
THE DIGITAL DIVIDE VS DIGITAL JUSTICE: A SOCIO-LEGAL INVESTIGATION TOWARDS INCLUSIVITY OF ONLINE DISPUTE RESOLUTION

Rudrabhan Singh, Ph.D. Scholar and Senior Research Fellow, Ram Manohar Lohiya National Law University, Lucknow.

Dr. Ankita Yadav, Assistant Professor, Ram Manohar Lohiya National Law University, Lucknow.

ABSTRACT

The growing prevalence of Online Dispute Resolution (ODR) as a modality of adjudication and settlement has generated significant legal and socio-political debate. While ODR holds the promise of democratizing access to justice by removing geographic, temporal, and institutional barriers, it simultaneously risks reproducing and deepening structural inequalities rooted in the digital divide. This paper undertakes a socio-legal investigation of the tension between the digital divide and digital justice in the context of ODR. Drawing upon foundational theories of distributive justice, recognition, and capabilities, the paper critically examines how socio-economic, demographic, and infrastructural disparities shape differential access to ODR mechanisms. It analyses the normative framework governing ODR at both the international and domestic levels, with particular attention to the Indian context. The paper argues that the mere deployment of technological infrastructure is insufficient to achieve digital justice; rather, a transformative approach rooted in inclusivity, procedural fairness, and substantive equality is indispensable. Concluding with a set of policy prescriptions, this paper contributes to the emerging jurisprudence on technology, law, and access to justice.

Keywords: Digital Divide, Digital Justice, Online Dispute Resolution, Access to Justice, Inclusivity, Socio-Legal Analysis, Information and Communication Technology, Distributive Justice.

THE DIGITAL DIVIDE VS DIGITAL JUSTICE:

A SOCIO-LEGAL INVESTIGATION TOWARDS INCLUSIVITY OF ONLINE DISPUTE RESOLUTION

I. Introduction

The administration of justice has historically been constrained by the physical infrastructure of courthouses, geographic accessibility, and the costs attendant upon formal litigation. The emergence of information and communication technologies (ICTs) has generated unprecedented possibilities for reconstituting the architecture of dispute resolution. Online Dispute Resolution (ODR), broadly defined as the use of digital platforms and networked technologies to facilitate the resolution of disputes between parties, has emerged as one of the most consequential innovations in contemporary legal practice.¹

Proponents of ODR contend that it represents a structural corrective to access to justice deficits, enabling parties who might otherwise lack the financial resources or physical capacity to litigate to obtain remedies through accessible digital channels.² International bodies such as the United Nations Commission on International Trade Law (UNCITRAL) have institutionalised ODR as a normative framework, and numerous national legal systems have either adopted or are in the process of adopting ODR mechanisms in both civil and commercial contexts.³

However, the enthusiasm surrounding ODR must be tempered by a socio-legal critique that acknowledges the structural conditions within which digital technologies are deployed. The concept of the digital divide, introduced in policy discourse in the late 1990s, identifies the differential access to digital technologies across socio-economic, demographic, and geographic lines.⁴ According to the International Telecommunication Union, as of 2023, approximately 2.6 billion people worldwide remain without internet access, a figure disproportionately concentrated in the Global South, among rural populations, elderly

¹Susskind R, *Online Courts and the Future of Justice* (Oxford University Press 2019) 1.

²OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (OECD Publishing 2019) 14.

³United Nations Commission on International Trade Law (UNCITRAL), *Technical Notes on Online Dispute Resolution* (United Nations 2017) 3.

⁴DiMaggio P and Hargittai E, 'From the 'Digital Divide' to 'Digital Inequality': Studying Internet Use as Penetration Increases' (2001) Working Paper 15, Centre for Arts and Cultural Policy Studies, Princeton University.

individuals, persons with disabilities, and those with lower incomes.⁵

The tension between the aspirational promise of ODR and the empirical reality of the digital divide constitutes the central problematic of this paper. If ODR platforms are accessible only to those already advantaged by digital connectivity and literacy, the substitution of traditional dispute resolution mechanisms with digital alternatives may inadvertently compound existing inequalities rather than ameliorate them. This paper undertakes a socio-legal investigation of this tension, examining how the structural conditions of digital inequality interact with the normative imperatives of justice and legal inclusion.

The paper is structured as follows. Section II traces the conceptual genealogy of the digital divide and situates it within broader socio-legal frameworks. Section III examines the normative architecture of ODR at the international and domestic levels. Section IV interrogates the specific barriers that the digital divide erects against inclusive ODR. Section V develops a theoretical framework of digital justice drawing upon philosophical and legal traditions. Section VI advances a set of structural prescriptions for achieving inclusive ODR. Section VII concludes with reflections on the implications for future legal scholarship and policy design.

