Delhi High Court

Assn. Of Victims Of Uphaar Tragedy ... vs Union Of India (Uoi) And Ors. on 24 April, 2003

Equivalent citations: II (2003) ACC 114, 2003 ACJ 1631, 2003 IIIAD Delhi 321, 104 (2003) DLT 234, 2003 (68) DRJ 128, 2003 RLR 333

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Bench: S Mahajan, M Mudgal

JUDGMENT S.K. Mahajan, J.

1. In the posh area of south Delhi in Green Park is located the Uphaar Cinema. Though it was constructed sometimes in 1973, however, after renovation in 1996/97, the first film released in this theatre on Friday, the 13th June, 1997 was "BORDER". The film had a patriotic fervor and was based on the 1971 Indo-Pak war. During the matinee show of the film, immediately after the interval, the audience in the cinema hall saw smoke coming out of the side of the screen. Most of the patrons sitting in the hall thought it was some special effect which was a part of the film Realizing little that a fire had broken out in the cinema building. By the time they realised that the smoke had engulfed the hall because of the fire in the building it was too late for many of them to leave the balcony. The entire balcony area and the stairs leading to the balcony were so full of smoke that it had became impossible for many of the patrons to go out of the building and as a result thereof 59 people, which included infants and children, lost their lives because of asphyxiation and about 103 other persons sustained injuries. Immediately after the incident of fire, the Lieutenant Governor vide order dated 14th June, 1997 ordered an enquiry into the incident and appointed Mr.Naresh Kumar, Deputy Commissioner (South), Government of National Capital Territory of Delhi to conduct the enquiry with the following terms of reference :-

i) To look into the cause(s) and circumstances leading to fire;

ii) To examine whether the Uphaar Cinema had the necessary clearances/ NOCs/licenses from various agencies/statutory authorities. If not, to fix responsibility for lapses of the agencies;

iii) To suggest measures to prevent such incidents in future;

iv) Any other fact(s) relevant to the incident.

2. The Deputy Commissioner after recording the statement of witnesses and examining the documents submitted his report which will hereafter be referred to as the "Naresh Kumar Enquiry Report".

3. This petition has been filed by the Association of Victims of Uphaar Tragedy. The members of the Association, we are informed, are either those who were injured in the fire or are relatives of those who were injured or killed in the fire. By this writ petition, besides claiming compensation, the petitioners have also tried to highlight the alleged shocking state of affairs existing in the cinema building and wholly inadequate safety arrangements made therein. The claim of the petitioners is that there was complete disregard of the statutory obligations prescribed under the law for prevention of fire hazards in public places. The grievance of the petitioners is that each and every public authority, not only failed in the discharge of its statutory obligations, but in fact acted in a manner which was hostile and foreign to the discharge of their public duties. The standards set under the statute and the rules framed for the purpose of preventing public hazards were observed only in their breach. License and permits were issued in complete disregard of the mandatory conditions of inspection and ensuring that the minimum safeguards were provided on the ground. Scores of cinema halls were and are permitted to run without any inspection and without any license. Permits are issued mechanically and perhaps, for a price. The petitioners, therefore, seek adequate compensation for the victims and punitive damages against the respondents for showing callous disregard to their statutory obligations and to the fundamental and indefeasible rights guaranteed under Article 21 of the Constitution of India, of the paying public, in failing to provide safe premises, free from hazards, that could reasonably be foreseen. The petitioners in the writ petition, as already mentioned above, besides claiming compensation have also sought for certain other reliefs as under:-

A. Direct the respondents jointly and/or severally to produce all the records of F.I.R. No.432 dated 13.6.97, P.S. Hauz Khas, New Delhi before this Hon'ble Court and on the basis of the same, this Hon'ble Court may be pleased to monitor the investigation from time to time, to ensure that no person guilty of any of the offences is able to escape the clutches of law and that the investigation is carried out as expeditiously as possible in a free and fair manner.

B. direct the respondent No.1 to ensure that no cinema hall in the country is allowed to run without license granted after strictly observing all the mandatory conditions prescribed under the laws and to further direct them to stop the operation of all

cinema halls and to permit the operation only after verification of the existence of a valid license/permit by the licensing authority, under the Cinematograph Act.

C. award damages against the respondents, jointly and severally, to the petitioners including all victims who lost their lives, the names and particulars of which, are given in Annexure B, through petitioner No.1, a sum of Rs.11.8 crores (Rupees Eleven Crores and Eighty Lakhs Only) with the direction to equally distribute the same to the first degree heirs of all the victims evenly or in such manner as may be considered just and proper, by this Hon'ble Court.

D. award damages against the respondents, jointly and severally, to the tune of Rs.10.3 crores (Rupees Ten Crores and Thirty Lakhs Only) to the injured whose names and addresses are mentioned in Annexure C, to be distributed evenly or in such manner as may be considered just and proper, by this Hon'ble Court.

E. award punitive damages against the respondents to pay a sum of Rs.100 crores, jointly and severally, to petitioner No.1 for the purpose of setting up and augmenting the Centralised Accident and Trauma Services and other allied services in the city of Delhi. Petitioner No.1 may be directed to create a fund for the purpose and submit a detailed report to this Hon'ble Court in accordance with which the said services will be set-up under the supervision of this Hon'ble Court.

F. pass such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

4. Since the police after registration of FIR has already filed a charge sheet before the competent Court and the trial, we are informed, is going on, the petitioners have not pressed relief (A) claimed in the petition.

5. The respondents had taken a preliminary objection to the maintainability of the writ petition on the ground that the same involved disputed questions of facts and that the writ petition was not the appropriate proceeding for deciding the causation and responsibility for the unfortunate incident. By a detailed judgment dated 21st February, 2000, this Court has held that it could not be said that the petition was not maintainable. By the same order, this Court has also held that the petition against respondents 14, 17 and 19 to 21 was not maintainable, as they had no nexus. We have now heard learned counsel for the parties on the question of their individual negligence, role assigned to them in the causation of fire, extent of their responsibilities in preventing the fire and extent of their liability to pay compensation, if it was ultimately held that the respondents were jointly and/or

severally responsible for complete disregard of their statutory obligations for preventing the fire hazards in pubic places.

6. On behalf of private respondents, namely, the owners of the theater, it was argued, as was also argued prior to the delivery of the judgment dated 21st February, 2000 by this Court, that this petition was not maintainable as disputed questions of facts were involved in the case and the remedy available to the petitioner was to file a suit for compensation in which all these questions can be decided after the parties are permitted to lead evidence in the matter. Dr.Dhawan appearing on behalf of the private respondents has relied upon the observations of the Supreme Court in its judgment dated 17th August, 2001 in SLP(C).No.10288/2000 filed against the order of this Court dated 21st February, 2000 to contend that even after the judgment of this Court, the Supreme Court had granted them liberty to raise this question again. We are afraid, no such observation is made by the Supreme Court in its order dated 17th August, 2001 passed in the aforesaid matter. Dealing with the contention of the private respondents that they had an apprehension that the High Court might adopt some procedure of appointing a commission to gather certain facts which, by itself, may not be sufficient to dispose of the matter and that the commission appointed would only to report whether the rules and regulations are complied with therein or not and not, the Supreme Court observed that whatever be the apprehension of the counsel, they could very well be pointed out to the High Court and address their arguments as to the manner in which a dispute of this nature could be resorted satisfactorily and as and when such arguments are raised, the High Court would consider them appropriately and the Supreme Court did not, therefore, find any justification to interfere with the order made by the High Court. It is thus clear that the Supreme Court has not interfered with the observations of this Court that a writ petition for claiming compensation under public law was maintainable.

7. Before we deal with the arguments of the parties on the question of causation of fire and individual responsibility and liability of the respondents, we will like to refer to certain observations of this Court made in the order dated 21st February, 2000. While deciding the maintainability of the petition, this Court had held that now the law is that in cases where question of life and liberty arise, merely because some disputed questions of fact are sought to be raised, the Court would not be justified in requiring the party to seek relief by way of lengthy, dilatory and expensive process of a civil suit. A party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits. Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the

somewhat lengthy, dilatory and expensive process by a civil suit against a public body. In Bandhua Mukti Morcha Vs.Union of India and Others , the Supreme Court held that the Court can appoint responsible persons as commissioners and ascertain facts for itself. The Supreme Court held that once the report of the commissioner was received, it would be supplied to the parties so that if they dispute any fact or data they may do so by filing an affidavit and the Court could then consider the report and the affidavits and it was then to the Court to decide what weight is to be attached to the facts and data stated in the report of the commissioner. As set out in Bandhua Mukti's case, it would not be correct to say that the reports of a Court appointed commissioner had no evidentiary value since statements in it were not tested by cross-examination. This case clearly shows that the courts have power to appoint commissioners whose reports will furnish prima facie evidence on the basis of which the writ Court can act. The following observations of the Supreme Court in M.C.Mehta Vs.Union of India, are also relevant for decision of this case and are being reproduced as under :-

"Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raison detre of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in th field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in R.D.Shetty case" brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of fundamental rights. Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expansing their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by

unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so.

We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defense that the thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury's Laws of England, vol. 45. para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider those decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule, evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the

present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law had to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or

inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher. "

8. It is thus clear that in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the development programme, the rule evolved in the 19th century at a time when all these developments of science and technology had not taken place consistent with the constitutional norms and the needs of the present day economy and social structure need not be inhibited by the rule in Rylands Vs. Fletcher. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. New principles have to be evolved and new norms have to be laid down which would adequately deal with the new problems which arise in a highly industrialised economy. Judicial thinking cannot be allowed to be constricted by reference to the law as it prevails in England or for that matter of that in any other foreign country. We no longer need the crutches of a foreign legal order and we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands Vs. Fletcher as developed in England recognise certain limitations and exceptions, we in India must hold back and not venture to evolve a new principle of liability since English Courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual

situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it had undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer for the enterprise to urge that it had taken all reasonable care and that the harm occurred without any negligence on its part. It is in this background that we have to examine the present case as to whether or not there was any negligence on the part of the Delhi Vidyut Board in the installation and maintenance of its transformer from where the fire is stated to have started and whether or not there was any negligence on the part of other authorities in not observing the highest standards to ensure that no such incident of fire took place and even if such an incident takes place, there should be easy egress of the patrons from the cinema hall. We are of the opinion that even if there was no negligence but it is proved to the satisfaction of the Court that there were statutory violations of the safety standards by the authorities, these violations may be sufficient for us to hold the respondents liable for compensation to the victims of the unfortunate incident and may be for damages.

9. A few facts relevant for deciding this petition may be briefly stated as under :-

Uphaar Cinema was started in 1973. In terms of the Cinematograph Act, a cinema cannot be run without obtaining license from the Licensing Authority as envisaged under Section 10 of the Act. In terms of Section 11 of the Act, the Licensing Authority as in 1973 was the District Magistrate. After the coming into force of the Commissioner of Police system in Delhi in 1978, the Commissioner of Police was notified as the licensing authority under the Act. Under Section 10 of the Act, license to be granted to a cinema hall can be either annual or temporary or casual. All cinemas in Delhi are, therefore, required to get their licenses renewed annually by moving an application in writing to the licensing authority. The licensing authority at the time of grant or renewal of the license is required to satisfy itself about the

licensee having complied with the provisions of the Delhi Cinematograph Act and the Rules framed there under. When the cinema was originally constructed, the license was being granted under the provisions of the Delhi Cinematograph Rules, 1953. However, after the coming into force of the Commissioner of Police system, the Rules were amended and the Delhi Cinematograph Rules 1981 have now come into force. In terms of Rule 3, the license shall be granted in respect of a building which is permanently equipped with Cinematograph rules and in respect of which the requirements set forth in 1st schedule of these Rules are fulfillled. The first schedule to the Rules lays down the specifications with which compliance must be made before any annual license is granted in respect of any building. Besides other things, the schedule lays down specifications regarding number of persons accommodated in the cinema hall and the manner in which the seats can be provided therein. The Rules insofar as they are relevant for accommodation, sitting, the width of gangways, stairways, exists, etc. read as under:-

6. ACCOMMODATION (1) The total number of spectators accommodated in the building shall not exceed twenty per hundred square feet of the area available for sitting and standing or twenty per 133-1/2 square feet of over all area of the floor space in the auditorium.

2. A notice showing the number of spectators permitted by the conditions of the license to be admitted to any one part of the building shall be exhibited at a prominent place either at the entrance of the building or in the auditorium.

7. SEATING (1) The seating in the building shall be arranged so that there is free excess to exists.

(2) The space assigned to each person shall not be less than twenty eight inches deep where backs are provided and not less than twenty four inches deep where backs are not provided and not less than twenty inches wide where arms are provided and eighteen where arms are not provided.

(3) The rows of seats shall be so arranged that there is a clear space of not less than fifteen inches between the back of one seat and the foremost portion of the seat arm of frame behind measured between perpendiculars.

(4) All seats, except those in private boxes, shall be securely fixed to the floor, and if battened together or made in inks, the complete ink shall be firmly attached to the floor.

(5) The distance between the front row of seats and the screen shall not be less than twenty five feet in case of cinema coming into existence after 13th March, 1952.

8. GANGWAY - (1) Gangway not less than forty-four inches wide shall be provided in the building as follows :-

(a) Down each side of the auditorium.

(b) Down the centre of the seating accommodation at intervals of not more than twenty-five feet.

(c) Parallel to the line of the seating so as to provide direct access to exists, provided that not more than one gangway for every ten rows shall be required.

(2) All gangways, exists and the treads of steps and stairways shall be maintained with non-slippery surfaces.

(3) Druggets, matting and floor covering, if provided in gangways, shall be securely fastened to the floors.

(4) The exists and the gangways and passages leading barriers provided in accordance with sub-rule (6). On no account shall extra seats be placed in the gangways or spectators be allowed to stand in the gangways at the time of performances in such a way as to block or effectively reduce their width.

(5) If steps have to be inserted a gangway or passage there shall be no less than three steps at any one place. The treads shall not be less than fifteen inches wide and shall be of uniform width and height.

(6) Rope barriers in gangways or elsewhere shall be fitted with clips or fastenings which will part in the centre on slight pressure, and shall not trail on the floor.

(7) Guard rails not less than three feet six inches above floor level shall be provided on the parapet at the foot of gangways in galleries where the incline of gangway exceeds fifteen degrees.

(9) STAIRWAYS - (1) There shall be at least two stairways each not less than four feet wide to provide access to any gallery or upper floor in the building which is intended for use by the public.

(2) The treads and risers on each flight of stairs shall be of uniform width and height. The treads shall not be less than eleven inches wide and the risers shall not be more than seven inches high.

(3) There shall be no winders.

(4) A continuous hand rail shall be fitted to each side of stairways.

(5) No stairways shall discharge into a passage or corridor against or across the direction of exit.

10. EXITS : - (1) Every public portion of the building shall be provided with an adequate number of clearly indicated exists placed in such positions and so maintained as to afford the audience ample means of safe and speedy egress.

(2) In the auditorium there shall be atleast one exit from every tier, floor, or gallery for every hundred persons accommodated or part thereof :

Provided further that an exit on or by way of stage or platform shall not be reckoned as one of exits required by this rule.

