When the Law Takes its Course

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On 16 June 2012, a twelve-member jury convicted the India born and educated Rajat Gupta, former head of consultancy major McKinsey and Company and former board member at Goldman Sachs and Procter and Gamble (among other firms). He was found guilty on three counts of securities fraud and one charge of conspiracy. All convictions were related to insider trading in Goldman stocks, which were among the charges on which hedge fund manager Raj Rajaratnam of Galleon Group had been earlier convicted. Rajat Gupta, the jury concluded, provided confidential information to Rajaratnam with regard to Goldman Sachs that permitted him to enter into and profit from trades based on insider knowledge.

One member of the jury that handed down the conviction suggested that it was an unfortunate and bad end to a story of somebody living the American dream of economic and social success of the highest order for a person who was not born privileged. Having been celebrated in India as a management guru and role model, this conviction has also turned out to be a bad end to a story that every member of India's professional elite in the neoliberal era is being tutored to want to live. Gupta had lived out the middle class Indian dream as well. Born to middle class parents, he had to struggle against the odds resulting from being orphaned by the death of his parents when he was in his teens. He earned his entry into the Indian Institute of Technology in Delhi and found his way to the Harvard Business School for an MBA. He then joined McKinsey and Company and rose to be elected its managing director in 1994, to which position he was re-elected twice to hold office for a total of nine years.

Wealth or net worth, estimated at $84 million in 2008 by his personal banker, was only one fall-out of Gupta's career. He seems to have earned a reputation for combining dynamism (epitomised by the aggressive expansion of McKinsey under his leadership) with the ability to deliver sage advice and promote philanthropic causes. In India, he was also known as an institution builder, having been central to the establishment of the well-funded and backed Indian School of Business, which won itself an instant reputation. Given these and many other features of his track record, admirers and analysts the world over are puzzled by the evidence and circumstances leading to his conviction. As his lawyer, Gary Naftalis, is reported to have argued before the jury: "Rajat Gupta was in the seventh decade of an accomplished and praiseworthy life. It strains common sense that [he] would... throw away everything he had done for 40 years, and wilfully and knowingly commit crimes. That just doesn't make sense." (John Gapper, The Financial Times, June 20, 2012).

There are many reasons why even in the US the Gupta case has grabbed headlines, not least of which is the fact that he is among the highest executives in terms of position and stature that government prosecutors have been able to bring to conviction. They include three that should have favoured Gupta's acquittal rather than conviction. The first was his reputation, whether cultivated or not, as a sage and saint in the management world. The second was the fact that the prosecution did not have hard evidence in the form of taped conversations that established his direct and personal involvement in Galleon's insider trading operations. And the third was the perception that given the wealth and position he had it did not make sense for him to commit crime to earn what he could have from the Rajaratnam connection.

The conviction was in the first instance based on circumstantial evidence that strongly suggested that Gupta had passed on information garnered as a director of Goldman Sachs to Rajaratnam, which the latter used for profit. Particularly damaging was the evidence that on September 23, 2008, Gupta called and spoke to Rajaratnam almost immediately after the Goldman Sachs board had approved through a conference call a $5 billion investment in Goldman shares. Minutes later, rushing to beat the closing of the market, traders ordered by Rajaratnam bought $40 million worth of Goldman shares to profit from a rise in their prices.

The jury also found convincing the prosecution's argument that Gupta informed Rajaratnam in October 2008 that Goldman was set to report a drop in profits over the quarter, and that Rajaratnam then made good use of it to trade in Goldman Sachs' equity for profit. A damaging piece of evidence here was a recording in which Rajaratnam declares that he had heard from somebody on the board of Goldman that the company was set to report a loss.