II. The Digital Divide: Conceptual Genealogy and Socio-Legal Dimensions

A. Origins and Evolution of the Concept

The term "digital divide" was first deployed in United States policy circles in the mid-1990s to describe the bifurcation between those with and without access to personal computers and the internet. Paul DiMaggio and Eszter Hargittai, among the foundational scholars of this phenomenon, identified the progression from a binary conception of connectivity to a more nuanced understanding of digital inequality that encompasses not merely access but the quality of access, the skills deployed in usage, and the social outcomes derived therefrom.

Jan van Dijk's seminal framework articulates four successive categories of access: motivational access, material access, skills access, and usage access, arguing that each level presents distinct barriers that must be independently addressed by policy interventions.⁶ Pippa Norris further distinguishes between the global divide separating industrialised from

⁵International Telecommunication Union (ITU), *Measuring Digital Development: Facts and Figures 2023* (ITU Publications 2023) 7.

⁶ Van Dijk JAGM, *The Deepening Divide: Inequality in the Information Society* (Sage Publications 2005) 22-35.

developing nations, the social divide within nations between advantaged and disadvantaged communities, and the democratic divide pertaining to the differential political engagement facilitated by digital technologies.⁷

The World Bank's 2016 World Development Report on Digital Dividends emphasised that the benefits of the digital revolution have been concentrated among a privileged minority, while the majority of the world's population remains structurally excluded from its economic and social benefits.⁸ This structural concentration of digital advantage maps closely onto existing axes of social stratification, including class, gender, race, disability, and geographic location, thereby reproducing and amplifying pre-existing patterns of inequality.

B. Socio-Legal Significance of the Digital Divide

From a socio-legal perspective, the digital divide is significant not merely as a descriptive empirical phenomenon but as a normative challenge to the foundational principles of the rule of law. The rule of law presupposes, among other things, that legal remedies are accessible to all persons without discrimination, that procedural justice is administered equitably, and that the legal system does not structurally favour particular classes of litigants.

John Rawls's theory of justice, articulated through the two principles of equal basic liberties and the difference principle, provides a foundational resource for evaluating the justice of digital access arrangements. To the extent that the digital divide systematically disadvantages the least well-off members of society, it violates the Rawlsian imperative that social institutions be arranged to benefit those in the most precarious positions.⁹

Nancy Fraser's framework of recognition adds a further dimension, identifying the failure to recognise the particular needs and vulnerabilities of marginalised groups as a form of injustice irreducible to distributive considerations alone.¹⁰ Iris Marion Young similarly emphasises the structural dimensions of oppression, arguing that institutional arrangements that systematically exclude certain groups from participation in social processes constitute

⁷Norris P, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Cambridge University Press 2001) 4.

⁸World Bank, *World Development Report 2016: Digital Dividends* (World Bank Group 2016) 2.

⁹Rawls J, *A Theory of Justice* (Revised edn, Harvard University Press 1999) 52-53.

¹⁰Fraser N, 'Rethinking Recognition' (2000) 3 *New Left Review* 107, 108.

forms of structural injustice even in the absence of intentional discrimination.¹¹

Manuel Castells's influential account of the network society suggests that the emergence of networked information technologies has reorganised the fundamental architecture of social power, creating a division between those integrated into the information network and those excluded from it.¹² When applied to the legal domain, this analysis implies that ODR systems, by requiring digital connectivity and literacy as preconditions for participation, may effectively reproduce the stratified structure of the network society within the administration of justice itself.

III. The Normative Architecture of Online Dispute Resolution

A. International Framework

The normative framework governing ODR at the international level has developed incrementally through the efforts of intergovernmental organisations, particularly UNCITRAL. The genealogy of ODR as a formal subject of international law can be traced to the rise of electronic commerce in the 1990s and the accompanying need for mechanisms capable of resolving cross-border consumer disputes without the expense and inconvenience of traditional litigation.¹³

Colin Rule, drawing upon his experience directing the eBay and PayPal dispute resolution systems, defined ODR as the application of alternative dispute resolution techniques to disputes that arise online, facilitated through the use of digital platforms and communication technologies.¹⁴ Pablo Cortes further contextualised ODR within the broader movement toward consumer protection and access to justice, identifying ODR as a structural response to the inadequacy of traditional court systems for handling the high volume and low value of disputes generated by online commerce.¹⁵

At the regional level, the European Union has established one of the most comprehensive ODR regulatory frameworks through Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes, which mandates the creation of a single ODR

¹¹Young IM, *Justice and the Politics of Difference* (Princeton University Press 1990) 39.

¹²Castells M, *The Rise of the Network Society* (2nd edn, Blackwell Publishers 2000) 370.

¹³Katsh E and Rifkin J, *Online Dispute Resolution: Resolving Disputes in Cyberspace* (Jossey-Bass 2001) 10.

¹⁴Rule C, *Online Dispute Resolution for Business* (Jossey-Bass 2002) 3.

