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CONSUMER REDRESS THROUGH ONLINE DISPUTE RESOLUTION: THE ROLE OF ONLINE DISPUTE  
RESOLUTION IN FACILITATING CONSUMER ACCESS TO JUSTICE IN E-COMMERCE

By  
Patrick Brogan\*

I. INTRODUCTION

Saptarshi Das<sup>1</sup> wrote *Consumer Redress through Online Dispute Resolution*<sup>2</sup> to analyze the challenges to consumer protection presented by the rise of the internet. These challenges include information asymmetry, jurisdictional problems and the law's inability to deal with these complex issues. The rise of e-commerce and the subsequent rise of disputes between consumers and companies that use it necessitate new methods of resolving conflicts. The focus of this book is a relatively new method to dispute resolution: Online Dispute Resolution.

Online Dispute Resolution (ODR) refers to the use of information and communication technologies to resolve disputes by integrating various alternative dispute resolution mechanisms like negotiation, mediation and conciliation.<sup>3</sup>

Das conducts a comparative study of ODR systems in both private and public sectors throughout the world. The majority of the book is dedicated to the findings from this study.<sup>4</sup> Ultimately, Das recommends his ideal ODR system to redress consumer disputes in his home country, India, based on the findings of his study.<sup>5</sup>

II. OVERVIEW

*Consumer Redress through Online Dispute Resolution* contains ten chapters, each of which is divided into smaller subsections.<sup>6</sup> The author introduces his study and his objective in the first chapter, then defines online dispute resolution in the second chapter.<sup>7</sup> In chapters three, four, and seven, the author analyzes the regulation of ODR around the world and showcases the

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<sup>1</sup> Saptarshi Das is an Assistant Professor of Law at the Indian Institute of Legal Studies. Das earned his LLM from the National Law School of India University, Bangalore and specializes in Business Law.

<sup>2</sup> Saptarshi Das, *Consumer Redress through Online Dispute Resolution* (2019).

<sup>3</sup> DAS, *supra* note 3, at 15-16.

<sup>4</sup> See, e.g., *infra* Section V, VI, and IV.

<sup>5</sup> See, e.g., *infra* Section X, XI, and XII.

<sup>6</sup> DAS, *supra* note 3, at 1-16.

<sup>7</sup> *Id.* at 10-45.

world's most successful ODR models including E-Bay.com.<sup>8</sup> Next, in chapter five, the author describes in more detail the different forms of ODR.<sup>9</sup> In chapter six, the author focuses specifically on India, and its history of alternate dispute resolution and protection of consumer rights.<sup>10</sup> This chapter is used as a precursor for chapter eight, in which the author details a specific implementation of an ODR model in the author's university in India.<sup>11</sup> Finally, in chapters nine and ten, the author summarizes the findings from his comparative study of ODR models and provides his ideal characteristics of an ODR model.<sup>12</sup>

Overall, the book offers an informative introduction to ODR, the various forms it takes, and the benefits it can provide to consumers in the redressal of disputes from online transactions. The author effectively frames the issue to be addressed in his study: the challenge of redressing online transactional disputes and provides his recommendations on overcoming the issue through the implementation of ODR. A reader with little knowledge of ODR should be able to glean a broad understanding of what ODR is and why the author finds it so important for countries, such as India, to adopt it into viability.

While the book's repetition and lack of proof-reading prove to be distracting, the author was ultimately successful in introducing the concept of ODR to the reader. The writing is unfortunately flawed because the book is rife with grammatical errors and drumming redundancy. The book suffers from an obvious lack of proofreading, and the poor writing makes it difficult to lend the author any credibility. The book is repetitive, with several chapters beginning with the same thought.<sup>13</sup> This repeated blurb takes some form of the following: the internet is a great tool to consumers that comes with challenges when disputes arise in e-commerce transactions, and ODR is a potential solution to this problem.<sup>14</sup> To this end, the author deserves credit where it is due: no reader will likely ever forget this rather obvious point.

### III. INTRODUCTORY CHAPTER

The first chapter is an introduction to the author's objectives, hypothesis, and the comparative parameters applied in his ODR study.<sup>15</sup> The author begins the chapter by describing the advantages of the rise of global e-commerce, specifically its power to connect people across the world and the enhanced consumer convenience and transparency when shopping online, but

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<sup>8</sup> *Id.* at 46-81, 127-142.

<sup>9</sup> DAS, *supra* note 3, at 82-97.

<sup>10</sup> DAS, *supra* note 3, at 98-126.

<sup>11</sup> *Id.* at 143-151.

<sup>12</sup> *Id.* at 152-177.

<sup>13</sup> *Id.* at 10-11, 30-31, 46, 62, 82.

<sup>14</sup> DAS, *supra* note 3, at 10-11.

