

Victim of Crime and Abuse of Power: Analyzing Procedural Implementation in Case of Uphaar Cinema Fire Tragedy

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Abstract

On 13th July 1997 around evening, the Uphaar cinema had no footlights, emergency lights, or exit lighting, so when the building's electricity went out, the auditorium was completely turned dark. Also, there was no system in place to inform moviegoers of the fire through public announcements and also no fire extinguishers were even working. It took a long time for moviegoers to even notice that the building was on fire in the pitch-black theatre. In the case of AVUT v. cinema, owners were a prime example of injustice and inefficiency in India and how the victim compensation process takes a long time, victims usually are not compensated right away and there is an infringement of their rights by majorly focusing on just punishing the accused. The AVUT worked tirelessly as researchers, paralegals, and campaigners to obtain justice for their children as well as the countless families who lost loved ones. The 24-year legal battle against Gopal and Sushil Ansal, the cinema's proprietors, were at the time national capital real estate tycoons with significant wealth and clout, and they were not engaged in a court struggle but rather got saved while trial using power, wealth and influence.

Keywords: Uphaar cinema, AVUT v. cinema, paralegals, Gopal and Sushil Ansal, real estate tycoons

INTRODUCTION

“As I left the court, I started crying. Just once in my life was I unable to control my actions. I experienced trauma and felt betrayed by the justice system. I had confidence in the system from 1997 until 2015, but I lost it now.” These words by the Convener of AVUT had a plausible fear that the witnesses may be persuaded, as well as the obvious risk that abuse of authority will hinder the process of justice under Criminal Jurisprudence. The Court in Uphaar Case exercised its discretion not in a judicious manner but rather as a matter of course. The effect of this case is to understand the nature and seriousness of the accusations necessitated the severity of the punishment in the case of a conviction, leading one to conclude that the accused had committed the offences but being influenced by determinative factors resulted in his grant of bail. Furthermore, the seeming likelihood of conviction and probable punishment thus far was not more consonant as per CrPC in this case. In addition to the

same, the court failed to consider the petition even in offences which involve seriousness, and the possibility that the accused will evade justice and manipulate the documents has failed to be noted in the initial 10 years of the case. An order under section 438 CrPC is a tool to protect a person's freedom, on the facts of this case, the commission of an offence and ensuring that the defendant is present during the trial are prerequisites for punishing the accused but also at the same time ignoring the rights of the victim according to procedure established by law was not either justifiable.

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Research Objectives

- To study the importance of the Rights of Victims in Criminal Trials in India with special reference to Uphaar Fire Case.
- To analyze how the law and the trial process are carried out where there is an abuse of power and influence of wealth.

Research Questions

- Is there a connection between victim rights and abuse of authority in criminal proceedings under the CrPC?
- What circumstances lead to the Uphaar Fire Tragedy's procedural implementation issues?

REVIEW OF LITERATURE

The literature shows that past studies were primarily focused on doctrinal modelling that precisely included the following: What had happened in the Uphaar fire tragedy and why it shook the society? However, limited progress has been made in classifying and analyzing the procedure to understand the criminal proceedings and trials that took place from Trial Court to Supreme Court. The literature includes The Law and Procedure by Janak Raj Jai and Lectures on Criminal Procedure by R.V. Kelkar provided insight and approach to analyzing the various stages in criminal trials and familiarized the researcher with the importance of Victim's rights in Criminal proceedings [1, 2]. Therefore, the article provides appropriate literature intending to cover missing information from past studies that will be taken as a comprehensive and structured approach to managing the constraints in this research paper.

RESEARCH METHODOLOGY

The research outcome supports the Doctrinal Legal Research Method through the analysis of the Code of Criminal Procedure, 1973 along with the Indian Penal Code, 1860 and various other statute laws used in various cases by the application of reasoning [3, 4]. The emphasis is on the analysis of the statutes, legal rules, case law and doctrines. The research focuses on the holistic manner of findings and locates the discussion based on textbooks, law journals, scholarly publications and Legal Articles.