(3) Every exit from the auditorium shall provide a clear opening space of not less than seven feet high and five feet wide.

(4) Exits from the auditorium shall be suitably spaced along both sides and along the back thereof and shall deliver into two or more different thorough fares or open space from which there are at all times free means of rapid dispersal.

(5) Every passage or corridor leading from an exit in the auditorium to a final place or exit from the building shall be of such width as will in the opinion of the licensing authority enable the persons who are likely to use it in an emergency to leave the building without danger of crowding or congestion. At no point shall any such passage or corridor be less than five feet wide and it shall not diminish in width in the direction of the final place of exit.

(6) The combined width of the final place of exit from the building shall be such that there are at least five feet of exit width for every hundred persons that can be accommodated in the building.

(7) All exit doors shall open outwards and shall be so fitted that when opened they do not obstruct any gangway, passage, corridor, stairway or landing.

(8) All exit doors and doors through which the public have to pass on the way to the open air shall be available for exit during the whole time that the public are in the building and during such time shall not be locked or bolted.

(9) All exits from the auditorium and all doors or openings (other than the main entrance) intended for egress from the building shall be clearly indicated by the word "EXIT" in block letters, which shall not be less than seven inches high and shall be so displayed as to be clearly visible in the light as well as in the dark.

(10) All other doors of openings shall be so constructed as to be clearly distinguishable from exits. They may be indicated by the words "NO THOROUGHFARE" arranged as in the figure below, but no notice bearing the words "NO EXIT" shall be used in any part of the building.

10. Clause 16 of the 1st schedule provides the fire precautions which are required to be taken by the cinema hall and the fire extinguishing appliances which must be readily available at the time of an emergency. Clause 16 of the 1st schedule reads as under:-

FIRE PRECAUTIONS - (1) Fire extinguishing appliances suitable to the character of the building and of a pattern, class and capacity approved by the licensing authority shall be provided as prescribed by him; these appliances shall be disposed to his satisfaction so as to be readily available for use in case of fire in any part of the building.

(2) There shall always be sufficient means of dealing with the fire readily available within the enclosure and these shall include a damp blanket, a portale Chemical fire extinguisher and two buckets of dry sand.

(3) All fire extinguishing appliances shall at all times be maintained in proper working order and available for instant use, and all Chemical fire extinguishers shall be capable of withstanding a pressure of not less than 250 lbs. square inch.

(4) During an exhibition all fire extinguishing appliances shall be in charge of some person or persons specially appointed for this purpose. Such persons need not be employed exclusively in looking after the fire appliances but they must not be given any other work during an exhibition which would take them away from the building or otherwise prevent them from being immediately available in case of danger or alarm of fire.

11. In terms of the schedule there must be a clear space of not less than 15 inches between the back of one seat and the foremost portion of the seat arm of frame being measured between perpendiculars and the distance between the front row of seats and the screen shall not be less than 25 feet in case of cinema coming into existence after 13th March, 1952. In terms of the Rule, gangways shall not be less than 44 inches wide and shall be so provided that there is also gangway down on each side of the auditorium; a gangway down the centre of the sitting accommodation at intervals of not more than 25 feet; parallel to the line of the seating so as to provide direct access to exits, provided that not more than one gangway for every ten rows shall be required. All gangways, exits and the treads of steps and stairways are required to be maintained with non-slippery surfaces. There is also requirement of at least two stairways each not less than four feet wide to provide access to any gallery or upper floor in the building which is intended for use by the public. Every public portion of the building is required to be provided with an adequate number of clearly indicated exits placed in such positions and so maintained as to afford the audience ample means of safe and speedy egress. There is required to be at least one exit from every tier, floor, or gallery for every 100 persons accommodated or part thereof provided that for every upper floor or gallery there shall not be less than two exits. Exits from the auditorium should be provided suitably spaced along both sides and along the back thereof and shall deliver into two or more different thorough fares or open space from which there are at all times free means of rapid dispersal.

12. Before issuing or renewing a license, the licensing authority is required to obtain reports from the health and fire authorities.

13. In the year 1975, there was a general cut of 10% in the rates which had already been fixed by the Delhi Administration for the sale of cinema tickets. The holder of the license felt aggrieved by the said cut in the cinema rates and made a representation to the Delhi Administration pointing out that the expenses had gone up for a number of years and the rates which had been fixed were already proving unbearable. The representation of the holder of the Association of Motion Pictures exhibitors was considered by the Lt. Governor and the Administration agreed to relax the Rules and allowed the licensees to add to the existing number of seats in their cinema halls certain seats to make the good the loss caused to the licensees by the reduction in the rates by 10% made in 1975. Uphaar Cinema was also permitted to add 43 seats in balcony and 57 seats in the main hall. A notification to that effect was issued by the licensing authority on 30th September, 1976. As a result of the relaxation of the Rules, 43 seats were added in the balcony and 57 seats were added in the main hall. On receipt of a report from the Chief Fire Officer that the addition of seats was a fire hazard, the Lt. Governor on 27th July, 1979 issued a notification canceling with immediate effect the earlier notifications by which relaxation had been granted to the different licensees who were thereby allowed to increase the number of seats in their theatres. This notification was challenged by the cinema owners by filing a writ petition in this Court. The writ petition was disposed of by a Division Bench of this Court by its judgment dated 29th November, 1979. The Division Bench of this Court held that the Administration could not have granted the relaxations if such relaxations would have contravened the Rules to such an extent as to increase the risk of fire hazard or to expose the spectators to unhealthy conditions from the public health view point. Therefore, the advice of the fire and health authorities had to be taken before relaxation could at all be granted. A perusal of the file showed that the Chief Fire Officer was very reluctant to advise the making of relaxation in the rules if the safety of the visitors to the theatres would be affected thereby and he in his note observed as under :-

" Even under the normal circumstances the exit facilities are seriously hampered by people rushing and it is felt that in case of panicky situation of a minor nature, the people will be put to great difficulty which may even result in stampede. In the circumstances, I feel that it would not be advisable to allow extra seats required by the Managements. In a few theaters, however, the difficulty may not be so acute. It at all any relaxation has to be considered under unavoidable circumstances, our reaction to the proposals but forward by the management of a few cinema houses may kindly be seen in the enclosure".

14. The Court further observed that the Chief Fire Officer then considered certain individual cinema theatres and gave his opinion regarding each of them. The Chief Fire Officer, however, improved this report because he was made to understand that with a view to compensate the licensees for the economic loss caused to them by the restriction imposed on the rights of admission to the cinemas, some relaxation had to be made and some additional seats had to be permitted to be installed in the cinema theaters. But for these "unavoidable circumstances" the question of relaxation might not have been considered at all and the Chief Fire Officer also would not have advised freely that there was scope for the increase in the number of seats. However, the very fact that the Fire Officer had agreed to the increase of seats in some of the cinemas would also show that he was prepared to take that risk in consonance with the compliance with the Rules. The Administration, the Public Health authorities and the Chief Fire Officer ultimately agreed to make some of these relaxations.

15. The Court, therefore, held that relaxation granted under the proviso to Rule 3(3) was capable of being modified or revoked and the cancellation of the relaxation was, therefore, justified and legal. The matter, however, did not end there. The Court further observed that by simply withdrawing the relaxation would not automatically mean that all the additional seats which were installed in the cinema theaters were contrary to rules and must, therefore, be dismantled without any consideration as to how many of these seats were in consonance with the rules and how many were contrary to the rules. The Court, therefore, directed the administration to apply their mind to the additional seats with a view to determine which of them had contravened which rule and to what extent keeping in mind that the compliance with the rules was to be substantial and not rigid.

16. After the notification dated 30th September, 1976 was issued permitting Uphaar Cinema to add 100 seats and before the judgment of the Court was delivered on 27th November, 1979, the Entertainment Tax Officer by an order dated 6th October, 1978 had permitted Uphaar Cinema to install 8 seats in the box and use the same subject

to the condition that no tickets will be sold against those eight seats and only complimentaries will be issued. When the notification dated 27th July, 1979 was passed cancelling the additional seats permitted by the notification dated 30th September, 1976 and letter dated 27th July, 1979 was issued by the DCP (Licensing) to Uphaar Cinema informing them that with the cancellation of notification, the additional seats allowed to be added in the cinema hall stood withdrawn and they should immediately remove the seats, no reference was made to the withdrawal of the letter dated 6th October, 1978 by which the cinema was permitted to add eight seats in the private box. The effect of addition of these eight seats was that the "exit" on the right side of the balcony (when facing the screen) was closed and there was thus no way to go out of the cinema hall from the right side of the balcony except through the "exit" door at the extreme left top corner of the balcony. After the judgment of the Court in Civil Writ Petition No.1010/79, the then DCP (Licencing) issued a notice on 6th December, 1979 to the Uphaar Cinema calling upon it to explain as to why the 100 additional seats permitted to be added vide notification dated 30th September, 1976 should not be removed after the cancellation of the said notification vide the notification dated 27th July, 1979. No reference was made in this notice also to the additional seats added in the box vide the aforesaid 1978 order of the Entertainment Tax Officer. After giving a hearing to the licensee of the cinema, the then DCP (Licencing) by his order dated 24th December, 1979 observed that 6 additional seats (seat No.8 in rows a to f) and all the 56 additional seats in the main hall were blocking vertical gangway causing obstruction to fire egress of patrons from the hall. It was observed by him that those 62 additional seats were in gross violation of paragraphs 7(i) and 8(i) of the 1st Schedule of Delhi Cinematograph Rules 1953 and must, therefore, be removed and the original number of vertical gangways in the hall must be restored. The DCP (Licensing), however, held that the remaining 57 additional seats in the balcony were found to be in substantial compliance of the rules and might, therefore, be retained. Even in this letter, no reference was made to the 8 seater box by which the "exit" at the rear right side of the balcony was closed. After the passing of this order, the licensee of Uphaar Cinema appeared to have sought permission to add 15 more seats in the balcony so as to make the total number of seats in the balcony as 302. This proposal was sent by the DCP (Licensing) to the Executive Engineer, PWD who by his letter dated 10th September, 1980 wrote to DCP (Licensing) that the total number of seats in the balcony were 287 and by adding these 15 seats, the total number of seats in the balcony would be 302; the number of exists at site were at present three and as per the 1st Schedule of Delhi Cinematograph Rules, 1953, the number of exits should be one per 100 seats and on account of which two seats would be in excess but at the time of removal of

additional seats in October, 1979 during a meeting held in the room of the DCP where the DCP and the Chief Fire Officer were also present, it was decided that keeping in view the High Court's order for substantial compliance, the excess number of seats over the required number of exits should be allowed and, accordingly, so many cinemas were allowed to retain excess number of seats than the permissible limit of one exit per 100 seats and keeping that decision in view, these excess seats could also be allowed and the proposal of an additional 15 seats would be in conformity with the Delhi Cinematograph Rules 1953. On receipt of this recommendation from the Executive Engineer, PWD, the DCP (Licensing) by his order dated 4th October, 1980 permitted the cinema to install 15 additional seats i.e. 2 additional rows each of 3 seats in front of the exit in the balcony, one seat against back wall adjacent to seat number 38 and eight additional seats in the balcony by adding one seat in rows a to h by making three additional seats in three rows. As a result of the addition of these seats, though the number of vertical gangways remained the same, however, not only that the exit from the right side of the balcony was closed but even the vertical gangway to the extreme right of the balcony along with the wall was also closed and instead a vertical gangway was created between seat Nos.8 and 9 on the right side of the balcony. Even the width of the gangways was reduced from 120 CMs to 90 CMs and there was clear absence of foot lights near the floor.

17. As a result of the closure of the exit, a visitor to the cinema hall sitting at the extreme right side of the balcony had to come out from the left side exit door and there was thus only one stairways available for him to go to the ground floor so as to get out of the building. In terms of the rules, there must be two stairways available to the patrons for coming in and going out of the cinema hall. From the foyer of the balcony, if one wanted to go to the right side stairways, he wold come across a glass door which used to remain normally closed at the time of the start of the show, as, according to the management of the cinema hall, that stairway was used mainly by the patrons coming to see the next show of the film. According to Mr.Tulsi, these deviations in the balcony, namely, addition of additional seats, closure of exit, closure of gangway at the extreme right of the balcony, contributed to a large extent in obstructing smooth egress of the patrons from the cinema hall at the time of fire which contributed to a large extent to the deaths in the balcony because of asphyxiation. It is the case of Mr.Tulsi, learned counsel for the petitioners, that had this exit not been closed and the gangway had existed on the right side of the cinema hall, there would have been smooth egress by the patrons from the balcony through that exit as well which would have led them to the stairway and then out of the

building. It is submitted by him that because of the exit being closed and the other stairway not being available, there was almost a chaos in the cinema hall at the time of fire which resulted in delay in the egress of patrons and they died, on coming out of the balcony, because of asphyxiation.

18. Besides the deviation in the gangways, arrangement of seats and exit, etc., inside the balcony the other major deviation, according to Mr.Tulsi, was raising of the 3 feet high parapet wall at one end of the ground floor, almost behind the transformer room, to the ceiling level. Submission of Mr.Tulsi is that in the original plan, the Municipal Corporation had approved only a 3 feet high parapet wall but the cinema owners not only raised the same to the ceiling level but also constructed a dispensary by its side above the ramp thus the ramp going to the basement was virtually closed. Contention of Mr.Tulsi, therefore, is that had this wall been not in existence, the smoke coming out of the transformer room would have gone out from the open space where this wall existed and the same would have not reached the balcony through the stairway and thus the tragedy could have been averted. It is also the submission of Mr.Tulsi that by construction of the dispensary the owners had violated the building bye-laws and the way to the ramp was closed which also contributed to the smoke not going out in the open and thus reaching the balcony floor through the stairway. Another deviation in the building argued by Mr.Tulsi was that the owners had constructed an independent intermediate floor of RS Joist on the ground floor. It is the contention of Mr.Tulsi that as the intermediate floor was constructed of wood, the same contributed to the spreading of fire and smoke reaching the balcony floor of the building through the stairway.

19. Dr.Dhawan appearing on behalf of the cinema owners has tried to controvert the allegations of the petitioners insofar as the deviations in the structure of the building and/or in the arrangement of seats in the hall were concerned. It is submitted by Dr.Dhawan that no additional seat was added without the sanction of the licensing authority. He submits that the seats in the cinema halls were in substantial compliance of the rules and the same were added after no objection certificates were given by the Chief Fire Officer as well as by the Executive Engineer. It is submitted that after closing the gangway by the side of the wall, the owners had introduced a new gangway in the middle in lieu of the same and hence there was no voluntary closure of the right side gangway by the owners. He submits that three exit doors were provided as per rules in the balcony and closure of the right side gangway and the exit gate made no difference nor was there any violation of the rules. He submits that placing of additional seats in the right gangway by the side of the wall and creating the box on the right side resulted in automatic closure of the exit gate and

the owners, therefore, provided an extra exit gate at the same level of the balcony on the left side and their being thus no reduction in the exit doors, no difference has been made by closure of the exit on the right side of the balcony. He submits that the provision of Section 12(i)(a) of the Cinematograph Act stipulates the substantial compliance with rules and principle of substantial compliance has also been upheld by the Delhi High Court in its judgment dated 29th November, 1979. He submits that the DCP (Licensing) while examining the number of exit gates at the time of sanctioning additional 15 seats had held that three gates for 302 seats amounted to substantial compliance of the rule of providing one "exit" gate per 100 patrons.