These charges stuck even though the jurors were scrupulous enough to acquit Gupta on other similar charges relating to Galleon's trading in the stocks of Procter and Gamble on the grounds that the evidence was not strong enough to implicate Gupta. What was most damaging perhaps was the failure of the defence to convince the jury that since Gupta and Rajaratnam had fallen out as partners by the time the events of 2008 occurred, Gupta could not have benefited from providing Rajaratnam with information and would not have provided any with that purpose. In sum, an attempt was made to rule out conspiracy, though there were occasions such as one underlined by the prosecutors in which Gupta in a conversation with Rajaratnam, "launches right into a detailed discussion of what happened at a Goldman board meeting in St Petersburg as if he's talking about what happened at a Yankees game."

However, the jury was not persuaded. It seems to have been partly swayed by the fact that Rajaratnam had put in a substantial investment in a firm titled New Silk Route Partners (founded in 2006) that was a joint venture with Gupta and others and allegedly Gupta's dream project. Gupta and Rajaratnam, together with a third patrner, also formed GB Voyager Multi-Strategy Fund in 2007, with Gupta investing $10 million (which he claims to have subsequently lost leading to his estrangement from Rajaratnam). In these and other ways Gupta was seen to have had a continuing business relationship with Rajaratnam.

What must have also been crucial to the jury's conclusions is the role of protégé Anil Kumar, a McKinsey partner and Gupta's collaborator in the creation of the Indian School of Business. Taped conversations indicate that Gupta knew that Kumar was being paid $1 million a year for leaking information to Rajaratnam. Kumar, who had pleaded guilty to providing inside information to Rajaratnam, talked in his testimony of a number of occasions prior to 2008 when he had engaged in joint business discussions with Gupta and Rajaratnam. As Gupta's junior collaborator in the creation of the Indian School of Business, Kumar reportedly collected a donation of $1 million from Rajaratnam (Kara Scannell, The Financial Times, June 1, 2012). Gupta was too intertwined with the two individuals who had either been held guilty or had pleaded guilty to be considered completely in the clear because of his reputation.

Finally, according to foreman Rick Lepkowski, the jury found the evidence "overwhelming". If right, that leaves those who raised the question "Why?" still searching for an answer. Perhaps it is not too difficult to find. Gupta must have fought his way up on the ladder in the rough and tumble of American corporate competition to get to the top and stay there as long as he did. There is too much evidence to indicate that in such battles rules and ethics are often violated. To expect Gupta to be all saint is not to misunderstand him, but to misrepresent the character of the corporate world.

In fact, there is evidence that he was perhaps a bit too aggressive even for the corporate world. In a Bloomberg report dated May 17, 2011, John Helyar, Carol Hymowitz and Mehul Srivastava, had the following to say once investigations against Gupta had begun: "At McKinsey, a firm known for keeping secrets, Gupta harboured a few of his own. As the managing director and then as senior partner of McKinsey for four more years before he retired, he ran his own consulting business on the side -- a violation of McKinsey rules. He and Anil Kumar, a former McKinsey partner who last year pleaded guilty to passing confidential information to Rajaratnam, set up their own consulting company. Gupta also independently advised Genpact Ltd. (G), a Gurgaon, India-based firm that manages business processes for other companies. That work, too, broke McKinsey's rules." According to them, "McKinsey conducted an internal investigation of Gupta and Kumar, and has cooperated with prosecutors and the SEC".

The point to note is that till the investigations by the SEC and the Justice Department began none of these accusations were voiced publicly. But things change when the law takes its course. Saints and sages turn inexplicable villains. But underlying all this is the view that when it comes to corporate culture what matters is winning, even if that involves violation of norms. What is appropriate is seen as definable when it comes to government officials, doctors and such others, but not to business leaders. Unless the law catches up with them.

In this case, the outcome has been particularly depressing for a section of India's post-liberalisation elite. Rajat Gupta was one of India's non-resident icons, representing the ability of the home grown to sit atop the global corporate establishment. He walked with ease in and out of India's corridors of power and its corporate circles. He also made it a point to show that he wants to give back to India, feeding a peculiar nationalism. The Indian School of Business was almost shaped as an incubator for future Gupta clones. His conviction is therefore a great disappointment. Not surprisingly, it has been given far less attention than other less sensational news events would attract.

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