

Consumer sovereignty

Consumer sovereignty is an economic concept that describes the power of consumers to determine the types and quantities of goods and services produced by firms. In a market economy, consumers are said to be sovereign because they are free to choose what they want to buy and what they don't want to buy. The principle of consumer sovereignty holds that the preferences of consumers are the ultimate determinant of what gets produced, how it gets produced, and for whom it gets produced.

Under consumer sovereignty, businesses must respond to the demands of consumers, producing goods and services that meet their needs and preferences. If consumers want more environmentally-friendly products, for example, businesses will respond by producing more eco-friendly options. Likewise, if consumers prefer cheaper products, businesses will compete to offer the lowest prices. In this way, consumer sovereignty is seen as a powerful force that drives the market economy.

However, it's worth noting that consumer sovereignty only holds true in a perfectly competitive market, where consumers have perfect information, and there are no barriers to entry for businesses. In reality, markets are rarely perfectly competitive, and businesses may have significant power to influence consumer choices through advertising, branding, and other marketing strategies.

Limitations of Consumer Sovereignty

Consumer sovereignty refers to the idea that consumers have the power to determine what goods and services are produced through their choices in the marketplace. While it is an important concept in the theory of market economics, it is not without its limitations. Here are some of the key limitations of consumer sovereignty:

- (1) **Limited choices:** Consumers may not always have access to a wide range of choices when it comes to goods and services, especially in cases where there is limited competition or monopoly power in the market. In such cases, consumers may not be able to exercise their sovereignty effectively.

- (2) **Incomplete information:** Consumers may not always have complete information about the products they are buying, including their quality, safety, or environmental impact. This can make it difficult for consumers to make informed decisions, limiting their ability to exercise their sovereignty.
- (3) **Income and wealth disparities:** Consumers with lower incomes may not have the same purchasing power as those with higher incomes, limiting their ability to exercise their sovereignty in the marketplace. This can create inequalities in the marketplace, with wealthier consumers having more power to shape the market.
- (4) **Externalities:** Some goods and services may have negative externalities, such as pollution or environmental damage, that are not reflected in their market prices. In such cases, consumers may not be fully aware of the true costs of the goods and services they are purchasing, limiting their ability to exercise their sovereignty effectively.
- (5) **Market failures:** Markets may not always function efficiently, leading to market failures such as monopolies, externalities, or public goods problems. In such cases, consumer sovereignty may not be sufficient to ensure that the market produces the optimal outcome for society as a whole.

Overall, while consumer sovereignty is an important concept in market economics, it is not without its limitations. These limitations highlight the need for regulatory and policy interventions to ensure that markets function efficiently and that consumers are protected from the negative consequences of market failures.

Consumerism

The term 'consumerism' was first coined by businessmen in the mid-1960s as they thought consumer movement as another "ism" like socialism and communism threatening capitalism. Consumerism is defined as social force designed to protect consumer interests in the marketplace by organising consumer pressures on business. Consumerism is a protest of consumers against unfair business practices and business injustices. It aims to remove those injustices, and eliminate those unfair marketing practices, e.g., misbranding, spurious products, unsafe products, planned obsolescence, adulteration, fictitious pricing, price collusion, deceptive packaging, false and misleading advertisements, defective warranties, hoarding, profiteering, black marketing, short weights and measures, etc." According to P. Drucker, consumerism challenges four important premises of the marketing concept- (1) It is assumed

that consumers know their needs. (2) It is assumed that business really cares about those needs and knows exactly how to find about them. (3) It is assumed that business does provide useful information that precisely matches product to needs. (4) It is presumed that products and services really fulfil customer expectations as well as business promises.

Consumerism covers the following areas of consumer dissatisfaction and remedial efforts:

- (1) Removal or reduction of discontent and dissatisfaction generated in the exchange relationships between buyers and sellers in the market. The marketing activities of the selling firms must ensure consumer satisfaction which is the core of marketing concept. Marketing practices and policies are the main targets of consumerism.
- (2) Consumerism is interested in protecting consumers from any organisation with which there is an exchange relationship. Hence, consumer dissonance (post-purchase anxiety and doubt) and remedial effort can develop from consumers' relations not only with profit-seeking organisations but also with non-profit organisations, e.g., hospitals, schools, Government agencies, etc.
- (3) Modern consumerism also takes keen interest in environmental matters affecting the quality of life

Consumerism in India – Need for Consumer Protection

Consumer choice is influenced by mass advertising using highly developed arts of persuasion. The consumer typically cannot know whether drug preparations meet minimum standards of safety, quality and efficacy. He usually does not know whether one prepared food has more nutritional value than others; whether the performance of a product will in fact meet his needs and expectations; or whether the “large economy size” is really a bargain. Hence, we need consumer protection.