20. The other major structural deviation in the building alleged by the petitioners is the construction of the rear wall at the back of the transformer room. The contention of learned counsel for the petitioner is that the wall as originally sanctioned by the Municipal Corporation of Delhi was only a 3 feet high parapet wall but the respondents have now raised it to the ceiling level and, according to the petitioner, construction of this wall has contributed, to a large extent, the smoke not going out of the building and going to the balcony through the stairway. Mr.Tulsi, learned counsel for the petitioner, in support of his argument that this wall was constructed in violation of the building bye-laws and in violation of the building plan sanctioned by the Municipal Corporation of Delhi has placed reliance upon the inspection report dated 11th August, 1997 prepared by the Engineers of the Municipal Corporation of Delhi and another report dated 2nd August, 1997 prepared by the Engineers of the Public Works Department. The contention of Dr.Dhawan, however, is that this wall was duly sanctioned and there was thus no question of the same being unauthorised. It is submitted by him that in the plans submitted by the owners for additions/alterations of the building and sanctioned by the Municipal Corporation of Delhi on 20th May, 1972, this wall was proposed to be built up to the ceiling level along with the ramp. It is submitted that in 1973 again additions/alteration plans of the building were submitted to the Municipal Corporation of Delhi and these plans were sanctioned on 22nd March, 1973. Contention of Dr.Dhawan is that in the plans which were sanctioned in 1973, the wall was shown to have been constructed and the same was not shown to be deleted and the wall, therefore, stood erected and is continuing to exist since 1972. It is also his contention that neither the Commissioners appointed by the Court in their report dated 30th November, 2000 nor the Naresh Kumar Enquiry Report makes a mention about this wall being unauthorised. It is also his contention that even the DCP (Licensing) in his various inspection reports submitted from time to time has not made any mention of this wall being unauthorised or being a deviation from the original building plan. It is,

therefore, submitted that the argument about construction of 12 feet high rear wall is only red herring.

21. Still another deviation upon which emphasis has been laid by Mr.Tulsi is the construction of a mazzanine floor on the R.S.Joist. It is submitted by Mr.Tulsi that the wooden floor constructed by the respondents/owners of the building so as to create a mazzanine floor on the R.S.Joist was burnt with fire and contributed to the spread of smoke to the upper floors of the building. The contention of Dr.Dhawan, however, is that the wooden flooring on the R.S.Joist was removed as far back as in 1983 and it was never put up again. It is submitted by him that absence of ash and remnants of the wood on the floor clearly show that there was no wooden planks at the time of fire taking place in the building. It is submitted that existence of R.S.Joist would not in any manner contribute to the flow of smoke to the higher floors. It is submitted that the R.S.Joists could not be removed as they were embedded permanently in the columns of the building and their removal would have caused danger to the stability of the structure itself.

22. It would not be out of place to mention here that the license of the cinema was sought to be suspended by the Licensing authority in June, 1983 for alleged violations of different provisions and rules under the Cinematograph Act and the rules framed there under and the cinema was required to obtain clearance certificates from various authorities within four days failing which it was threatened that the license would be revoked. On receipt of this notice from the licensing authority, the cinema owners filed a writ petition in the High Court of Delhi being C.W.P.No.1347/83. On 28th June, 1983 when the matter came up before the Court for hearing, the Court stayed the operation of the order suspending the license of the respondent/owners. This stay, we were informed, continued till the date of unfortunate incident. Before suspending the license, an inspection of the cinema was carried out on 9th June, 1983 and 17th June, 1983 by a joint team of the representatives of the licensing branch of the Delhi Police, Delhi Development Authority and Delhi Fire Service. This inspection was carried out under instructions of the Lieutenant Governor following incidents of fire in L.P.G. Godown Shakur Basti and Gopala Towers at Rajindra Place with a view to detect deviations from structural plans and violations of safety regulations and other conditions of the license. The violations noticed by the inspecting team after its visits on 9th and 17th June, 1983 were as under :-

1. According to the sanctioned plan, the basement is to be used for parking of vehicles. A portion of the basement, however, has been covered and let out to

M/s.East Coast Breweries and Distilleries who are using some portion of the area let out to them as their office and the rest for storing crates of Beer.

2. As per the sanctioned plan, the distance between the stilt floor and the floor of the auditorium should be 7'6". An additional floor has been created between the stilt floor and the floor of the auditorium by providing a wooden plank flooring. A part of it has been let out to M/s.Nariers whereas the rest of it is lying vacant. The creation of additional space is a gross violation of the plan sanctioned by the MCD.

3. 3rd floor has been let out to various organisations namely, Trade Pumps Sales Private Limited, Public Construction Company, Besai Builders and Sarin and Associates whereas the same was sanctioned for offices of the administration of the cinema.

4. Wooden planks have been removed as noticed at the time of second inspection but steel posts and RS Joists are still intact.

5. A homeopathic dispensary was noticed between the stilts floor and the floor of the auditorium which has been created by providing wooden plank flooring. This structure is not only unauthorised but is also a fire hazard.

6. A part of the basement, made inaccessible from the basement level and having access from ground floor, was noticed in use of a printing press. This is not only a violation of building bye-laws but is also a big fire hazard.

7. A part of the basement meant for electric installation is being used for storage of combustible materials. This structure is also found to be highly objectionable from the fire safety point of view.

8. On the top floor, an office has been created forming part of the staircase plus a left over it and attending to the portion above the toilet shown in the sanctioned plan.

9. One room at second floor mentioned as store in the completion certificate is being used as office of M/s.Anil Chopra & Company.

10. Many offices were noticed on the top floor for which no permission seems to have been taken as required under condition 17 of the license.

11. The space marked for a restaurant has been let out to a bank.

23. These deviations, according to the DCP (Licensing) amounted to contravention of conditions 1, 2 and 17 of the license conditions, rule 23 and 47 of the Delhi Cinematograph Rules and paragraphs 2 and 18 of the First Schedule appended thereto. He, therefore, issued a notice to the cinema to show cause as to why the license be not revoked under Rule 8 of the Rules. After considering the reply received from the cinema, order dated 27th June, 1983 was passed suspending the license of the cinema for four days. As already mentioned above, this order was stayed by the Delhi High Court by its order dated 28th June, 1983. The licensee besides filing writ petition in this Court had also filed an appeal against the order dated 27th June, 1983 before the Lieutenant Governor. While the appeal was pending before the Lieutenant Governor, the parties agreed to the constitution of a committee to verify and report whether the facts which were recorded and termed as violations in the order dated 27th June, 1983 existed or not. The committee in its report mentioned that objections at Sl.Nos.1, 5 and 7 had been removed and as regards objections at Sl.Nos.2 and 4, they were also partly removed. The committee in its report noted that while wooden planks from the intermediate floor had been removed, R.S.Joists were not removed and since the contention of the owner was that they were added so as to give stability to the columns, they should be permitted to remain there. The Lieutenant Governor in his order directed that the space meant for the management's office on third floor has been rented out to commercial organisations and the defendants had to remove that objection and restore the space to its authorised use. The Lieutenant Governor also directed to restore the space on the second floor for the purpose sanctioned under the plan by getting it vacated from the commercial firm to which it was given on rent. Insofar as the sanction granted by the licensing authority to convert the restaurant into a bank and other violations, the Lieutenant Governor gave further directions as under:--

" As regards objection at Serial No.11, the committee has reported that the space meant for restaurant as per the sanctioned plan has been let out to a bank but this was done with the permission of the then Licensing Authority vide its letter No.F.2(48)/ETO/1052 dated 11.3.1976. It is surprising that the Licensing Authority should have assumed the function of the local body by approving this deviation from the building plan sanctioned under the building bye-laws. The purpose of a restaurant is entirely different from that of a bank. Whereas a restaurant in a cinema is approved for the convenience of the patrons, opening a bank in the cinema premises is a purely commercial proposition from the point of view of the licensee. In any case, it is a deviation from the sanctioned building plan. The appellant should approach the local body to get it regularised/compounded.

After a careful consideration of the facts and circumstances of the case, I direct as below :-

The respondents shall remove the objections mentioned at Serial Nos.3, 6, 9 and 10 by 31st August, 1984.

The appellant shall make an application to the concerned local body i.e. Municipal Corporation of Delhi for regularisation/compounding of the objections mentioned at Serial Nos.2, 4, 8 and 11 within a period of 7 days from the date of this order and the said local body shall dispose of this application within a period of one month. Such of the objections as the local body is not willing to regularise, shall be removed by the appellant by 31st August, 1984.

The appellant shall report compliance of the directions at No.1 and 2 above to the Licensing authority on or before 1st September, 1984.

The appellant shall also give an undertaking to the Licensing authority, in the form and manner prescribed by it, that he shall not again indulge in any of the violations that he has removed on his own or in terms of this order.

In case, any one of the directions is not complied with, the order dated 27.6.1983 of the Licensing Authority shall come into operation."

24. The Lieutenant Governor expressed his displeasure over the manner in which the case was handled in the past by various authorities and wanted the Chief Secretary to examine the case from that angle and fix responsibility for lapses wherever they occurred.

25. A few other deviations alledged by Mr.Tulsi, learned counsel for the petitioner, were as under :-

i) the exhaust fan provided in the transformer room opened inside the car parking area because the right side open space was closed by constructing 3 feet parapet wall up to the ceiling level;

ii) Room of the size of 14' X 7' adjoining the transformer room was constructed and used as a ticket counter;

iii) the restaurant and the portion of the ticket foyer in the front was sublet to Syndicate Bank.

26. As already mentioned above, the case of the respondents is that the 3 feet high parapet wall was raised up to the ceiling level only after the plans were sanctioned by the Municipal Corporation of Delhi on 30th May, 1972 and since the wall was constructed after the plans had been sanctioned by the Municipal Corporation of Delhi, the allegations about the exhaust of the transformer room opening inside the car parking area, according to the licensee, had no relevance or bearing on the spread of fire. It is also the case of the respondents that the canteen and a portion of the foyer in front of the ticket counter on the ground floor was converted into a bank after necessary permission was granted by the authorities. Similarly, according to the respondents, insofar as the construction of the counter adjoining the transformer room was concerned, the same was constructed near the car parking exit door as per the completion certificate.

27. As already mentioned above, immediately after the incident of fire, the Lieutenant Governor of Delhi had instituted an Inquiry Committee headed by Mr.Naresh Kumar, Deputy Commissioner (South), Government of NCT of Delhi. Mr.Naresh Kumar after recording the evidence of some of the witnesses and after perusal of the material placed before him, submitted his report known as Naresh Kumar Enquiry Report. By our order dated 29th February, 2000 we had also appointed Mr.Ravinder Sethi, Senior Advocate, Delhi High Court, Mr.T.K.Dutta, Head of Civil Engineering Department, IIT, New Delhi and Dr.Sanjeev Jain in Mechanical Engineering Department, IIT, New Delhi as Court commissioners to visit the site and to submit report as to whether or not all rules and regulations and statutory provisions were complied with and if not to what extent. The Court commissioners have submitted their report indicating the structural deviations alleged to have been committed by the owners of the cinema hall. The report of the commissioners giving floor-wise deviations/violations by the owners of the cinema may be reproduced as under :-

13. FLOORWISE DEVIATION/VIOLATIONS A. BASEMENT FLOOR :

(i) Four partition walls were constructed in the basement hall meant for parking (Deviation & Violation-BBL 14.12.2; There was no proof of the approval granted by the Authority).

(ii) Inflammable materials such as seats, frames, planks were stored in the basement. (Violation-BBL 14.12.1.1)

(iii) A number of rooms such as air washer room next to the blower room; rooms/offices next to A/c ducts & the lift well; stores below the ramp were made in the basement. (Deviation & Violation-BBL 14.12.1.1). Offices were not airconditioned and not included in FAR.

(iv) A temporary wooden structure was made in the basement (Deviation & Violation-BBL 14.12.1.1)

(v) One of the stairs leading to basement was closed by wooden planks and occupied by M/s. Shegal Carpets. (Deviation & Violation-BBL 16.4.3. & 16.4.4.)

(vi) An air washer system was provided. (Deviation- Indicative of building not being air-conditioned at al times of usage).

(vii) Airconditioning plant room does not conform to the safety code IS660-1963, 3.1.3.-3.1.6 & 3.3. regarding ventilation, emergency, exits, fire extinguisher, First aid equipment, Gas masks, Servicing space.

(viii) Staircase leading to the basement was not of enclosed type serving as a fire separator (Violation-BBL 14.12.1.1) B. GROUND FLOOR/STILT FLOOR:

(i) Some modifications were made in the sanctioned Manager's room such as removal of adjoining toilet, conversion of the front wall into a glass partition/door. (Deviation)

(ii) The space sanctioned for restaurant was let out to a Bank and other offices (found sealed). (Deviation).

(iii) A ticket booth was constructed near the car parking entry door. (Deviation).

(iv) The partition walls between the L.T., Transformer and H.T. Rooms were altered, keeping the same outer envelope. (Deviation).

(v) A dispensary behind the transformer rooms, over a portion of ramp, was constructed. (Deviation).

(vi) One toilet adjoining A.C. Duct was constructed (Deviation).

(vii) Cars were found parked in front of entry/exit from the transformer room (Violation BBL 16).

(viii) Horizontal framing of R.S. Joists was erected on the ground floor. Moreover, it was not strengthening any part of the existing structure. On the contrary, it appears that the structure was erected to create additional space. In fact, a part of the framing was used to support a office near the staircase (Deviation).

(ix) Cycles & Scooters were found parked in front of the stairs (coming from the lower foyer) to the car parking area (Deviation & Violation-BBL-16).

(x) A portion of the said wall around the staircase surrounding the lift was made up of glass panels. One of the glass panels was of full door size and found broken (Violation-BBL 16.4.3).

(xi) The ladies toilet in the lower class foyer was found closed. (Violation-BBL Table 17).

C. FIRST FLOOR:

(i) Two additional refreshment counters were constructed in the rear stall foyer (Deviation).

(ii) One additional seat was added in the rearmost row near the left side exit door (Deviation)

(iii) An alteration was made in the ladies toilet by removing one of the areas earmarked for Air- conditioning duct. (Deviation).

(iv) Two washrooms, originally sanctioned, were not existing (Deviation).

D. MEZANINE FLOOR:

(i) One additional refreshment counter was constructed (Deviation).

(ii) An air-conditioning unit was installed in the area sanctioned for Air-conditioning duct/wash room. (Deviation).

E. SECOND FLOOR/BALCONY:

(i) The addition of (37+15) seats were made in the balcony over and above the 250 originally sanctioned. Although permission was granted by D.C.P. (Licensing), but sufficient care was not taken to facilitate fire egress of the patrons sitting on the right side of auditorium.