¹⁵Cortes P, *Online Dispute Resolution for Consumers in the European Union* (Routledge 2011) 1.

platform accessible to consumers and traders across member states.¹⁶ UNCITRAL's Working Group III has developed Technical Notes on Online Dispute Resolution that articulate a set of procedural principles intended to guide the development of ODR systems at the national and international levels, including principles of transparency, impartiality, independence, effectiveness, legality, and autonomy.¹⁷

Julia Hörnle's comprehensive analysis of cross-border internet dispute resolution identifies three distinct models of ODR: those operating entirely outside formal legal systems, those integrated within formal court structures, and hybrid models combining elements of both.¹⁸ The appropriate model for any given jurisdiction is shaped by its legal tradition, institutional capacities, and the specific nature of disputes to be resolved. Richard Susskind's more recent analysis situates ODR within a broader transformation of legal service delivery toward online courts, arguing that the digitisation of justice is both inevitable and potentially transformative.¹⁹

B. Domestic Framework: The Indian Experience

India presents a particularly instructive case study for analysing the relationship between digital infrastructure and access to justice. The Indian judiciary confronts one of the most severe case backlogs in the world, with tens of millions of cases pending across various levels of the court hierarchy. The deployment of ODR has accordingly been promoted both as a mechanism for reducing court congestion and as a modality for extending legal access to populations that have historically been excluded from formal dispute resolution.

The constitutional foundation for access to justice in India is grounded in Article 21 of the Constitution, which guarantees the right to life and personal liberty, interpreted by the Supreme Court to include the right of access to justice as a fundamental right.²⁰ The Supreme Court in *Hussainara Khatoon v Home Secretary, State of Bihar* affirmed that the right to a speedy trial is an essential component of the right to life under Article 21, establishing the

¹⁶Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes [2013] OJ L165/1.

¹⁷UNCITRAL, Working Group III (Online Dispute Resolution), Report of Working Group III on the Work of Its Thirty-Second Session (UN Doc A/CN.9/868, 2016).

¹⁸Hörnle J, *Cross-Border Internet Dispute Resolution* (Cambridge University Press 2009) 47.

¹⁹Susskind (n 1) 78.

²⁰Constitution of India 1950, art 21.

constitutional basis for judicial reforms aimed at reducing delay.²¹ More recently, in *Anita Kushwaha v Pushap Sudan*, the Supreme Court explicitly identified access to justice as a fundamental right, encompassing the right to infrastructure, remedy, and fair treatment.²²

The regulatory framework for electronic evidence and digital proceedings has been partially established through the Information Technology Act, 2000, which provides for the legal recognition of electronic records and digital signatures.²³ The E-Committee of the Supreme Court of India, established pursuant to the National Policy and Action Plan for the Implementation of ICT in the Indian Judiciary, has overseen successive phases of court computerisation aimed at digitising court records, enabling electronic filing, and facilitating video-conferencing for hearings.²⁴

The third phase of the E-Courts Mission Mode Project, launched in 2021, represents an ambitious programme for the comprehensive digitisation of judicial processes, including the deployment of artificial intelligence for case management, the creation of virtual court platforms for traffic and commercial disputes, and the development of an ODR framework for consumer and commercial disputes.²⁵ While these initiatives represent significant institutional progress, their effectiveness is contingent upon the resolution of the foundational challenge of digital inequality that continues to stratify Indian society along lines of class, caste, gender, and geography.

IV. The Digital Divide as a Barrier to Inclusive ODR

A. Infrastructure and Connectivity Deficits

The most immediate barrier to inclusive ODR participation is the absence of reliable digital infrastructure. Access to ODR systems presupposes a minimum level of connectivity, including access to a device capable of interfacing with online platforms and a sufficiently reliable internet connection to sustain real-time or asynchronous communication. The uneven geographic distribution of digital infrastructure creates structural exclusions that replicate and

²¹*Hussainara Khatoon v Home Secretary, State of Bihar* AIR 1979 SC 1360.

²²*Anita Kushwaha v Pushap Sudan* (2016) 8 SCC 509.

²³Information Technology Act 2000 (India), s 65-B.

²⁴Supreme Court of India, E-Committee, National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary (Supreme Court of India 2005).

²⁵Ministry of Law and Justice (India), Phase III of E-Courts Mission Mode Project: Concept Note (Government of India 2021) 4.

intensify existing patterns of marginalisation.²⁶

Arno Lodder and John Zeleznikow, in their comprehensive treatment of enhanced dispute resolution through information technology, note that the technology dependency of ODR creates a structural vulnerability insofar as any failure or absence of digital infrastructure directly translates into an inability to participate in the dispute resolution process.²⁷ In regions characterised by unreliable electricity supply, limited broadband penetration, or prohibitively expensive data costs, the promise of ODR as an access-enabling mechanism is substantially undermined.