1. Physical protection of the consumer, for instance, protection against products that are unsafe or endanger health and welfare of consumer.
2. Protection of the consumer against deceptive and unfair trade practices. Consumer must have adequate rights and means of redress against business malpractices and frauds.

3. Ecological and environmental effects of chemical, fertiliser or refinery complexes will have to be seriously considered because they pollute water, air and food and endanger human life. Consumer wants due protection against all types of pollution; he wants enriched quality of life — a beautiful, healthy, and peaceful environment free from pollution.

4. Adequate protection of consumer public against the abuse of monopoly position and/or restrictive trade practices. Protection delayed is protection denied.

Consumer Protection & Doctrine of Negligence

Yashumati Devi v. Christian Medical College, Vellore²⁶⁰

Facts: The Appellant's husband, a 58 year old man, had a history of pain in his left arm and in 2009, he visited the hospital's outpatient department complaining of pain in his left arm on exertion. On diagnosis, it was revealed that he had a Coronary Artery Disease (CAD). The patient was administered doses of Herapin without any monitoring protocol. Even when the patient complained of bleeding and disorientation, the authorities ignored the requests of the patient. The patient later suffered a stroke and there was immediate need of a CT scan. The hospital denied CT scan for over three hours citing unpaid dues despite the fact that Rs. 1.5 lakh were already deposited.

Issue: Whether this was a case of medical negligence and was the wife of the patient entitled to compensation?

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Decision: The NCDRC granted a compensation of Rs. 25 lakh to the Appellant stating that a hospital has every right to insist on payment but it also has the prime duty to take care of a patient facing a health emergency. The Court noted that there was an urgent need for the patient's brain CT scan but it was delayed for more than three hours as the hospital waited for a fresh receipt of Rs. 1850/- towards charges for the procedure. Thus, a deficiency/negligence was clearly established.

Bijoy Sinha Roy (d) By Lr. v. Biswanath Das & Ors²⁷⁰

Facts: This complaint is filed by legal heirs of the deceased Bijoy Roy who had some menstrual problem. The Complainants had consulted Dr. Bishwanath Das (respondent No.1) a

Gynaecologist, it was found that the patient had multiple fibroids uterus. She was advised to undergo Hysterectomy. After about five months, she had severe bleeding and was advised emergency Hysterectomy at Ashutosh Nursing Home. She was also suffering from high blood pressure and her haemoglobin was around 7 gm% which indicated that she was anaemic. The treatment was given for the said problems but was not success. Finally, operation was conducted after which she did not regain consciousness and since the Nursing Home did not have the ICU facility, she was shifted to Repose Nursing Home and thereafter to SSKM Hospital where she died on 17th January, 1994. The Appellant filed a complaint before the State Commission on 16th June, 1994 alleging the decision to perform surgery without first controlling blood pressure and haemoglobin amounted to medical negligence. The Appellant also alleged that the surgery was not an emergency but a planned one which was conducted six months after the disease first surfaced and also the decision to perform surgery at a nursing home which did not have the ICU for post-operative needs amounted to medical negligence. The State Commission, vide order dated 19th September, 2005, held that there was medical negligence as surgery was conducted without controlling the blood pressure and haemoglobin. The Complainant as well as the opposite parties preferred appeals. The National Commission reversed the above finding as procedure could be done on a patient with diastolic blood pressure of not more than 110 mm Hg and hemoglobin concentration of even up to 6 g/dl. Hence the Complainants preferred appeal before hon'ble Supreme Court.

Issue: Whether there was negligence on the part of the Respondent?

Decision: On Appeal to the Supreme Court by the Complainant it was pointed out by the Hon'ble Supreme Court that neither the State nor the National Consumer Disputes Redressal Commission had examined the plea of the Appellant in this case that the operation should not have been performed at a nursing home which did not have the ICU when it could be reasonably foreseen that without ICU there was post-operative risk to the life of the patient. Supreme Court through its order awarded the compensation of Rs. 5 lakh to the heirs of the deceased for negligence on the part of the Respondent.