Infringement of Victim's Rights in the Uphaar Fire Tragedy

The 1997 Uphaar Cinema fire tragedy, was one of the deadliest fire catastrophes our nation has ever experienced [5]. A constructive death trap somewhat a man-made disaster concerned with power, wealth, and influence and thus, abusing their dominant position in the market of entertainment where people gladly accept services to release themselves from the stress of their everyday lives and routines and, in addition, eagerly anticipate viewing 2 hours of carefree movies and enjoying personal attendance at theatres. But, this case significantly ignores the presence of its people in a cinema in order to fulfil their ulterior motives. For the past 24 years, this case, however, ignores the rights of the victim, who is a byproduct of the crime/criminal negligence itself. As per Section 2(wa) of CrPC, "victim" [6] *means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused has to be charged and also "victim" includes his/her guardian or legal heir.*

A couple, the parents of children Unnati (17 years old) and Ujjwal (13 years old), that is, Neelam and Shekhar Krishnamoorthy, chose to walk on a path of justice and together with 30 families, whose family members either perished or suffered terrible injuries in the tragedy, they created the Association of Victims of Uphaar Tragedy (AVUT). Uphaar Cinema Fire Tragedy where there was a premium screening of the movie: "Border." However, In the current matter, the deaths of 59 innocent individuals and severe injuries caused by more than 100 others who had been considered "victims" are unfortunately deprived of their interests recognized by the Indian criminal justice system. To give the term "victim" wider coverage, the drafters of the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power [7] attempted to give it the broadest meaning possible. *"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts*

or omissions that are in violation of criminal laws in effect within the Member States, including those laws prohibiting criminal abuse of power.” Because of this broader sense of understanding, it has become possible to include not only the original victim, who directly felt the pain of the crime but also those people who suffered indirectly because of the initial victim. And in the present case, the families were involved in a 23-year legal struggle with Delhi Vidyut Board (DVB), Sunil Ansal, Gopal Ansal, and others, in which they claimed criminal negligence and its aggravating forms, both of which might had appropriate safety precautions been taken, these could have been avoided. The State usually has more interest in the crime than it does in the victim. Its main priority is to listen to the accused; if his guilt is established, it will take all necessary steps to ensure he is held accountable. Many provisions, including sections 56 and 76 of the CrPC [8], require that the culprit be taken to stand before a judge within 24 hrs after their detention and without further delay to protect the accused against unwarranted harassment. The Indian criminal justice system does not have a strong codification of the victim’s rights, though. Nonetheless, having sufficient safeguards for the protection of victims is crucial for the efficient operation of a criminal justice system [9]. In the current matter, Due to a shortage of ambulance services and poor administration by the authorities, the atmosphere within the hospital was very chaotic and tumultuous. Because the authorities were preoccupied with protecting their own power, position, and wealth at the expense of the lives of victims, the fire services were even further delayed. We frequently see that the State and its representatives focus primarily on punishing the guilty, ignoring the rights and interests of the victim in the process. Moreover, this leads to a complete violation of their right towards seeking justice and receiving fairness Similarly, in the instant matter, after the FIR filed under S.154 CrPC [10], the arrest made against the Ansal brothers along with DVB and 13 others, in the case of *Sushil Ansal vs State through CBI* [11] Delhi HC only convicted 6 out of 12 accused and subsequently remaining got bailed, their punishments were also reduced from 2 years to 1 year and also the court denied the charges of Criminal Negligence. The courts dealing with the application of bail, in this case, failed to consider the necessary factors required to grant Bail to the accused as established in the case of *State of Maharashtra v. Dhanendra Shriram Bhurle* [12]. According to Section 439, CrPC [13] the victim must be notified before the offender is granted bail unless the court determines that it would not be practical to do so for compelling reasons. However, none of this was followed as a procedure; everything got covered by abuse of power.