The two gangways and one exit on the right side were closed and only one central gangway was provided in lieu of these. Due to this eccentric placement of the exits, the central exit was catering to at least about 200 people, much more than norm of one exit per 150 people. (Violation:DCR, Sch.1 No.12). It may be mentioned that as per the rules in force before 1981, the norm was one exit per 100 people.

(ii) Inspection room was converted to a 18 seater box. (Deviation).

(iii) A toilet block was converted into an office. (Deviation).

(iv) Operators rest room and sweeper's room with toilet were converted into a retiring room with an attached toilet & office. (Deviation).

F. THIRD FLOOR:

(i) The sanctioned administrative area was converted into office complex using wooden partitions and let out to various companies without independent means of escape. (Deviation & violation DCR Sch. 1 No.2).

(ii) A few offices were also constructed around the lift well with wooden Floors and let out. Part of the sanctioned toilet block was also converted into an office. (Deviation).

G. TERRACE FLOOR:

(i) The existing machine room is bigger in size than sanctioned. (Deviation).

28. Besides the violations pointed out by the DCP (Licensing) in his report which was made the basis of suspension of license in the year 1983 and which have been reproduced earlier in this order, Mr.Naresh Kumar in his report has observed as under :-

" It was also noticed that there was some major deviations from building bye-laws which contributed converting the whole building into a death trap for innocent people. The office of Shegal Carpet is situated in the staircase which leads to the exit from the building. That staircase has been converted into the office and given on rent to the Shegal Carpet. They did not even pause to think of the consequences of this deviation.

The other interesting deviation noticed during the course of the inquiry was that the portion which was meant for restaurant had been let out to a Bank. A lot of

correspondence has been made by the Licensing authority in this regard with the licensee but it seems that the licensee was not interested in abiding by the laid down provisions of law."

29. Besides the above structural deviations/violations, the Committee appointed by this Court as well as Naresh Kumar Inquiry Report have also made observations about the addition of seats, shortening of gangways, closure of the right side exit in their respective reports. To what extent these violations/deviations have been contributed to the spread of fire would be discussed by us at a later stage.

30. According to Mr.Tulsi, the car parking area was over parked with more than double the number of cars for which the car parking was meant. It is his submission that the manner in which the cars were parked enhanced the danger of fire from the transformer. He has relied upon the statement of the sweeper Sunil and the parking assistant Vijay Kumar who have both stated in the statement recorded under Section 161 of the Code of Criminal Procedure to the police that the cars were parked in front of the transformer. Mr.R.K.Sethi, car parking contractor in his statement recorded under Section 161 of the Cr.P.C has stated that he was not given any instructions by the owners of the cinema not to let cars be parked in front of the transformer room. It is not in dispute that right in front of the transformer room or in its vicinity, the cars were parked and it is also not in dispute that the contessa car parked next to the transformer room was the first to catch fire. To what extent, the improper parking of cars and over crowding of the parking area has contributed to the spread of smoke is a question to be examined by this Court, however, we have no hesitation in holding that the parking area was not only over crowded but the cars were also not parked in a proper manner and were parked in the vicinity of the transformer room which could be a fire hazard.

31. Another point on which the parties are in issue is the installation of the transformer. While according to Mr.Tulsi, the transformer was installed by the Delhi Vidyut Board (Formerly known as Delhi Electric Supply Undertaking) in total violation of the rules and bye-laws framed for installation of such transformer and that was done with the consent and connivance of the owners of the cinema and the owners of the cinema had agreed to the installation of the transformer on the first floor of the building so as to get a favor from the Delhi Vidyut Board. Contention of Dr.Dhawan is that the licensee had no choice but to provide space for installing transformer by the Delhi Vidyut Board and the same was not provided for getting any favor from the Delhi Vidyut Board.

32. After construction of the theatre, an application was made for electricity connection on 29th July, 1972 by the licensee. Since the load required by the theatre was exceeding 100 KW, it was required to have HT connection and for HT connection, the consumer is required to provide a built up space for installing HT panel. Accordingly, the theatre was informed of the said requirement vide letter dated 13th September, 1972. The Executive Engineer (Planning) vide his note dated 30th November, 1972 intimated the concerned engineer that built up accommodation of 10.5' X 15' size may be accepted from the party for housing HT panel. While the matter was under process, the Executive Engineer (D-VII) vide his letter dated 5th January, 1973 requested the theatre to hand over a suitable building of 45' X 75' for installation of a sub-station of Delhi Vidyut Board and its HT and LT panels. This type of large space is required only for a colony developed by the Delhi Development Authority and is not applicable to the individual consumers. After protracted correspondence, Mr.Sushil Ansal, Managing Director of the licensee agreed to give the premises to Delhi Vidyut Board for setting up their sub-station on the ground floor of the building at a nominal rent of Rs.11/- per year. The theatre had agreed to give two rooms measuring 10'6" X 30' and 10'6" X 15' for Delhi Vidyut Board transformer and HT/LT panels and also undertook to execute the civil maintenance work. Since the party had agreed to give a space for setting up a sub-station, Delhi Vidyut Board not only set up a sub-station on the ground floor of the car parking area but a transformer exclusively for the use of the theatre was also installed along with the same. Initially a transformer of 500 KVA was installed in the sub-station which was subsequently augmented to 750 KVA and then in July, 1989 it was augmented to 1000 KVA.

33. For installation of the transformers, certain rules have been framed both under the Delhi Municipal Corporation Act as well as under the Indian Electricity Act. Under rules 32 and 33 of the Indian Electricity Rules proper earthing is to be provided on the consumers premises. Under Rule 36 before any conductor or apparatus is handled adequate precautions shall be taken, by earthing or other suitable means, to discharge electrically such conductor or apparatus, and any adjacent conductor or apparatus if there is danger there from. Every person who is working on an electric supply line or apparatus or both shall be provided with tools and devices such as gloves, rubber shoes, safety belts, ladders, earthing devices, helmets, line testers, hand lines and the like for protecting him from mechanical and electrical injury. No person is supposed to work on any live electric supply line or apparatus and no person shall assist such person on such work, unless he is authorised in that behalf, and takes the safety measures approved by the Inspector.

Under Rules 42 and 43, the owners of all circuits and apparatus shall so arrange them that there shall be no danger of any part thereof becoming accidentally charged to any voltage beyond the limits of voltage for which they are intended. Fire buckets filled with clean dry sand and ready for immediate use for extinguishing fires, in addition to fire extinguishers suitable for dealing with electric fires, shall be conspicuously marked and kept in all generating stations, enclosed sub-stations and switch stations in convenient situation. The fire extinguishers shall be tested for satisfactory operation at least once a year and record of such tests shall be maintained. Two or more gas masks shall be provided conspicuously and installed and maintained at accessible places in every generating station with capacity of 5 MW and above and enclosed sub station with transformation capacity of 5 MVA and above for use in the event of fire or smoke. Under Rule 50 the energy shall not be supplied, transformed, converted or used or continued to be supplied, transformed, converted or used unless a provision is made for a circuit breaker by HV consumers having an aggregate installed transformer/apparatus capacity above 1000 KVA and supplied at 11 KV and above 2500 KVA supplied at higher voltages. Under Rule 50 A in the case of supply and use of energy in multi-storeyed buildings more than 15 metres in height, the supplier/owner of the installation shall provide at the point of commencement of supply a suitable isolation device with cut out or breaker to operate on all phases except neutral in the 3 phase 4 wire circuit and fixed in a conspicuous position at not more than 2.75 metres above the ground so as to completely isolate the supply to the building in case of emergency. Under Rule 51, at the time of installation of a transformer all conductors (other than those of overhead lines) are required to be completely enclosed in mechanicaly strong metal casting or metallic covering which is electrically and mechanically continuous and adequately protected against mechanical damage unless the said conductors are accessible only to an unauthorised person or are installed and protected to the satisfaction of the Inspector so as to prevent danger. Under Rule 61, the provision of providing neutral conductor of a phase, 4 wire system and the middle conductor of a 2 phase, 3 wire system shall be earthed by not less than two separate and distinct connections with a minimum of two different earth electrodes of such large number as may be necessary to bring the earth resistance to a satisfactory value both at the generating station and at the sub-station. Under Rule 61 A, earth leakage protective device is all circuit breakers are to be provided in case of earth fault or leakage of current. Under Rule 63, before installation of a transformer approval of the Inspector under the Rules is required to be taken. Under Rule 64 and Rule 64 A, at the time of installation of the transformer relays must be provided and cable trenches inside the sub-station and the switch station containing cables are to be filled with sand, pebbles or similar non-

inflammable materials or completely covered with non-inflammable slabs. All systems and circuits are required to be so protected so as to automatically disconnect the supply in abnormal conditions by provision of relays and bouchold. Under Rule 65, all apparatus, cables and supply lines are to be maintained in healthy conditions and tests carried out periodically as per the relevant codes of practice, as per Bureau of Indian Standards. Records of all tests, trippings, maintenance works and repairs of all equipments, cables and supply lines are also required to be kept in such a way that this record may be compared with the earlier ones.

34. Both, according to Mr.Tulsi as well as Dr.Dhawan, the entire framework right from the installation to maintenance was defective and rules were followed more in breach than in observance. It is submitted that neither circuit breakers nor the relays were provided nor the earthing was provided at the generator. It is submitted that at the time of installation of the 1000 KVA transformer, approval as per Rule 63 was not taken and cable trenches were not provided nor bouchold were provided as provided under Rule 64 A. It is submitted that the Delhi Vidyut Board had not kept any maintenance schedule which was required to be kept not only in terms of the Rules but also in terms of the Bureau of Indian Standards.

35. In his letter dated 16/17th July, 1997 the additional Chief Engineer, Delhi Vidyut Board wrote to the DCP (Crime) that manual circuit breakers were provided but they could not operate due to absence of relays. He, however, stated in his letter that the relays were getting stolen all over Delhi and even at Uphaar Cinema, relays were found missing. According to him, no space for parking of cars was shown in sketch at the time of sanction of installation of the transformer, in front of the transformer room. He also stated that no intimation was available with the Delhi Vidyut Board indicating that the cinema was ever cautioned in writing that they should not permit the parking of cars in the vicinity of sub-station. He said that it was the primary responsibility of the cinema management to ensure that no inflammable materials are brought near sub-station equipments so that sparking which are inherent features of electric system do not result in escalation. As per the joint inspection of the transformer carried out after the fire, protective relays were not found in the transformer and there was no kerb at the entrance of the Delhi Vidyut Board transformer room to prevent the flow of oil outside. Fire fighting equipments were also not provided in the transformer room except that sand was available for that purpose. No maintenance record of the transformer was available except that it was installed on 9th July, 1989 and maintenance was carried out on 27th January, 1997. The Delhi Vidyut Board in its counter affidavit has not mentioned anything about the

provision of relays, circuit breakers, earthing nor any maintenance record of the transformer has been filed by the Delhi Vidyut Board.

36. It will be useful to give here a short background as to how the electricity was being received at the Delhi Vidyut Board (sub-station) installed on the ground floor of Uphaar Cinema and how it was transmitted from the sub-station to the consumers. The power to the sub-station is received from the 33/11 KV grid sub-station installed at the All India Institute of Medical Sciences via Green Park main and K-84 sub-stations. Power is received on the HT panels at 11000 Volts from where it is divided into two channels, one is leading to 1000 KVA DVB transformer and the other goes to 500 KVA Uphaar Cinema transformer. In this petition, we are only concerned with the 1000 KVA DVB transformer. At both the transformers, 11000 volts power supply is stepped down to 440 volts on LT side. The 440 volts power supply from the DVB transformer goes to LT panel in the switch gear room for onward distribution to the adjoining locality of Green Park Extension, commercial complex and to a few tenants in the Uphaar Cinema building. From Uphaar Cinema transformer the 440 volts power supply is taken to the LT panels of the Cinema located in the basement from where it is supplied to various points inside the cinema. DVB sub-station, as already mentioned above, is required to be maintained by the Delhi Vidyut Board. As stated above, earlier the DVB had installed a transformer of 750 KVA in its sub-station but after the fire in their transformer sometimes in 1989, the Delhi Vidyut Board augmented the power supply to the sub-station and installed 1000 KVA transformer in July, 1989. In terms of Rule 63 of the Indian Electricity Rules, before making an application to the Inspector for permission to commence or re-commence supply after an installation has been disconnected for one year and above at high or extra high voltage to any person, the supplier shall ensure that the high or extra high electricity supply lines or apparatus belonging to him are placed in position properly joined and duly completed and examined. The supply of energy shall not be commenced by the supplier unless and until the Inspector is satisfied that the provisions of Rules 65 to 69 both inclusive have been complied with and the approval in writing of the Inspector had been obtained by him. The owner of any high or extra high installation shall before making an application to the restoration of approval or addition thereto test every high or extra high voltage circuit or additions thereto, other than an overhead line, and satisfy himself that they withstand the application of the testing voltage set out in Rule 65(i) and duly record results of such tests and forward to the Inspector. In cases where the owner makes addition and alterations to his installation, he shall not connect to the supply. It is thus clear that when the Delhi Vidyut Board had installed 1000 KVA transformer in place of 750

KVA installed earlier, it was required to obtain written approval of the Electrical Inspector apparatus or electric supply lines, comprising the said alterations or additions unless and until such alterations or additions are approved in writing by the Inspector. Under the Rules, the transformer must have relays, cable box, earthing, etc. and it was also required to provide a kerb so that the leaking oil does not go out of the transformer room. Despite mandatory provisions of Rules 65 to 69 and despite the requirement of approval of the Inspector in writing before installation of the transformer, nothing has been placed on record to show that any such approval was ever taken by the Delhi Vidyut Board at the time of installation of 1000 KVA transformer in July, 1989. Though it is the contention of learned counsel for the Delhi Vidyut Board that relays were provided but they were stolen, however, despite our repeated querries, no record had been produced to show that relays were ever issued by the store for installing the same in the transformer and the same were stolen nor any report was ever lodged about the theft of these relays.

37. In terms of clause 6.1 of IS:10028 the maintenance schedule has been prescribed for unattended sub-stations. In terms of the aforesaid clause, the sub-station is required to be inspected as frequently as possible. Delhi Vidyut Board has also formulated its own norms for inspection of sub-stations. In terms of these norms, sub-station is required to be inspected by Inspector/Foreman once in a month, by a Suprerintendent once in three months, by the Assistant Engineer once in a year, by the Executive Engineer 10% at random and by the Superintending Engineer and Additional Chief Engineer 2% at random. No record has been produced to show that inspection in terms of the schedule or norms was ever carried out. What to speak of inspection in terms of the schedule, no records have been produced to show that any inspection was carried out between July, 1989 and 22nd January, 1997. No one is aware whether oil and filter in the transformer were ever changed during the aforesaid period of eight years. In this regard, the statement of Hari Babu, Foreman recorded under Section 161 Cr.P.C. may be relevant when he states that he was Foreman at the sub-station R.K.Puram and he had carried out inspection of the DVB transformer at Uphaar Cinema on 22nd January, 1997 with the help of Ram Kumar, Fitter and some helpers. He states that at the time of inspection, protective system (protection relays) were not available and the same was brought to the notice of the Assistant Engineer Mr.P.C.Bhardwaj. Though Mr.Hari Babu was posted at R.K.Puram sub-station from 30th January, 1996 to 10th February, 1997 but except this one inspection stated to have been carried out on 22nd January, 1997, no other inspection was carried out by any other technician or engineer.

