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'Silence Period' Vanishes in the Age of Digital Political Campaigns: In Exigency of a Legislative Reform to Safeguard Democracy

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‘Silence Period’ Vanishes in the Age of Digital Political Campaigns: In Exigency of a Legislative Reform to Safeguard Democracy

ABSTRACT

Democracy survives, when citizens’ ability to think independently exists. It is for this purpose we have 48 hours of ‘Silence Period’ before election. However, in this modern digital age, political campaigning has transcended traditional boundaries of time, space, and format. The purpose of silence period is more ideal rather than an attainable objective. The study aims to understand how the Digital media and political campaigns behind the screens escape from the regulation of Representation of People Act 1951. The objective of the research paper is to identify the legal gap between existing law and political campaigns in this digital era. The methodology used for this research is Doctrinal Research with descriptive approach. The research is taken on the grounds of reality basis and from legal perspective with the incorporation of case laws at significant points. It shall be observed that Platforms such as social media and OTT services have transformed from mere tools of communication and entertainment into powerful instruments of political influence. From short-form content like reels and shorts to long-form movies and web series, digital media now acts as a continuous, subtle, and pervasive campaign mechanism. Section 126(1)(b) of the Representation of the People Act, 1951 mandates a forty-eight-hour silence period before polling, by prohibiting display of any election matter through cinematography, television or similar apparatus. The findings provides that still social media, OTT Platforms, private satellite televisions are still out from the ambit of this provision. In 2024, Political parties collectively spent an estimated USD 50 million on AI-generated content, deepfakes of deceased leaders, synthetic voice clones, and micro-targeted social media campaigns and all of which deployed through platforms entirely outside Section 126’s statutory ambit. The Research Paper critically studies the recommendations of the Committee constituted under the chairmanship of Sh. Umesh Sinha, the interjection of PCI, IAMAI, Meity and ECI. The research paper thus also provide suggestions to overcome the shortcomings of the soft power influence through digital media.

KEYWORDS

Silence Period, Digital Political Campaigns, Social Media and OTT Services, Soft power influence, legislative lacuna.

1. INTRODUCTION

The conduct of free and fair elections forms the bedrock of a democratic polity. In India, this foundational principle is safeguarded through a combination of constitutional guarantees, statutory frameworks, and institutional oversight, most notably by the Election Commission of India. Among the various mechanisms designed to preserve electoral integrity, the concept of the “Silence Period” occupies a crucial position. Enshrined under Section 126 of the Representation of the People Act, 1951, it mandates a cessation of active campaigning for a period of 48 hours prior to the conclusion of polling. The underlying rationale of this provision is to provide voters with a reflective pause, free from the pressures of political persuasion, thereby enabling them to exercise their franchise with independent judgment.

The traditional modes of campaigning such as public meetings, print media, radio, and television have now been supplemented, and in many instances overtaken, by social media platforms, online streaming services, and algorithm driven content dissemination. While Section 126(1)(b) prohibits the display of election matter through “cinematograph, television or other similar apparatus,” the scope and applicability of this phrase in the context of modern digital platforms remain uncertain and contested. This ambiguity has given rise to a significant regulatory gap.

At the same time, any attempt to extend regulatory control over digital platforms must be carefully balanced against the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In this context, the present study seeks to critically examine Section 126(1)(b) of the Representation of the People Act, 1951 in light of contemporary digital political campaigning. It explores the legislative intent behind the silence period, identifies the gaps in its current application, and evaluates the feasibility of extending its ambit to include digital platforms. By engaging with judicial precedents, doctrinal principles, and comparative legal frameworks, the paper aims to contribute to the ongoing discourse on electoral reforms in the digital age.

2. PROBLEM STATEMENT

The problem statement discussed under this Research Article is sub clause (b) of sub-section (1) of Section 126 under Chapter III ‘Electoral Offences’ of the Representation of the People Act, 1951.¹

¹ The Representation of the People Act, 1951, No.43, Act of Parliament, 1951(India).

"Section. 126: Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.-

(1) *No person shall--*

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election, or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus, or

(c) propagate any election matter to the public by holding, or by arranging the holding of , any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section(1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election."

