, *available at*: https://ojs.aaai.org/index.php/ICWSM/article/view/22228 (last visited Sept. 28, 2025); preprint *available at*: https://arxiv.org/pdf/2302.09654 (last visited Sept. 28, 2025); Paul Covington, Jay Adams and Emre Sargin, *supra* note 38.

43 Pierre Bourdieu, *Language and Symbolic Power* (Polity Press/Harvard University Press, Cambridge, 1991), *available at*: https://www.hup.harvard.edu/books/9780674510418 (last visited Sept. 28, 2025); Nick Couldry, "Media Meta-Capital: Extending the Range of Bourdieu's Field Theory" (2003) 32 *Theory and Society* 653, *available at*: https://eprints.lse.ac.uk/17655/1/Couldry_Media_meta_capital_2003.pdf (last visited Sept. 28, 2025).

journalism and civic information, is normatively justified and doctrinally cabined.[44]

4. ARGUMENTS AND DISCUSSION

4.1 Comparative Benchmarks

Across mature democracies, the regulatory centre of gravity has moved from content bans to process controls that make persuasive communication traceable, time-bounded, and reviewable. The European Union's Regulation (EU) 2024/900 ("PAR") is the clearest expression of this shift: it harmonises transparency for political advertising, narrows targeting, and hard-wires sponsor and platform duties—while expressly deferring to each state's short pre-poll "silence" windows rather than replacing them with blanket speech prohibitions.[45] The Regulation entered into force on 9 April 2024; most obligations bite from 10 October 2025. It compels labels on political ads, contemporaneous transparency notices disclosing sponsor identity, consideration paid, publication dates, and targeting/delivery techniques, and mandates public, searchable ad repositories for seven years (with VLOPs able to reuse existing DSA repositories if they meet the same accessibility guarantees).[46] It then crimps micro-targeting by banning the use of sensitive data and forcing explicit, ad-specific consent for any personal-data-based targeting, and it erects a three-month pre-election cordon against foreign-sponsored political ads.[47] Critically for last-mile integrity, platforms must verify sponsors, keep complete records, and process election-linked ad notifications within 48 hours during the last month before a vote—procedural rails that matter far more than any theatrical "ban."[48] Draft Commission guidance issued in July 2025 operationalises definitions, due-diligence flows across the ad supply chain, and machine-readable label templates, again privileging implementable processes over abstract speech rules.[49]

Observation bodies converge on the same architecture. OSCE/ODIHR's monitoring baselines emphasise that silence periods, where used, should be short,

---

44 European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters* CDL-AD(2002)023rev, *supra* note 24; OSCE/ODIHR, *Election Observation Handbook* (6th edn., Warsaw, 2010), *supra* note 24.

45 European Commission, Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the Transparency and Targeting of Political Advertising [2024] OJ L 202/1, art. 1, *supra* note 25.

46 European Commission, Regulation (EU) 2024/900, *supra* note 25, arts. 7–14.

47 *Ibid*., arts. 12–13, 28.

48 *Ibid.,* arts. 14–17.

49 European Commission, *Draft Guidance on the Implementation of Regulation (EU) 2024/900* COM(2025) 421 final (July 2025).

clear, evenly applied, and proportional; the core is voter reflection without pressure, not open-ended censorship.[50] The Venice Commission's Code of Good Practice describes the "day of reflection" as a brief pre-election window to let voters "absorb and digest" campaign information and choose "without pressure", and it locates silence within a fairness-and-equality frame that demands narrowly tailored, media-proportionate rules rather than broad gags.[51] Comparative syntheses underline that these principles now meet digital realities: the Commission acknowledges the migration of campaigning online and the practical difficulty of enforcing silence against cross-border, platform-mediated flows—hence the need for targeted, process-first levers.[52]

