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REGULATING REPUTATION IN THE DIGITAL AGE: THE LEGAL REGULATION OF ONLINE DEFAMATION AND DIGITAL EVIDENCE IN JAMMU & KASHMIR

Sharuv Sharma[1]

I. ABSTRACT

The migration of public discourse to social media has multiplied the occasions on which reputation is injured and has changed the way in which that injury is proved. This paper examines the legal regulation of online defamation and digital evidence in the Union Territory of Jammu & Kashmir, a jurisdiction whose legal landscape was reset after 2019, when the Ranbir Penal Code gave way to the Indian Penal Code and, from 1 July 2024, to the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023. Using a doctrinal methodology, the paper analyses criminal and civil defamation under section 356 of the Bharatiya Nyaya Sanhita, the intermediary liability regime under the Information Technology Act, 2000 and the Intermediary Rules, 2021, and the evidentiary framework for electronic records under sections 61 to 63 of the Bharatiya Sakshya Adhiniyam. It argues that three features of the Jammu & Kashmir context deserve particular attention: the territorial difficulty of prosecuting publication that crosses jurisdictions; the tendency of enforcement agencies to approach online speech through the lens of public order rather than reputation; and the heightened need for forensic integrity where internet access has been restricted and anonymity tools are widely used. The paper finds that the formal legal framework is now uniform with the rest of India but that its application is uneven, that the mandatory two-part certificate with hash value raises the evidentiary threshold in ways that investigators and courts are still adapting to, and that proportionality safeguards remain under-developed. It recommends a graduated shift towards civil remedies, a standard operating procedure for digital evidence, district-level forensic capacity, and judicial guidelines on interim takedown orders.

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II. KEYWORDS

Online Defamation; Digital Evidence; Bharatiya Sakshya Adhiniyam; Intermediary Liability; Jammu & Kashmir.

III. INTRODUCTION AND RESEARCH PROBLEM

A reputation that once travelled by word of mouth and the printed page now travels by a forwarded message. A single post on Facebook, X, Instagram or a WhatsApp group can reach thousands of people within minutes, survive deletion through screenshots, and resurface years later. The law of defamation was built for a slower world, and its application to this one raise two connected problems. The first is substantive: when does an online post, share or comment amount to defamation, who answers for it, and what limits does the Constitution place on the answer? The second is evidentiary: how does a court come to know, to the standard that a criminal or civil trial demands, that a particular person published a particular statement on a particular date?

These problems take a distinctive form in Jammu & Kashmir. Until 2019 the Union Territory's predecessor State had its own penal code, the Ranbir Penal Code, and its own procedural and evidentiary arrangements.[2] The Jammu and Kashmir Reorganisation Act 2019 extended central criminal law to the new Union Territory, and the three criminal statutes enacted in 2023, which came into force on 1 July 2024, then replaced the Indian Penal Code, the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 across the country. A region that moved within five years from a distinct local code to a new national one is a useful place to ask whether a uniform text produces uniform practice.

[2] The Ranbir Penal Code, Samvat 1989 applied in the State of Jammu and Kashmir and was substantially modelled on the Indian Penal Code 1860: Law Commission of India, *Report on the Indian Penal Code* (Law Commission of India), discussing the Ranbir Penal Code as a replica of the Indian Code with a few additions, https://www.advocatekhoj.com/library/lawreports/indianpenalcode/1.php accessed 16 October 2026.

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The region's recent history also shapes how online speech is policed. Reports of internet suspensions, the blocking of social media sites in 2020, and first information reports registered by the Cyber Police Station, Kashmir Zone against users accused of circumventing the ban suggest that enforcement agencies have often treated online expression as a question of public order and security, not of private reputation.[3] Where the legal vocabulary of defamation, intermediary liability and electronic evidence is applied in that setting, it is applied to a population with uneven access to forensic resources, to legal assistance and to the platforms themselves.

The research problem, accordingly, is this: whether the present legal framework governing online defamation and digital evidence, as it applies in Jammu & Kashmir, adequately balances the protection of reputation, the freedom of speech and the reliable proof of digital facts, and where it falls short. The paper is current to 16 October 2026. 'Jammu & Kashmir' is used to mean the Union Territory of Jammu and Kashmir, whose courts are subject to the High Court of Jammu & Kashmir and Ladakh.

A. Research Objectives

1. To map the substantive law of criminal and civil defamation as it applies to online publication in Jammu & Kashmir after the Bharatiya Nyaya Sanhita, 2023.
2. To examine the constitutional limits on the regulation of online defamation, with particular reference to Articles 19(1)(a), 19(2) and 21.
3. To analyse the intermediary liability and takedown regime under the Information Technology Act, 2000 and the Intermediary Rules, 2021, and its effect on defamation disputes.

[3] See the reports on the first FIR registered at the Cyber Police Station, Kashmir Zone: 'J&K cyber police register first FIR for misuse of social media' *Hindustan Times* (Patiala, 18 February 2020), https://www.pressreader.com/india/hindustan-times-patiala/20200218/281814285879827 accessed 16 October 2026; Entrackr, 'Kashmir Cyber Police registers FIR against social media profiles', https://entrackr.com/?p=79904 accessed 16 October 2026.

4. To evaluate the admissibility and proof of electronic records under the Bharatiya Sakshya Adhiniyam, 2023, and the practical consequences of the new certificate regime.
5. To identify gaps specific to Jammu & Kashmir and to propose workable reforms.

B. Research Questions

1. How does section 356 of the Bharatiya Nyaya Sanhita, 2023 apply to defamatory content published on social media and messaging platforms?
2. What constitutional constraints govern criminal defamation and takedown orders directed at online speech?
3. How have the Information Technology Act, 2000 and the Intermediary Rules, 2021 allocated responsibility between authors, platforms and the State?
4. What must a litigant in Jammu & Kashmir do to prove an online publication under sections 61 to 63 of the Bharatiya Sakshya Adhiniyam, 2023?
5. What does the enforcement experience in Jammu & Kashmir reveal about the gap between the text of the law and its application?