This research paper discusses Section 126(1)(b) of Representation of the People Act, 1951 (hereinafter to be referred as Act of 1951), in context of the contemporary Digital political campaigns. This gives us two ways of approach which are as follows:

- Should social medias which have become a largest platform for political campaign be regulated under the ambit of Section 126(1)(b), so as to fully achieve the purpose of 'Silence Period.'
- Would extension of Section 126(1)(b) lead to violation of freedom of speech and expression or would it avail the benefit of reasonable restriction to uphold the spirit of democracy.

As provided above, only an independent thinking society can let survive the true spirit of democracy. This objective has been well recognized by our legislators and reflected in the Act of 1951. Yet the said object slowly gets undermined with growth of technology and changing society. This paper discusses on whether this brings us a demand to respond and the possible consequences of such response.

3. RESEARCH OBJECTIVES

- To trace out the true object of Silence Period given under Section 126(1)(b) of the Act of 1951.
- To analyze the ill effects of digital political campaign even during silence period.
- To study the procedural gaps existing to regulate the digital political campaigns.
- To interpret Section 126(1)(b) so as to include social media within its ambit.
- To analyze the consequences of including social media under the ambit of Section 126(1)(b) with respect to freedom of speech and expression under Article 19(1)(a) of the Constitution of India 1950.
- To have a comparative study of silence period with other countries.

4. SILENCE PERIOD IN DIGITAL ERA

4.1: Existing Mechanism of Silence Period

The Standard Operating Procedure for Last 72 hours given by the Election Commission of India (hereinafter to be referred to as ECI) provides that no election matter which tends to influence the results of election shall be displayed to public by means of cinematography, television or other similar apparatus. This prohibition extends to opinion polls or poll survey on any electronic media for 48 hours. It is pertinent to observe that the ECI has a Standard Operating Procedure (hereinafter to be referred as SOP) for Social Media updates. However, the above mentioned SOP is only in respect to the dissemination of information through Chief Election Officer's social media handles. The Election Media Monitoring Center (EMMC) ensures that it monitors election related news on electronic media. In specific to political advertisements, ECI provides a pre-certification process for publishing those political advertisements in Print media during pre and on poll day. In regard to coordination, the SOP also provides that communication should be maintained with electronic media, print media, Dhoordarshan, All India Radio in respect to dissemination of election related information. ² It is

² ELECTION COMMISSION OF INDIA, SOP FOR LAST 72 HOURS, (2nd ed. 2013)

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<https://www.eci.gov.in/ecibackend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJp1KivrUxbfqkDatmHy12e%2FzVx8fLfn2ReU7TfrqYobgliNhnzbEKvXM4fZkv7oWP5VK3IqBvlq74UgFxfzf%2FiI7r3vTvRIBNdWCJIVTpwfJcW0Qec4Xn%2FT2yF642%2BtuFKPY%3D> >

vital note that print media was included into the ambit of Section 126 by recommendation of Core Committee on Electoral Reforms in 2010.³

In a clarification issued by the Chief Electoral Officer of Tripura regarding Media coverage during elections, it was given that TV, Radio channels, cable networks, internet websites and social media should ensure that the contents displayed during the 48 hours of silence period should be free from any matter regarding the election, the political party, the candidate, which tends to have influence and affects the results of election. It also advises media from broadcasting any predictions of election result by Astrologers, Tarot Readers or Political Analysts. It is vital to note that telecasting of feature films of actors who are contesting in elections is not allowed but only in respect to Doordarshan. While other TV channels and Cinema theatres are not restrained from broadcasting any films featuring actors turned political leaders.⁴

4.2. Identification of Legal Gap

From above clarifications and SOP of ECI, it shall be understood that social media platforms circulating political content reels, shorts, advertisements, OTT platforms having political content movies, theatrical release of political content movies, broadcasting of political content and political leaders' movies on satellite televisions are not yet covered under the ambit of Section 126(1)(b) of the Act of 1951. This raises a question on object behind 'Silence Period' and the legislative lacuna existing.