<sup>15</sup> *Id.* at 10-29.

also the challenges of e-commerce like jurisdictional difficulties and the anonymity of parties.<sup>16</sup> Sometimes consumers do not know the person or company with whom they are transacting and, sometimes, the online retailer they purchase a good from is operating from a location unknown to the consumer.<sup>17</sup> Das argues that consumers will struggle to redress grievances with a company and to enforce judgements, particularly when the merchant is unknown, and is potentially located outside of the consumer's home jurisdiction.<sup>18</sup> Ultimately, the author argues, if consumers do not have effective means to resolve disputes with online retailers, it will have a negative impact on consumer protection, as well as, confidence and trust in engaging in e-commerce.<sup>19</sup>

The author then introduces Online Dispute Resolution (ODR) as a potential solution to the challenges previously described.<sup>20</sup> ODR is dispute resolution that integrates technology and the internet's power to connect people with various kinds of alternative dispute resolution methods such as negotiation, mediation, and arbitration.<sup>21</sup> He emphasizes that the use of Information Communication Technologies (ICTs) in ODR are critical and include email, video conferencing, online messaging, shared drives, and dispute resolution software.<sup>22</sup> According to the author, ODR is still in its infancy, but is becoming more and more popular in developed countries due to its cost effectiveness, speed, flexibility, and ability to overcome barriers to justice.<sup>23</sup> These barriers, such as jurisdiction, are discussed later in this article.

The author introduces his problem statement that forms the scope and objectives of his study: the growing popularity of e-commerce transactions brings major challenges to enforcing consumer rights due to characteristics of online transactions such as anonymity of the parties and lack of information available to the consumer.<sup>24</sup> Within this chapter, Das does not expound what specific information is lacking; however, in chapter six, Das states the missing information may include a supplier's identity and location, where a product is coming from, and what process is in place if the consumer is not satisfied with the transaction.<sup>25</sup> This point about the lack of information is connected to the author's previous point about anonymity.

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<sup>16</sup> DAS, *supra* note 3, at 10-13.

<sup>17</sup> DAS, *supra* note 3, at 12.

<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.*

<sup>21</sup> DAS, *supra* note 3, at 15-16.

<sup>22</sup> *Id.* at 16-17.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.* at 21-22.

<sup>25</sup> DAS, *supra* note 3, at 110.

Next, the author introduces his study by detailing his study's objective and hypothesis. The author describes his objective as the following:

[To] delve deep into the fascinating world of ODR by tracing out the evolution of ODR, studying its models, especially in the developed jurisdictions across the world using a comparative framework; align it with that of consumer affairs and ascertain how the method of ODR especially through Mediation could be applied and be beneficial for the redressal of consumer disputes in the country.<sup>26</sup>

This objective is confusing and does not help the reader fully understand the starting point of the author's study. The purpose of Das' study, and the fuller book surrounding it, is no easier to define with this explanation than without. This "objective" relies on a host of terms to define itself without first defining them, and because it presumes so much about the merits of ODR, it lacks any empirical objectivity. For a lay reader, Das seems to be suggesting a forgone conclusion before he even collects any research. Per his "objective," his study is not designed to see whether ODR is actually a beneficial system, but to prove his preexisting presumption that it is. This unclarity is reflective of the other glaring flaw in Das' objective statement; by suggesting that some form of ODR could be an effective system in "the country," Das is suggesting that ODR must already be an effective solution elsewhere.

Finally, the author provides a hypothesis to his study: the incorporation of ODR in India would protect consumer rights by ensuring effective and cost conscious dispute resolution solutions and therefore would provide access to justice to millions of Indian consumers, which in turn creates consumer trust in the economy.<sup>27</sup> While the objective and hypothesis in this chapter are not perfectly clear, the reader benefits from Das dedicating the opening chapter to framing his study. The remainder of the book does follow this framework and the author does well in operating within the scope laid out.

#### IV. DEFINING ONLINE DISPUTE RESOLUTION

The author begins the second chapter by reintroducing the problem statement from the previous chapter: the internet is a great tool that has led to faster and cheaper communication and access to information.<sup>28</sup> Once Das has finished his hermetic chant for the chapter, he asserts the actual point of his first chapter: e-commerce has made transacting fast and cheap, but it has also made consumer grievances, especially in cross-border disputes, uniquely challenging compared to traditional domestic commerce.<sup>29</sup> The author showcases a host of differences in jurisdictional procedures that governing bodies and courts consider when determining the proper forum in

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<sup>26</sup> DAS, *supra* note 3, at 20.

<sup>27</sup> DAS, *supra* note 3, at 25.

<sup>28</sup> *Id.* at 30-31.