Faulty insertion of Double Lumen Tube Manipal Hospital v. J. Douglas Luiz²⁷¹

Facts: The Complainant patient Mr. J. Douglas Louis underwent thoracotomy surgery for carcinoma of left lung with left pneumonectomy on 31-10-2003 at the Manipal Hospital (OP1). It was performed by Cardio Thoracic Surgeon assisted by a Cardiac Surgeon at OP1. When the

patient was shifted to ICU for recovery, after regaining consciousness, he experienced severe hoarseness of his voice and was unable to speak. On enquiry doctors informed that he would regain his voice after few months. He was discharged from hospital with no improvement in his voice. The Complainant alleged that OP-hospital failed to ascertain the cause of hoarseness; it did not seek opinion from ENT Department. Anaesthesia was administered using Double lumen tube by a trainee anaesthetist, instead of expert anaesthetist, wrong and repeated insertion of the tube has resulted in irreparable damage to the patient's vocal cord. Though the speech was therapy taken by the patient there was no improvement. The speech therapist referred him to another Doctor who performed Fibre Optic Laryngoscopy (FOL) and opined that the patient had posterior subluxation of left Arytenoid and issued the report accordingly. He also informed that there was very little hope of cure. When patient immediately approached the OP Hospital he was advised to consult HOD of ENT for the opinion, who after examination admitted verbally that there was problem with left Arytenoid but he was hesitant to provide the written record of the same. The Complainant further contacted eminent ENT surgeon of Mumbai, he confirmed that the patient had anterior subluxation of arytenoid with left vocal cord paralysis. Thereafter, alleging medical negligence on the part of OP1-hospital and the doctors therein, the Complainant filed the complaint before District Forum, Bangalore alleging medical negligence and prayed for compensation of Rs. 18 lakhs. The District Forum found the hospital guilty of medical negligence and ordered OP-1/hospital to pay a sum of Rs. 5,00,000/- along with Rs. 5,000/- towards cost to the Complainant. Being aggrieved by the order of the District Forum, the parties filed cross appeals before the State Commission. Both the appeals were dismissed by the State Commission. During pendency of the revision petition, the patient expired and the legal heirs were brought on record. Both the parties filed the instant two revision petitions before National Commission.

Issue: Whether there was medical Negligence on the part of the Hospital?

Decision: Considering the material on record, the medical literature NCDRC opined that, the dislocation of left Arytenoid was only due to traumatic cause, which subsequently led to vocal cord paralysis. The Recurrent Laryngeal Nerve (RLN) injury will not cause dislocation of arytenoid. It was the result of faulty insertion of Double lumen tube during administration of anaesthesia to the patient."NCDRC confirmed the medical negligence by the hospital and it held that looking at the entire facts and circumstances of the case there was no justification for enhancement of the award given by the State Commission. Thus the order of State Commission was upheld.

Western Railway v. Vinod Sharma³²⁰

Facts: The Complainant, Vinod Sharma, aged 34 years, was employed with M/s. S.K.I.L. Infrastructure Ltd. as Administrative Manager and he used to commute from Virar Station to Churchgate Station in Mumbai, every day by local train. He was holder of a first-class season ticket/pass effective from 07.05.2010 to 06.06.2010. On 13.05.2010, when the Complainant got down from the local train at Churchgate Railway Station at about 10.45 am, and was going towards his office, a heavy wooden plank/sleeper, approximately 10 ft long and 2 ft wide, fell on his head, from a height of more than 50 feet, causing grievous brain injury and multiple skull fracture with spontaneous unconsciousness. At that time, renovation work was at progress, but there were no warnings/alert sign-boards or fencing etc. to that effect on the spot. The Complainant was diagnosed as suffering from right hemiparesis grade III upper limbs, grade IV lower limbs and had significant global dysphasia. A part of his skull was removed that would be required to be fixed at a later stage. A consumer complaint was filed in the State Commission against the Opposite Party. The OPs resisted the complaint by filing a written statement before the State Commission, in which they stated that the Commission had no jurisdiction to entertain the complaint in view of Sections 13 & 15 of the Railway Claims Tribunal (RCT) Act, 1987. Moreover, the OPs had already paid more than Rs. 25 lakhs to the Bombay Hospital for medical treatment of the Complainant. The OPs also stated that under Section 124 & 124A of the Railways Act, the Railway Claims Tribunal had the exclusive jurisdiction to entertain the complaint in question. Further, the validity of the season ticket was also questioned.

Issue: Whether Railways should compensate for negligence?