Practice outside Europe confirms the same pattern. Australia retains a broadcast-only "media blackout" under the Broadcasting Services Act (midnight Wednesday to poll close), expressly limited to TV/radio; online, print, streaming, SMS, and email remain outside the blackout. Courts narrowed prior overreach in the 1990s, and neither the AEC nor courts have extended silence obligations to platforms. The result is a formal "cooling-off" for legacy media and a de facto digital exception.[53] Canada's framework is similar: a polling-day broadcaster blackout and regulated activities for legacy media, with online platforms largely unregulated during the silence period; courts have declined to read a digital blackout into statute.[54] By contrast, Brazil and South Korea have moved silence-compatible process tools onto platforms: Brazil's TSE Resolution 23.551/2017 imposes 24-hour takedown obligations for false/heavily distorted electoral content and bans deepfakes during the silence period, enforced by courts when digital propaganda overrides margins of victory.[55] South Korea's Public Official Election Act applies to digital media, and the 2023 amendment bans AI-based deepfakes from 90 days before polling; the NEC mobilises AI monitoring and reinforced false-information response units in the run-up.[56] The lesson is not "ban more," but "engineer enforceable, time-boxed processes" that map onto platform affordances.

---

50 OSCE/ODIHR, *Election Observation Handbook* (6th edn, Warsaw 2010) 42–44 https://www.osce.org/odihr/elections/68439

51 European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report* CDL-AD(2002)023rev (2002) II.2.3, *supra* note 24, *available at*: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev (last visited Sept. 28, 2025).

52 *Ibid*.; OSCE/ODIHR, *supra* note 24.

53 Broadcasting Services Act 1992 (Cth), s. 79A; Australian Broadcasting Authority v. Hanson, (1998) 43 NSWLR 103.

54 Canada Elections Act, 2000, s. 323; Thomson Newspapers Co. v. Canada (Attorney General), [1998] 1 SCR 877.

55 Tribunal Superior Eleitoral (TSE), Resolution No. 23.551 of 18 December 2017, arts. 18–22.

56 Public Official Election Act, 1994 (South Korea), art. 82–7 (as amended 2023).

International IDEA's comparative work pulls these strands together: many democracies keep short reflection windows for fairness and voter autonomy, but early/special voting and platform recommenders blunt their effect unless regulators upgrade transparency, monitoring capacity, and rapid-response channels—potentially with AI-assisted detection—so that silence aims are met by delivery-focused remedies rather than sweeping speech blocks.[57] The through-line across EU law, observation standards, and comparative practice is stable: keep the blackout short; aim at last-mile influence; demand verifiable process from sponsors and platforms; and resist totalising bans that chill core political speech without delivering electoral equality.

4.2 The Doctrinal Standard: Foreseeability-Control-Mitigation

The central doctrinal challenge is to determine when algorithmic resurfacing of campaign content during the statutory "silence period" amounts to a prohibited "display" under S126 of the Representation of the People Act, 1951, who bears the operative duty of prevention, and what remedies survive constitutional scrutiny. The difficulty arises from the fact that unlike traditional "acts" of display, posters, speeches, broadcasts, the digital environment produces aftershocks of visibility through automated ranking, auto-play, or recommender systems, even in the absence of new acts by political actors. A principled legal response must therefore distinguish between fortuitous user behaviour and foreseeable systemic effects, and then allocate liability to the actor best placed to prevent harm, while calibrating obligations in proportionate, constitutionally sustainable ways.

To this end, a three-limb test—foreseeability, control-proximity, and reasonable mitigation—provides an operational standard. This structure draws directly from Indian free-speech jurisprudence on prior restraint, comparative proportionality doctrine, and emerging evidence on platform regulation. It does not invent new legislative obligations but interprets S126 in harmony with constitutional precedent and comparative practice.

4.2.1 Foreseeability

The first inquiry is whether the resurfacing of campaign material in the blackout period is a foreseeable and proximate effect of a system's design, rather than a random or user-driven event. Indian courts have consistently required that restrictions on speech must be justified by a real, not speculative, danger. In *Sahara India Real Estate Corp. v. SEBI*, the Court upheld postponement orders only when there existed a "real and substantial risk" of prejudice to the fairness of trial,

---

[57] International IDEA, *Digital Disinformation and Election Silence Periods: Comparative Experiences* (Stockholm, 2022).

rejecting vague fears or conjectural harms.[58] Likewise, in *Anuradha Bhasin v. Union of India*, the Court clarified that restrictions on digital access require a "proximate nexus" between the restriction and the specific threat sought to be averted.[59]

Applied to the digital silence regime, this means that if a recommender system predictably re-amplifies a campaign video to users within a constituency during the blackout window, because its design ranks content on recency of engagement or auto-queues related persuasive material, then the resurfacing is not accidental but a foreseeable consequence of systemic design. To take a concrete example: suppose a political party uploads a campaign advertisement three days before polling. The video goes viral, accumulating shares and likes. During the subsequent 48-hour silence period, the platform's algorithm continues to push the video onto fresh feeds, either through auto-play or the "recommended for you" bar. Although no new upload has occurred, the system is delivering persuasive campaign content anew, reaching fresh audiences. Foreseeability analysis treats this not as a passive carry-over but as a deliberate continuation of display, grounded in predictable design architecture.