<sup>29</sup> *Id.* at 30 .

these cross-border disputes.<sup>30</sup> For example, Das compares how the European Union uses the habitual residence of the consumer as the competent forum by default, while the United States interprets pre-dispute contractual clauses to determine the proper forum.<sup>31</sup> While the internet and new technologies are attributed with the rise of cross border disputes from e-commerce transactions, Das reinforces his claim that the internet and technology may also provide the method by which these disputes are resolved.<sup>32</sup>

In this chapter Das offers a more detailed description of ODR and the forms that it takes.<sup>33</sup> He defines the "anatomy" of ODR as a synergy of alternate dispute resolution (ADR) and information and communication technologies (ICT).<sup>34</sup> The author then offers the four most commonly used methods for resolving disputes online to explain this synergy: automated negotiation, online mediation, online conciliation, and online arbitration.<sup>35</sup>

Automated negotiation is often used by e-commerce companies.<sup>36</sup> In this method, the parties to the dispute use an ODR platform (website) to confidentially submit their information.<sup>37</sup> Automated negotiation platforms give the parties the opportunity to assess their own position against that of the other party.<sup>38</sup> Next, online mediation is an ODR mechanism that features a neutral third party who helps conduct both parties through their dispute resolution but lacks any binding final authority and does not offer any solutions.<sup>39</sup> Similarly, online conciliation also involves a neutral third-party conciliator who participates in the dispute resolution process by actively trying to find a solution with the parties, rather than merely conveying the parties statements to each other like a mediator does.<sup>40</sup> Finally, online arbitration involves the parties filing a submission to an arbitrator, who issues a final binding award.<sup>41</sup> The author provides only

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<sup>30</sup> DAS, *supra* note 3, at 31.

<sup>31</sup> *Id.*

<sup>32</sup> DAS, *supra* note 3, at 31.

<sup>33</sup> *Id.* at 32

<sup>34</sup> DAS, *supra* note 3, at 32.

<sup>35</sup> *Id.* at 32-37.

<sup>36</sup> *Id.* at 32.

<sup>37</sup> *Id.* at 32-33.

<sup>38</sup> *Id.* at 33.

<sup>39</sup> DAS, *supra* note 3, at 34-35.

<sup>40</sup> *Id.* at 36.

<sup>41</sup> *Id.* at 36-37.

surface-level examples of the differences between traditional (in-person) arbitration and online arbitration, so the reader is left to assume that online arbitration is simply traditional arbitration with electronically submitted claims and awards. Accordingly, the reader could have benefitted from a more in-depth review of, for instance, the differences in how claims are started, the role of arbitration clauses in a company's online terms and conditions, and online arbitration's broader availability to qualified, neutral, arbitrators since the parties are not tied to a single geographic location.

Next, the author provides a list of advantages of ODR, beginning with its enhanced convenience over traditional dispute resolution methods.<sup>42</sup> In comparison to traditional court litigation, ODR does not require either party's physical presence in a court room or any other formal hearing, which Das argues is not only convenient but also reduces the level of intimidation a consumer may have otherwise felt during an in-person proceeding.<sup>43</sup> The author asserts that ODR creates an environment of good trust and faith as opposed to the hostile environment in court.<sup>44</sup> However, he does not further explain how a proceeding conducted online creates any more trust or faith between parties when compared to a physical proceedings. A reader cannot help but note that this point is contradicted by the author's previous arguments suggesting the internet's anonymity actually fosters deception between the parties.

In listing the advantages of ODR, the author often uses general characteristics of modern court litigation as the benchmark by which ODR is measured, but this section could have benefitted from listing ODR's advantages to in-person ADR as well. Das has not specified anything uniquely advantageous about the actual structure of an ODR proceeding, only that its benefits derive from its digital form. Without doing that, Das must therefore admit any of the specific advantages he claims ODR has over litigation could also be said for any ADR mechanism, which renders his point into little more than a recitation of common knowledge on the topic.

The author concludes this chapter by stating the role of ODR is to address online consumer disputes by arguing that because more and more transactions take place online consumers will require a quicker, holistic solution to redress their grievances.<sup>45</sup> The author then claims ODR enhances consumer rights enforcement because it gives consumers feasible and efficient access to justice, but is also advantageous to businesses by providing them with an inexpensive way to address consumer conflicts.<sup>46</sup>

Though the author mentions a number of advantages of ODR for consumers, he offers little of the same for businesses. Further, the author barely addresses business' willingness or incentive to participate in this type of resolution. Common sense dictates that a business wants to decrease the amount of consumer grievances brought against them, but welcomes the resolution

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<sup>42</sup> *Id.* at 37-41.

<sup>43</sup> DAS, *supra* note 3, at 38.

<sup>44</sup> DAS, *supra* note 3, at 38.

<sup>45</sup> *Id.* at 42-45.