C. Research Hypotheses

1. The statutory framework governing online defamation in Jammu & Kashmir is now formally identical to that of the rest of India, but its enforcement has been shaped by public-order concerns that are less prominent in ordinary reputation disputes elsewhere.
2. The two-part certificate and hash-value requirement under section 63 of the Bharatiya Sakshya Adhiniyam, 2023 improves the reliability of electronic evidence but increases the compliance burden on litigants and investigators, particularly where forensic infrastructure is limited.

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3. Criminal defamation combined with executive takedown mechanisms creates a risk of chilling lawful expression unless it is accompanied by procedural safeguards and proportionality review.

D. Research Methodology

The study is doctrinal. It proceeds by analysing primary legal sources, namely statutes, subordinate legislation and the reported judgments of the Supreme Court of India and, where available, the High Court of Jammu & Kashmir and Ladakh. Secondary sources include textbooks, law commission reports and commentary in legal publications. Because the volume of reported decisions on online defamation originating in Jammu & Kashmir is small, the paper also draws on contemporaneous news reports and police statements to describe enforcement practice. Such sources are treated as evidence of what was reported and not as findings of fact, and where a point rests on them, the footnote says so.

Two limitations should be stated plainly. First, there is no published, disaggregated dataset of defamation or cybercrime prosecutions in the Union Territory, and the paper does not claim to measure their frequency or outcomes. Second, the new criminal statutes are less than three years old, and appellate interpretation of several of their provisions is still developing. The conclusions are therefore analytical and tentative, and the recommendations are framed accordingly.

E. Literature Review

Writing on Indian defamation law has long centred on the constitutionality of its criminal limb. The Supreme Court upheld sections 499 and 500 of the Indian Penal Code in *Subramanian Swamy v Union of India*, treating reputation as part of the right to life under Article 21 and criminal defamation as a reasonable restriction under Article 19(2).[4] Gautam Bhatia's study of free speech under the Constitution offers a sustained critique of the breadth of the grounds on which speech may be restricted and of the weight that courts have accorded to reputation.[5] That debate gained fresh relevance

[4] *Subramanian Swamy v Union of India* (2016) 7 SCC 221.
[5] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (OUP 2016).

in September 2025, when a bench of the Supreme Court remarked orally, while issuing notice in a petition arising from a complaint against the news portal The Wire, that the time had come to decriminalise defamation.[6]

A second body of literature addresses intermediary liability. The decision in *Shreya Singhal v Union of India* struck down section 66A of the Information Technology Act 2000 and read down the 'actual knowledge' standard in section 79(3)(b) to mean knowledge acquired through a court order or a government notification.[7] Commentators have argued that the Intermediary Guidelines and Digital Media Ethics Code Rules 2021 strain against that reading, and that executive takedown outside the structured blocking procedure under section 69A is difficult to reconcile with it.[8]

The third strand concerns electronic evidence. Writing on sections 65A and 65B of the Indian Evidence Act 1872 traced the movement from the permissive approach in *State (NCT of Delhi) v Navjot Sandhu*, through the insistence on a certificate in *Anvar PV v PK Basheer* and the dilution attempted in *Shafhi Mohammad v State of Himachal Pradesh*, to the restoration of the certificate requirement in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*.[9] Comparative and doctrinal work on electronic evidence emphasises that admissibility and weight are distinct questions.[10] Since the Bharatiya Sakshya Adhiniyam came into force, commentary has focused on the Schedule certificate and its hash-value disclosure, with some writers reading section 61 as a

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[6] Reports of the hearing of 22 September 2025 before Sundresh and Sharma JJ: Ritwik Choudhury, 'Time to Decriminalise Defamation: Supreme Court in Defamation Case against The Wire' *Bar & Bench* (22 September 2025), reproduced at https://www.moneylife.in/article/time-to-decriminalise-defamation-supreme-court-in-defamation-case-against-the-wire/78348.html accessed 16 October 2026. The remarks were oral and made while issuing notice; they do not alter the holding in *Subramanian Swamy* (n 3).

[7] *Shreya Singhal v Union of India* (2015) 5 SCC 1.

[8] Amith Krishnan, 'Intermediary Rules 2021 – Not Liberal' *LiveLaw* (12 June 2021), https://www.livelaw.in/columns/intermediary-rules-2021-not-liberal-175610 accessed 16 October 2026; Chinmayi Arun, *Rebalancing Regulation of Speech: Hyper-Local Content on Global Web-Based Platforms* (Berkman Klein Center for Internet & Society 2018).

[9] *Anvar PV v PK Basheer* (2014) 10 SCC 473; *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600; *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801; *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1.

[10] Stephen Mason and Daniel Seng (eds), *Electronic Evidence and Electronic Signatures* (5th edn, University of London Press 2021).

legislative response to *Arjun Panditrao* and others disagreeing on whether hashing is required for copies as well as originals. That commentary must now be read with the Supreme Court's decision in *Pune Bar Association v Union of India*, which upheld section 63(4) and the Schedule and widened the class of persons competent to sign the expert's part of the certificate.[11]

What the literature does not yet supply is an integrated account that joins these three strands and asks how they operate together in a specific territory with a distinctive security and legal history. Studies of Jammu & Kashmir tend to address internet restrictions and preventive detention, and studies of defamation tend to be written from the standpoint of metropolitan courts and national media. This paper attempts to bridge that gap.