The ITU's measurement of digital development reveals persistent disparities between urban and rural populations, between high-income and low-income countries, and between developed and developing regions that cannot be expected to dissolve without targeted policy intervention.²⁸ In the Indian context, the urban-rural digital divide remains pronounced, with rural broadband penetration substantially lower than urban levels and with significant variation across states reflecting differential levels of economic development and infrastructural investment.

B. Digital Literacy and Skills Deficits

Beyond material connectivity, participation in ODR requires a level of digital literacy that is far from universally distributed. Van Dijk's taxonomy of digital skills distinguishes operational skills, the basic capacity to operate digital devices and interfaces; informational skills, the capacity to search for and evaluate information online; strategic skills, the capacity to deploy digital resources to achieve personal and professional goals; and social skills, the capacity to participate in digital communities and networks.²⁹

Virginia Eubanks, in her critical examination of automated inequality, demonstrates that the deployment of high-tech tools in public services systematically disadvantages those lacking the skills to navigate complex digital systems, effectively creating a two-tiered system of service delivery that privileges the digitally literate.³⁰ Neil Selwyn similarly argues that

²⁶Denvir, Balmer and Pleasence (n 27) 18.

²⁷Lodder AR and Zeleznikow J, *Enhanced Dispute Resolution Through the Use of Information Technology* (Cambridge University Press 2010) 19.

²⁸ITU (n 5) 12.

²⁹van Dijk (n 6) 58.

³⁰Eubanks V, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St Martin's

digital inequality must be understood not merely in terms of access but in terms of the meaningful and effective engagement with digital technologies that translates access into substantive social outcomes.³¹

Ellen Helsper's corresponding fields model illuminates the interaction between digital and social exclusion, demonstrating that those who are most severely excluded from social resources are also most severely excluded from the digital sphere, creating a mutually reinforcing dynamic of compounded disadvantage.³² In the ODR context, this dynamic implies that those most in need of accessible dispute resolution mechanisms are precisely those least likely to possess the digital skills necessary to utilise them effectively.

Conor Denvir, Nigel Balmer, and Pascoe Pleasence, in their empirical study of online access to justice, found that individuals with lower levels of education, older age, and lower income were significantly less likely to successfully navigate online legal services, with implications for the distributive justice of ODR systems.³³

C. Linguistic and Cultural Barriers

A dimension of the digital divide frequently neglected in ODR scholarship is the linguistic and cultural dimension. The predominance of English as the primary language of online platforms and ODR interfaces constitutes a structural barrier for populations whose primary language is not English.³⁴ In a linguistically diverse country such as India, where the Constitution recognises twenty-two scheduled languages and hundreds of dialects are in common use, ODR systems designed in English or a limited set of languages exclude substantial portions of the population from effective participation.

Amy Schmitz and Colin Rule identify language as a critical axis of ODR accessibility, noting that natural language processing technologies, while increasingly capable, continue to perform unevenly across languages, with systematic disadvantages for speakers of minority or low-resource languages.³⁵ The cultural dimension of ODR accessibility further encompasses

Press 2018) 9.

³¹Selwyn N, 'Reconsidering Political and Popular Understandings of the Digital Divide' (2004) 6(3) *New Media and Society* 341, 348.

³²Helsper EJ, 'A Corresponding Fields Model for the Links Between Social and Digital Exclusion' (2012) 46(4) *Communication Theory* 403, 407.

³³Denvir C, Balmer NJ and Pleasence P, 'Surfing the Web: Online Dispute Resolution and Access to Justice' (2013) 22(1) *Information and Communications Technology Law* 11, 14.

³⁴Cortes (n 15) 87.

³⁵Schmitz AJ and Rule C, 'Online Dispute Resolution for Smart Contracts' (2019) 2019(1) *Journal of Dispute*

differential attitudes toward adversarialism, mediation, and formal dispute resolution that may shape the willingness and capacity of individuals from diverse cultural backgrounds to engage with ODR processes.

D. Structural and Institutional Barriers

Beyond the individual level, structural and institutional factors further mediate the accessibility of ODR. Dory Reiling's analysis of technology for justice identifies the institutional culture of legal systems as a critical determinant of the effective deployment of digital technologies, noting that resistance from legal professionals, inadequate judicial training, and insufficient administrative support can substantially undermine the implementation of ODR initiatives.³⁶

The commodification of ODR platforms by private technology corporations raises further structural concerns. Where ODR services are provided by profit-driven entities, the design of platforms may be shaped by commercial imperatives that do not necessarily align with the imperatives of justice and access.³⁷ The concentration of ODR infrastructure in the hands of a small number of dominant platform operators creates risks of market power abuse, lack of transparency, and insufficient accountability that must be addressed through robust regulatory frameworks.