<sup>46</sup> *Id.* at 43.

of grievances in order to maintain specific consumer trust in the company. Das has already stated that ODR offers consumers a way to redress a grievance that they otherwise would not have brought.<sup>47</sup> Therefore, why would any business favor a nationalized mechanism that deprives them of that specific confidence and increases the amount of grievances it will need to handle? The reader cannot help but be jarred by Das' logical leap on this subject.

## V. REGULATION OF ODR IN INTERNATIONAL DEVELOPED JURISDICTIONS

In the third chapter, the author examines the regulation of ODR in international jurisdictions by analyzing the United Nations Commission on International Trade (UNCITRAL) model rules of ODR, the European Union Consumer Dispute Regulation (EUCDR), and the World Intellectual Property Organization (WIPO) method to resolve intellectual property disputes.<sup>48</sup> First, the UNCITRAL model rules provide an ODR framework divided into three stages: automated negotiation, online mediation, and finally, online arbitration.<sup>49</sup> The stages are interconnected and a claim advances through the framework as the need for human intervention increases.<sup>50</sup> Most low dollar value claims will be resolved in the first stage of the framework, however, the framework does not define what constitutes a low dollar value.<sup>51</sup> The UNCITRAL model rules suggest that prior to beginning the third stage, parties should be educated about arbitration's binding finality before they provide informed consent to the process.<sup>52</sup>

The author then turns his focus to the European Union's framework on consumer ADR and ODR.<sup>53</sup> The EU Regulation on Consumer ODR is a regulatory directive for the use of ODR in the EU and mandates the creation of an ODR platform to be used for online consumer disputes.<sup>54</sup> Per the EUCDR rules, the platform should allow both consumers and traders to file complaints and redress grievances online and without court intervention after both parties mutually agree on an ADR entity that will help resolve the dispute.<sup>55</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 46-61.

<sup>49</sup> DAS, *supra* note 3, at 48. (citing *United Nations Commission on International Trade Law. UNCITRAL Model Law on Electronic Commerce, with Guide to Enactment, 1996 : with Additional Article 5 Bis as Adopted in 1998. New York: United Nations, 1999*).

<sup>50</sup> DAS, *supra* note 3, at 48-49.

<sup>51</sup> *Id.* at 50.

<sup>52</sup> *Id.* at 51.

<sup>53</sup> *Id.* at 52-57.

<sup>54</sup> DAS, *supra* note 3, at 56. (citing Directive 524/2013 of the European Parliament and of the Council of 21 May 2013).

<sup>55</sup> *Id.*



Finally, the author discusses the World Intellectual Property Organization's (WIPO) implemented ODR model, which aims to resolve intellectual property disputes, particularly related to domain names.<sup>56</sup> Disputing parties file submissions electronically to a WIPO panel, which typically deliberates and returns the decision to the parties within four months.<sup>57</sup>

The author advocates for developing countries to implement their own ODR regulations to better protect their citizens in commercial disputes, particularly in India, where there is currently no regulatory framework in place.<sup>58</sup> The author argues that introducing such regulation will reinforce consumer rights and protections. If anything, according to the author, ODR regulation would increase awareness among consumers of ODR's availability and other important advantages.<sup>59</sup> This chapter provides a look at how ODR can be implemented, or at least recommended, through the decree of regulatory bodies. The author then shifts focus to ODR's implementation by private industry.

## VI. ANALYZING THREE COMPANY-IMPLEMENTED ODR MODELS

In chapter four, the author analyzes the ODR models of e-commerce companies: eBay, Modria, and Youstice.<sup>60</sup> First, the author analyzes eBay, the global online marketplace for goods, and its model of ODR, which the author praises as one of the best in the world.<sup>61</sup> To maintain consumer trust and mitigate the risk of scams, eBay implemented its own ODR system.<sup>62</sup> The system generally involves relatively low dollar amount in question, averaging \$70-\$100, and the claimant's recovery is limited to full reimbursement of the price of the item either bought or sold, which eBay calls their Money Back Guarantee.<sup>63</sup>

The eBay model consists of three stages beginning with the buyer or seller filing a complaint and an eBay representative opening the case file and gathering specific details of the complaint.<sup>64</sup> In the second stage, eBay encourages the buyer and seller to communicate with each other via

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<sup>56</sup> *Id.* at 57-59.

<sup>57</sup> *Id.* at 58.

<sup>58</sup> *Id.* at 60-61.

<sup>59</sup> DAS, *supra* note 3, at 61.

<sup>60</sup> DAS, *supra* note 3, at 62-81.

<sup>61</sup> *Id.* at 64.

<sup>62</sup> *Id.* at 66.