IV. RESEARCH AND ANALYSIS

A. The Legal Architecture of Jammu & Kashmir after 2019

The Jammu and Kashmir Reorganisation Act 2019 took effect on 31 October 2019 and extended a large body of central legislation to the new Union Territory.[12] The Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order 2020 then amended residual State legislation so that references to the Ranbir Penal Code were read as references to the Indian Penal Code.[13] The practical result was that, for offences after the commencement date, a defamation complaint in Srinagar or Jammu was governed

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[11] See, for example, 'How Bharatiya Sakshya Adhiniyam Has Transformed Digital Evidence' *LiveLaw*, https://www.livelaw.in/articles/bharatiya-sakshya-adhiniyam-transformed-digital-evidence-552681 accessed 16 October 2026; Saji Koduvath, 'Sakshya Adhiniyam doesn't mandate hashing copy, pen drive or CD produced' *Indian Law Live* (29 June 2025), https://indianlawlive.net/2025/06/29/sakshya-adhiniyam-doesnt-mandate-hashing-copy-pen-drive-or-cd-produced-it-mandates-hashing-original-only/ accessed 16 October 2026. That commentary must now be read with *Pune Bar Association v Union of India* 2026 SCC OnLine SC 1297 (SC, 22 May 2026), discussed in Part 7.6.

[12] Jammu and Kashmir Reorganisation Act 2019 (Act 34 of 2019), s 95 read with Table 1 of the Fifth Schedule, by which the Indian Penal Code 1860 was extended to the Union Territory on and from the appointed day. The appointed day was fixed as 31 October 2019 by Notification SO 2889(E) dated 9 August 2019. See also *National Investigating Agency v Owais Amin* 2024 INSC 447, holding that the central codes govern the field in Jammu & Kashmir only from 31 October 2019 and have no retrospective application.

[13] Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order 2020, issued under s 96 of the Jammu and Kashmir Reorganisation Act 2019, https://www.legitquest.com/act/jammu-and-kashmir-reorganisation-adaptation-of-state-laws-order-2020/CC70 accessed 16 October 2026.

by sections 499 and 500 of the Indian Penal Code and no longer by the corresponding provisions of the Ranbir Penal Code.

The Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023 and the Bharatiya Sakshya Adhiniyam 2023 came into force on 1 July 2024.[14] Offences alleged to have been committed before that date continue to be governed by the earlier codes, while later conduct falls under the new ones. A defamation dispute that began with a post in 2023 and is tried in 2026 may therefore engage both regimes, and courts must identify the applicable text at each stage. Because the new defamation provision reproduces the old one in substance, the precedents on sections 499 and 500 of the Indian Penal Code remain the working authorities, a point that has been noted in commentary on the transition.[15]

Two consequences follow for the topic of this paper. The first is that the legal text is no longer a source of difference between Jammu & Kashmir and the rest of India: any distinctiveness must be sought in institutions, in enforcement practice and in context. The second is that the High Court of Jammu & Kashmir and Ladakh now decides these questions with the benefit of, and bound by, the decisions of the Supreme Court and of its own earlier cases, some of which were decided under the Ranbir Penal Code and require careful reading before they are applied to the new text.

B. Online Defamation under Section 356 of the Bharatiya Nyaya Sanhita, 2023

Section 356(1) of the Bharatiya Nyaya Sanhita defines defamation in terms that follow section 499 of the Indian Penal Code: whoever, by words spoken or intended to be read, by signs or by visible representations, makes or publishes an imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm that person's reputation, defames that person, subject to the

[14] Bharatiya Nyaya Sanhita 2023; Bharatiya Nagarik Suraksha Sanhita 2023; Bharatiya Sakshya Adhiniyam 2023. Each came into force on 1 July 2024. The transitional rules are in the repeal and savings provisions of each statute.

[15] Apni Law, 'Section 356 of the Bharatiya Nyaya Sanhita vs Section 499 IPC: Defamation Explained', https://www.apnilaw.com/legal-articles/acts/section-356-of-the-bharatiya-nyaya-sanhita-vs-section-499-ipc-defamation-explained/ accessed 16 October 2026.

Explanations and Exceptions.[16] The statutory Explanations, which deal with imputations concerning the dead, companies and associations, and with imputations expressed ironically, have been retained, as have the ten Exceptions, which include truth published for the public good, fair comment on the conduct of public servants and on matters of public interest, and good-faith accusations made to authorities.[17] The punishment under section 356(2) is simple imprisonment for a term up to two years, or fine, or both, or community service.[18]

The wording is technology-neutral. Because defamation may be committed by 'words ... intended to be read' or by 'visible representations', and because the statute speaks of making or publishing an imputation without limiting the medium, a post, a comment, a video, a meme, a reel caption or a group message is capable of being defamatory. The questions that online publication raises are therefore ones of application, and four stand out.

The first is publication. Defamation requires that the imputation be communicated to someone other than the person defamed. On social media this is usually clear for a public post. It is less clear for a message in a closed group, for a story that disappears after twenty-four hours, and for a person who shares or reacts to another's post. Courts have not settled when a forward amounts to a fresh publication with the intention or knowledge that the statute requires, and the answer will usually turn on the sharer's comment, the audience, and whether the sharer adopted the imputation. A mechanical equation of a 'like' or a share with authorship would sit uneasily with the mental element in section 356(1).

The second is identification. The imputation must concern a person, who need not be named but must be identifiable by those who read the post. Online posts often allude to individuals through initials, handles, photographs or context that is clear to a local audience and opaque to a stranger. In a small community that audience may be most

[16] Bharatiya Nyaya Sanhita 2023 (n 13), s 356(1).
[17] ibid s 356, Explanations and Exceptions 1 to 10. See the comparison in Apni Law (n 14) for the observation that the Explanations and the ten Exceptions are retained.
[18] ibid s 356(2).

of the readership. The complainant's task is to show that readers would have understood the post to refer to the complainant, and that task is evidentiary as much as legal, a point to which Part 7.6 returns.