Decision: The State Commission, after taking into account the averments of the parties, allowed the said consumer complaint and directed the Opposite Party to pay compensation of Rs. 62,87,040/- to the Complainant and an interest thereon @ 9% p.a. from the date of filing complaint till realization. The said amount should be paid to the Complainant within three months from the date of this order in default the amount will carry interest @ 12% p.a. The Opposite Party is directed to bear the entire medical expenses present and future of the Complainant in respect of the said incident, arising out of the said disability as undertaken by the Opposite Party. The Opposite Party is directed to pay an amount of Rs. 5,00,000/- on account of pain, suffering, mental agony and loss of amenities. The Opposite Party is directed

to pay an amount of Rs. 15,000/- on account of cost of this complaint. The decision was upheld by the National Commission

In the case of *MacPherson v. Buick Motor Co. (1916)*, the plaintiff was injured when the wooden wheel of his car collapsed due to a hidden defect. The court held that the manufacturer had a duty of care to the ultimate consumer of its product, regardless of whether there was a contractual relationship between them. This case established the principle that manufacturers can be held liable for negligence towards consumers, even if the consumer did not purchase the product directly from the manufacturer.

Nizam Institute of Medical Sciences v Prasanth S. Dhananka & Ors

This Consumer Protection Act case arises out of a complaint of medical negligence where a 20-year-old engineering student was admitted to the Nizam Institute of Medical Sciences (NIMS) after he had a complaint about the acute chest pain. After several tests and X-rays, a tumor was revealed. Though, it could not be diagnosed whether the tumor was malignant. Therefore, the patient was advised to undergo a surgical removal of the same. After the surgery, the patient developed paralysis. There was a complete loss of control over the lower limbs and other related complications also raised leading to urinary tract infections, bedsores, etc. The family of the patient held NIMS and the State of Andhra Pradesh statutorily liable for this utmost negligence. The family of patient also claimed that no pre-operative tests were conducted, no neurosurgeon was present during operation. Consent was only taken for the tumor excision, however, doctors also removed ribs, tumor mass and destroyed blood vessels leading to condition of paralysis. The Supreme Court based on the evidences, held that a huge negligence was made out on the part of doctors and the hospital. Hence, the Supreme Court awarded damages worth Rs.1 crore to compensate present and prospective medical expenses and suffering of life.

V.N. Shrikhande Vs. Anita Sena Fernandes

The respondent in this case – Anita Sena, was a nurse by profession underwent a stone removal surgery from her gall bladder but claimed that she continued to experience pain. After 9 years, it was detected that the reason behind this was that a gauge was left in her abdomen by the surgeon who operated her. This required a second surgery. Therefore, she filed the charges for negligence and compensation of Rs.50 Lakhs before State Commission where it was barred by limitation. So she filed the case against the doctor for his negligence before National commission where it reversed the order of State Commission. Therefore, this appeal to Supreme Court.

Hon'ble Supreme Court rejected the case on limitation and evidentiary grounds. The court held that when nurse was working in the same hospital where the surgery happened. Then, in the past nine years, why did not she contact the doctor. During the discovery of gauge in the abdomen, appropriate action could have been taken on an immediate basis without requiring the respondent to pay. However, she chose to consume pain killers. Her long silence dismissed the complaint and she was entitled to no compensation.

Arvind Shah (Dr.) v Kamlaben Kushwaha

In this case, the complainant alleged that his son died due to the administration of a wrong treatment by the doctor. The State Commission upholding negligence provided a compensation of five lakh rupees.

In appeal, the National Commission observed that the two prescriptions that were available on record neither contained any description of the symptoms that the patient was experiencing nor did it have any preliminary vital information that a doctor is mandated to check, as per the guidelines and regulation of the Medical Council of India or the concerned State Medical Council, like body temperature, blood pressure, pulse rate, prior medical history et cetera. If further tests were required for the diagnosis, such was also mandated to be mentioned. The commission, following the case of *Samira Kohli v Dr Prabha Manchanda [I (2008) CPJ 56 (SC)]*, held that failure to put such essentials in the prescription amounted to medical negligence. The Commission also noted that availability of such essentials, clinical observations and consent of the patient, point towards the care and diligence of the doctor and act as evidence against frivolous cases of medical negligence.

However, due to lack of available evidence that attributed the death of the patient directly to the negligence, the National Commission reduced the compensation to two and a half lakhs along with the interest thereon.

Poonam Verma v Ashwin Patel & Ors

In this case, the respondent, a homoeopathic doctor, prescribed allopathic medicines for the treatment of a patient who did not respond to the medicine and subsequently died. The Supreme Court held that the right to practice the allopathic system of medicine was restricted by the Central and State Acts which prohibit such practice unless the person possesses requisite qualification and is registered according to the Acts. Based on the fact that the respondent was qualified and registered to practice Homeopathy only, he was found to be in violation of the statutory duty not to practice Allopathy given under the section 15(3) of the Indian Medical Council Act, 1956. Respondent's act was held to be actionable negligence and he was ordered to pay a compensation of three lakhs.