38. In his statement recorded under Section 161 of the Code of Criminal Procedure Mr.P.C.Bhardwaj, Assistant Engineer DVB has stated that he was posted at R.K.Puram sub-station from October, 1994 to June, 1997 when he was suspended. He states that in addition to the duty of continuity of supply and system improvement for sub-stations, the Assistant Engineer has to do the duty of preventive maintenance of sub-stations. He states that as per norms, the Assistant Engineer is required to carry out inspection of every transformer under him once in a year, Inspector carries out inspection once in a month and Superintendent at sub-station once in three months. He states that though he joined the sub-station in October, 1994, he did not carry out inspection of the sub-station located on the ground floor of Uphaar Cinema in 1995 as the date i.e. 27th February, 1995 which was fixed for inspection was declared a Gazetted holiday. He states that in 1996 he carried out inspection on 14th May, 1996 and in 1997 the inspection was carried out on 22nd January, 1997. He states that during the inspection in 1997 everything was found correct except that DC relays (protection relays) were missing. He further states that the protection system was not available at DVB transformer at Uphaar Cinema as protection relays were stolen from there and he pointed out the non-availability of the protection system in the check list dated 22nd January, 1997. He further stated that despite the protection relays having not been provided, protection system was available at All India Institute of Medical Sciences grid sub-station for the safety of DVB transformer at Uphaar Cinema in case of over current and abnormality in the electric supply.

39. The record produced during the hearing and the statement of the witnesses show that the Delhi Vidyut Board was clearly negligent in the maintenance and installation of its transformer installed on the ground floor of the Uphaar Cinema. Though by order dated 29th February, 2000 while appointing the Commissioners, we had directed them to submit report as to whether or not all rules, regulations and statutory provisions were complied with and if not to what extent, the Commissioners have given their report only regarding deviation in structure of building and installation of seats inside the cinema hall. They have not given any report as to whether or not the Delhi Vidyut Board had complied with all the rules, regulations and statutory provisions in the installation of the transformer. We have, therefore, ourselves gone through the admitted evidence on record to find out the violations committed by the Delhi Vidyut Board in the installation and maintenance of the transformer.

40. Nothing has been placed on record to show as to what follow up steps were taken by the Delhi Vidyut Board to ensure that no fire takes place after the fire was

reported in the transformer in 1989 and the transformer was changed from 750 KVA to 1000 KVA. Even Naresh Kumar in his report has commented upon the state of affairs of the transformer installed on the ground floor of the car parking area in the cinema and has pointed out the discrepancies therein as under :-

STATE OF AFFAIRS OF DVB 1000 KVA TRANSFORMER INSTALLED IN GROUND FLOOR CAR PARKING AREA IN UPHAAR CINEMA

(i) PROTECTION SYSTEM - (a) 1000 KVA transformer of DVB had not been protected against over-current, Earth fault and excessive gas pressure (Buchholtz Relay) -

[Violation of Rule 64 (A) of IE Rules, 1956]

(b) Records of all tests, tripping and maintenance work and repairs of the equipments, cables and supply cables had not been maintained in such a way that these records could be compared with the earlier ones, so that it could be helpful in tracing the recurrence of the faults.

[Violation of Rules 65 (6) of the IE Rules]

(ii) PREVENTIVE MAINTENANCE - DVB has not produced any record of the tests carried out during routine maintenance work i.e. Testing of Transformer oil, Testing of Protection relays and Insulation resistances result (Megger results) of the transformer winding and its supply cables etc., value of Earth resistance of the sub-stations. Loose connections, damaged cable insulation, direct connection with L.T. switches without any fuses in the circuit, clearly shows that the sub-station had not been maintained in a healthy condition.

[Violation of a 65 (5) of IE Rules]

(iii) INSTALLATION - (a) The lay out of the DVB transformer was not in accordance with the rules/specifications laid down in bids and IE Rules, 1956. The space around the transformer is approx. 0.95 meter whereas it should be 1.25 mtrs. for proper circulation of Air.

[Violation of IS 1886-1967 (fig-2)]

(b) Electrical cables were found laid in a haphazard way and it was difficult to distinguish which cable is connected to which transformer/HT breaker.

[Violation of Rule 41 of IE Rules, 1956]

(c) Cable trenches were not to proper size and due to over crowding of HT/LT cables, most of these cables were lying on the sub-station floor. Cable trenches had not been found covered with slabs of non-inflammable material.

[Violation of Rule 62 (2) (g) of IE Rules, 1956]

(d) Arrangement had not been made to stop the flow of transformer oil from the sub-station to the other parts of the building, in the event of transformer tank being ruptured/ damaged. Figure-1 of I.S. 1886-1967 shows typical arrangement for a transformer of about 500 KVA rating.

(e) All the non-current carrying metals associated with the DVB sub-station i.e. Transformer, H.T. Breakers etc. had not been effectively earthed to a grounding system or mat which will limit the touch and stop potential to tolerable values and maintain the resistance of the earth connection to such a value as to make operation of the protective device effective.

[Violation of 67 (1) of I.E. Rules, 1956]

In brief, the state of affairs at the site of DVB transformer clearly indicates that standards prescribed for such a power installation system in IE Act/Rules and bids have not been adhered to at all. This further reflects on the functioning of the Board.

41. The contention of Mr.Tulsi, insofar as the quantum of damages is concerned, is that the quantum of damages to be awarded by the Court depends upon the nature of wrongful act in the overall fact situation of the case. It is his submission that the respondents not only owed a duty of care but were also under a statutory obligation to ensure compliance of the standards prescribed by law; the very existence of standards in the form of statutory rules show that the risk was of a foreseeable nature. He submits that the facts of the case make out a crying need for grant of exemplary and punitive damages against the respondents; the wanton, reckless,

malicious and oppressive character of the acts of the respondents allegedly writ large on the face of the admitted facts, according to Mr.Tulsi, deserve grant of exemplary damages. It is submitted that it was necessary to punish the respondents so that others were deterred from indulging in extreme misconduct of similar nature in future and the enormity of misconduct of the public authorities as well as the owners in committing breaches with impunity of each and every public duty required a deterrent warning. It is submitted that the exemplary and punitive damages could have reference to the future rather than past and they were meant to admonish not only the respondents but serve as a warning to all others who were similarly situated so as not to repeat the wrongful act. For the grant of exemplary and punitive damages Mr.Tulsi has relied upon the judgments of the Supreme Court in M.C.Mehta Vs.Kamal Nath, and Ornago Chemical Industries Vs.Union of India, . He also relied upon the judgment of the US Supreme Court in Honda Motor Company Vs.Oberg, 1994 US Supreme Court Vol.L. 193A. In this case, the Honda Motor Company was held liable for injuries received by Oberg while driving three-wheeled all terrain vehicle manufactured and sold by them and it was held that if in committing the wrong complained of, the defendant had acted wrongfully, willfully and maliciously with a design to oppress and injure the plaintiff, the jury in fixing the damages, may disregard the rule of compensation and beyond that may as a punishment to the defendant and as a protection to the society against violation of personal rights and social order, award such additional damages that they may deem proper. The US Supreme Court further laid down the following substantial criteria for awarding punitive damages :-

1. Likelihood at the time that serious harm would arise from the defendants misconduct;

2. The degree of the defendant's awareness of that likelihood;

3. The profitability of the defendant's misconduct;

4. The duration of misconduct and any concealment of it;

5. The attitude and conduct of the defendant upon discovery of misconduct;

6. Financial condition of the defendant; and

7. The total deterrent effect of other punishment imposed upon the defendant.

42. Submission of Mr.Tulsi, therefore, is that since the sole intention of the private respondents, namely, the owners of the cinema to add more seats in the cinema hall and in the process close the right side vertical gangway and the right side rear exit, was to get more profits, the Court should impose punitive damages upon the owners. It is also the contention of Mr.Tulsi that it is the most reckless, wanton, malicious and oppressive breach of statutory duty by the licensee and the licensing authority by closing down not only the gangway leading to the exit on the right side of the balcony but the exit itself leading to the staircase which has led to the tragic incident otherwise at least half, if not more of the public present in the balcony, could have come out unharmed, the cause of death of 59 persons was the most wanton and reckless act of the respondents and not the fire. It is submitted that the rules and bye laws were designed to cater for the safe escape of the public in case of fire and if the rules with regard to the gangways and exits were complied with, many innocent lives might have been saved in spite of the fire. It is submitted that the persistence of the licensee with various other breaches of the rules and deviations in spite of their being required to remove the same for decades make them liable for exemplary and punitive damages. It is also his contention that the licensing authority, the Delhi Vidyut Board, the Municipal Corporation of Delhi and the Fire Service were jointly and severally liable Along with the licensee for their failing to ensure compliance with the rules as were required under the statute. It is submitted that if the cost of one ticket is taken as Rs.50/- which was the cost on the date of the tragedy, the profit per seat per day would come to Rs.250/- for five shows. The period of 1979 to 1997, according to Mr.Tulsi, comes to 6570 days and the profitability, therefore, with regard to each seat comes to Rs.16,42,500/- and number of extra seats in the balcony being 52, the total profitability would come to Rs.8,54,10,000/-.

43. Whether or not the criteria of profitability of the owners to be taken into consideration at the time of grant of damages is a question which we may have to examine at a later stage, however, insofar as the calculation of the profitability is concerned, in our view, the same appears to have been slightly exaggerated. The cost of one balcony ticket is taken by Mr.Tulsi as Rs.50/- , which was the cost in 1979, but it could not be the rate throughout between 1979 and 1997. The cost of the balcony ticket in or about 1979 may be Rs.15 or Rs.20 and the same position might have continued till the middle of 80's. Moreover, one could not imagine that all the five shows of the day during the entire 365 days a year would have been house full. Assuming the average rate of ticket in the balcony between 1979 and 1996 to be Rs.30/- and of the 150 shows in a month assuming 50% shows to be houseful, the owners will be getting approximately Rs.2250/- per seat per month or Rs.27,000/-

per seat per year and in 18 years the owners may have earned Rs.4,86,000/-. We may not be in error in estimating that the owners may have earned Rs.2,50,00,000/- (Rupees Two Crores Fifty Lacs only) from all these additional seats. This may not be the exact income earned by the owners of the cinema hall but this figure is only one of the indices which may indicate what the damages should be in the event of their being awarded.

44. It is submitted by Mr.Tulsi that the conduct and attitude of the licensee and their officers in filing false and misleading affidavits not only before the licensing authority but also before the Lieutenant Governor as well as this Court about their having removed the breaches pointed out from time to time by the licensing authority calls for award of punitive damages against them. It is submitted that it was a case of composite negligence on the part of the licensee, the licensing authority, Government of NCT of Delhi, the Delhi Fire Service, Delhi Vidyut Board and the All India Institute of Medical Sciences. It is submitted that closure of right side gangway and exit by the licensee after permission for the same was granted by the licensing authority and the construction of 3 feet high parapet wall up to the ceiling level have contributed most in spreading the fire and to the cause of death and injuries. It is submitted that it was incumbent upon the Municipal Corporation of Delhi to ensure that 3 feet high parapet wall was not constructed up to the ceiling level and even assuming the plans had been sanctioned by the Municipal Corporation of Delhi, the same were clearly in violation of the safety standards prescribed for places which are visited by large number of public. It is submitted that it was a case of composite negligence and not a case of contributory negligence. He submits that in case of contributory negligence, the victim contributes to the accident or loss while in a case of composite negligence it is the negligence of the parties who were negligent in the performance of their duties or obligations and since it is a case of negligence of all these authorities, it was a case of composite negligence and their liability is joint and several. It is submitted that if at all apportionment is required to be done, it is only for purposes of enabling one of the joint tortfeasors to recover the rest of the amount from the other joint tortfeasors, however, the liability of all the joint tortfeasors will remain joint and several.

45. It is submitted that fire in the transformer may be the cause of the smoke, but that fire by itself was not the cause of the death. It is contended that the cause of the death was the manner in which the death trap was laid for the patrons by the licensee in collusion with the licensing authority in the blatant disregard of the rules for safety. The eruption of fire in the building either by electrical short circuiting or otherwise is not an unforeseeable eventuality and the fact that it is foreseeable is

clear from the safety requirements engrafted in the rules of the Municipal Corporation of Delhi as well as the Delhi Cinematograph Rules as also the rules framed under theIndian Electricity Act. It is submitted that since the fire was a foreseeable contingency, the requirements with regard to adequate egress ought to have been insisted upon so that in case of fire, patrons could escape to safety through gangways and exits on either side of the hall and the balcony leading to the staircase so as to discharge them in the open. It is submitted that the cinema was owned by the Ansal Group of Industries and their annual turn over was to the tune of Rs.200 crores and they had projects in hand worth Rs.1,500 crores. It is submitted that any amount of punitive damages less than Rs.100 crores was not likely to have the desired deterrent effect on the owners of the Uphaar Cinema nor the same would have any significant deterrent effect on the owners of other cinema halls across the country.

46. Dr.Rajeev Dhawan, Senior Advocate, argued on behalf of the respondents that the public law remedies by way of writ petitions are normally limited to giving directions, providing interim and final injunctive reliefs and quashing decisions which are violative of the fundamental rights or violation of law. He submits that the scope of providing damages in public law is limited to specific situations and circumstances where the State deliberately deprives a person of his personal liberty in cases such as causing death, grievous injury, custodial violence and the like. He submits that the judgments already cited by this Court in its earlier judgment dated 21st February, 2000, namely, Sebastian M.Hongray Vs. Union of India - 1984 (3) SCC 82; Rudul Sah Vs. State of Bihar, Bhim Singh Vs. State of J&K, M.L.A.; PUDR Vs. State of Bihar and Ors. PUDR Vs. Police Commissioner, Delhi Saheli Vs. Commissioner of Police Nilabati Behara Vs. State of Orissa Arvinder Singh Bagga Vs. State of U.P., Inder Singh Vs. State of Punjab, Ajaib Singh and Anr. Vs. State of U.P. and Ors. - related to cases where the State had deliberately deprived a person of his personal liberty or related to cases of causing death, grievous injury, custodial violence, etc. by the public authorities. It is submitted by him that the remedy of damages in public law is not available for each and every transgression of fundamental rights and thus even if there is an error arising out of an arbitrary action or denial of permission which may result in damages of crores or there is a transgression of freedom of religion or any other fundamental right, the remedy of damages is not available. It is submitted that ultra vires acts by themselves did not give rise to damages and for this he relied upon the judgments of the Supreme Court in D.K.Basu Vs.State of West Bengal, .