The third is the application of the Exceptions to informal speech. The first Exception protects a true imputation only if its publication is for the public good, and the ninth protects an imputation made in good faith for the protection of the interests of the person making it or of another.[19] Posts made in anger, in the heat of a local dispute, or as a warning to others about a trader or a professional invite arguments under these Exceptions, and the requirement of good faith demands due care and attention, which is difficult to assess on a record limited to screenshots.

The fourth is the standard by which words are judged. In March 2025 the Supreme Court, in a case concerning a social media post, held that the effect of allegedly offending words must be judged by the standard of reasonable and strong-minded persons and not of those with weak and vacillating minds.[20] That approach is directly relevant to online speech, where hyperbole and sarcasm are common.

Two procedural features of the offence also matter. First, under section 222 of the Bharatiya Nagarik Suraksha Sanhita a court ordinarily cannot take cognizance of defamation except upon a complaint by the person aggrieved, subject to specific provisions for public servants and other cases.[21] Second, as under the Indian Penal Code, defamation is treated as a non-cognizable offence in the First Schedule, so that the police do not ordinarily investigate it without the direction of a magistrate. The first proviso to section 223(1) of the Bharatiya Nagarik Suraksha Sanhita also requires that the accused be given an opportunity of being heard before cognizance is taken in

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[19] Bharatiya Nyaya Sanhita 2023 (n 13), s 356, Exceptions 1 and 9.

[20] *Imran Pratapgadhi v State of Gujarat* 2025 INSC 410 (Criminal Appeal No 1545 of 2025, SC, 28 March 2025) (Oka and Bhuyan JJ). The Court held that the effect of allegedly offending words must be assessed by the standards of reasonable, strong-minded, firm and courageous persons and not by those of weak and vacillating minds.

[21] Bharatiya Nagarik Suraksha Sanhita 2023 (n 13), s 222. See the summary in Apni Law, 'Can Someone Be Sued for Defamation over a Social Media Post?', https://www.apnilaw.com/legal-articles/documentation/can-someone-be-sued-for-defamation-over-a-social-media-post-know-the-law-in-india/ accessed 16 October 2026.

a complaint case, and the Supreme Court has held compliance with this step to be mandatory.[22] Where an online post is investigated by the police as defamation alone, a lawyer should therefore ask whether the proper route was a private complaint.

Online defamation is also frequently charged together with other offences. A recent report from another State illustrates the pattern: a man was booked for allegedly defaming a senior official on social media under sections 336(4), 356(2) and 79 of the Bharatiya Nyaya Sanhita at a cyber police station.[23] The addition of cognizable offences such as forgery for the purpose of harming reputation or insulting modesty has the effect of bringing the matter within police powers. Whether those additional charges are properly made out, or serve instead to avoid the limits on police action in defamation, is a question that courts must examine closely.

C. Constitutional Limits: Speech, Reputation and Proportionality

Article 19(1)(a) guarantees the freedom of speech and expression, and Article 19(2) permits reasonable restrictions in the interests of, among other grounds, defamation. The Supreme Court has held that this guarantee extends to the internet and that restrictions on online expression must satisfy the test of proportionality. In *Anuradha Bhasin v Union of India*, which arose from the communications restrictions imposed in Jammu & Kashmir in August 2019, the Court held that orders restricting internet access must be published, must be reasoned, and must satisfy the requirements of necessity and proportionality, and that an indefinite suspension is impermissible.[24] The decision is the most important constitutional authority on the regulation of online

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[22] Bharatiya Nagarik Suraksha Sanhita 2023 (n 13), s 223(1), first proviso, which provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. See *Parvinder Singh v Directorate of Enforcement* 2026 INSC 519, [2026] 6 SCR 486 (SC, 19 May 2026), holding the proviso to be substantive and mandatory, so that cognizance taken in breach of it is void ab initio; and *Dipankar Majumder v State of Tripura* (Tripura HC, Crl P No 33 of 2026), applying the requirement to cognizance taken after 1 July 2024.

[23] See 'Man booked for 'defaming' Health Secretary on social media' *The Tribune* (Shimla), https://www.tribuneindia.com/news/himachal/man-booked-for-defaming-health-secretary-on-social-media/amp accessed 16 October 2026. The example is from Himachal Pradesh and is cited only to illustrate charging practice.

[24] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

communication in the Union Territory and it frames the way in which later enforcement ought to be judged.

On the value of reputation, *Subramanian Swamy* holds that reputation is an aspect of personal dignity under Article 21 and that the balance struck by sections 499 and 500 is a reasonable restriction.[25] The proportionality framework developed in *Justice KS Puttaswamy v Union of India* nonetheless supplies a lens through which the criminal sanction can be re-examined.[26] If civil damages, a retraction or an injunction would adequately repair the injury, the necessity of imprisonment as a remedy for an online post is open to question. The oral remarks of September 2025 mentioned above point in the same direction, although they do not alter the law (n 5).

The constitutional constraint also governs interim relief. In *Bloomberg Television Production Services LLC v Zee Entertainment Enterprises Ltd* the Supreme Court cautioned against pre-trial injunctions in defamation suits, holding that such relief should be granted only in exceptional cases in which the material is malicious or palpably false, and that reasons must be recorded.[27] That principle matters for online disputes because takedown or restraint at the interim stage produces the practical result of the suit before trial, and because content once removed is often not restored.

