

IN THE WHIRLPOOL OF CYBER POLEMICS: CONSUMER CRUCIFIED BEFORE THE LAW AS BYSTANDER

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ABSTRACT

The web worldwide uploads *sui generis* issues for net savvy citizens (“netizens” in the trendy sense of the term) to grapple with corporate interest operative from within the system of cyber governance. At times, savage takes place under the (dis) guise of ideology as well. One such epic struggle surfaces itself through polemics between digital equality and net neutrality, a feud that constitutes the crux of this effort, to put its consumers to crossroads. A quest thereby stands tested with jurispudent reasoning; whether and how far internet browser may be construed as “consumer” under the given legal regime. The author engages in this quest, in the Indian context, to plead with an argument of his own that naive browser as new entrant deserves parental coverage of the law. Besides, the author has identified fault-lines in ideological positioning and thereby demonstrated mutual criss-crosses between classical left-wing and right-wing politics *inter se*; no less contentious for otherwise veteran readership. Irrespective of his political positioning, however, the consumer is put to peril anyway. While digital equality falls short to offer freedom of access, net neutrality has had no package to offer even access to net. Nowadays equality plays for right-wing politics and liberty does the same for left-wing politics. At the bottom, both of them appear great grandeurs since the requiem for naive consumer, crucified by either ideology, falls on deaf ear. Irrespective of polemics (read politics), ideology appears savage for the naive *netizenry* and saviour for the rest. Isolated and unorganized, often than not consumer falls prey to pitfalls arranged by organized and collusive goods producer or/ and service provider.

Peter: Quo Vadis? (Whither goest thou thus?)

Jesus: Eo Romam iterum crucifigi.

(I go into Rome to be crucified.)

-Early Christian Writings^{2#}

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2 # *Vide* M. R. JAMES (tr.), *The Acts of Peter*, in THE APOCRYPHAL NEW TESTAMENT (1924) available at <http://www.earlychristianwritings.com/text/actspeter.html>.

INTRODUCTION

In great ancient antiquity, characters in general and protagonists in particular suffer from critical hardship and succumb to jeopardy; at times to the gross detriment of justice. Thus, to win cynicism, *Sita* was required to undertake the test of entry to sacred fire and thereby prove her chastity twice. Besides *the Ramayana*, early Christian writings offer parallel mythology where, while being asked by a follower about his destination long after his crucifixion, the bereaved soul of Jesus indicated the event of crucifixion as eternal phenomenon to draw rhetoric of despair for the readership as quoted above. A simile may get drawn to depict the drudgery, if not vagary, meant for the netizenry as consumer in the cyber space. The online formality apart, there lies little disparity between the actual world and the virtual world vis-à-vis victimization of consumer in the wake of high-handedness on the part of corporate collusive practice worldwide through diverse tools and techniques including ideology as one among them. Thus, in the forthcoming paragraphs, the consumer, those naive in the worldwide web (*hereinafter* “www”) in particular, constitutes the crux of this effort.

Since time immemorial, ideology plays a critical change agent in the hitherto course of civilization. Since the primitive society, to the slave society, to the feudal society, to the present capitalist one, one ideology got ceded by another and thereby paved the way for newer versions to transcend to newer value system, newer teleology, and the like. Indeed, most of these polemics are loaded with potential of their own, all of them but share undercurrents of politics to carry forward agenda of their own in a way or other. The reach of politics stands pervasive to spare nothing and nowhere, be the same actual or virtual. The intellectual property and the cyberspace may best be illustrated respectively to cite something or somewhere within the reach of contemporary politics despite their existence falling short of tangibility in the sensory world. The cyberspace, for instance, is ridden with hyperbolic spatial politics of the virtual world where consumers are stuck to the rivalry out of polarization and thereby forced to struggle for survival

strategy to get rid of receiving the end of the world. The series of ideology thereby does construct, deconstruct and reconstruct the polemics but hardly takes care of those crucified in the whirlpool of otherwise great struggle.