<sup>63</sup> *Id.*

<sup>64</sup> DAS, *supra* note 3, at 67-72.

eBay's messaging tool in order to resolve the dispute.<sup>65</sup> Finally, if the dispute has not been resolved during the first two stages, eBay's Resolution Support team interjects to provide a resolution to the parties.<sup>66</sup>

The author's use of eBay's in-house ODR model was a helpful example of the efficiency and convenience an ODR model can provide both consumers and e-commerce companies. Particularly, since claims typically range from \$70-\$100 and given the typical cost of traditional dispute resolution exceeds that amount, it is likely these disputes would not be worth resolving elsewhere had eBay not provided ODR. The eBay model exemplifies how offering consumers a quick and easy means to address disputes can increase the consumer's confidence to transact through a company's website. However, since eBay is an online marketplace whose business is driven by consumer-to-consumer transactions, this ODR model and its invaluable benefits only applies to similar companies and cannot be applied to disputes between a consumer and an e-commerce retailer, in which bargaining dynamics present a different landscape. These disputes may be more appropriately redressed through third-party companies that deal solely in dispute resolution, which Das introduces next.

Das analyzes the ODR models of the ODR institutions Modria and Youstice.<sup>67</sup> Both companies offer parties a platform to handle disputes stemming from e-commerce transactions. However, their services are also available for disputes arising from other areas like divorce, rental agreements, insurance claims, and intellectual property infringement.<sup>68</sup> Modria also has a three-tiered process of "modules" to guide users through ODR: the "diagnostic module" identifies the issues in dispute with the use of algorithms, the "negotiation module" summarizes the issues for the parties and proposes potential settlement offers to them, and the "mediation module" resolves the issue by introducing a neutral third party to facilitate an amicable settlement between the parties.<sup>69</sup> Mediation under the third module can escalate into arbitration if Modria fails to resolve the dispute.<sup>70</sup>

Comparatively, Youstice is an ODR platform that offers a two-tiered process for resolving disputes: online negotiation and third-party review.<sup>71</sup> The process begins when a party files a claim on Youstice's website, at which point the opposing party is entitled to propose a resolution and the parties may negotiate with each other.<sup>72</sup> If the parties do not come to a resolution on their

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<sup>65</sup> *Id.* at 67-68.

<sup>66</sup> *Id.* at 68.

<sup>67</sup> *Id.* at 73-75.

<sup>68</sup> DAS, *supra* note 3, at 73.

<sup>69</sup> *Id.* at 73-74.

<sup>70</sup> *Id.* at 74.

<sup>71</sup> DAS, *supra* note 3, at 74-75.

<sup>72</sup> DAS, *supra* note 3, at 75.

own, a third-party mediator is introduced to offer a final resolution.<sup>73</sup> Retailers who do not implement the mediator's resolution receive poor ratings on Youstice.com.<sup>74</sup>

By introducing the three ODR models above, the author successfully exemplifies what the ODR process looks like through companies with whom the reader may already be familiar. A takeaway from this chapter is that consumers should seek out the best platform for their particular dispute because the nature of the transaction changes the nature of the conflict. While resolving a dispute with a seller directly on the website where the transaction took place is probably the most convenient option for the consumer, a better option might be to take the dispute to a website that specializes in dispute resolution to ensure a fair process.

## VII. CHALLENGES TO ONLINE CONSUMER GRIEVANCE REDRESSAL

In the book's fifth chapter, Das provides a deeper dive into the challenges that arise in global e-commerce.<sup>75</sup> Das restates that these issues include jurisdictional challenges to cross-border transactions, the anonymity of buyers and sellers, and the unfeasibility of litigating disputes involving relatively small dollar amounts.<sup>76</sup> The author expands on a previously mentioned challenge: maintaining trust in an online transaction.<sup>77</sup> Das argues that if consumers cannot properly redress an e-commerce dispute due to anonymity, jurisdiction, feasibility, or any other reason, consumers' collective confidence and trust in e-commerce will suffer.<sup>78</sup> Unsurprisingly, the author then claims that ODR is a solution to that problem. This chapter analyzes both e-commerce and how ODR implementation enhances both buyer and seller transactional trust.

At the chapter's outset, Das describes two different forms of e-commerce: Business-to-Business (B2B) and Business-to-Consumer (B2C). Das states that bargaining power is a product of access to litigative resources and information; Businesses, compared to consumers, generally have greater access to both.<sup>79</sup> Therefore B2B transactions can involve two parties with relatively similar bargaining power, while in B2C transactions, the bargaining power largely favors the business.<sup>80</sup> To account for the shifting bargaining power balance over different types of e-

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<sup>73</sup> See Online Dispute Resolution Rules, <https://youstice.com/en/rules-for-odr> (last visited April 5, 2020). Mediator offered resolutions are binding, however, parties may still bring lawsuits over the same disputed transaction.

<sup>74</sup> DAS, *supra* note 3, at 75. Youstice designates retailers with a "Trustmark" when they implement 98% of mediator proposed resolutions.

<sup>75</sup> DAS, *supra* note 3, at 83-101.

<sup>76</sup> *Id.* at 83.