47. In D.K.Basu Vs.State of West Bengal (Supra) it was held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed underArticle 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. Dr.Dhawan also relied upon the judgment reported as M.C.Mehta Vs.Union of India, to contend that to justify the award of compensation, the requirement is that infringement must be gross, patent, incontrovertible and ex facie glaring. It is also his submission that the remedy of damages was an extra ordinary remedy where there was gross violation arising out of deliberate action or malicious action resulting in deprivation of personal liberty. It is submitted that the exemplary damages in public law were not to be confused with damages in private law for which private law remedies were

available. The damages available for constitutional wrongs were by very nature exemplary and have a limited meaning and were not intended to be compensatory in nature. In support of his contentions, he refers to the judgments of the Supreme Court in Nilabati Behara Vs.State of Orissa, and Indian Council for Enviro Legal Action and Others Vs.Union of India and Others, . In Nilabati Behara Vs.State of Orissa (Supra), it was held by the Supreme Court that it would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defense in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this court as well as some other decisions before further discussion of this principle. The compensation is in the nature of `exemplary damages' awarded against the wrongdoer for the breach to its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

48. In Indian Council for Enviro Legal Action and Others Vs.Union of India and others (Supra), the Supreme Court had held that even if it is assumed that the Court cannot award damages against the respondents in proceedings under Article 32 of the Constitution of India that would not mean that the Court could not direct the Central Government to determine and recover the cost of remedial measures from the respondents. It was held that Section 3 of the Environment (Protection) Act, 1986 expressly empowered the Central Government to made all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. The right to claim damages was left by institution of suits in appropriate Civil Courts and it was held that if such suits were filed in forma pauperis, the State of Rajasthan shall not oppose those applications for leave to sue in forma pauperis.

49. In view of the aforesaid observations of the Supreme Court, the contention of Dr.Dhawan is that the relief of monetary compensation as exemplary damages in

proceedings under Article 226of the Constitution by the High Courts for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. It is submitted that the quantum of damages being exemplary but not compensatory in nature is, therefore, limited to the public law purposes of quantifying public law wrong and not the private damages suffered. It is submitted that the test of awarding exemplary damages in private law is not applicable to public law. He further submits that the normal award in cases of genocide, mass burial, etc. has been between Rs.10,000/- and Rs.1.5 lacs and in the case of Common Cause and Shiv Sagar Tiwari's case Vs.Union of India, and Capt.Satish Sharma Vs.Union of India, 1996 (6) Supreme Court Cases 667, the amount of damages was higher since there was a proven malafide and corruption at cabinet minister level and those cases, according to Dr.Dhawan, were reversed in law. It is submitted by Dr.Dhawan that the cases in which the compensatory damages have been determined by way of writ petition were those where 1) there was no disputed questions of facts; 2) liability has been admitted; and 3) the damages were discernible from the facts. He submits that the public law cases cannot be tried as civil suits and thus the only damages available in law law were in the nature of exemplary damages and even if damages were quantified, those must be done on the basis of settled principles and mere averment of compensation of Rs.20 lacs per person or Rs.1 lac per person was without any basis and was not enough. It is argued that the settled principles were based on the law laid down in tort and motor vehicle cases where multiplier methods were applied. For this he relies upon the judgment of the Supreme Court in Lata Wadhwa and Ors. Vs. State of Bihar M.S. Grewal and Another Vs. Deep Chand Sood and Others G.M. Kerala State Road Transport Corporation Trivandrum Vs.Susamma Thomas (Mrs) and Ors. Bhagawan Das Vs. Mohd. Arif [1987 ACJ 1052]; Chairman Andhra Pradesh State Road Corporation Vs. Shafiya Khatoon and Others [1985 ACJ 212]; and Andhra Pradesh State Road Transport Corporation Vs.G.Ramanaiah - to contend that in an action for tort as to whether the plaintiff was found to be entitled for damages, the matter should not be stretched too far to punish the defendant by awarding exemplary damages except when their conduct, specially those of the Government and its officers, was found to be oppressive, obnoxious and was arbitrary and was sometimes coupled with malice. It is submitted by Dr.Dhawan that exemplary damages has a limited meaning in the realm of public law and it can only be awarded for violation of a specific constitutional wrong where the State deliberately deprives the person of his personal liberty in cases such as causing death, grievous injury, custodial violence and alike and the exemplary damages in

public law should not be confused with damages in private law for which private law remedies were available and no liability whatsoever can be fastened on the basis of the ultra vires act unless specific allegations of malafide were pleaded and proved. It is the contention of Dr.Dhawan that Delhi Vidyut Board was solely responsible for the fire tragedy and the fire had spread to the car parking area from the Delhi Vidyut Board transformer. He submits that the smoke was the inevitable effect of fire which emanated from the transformer maintained and installed by the Delhi Vidyut Board without any permission/license from the Electrical Inspector and since many people had escaped from the balcony it could not be said that the escape routes from the balcony were closed by closing the gangways and the exit. The contention of Dr.Dhawan is that the Uphaar Cinema management had done their best in rescue operation and in speedy evacuation of the patrons and there was no violation of either the building bye laws or the Delhi Cinematograph Rules and all the seats, gangways, exits in the balcony were duly authorised by the licensing authority.

50. The contention of Mr.Milan Banerjee and Mr.P.P.Malhotra, Senior Advocates appearing on behalf of the Delhi Vidyut Board is that the tragedy had taken place due to complete and clear negligence on the part of the management of the Uphaar Cinema. It is submitted that the negligence of the management of the Uphaar Cinema consisted in permitting/allowing parking of cars in front of the transformer room and an area of 16' was to be left as a manouvring area for the movement of cars and if the cars in front of the transformer room had not been parked, the transformer oil spill had to travel at least 16 feet outside the transformer room so as to reach any car and the occurrence might not have taken place. It is submitted that the oil in that circumstances had spread in all directions and the tragedy could have been avoided. It is submitted that there was a clear negligence on the part of the management of Uphaar cinema in not giving directions to the parking contractor or the parking attendant not to permit any car to be parked in front of the transformer room and not to permit parking of more than 15 cars in the parking area. It is submitted that admittedly on the fateful day more than 28 cars were parked inside the parking area on the ground floor whereas there was a provision only for 15 cars in such parking area. It is submitted that the negligence of the management of Uphaar Cinema is also clear from the fact that they had excess seating capacity by at least 52 seats in the balcony and the right side gangway as well as right side exit had been closed. It is submitted that by closing the exit which leads to the foyer towards the staircase on the right side, the patrons could not come out and use the second staircase which

resulted in almost a stampede as everyone was trying to go towards the only staircase available for going out of the cinema building and which also they were not able to find because of the dense smoke and darkness. It is submitted that the construction of 12 feet high parapet wall in place of 3 feet high parapet wall prevented the escape of smoke and there was no other way for the smoke to go except to go to the balcony area through the staircase. 12 feet high parapet wall at the back of the transformer room not only prevented the escape of smoke but also prevented fresh air from coming in. It is submitted that the management of Uphaar cinema had not provided emergency lights in the balcony nor was there any fire alarm and even the public address system was not functioning. It is submitted that non-availability of any help or guidance at the time of tragedy, non-illumination of any exit signs, indifferent and callous attitude of the management and running of the picture for about 10 minutes on generator even after the fire resulted in spreading of smoke and caused the delay in the escape of patrons from the balcony area. It is also the contention of Mr.Malhotra that there was no compliance much less substantial compliance of the Delhi Cinematograph Rules and false affidavits were filed from time to time by the management in Courts to the effect that the deviations had been removed. It is submitted by Mr.Malhotra that the Delhi Vidyut Board transformer was properly maintained and the fact that no fire was noticed in the transformer room clearly show that the fire had spread because of the oil coming in contact with the cars. It is submitted that the deaths have occurred in the balcony due to asphyxia and oil being quenching material, it could not catch fire and the entire theory of the fire having spread from the transformer was, therefore, baseless.

51. We have given our thoughtful consideration to the arguments advanced by Dr.Rajeev Dhawan that public law remedies by way of writ petition are normally limited to giving directions, providing interim and final injunctive reliefs and quashing decisions which are violative of the fundamental rights or violation of law and that the remedy of damages in public law is not available for each and every transgression of fundamental rights nor ultra vires acts by themselves give rise to damages and that where the disputes questions of fact involved, the party should be left to the normal course of getting the matter decided by a Civil Court but we have not been able to make ourselves agreeable with Dr.Rajeev Dhawan. We have already held in our judgment dated 29th February, 2000 that the petition for claiming damages in public law by filing a petition under Article 226 of the Constitution of India was maintainable. We have also already held that it was not a matter in which

highly disputed questions of fact arose and it appears to be a matter in which facts could be ascertained very easily. The earlier observations of the Court, in our view, are relevant to quote at this stage as under :-

"The Rules and Regulations are clear and unambiguous. Everybody knows them or should know them. It cannot seriously be disputed that the private Respondents, who were or are owners of Uphaar Cinema were (as are all cinema owners) bound to strictly comply with the. It cannot be seriously disputed that the Govt. agencies are entrusted with duty to ensure that the Rules and Regulations were complied with. It cannot be seriously disputed that a theatre is one place where a large number of people have to sit in an enclosed area for a fairly long period of time. There is a potential threat to life and safety if fire, leakages of gas etc. take place. This potential threat has to be guarded against. At this stage, therefore, it cannot be said that the cinema owners/employees (past/present) cannot be held to be under an obligation to provide and maintain all standards of safety and/or that they are not liable to compensate for loss of fundamental right guaranteed under Article 21 if harm has arisen by virtue of their not guarding against such hazard. Prima facie it appears that under the doctrine of strict liability on Public law (as set out above) the liability would be them even if there is no negligence on their part. The govt. and its agencies would also be liable for not having ensured strict compliance with Rules and Regulation which have been created to ensure safety. At this stage it appears to us that this is the case in which there can hardly be any dispute. The Rules and Regulations are clear and known. The affidavits of the public authorities support Petitioners and admit that there was non-compliance. In fact, Mr.Rawal's arguments have necessarily been that Rules and Regulations were not complied with. Mr.Rawal sought to justify the lapse of not ensuring compliance by blaming it on the Orders of the High Court. At this stage, it appears to us that Orders of this Court only stayed the suspension of license for four days and/or the Order of the Lt.Governor. It prima facie appears that the Orders of the High Court did not justify grant of temporary permits for such a long period of time. Admittedly, the fire took place on 13th June, 1997. Admittedly, a number of people have been killed and/or injured. Admittedly, fire fighting equipments and/or ambulances arrived on scene late. Admittedly at that time and even now the CATS Centre which was to have been created as far back as 1986 has not yet been established. There also does not appear to be much dispute on fact that number of seats had been increased, size of gangway reduce, one exit closed by creating a private viewing box, etc. It can easily be ascertained whether there have been unauthorised deviations. The building is still standing. These are matters which can easily be verified by the court by appointment of commissioners. The

commissioners, who would be responsible persons, knowledgeable in the field would visit the site in presence of all parties and ascertain facts. The Report of the commissioner would show whether Rules and Regulations were complied and whether there have been deviations or not. It is clarified that Court is not giving any finding at this stage and is not holding that there have been breach of Rules and/or Regulations and/or unauthorised deviations and/or failure to enforce. All that the Court is saying is that at this stage it cannot conclude that the petition is not maintainable.

In this view of the matter we do not find much substance in contentions that Petitioners could not have and should not have been permitted to rely upon numerous documents. All the documents shown to the Court were part of the Naresh Kumar Report. As Mr.Desai and Dr.Dhawan have repeatedly commented, the Petition is based on that Report. Thus all Respondents have all along known that material in support of the Petition would come from that Report. The Report was with Respondent No.2 it was produced in Court by Respondent No.2. Petitioners did not have a full copy of the Report with them. After it was produced by Respondent No.2, Petitioner relied on it. Having known all along that the Petition was based on that Report any Respondent could have asked for and take inspection of that Report. Not having done so they could hardly complain that they were taken by surprise."

52. It is in view of these observations that we have to examine as to how the fire was caused and what is the complicity of the parties in the same. Besides examining the causation of fire, this Court is also required to go into the question as to whether a party even if not responsible for causation of fire was still responsible for spreading the smoke so as to make it liable for compensation. This Court is also to examine, if it is ultimately held as to how the fire was caused, who was responsible for the same and who was responsible for spread of smoke to the upper floors and what were the deviations in the building, seating arrangement including provision of gangways and exit doors, etc., what were the defects in installation and maintenance of the transformer and how all this has contributed to the spreading of smoke and fire in the building and how the compensation, if any, is to be apportioned amongst the parties to this petition.

53. Though there is divergence of opinion amongst the owners of the cinema, the petitioners and the Delhi Vidyut Board as to how the fire started, however, certain sequences of events may clarify as to how the fire started and how the smoke spread in the building. It is not in dispute that on 13th June, 1997 at about 07.00 a.m. a minor fire broke out in the transformer of the Delhi Vidyut Board on the ground floor

of the cinema. Matter was immediately reported to the Delhi Vidyut Board as well as the Delhi Fire Service. One Munna Lal, Lineman of the Delhi Vidyut Board was deputed to attend the complaint. He along with another person reached the spot and noticed that sparking was going on and there was fire on the sand on the floor. They switched off the supply from the HT panel and after opening the shutter they extinguished the fire by putting sand upon the same. Thereafter they noticed that the insulation of one of the cables towards the LT panel of B phase of the transformer had melted by about 8-10 inches. There was smoke and blackish spots over the socket near the cable. He went back to the office and informed one Deep Chand about the same. At about 10.30 a.m. Mr.Bir Singh and Mr.B.M.Satija, Senior Fitter and Inspector repaired the phase leads and cable and sockets by hammering. As per statement of these witnesses made before Naresh Kumar Inquiry Committee, they did not have crimping machine with them at the time of repairing the cables in the morning. According to Mr.Satija, they replaced the sockets of the LT side cable and the transformer was put on load and LT main was loaded/operated by lineman of the zone. After such repairs, the system was put on operation. At about 3.55 p.m. there was load shedding and there was no electric supply to Uphaar Cinema between 3.55 p.m. and 4.55 p.m. The supply was restored at about 4.55 p.m. At about 4.57 pm/4.58 pm sparking was observed in the transformer of the Delhi Vidyut Board. Mr.K.L.Malhotra, the Manager of the cinema hall reached the spot and tried to control the fire by throwing sand on it. Due to intense sparking the socket of B-1 lead of B-phase started melting and came out of the nut and bolt of the bus bar and fell on the radiator fin. As there was still electric supply in this cable, the sparking continued when it came in contact with the radiator fins leading to the melting of fin metal and thus creating a hole therein. Because of arcing at the radiator fins when the cable came in contact with fin, a hole was created and the oil came gushing out of this hole and spread on the floor. Since the kerb at the entrance of the transformer room was not of appropriate height and slope, the oil came out from the transformer room in the parking lot. There is some controversy as to how the oil caught fire. While it is the case of the Delhi Vidyut Board that because of the high flash point of oil and because of the oil being a quenching material, it could not catch fire, however, the witnesses at the spot were unanimous in their statement that the oil which was gushing out of the transformer room was on fire. A car was parked in the vicinity of the transformer room. The burning oil appears to have come in contact with the car and the car also caught fire. The burning oil or the fire from the car which caught fire appears to have come in contact with a few more cars parked in the parking area both perpendicular and parallel to the transformer room and as a result about 27 cars were burnt. The burning cars created a lot of smoke in the parking area. As there was no other way

from where the smoke could get out and the hot air has the tendency to go upward, it started going up through the stairway to the balcony foyer. Some of the smoke entered the hall and the patrons sitting in the main hall noticed smoke entering from the side of the screen. As already mentioned above, the patrons sitting inside the hall thought it was some special effect in the movie, however, when they realised that it was smoke as a result of the fire in the cinema building, they started running out of the hall. By this time, the smoke had reached the foyer of the balcony and it also entered the balcony of the cinema. Most of the patrons coming out of the balcony, because of the dense smoke, did not find any way to come out of the cinema building and some of them with a view to get away from the smoke entered the toilets on the balcony foyer. The patrons were trapped in the balcony, in the balcony foyer as well as in the toilets. Since the right side box had closed the exit of that side, people came out only from the left side of the balcony and only one stairway was available to them to go out of the cinema building. Some of the patrons, it appears, tried to go from the other stairway but because of the dense smoke, they did not find way to the second stairway which was towards the side of the closed exit. Moreover, that stairway was mostly used by patrons for entering the balcony area and was normally not used for going out of the cinema building. Besides there was a glass door between the right side stairway and the balcony foyer which blocked the exit of the patrons for quite some time towards the other stairway. As the time passed, the balcony foyer, the balcony and the toilets almost became gas chambers resulting in suffocation. Most of the patrons who had died due to asphyxiation had died in this area. Some enterprising patrons broke open the glass panes of the windows in the foyer area and they were rescued by the Fire Brigade from that place. It is the stand of the petitioners that emergency lights were not on, there was no public address system to guide the patrons as to how to get out of the building and no assistance was provided by the officials of the cinema hall and at the end of the day 59 people had died in the unfortunate incident due to asphyxiation and more than 100 were injured.