The contemporary debate between digital equality and net neutrality constitutes the focus of this effort from a consumer jurisprudence perspective. To narrate the same in brief, digital equality refers to the access to net movement initiated in India by Mark Zuckerberg, anchor of the online social media giant Facebook, with self-proclaimed commitment to facilitate one and all to transcend the digital divide and thereby achieve digital equality in terms of their reach to the internet. Innocent on apparent face of the record, the online civil society movement went critical to this initiative and thereby condemned the same as market strategy under the disguise of public good. The reasoning lies in limitation of access to net since digital equality is meant to offer the user under “Free Basics”³ limited freedom in the www. Thus, the Facebook portal dedicated to digital equality falls severely short of optimal freedom (s)he should have to attain “digital equality” in the technical sense of the term. Also, these websites available in free basics are loaded with commercial character of their own. Together these inbuilt lacunae contributed toward setback for the free basics movement in India.

DIGITAL EQUALITY: DEMYSTIFIED BY DEFAULT

Since the beginning of rivalry between capitalism and socialism, their characteristics stand reverse on the face of record. While feudalism was replaced by the bourgeoisie on the agenda of civil and political rights, bourgeoisie was replaced by the working class movement on the agenda of social, economic and cultural rights. Liberty and equality thereby emerge as classical icons of capitalism and socialism respectively to represent right-wing and left-wing politics in the broad sense of the term. No wonder that, through his “free basics” movement toward digital equality, Mark

3 *Vide* dedicated Facebook portal, <https://info.internet.org/en/story/free-basics-from-internet-org/> (last visited 1 May 2016).

thereby turned the table upside down to confuse the hitherto divide between right-wing and left-wing politics the way these are played out so far. Now, by courtesy the “Free Basics” portal, online corporate giant preaches that otherwise great grandeur of digital equality needs to get converted to praxis and that also be facilitated free of cost by no less than Facebook. Mark thereby made a bolt from the blue on the left-wing politics to exceed the same in his corporate move to play the great digital equalizer. Amen!

The left-wing politics declined to digest the way a corporate player turned more left than the left. In the course of counterclaim, Mark was trapped to the same age-old pitfall of right-wing politics prepared to trap the socialist experiment on the question of liberty. In course of its quest for fallacy, left-wing politics deciphered its countermove to offer kneejerk blow for Mark through inbuilt limits of the access to net through so called digital equality and alleged the same as offensive toward net neutrality that refers to freedom of choice during access to net. Thus, by a bizarre turn of eventuality, left-wing politics appears apprehensive about compromise with liberty that got played out by right-wing politics as its treasure trove so far. Together the movement and the counter movement strike role reversal for rivals in the realm of polemics (read politics) in the digital world. While Mark strives to unfold freedom of access to net, the freedom is earned with a disproportionate cost of intellectual freedom and thereby reduces digital equality to otiose. Indeed, Mark appears exposed to the hostility of civil society movement while advocating digital equality devoid of net neutrality- albeit arguably- for public good. On the contrary, net neutrality is needed for better cyber governance. In the absence of digital equality, however, net neutrality stands otiose and those critical to digital equality hardly facilitate the public access to net. In the absence of access to net, the question of net neutrality cannot arise anyway. Both sides thereby stand

still with hiccups of their own.⁴ In given circumstance, casualty ought to get heightened to hit those at receiving end.

Given a look on two representative icons, of digital equality⁵ and of net neutrality,⁶ respectively, the readership is likely to get mesmerized over the great grandeurs while both are ridden with polemics of their own. Together they would have emerged complementary and supplementary to one another toward holistic construct. Regrettably, under given circumstance, the same appears oxymoronic for the reasoning of ideology articulated hereafter in minute details.

In the given circumstance of cyber polemics, consumer constitutes one among them who finds oneself at the receiving end of the world. In the wake of online market economy, while the steering wheel is driven by organized corporate players, unorganized and left alone, consumer ought to have pushed to the backseat. Thus default concern for equality in general, and for digital equality in particular, appears great for ocular opulence. Equality thereby appears a misnomer since the same refers to mathematical similarity, quantifiable in exactitude, and hardly reachable to attain in mortal and morbid world; actual and virtual alike. As a catchphrase, digital equality marketed a myth for digital data equality to backfire the free basics since the so called free access to net stands compromised with freedom of choice. What appears reachable is equity to balance competing claims between private (read corporate) interest and public interest. Albeit a distant dream, equity evokes optimizer for digital justice.