<sup>77</sup> DAS, *supra* note 3, at 84-85.

<sup>78</sup> *Id.* at 85.

<sup>79</sup> *Id.* at 86-87.

<sup>80</sup> DAS, *supra* note 3, at 87.

commerce grievances, Das claims that different forms of ODR are necessary to achieve effective and fair dispute resolution.<sup>81</sup>

According to the author, an effective ODR system in B2C transactions should include a negotiation and mediation platform, a space for consumers to rate businesses, a trustworthiness rating for each business, and a moneyback guarantee.<sup>82</sup> While this recommendation appears to benefit the consumer, Das argues that businesses benefit by maintaining the consumers trust in their business which can lead to repeat business.<sup>83</sup> Das' praises resolution methods that sound like generally accepted corporate customer service policies rather than the unique methods to ODR; as showcased by Das' admiration for eBay's ODR model.

By contrast, the author recommends that B2B disputes should be brought to an ODR service where all inter-party communications and submissions are electronically delivered via email, chat, or video conference.<sup>84</sup> However, unlike B2C ODR, the B2B process should take a more formal approach mirroring arbitration.<sup>85</sup> Das' point presumes that even in a more formal ODR proceeding, ODR still offers companies increased convenience and flexibility over a process that requires the parties to be in the same physical location.

The author concludes this chapter by introducing challenges to incorporating ODR in cross-border e-commerce.<sup>86</sup> The barriers identified can be summarized as technological, legal, social, and cultural.<sup>87</sup> Parties may be hesitant to resolve disputes online due to privacy concerns and an unwillingness to reveal confidential information over the internet, especially when dealing with an adversary.<sup>88</sup> In addition, enforcement of ODR may be a barrier when jurisdictions have differing views on the enforcement of various forms of dispute resolution.<sup>89</sup> Finally, the author describes "the digital divide" of undeveloped countries and the way in which differences in technological literacy between developed and undeveloped countries poses yet another barrier to making the implementation of ODR more popular.<sup>90</sup> While describing the challenges that arise from an e-commerce system is beneficial to the reader, this chapter would be better placed at the beginning of the book rather than its midway point. Detailing the

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<sup>81</sup> *Id.* at 87-88.

<sup>82</sup> *Id.* at 88.

<sup>83</sup> *Id.* at 90.

<sup>84</sup> DAS, *supra* note 3, at 91.

<sup>85</sup> DAS, *supra* note 3, at 92.

<sup>86</sup> DAS, *supra* note 3, at 94-97.

<sup>87</sup> *Id.* at 94.

<sup>88</sup> *Id.* at 95.

<sup>89</sup> *Id.* at 95-96.

<sup>90</sup> *Id.* at 96-97.

problems of e-commerce transactions after already introducing successful models of ODR to combat these problems does not make much logical sense.

#### VIII. CONSUMER MEDIATION IN INDIA

In chapter six, the author analyzes India's Supreme Court, High Court, and Consumer Forum, and each body's precedents on consumer protection.<sup>91</sup> The author also analyzes India's 2018 Consumer Protection Bill, its advantages, and shortcomings.<sup>92</sup> The author showcases the variation in online consumer complaints brought to the courts by summarizing several cases from India.<sup>93</sup> Complaints vary from simple disputes over consumer goods transactions to Ponzi schemes and fraudulent businesses using the internet's anonymity to prey on vulnerable consumers.<sup>94</sup> By introducing these cases, the author successfully exemplifies the variety of disputes that may arise in a world that conducts more and more business online, as well as, the need for a proper method to redress a growing number of economically inefficient consumer claims.

Das then analyzes consumer challenges in India related to cross border e-commerce disputes.<sup>95</sup> First, he claims that nuanced ambiguities in dense e-commerce terms and conditions can affect the consumer's access to the respective retailer's customer service contact information, pricing and availability policies, cancellation, refund, and return policies.<sup>96</sup> These ambiguities, Das states, expose consumers to protection issues since they are barriers to consumers' pursuit of grievance redressal. Whether or not the potential monetary damages in dispute are worth pursuing when considering the cost of redressing grievances is another issue consumers face.<sup>97</sup> For these reasons, the author claims there is an urgent need for India to adopt a system of ODR.<sup>98</sup> At the time this book was written, there is currently no legislation in India governing ODR, however India's Supreme Court has allowed for video conferencing as a valid form of receiving testimony and evidence.<sup>99</sup>

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<sup>91</sup> DAS, *supra* note 3, at 98-120. India's Consumer Forums are a quasi-jurisdictional body that provide resolution to consumer disputes.

<sup>92</sup> *Id.* at 121-126.

<sup>93</sup> *Id.* at 102.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 100-101.

<sup>96</sup> DAS, *supra* note 3, at 110.

<sup>97</sup> *Id.* at 117.