By contrast, if an individual manually searches for an old manifesto video stored in archives, clicks it deliberately, and watches it during the silence period, the causative agency is user-pull, not system-push. Here, the foreseeability of systemic coercion is weak, since the resurfacing is not an algorithmic act of recommendation but a user's conscious retrieval. In such cases, S126 should not attach, just as Indian courts have traditionally differentiated between systemic risk and isolated private conduct. The parallel lies in *K.A. Abbas v. Union of India*, where prior restraint on film exhibition was justified because the medium's impact was predictably enduring, not because any individual might coincidentally seek out archival material.[60]

Thus, foreseeability provides the first doctrinal sieve: algorithmic resurfacing qualifies as "display" only when it is a predictable and proximate consequence of platform design rather than an incidental outcome of individual user choice.

4.2.2 Control–Proximity

The second limb identifies the actor who bears operative responsibility, based on their proximity to the levers of prevention. Indian free-speech jurisprudence consistently rejects liability for actors lacking agency or knowledge. In *Shreya*

---

58 *Sahara India Real Estate v. SEBI*, *supra* note 19.
59 *Anuradha Bhasin v. Union of India*, *supra* note 19.
60 *K.A. Abbas v. Union of India, supra* note 19.

Singhal v. Union of India, §66A of the Information Technology Act was struck down in part because intermediaries were saddled with liability without clear capacity to assess legality or exercise control.[61] Liability cannot attach to those who neither design the system nor actively trigger the resurfacing.

The comparative position illustrates the point further. The European Union's Regulation 2024/900 explicitly places due-diligence obligations on platforms, because they design recommender systems, ad repositories, and sponsor verification protocols.[62] Liability here rests not on passive hosting but on operational control over systemic visibility.

Transposed to the Indian blackout regime, the allocation becomes clearer. If a political party covertly pays to boost its campaign video during the blackout, disguising the ad spend, then proximate control is with the party, and liability under S126 must attach to it. But if the same video is delivered afresh during the silence period solely because the platform's recommender system auto-queues or continues its ranking logic, the party has not acted; the proximate control rests with the intermediary. In such cases, liability cannot attach directly under S126's penal clause, since the statutory wording targets candidates and parties, but it can attach indirectly through Election Commission of India (ECI) circulars under Article 324, which impose compliance duties on platforms. This doctrinal nuance avoids the misstep of criminalising intermediaries under a statute not drafted with them in mind, while still preserving accountability through the ECI's constitutional supervisory powers.

This approach mirrors comparative practice: the EU requires platforms to process election-linked ad notifications within 48 hours,[63] effectively making them responsible for neutral dampening of algorithmic amplification during sensitive periods. Indian doctrine accommodates such an arrangement because Article 324 authorises the ECI to issue content-neutral, process-oriented directions to those with operational control, provided judicial review remains available to test their proportionality.

4.2.3 Reasonable Mitigation

The third limb asks whether the actor with proximate control has discharged reasonable duties of mitigation. Proportionality requires that restrictions be tailored and incremental, escalating only when lighter measures prove insufficient. The Supreme Court has repeatedly insisted that less restrictive means must be

---

61 *Shreya Singhal v. Union of India*, *supra* note 36.

62 European Commission, Regulation (EU) 2024/900, *supra* note 25, chs. II–III.

63 *Ibid.,* arts. 12–14.

exhausted before resorting to blanket prohibitions. In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers*, the Court upheld postponement orders only after evaluating whether disclosure or time-limited restraints could achieve the purpose with less impact on speech.[64] Similarly, EU electoral regulations sequence obligations: transparency notices and archival duties precede stronger interventions like de-amplification or takedowns.[65]

Applied here, mitigation should follow a graduated ladder. The first step is disclosure: platforms must flag persuasive political content that risks resurfacing during the blackout, maintaining accessible repositories for transparency. The second step is archival segregation: shifting such content into an archive accessible on demand but not algorithmically promoted. The third step is de-amplification: reducing the ranking weight of campaign content in feeds during the blackout. The final step is takedown, and even this must be narrowly confined to content whose algorithmic resurfacing creates a proximate and substantial risk of undermining voter equality.