54. While deciding this petition in the exercise of our jurisdiction under Article 226 of the Constitution, we are not required to go into the factual details of the matter nor without sufficient material before us we are in a position to hold as to what extent each of the parties involved were negligent. However, on the basis of the admitted facts on record about which there cannot be any controversy between the parties, we are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the safety of persons working in the premises or vicinity, owes an absolute and non-delegable duty to the patrons who visit the same to ensure that no harm results to anyone on account of

hazardous or inherent nature of the activity which it has undertaken. The enterprise is under an obligation to ensure that the activities are conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it would be no answer to the enterprise to say that the harm has not been caused because of any negligence on its part. The persons harmed on account of the hazardous activity carried on by the enterprise may not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm, the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous activity. If the enterprise is permitted to carry on an hazardous activity for its profit, the law must presume that such permission is conditional on the profit seeking enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. It must indemnify all those who suffer on account of carrying on of such hazardous or inherently dangerous activity regardless of whether it has carried on carefully or not. The principle is also sustainable on the ground that the enterprise alone has the resources to discover and guard against hazards or dangers and to provide warning against potential hazards. These observations of the Supreme Court in M.C.Mehta Vs.Union of India, are relevant till date to hold an enterprise liable to compensate all those who are affected by the accident and such liability is not subject to any of the conditions which operate vis-a-vis tortuous principle of strict liability under the rule in Rylands v. Fletcher.

55. We will therefore make an endeavor to find out as to what extent each of the public authorities was negligent and/or responsible in the non-compliance of rules meant for the safety of the patrons in the cinema hall and what can be the extent of their liability in that regard. We will also make an endeavor to find out whether any liability can be fastened upon the Delhi Fire Service because of their having allegedly not responded promptly to put off the fire and rescue the persons from the cinema hall and if so, what can be their liability in that regard. We are also to find out whether the State is not obliged to provide necessary assistance at the time of such mishaps to the victims and to what extent the State has failed to discharge its duties in providing necessary assistance to the victims of the incident and what suggestions in that regard are required so as to avoid such mishaps in future. As the fire had started from the transformer of the Delhi Vidyut Board, we will like to deal with the Delhi Vidyut Board first. Thereafter we will like to discuss the role of the Licensing Authority and the licensee of the Uphaar Cinema and whether any of their actions

has resulted in the spreading of smoke in the balcony and hampered the smooth exit of the patrons from the cinema hall or the balcony.

56. The case set up by the Delhi Vidyut Board is that transformer of 750 KVA was replaced by a transformer of 1000 KVA on 9th July, 1989. While inspection certificate from electrical inspector was obtained at the time of inspection of 750 KVA transformer, it is the case of Mr.Milon Banerjee and Mr.Prem Pal Malhotra, Senior Advocates appearing for the Delhi Vidyut Board, that there was no practice for getting the transformer re-inspected at the time of replacement/augmentation. It is submitted that the practice of not getting the new transformer inspected by the electrical Inspector at the time of replacement/augmentation was being followed to ensure that there was no dislocation of power supply at the time of replacing the transformer, since the inspection/approval of the electrical inspector was a time consuming process. It was submitted that there were 8000 transformers in the whole of Delhi and more than 95% of them were unmanned.

57. Maintenance schedule recommended by bids for unattended sub-stations was as per IS 10028 para (Part iii) 1981 clause 6.6.1 is that they "should be inspected as frequently as possible". As already mentioned above, the Delhi Vidyut Board has also formulated its own norms of inspection of the sub-stations as under :-

(i)	Inspector (S/Stn.) : Foreman (S/Stn.) :	Every distribution transformer under his charge once a month.
(ii)	Superintendent (S/Stn.) :	Every distribution transformer under charge once in three months.
(iii)	A.E.(S/Stn.) :	Every distribution transformer under his charge once a year.
(iv)	XEN(S/Stn.) :	10% test check at random.

(v) S.E.(D) : 2% test check at random.

(vi) ACE (T&D) : 2% test check.

58. The last maintenance, according to the Delhi Vidyut Board, of the sub-station at Uphaar Cinema was carried on 22nd January, 1997. It is submitted by the Delhi Vidyut Board that the absence or presence of buchholz relay would have made absolutely no difference either before or after separation of the LT lead from the LT bush of the transformer. The case of the Board is that HT circuit breaker had been provided to control 1000 KVA transformer of Delhi Vidyut Board with the provision of over current and earth fault relays at the initial stage. An explosion vent pipe was provided to release gas pressure. It was submitted that since the relays at various sub-stations all over Delhi were getting stolen, it was difficult for the Board to have control over un-attended sub-stations like the one at Uphaar Cinema and though the over current and earth relays were found missing at the time of incident in the sub-station at Uphaar Cinema, the back up protection was still available and the feeder tripped from the AIIMS grid thereby allegedly conforming the functionality of the protection system. Insofar as the provision of cable trenches was concerned, the case of the Delhi Vidyut Board was that it was not possible to dig the cable trenches because of the burning of the leads and fire in the adjoining area, however, adequate quantum of sand was provided in the trenches for soaking oil and there was no need for provision of slabs in trenches when it was adequately covered with sand. This arrangement is averred to be in conformity with the Rule 64 (2) (g) of the Indian Electricity Rules.

59. To the findings in the Naresh Kumar Enquiry Report that fire had started from the Delhi Vidyut Board transformer and then spread outwards, the submission of the Delhi Vidyut Board is that the flash point of the transformer oil being extremely high the oil could not catch fire and even if oil catches fire, it will get extinguished of its own as it spreads on the floor since it will rapidly loose its heat on the increasing contacts with the floor covered with loose sand, etc. Some of the points made by the Board in its submissions before the Court were as under :-

"1. The testing of the oil after occurrence of fire at the substation may not give correct result.

2. It may be added that the rolling shutter provided in front of the transformer room is not required to be leak-proof.

3. As stated above, it is obviously strange that despite there being constant sparking in the transformer, the management of Uphaar Cinema did not choose to lodge a complaint. The Cinema was carrying on a public show with nearly 1000 persons attending the same. The management of Uphaar Cinema owed a duty to the said persons and ought to have taken steps to complaint even on telephone. It is submitted that break downs do occur and they are repaired upon receipt of a complaint. Yet with a view of not disturbing the show, the management of Uphaar Cinema has failed to take steps to lodge complaints expeditiously. On the one hand when the loud explosion took place, there was instant tripping in 0.3 seconds at the substation at AIIMS which cutt off the electricity supply. On the other hand the management of Uphaar Cinema without bothering for the safety of the public in the cinema show, instead of stopping the show and evacuating the hall, chose to start the generator so that the cinema show continues. It is clear that the management of Uphaar Cinema has been criminally negligent to say the least.

It is further noteworthy that hot oil leaked from the transformer, which may or may not be on fire, the later fact strongly refuted, even then, in view of the characteristics of the Medium, of oil including inter alia its thermal conductivity as a cooling medium no tragedy would have occurred, had the management of Uphaar Cinema not parked the cars in the manner in which they were parked. The fire spread only after the oil came in touch with something other than the ground and sand, mud etc. Hence the cause of the tragedy & loss of life is solely attributed to the above circumstances."

60. Under Para 7.3.1.1 of the I.S.Code, the most important thing to be ensured with transformers installed indoors is proper ventilation, that is, free movement of air round all the four sides; the level of the transformer base should be higher than the highest flood and storm water level of that area. Under para 7.3.1.2 the transformer

should be kept well away from the wall. The minimum recommended spacing between the walls of the transformer periphery from the point of proper ventilation should be around 1.25 mm. Under para 7.3.1.4 for indoor installations the air inlets and outlets shall be of adequate sizes and so placed so as to ensure proper air circulation for the efficient cooling of the transformers. The inlets should preferably be as near the floor as possible and the outlets as high as the building allows to enable the heated air to escape readily and be replaced by cool air. Despite this provision having been made in the I.S. Code, the submission of the Board is that one ventilation was available on the western side of the transformer room apart from an exhaust fan on the eastern side and in addition to this, the shutter of the transformer room was also having grills thereby allowing better decimation of heat.

61. Insofar as the detachment of socket of `B' phase, bus bar and creation of hole in the radiator fin of the transformer was concerned, the case of the Board was that the transformer was attended to by the Delhi Vidyut Board on the morning of 13.6.1997 itself in response to a complaint. The DVB repair team found the Y phase socket defective and replaced it. After repairs, at 11.30 AM, the system was switched on and the transformer was functioning normally. All the sockets remained intact and continued to operate successfully for more than four hours from 11.30 AM to 3.55 PM, when load shedding was resorted to for one hour. It is submitted that had there been any loose connection in any of the sockets, a) there would have been arcing/sparking which could not have escaped the attention of the cinema employees present in the parking area over the 4 hours that the transformer admittedly functioned; b) although the entire area of the transformer room and the car park is in partial darkness, which would have made any arcing/sparking highly noticeable; Significantly, not a single cinema employee has stated that after the morning's repairs, they noticed any arcing/sparking during the 4 hours that the transformer was functioning; hence, the owners contention that heat was generated `due to sparking, arcing in the poorly joined connections' is without foundation and it was practically impossible for there to have been a loose connection after the repairs in the morning.

62. To another contention of the petitioner that during the repairs in the morning of 13.6.1997, the socket of `B' phase was not connected to the cable with the crimping machine and it was for this reason that the socket got detached from the bus bar as it was not properly crimped, the submission of the Delhi Vidyut Board is that in the morning of 13.6.1997, two sockets of Y phase LT lead were replaced and not of B-phase and as there was no crimping machine available with the Board officials, they hammered the sockets applying proper hammering pressure. It is submitted that the

same effect and pressure was applied by hammering and the same properties of joining were achieved as are achieved by the crimping machine. It is submitted that the socketing of cable leads is done at the tail of the sockets. In fact not a single socket had been detached from its cable lead at socket tail as was observed by the electrical Inspector. Had there been any looseness due to hammering of the sockets, the LT leads would have been detached from the socket tail, which has not happened in this case. Even the socket tail of B-phase lead, which got detached from the bus bar, has been found intact. The socket in question has been detached from its mouth and not from its tail. Therefore, the issue of hammering and not crimping is irrelevant.

63. It is, therefore, the case of the Board that since the electric supply was restored at 4.55 PM after a gap of one hour, it would have taken at least 8-10 minutes for it to heat up and melt and get detached from the bus bar and thereafter the heat generated must have been utilised for melting the steel of the radiator fin which resulted in the creation of a hole in the radiator fin. The contention is that this heat would not have been sufficient to burn the transformer oil coming out at the rate of 9 litres per minute from the 2 cm diameter hole created by the socket so detached. It is also the contention of the Board that LT side of the transformer/sockets were repaired by DVB officials at 11.30 am on 13.6.97. The supply remained in operation successfully and effectively for more than 4 hours i.e., up to 3.55 pm when load shedding was resorted to from AIIMS grid. During this period of 11.30 am to 3.55 pm, no sparking or failure of LT sockets had taken place or was noticed as is evident from the fact that there were no complaints during this period noticed or notified by Uphaar Cinema staff; this aspect could not escape the attention of the Uphaar Cinema staff since there was a continuous show of the film and the parking area of transformer room was completely occupied by the parking attendants, officials of Uphaar Cinema and visitors also; that it is highly improbable for the socket to fall on its own within 10 minutes of supply restoration from 4.55 pm to 5.05 pm when it had successfully operated from 11.30 am to 3.55 pm for more than 4 hours.

64. It is submitted that during load shedding from 3.55 pm to 4.55 pm (for one hour) Uphaar Cinema had operated their generator. It is possible that the generator set or some foreign element interacted after the load shedding at 4.55 pm when DVB supply was restored and the generator was in operation. It was mentioned by Shri K.V. Singh XEN PWD who submitted to the Naresh Kumar Committee that earth strips were lying in the transformer room but the joint in the earth strip was not proper and the earth connections to the neutral was also broken. It is submitted that after a fire, the connections to earth and neutral might have been loosened. As it is

evident that earthing effectively completed its role which tripped the system within prescribed lime setting of 0.3 second from AIIMS grid, it is submitted that after having one hour load shedding from 3.55 pm to 4.55 pm when the load of the Uphaar Cinema was being supplied by their own generator, at about 4.55 pm the sparking/arcing/heating reportedly developed. If the transformer end and its socket lead had not shown any fault/arcing/sparking/heating during more than 4 hours from 11.30 am to 3.55 pm then how could the same have developed when the load was much less in the evening? It is submitted that there must have been some other external factors which created the alleged arcing/sparking/heating when the DVB supply was resumed, if at all it happened. The contemporaneous record kept at AIIMS grid shows that at 5.00 pm, the system was functioning normally.