Misuse of Power of “Investigation” by Police in Uphaar Case

“The truth should be the quest for every police officer who is entrusted with the assignment of investigation.” The investigating officer’s (IO) primary goal should be to discover the truth and succeed. However, in our case, the investigation was looked after by Dilip (Delhi police inspector in chief) which gave rise to the assumption that the investigation of crime started under Section 157 of CrPC [14] was much later as compared to when FIR got registered. Subsequently, the investigation into the crime was not impartial, ethical, or without any flaws of any kind.

When it comes to investigating crimes, the law has given the police a lot of authority, but those powers were never intended to be abused as per the Code. In this case, Delhi Police was given a show-cause order by the court for providing “misinformation” in the Uphaar case, providing officials false information and facts concerned with the passport renewal of the Ansals Brothers with no basis. In this case, the court also reiterated, noting that *“evidence collected during investigation is not the be all and end all.”* Hence, the power of the police during the investigation must be exercised strictly within the limitations prescribed in CrPC. Nevertheless, in the instant case, the investigation was tainted, which made it risky to rely on it because the IO developed his theories and models. In an 8-page charge sheet submitted to Chief Metropolitan Magistrate Pankaj Sharma, the police alleged that Ansal lied to the government under oath about having no criminal cases pending against the applicant in any court of law or that she or he has not been found guilty of any crimes in the past. The trial court found the above record patently unreliable.

Moreover, in the instant matrix, the respondents filed a criminal petition under Section 482 of the Code seeking to transfer the investigation that had been opened about an offence under Sections 120B,

409, Section 304, Section 304A read with Section 36, and Section 337 of the IPC that would run concurrently to the CBI. The High Court dismissed the aforementioned criminal plea in 1998 after declining to hand the probe over to the CBI. In regard to the facts and circumstances of this case, the High Court decided in the decision mentioned above that it was not essential to transfer the investigation to the CBI and instructed the SBCID to carry on with its investigation. In this case, the HC also anticipated that police officers must carry out their investigations of crimes honestly and legally, and they won't gather or embellish information that can shed light on the nature of the incident while it is being investigated or tried. But, Ansals Brothers along with DVB put forward their request to Higher Authorities by using their power to transfer the case to CBI. Thereafter, the direction issued by the HC, utilizing its authority granted by Article 226 of the Constitution, to the CBI to conduct an investigation in a case concerned; was transferred under Delhi special police Act after the concerned police investigation. The petitioners were one of the 16 people named in the charge sheet. The writ petition was submitted to this Court by AVUT in order to have the case heard quickly. All the accused pleaded not guilty to the charges filed against them under Section 252 or section 253 of CrPC [15] and they demanded a trial. The case sets a question of how extraordinary power must be exercised sparingly and cautiously.

Uphaar Fire Tragedy: Journey from Inquiry to Framing of Charges

Before the framing of charges, everything is an inquiry by Judicial Magistrate (JM). As per Section 2(g) of CrPC [16] "*Inquiry*" is every proceeding conducted by court/JM other than a trial. The inquiry will begin the moment JM takes cognizance and there is the issue of the process (summons or warrant) and it will end at the stage of framing of charges subsequently, the Trial will begin, the moment the charges are framed except if the accused has been discharged already. In the present case, as the inquiry held in Trial Court revealed, that is, the management of the cinema DVB, the Delhi Police licensing branch, municipal corporation Salwa, and theatre owners were held accountable for the incident because they all contributed to the accident through their act or omission in some other ways, according to the findings of the first investigation report submitted on July 3, 1997. Moreover, The Additional Sessions Judge Mamta Sehgal, inspected theatres and Dinesh Chandra Sharma, the Court Ahlmad, and the Ansal Brothers were the subject of an investigation. According to further investigation, Dinesh Chandra Sharma was prima facie guilty of misconduct, as well as for the destruction, tampering, and alteration of papers and evidence that made up a significant portion of the court record against the accused. As such, it was mandated that Delhi Police file a case against those guilty for the destruction, mutilation, and manipulation of papers.