D. Intermediary Liability and the Takedown Regime

Defamatory content is usually hosted by a platform that did not write it. Section 79 of the Information Technology Act 2000 gives an intermediary conditional immunity for third-party content, and section 79(3)(b) withdraws that immunity if, on receiving actual knowledge or being notified by the appropriate government or its agency, the intermediary fails to remove or disable access to the material expeditiously.[28] In *Shreya Singhal* the Supreme Court read down 'actual knowledge' to mean knowledge obtained through a court order or a notification by the appropriate government, with

[25] *Subramanian Swamy* (n 3).
[26] *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.
[27] *Bloomberg Television Production Services LLC v Zee Entertainment Enterprises Ltd* 2024 SCC OnLine SC 426.
[28] Information Technology Act 2000, s 79(1) and (3)(b).

the result that a private complaint to a platform could not, on its own, create an obligation to remove.[29] The same decision struck down section 66A, which had criminalised the sending of 'grossly offensive' or annoying messages through a communication service and had been used against online speech of precisely the kind that defamation law also addresses.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 superseded the earlier rules and placed due-diligence duties on intermediaries, including a grievance redressal mechanism and an obligation to remove unlawful information on receiving actual knowledge under Rule 3(1)(d), originally within thirty-six hours.[30]

The Amendment Rules 2025, notified on 22 October 2025 and in force from 15 November 2025, provide that actual knowledge arises in only two ways, by an order of a court of competent jurisdiction or by a reasoned written intimation from an authorised government officer not below the rank of Joint Secretary or, for a police authority, Deputy Inspector General, failing which the intermediary risks losing its safe harbour.[31] The Amendment Rules 2026, notified on 10 February 2026 and in force from 20 February 2026, then reduced the period for acting on such an order or intimation from thirty-six hours to three. The Karnataka High Court has separately upheld the government's Sahyog portal, through which notices under section 79(3)(b) are routed.

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[29] *Shreya Singhal* (n 6).

[30] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(d), as originally framed. The thirty-six hour period was reduced to three hours by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026, notified by GSR 120(E) dated 10 February 2026 and in force from 20 February 2026: see Ministry of Electronics and Information Technology, Frequently Asked Questions on the Amendment Rules 2026, https://www.meity.gov.in/static/uploads/2025/10/065b6deb585441b5ccdf8be42502a49c.pdf accessed 16 October 2026. On the contention that the Rules strain against *Shreya Singhal*, see Krishnan (n 7).

[31] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2025, notified by GSR 775(E) dated 22 October 2025 and in force from 15 November 2025, substituting r 3(1)(d). The consolidated Rules as so amended are published by the Ministry of Electronics and Information Technology at https://www.meity.gov.in/static/uploads/2025/10/708f6a344c74249c2e1bbb6890342f80.pdf accessed 16 October 2026.

For a private person defamed online in Jammu & Kashmir, this framework gives three routes. The first is the platform's own grievance process, which is quick and inexpensive but has no binding adjudicative force. The second is a court order, whether an interim injunction in a civil suit or a direction under the criminal process, which, once served, creates the 'actual knowledge' that triggers the platform's obligation to act. The limits of that route appear from the dispute between ANI and Wikimedia, in which the Supreme Court set aside the Delhi High Court's takedown directions because a direction to remove all allegedly false, misleading and defamatory material was too broadly worded to be capable of implementation. A court order will therefore create actual knowledge only if it identifies the offending material with precision.[32] The third is a notification to the platform through the State, which is generally available only for content that falls within the statutory grounds, and is not a general remedy for private reputation.

The more difficult question is whether the executive route can be used, or is used in practice, in ways that go beyond what the Act contemplates. Critics argue that the use of section 79(3)(b) for large numbers of notices bypasses the safeguards that *Shreya Singhal* attached to blocking under section 69A.[33] The matter is contested, and the Karnataka High Court's decision rejects the platform's challenge. For present purposes the point is narrower. A police or administrative notice, issued in a region where online speech has long been treated as a security matter, can lead to removal without any hearing for the author, and the author is rarely the person with the resources to challenge it. The three-hour deadline sharpens that difficulty, because it leaves no practical interval in which an author can be heard before the material disappears.

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[32] *Wikimedia Foundation Inc v ANI Media Pvt Ltd* 2025 INSC 656 (SC, 9 May 2025), setting aside the Division Bench order of the Delhi High Court dated 16 October 2024. By an earlier order dated 17 April 2025 the Supreme Court had set aside the interim orders of the Delhi High Court dated 2 April 2025 and 8 April 2025 in the same dispute.

[33] On this criticism see the discussion in 'Edition 6: Now X (ex-Twitter) is challenging IT Rules 2021', https://thetechtrace.substack.com/p/edition-6-now-x-twitter-is-challenging-it-rules-2021 accessed 16 October 2026.

E. Jurisdiction and Procedure

Online publication is not confined to a place, and yet a court must have territorial jurisdiction. Under the Bharatiya Nagarik Suraksha Sanhita, as under the Code of Criminal Procedure 1973, an offence may ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed, or in which a consequence of the act ensued.[34] The Information Technology Act additionally applies to offences committed outside India by any person if the act involves a computer, computer system or network located in India.[35] A complaint of online defamation therefore may be presented where the reader accessed the post and the reputation was harmed, but this breadth is limited by the protection that the law gives to an accused who lives elsewhere.

A decision of the High Court of Jammu & Kashmir and Ladakh in 2024 illustrates the limit. The court quashed a defamation complaint presented in Srinagar against a resident of Rajasthan, holding that the alleged offence had been committed beyond the limits of the erstwhile State and that the accused could not be prosecuted at Srinagar, and directed that the complaint be returned for presentation to a court having jurisdiction.[36] The case concerned pleadings relied upon in court and decided under the Ranbir Penal Code, and not a social media post, so it is not direct authority on online territorial jurisdiction. It is nonetheless a reminder that the High Court is willing to examine the territorial basis of a defamation complaint, and that the same reasoning will be tested when the publication is a post accessible everywhere.

Where the accused resides outside the territorial jurisdiction of the Magistrate, section 225 of the Bharatiya Nagarik Suraksha Sanhita requires the Magistrate to postpone the

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[34] Bharatiya Nagarik Suraksha Sanhita 2023 (n 13), ss 197 and 199, which correspond to ss 177 and 179 of the Code of Criminal Procedure 1973 and provide respectively for the ordinary place of inquiry and trial and for the inquiry and trial of an offence at the place where the act is done or where its consequence ensues.