This sequencing corresponds with *Anuradha Bhasin*, where the Court identified temporariness, necessity, and reviewability as essential safeguards for restrictions.[66] It also reflects proportionality's least-restrictive-means requirement, ensuring that the silence mandate is preserved without suppressing legitimate discourse. Such a calibrated approach avoids both extremes: blanket takedowns that mute civic and news content under the pretext of blackout enforcement, and laissez-faire inaction that erodes the statutory guarantee of voter equality.

4.3 Institutional Allocation

A doctrinal standard without a clear institutional allocation risks either under-enforcement or overreach. The test therefore requires principled allocation of responsibility between the Election Commission of India (ECI) and the judiciary.

Article 324 of the Constitution vests the ECI with plenary powers to "superintend, direct and control" elections. In *Mohinder Singh Gill v. Chief Election Commissioner*, the Supreme Court affirmed that these powers are broad enough to fill statutory interstices in order to secure free and fair elections.[67] The ECI already uses these powers to issue model codes of conduct, circulars on paid news, and advisories on political advertising. Extending this to algorithmic resurfacing is doctrinally consistent. The ECI can require platforms to implement

---

64 Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, (1989) 4 SCC 548.
65 European Commission, Regulation (EU) 2024/900, *supra* note 25, arts. 7–10.
66 *Anuradha Bhasin v. Union of India*, *supra* note 19.
67 *Mohinder Singh Gill v. Chief Election Commissioner*, *supra* note 31.

blackout measures: flagging persuasive appeals, demoting them from feeds, maintaining ad repositories, and operating rapid-response takedown channels. These are content-neutral, process-oriented directions, targeted not at suppressing political content generally but at managing its algorithmic delivery within a constitutionally recognised silence window.

Courts, in turn, play the role of proportionality reviewers. In *Anuradha Bhasin*, judicial oversight ensured that speech-restrictive orders were temporary, reasoned, and subject to challenge.[68] A similar role is appropriate here. Courts may test ECI's blackout measures against structured proportionality: Was the risk assessment proximate and substantial? Were narrower measures like disclosure or archival considered before takedown? Was non-campaign content insulated from collateral suppression?

Importantly, courts should intervene through expedited interim relief where ECI inaction or overbreadth threatens imminent harm, but they should avoid dictating the technical modalities of algorithmic demotion or de-amplification. Such micromanagement would embroil courts in questions of engineering design beyond their institutional competence. The principled division is therefore as follows: the ECI as the primary process-manager, empowered to issue binding circulars under Article 324, and the judiciary as the rights-reviewer, ensuring that measures conform to proportionality, necessity, and temporariness.

This dual allocation avoids two symmetrical risks. On one side lies under-enforcement, where the silence regime is rendered ineffective by algorithmic spillovers. On the other lies overreach, where judicial micromanagement of platform design threatens both institutional legitimacy and technical coherence. By confining each institution to its constitutional strengths, with the Election Commission exercising supervisory management and the courts applying proportionality review, the doctrinal test preserves fidelity to India's constitutional architecture.

5. RESULT/FINDINGS

The doctrinal and empirical record makes clear that India's election-silence rules are textually capacious enough to encompass algorithmic delivery. Section 126 of the Representation of the People Act prohibits "displaying … by any other means" election matter during the 48-hour cooling-off window. The 1996 amendment deliberately extended the prohibition from traditional public meetings to the domain of audiovisual broadcasting, and subsequent Law Commission reports have repeatedly urged a media-neutral interpretation that captures the functional

[68] *Anuradha Bhasin v. Union of India*, *supra* note 19.

reality of online distribution.[69] Once understood against the purposive backdrop of Article 324 jurisprudence, it becomes difficult to argue that algorithmically resurfaced videos or boosted posts fall outside the statutory phraseology. What is decisive is not the novelty of the medium but the operative function it performs: the fresh delivery of persuasive election matter to voters in a constituency during silence.[70]