4.3. Escalating Expenditure on Digital Political Campaign - A call for regulation

It was reported by ECI that political parties have spent 76% more in Financial Year 2025 compared to Financial Year 2024, in advertising and publicity on media, amounting to a total sum of Rs.1,793 in 2024 to Rs.3,124 crore in 2025.⁵ In 2024 Elections, BJP had spent Rs.116 crore, followed by INC spending Rs.45.6 crore.⁶ With elections around, Political

³ Core Committee on Electoral Reforms, *Background Paper on Electoral Reforms*, LEGISLATIVE DEPARTMENT, MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA, (Dec. 2010)

< <https://share.google/muS091rIMRTSd88VZ> >

⁴ Chief Electoral Officer Tripura, *Faq On Media Coverage During Election*, CEOTRIPURA.NIC.IN, (2019)

< <https://share.google/HTH6FW7rNQsBooqi> >

⁵ Imran Fazal, *Election campaigns go big on media, political advertising crosses Rs.3,100 crore in FY25*, STORYBOARD 18, (Jan. 29, 2026)

< <https://share.google/Es9iwn4vDrIu6C9yu> >

⁶ Snehasis Mukhopadhyay, *How much do Parties' Digital campaigns Costs?*, THEWIRE, (Jun. 01, 2024)

< <https://share.google/uSqRZ783aicBVNIFD> >

parties contribution to digital political advertisements also surges. In response to the 2026 Election in Tamil Nadu, political parties such as DMK backed with Populus Empowerment Network Pvt Limited has spent Rs.394 million by circulating 9,332 advertisements being circulated, AIADMK backed with Spangle PR & Media Pvt Limited has spent Rs.20 million by circulating 20 advertisements as per Google Ads Transparency Centre as of 11th April 2026. The constant and keen contribution of political parties over digital campaign is a sign of changing trend, which ought to have supervision. Even ECI has well understood the difficulty of maintaining the object of Silence Period amidst the influence of digital media. It is in pursuance of this, the ECI constituted a Committee under the chairmanship of Sr. Deputy Election Commissioner Sh. Umesh Sinha and the report of same was submitted in the year of 2019. The committee had worked on various aspects such as growth of communication technology, impact of prohibitory on digital media, modifications to be made on Model Code of Conduct and coordination of ECI with other organs of government.⁷

5. THE NEED TO REGULATE DIGITAL POLITICAL CAMPAIGNS DURING SILENCE PERIODS

5.1: Social Media Platforms

Social media platforms such as Instagram, Facebook, YouTube has political content either by the concerned political parties itself or by other sources. Political advertisements, shorts, reels across the social media by the concerned political parties itself tends to encourage people to cast their vote in their support. Thus in short, it is what exactly termed as Digital Political campaign. While political videos by other sources could either criticize or support political parties resulting in influencing public either in favour or against. Now, irrespective of the source from where the political video comes, it tends to influence people. These videos continues to exist in social media platforms even during silence period. To be particular, not only existing videos but also new videos could be circulated, as the above clarifications from ECI doesn't refrain social media platforms from circulating new political videos during silence period.

5.2. OTT Platforms and Theatres

Unlike CBFC's regulation on theatrical release of movies, OTT platforms have self regulated mechanism as per the Information Technology

⁷ Press Information Bureau, *Report of the Committee on Section 126 of the Representation of the People Act, 1951, Submitted to the Election Commission*, GOVERNMENT OF INDIA, (Jan 10. 2019)

< <https://share.google/GNBziRirerxMLpdJC> >

(Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 provides provisions on content classification, while being silent on timelines for release. Added to this, neither ECI refrains OTT platforms from casting political movies or movies of political leaders during silence period. Though this doesn't come directly under Political campaign, the timely release of political movies have high point of influence over people.

5.3. Televisions

As above provided, satellite televisions other than Dhoordarshan, no channel is refrained from broadcasting political movies. Movies of former political leaders, movies criticizing any political party or political issues being telecasted during silence is nothing less than using the momentum to influence people.