In the instant matter, upon consideration, examination of documents sent with it under section 173 of CrPC [17] If the magistrate believes there is sufficient cause to believe that the accused committed a crime then they may be tried under this chapter, which the magistrate is qualified to try, and which, in his judgement, might be sufficiently punished by him, he shall formulate a written charge against the accused. In the present case, the Trial Court frames charges against the accused under various sections, including sections 304, 304 A, and 337 of the IPC. Charges can be framed only where there is evidence whether Direct or Circumstantial, but it would have been the most appropriate charge in that view of the matter. In the instant matter, the Trial Court ruled that because the issue involved tampering with court documents, it must be resolved quickly to maintain the public's trust and confidence in the legal system. He asserted that the cunning manner in which court documents were manipulated suggested a well-thought-out and organized attempt to interfere with the legal process in order to escape the conviction under criminal laws in the Main Uphaar Fire Cinema Case [18] and this won't be considered an important appreciation of evidence in the framing of charges.

"Trial" by Fire: The Court, Prosecution and Defense

"*Every Criminal Trial is a voyage of discovery in which truth is a quest*" [14 19]. The part to be played by a judge in all this "*Trial*" is to hear the evidence under section 165 of the Indian Evidence Act, himself putting questions to witnesses is not only an end but "*when a Judge sits in court he is on*

trial himself.” In the instant matter, the “trial” from Trial Court to Supreme Court is the product of a fight, fate, anger, and legal battle in order to ensure justice for the victims of Uphaar Cinema. However, it also represents the other side of the coin, which is wholly covered with the submissive interest of the accused which is a byproduct of power and influence of wealth. In this present scenario, the “Trial” was started with a court of sessions with CMM, L D Malik as the judge and subsequently, the prosecution's witnesses’ testimonials began to be documented. In the Uphaar case, the prosecution cross-examined 115 witnesses throughout the trial. The witnesses described everything that happened in the deadly cinema hall in all possible manner. The firm that held Uphaar Cinema belonged to Sushil and Gopal Ansal as well as other family members who broke a number of criminal laws. The trial court determined that one of the petitions for the grant of energy for Uphaar Cinema was signed by Sushil Ansal after relying on the documentary and oral evidence for the prosecution. Thus, the magistrate court found Ansals guilty and condemned them to 2 years in jail, including Sushil and Gopal Ansal moreover, they declined to acknowledge such papers in their statement according to section 313 CrPC because they had tampered thereof. In accordance with Section 304A of the Indian Criminal Code, the other 7 accused—three former Uphaar cinema managers as well as gatekeepers and officials—were also sentenced to 7 years of hard imprisonment and were lodged in the Tihar Prison as per CMM.

However, the accused filed an appeal in HC to seek justice with respect to the quantum of the sentence. In return, the public prosecutor alleged the tampering of evidence by the Ansal Brothers. According to them, the free flow of justice is impeded by tampering with court documents, which thus undermines the foundation of the rule of law. And as a result, the Uphaar Cinema Hall owners and four other people were summoned by the Delhi HC in the evidence tampering case under sections 120B, 201, and 409 of the Indian Penal Code according to the charge sheet that the CBI’s Economic Offences Branch filed in February 2008, for deleting or tampering with crucial case documents.

The Ansal Brothers also have filed criminal appeals against their conviction and punishment. But, the Delhi High Court ordered Ansals to pay the surviving family members of the victim’s Rs 180 million in compensation. And the Ansal Brothers and two other defendants are bailed by the Delhi High Court under section 439 CrPC [20]. The HC laid down the conditions of Section 389 CrPC [21] in comparison with Section 439 CrPC. The reach of Section 389 CrPC must be considered while granting a sentence extension. It is now widely accepted that there are different considerations for the grant of bail under Section 439 CrPC before the conviction and the grant of a sentence extension under Section 389 CrPC post-conviction for the straightforward reason that the presumption of innocence is no longer applicable to someone who has been found guilty of an offence. Thus, High Court opined that sentence of the remaining accused including DVB had been reduced from 2 years to 1 year. The High Court also retains the Trial Court order with respect to the conspiracy which is seen as a distinct offence itself.