Judicial doctrine sustains such a reading provided it is structured through proportionality. The Supreme Court has always recognised a strong presumption against prior restraint, beginning with *Brij Bhushan v. State of Delhi* and *Romesh Thappar v. State of Madras*, which struck down pre-censorship schemes as unconstitutional.[71] Yet the Court has simultaneously carved out narrow, temporally bounded exceptions where the integrity of a process requires prophylactic insulation: *K.A. Abbas v. Union of India* permitted pre-censorship of films on account of their predictable societal impact; *Sahara India Real Estate Corp. v. SEBI* upheld postponement orders narrowly tailored to avoid trial prejudice; and *Anuradha Bhasin v. Union of India* allowed communication restrictions subject to stringent safeguards of temporariness, necessity, and reviewability.[72] Section 126 fits within this tiered framework. Its blackout is not open-ended but short, phase-bound, and designed to preserve electoral integrity at a moment of heightened vulnerability. The phenomenon of algorithmic "afterglow" alters only the medium through which the risk materialises, not the underlying constitutional calculus. Judicial reinterpretation of the provision through the Foreseeability–Control–Mitigation (F–C–M) standard ensures that enforcement remains tethered to Article 19(2) while avoiding both the under-reach of ignoring digital spillovers and the overbreadth of indiscriminate censorship.[73]

The sociological justification is sharpened by Bourdieu's field theory. Elections are not neutral contests of ideas but structured struggles where symbolic power is unequally distributed and where economic, social, and media capital are continuously converted into visibility.[74] The final 48 hours are precisely when the

---

69 The Representation of the People (Amendment) Act, 1996 (Act 21 of 1996), s. 126; Law Commission of India, *255th Report on Electoral Reforms* (2015), *supra* note 6.

70 *Mohinder Singh Gill v. Chief Election Commissioner*, *supra* note 31.

71 *Brij Bhushan v. State of Delhi*, *supra* note 19; *Romesh Thappar v. State of Madras*, *supra* note 19.

72 *K.A. Abbas v. Union of India*, *supra* note 19; *Sahara India Real Estate v. SEBI*, *supra* note 19; *Anuradha Bhasin v. Union of India*, *supra* note 19.

73 *State of Madras v. V.G. Row*, AIR 1952 SC 196; *Kaushal Kishor v. State of U.P.*, (2023) 4 SCC 1.

74 Pierre Bourdieu, *Language and Symbolic Power* (Harvard University Press, Cambridge, 1991), *supra* note 43.

marginal effect of additional visibility is most pronounced, as undecided voters crystallise preferences. At this critical juncture, recommender systems operate as a form of meta-capital: they autonomously privilege certain actors by re-surfacing content even without fresh campaigning. Unless constrained, this algorithmic visibility advantage undermines the level playing field that Section 126 was designed to secure. The delivery-focused restraint proposed here is therefore not a paternalistic gag on expression but an equalisation device. It limits the capacity of platforms' meta-capital to distort outcomes at the decisive moment of voter choice.[75]

Remedial design must remain proportional and rights-compatible. Blanket takedowns or infrastructure-level bans, such as suspending entire platforms, would fail *Anuradha Bhasin*'s proportionality standard, which requires that restrictions be necessary, narrowly tailored, and temporary.[76] Instead, obligations should proceed incrementally. At the first level, platforms should disclose and maintain searchable archives of political content. At the second, constituency-specific demotion or labelling should attach to resurfaced campaign clips within the blackout window. At the third, rapid-response protocols should be activated for egregious cases of amplification that demonstrably threaten silence. Only as a last resort should targeted takedowns be considered, and even then confined to content that predictably and substantially undermines voter equality.[77] This graduated architecture mitigates algorithmic resurfacing while preserving circulation of bona fide news, civic education, and commentary. Comparative regimes reinforce this calibration: the EU's Regulation 2024/900 emphasises transparency, ad repositories, and user choice mechanisms over outright bans, while guidance from the OSCE and Venice Commission continues to defend short reflection windows precisely because they are limited, reviewable, and evenly applied.[78]

Institutional allocation is equally central. Article 324 vests the Election Commission with plenary powers to superintend, direct, and control elections, but those powers are bounded by constitutional necessity and remain subject to judicial oversight.[79] The emerging division of labour is therefore functional. The Commission should manage systemic and ex ante obligations: issuing advisories, circulars, and compliance codes to platforms; mandating constituency-specific

---

75 Rodney Benson, "Fields of Contention: Bourdieu and the Media" (1999) 22 *Political Communication* 187.

76 *Anuradha Bhasin v. Union of India, supra* note 19.