4 This line separates groups on the basis of beliefs about the internet's overriding purpose. In some ways this is a variant on the classic tension between liberty and equality. However, it goes beyond this to represent the tension between individualism and communitarianism, with the former being a focus on individual rights, and the latter invoking community benefits like economic growth, security and improved quality of life; Robert D. Atkinson, *Who's Who in Internet Politics: A Taxonomy of Information Technology Policy*, The Information Technology and Innovation Foundation, Washington DC, 2010 (7 May 2016) available at <http://www.itif.org/files/2010-digital-politics.pdf>.

5 By courtesy, Facebook, <http://techlomeia.in/wp-content/uploads/2015/12/tnt-freebasics-logo-01-900x450.png> (last visited 7 May 2016).

6 By courtesy, Facebook <https://www.savetheinternet.in/> (last visited 7 May 2016).

NET NEUTRALITY: INCONSISTENCY INBUILT

Indeed, a least explored area of concern so far, even net neutrality appears too fragile to bank upon since the same suffers from inbuilt inconsistency on the following heads: (i) with little concern for the public access to net, net neutrality offers extravaganza; much ado about nothing, after Shakespeare, in terms of the cyber literacy worldwide. In India, for instance, majority of the population worldwide lacks access to net.⁷ Thus, in demographic perspective, net neutrality hardly matters here. (ii) Also, in practice, net neutrality poses no big deal since netizens by and large belong to bourgeoisie and thereby behold the capitalist life-world inbuilt in their class character. Therefore, they hardly share intellectual cyber polemics between Mark-ism and Marxism so far as broad ideological orientation is concerned. At bottom, when individually identified, these stakeholders in both sides represent creamy layer of the society where neither the commoners nor the consumers possess stake anyway. The drawing room struggle thereby facilitates little toward emancipation of the poor and underprivileged browser, often than not in course of maiden entry or irregular entry by eventuality, to www. Thus, despite net neutrality logic being otherwise reasonable enough, the free basics, even if the same corresponds to no digital equality, at least facilitates bare minimal logistic support for subaltern access to net. Common sense, often than not uncommon, sometimes prevails over reason in practice; as is the case here.

Another discursive constraint for net neutrality ought not to get left out. The concept of neutrality is contentious, also relative enough, to carry the meaning on its back that may and does vary to offer findings poles apart from one another.⁸ For instance, authoritarian vigil on the part of statecraft

7 For exact statistics, refer to relevant database, *available at* <http://www.internetlivestats.com/internet-users/> (last visited 14 May 2016).

8 There is no doubt an art in saying something when there is nothing to be said, but it is equally certain that there is an Art no less important of saying clearly what one wishes to say when there is an abundance of material; and conversation will seldom attain even the level of intellectual pastime if adequate methods of interpretation are not also available; C. K. Ogden and I. A. Richards, *THE MEANING OF MEANING: A STUDY OF THE INFLUENCE OF LANGUAGE UPON THOUGHT AND OF THE SCIENCE OF SYMBOLISM* (1923)

in diverse forms, e.g., ban, censorship, etc., change its character from regime to regime. What went prohibited in British India attracts appreciation after independence. Also, ultra-left literature nowadays forbidden is likely to receive appreciation in time ahead if compatible regime usurps “the State” under Article 12, read with Article 36, of the Constitution. Back to cyber polemics, meanwhile Microsoft got exposed to play partisan,⁹ by courtesy *pro-bono* movement. Likewise, flip sides of the movement may get exposed to disadvantage of stakeholders and like’s in favour of the same may not be taken well by the movement. Therefore, giving the steering wheel to these human stakeholders, perhaps they would have acted the same way Microsoft does with given stronghold in cyber governance since power is presumed to drive all alike; albeit exceptions apart. Thus, there is little assurance that those appearing progressive nowadays cannot turn regressive in time ahead and act to gross detriment of public interest with the cloak of ideology in a way or other. The guesswork above, with reasoning of its own, may get corroborated by experience of the experiment in the actual world, e.g., Soviet Union, China, Cube, and the like. The virtual world stands susceptible to similar fallibility.