Frank Sander's foundational critique of the obsession with settlement in alternative dispute resolution is pertinent here: if ODR systems are designed primarily to reduce court caseloads rather than to deliver substantive justice, they may prioritise efficiency over fairness in ways that systematically disadvantage parties with weaker bargaining power.³⁸

V. Towards Digital Justice: A Theoretical Framework

A. Reconceptualising Justice in the Digital Age

The concept of digital justice, as articulated by Ethan Katsh and Orna Rabinovich-Einy, represents an attempt to articulate a normative framework adequate to the challenges of dispute

Resolution 103, 108.

³⁶Reiling D, *Technology for Justice: How Information Technology Can Support Judicial Reform* (Leiden University Press 2009) 35.

³⁷Katsh E and Rabinovich-Einy O, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press 2017) 22.

³⁸Sander FEA, 'The Obsession with Settlement' (1995) 46 *University of Miami Law Review* 247, 249.

resolution in the digital age. Digital justice is not merely the application of traditional justice principles to digital contexts but the reconceptualisation of justice norms in light of the specific affordances, constraints, and risks generated by digital technologies.

Drawing upon Rawls's difference principle, digital justice requires that the design and deployment of ODR systems be evaluated by reference to their effects on the least advantaged members of society.³⁹ An ODR system that delivers significant efficiency gains for digitally connected middle-class litigants while systematically excluding the poor, the rural, the elderly, and the disabled fails the Rawlsian test and therefore cannot be considered just.

Amartya Sen's capability approach offers a complementary framework, evaluating institutions not merely by the formal rights they extend but by the substantive freedoms, or capabilities, they enable.⁴⁰ On this view, access to ODR is not merely a matter of formal legal entitlement but of the substantive capability to participate meaningfully in digital dispute resolution processes, a capability that is unevenly distributed across the population.

Martha Nussbaum's enumeration of central capabilities includes, among others, the capability of practical reason, the capability to participate in political choices, and the capability to live with concern for and in relation to other species, all of which presuppose a level of social inclusion and institutional access inconsistent with severe digital exclusion.⁴¹ The application of the capabilities approach to ODR implies that justice requires not merely the availability of ODR platforms but the conditions necessary for all persons to participate in them effectively.

B. Recognition, Participation, and Procedural Justice

Fraser's tripartite framework of redistribution, recognition, and representation provides a further theoretical resource for conceptualising digital justice.⁴² The redistributive dimension requires that the material resources necessary for digital participation, including devices, connectivity, and skills, be equitably distributed. The recognition dimension requires that ODR systems acknowledge and accommodate the particular needs and vulnerabilities of marginalised groups, including those with disabilities, the elderly, and speakers of minority languages. The representational dimension requires that excluded groups have meaningful

³⁹Rawls (n 9) 118.

⁴⁰Sen A, *The Idea of Justice* (Allen Lane 2009) 226.

⁴¹Nussbaum M, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011) 33.

⁴²Fraser (n 10) 115.

voice in the design and governance of ODR systems.

Procedural justice theory, developed by scholars including Tom Tyler, suggests that the perceived legitimacy of dispute resolution processes is significantly influenced by the procedural fairness of the process, including whether parties feel heard, respected, and treated with dignity.⁴³ ODR systems that are inaccessible to significant portions of the population not only fail substantively but undermine the procedural legitimacy upon which the social acceptance of dispute resolution outcomes depends.

Young's emphasis on inclusion and the politics of presence suggests that justice requires not merely formal access but substantive participation in the institutions and processes that govern social life.⁴⁴ Applied to ODR, this principle implies that digital justice cannot be achieved through a model of passive availability but requires active measures to ensure that the structural conditions necessary for meaningful participation are in place for all segments of the population.

C. The Risk of Algorithmic Injustice

A particularly acute dimension of digital justice concerns the deployment of artificial intelligence and algorithmic decision-making within ODR systems. The integration of machine learning algorithms into ODR processes raises profound questions about transparency, accountability, and the potential for systematic bias.

Eubanks's analysis of automated inequality demonstrates that algorithms trained on historical data reflecting existing patterns of discrimination systematically reproduce those patterns in their outputs, effectively automating injustice.⁴⁵ Safiya Umoja Noble's study of search engine algorithms reveals analogous patterns of racialised and gendered bias embedded in algorithmically generated outputs.⁴⁶

Frank Pasquale's concept of the black box society illuminates the opacity of algorithmic systems, arguing that the lack of transparency in automated decision-making renders these

⁴³Rule (n 14) 42.

⁴⁴Young (n 11) 183.

⁴⁵Eubanks (n 24) 175.

⁴⁶Noble SU, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York University Press 2018) 1.

systems effectively unaccountable to those they affect.⁴⁷ In the ODR context, the deployment of opaque algorithmic systems for dispute management or decision-making raises concerns about the right to know the reasons for decisions, the right to challenge adverse outcomes, and the ability to hold decision-making entities accountable.