5.4: AI and Deepfakes

AI is used for resurrection of late political leaders and grab attention of public. Tracing back to history till now, there have been many political leaders who were the face of political party. Former Chief Minister and renowned politician M.Karunanidhi was featured in a video, appreciating his son, who is the current Chief Minister of Tamil Nadu, M.K. Stalin.⁸ Similarly, son of former politician H. Vasanth Kumar campaigned using a AI generated video.⁹ In January 2025, amidst of Delhi elections AAP political party released an AI generated video of Prime Minister Narendra Modi and Home Minister Amit Shah. The ECI released a guideline, 'Advisory for Labeling Synthetic or AI Generated Content used by Political Parties for Election Campaigning' in alarm to the above incident.¹⁰ Though these incidents took place during campaigning time, prevalence of those videos and circulation of the same during silence period is possible.

5.5. Lack of Accountability

Apart from political videos being made available during silence period,

⁸ Nilesh Christoper, *How AI is resurrecting dead Indian Politicians as election looms*, ALJAZEERA, (Feb. 12, 2024) < <https://www.aljazeera.com/economy/2024/2/12/how-ai-is-used-to-resurrect-dead-indian-politicians-as-elections-loom> >

⁹ Barkha Dutt, *Indian Politicians are bringing the dead on the campaign trail, with help from AI*, REST OF WORLD, (May 06, 2024) < <https://restofworld.org/2024/dead-relatives-ai-deepfake-india/> >

¹⁰ Shemin Joy, *Delhi Assembly Elections 2025, Use AI transparently: ECI issues guidelines for political parties*, DECCAN HERALD, (Jan. 16, 2025) < <https://share.google/8nhvvGjy2QCAYu3cc> >

one of huge challenge is lack of accountability on the end of creator of the content, if in case it has any misinformation. A clear politically inspired movie can on OTT platform with partial real incidents and partial imaginary could be released during silence period, influencing people on no clear distinction between what is true and what is fiction. The director could claim the benefit of disclaimer and its solely for entertainment purpose. Yet the impact of movie in minds of voters has a long effect. Social and entertainment medias can't be demanded to reveal both sides of a coin. Yet it is the same media which influences people to greater extent.

6. INTERPRETATION OF SECTION 126(b) OF REPRESENTATION OF PEOPLE ACT, 1951

6.1. Statutory Meaning

Though the clarifications given by ECI has exempted social media, OTT platforms and Televisions from casting election related matters during silence period. The words of Section 126(1)(b) shows clear legislative intent to completely restrict election matters from being displayed during silence period in any of the media by using the word 'similar apparatus', following the specific words cinematography and television.

6.2. Doctrine of Ejusdem Generis

By applying Doctrine of Ejusdem Generis, which allows to interpret the meaning of a general word in same kind of the specific words. In the above instance, 'similar apparatus' is the general word to be interpreted in context of the specific words 'cinematography and television'. Having reliance to the principle 'specific terms should form a class of words' elucidated in the case of *Amar Chandra Chakraborty v. Collector of Excise*¹¹, in the instant case, the specific words 'cinematography and television' form a class of words relating to media.

6.3. Legislative Intent

Furthermore, at this juncture it is pertinent to examine the object behind Silence period. The Core Committee Report on Electoral Reforms, has clearly identified the object behind the Silence period by stating that, 'the logic behind the restriction on campaigning during the 48 hours is to allow citizens to decide their option without being prejudiced by any last

¹¹ *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura & ors.*, 1972 AIR 1863.

moment appeals.¹² 'Relying on the case of *Lilawati Bai v. Bombay State*¹³, wherein given that the doctrine of *ejusdem generis* should be applied with accordance to the legislative intent.

7. RIGHT TO SPEECH V. DEMOCRATIC PRINCIPLES

7.1. *Right to Freedom of Speech and Expression*

One of the most common counter argument against the restriction of social medias, OTT platforms and Televisions if posed would be 'Right to freedom of speech and expression.' Article 19(1)(a) of the constitution providing Right to freedom of speech and expression includes one's right to share political opinion, dissent a political opinion, freedom of expression on social media platforms, press freedom etc. *Shreya Singhal v. Union of India*¹⁴ is a landmark case in regard to freedom of speech and expression on social media platforms. In the case of *Indian Express v. Union of India*¹⁵, the Hon'ble Supreme Court emphasized the role of press in upholding democracy. *Romesh Thappar v. State of Madras*¹⁶ ensures right to criticize government policies and share political ideas. All of the above judgments are instances where Right to freedom of speech and expression was uphold. Having reliance to the above precedents, inclusion of social media, OTT platform, television under the ambit of Section 126(1)(b) would be challenged.