CONSUMER INTEREST: A CONCERN FOR NONE

With the ideological background above, let us grapple with position of the consumer in the virtual world. As zeroed-in meanwhile, now onward, the consumer does refer to the naive browser, little exposed to www, somehow reaching the entrance to net; by courtesy the free basics movement. Thus, understanding identity of the consumer hereby pointed out appears critical to arrive at the whereabouts of consumer interest. Here

available at <http://s-f-walker.org.uk/pubsebooks/pdfs/ogden-richards-meaning-all.pdf> (last visited 3 May 2016).

- 9 A NetAction survey of the top internet service providers concludes that Microsoft’s marketing strategy is preventing consumers from choosing the browser they use to access the World Wide Web, and integration of Internet Explorer into the Windows 98 operating system will further limit consumer choice. NetAction’s survey reveals that Microsoft’s marketing strategies already limit the choice consumers have regarding which browser they use to access the web; *Vide* Consumer Choice in Web Browsers: A NetAction Report, undated literature *available at <http://www.netaction.org/msoft/browsers.html>* (last visited 8 May 2016).

the consumer represents those living in forest, remote hamlet, peri-urban pocket of the metropolis India, where access to energy is recent, if not latest, development (if at all), who are underprivileged on any of these five counts otherwise prohibited for the purpose of discrimination under constitutional governance,¹⁰ etc. In its given demographic characteristics, while the subaltern consumer constitutes the majority population in India, whether and how far the free basics is critical for their inclusion needs little time to answer. “The Answer,” after Bob Dylan, “is blowing in the wind.”¹¹ A cynicism may not be too remote to decipher the project as marketing management. The Facebook marketing strategy behind the so-called movement lies in its plan of action for extension of its existing catchment to cover the petty bourgeoisie here and there who have access to daily newspaper to get mesmerized with front-page and full-page information at right time, can afford minimal technical knowhow to operate mobile smart phone handset, that also one from Reliance with the same as service provider, and the like. Somehow few hard facts went into oblivion that, in the emerging economy of India, the target crowd is more aspirant than Mark and vigilant than government with a consequence that, peer group feedback prompted few, too few of target crowd, to fall prey to populism under the aegis of Facebook. As a regulatory agency, Telecom Regulatory Authority of India (hereafter TRAI) took entry to the cyber melodrama thereafter; the way policemen do for popular film industry. Thus the Facebook project to develop digital culture, followed by digital socialization, for rearing its consumers accordingly ended in smoke with fateful TRAI regulations against differential tariff¹² issued to stop free basics movement move ahead in India. In its one-year duration, the project but left a mark of its own in diverse domains.

10 Article 15 of the Constitution of India, 1950.

11 *Vide* <http://bobdylan.com/songs/blowin-wind/> (last visited 7 May 2016).

12 *Vide* TRAI Press Release No. 13/ 2016, on Prohibition of Discriminatory Tariffs for Data Services Regulations 2016, dated 8th February, 2016, *available at* http://traai.gov.in/WriteReadData/PressRealease/Document/Press_Release_No_13%20.pdf (last visited 7 May 2016).

In this given context, a contentious issue to be dealt with lies in the status of net browser; whether and how far (s)he may be construed as the consumer during such access to net through the free basics project. The Facebook never considered the crowd consumers for reasoning of their own. To them, the movement is meant to serve public good, if not great, and thereby merges with their stake toward corporate social responsibility (*hereinafter* “CSR”). Had the free basics project been continued, Facebook would have set to demonstrate the same as its contribution to CSR and thereby avoid further burden to meet statutory obligation on this count.¹³ Besides being the goodwill ambassador, the movement seems instrumental toward cost-cutting in terms of its expense for CSR. Also, by the same stroke, browser turned beneficiary in technical sense of the term.¹⁴ In the absence of statutory criteria to be fulfilled for the net browser to get defined as the consumer, Facebook owes no liability to its target crowd as part of free basics and thereby maintains freehold lease over those brains connected to net. At bottom, Facebook has had considerable hold over the default choice for all these browsers and in turn their family members along with peer group associated with them. Indeed, there is no transaction either way. The circuitous routes for phenomenal transaction appears in prospect since success of the project as crowd puller would bring in better business bonanza for Facebook through offer-acceptance-inclusion of more websites to get included as part of the package for its free basics portal in time ahead. Thus, Facebook indulges in business with those in the project as its capital. The consumer thereby appears dehumanized in the wake of business management.