77 European Commission, Regulation (EU) 2024/900, *supra* note 25.

78 OSCE/ODIHR, *Handbook for the Observation of Election Campaigns* (Warsaw, 2022); European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters* (2002, rev. 2020).

79 *Election Commission of India v. Ashok Kumar*, *supra* note 31.

protocols in multi-phase polls; and supervising rapid-response mechanisms during blackout periods. Courts, by contrast, should act ex post as guardians of constitutional proportionality, reviewing the necessity of restrictions, insisting on temporariness, and policing carve-outs to safeguard legitimate speech.[80] This bifurcation respects institutional competence and democratic accountability: the Commission supplies electoral expertise and operational reach, while the judiciary ensures rights are not unduly sacrificed. In this way, statutory interpretation, constitutional doctrine, and sociological insight converge to sustain a silence regime fit for the algorithmic age.

In sum, the silence rule is neither an anachronism nor an unworkable relic in the digital age. Properly interpreted, Section 126 RPA already contains the textual elasticity to capture algorithmic "afterglow". The F–C–M doctrinal test operationalises proportionality for this new medium, ensuring enforceability without collapsing into overbroad censorship. Sociological theory confirms that silence rules retain their equalization function when applied to recommender systems, which otherwise amplify symbolic power asymmetries. The remedies proposed are moderate, layered, and globally consonant, while institutional division between ECI and courts secures both electoral integrity and constitutional rights. The overarching finding is thus affirmative: silence rules remain relevant, but only if judicially re-read with technological realism and doctrinal precision.

6. CONCLUSION AND SUGGESTIONS

Silence provisions were once thought of as a broadcast-era relic, tethered to radio announcements and the televised rally. The analysis advanced here demonstrates otherwise: when re-read with doctrinal precision and sociological realism, Section 126 of the Representation of the People Act remains not only constitutionally valid but normatively indispensable. Its operative phrase—"display by any other means"—is broad enough to include algorithmic resurfacing, provided courts and the Election Commission apply a proportionality-governed test that distinguishes between residual user access and fresh, system-driven delivery.[81] The 1996 amendments anticipated technological evolution, and the constitutional jurisprudence of prior restraint, proportionality, and Article 324 plenary powers offers the interpretive scaffolding to extend the silence rule into the platform age without statutory overhaul.[82]

---

80 *Kanhaiyalal Omar v. R.K. Trivedi*, *supra* note 31.

81 The Representation of the People (Amendment) Act, 1996 (Act 21 of 1996), s. 126; Law Commission of India, *255th Report on Electoral Reforms* (2015), *supra* note 6.

82 *Mohinder Singh Gill v. Chief Election Commissioner, supra* note 31; *Election Commission of India v. Ashok Kumar*, *supra* note 31.

The principal conclusion is that algorithmic afterglow can and should be treated as a prohibited "display" during the blackout when it meets three conditions: (i) the resurfacing was foreseeable in light of platform design; (ii) control lay with an actor—campaign or intermediary—capable of prevention; and (iii) reasonable mitigation steps were available but ignored. The Foreseeability–Control–Mitigation (F–C–M) standard translates constitutional doctrine into operational levers.[83] It prevents the futility of under-enforcement, where the silence period is hollowed out by feeds that continue to circulate persuasive content, and it avoids the excess of overbreadth, where enforcement degenerates into blanket takedowns or platform shutdowns.

The sociological perspective reinforces the doctrinal claim. Bourdieu's conception of fields and symbolic power shows that elections are structured contests over visibility and legitimacy.[84] In this context, platforms operating through recommender systems function as "meta-capital," determining not only who speaks but whose speech is rendered visible. Without intervention, economic capital can be converted into algorithmic advantage at precisely the moment when equality of opportunity is most fragile, namely the 48 hours preceding voting. Silence rules, correctly construed, operate not as content gags but as delivery-dampeners that restore equilibrium to the electoral field. This sociological account corresponds with the doctrinal purpose of S126, which is to safeguard fairness and deliberative autonomy rather than to shield voters from exposure to ideas.