[35] Information Technology Act 2000 (n 27), s 75.

[36] *Satya Prakash Arya v Syed Abid Jalali* 2024 SCC OnLine J&K 556 (High Court of Jammu & Kashmir and Ladakh, Sanjay Dhar J, 20 July 2024). The decision is noted in 'J&K: High Court Quashes Defamation Case, Affirms Court Arguments Can Be Defamatory' *ETV Bharat* (29 July 2024), https://www.etvbharat.com/en/!state/j-and-k-high-court-quashes-defamation-case-affirms-court-arguments-can-be-defamatory-enn24072907463 accessed 16 October 2026.

issue of process and to hold an inquiry or direct an investigation, a safeguard that the Supreme Court has treated as mandatory.[37] In an online defamation case brought in Srinagar against a person who lives in another State, or in Jammu against a person who lives in the Valley, the safeguard has real bite, and a Magistrate who issues process on a bare complaint and screenshots invites quashing under the inherent powers of the High Court.

The Bharatiya Nagarik Suraksha Sanhita also contains provisions that bear on how digital material is gathered and brought to court. Its provision on production of documents and things extends to electronic communication and devices that may contain digital evidence, and its provision on search and seizure requires audio-video recording of the process.[38] These provisions help a complainant who needs platform records, subscriber information or the seizure of a device, but they operate mainly in investigation, and a private complaint of defamation does not normally begin with an investigation. The complainant who needs data held by a platform will often need a court order to obtain it.

F. Digital Evidence under the Bharatiya Sakshya Adhiniyam, 2023

An online defamation case turns on proof. The complainant must show that the statement was published, that the accused made or published it, that it referred to the complainant and, if the accused pleads an Exception, that the plea fails. Almost all of this will usually be shown through electronic records: posts, profile pages, messages, URLs, timestamps, account data and logs. The law on how such records are proved has been recast by the Bharatiya Sakshya Adhiniyam 2023.

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[37] Bharatiya Nagarik Suraksha Sanhita 2023 (n 13), s 225, which corresponds to s 202 of the Code of Criminal Procedure 1973 and requires the Magistrate to postpone the issue of process and to hold an inquiry or direct an investigation where the accused resides beyond the area of his jurisdiction. See *Abhijit Pawar v Hemant Madhukar Nimbalkar* (2017) 3 SCC 528.

[38] Bharatiya Nagarik Suraksha Sanhita 2023 (n 13), ss 94 and 105. Section 94 empowers a court or an officer in charge of a police station to require the production of a document or other thing, including a document or electronic communication in electronic form, and s 105 requires the process of search and seizure to be recorded through audio-video electronic means. See also s 530, which permits trials, inquiries and proceedings to be held in electronic mode.

Section 61 provides that nothing in the Adhiniyam is to deny the admissibility of an electronic or digital record merely because it is in that form, and that such a record, subject to section 63, has the same legal effect, validity and enforceability as any other document.[39] Section 63 is the successor to section 65B of the Indian Evidence Act. It provides that information contained in an electronic record that is printed, stored, recorded or copied in electronic form is a document and is admissible without production of the original if the conditions of the section are met, and it requires that a certificate accompany the record.[40] Section 63(2) lays down conditions concerning the regular use of the device and its proper operation, and section 63(4) requires the certificate to be in the form prescribed in the Schedule.

Three features of the new regime deserve attention. The first is that the certificate is now in a prescribed form with two parts. Part A is to be signed by the person in charge of the device or of the relevant activities and requires the hash value of the electronic record to be stated along with the algorithm used, which the form identifies by reference to standard algorithms such as SHA-256, while Part B is to be signed by an expert.[41] The Indian Evidence Act contained no express requirement of a hash value. The second is that the language of section 63(4) makes the certificate a mandatory accompaniment to the record. Under the earlier law the obligation had to be derived from judicial interpretation, which the Supreme Court did in *Anvar* and restored in *Arjun Panditrao* after the intervening decision in *Shafhi Mohammad*.[42] The third is that,

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[39] Bharatiya Sakshya Adhiniyam 2023 (n 13), s 61. See the note on s 61 at https://ksandk.com/litigation/section-63-bharatiya-sakshya-adhiniyam-2023/ accessed 16 October 2026.

[40] ibid s 63(1) and (4). A convenient summary of the structure of s 63 is 'Section 63 Certificate: How Electronic Evidence Is Actually Proved in Indian Courts' (TaxGuru), https://taxguru.in/?p=1067873 accessed 16 October 2026.

[41] Bharatiya Sakshya Adhiniyam 2023 (n 13), the Schedule, Parts A and B. Part A requires the party producing the record to state its hash value together with the algorithm used, which the form identifies by reference to standard algorithms such as SHA-256, and Part B requires a certificate by an expert. See *Pune Bar Association v Union of India* 2026 SCC OnLine SC 1297 (SC, 22 May 2026), describing the hash value as the electronic fingerprint of the record.

[42] *Anvar* (n 8); *Shafhi Mohammad* (n 8); *Arjun Panditrao* (n 8). In *Arjun Panditrao* the Court overruled *Shafhi Mohammad* and held that the certificate is a condition precedent to admissibility of secondary electronic evidence, while accepting that it is unnecessary where the original device itself is produced and proved.

on one reading, the concession in *Arjun Panditrao* for the original device does not survive, since every electronic record must now be routed through section 63.[43]

For a complainant in an online defamation case the consequences are concrete. A screenshot printed from a phone is a computer output and requires a certificate. The certificate should be prepared when the record is captured, because the hash value is generated from the data at that moment and cannot be reconstructed later from a printout. A complainant who captures a post by taking a photograph of a screen with another device, or who relies on a forwarded image of unknown origin, will find that no meaningful hash can be given. The record may be admissible, if at all, only under other routes and will carry little weight.