Interestingly enough, while Facebook stands defaced in the wake of minute cynicism on the count of net neutrality, neither the reverse side did care for consumer interest. For whatever limits there may be, the free basics project at least offers access to net and thereby provides for logistic support to those otherwise deprived of access to net. Net neutrality protagonists,

13 *Vide* section 135 of the Companies Act, 2013.

14 *Vide* section 2(d) of the Consumer Protection Act, 1986.

however, suffer from want of project for the consumers toward their empowerment while they appear critical enough to decipher all flip sides of the impugned Facebook project. In the whirlpool of cyber polemics, the consumers are thereby set to get crucified since, in their pursuit to respective policy preference, neither side cares for consumer interest. Thus, in the virtual world, naive consumer emerges as newer version of subaltern whose claim is left unheard in the cacophony of partisan cyber politics worldwide. After Spivak, the subaltern incapability to voice *bona fide* interest of the community stands apparent in the discursive sense of the term.¹⁵ Consequently, the cyber world suffers setback out of the politics of voice and silence as binary opposites engaged in perennial struggle *inter se* to surface their respective discursive polemics in ways of their own.

PARADIGM SHIFT IN CAVEAT: LAW AND PRACTICE

Indeed, the economic jurisprudence did shift from *caveat emptor* to *caveat venditor* long back, remnants of the former but hoodwinks the law through stereotypical rites and rituals as practice. The market economy thereby falls severely short in its outreach toward its destination of liberalization-privatization-globalization (*hereinafter* “LPG”). In the digital world, in the given context of the cyber polemics, *caveat venditor* seems yet a distant dream with little information disseminated to those joining the movement.¹⁶ Therefore, even if there is no legal obligation, a legitimate anticipation but lies that they are informed about their prospective role in

15 For minute details, refer to Gayatri Charavorty Spivak, *Can the Subaltern Speak?* <http://postcolonial.net/@/DigitalLibrary/entries/40/file-pdf.pdf> (last visited 14 May, 2016).

16 Caveat emptor is dead as a general legal principle. Modern is now best explained by the least-cost-information-gatherer principle. But in practice, caveat emptor is kept alive in a wider set of cases than is economically justified by the inconsistent application of the least-cost-information-gatherer principle. For instance, courts do not create as many disclosure duties in contract law as a consistent application of the LCIG principle dictates. When there is a duty to disclose, the legal system does not always require that the information be disclosed in the most efficient way. Courts do not always correctly apply the materiality criterion; they seem to insufficiently realize that what is material depends on the type of search process; Gerrit De Geest, *The Death of Caveat Emptor*, paper presented in Law and Economics Workshop of the University of Chicago Law School on 18 February 2014 available at http://www.law.uchicago.edu/files/files/degeest_paper_0.pdf (last visited 14 May 2016).

the Facebook business management. Here lies the hiccup since the least-cost-information-gatherer principle appears ignored to result into reversal of the paradigm shift back to *caveat emptor* to gross detriment of the market. With no transaction between Facebook and free basics stakeholders, legal rights indeed cannot be pleaded. With recourse to basic jurisprudence, interest in general, and *de facto* interest in particular, may well be pleaded to demonstrate consumer advocacy in the contemporary cyber polemics.¹⁷⁻¹⁸ Conversion of otherwise legitimate expectation to legal obligation, i.e. from *de facto* interest to *de jure* one, appears a need of the hour to this end. Accordingly, rather than blanket proscription on the free basics project, adherence to LCIG principle could serve the purpose better. The strategy is meant not to allow such matter out of hand.