Sheila Jasanoff's framework of the ethics of invention urges a prospective engagement with the social implications of technological innovation prior to its deployment, arguing that technological choices are simultaneously political choices that distribute benefits and burdens across society.⁴⁸ Applied to ODR, this framework suggests that the design of digital dispute resolution systems is itself a normative enterprise that must be subject to democratic deliberation and principles of justice.

VI. Structural Prescriptions for Inclusive ODR

A. Bridging the Infrastructure Gap

The foundational precondition for inclusive ODR is the provision of adequate digital infrastructure to all segments of the population. This requires sustained public investment in broadband connectivity, particularly in rural and remote areas, as well as subsidised access programmes that ensure affordability for low-income populations.⁴⁹

The establishment of community digital access centres at the sub-district level, equipped with devices, connectivity, and trained facilitators, can serve as a bridging mechanism for populations lacking individual access to digital technologies. Models pioneered in countries such as Brazil's telecentros and India's Common Service Centres provide instructive precedents for state-supported digital infrastructure that can be adapted to serve ODR access functions.⁵⁰

The Indian government's BharatNet project, which aims to provide broadband connectivity to all gram panchayats across the country, represents an important step toward bridging the rural-urban digital divide. However, the effective utilisation of this infrastructure for access to justice requires complementary measures including the deployment of trained

⁴⁷Pasquale F, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 8.

⁴⁸Jasanoff S, *The Ethics of Invention: Technology and the Human Future* (W W Norton 2016) 4.

⁴⁹Schmitz AJ, 'Expanding Access to Remedies Through E-Court Initiatives' (2010) 67 *Buffalo Law Review* 89, 97.

⁵⁰Denvir, Balmer and Pleasence (n 27) 25.

legal aid facilitators and the development of ODR interfaces specifically designed for low-bandwidth environments.⁵¹

B. Digital Literacy and Capacity Building

Sustained investment in digital literacy programmes is a prerequisite for the meaningful participation of all population segments in ODR. These programmes must extend beyond basic operational skills to encompass the informational, strategic, and social skills necessary for effective engagement with digital legal processes.⁵²

The ITU's Digital Skills Toolkit and related international instruments provide a framework for the design of comprehensive digital literacy programmes that can be adapted to national contexts.⁵³ In the Indian context, the integration of digital literacy programmes with existing legal aid delivery mechanisms through the Legal Services Authorities Act, 1987 offers a potential vehicle for targeting digital literacy support at populations with the highest need for access to justice.

Legal aid providers and paralegal networks can be trained and deployed as digital intermediaries, assisting individuals who lack the capacity to navigate ODR platforms independently. This model of supported digital participation, analogous to the use of lay representatives in traditional legal aid, can serve as a bridging mechanism while structural digital inequality is progressively addressed.⁵⁴

C. Multilingual and Accessible Platform Design

ODR platforms must be designed from the outset with linguistic diversity and universal accessibility as core design principles rather than afterthoughts. The development of ODR interfaces in all major regional languages of a given jurisdiction, supported by natural language processing capabilities that can handle code-switching and transliteration, is essential for ensuring that language does not constitute a structural barrier to participation.⁵⁵

The principles of universal design, developed in the context of accessibility for persons

⁵¹Ministry of Law and Justice (n 36) 10.

⁵²van Dijk (n 6) 180.

⁵³ITU, Digital Skills Toolkit (ITU Publications 2018) 3.

⁵⁴Kaufmann-Kohler and Schultz (n 46) 195.

⁵⁵UNCITRAL (n 3) 12.

with disabilities, provide a framework for the inclusive design of ODR platforms that accommodate the widest possible range of users. Screen reader compatibility, adjustable font sizes, simplified navigation structures, and voice-activated interfaces are among the features that can substantially extend the accessibility of ODR systems to populations with visual, cognitive, or motor impairments.⁵⁶

The OECD's framework for equal access to justice recommends the adoption of plain language standards for all communications within dispute resolution processes, recognising that legal language constitutes an independent barrier to access that must be addressed through deliberate simplification without sacrificing legal precision.⁵⁷

D. Regulatory and Governance Frameworks

The deployment of ODR requires a robust regulatory framework that ensures standards of procedural fairness, transparency, and accountability. Regulatory provisions should mandate minimum standards for ODR platform design, including accessibility requirements, data protection obligations, and procedural safeguards equivalent to those applicable in traditional dispute resolution contexts.⁵⁸

The regulation of algorithmic decision-making within ODR systems requires particular attention. Regulatory frameworks should mandate algorithmic transparency, requiring ODR providers to disclose the basis on which automated decisions are generated and to provide effective mechanisms for parties to challenge decisions they consider unjust.⁵⁹

The establishment of an independent ODR oversight body, modelled on ombudsperson institutions in analogous regulatory contexts, can provide a focal point for complaints, standard-setting, and public reporting on the performance of ODR systems with respect to inclusivity and access.⁶⁰

At the international level, the development of a binding treaty instrument on ODR, building upon the UNCITRAL Technical Notes and the Singapore Mediation Convention,

⁵⁶European Parliament and Council, Directive 2013/11/EU of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes [2013] OJ L165/63, art 7.