<sup>98</sup> *Id.* at 119.

<sup>99</sup> *Id.*

The author concludes this chapter with an analysis of India's 2018 Consumer Protection Bill.<sup>100</sup> The bill requires consumer disputes be resolved through mediation before reaching India's Consumer Forum.<sup>101</sup> The bill creates cells of court-sponsored mediation and mediators throughout India.<sup>102</sup> In addition, the bill lays out the proper procedure for consumer dispute mediation.<sup>103</sup> Though Das is generally excited by the bill and the procedures laid out, an aspect he claims is absent is a fixed time limit, which he argues dilutes the effectiveness of the bill, since disputes may extend for long periods of time and discourage consumers' trust in the process.<sup>104</sup> Finally, the author would like to see ODR referenced more as a means to provide consumers more access to dispute resolution.<sup>105</sup>

## IX. COMPARATIVE STUDY OF INTERNATIONAL ODR MODELS

In chapter seven, the author studies the ODR systems available in Europe, North America, and Asia.<sup>106</sup> Das claims that the rise of multinational corporations and e-commerce expose consumers to deceptive trade practices, which necessitates an effective system for consumers to redress disputes.<sup>107</sup> The goal of this analysis is to address the best aspects of various ODR systems around the world.<sup>108</sup>

The author begins in the European Union, by analyzing how the EU's Regulation on Online Dispute Resolution mandates the creation of an ODR platform and requires EU member states to ensure that e-commerce disputes between EU-resident consumers and retailers are sent to an ADR entity.<sup>109</sup> In Ireland, an online Small Claims Procedure Box has been established for consumers to electronically file claims under 2000 Euros.<sup>110</sup> If the claim is challenged by the corporation, a mediator is appointed to work out a settlement between the parties. Conversely, if

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<sup>100</sup> *Id.* at 121-126.

<sup>101</sup> DAS, *supra* note 3, at 122. (citing Chapter V of the Consumer Protection Act, No. 1 of 2018, India Code (2018)).

<sup>102</sup> DAS, *supra* note 3, at 122.

<sup>103</sup> *Id.* at 122-123.

<sup>104</sup> *Id.* at 124.

<sup>105</sup> *Id.* at 125-126.

<sup>106</sup> DAS, *supra* note 3, at 127-142.

<sup>107</sup> DAS, *supra* note 3, at 128.

<sup>108</sup> *Id.* at 129.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 130.

the corporation does not challenge the complaint, they will be required to pay damages to the claimant once the claimant files an affidavit with the proper court.<sup>111</sup>

Next, the author compares ODR models in North America. The United States has one of the most developed systems of ODR due to its corporate culture, technological pioneers, and a technologically-savvy population.<sup>112</sup> ODR is popular with corporations and consumers, despite there being little to no legislative initiatives to support it.<sup>113</sup> Canada, like the US, has been at the forefront of ODR since the advent of the internet. Smartsettle, a Canadian company with international users, is an automated service that gathers data from resolved disputes to propose potential resolutions to future disputes.<sup>114</sup> In Mexico, Concillanet is a popular ODR platform used by consumers as an effective grievance redressal mechanism.<sup>115</sup> Interestingly, the outcomes from Concillanet are enforceable by the courts of Mexico since the system is "annexed and attached to the judiciary."<sup>116</sup> The author claims that an ideal Indian ODR system would embrace the best elements of the systems in North America.<sup>117</sup>

Lastly, the author analyzes the ODR model in Singapore.<sup>118</sup> Singapore introduced an electronic case filing and management system called the Community Justice and Tribunals Systems (CJTS), which allows parties to access courts from anywhere and file small claim disputes, negotiate settlements on a confidential platform, and submit their settlement using the Tribunal System's e-services.<sup>119</sup> The author concludes that the ODR models of the aforementioned developed countries prove that access to consumer protection is achievable if both private and public institutions make it a priority.<sup>120</sup>

## X. A MODEL NATIONAL ODR SYSTEM FOR INDIA

### A. THE ONLINE CONSUMER MEDIATION CENTRE IN BANGALORE

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<sup>111</sup> DAS, *supra* note 3, at 132.

<sup>112</sup> *Id.* at 134.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 136-137.

<sup>115</sup> DAS, *supra* note 3, at 137.

<sup>116</sup> *Id.* at 138.

<sup>117</sup> *Id.* at 142.

<sup>118</sup> *Id.* at 139-141.

<sup>119</sup> DAS, *supra* note 3, at 140.

<sup>120</sup> DAS, *supra* note 3, at 142.