Courts have also warned that a certificate is not a substitute for proof. A certificate gets a record in; it does not establish that the account belonged to the accused, that the content was not edited, or that the date shown is accurate. Commentators note that the signatory of the certificate and the expert may be cross-examined on extraction methods, safeguards and hash generation.[44] In a defamation case the most contested facts are likely to be attribution, because accounts can be created under false names and devices shared, and integrity, because posts can be altered or fabricated with ease. Neither is resolved by a certificate alone, which is why platform-side records, including registration details and login logs, and corroborating testimony, remain critical.

A further difficulty is the relationship between the evidentiary rules and the realities of social media. Platforms may not preserve content that the author deletes. Messages in an end-to-end encrypted group may exist only on the devices of participants. Synthetic and manipulated media, including cloned voices and fabricated images, enlarge the possibility that a persuasive record is false. The Adhiniyam provides for expert opinion on digital matters, and the Information Technology Act contemplates

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[43] LiveLaw (n 10). Contrary readings exist; see Koduvath (n 10), who argues that the certificate is an enabling provision and that hashing is required only for the original record.
[44] See 'Electronic Evidence Under Section 63: Admissibility and Reliability' (TaxGuru), https://taxguru.in/?p=1072828 accessed 16 October 2026.

a notified Examiner of Electronic Evidence, but neither addresses the specific problem of authenticating synthetic content, which will fall to judicial development.[45]

The constitutional validity of this regime is now settled. In *Pune Bar Association v Union of India,* the Supreme Court rejected a challenge to section 63(4) and the Schedule as manifestly arbitrary, holding that the hash value and the expert's certificate bear a rational connection to the protection of the integrity of electronic records, and describing the hash value as the electronic fingerprint of the record.

The Court also read section 39(1) as permitting any person with special skill in computer science and cyber forensics, and not only an Examiner of Electronic Evidence notified under section 79A of the Information Technology Act, to sign Part B, provided the court is satisfied of that person's credentials on unimpeachable material, and it held that the narrower view taken by the Madras High Court does not bind. For a litigant in Jammu & Kashmir the significance is practical, because the persons competent to certify are no longer confined to a small set of notified examiners. The Court did not, however, address who is to bear the cost of the expert, and that question remains the real obstacle for a complainant of limited means.[46]

The result for a court in Jammu & Kashmir is a demanding standard that depends on resources. Parties will need forensic help to produce a conforming certificate, and the court will need the ability to assess the expert's work. The risk is that a complainant with a genuine grievance will fail on a technical ground, while a well-resourced party may succeed in producing apparently flawless evidence. This asymmetry is addressed in the recommendations.

G. The Enforcement Experience in Jammu & Kashmir

The available material suggests that the enforcement of rules on online speech in the Union Territory has often been driven by public-order concerns. In February 2020,

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[45] Bharatiya Sakshya Adhiniyam 2023 (n 13), s 39 (opinions of experts); Information Technology Act 2000 (n 27), s 79A (Examiner of Electronic Evidence). The point about synthetic media is the author's analysis and is not drawn from a reported decision.

[46] *Pune Bar Association v Union of India* 2026 SCC OnLine SC 1297 (SC, 22 May 2026) (Surya Kant CJI, Bagchi and Pancholi JJ), https://www.livelaw.in/pdf_upload/2026/05/27/pune-bar-association-v-union-of-india-676590.pdf accessed 16 October 2026.

during a period when social media access was restricted, the Cyber Police Station, Kashmir Zone registered what it described as its first FIR since being notified, against users alleged to have defied government orders and used virtual private networks to access prohibited sites. According to contemporaneous reports, the FIR invoked section 13 of the Unlawful Activities (Prevention) Act, sections 188 and 505 of the Indian Penal Code and section 66A(b) of the Information Technology Act.[47] The reference to section 66A is striking, because that provision had been struck down in *Shreya Singhal* nearly five years earlier. The Supreme Court expressed alarm at the continued invocation of the provision in 2021, and a prosecution that rests on a void provision is plainly vulnerable.[48]

A second episode concerns expression about the judiciary. In 2020 the police at Shaheed Ganj, Srinagar registered an FIR in response to social media comments criticising a High Court decision upholding the preventive detention of the President of the Kashmir Bar Association, on the stated basis that the comments sought to disrepute the court and disturb public order. Reports record that the FIR was not lodged on the complaint of any judge or court official and that members of the bar said the police should leave questions of contempt to the court.[49] Whatever the merits, the episode shows the police acting on social media content on their own information, which is not how a defamation complaint is ordinarily set in motion.

A third strand is the monitoring of social media by the cyber police. In 2020 the police reported that eight FIRs had been registered against persons alleged to have posted fake news or content glorifying militancy and that the cyber police was monitoring

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[47] Entrackr (n 2), reporting FIR No 01 of 2020; see also 'J-K cyber police question 10 over social media misuse, probes over 1000 handles' *The Kashmir Walla*, https://thekashmirwalla.com/?p=41397 accessed 16 October 2026. These are contemporaneous press accounts of the police statement and are relied upon only as evidence of what was reported, in accordance with Part 5.

[48] *People's Union for Civil Liberties v Union of India* (SC, order dated 5 July 2021) (Nariman, Joseph and Gavai JJ), issuing notice on the continued registration of cases under s 66A after *Shreya Singhal*. The Ministry of Home Affairs thereafter issued an advisory dated 14 July 2021 directing law enforcement agencies to stop registering cases under the provision and to withdraw those pending.

[49] Reports in 'Police registers FIR for social media criticism of recent J-K HC verdict' *The Tribune*, https://www.tribuneindia.com/news/j-k/police-registers-fir-for-social-media-criticism-of-recent-j-k-hc-verdict-95847/amp accessed 16 October 2026, and *Scroll.in*, https://amp.scroll.in/latest/964301/scroll_in accessed 16 October 2026.

profiles.[50] This activity is aimed at a different mischief from defamation, but it uses the same evidence: screenshots, profile data and device seizures. The lessons about evidence handling are therefore common, and any improvement in the handling of digital evidence in security-related cases will carry over into reputation disputes, and the reverse.