Also, after basic jurisprudence, the matter could have been dealt with through resort to doctrine of unjust enrichment for the better management of the matter with little feud to this end.¹⁹ What could serve the purpose was a petition for public interest litigation on the part of net neutrality crusaders against Facebook to put an end to its practice. In the given

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- 17 Interests are things which are to a man's advantage: he has interest in rights protect the interests, which accordingly form the subject of his rights but are different from them. To say he has an interest in his reputation means that it is to his advantage to enjoy a good name; to say he has right to this is to imply that others ought not to take this from him; *Salmond on Jurisprudence* (P. J. Fitzgerald ed., Universal Law Publishing Co. Pvt. Ltd., New Delhi, 12th ed., Indian Economy reprint, 2010) (1902).
- 18 Many interests exist *de facto* and not also *de jure*; they receive no recognition or protection from any rule of right. The violation of them is no wrong, respect for them is no duty. For the interests of men conflict with each other, and it is impossible for all to receive rightful recognition. The rule of justice selects some for protection, and the others are rejected. Salmond, *supra* note 15, at 218.
- 19 The doctrines which fall under the head of quasi-contract are really founded on a broad principle that unjust enrichment should not be retained at the expense of one who suffered. In some systems, however, the actual rules of quasi-contract are rather limited, and the broader doctrine has been called into play to supplement the law. In French law, the principle is known by the name of *actio de in rem verso*, which "is founded on the principle of equity which forbids one man to enrich himself at the expense of another." It applies in every case in which, "the estate of one person being enriched without lawful cause at the expense of another person, the latter, in order to obtain what is due to him, does not enjoy the benefit of any action based on contract, quasi-contract, delict or quasi-delict; George Whitecross Paton, *A TEXTBOOK ON JURISPRUDENCE* (Oxford University Press, 4th ed., second Indian edition, New Delhi (2005)) (1946).

trajectory, a precedent could have been set to prevent similar practices of other corporate giants under the disguise of cyber polemics in time ahead. In brief, there were better routes to handle an otherwise pro-people project like free basics than one through legislative prohibition of the same by impugned TRAI Regulations on commercial reasoning.²⁰ While the series of incidents between 8 February 2015 and 8 February 2016 made Mark a tragic hero, before the public, telecom regulator was reduced to selfish giant for its contribution to subvert the digital emancipation ahead with consumer interest as casualty.

A moot point lies in the determination of the character of public interest. Here two areas of interest, corporate interest and consumer interest, claim their own stakeholders represent public interest while the rest do private interest. Hence, for determination of greater stake in public interest, who constitutes “public” deserves to get addressed beforehand. In terms of majority and vulnerability, compared to corporate interest, consumer interest thereby stands closer to public interest in their forms and contents. Thus, in cases of competition *inter se*, society needs reasonable approach to balance both sides to the best extent plausible. In cases of irreconcilable conflict, however, consumer deserves priority over entrepreneur since the same in final count represents public interest. Since the latter is stronger and organized, more so in the age of LPG, the former deserves right against exploitation not only for the sake of justice but also for good market governance. Want of credibility for the market as level-playing space is bound to hit the economy hard and in turn affect the entrepreneur in a way or other. So also is the case, if not more, while the market becomes online where information moves faster than fire in the technical sense of the term. In its own interest, therefore, entrepreneurship ought to observe the self-restraint.

20 For details, refer to provisions under section 3, read with section 4, of the (TRAI) Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, dated 8 February 2016, available at http://www.trai.gov.in/WriteReadData/WhatsNew/Documents/Regulation_Data_Service.pdf (last visited 15 May 2016).

Last but not least, internet *per se* being parallel to common heritage of mankind, a moot point is left out about status of the browser as consumer. Whether and how far internet browser may get construed as consumer constitutes the zenith of this effort. Again, in public interest, answer ought to run positive for the following reasoning: (i) access to net requires accessory, service provider, etc., for the browser to take entry to www. Without all these, there is no access to net. Airlines passenger is construed as consumer despite air and airspace beyond territorial water being property of none. Similar is the case in case of passenger above mercantile shipment carrier. Likewise, by courtesy surfing the net, netizen deserves the same accordingly (ii) manipulation of available information by service provider for commercial consideration stands already established fact and need not prove once again.²¹ Therefore, accountability may and does arise on its part. (iii) Also, ideology apart, no organized crowd cares for consumer as such. The onus thereby reaches the law to cure an evil while the same falls severely short out of inbuilt limits of its own.