In chapter eight, the author discusses the Online Consumer Mediation Centre (OCMC) at the National Law School of India University of Bangalore and its mission to provide technology for consumers and organizations to manage disputes and advance online mediation of consumer disputes.<sup>121</sup> The ODR created by the OCMC encourages online negotiation and online mediation of consumer disputes stemming from e-commerce transactions.<sup>122</sup> Consumers can register for an account on the OCMC website, input contact information, and file a grievance.<sup>123</sup> If the grievance is within the scope of the OCMC purview, the concerned e-commerce company is notified and the parties will then agree to either online mediation or negotiation.<sup>124</sup> The Centre is self-regulated and abides by the Supreme Court Mediation Manual.<sup>125</sup> Disputes are resolved in seven days when negotiated and twenty- three days when mediated.<sup>126</sup>

In the author's opinion, the OCMC provides the best aspects of ODR to parties, which are convenience, privacy, and speed.<sup>127</sup> The author hopes that the work conducted at the OCMC can be scaled and implemented throughout all of India, which will require the Indian government to realize the importance of ODR.<sup>128</sup>

#### B. AUTHOR'S RECOMMENDED SPECIFICATIONS FOR A NATIONAL ODR PLATFORM

In chapters nine and ten, the author details his suggestion for a national ODR platform.<sup>129</sup> According to the author, the best possible ODR platform should be state-sponsored and funded, feature multiple tiers of dispute resolution, designed with cutting-edge software, compulsory for all e-commerce companies to participate, and available to Court annexed mediation centers created under the 2018 Indian Consumer Protection Bill.<sup>130</sup>

The author then details the process a claim would go through from start to finish in his proposed ODR platform, beginning with a consumer filing a claim online.<sup>131</sup> At that point, the

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<sup>121</sup> *Id.* at 143-151.

<sup>122</sup> *Id.* at 145.

<sup>123</sup> *Id.* at 146.

<sup>124</sup> DAS, *supra* note 3, at 146.

<sup>125</sup> *Id.* at 147.

<sup>126</sup> *Id.* at 148.

<sup>127</sup> *Id.* at 150.

<sup>128</sup> *Id.*

<sup>129</sup> DAS, *supra* note 3, at 152-177.

<sup>130</sup> DAS, *supra* note 3, at 155-157.

<sup>131</sup> DAS, *supra* note 3, at 158.



ODR software would diagnose the nature of the grievance and would inform the defendant e-commerce company named in the claim.<sup>132</sup> Next, upon the company's response to the claim within a mandatory five days, the parties may begin negotiating a resolution over the platform's interactive chat function.<sup>133</sup> The software would also provide suggestions to resolve the dispute similar to the Canadian software mentioned in chapter seven.<sup>134</sup> If negotiation does not end in resolution, the parties would then enter the online mediation phase, in which a neutral mediator would be assigned automatically from a list of approved mediators.<sup>135</sup> Finally, assuming the parties settle, the settlement would be signed by the mediator and enforced by the courts.<sup>136</sup> If the dispute is not resolved within this model, the case would need to be adjudicated through the Consumer Forum of India.<sup>137</sup>

According to the author, this model should be state sponsored and funded, and made available to consumers free of cost.<sup>138</sup> The author claims the combination of the user-friendliness and free costs would empower consumers and promote access to justice.<sup>139</sup>

The author concludes this book by emphasizing that online dispute resolution protects the rights of the consumers, especially in e-commerce transactions, when considering the new challenges brought on by the rise of online shopping.<sup>140</sup> Das' findings have been stated several times throughout his book and now this article: the rise of the internet, e-commerce, and cross border transactions has created several impediments to consumer dispute resolution.<sup>141</sup> However, the author has also found ODR provides a potential solution to these issues by offering the convenient and inexpensive redressal of consumer disputes with e-commerce companies.<sup>142</sup>

## XI. CONCLUSION

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<sup>132</sup> *Id.* at 158-159.

<sup>133</sup> *Id.* at 159.

<sup>134</sup> *Id.* at 160.

<sup>135</sup> DAS, *supra* note 3, at 160-161. The mediator takes an evaluative role in resolution rather than simply facilitate.

<sup>136</sup> *Id.* at 162.

<sup>137</sup> *Id.* at 163.

<sup>138</sup> *Id.* at 164-165.

<sup>139</sup> DAS, *supra* note 3, at 165.

<sup>140</sup> *Id.* at 167.

<sup>141</sup> DAS, *supra* note 3, at 10-11.

<sup>142</sup> DAS, *supra* note 3, at 172-173.

Overall, Das successfully introduced the reader to the topic of Online Dispute Resolution and its ability to overcome challenges consumers face in the redressal of grievances from online transactions. Despite the book suffering from grammatical errors, Das provides the reader an informative look into the current presence of Online Dispute Resolution as he lobbies for its expansion in India.

The author's study analyzed the different forms that ODR can take and the advantages and disadvantages of models implemented throughout the world, in both private and public sectors. Ultimately, Das drew from his study's findings and through the work of the OCMC to detail an ODR system that he would like to see implemented in India.