⁵⁷OECD (n 2) 58.

⁵⁸Kaufmann-Kohler G and Schultz T, *Online Dispute Resolution: Challenges for Contemporary Justice* (Kluwer Law International 2004) 5.

⁵⁹Katsh and Rabinovich-Einy (n 43) 88.

⁶⁰Susskind (n 1) 201.

would provide a framework for cross-border interoperability and mutual recognition of ODR outcomes while embedding principles of inclusivity and access to justice as fundamental obligations.⁶¹

E. Human-Centred ODR Design and Evaluation

The design of ODR systems must be grounded in empirical research on the needs, capacities, and experiences of diverse user populations. The systematic collection of data on ODR usage disaggregated by socio-economic status, gender, age, disability, and geographic location is essential for identifying and addressing disparities in participation and outcomes.⁶²

The Indian E-Courts Mission Mode Project has begun to collect data on court digitisation and usage, but the systematic collection and analysis of data on equitable access to ODR platforms remains underdeveloped. The establishment of an ODR access audit mechanism, analogous to the social impact assessments required for major public infrastructure projects, would provide a systematic basis for identifying and addressing barriers to inclusivity.⁶³

Amy Schmitz's advocacy for the expansion of access to remedies through e-court initiatives emphasises the importance of co-designing ODR systems with the populations they are intended to serve, ensuring that the specific barriers and needs of diverse user groups are incorporated into system design from the outset.⁶⁴

Katsh and Rabinovich-Einy's vision of digital justice envisions ODR not as a replacement for human judgment but as a technology that enhances the capacity for fair and efficient dispute resolution while remaining accountable to the values of justice, fairness, and access that underpin the rule of law.⁶⁵

VII. Conclusion

This paper has undertaken a socio-legal investigation of the tension between the digital divide and digital justice in the context of Online Dispute Resolution. The central argument

⁶¹United Nations General Assembly, Resolution 73/346: Online Dispute Resolution (UNGA Res 73/346, 2019).

⁶²Lodder and Zeleznikow (n 38) 78.

⁶³Supreme Court of India, Annual Report 2022-2023 (Supreme Court of India 2023) 45.

⁶⁴Schmitz (n 68) 101.

⁶⁵Katsh and Rabinovich-Einy (n 43) 132.

advanced is that ODR, while possessing significant potential for democratising access to justice, simultaneously risks entrenching and amplifying existing patterns of social inequality if deployed without adequate attention to the structural conditions of digital exclusion.

The analysis has demonstrated that the digital divide is a multidimensional phenomenon encompassing not merely material connectivity but skills, literacy, language, and institutional access. The interaction of these dimensions with existing axes of social inequality creates compounded barriers to ODR participation that cannot be addressed through technological innovation alone.

Drawing upon the theories of Rawls, Sen, Nussbaum, Fraser, and Young, this paper has elaborated a framework of digital justice that demands substantive rather than merely formal equality of access to ODR, incorporating requirements of redistribution, recognition, and representation. This framework implies that the justice of ODR systems must be evaluated not merely by reference to their efficiency or their availability to connected populations, but by reference to their accessibility and effectiveness for the most marginalised and digitally excluded members of society.

The structural prescriptions advanced in Section VI, encompassing investment in digital infrastructure, digital literacy programming, multilingual and accessible platform design, regulatory governance, and human-centred evaluation, constitute a programme for the transformation of ODR from a technology of privilege into a genuine instrument of inclusive justice. The realisation of this programme requires coordinated action by governments, international organisations, technology providers, civil society, and the legal profession.

The Sustainable Development Goal 16, which commits signatory states to promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable, and inclusive institutions at all levels, provides an overarching normative framework within which inclusive ODR can be situated as both a means and a measure of progress toward global justice.⁶⁶

The aspiration toward digital justice is not a technological aspiration but a fundamentally political and ethical one. The technologies of ODR are morally neutral

⁶⁶United Nations, Sustainable Development Goal 16: Peace, Justice and Strong Institutions <https://sdgs.un.org/goals/goal16> accessed 1 March 2024.

instruments whose justice depends entirely upon the social arrangements within which they are embedded and the values by which their design and deployment are guided. To achieve digital justice, societies must commit not merely to building faster platforms and smarter algorithms but to dismantling the structural inequalities that determine who benefits from digital innovation and who bears its costs.

The digital divide and digital justice are not fixed conditions but contested terrains upon which the values of inclusion, equality, and the rule of law are continually renegotiated. The socio-legal scholarship of ODR must remain attentive to this contest, insisting that the promise of technology as a democratising force can only be realised through sustained commitment to the structural conditions of genuine inclusion. The law, as both a normative framework and an institutional practice, has an indispensable role to play in ensuring that digital justice is not merely an aspiration but an achieved social reality.