These episodes are drawn from press reports and the police's own statements, and they are not a systematic survey. Their significance is limited to what they show about the setting in which the law is applied. In that setting the agencies that handle digital evidence are primarily oriented towards security, the forms of process used are criminal and rapid, and the individual whose reputation is harmed by a post has fewer practical options than the State. The first hypothesis is thus partly supported, though a more rigorous test would need data on private defamation complaints that is not at present published.

H. Civil Remedies

The criminal process is not the only route. A person defamed online may sue for damages and for an injunction in a civil court, and the civil standard of proof, the ability to seek a retraction and the possibility of compensation make it a better fit for many reputational injuries. The principle in *Bloomberg* governs interim restraint, and the evidentiary regime of the Adhiniyam applies equally to civil proceedings, so a civil plaintiff faces the same certificate and hash requirements as a criminal complainant.

Civil litigation has its own drawbacks. It is slow and costly, damages in defamation cases in India are frequently modest, and a plaintiff who obtains an injunction against a platform may find the content reappearing on mirror pages. The attraction of the criminal route for complainants is that it is cheap to start and places pressure on the

[50] See 'J&K Cyber Police registers 8 FIRs against people posting fake reports' *The Kashmir Walla*, https://thekashmirwalla.com/cyber-police-monitoring-all-profiles-registers-8-firs-against-people-posting-fake-reports/ accessed 16 October 2026; and the Deccan Herald report '8 FIRs filed in valley for fake news on social media', https://www.deccanherald.com/national/north-and-central/8-firs-filed-in-valley-for-fake-news-on-social-media-826258.html accessed 16 October 2026.

accused. This pressure is the reason the Supreme Court's recent remarks are significant, because they treat that very feature as a risk of misuse in cases between private persons.

V. SUGGESTIONS AND RECOMMENDATIONS

The analysis suggests that reform should be directed less at the text of the law, which is now uniform, and more at institutions, procedure and capacity. The following measures are proposed.

1. **Move private defamation towards civil remedies:** Parliament should consider reducing the role of imprisonment in defamation between private persons, keeping criminal liability for the gravest cases of knowing falsehood. Pending legislation, courts should apply the pre-cognizance hearing, the inquiry safeguard for out-of-jurisdiction accused, and the reasonable-reader standard with strictness.
2. **Issue police guidance on charging:** The Union Territory's police leadership should issue directions that defamation alone is not to be registered as an FIR without a magistrate's direction where the law so requires, that cognizable offences are not to be added without a basis in the facts, and that no case is to be registered under section 66A of the Information Technology Act.
3. **Adopt a standard operating procedure for digital evidence:** The Home Department, the Police and the High Court's judicial academy should jointly prepare a procedure covering capture, hashing, preservation, chain of custody and use of the Schedule certificate, with model forms in English, Hindi and Urdu, so that complainants and investigators produce conforming records at first instance.
4. **Build district-level forensic capacity:** The Union Territory should create or accredit digital forensic units at the district level, with fixed turnaround times and a published fee schedule for private litigants, so that a certificate under section 63(4) is not available only to those who can pay a private expert.

5. **Train judges, prosecutors and lawyers:** The judicial academy should offer regular modules on the Bharatiya Sakshya Adhiniyam, authentication of social media content, and the assessment of manipulated media.
6. **Frame judicial guidelines on interim takedown:** The High Court may consider practice directions requiring that any interim order directed at a platform record reason in light of *Bloomberg*, identify specific URLs, fix a time limit, and allow the author to be heard promptly. The three-hour compliance window introduced in 2026 makes that precision essential, because it leaves no interval in which an author can be heard before removal, and the Supreme Court's reasoning in the ANI and Wikimedia dispute confirms that a broadly worded direction cannot be implemented. Executive notices under section 79(3)(b) concerning the Union Territory should be recorded and periodically disclosed in aggregate.
7. **Strengthen pre-litigation options:** Complainants should be directed to the platform's grievance mechanism and, where available, to the Grievance Appellate Committee under the Intermediary Rules, and legal services authorities should offer assistance in drafting notices and seeking corrections or a right of reply.
8. **Collect and publish data:** The High Court and the police should publish disaggregated annual data on defamation and cybercrime complaints, cases reaching trial, outcomes and the proportion in which electronic evidence was held inadmissible, so that the effects of the 2024 reforms can be measured.

VI. CONCLUSION

The legal regulation of online defamation and digital evidence in Jammu & Kashmir presents an unusual combination: a text that is now the same as that of the rest of the country, and a setting that is not. Section 356 of the Bharatiya Nyaya Sanhita applies to online publication without difficulty, but its application raises questions of publication, identification, the Exceptions and the standard of the reasonable reader that courts are only beginning to address.

The intermediary regime gives a private person few quick, binding remedies against a platform, while giving the executive an efficient one. The Bharatiya Sakshya Adhiniyam has raised the standard of proof for electronic records and, by introducing a hash value and an expert's certificate, has made the proof of an online post a technical exercise.

On the three hypotheses, the first is supported by the available press reports, subject to the limits of that source. The second is supported by the text of the statute, by commentary and now by the decision in *Pune Bar Association*, which upheld the certificate requirement while widening the class of persons competent to sign the expert's part, and so eased one element of the compliance burden without addressing its cost.

The third is a matter of risk rather than established fact, since the combination of criminal liability and executive takedown calls for safeguards that the present framework only partly supplies. The remedy lies in procedure, capacity and data. A framework that offers no practical means of proving what was said online will fail both the person who has been wronged and the person who is accused unjustly, and the measures proposed above are directed at making the proof reliable and the process proportionate.

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