7.2. *Restriction on Article 19(1)(f) is Reasonable*

To put it precisely, the restriction imposed on Article 19(1)(a) specifically during Silence Period in context of Section 126(1)(b) of Act 1951 itself is to foster one of the facet of Article 19(1)(a). Right of a citizen to cast his or her vote in individual capacity to think is one of the facet of Right to freedom of speech and expression. The underlying purpose of Silence Period is in terms of Common interest of all and to let Democracy survive in truest sense. It is this factor which makes the restriction reasonable availing the ground of 'public order' under Article 19(2) of the Constitution of India.

8. COMPARATIVE STUDY OF FOREIGN LAWS

¹² Core Committee on Electoral Reforms, *Background Paper on Electoral Reforms*, LEGISLATIVE DEPARTMENT, MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA, (Dec. 2010)

< <https://share.google/muS091rIMRTSd88VZ> >

¹³ *Lilavati Bai v. State of Bombay*, 1957 AIR 521.

¹⁴ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹⁵ *The Indian Express Newspapers (Bombay) v. Union of India*, 1986 AIR 515.

¹⁶ *Romesh Thappar v. State of Madras*, 1950 AIR 124.

The silence period in Nepal ranges from 24 to 72 hours, extending explicit ban on digital media by prohibiting circulation, publication and broadcasting of any of political content, messages across social media platforms.¹⁷ The countries such as Austria, Czechia, Denmark, Estonia, Finland, Germany, Hungary, Luxembourg and Netherlands has silence period extending prohibition on any form of political advertising on election day.¹⁸

9. WAY FORWARD

- To explicitly bring social media platforms, OTT platforms and all other satellite televisions under the ambit of Section 126(1)(b) of Act 1951.
- To provide a SOP on how Social media should be handled by citizens, political parties and media people during silence period.
- To have a separate screening of movies for OTT platform in specific during silence period and political content.
- To bring accountability on social media platforms in creating a strong algorithm so as to maintain the object of Silence Period.
- To educate people about the importance of independent thinking and Silence period.
- To foster institutional coordination among ECI, Press Council of India, News Broadcasters Association, Internet and Mobile Association of India, Ministry of Information and Broadcasting, Ministry of Electronics and Information Technology, as well as representatives of social media platforms.

10. CONCLUSION

The evolution of political campaigning from traditional public gatherings to digitally mediated engagement marks a significant shift in the functioning of modern democracies. While this transformation has enhanced accessibility and participation, it has simultaneously introduced new challenges that existing legal frameworks struggle to address. Section 126 of the Representation of the People Act, 1951,

¹⁷ Author, *The silence period has begun, what is not allowed?*, NEW SPOTLIGHT ONLINE, (Mar. 3, 2026)

< <https://share.google/S2a3WKxBgl21FoJ0d> >

¹⁸ Micaela Del Monte, Silvia Kotanidis, *Length of the election campaign and the electoral silence period in European Parliament elections*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE, (Sep. 2023)

< <https://share.google/X9MD5JtWXIEwbYqTA> >

conceived in an era dominated by conventional media, continues to serve an essential democratic purpose by safeguarding the silence period. However, its effectiveness is increasingly undermined by the rapid proliferation of digital platforms that operate beyond the clear contours of the statutory language.

The analysis undertaken in this study demonstrates that the phrase “other similar apparatus” within Section 126(1)(b) possesses the interpretative flexibility to accommodate emerging forms of media, including social media platforms and digital broadcasting tools. Through the application of the doctrine of *eiusdem generis*, supported by judicial principles emphasizing legislative intent, it becomes evident that the provision was designed to prevent the dissemination of election-related content through any medium capable of influencing voters during the critical pre-poll period.

Furthermore, a parallel analysis via Google form was taken to know how far people are aware about Silence Period. More than 60% of responses has given that they have been influenced by digital political campaigns and they have also felt that the present regulation on silence period is ineffective. 80% responses have supported for legislative reform in area of Silence Period. Only then can the true spirit of the silence period be preserved, and along with integrity of the democratic process.