Bibliography

Books

- Castells M, *The Rise of the Network Society* (2nd edn, Blackwell Publishers 2000)
- Cortes P, *Online Dispute Resolution for Consumers in the European Union* (Routledge 2011)
- Eubanks V, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St Martin's Press 2018)
- Hörnle J, *Cross-Border Internet Dispute Resolution* (Cambridge University Press 2009)
- Jasanoff S, *The Ethics of Invention: Technology and the Human Future* (W W Norton 2016)
- Jasanoff S, *The Ethics of Invention: Technology and the Human Future* (W W Norton 2016)
- Katsh E and Rabinovich-Einy O, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press 2017)
- Katsh E and Rifkin J, *Online Dispute Resolution: Resolving Disputes in Cyberspace* (Jossey-Bass 2001)
- Kaufmann-Kohler G and Schultz T, *Online Dispute Resolution: Challenges for Contemporary Justice* (Kluwer Law International 2004)
- Lodder AR and Zeleznikow J, *Enhanced Dispute Resolution Through the Use of Information Technology* (Cambridge University Press 2010)
- Noble SU, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York University Press 2018)
- Norris P, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Cambridge University Press 2001)
- Nussbaum M, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011)
- Pasquale F, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015)
- Rawls J, *A Theory of Justice* (Revised edn, Harvard University Press 1999)
- Reiling D, *Technology for Justice: How Information Technology Can Support Judicial Reform* (Leiden University Press 2009)

Rule C, Online Dispute Resolution for Business (Jossey-Bass 2002)

Sen A, The Idea of Justice (Allen Lane 2009)

Susskind R, Online Courts and the Future of Justice (Oxford University Press 2019)

van Dijk JAGM, The Deepening Divide: Inequality in the Information Society (Sage Publications 2005)

World Bank, World Development Report 2016: Digital Dividends (World Bank Group 2016)

Young IM, Justice and the Politics of Difference (Princeton University Press 1990)

Journal Articles

Denvir C, Balmer NJ and Pleasence P, 'Surfing the Web: Online Dispute Resolution and Access to Justice' (2013) 22(1) Information and Communications Technology Law 11

DiMaggio P and Hargittai E, 'From the "Digital Divide" to "Digital Inequality": Studying Internet Use as Penetration Increases' (2001) Working Paper 15, Centre for Arts and Cultural Policy Studies, Princeton University

Fraser N, 'Rethinking Recognition' (2000) 3 New Left Review 107

Helsper EJ, 'A Corresponding Fields Model for the Links Between Social and Digital Exclusion' (2012) 46(4) Communication Theory 403

Kenney M and Zysman J, 'The Platform Economy: Restructuring the Space of Capitalist Accumulation' (2016) 55(7) Cambridge Journal of Regions, Economy and Society 293

Sander FEA, 'The Obsession with Settlement' (1995) 46 University of Miami Law Review 247

Schmitz AJ, 'Expanding Access to Remedies Through E-Court Initiatives' (2010) 67 Buffalo Law Review 89

Schmitz AJ and Rule C, 'Online Dispute Resolution for Smart Contracts' (2019) 2019(1) Journal of Dispute Resolution 103

Schultz T, 'Online Dispute Resolution: An Overview and Selected Issues' (2002) UN ECE Forum on ODR <www.odr.info>

Selwyn N, 'Reconsidering Political and Popular Understandings of the Digital Divide' (2004) 6(3) New Media and Society 341

Cases

Anita Kushwaha v Pushap Sudan (2016) 8 SCC 509

Hussainara Khatoon v Home Secretary, State of Bihar AIR 1979 SC 1360

Legislation and International Instruments

Constitution of India 1950

Information Technology Act 2000 (India)

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes [2013] OJ L165/1

European Parliament and Council, Directive 2013/11/EU of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes [2013] OJ L165/63

UNCITRAL, Technical Notes on Online Dispute Resolution (United Nations 2017)

United Nations General Assembly, Resolution 73/346: Online Dispute Resolution (UNGA Res 73/346, 2019)

Reports and Institutional Documents

International Telecommunication Union, Measuring Digital Development: Facts and Figures 2023 (ITU Publications 2023)

International Telecommunication Union, Digital Skills Toolkit (ITU Publications 2018)

Ministry of Law and Justice (India), Phase III of E-Courts Mission Mode Project: Concept Note (Government of India 2021)

OECD, Equal Access to Justice for Inclusive Growth: Putting People at the Centre (OECD Publishing 2019)

Supreme Court of India, Annual Report 2022-2023 (Supreme Court of India 2023)

Supreme Court of India, E-Committee, National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary (Supreme Court of India 2005)