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## Netaji Cult and wilful defaulters: two sides of the same coin



*Economic offenders can continue to ply their trade only with the complicity of the enforcers.*



**O**n 2 June 2016, an orgy of violence engulfed Jawahar Bagh, a property of the Uttar Pradesh (UP) government in Mathura. Twenty-nine people, including two police officers, died in the incident and hundreds were injured. About 3,000 members of the Swadheen Bharat Subhash Sena (SBSS), a breakaway group of the adherents of a deceased godman, Jai Gurudev who had illegally occupied



this government property for over two years, forcibly resisted eviction. Claiming to be the 'true followers of Netaji Subhash Chandra Bose', it needed an order of the Allahabad high court to force the district administration to act, suffering and inflicting heavy casualties.

The other news that grabbed headlines during this period was the struggle of the Indian banking system to find a way out of the non-performing asset (NPA) imbroglio in general, and recovery of loans from wilful defaulters in particular.

Is there a common thread running through these seemingly disparate issues?

Both are economic offences, a manifestation of the same malaise—a nexus between a group of the powerful and the resourceful. Elected, selected and their associates constitute the universe of the powerful. Resourceful own money and control men. The outcome—a mutually beneficial and reinforcing relationship in which the whole is greater than the sum of the parts. It is a revolving door which facilitates seamless movement from one to another. A win-win situation for both, in what is essentially a zero-sum game, at the cost of the excluded who are at the receiving end of rent extraction.

For economic offences to continue unchecked, there is a necessary condition or an essential prerequisite. Economic offenders can continue to ply their trade only with the complicity of the enforcers. Complicity could be an act of omission or commission, or a combination of the two, obtained by coercion and/or graft. Visibly, an invisible hand sustains white-collar crimes.

In Mathura, the members of SBSS were first permitted to station themselves in a government park. Then the powerful invisible hand guaranteed that they stayed put by ensuring that the executive desisted from evicting them. Their unstated objective was to use the nexus to grab this property worth a fortune in the garb of a lease. SBSS was a resourceful community which prospered on unknown sources of income, with enough surplus to arm themselves. It reportedly enjoyed immunity from action on complaints and first investigation reports. The head of the cult, a UP government pensioner, was a lawmaker, enforcer and justice dispenser. Jawahar Park, a state government property, went out of bounds of the law enforcement agencies. The state of affairs may have continued indefinitely, but for the intervention of the Allahabad high court which snapped the link between SBSS and its powerful patrons. Even then, the court order remained unimplemented for over a year till the threat of contempt proceedings forced the hand of the law enforcers.

Willful defaulters are similarly seen to be beyond the reach of the law. This perception is strengthened by specific examples, two of which are being cited for illustrative purposes. Vijay Mallya, the biggest willful defaulter, is now operating out of the UK. Similar is the case of the main promoter, Jatin Mehta, of the Winsome Diamonds, the second biggest willful defaulter. Mehta has been reportedly granted citizenship of St. Kitts Island. Mallya's Kingfisher Airlines was given loans for starting a difficult business, even when he had no experience of the aviation industry. It continued to get loans even after it was incurring losses.



Promoters of both Kingfisher Airlines and Winsome Diamonds are accused of diverting loans for purposes other than for which they were sanctioned. In both the cases, collateral security is grossly inadequate to recover the defaulted amount. The bigger question is how were things allowed to come to this pass? What made the bankers treat such companies and their promoters differently from ordinary borrowers?

Law enforcers and bank managers both have jobs to protect and careers to preserve. Playing along means prize postings, fast track promotions and post-retirement sinecures. Disturbing the equilibrium is disincentivised by the threat of punishment postings, untimely transfers and stalled promotions, often on frivolous grounds. Expectedly, the status quo continues.

Sometimes, however, surprisingly the status quo gets disturbed. Broadly, it happens when:

- (i) A public-spirited citizen gets a court order, directing the executive to perform its obligatory duties.
- (ii) One of the powerful, aroused by a sense of higher purpose, undertakes the risk of breaking this nexus and is willing to bear the price for doing so.
- (iii) The cost of sustaining this relationship becomes prohibitive. It is no longer possible to sweep things under the carpet. For example, how long can banks use non-receivable receivables to boost profits, pay taxes and declare dividends out of a non-existent income, without seeking capital infusion from owners (the tax payers in the case of nationalised banks)? The Kingfisher account was declared NPA in 2011. Similarly the Winsome Diamonds default dates back to 2013. Action to declare the main promoters as wilful defaulters is delayed, with little explanation for the lack of promptitude.

The invisible hand which protects the resourceful, unlike that postulated by Adam Smith, does not further common interest. This has to change. The onus of banishing the invisible hand rests at the top of the pyramid of the powerful. They alone can create a level-playing field, where the rule of law prevails. Lessons have to be learnt to avoid recurrence of such incidents. It would be worthwhile to recall the words of George Santayana: "Those who cannot remember the past are condemned to repeat it."

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