Finally, AVUT aggrieved by the Delhi HC hearing filed an appeal under section 374(1) of CrPC [22] in the Supreme Court demanding a re-trial under Section 304 Part II to build a platform for innocent victims. A three-judge bench was consulted regarding this matter in SC. The quantum of sentencing was the first aspect of the discussion. On 8th November 2021, the SC granted bail to Ansals in order to leave the jail after they each paid a fine of Rs 30 crore. And ordered Gopal Ansal to spend the remaining 1-year sentence in Tihar Jail while his older brother Sushil was released from prison due to age-related issues and the time he had already served in prison. The judges opined that the appellants will face a hard 2-year jail sentence in addition to the previous punishment if the aforementioned sum is not paid within three months of the order date. Therefore, SC dismisses the curative petition of AVUT, avoiding more prison time for the Ansal brothers. The bench expressed their opinion that they could not find any contradictions in the ruling rendered by the bench led by Chief Justice Ranjan Gogoi. The VIR [23], which stated that the victims have endured “incalculable harm,” was taken into consideration by the Supreme court. Thus, this put an end to the victims’ 23-year legal fight. Therefore, it has been observed that the entire “Trial” was well focused towards receiving money as compensation but for the AVUT it was fought to prevent injustice from occurring in future. However, the convenor of AVUT voiced her

disappointment with the verdict and claimed that it was an accused-friendly system designed for the wealthy. The 24 years of criminal proceedings with ups and downs, was an aim to administer towards punishing the guilty and not to uphold the rights and duties of Victims under Code [24, 25].

POST TRIAL: CONCLUSION AND SUGGESTIONS TO PREVENT FATAL TRAGEDIES

The genesis of this case has always looked like a Bollywood plot but the tragic fire happened on 13th July 1997 at the Uphaar Cinema, Green Park, South Delhi, which killed 59 individuals due to suffocation and injured more than 100 others, served as the impetus for the whole process. However, every picture carries different perspectives to the viewers as per their lifestyle. In this case, it is a blend of two different aspects, one is punishing the accused and the other is substantiating the conviction sentence of the accused. This case was not a fight between rich and poor but rather between punishing the guilty or upholding the rights of the victim. The Uphaar case is a classic appraisal of misuse of power in a procedure at different stages of crime under the Code. The comprehensive understanding of the case gives the accused a chance for a proper trial in line with constitutional norms and the idea of natural justice in order to guarantee that no one's rights are violated; however, there is a grave, imminent and immediate possibility of violation of the victim's rights. In the instant matter, the principle of restitution had been abandoned and rather majorly focused on compensation. The monetary compensation will surely not help the victim's family to achieve justice but the significantly proper measures against the big businessmen and real-estate owners will ensure the confirmation of justice. A prime example of injustice and delay is the Uphaar Fire Disaster. Instead of receiving justice through the Criminal Justice System, the victims were subjected to torture by the judicial system and the powerful opposition. The court's actions make it clear that even in a delicate and publicly sensitive case like this, it took 3 years for the court to formulate the allegations against the defendant. It also found the defendants guilty and imposed a meagre punishment and sentence of jail on them which is probably an ineffective form of justice with respect to public conscience in a public domain. In addition, the amicable solution according to researchers in keeping such deadly tragedies in mind itself necessitates the creation of a new criminal law provision to address strict liability involving the general public must have a criminal significance. The owners of open premises with dangerous materials must be held accountable by criminal legislation, not just financial compensation. Nationwide man-made disasters like Bhopal had previously occurred. It is therefore imperative to include the concept of strict liability as an offence. Section 304A addresses accident-related situations rather than catastrophes like Uphaar, where hundreds of people were harmed. Well, it's also equally important to improve the competency of public prosecutors in order to ensure a smooth and fair trial under CrPC.

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