The remedial prescriptions are structured and consistent with comparative practice. Courts and the Commission should reject blunt instruments such as blanket takedowns, pre-emptive bans, or infrastructure shutdowns, since these cannot withstand proportionality review.[85] Instead, enforcement should rest on incremental duties: attaching labels to resurfaced campaign clips, confining such material to searchable archives rather than feeds, reducing their prominence in constituency-specific recommendations, and reserving targeted takedowns for extreme cases such as deepfakes or synthetic impersonation.[86] These measures protect the reflection function of the blackout while preserving news, civic education, and satirical or critical commentary. Comparative frameworks reinforce this calibration. The European Union's Regulation 2024/900 requires transparency, sponsor verification, and rapid-response mechanisms but leaves silence rules to

---

83 *Sahara India Real Estate v. SEBI, supra* note 19; *Anuradha Bhasin v. Union of India*, *supra* note 19.

84 Pierre Bourdieu, *Language and Symbolic Power* (Harvard University Press, Cambridge, 1991), *supra* note 43.

85 *Anuradha Bhasin v. Union of India*, *supra* note 19.

86 Public Official Election Act, 1994 (South Korea), arts. 93, 82–8 (as amended 2023); Tribunal Superior Eleitoral (TSE), Resolution No. 23.551 of 18 December 2017, *supra* note 55.

national law.[87] OSCE/ODIHR and the Venice Commission defend "days of reflection" provided they are short and evenly applied.[88] Australia and Canada confine blackout to broadcast media, confirming that overreach is neither necessary nor desirable. Brazil and South Korea, conversely, illustrate how process tools—24-hour takedowns of false propaganda, bans on AI-generated impersonations—can be crafted to protect last-mile integrity without sweeping bans.[89]

Institutional allocation must be disciplined. The ECI, under Article 324, is best positioned to manage ex ante systemic measures: circulars to platforms, compliance codes, constituency-specific demotion protocols, and monitoring channels. Courts should reserve their jurisdiction for ex post review of necessity, proportionality, and rights impact, intervening through expedited orders where enforcement is arbitrary or inaction threatens imminent harm.[90] This separation respects democratic accountability: the Commission as electoral steward, the judiciary as constitutional guardian.

The operative reform lies not in legislative upheaval but in calibrated reinterpretation. Parliament may, in due course, amend the statutory text to expressly codify its medium-neutral reach, as the Law Commission has urged, yet doctrinal technique already furnishes a sufficient basis for enforcement.[91] What is needed is not the invention of a new regulatory "model" but fidelity to existing constitutional benchmarks—proportionality, temporariness, and equality of opportunity. Properly construed, silence rules function as precise, delivery-oriented restraints, preserving the decisional integrity of the voter at the critical threshold of choice within a platform-saturated environment.

Finally, this inquiry suggests avenues for future scholarship and institutional design. Empirical audits of platform archives could validate the operation of afterglow and test the effectiveness of mitigation steps. Comparative jurisprudence should be studied to see how courts across common-law jurisdictions read silence laws into the algorithmic age. And the interface between election commissions and data-protection authorities must be clarified, particularly where microtargeting

---

87 European Commission, Regulation (EU) 2024/900, *supra* note 25.

88 OSCE/ODIHR, *Handbook for the Observation of Election Campaigns* (Warsaw, 2022), *supra* note 79; European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters* (2002, rev. 2020), *supra* note 79.

89 "Regulation of Digital Campaigning During Silence Periods: Brazil and South Korea" (2023 synthesis).

90 *Kanhaiyalal Omar v. R.K. Trivedi*, *supra* note 31; *Anuradha Bhasin v. Union of India*, *supra* note 19.

91 Law Commission of India, *255th Report on Electoral Reforms* (2015), *supra* note 6.

intersects with blackout rules. These are questions for further research, but the doctrinal anchor remains firm: silence rules retain vitality if they are re-read through the dual prisms of constitutional proportionality and sociological field theory.

Section 126 cannot be dismissed as a constitutional anachronism. Read through the prism of the F-C-M test and operationalised by layered, proportionate remedies within a disciplined institutional division, the provision retains both enforceability and rights-compatibility while aligning with comparative global practice. It continues to anchor equality of electoral opportunity precisely where contemporary campaigning most destabilises it; the algorithmic last mile.