The three-decade old statute of India cannot cover the nitty-gritty of www anyway since the same got enacted for protection of consumers in the tangible market built by bricks and mortars. Consequently, online consumer interest appears the casualty out of its antiquity. Indeed, the recent proposal was meant to include online marketplace and thereby extend its protection network to the cyberspace as well.²² Where such otherwise welcome jurisprudence fell severely short is its concern for overt transaction alone. Thus, covert commercial transactions like that of free basics, where popular participation itself appears capital for prospective business bonanza in favour of Facebook through plausible prospect of commercial gain

21 But how much choice do consumers have now in the browser they use to access the web? In order to find out, NetAction conducted a survey of the top Internet Service Providers to determine the extent to which consumers currently have a choice of web browsers. The survey results indicate that consumers already have very little choice, primarily because of the marketing strategies employed by Microsoft. Moreover, consumer expectations about which browser they will be using in the coming year appear to be unrealistic in the light of survey's findings. *Supra*, note 7.

22 *Vide* Explanation (b), section 2(8), read with section 2(16), of the Consumer Protection Bill, 2005.

in time ahead, remains outside the jurisdiction of proposed legislative regime. The matter remains least explored since even widened version of consumer is yet to reach there. Whether and how far a legal fiction like “potential consumer” may address the given anathema is hereby raised for policymakers. The fiction is meant to care for hybrid consumers and caution erratic players alike.

CONCLUSION

To sum up observations arrived at in the course of arguments advanced with reasoning behind the same, findings may get arrayed thus: (i) Indeed not in conventional sense of the term, browsers deserve coverage under the umbrella of consumer jurisprudence if their presence appears instrumental toward commercial gain for the given web portal. (ii) Despite no apparent gain, popular participation plays a great role for free basics in terms of its business (read marketing) management, e.g., to have more websites as part of free basics scheme and in turn more resource generation for its exchequer. (iii) After the misadventure of free basics project to play debenture, Facebook initiated other events of entrepreneurship, Initiatives for Social Action being one among them. All these are welcome initiatives until corporate interest exceeds public interest and thereby deprive the consumers from their legitimate interest. Regrettably, Facebook is yet to come out of the whirlpool with clean hands. It did suffer from setback after TRAI prohibited differential tariff. A revised version of the free basics in time ahead, or the newly initiated project with better safeguard for consumer interest, would serve a face-wash for the Facebook to showcase CSR commitment in legal sense of the term if the default class character in these initiatives stands corrected. In these otherwise welcome initiatives, need of the hour in age of LPG is to strike fair balance between competing, and sometimes conflicting, interests and thereby serve greater public good for the community. Thus, disproportionate compromise with consumer interest, even if the same stands peripheral, ought to hit a beneficiary hard and the free basics fiasco has set a classic precedent to this end.

Tragedy lies elsewhere. Net neutrality movement, in its crusade against free basics, turns blind eye on consumers and thereby ruins the minimal access to net otherwise available in public domain for those yet to get included to the cyberspace. Thus, despite digital equality being misnomer, the minimal logistic support whatever got extended to commoners stands withdrawn, by courtesy hyperbolic tantrum to “save the internet,” etc. followed by the fateful position of TRAI against differential tariff. In its anxiety to save, the movement missed to apply its mind on a corollary question: to save from whom? With myopic syndrome, the movement thereby elevated internet to sacrosanct and set the same beyond reasonable reach of entrepreneur and browser (read consumer) alike while both constitute their *bona fide* stakes toward formulation of good cyber governance. While corporate interest is scheduled to manage its route to keep its outreach to net in a way or other, consumer interest cannot manage, since the same is run by commoners, and thereby crucified by politics of either side. Also, *pro-bono* civil society movement is yet to identify “potential consumer” as the other, excluded within the excluded, from within the consumer community.