65. As already observed by us above, before installing or replacing a transformer, it is mandatory under the rules to get approval from the electrical Inspector after he had inspected the equipment. Admittedly, even as per their own case, the Delhi Vidyut Board had not taken the approval from the electrical Inspector at the time of installation of 1000 KVA transformer. Though, it is the case of the Delhi Vidyut Board that with a view to ensure continuous supply of electricity to the consumer, they did not feel it necessary to have the equipment inspected by the electrical inspector and to get his approval before the transformer was made operational, however, in our view, this argument does not inspire any confidence inasmuch as the Board is not expected to do away with the safety standards in the name of supply of continuous electricity to the consumers. Safety is the first aspect which has to be looked into by all concerned including the Board and even if there is any apprehension of the safety standards having not been followed, the transformer ought not have been made functional. Moreover, there is clear deviation and violation of the rules by the Delhi Vidyut Board by not providing the circuit breakers and relays which are necessary to be provided under the I.S.Code. It is no ground not to provide relays by stating that the same were being stolen from time to time and the Board had no control over the unmanned sub-stations. It is the duty of the Board to ensure that proper safety standards are applied and proper relays are provided at the sub-stations so that any such mishap does not takes place at the sub-station. As already observed by us above, we are not inquiring as to whether or not the fire had started because of any such defect in the transformer, but once we are satisfied that the Delhi Vidyut Board was negligent in the maintenance and installation of the transformer, in our view, the same would be sufficient to hold the Delhi Vidyut Board responsible and liable for payment of compensation. Installation of a transformer is not such an activity which can said to be normal. There is inherent danger of fire in

the installation of the transformer and it can, therefore, be said to be hazardous activity. As held by the Supreme Court, the Board is under an obligation to ensure that the hazardous activities should be conducted with the highest standards of safety and if any harm results on account of such activity, the Board must be liable to compensate for such harm and it would be no answer to the Board to say that the harm has not been caused because of any negligence on its part.

66. As already mentioned above, Mr.P.C.Bhardwaj, Assistant Engineer of the Delhi Vidyut Board in his statement recorded under Section 161 of the Cr.P.C. has stated that the inspection of the sub-station located on the ground floor of Uphaar Cinema could not be carried out in the year 1995 as the date i.e. 27th February, 1995 which was fixed for inspection was declared a gazetted holiday. It is surprising that when the Board is required to carry out periodical maintenance, it does not fulfilll its obligation only because a particular date fixed by it to carry out inspection was declared a holiday. Nothing has been explained as to why the inspection could not be carried out a day later or on any other day which was felt convenient by the officers of the Board. Merely because a particular day has been declared a holiday will not mean that the entire work of the Board would come to a stand still for ever. It clearly shows the casual approach of the Board in the maintenance of its transformers and shows the manner in which it treats its own manual of maintenance prescribing periodical maintenance of the transformers/sub-stations by its officers. Under the I.S.Code, the cables are required to be joined with the help of a crimping machine. It is an admitted case of the parties that on the fateful day when the fire had taken place in the morning, the staff which had gone to repair the damage did not have in its possession a crimping machine and the cables were, accordingly, joined by hammering. At this stage, we do not want to go into the question as to whether the desired result had been obtained by hammering but the fact remains that the staff of the Board has clearly violated the provisions of the I.S. Code insofar as the joining of cables was concerned. Prima facie, it appears to us that the desired result of joining the cables cannot be obtained by hammering which could otherwise be obtained by crimping of the cables. In case, the desired result could be obtained by hammering, there was no need to make a provision in the Code to join the cables by crimping. The fact that a provision has been made in the Code for joining the cables with the aid of crimping machine clearly shows that there is difference between joining the cables by crimping and by hammering.

67. Moreover, as mentioned in para 7.3.1.1 of the I.S.Code, the Board was required to ensure that there was proper ventilation if the sub-station was installed indoor i.e. there should be more movement of air all around four sides of the transformer; the

level of the transformer base should be higher than the highest flood and storm water level; it should be kept away from the wall. Under para 7.3.1.4 for indoor installations the air inlets and outlets are required to be of adequate sizes and so placed so as to ensure proper air circulation for the efficient cooling of the transformers. The inlets should preferably be as near the floor as possible and the outlets as high as the building allows to enable the heated air to escape readily and be replaced by cool air. Despite this provision in the I.S. Code, the inspection of the site as well as the report of the commissioners show that there was only one exhaust in the room where the sub-station was located. Even the provision of this exhaust was of no use inasmuch as the ground floor where the sub-station was located was covered from all sides and the only side which was open and where existed a 3 feet high parapet wall, the owner's had covered the same by constructing a wall which was as high as the ceiling. At the back of the transformer room though there was a parapet wall of 3 feet height in the year 1972 but the same was raised up to the ceiling either in the later part of 1972 or early 1973. Though, as mentioned by us above, it is the case of the petitioner that the wall was raised up to the ceiling level unauthorisedly by the owners of the cinema without obtaining permission or without getting the plans sanctioned from the Municipal Corporation of Delhi, however, the case of the owners is that the Municipal Corporation of Delhi had duly sanctioned the construction of the wall up to the ceiling level on 20th May, 1972 and it was pursuant to the plan having been sanctioned by the Municipal Corporation of Delhi that the wall was constructed up to the ceiling level. Even assuming that the plans were sanctioned by the Municipal Corporation of Delhi for constructing the wall up to the ceiling level, we are clearly of the view that such sanction was as a result of complete non=application of mind. With the construction of the wall up to the ceiling level there remained no outlet for proper air circulation in terms of Rules 7.3.1.1, 7.3.1.2 and 7.3.1.4. The exhaust which was provided in the transformer room would have thrown the hot air from the transformer room to the outer area on the ground floor from where there was no outlet for the hot air to go out and the hot air finding no outlet would naturally go upwards through the stairs. This violation of the rules was not pointed out either by the Municipal Corporation of Delhi or by the licensing authority or even by the officers of the Delhi Vidyut Board from 1972 to 1997. The construction of this wall, as would be pointed out later, has played major role in spreading the fire to the balcony area which has resulted in the deaths. For construction of this wall, in our opinion, not only the owners are responsible but even the Municipal Corporation of Delhi, the licensing authority and the Delhi Vidyut Board are equally responsible and liable.

68. Another question which may arise for consideration is whether the installation of transformer on the ground floor of the building was a natural user and even if it was a natural user, whether it was an hazardous activity carried out by the Delhi Vidyut Board. On the ground floor of the building, the Delhi Vidyut Board had installed two transformers; one transformer of 500 KVA capacity was installed for purposes of supply of electricity to the cinema itself. A transformer which is required to be installed for purposes of supply of electricity may have to be installed in the building itself and the same may said to be of the natural user of the ground floor of the building on which we do not wish to give any opinion, however, in the case of installation of 1000 KVA transformer on the ground floor of the building which was meant to supply electricity to the colony and had nothing to do with the cinema building, in our view, cannot be said to be a natural use. It is not understood as to how the Board could insist upon installing the transformer inside the building when the same is to provide electricity to the area other than the building. Though, one or two tenants had already been provided electricity through this transformer, however, that will not make it a natural user. Even if this transformer was not installed on the ground floor of the building, the Board would have provided electricity to these tenants from the transformer which would have been located outside the building. It is, therefore, of no consequence that to two or three tenants in the building the electricity was being supplied from this 1000 KVA transformer. Though initially the owners of the cinema were not prepared to give any space to the Board for installation of a transformer which was not at all meant for supply of electricity to the cinema, however, subsequently they agreed to provide space for installation of the said transformer as the Delhi Vidyut Board was delaying the supply of electricity to the cinema because of the owners not providing space for installation of this transformer. Even if the owners had agreed to provide space to the Board for installing a transformer which would have supplied electricity to the colony and consumers outside the cinema building, the same would not make installation of 1000 KVA transformer on the ground floor of the cinema. In our view, the owners might not have other option but to agree to the demand of the Board to install the transformer on the ground floor otherwise the Board had refused to provide electricity to the cinema as well.

69. Having thus held that the installation of the transformer on the ground floor of the cinema building for purposes of supply of electricity to consumers who were not connected with the cinema, was a non-natural user, in our view, the rule of absolute and strict liability will apply in this case as well as it applies in the case of any activity which is inherently dangerous. In any case, installation of a transformer, in our view,

is also hazardous activity inasmuch as there is always a danger of short circuiting and sparking in case, it is not properly installed and maintained and the schedule of maintenance of the transformer is not adhered to. As it is an unmanned transformer and admittedly maintenance schedule was not adhered to by the Board and the installation of the transformer being an hazardous activity carried on by the Board at a place which was not meant for the same, for this reason as well the rule of strict liability will apply to the present case.

70. The Central Forensic Science Laboratory in its report dated 27th June, 1997 has observed that the constant intense sparking between the detached phase cable and radiator base had initiated the fire and the same spread along the oil spill. It was observed that from out of a total of about 850 litres of oil only 10-12 litres of transformer oil was found in the transformer meaning thereby that the rest of the oil had spilled from the transformer through the hole created as a result of the cable coming into contact with the radiator fin. The result of examination by the Central Forensic Science Laboratory was as under :-

RESULT OF EXAMINATION "The inspection of scene of crime carried out by undersigned from 13th to 15th June, 1997 in the premises of Uphaar Grand Cinema and subsequent detailed Laboratory scientific examination of exhibi9tes marked 1, 2a, 2b, 3 and 5 revealed the following:-

1. The physical inspection of the scene of fire revealed two transformers in two rooms in one of the corner of the hall in the ground floor of the cinema complex. The smaller transformer situated at one of the corner room stated to be of Uphaar cinema was found intact. The other bigger transformer of 1000 KV installed in the adjacent room stated to be of DVB have maximum burning effect of fire. The one electric phase cable of LT side mounted on bus bar of this transformer has been found to be detached and fallen on ground due to constant sparking as electric sparking effects were detected on the nut and bolts, bus bar and fastener end. In the process of falling down of the detached phase cable, the same has apparently come in contract with fins of radiator at many places leading to intense sparking and creating U shape hole in one end fin of the radiator resulting in oil spill. This U shape hole is of same dimentions as that of cable fastener. Approximately 10-12 liters of transformer oil was found in transformer.

On the basis of the fact stated above and Laboratory findings it is concluded that the constant intense sparking between detached phase cable and radiator has initiated the fire and thus spreading along the oil spill.

Central Forensic Science Laboratory also gave a report about the shortcomings in the safety measures in the transformer noticed at the time of inspection as under :-

The transformer in question i.e. D.V.B. Transformer do not have following safety measures at the time of inspection.

i) The L.T. Side cables from the bus bar do not have clamping system or any support to the cables.

ii) The earth cable of the transformer has been found temporarily fitted with the earth strip i.e. twisting of earth cable.

iii) There was no cable trench to conceal the cable.

iv) H.T. Panel Board of transformer do not have any relay system to trip the transformer in case of any fault.

v) The Buchholtz Relay system was not fitted on the transformer.

vi) Temperature meter was not found fitted on the transformer.

The physical examination of D.V.B. Transformer reveal that the cables on bus bars on L.T. Side did not have check nuts. Except one lower terminal of phase Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable-end-socket (detached cable) fell down on radiator fin due to constant arching/sparking at nut bolt portion on bus bar, decoiling effect of cable and weight of cable. All coupled together led to eating away of metal of cable end socket resulting in U shape cable socket end."

71. The electrical inspector also gave a report on 25th June, 1997 about the shortcomings in the transformer as well as the cause of the fire. The observations of the electrical inspector were as under :-

"On physical examination, wex found that the 500 KVA transformer of consumer was almost intact, whereas the 1000 KVA transformer & H.T./L.T. Panel Boards & Battery Charger of DVB were affected by the fire. On inspection of the DVB transformer, it was observed that there were two L.T. Bushings for each phase of the transformer and the Bushings of each phase had been found shorted with a common metal Bar (known as Bus-Bar). There were four holes in each of the Bus-Bar mounted on the transformer L.T. Bushing. Out of these four holes, two holes were

used for fixing the Bus-Bar on the L.T. Bushing Terminals and the remaining two holes were used for jointing the L.T. Cable-end-sockets with the Bus-Bar. On each phase three Nos. of single core aluminum cables of size 630 sq.m. had been connected, for carrying electric supply from the transformer to the Air Circuit Breaker installed on the L.T. Panel Board.

On detailed examination/inspection of the 1000 KVA transformer and H.T./L.T. Panel Boards of DVB, the following observations were made:-

1. Two H.T. Bushings of the transformer were broken and the third one cracked. There were no flash marks on the H.T. Supply leads and H.T. Bushings of the transformer.

2. One of the L.T. supply cable-end socket of B-Phase through which the L.T. supply from transformer to L.T. ACB had been taken, was found detached from the transformer L.T. Bus Bar (Blue-Phase) and was lying by the side of the transformer radiator

3. There was a cavity in the B-Phase Bus-Bar (around the hole from where cable got detached) of the transformer and the upper portion of the cable-end-socked which was lying by the side of the radiator, also melted/burnt in a way that the centre hole of the socket took a U-shape.

4. The earth conductors connected to neutral terminal of the transformer were found disconnected near the neutral terminal. There were short-circuit markes on these earth conductors (indicating beads formation at the end of these earth conductors).

5. The neutral Bus-Bar was loose and the check nut used for tightening the Bus-Bar was also loose.

6. The P.V.C. insulation of the L.T. Cables connected to the transformer Bus-Bar were found damaged/burnt. The insulation of the cable which was lying by the side of the radiator, was also found almost burnt out from transformer up to L.T. Switch Room.

7. Battery Charger & L.T. Panel Board were found almost damaged with fire.

8. No protection relays/system were found installed on any of the H.T. Breakers of the said H.T. Four-Panel Board, from where the H.T. Supply to 1000 KVA transformer in question had been fed.

It was told by the representative of Uphaar Cinema present at the side that they had lodged a complaint with DVB Complaint Centre regarding sparking in DVS transformer on 13.6.97. The DVB staff attended to the complaint on the noon of that day & started that they had switched 'ON' the transformer after replacing the two nos. of burnt cable-end-sockets of Y-phase of L.T. supply cables.

From the above it is evidence that due to loose connection of the cable-end-socket of the B-phase Bus-Bar of transformer, there were sparking at the said connection. At that time, the transformer was 'on load' & the current supplied from the 1000 KVA transformer was passing through there Bus-Bars & at the same time sparking was there on the B-phase Bus-Bar, thus the magnitude of the current supplied through B-phase could be large, which had caused excessive heating of the transformer B-phase Bus-Bar and cable-end-socket. The excessive heating & sparking formed a cavity on the B-phase Bus-Bar and also melted the upper portion of the cable-end-socket. Due to the weight of the cable and decoiling effect of the cable, it might have exerted pull on the Bolt (used for fixing the cable-end-socket with transformer Bus-Bar), as a result cable-end-socket came out with a flick from the bold portion, after formation of an opening in the cable-end-socket (U-formation of socket) & hit the transformer radiator's fin. Due to overheating of the cable, its insulation gave-way & conductor became naked/exposed. The live conductor of this cable, which hitted the radiator-fin, formed an opening in the radiator-fin (due to short circuiting), from where transformer oil gushed out & spilled over the floor. It appeared that the short circuiting of cable with the radiator fin continued for a sufficient time, since there was no protecting system provided for the transformer at the said sub-station, as a result the transformer's oil caught fire due to arcing/sparking caused by short circuiting.

At the time of inspection the following provisions of the Indian Electricity Rules, 1956, had not been found complied with by DVB:-

1. No protecting system against Over-Current Earth Fault & excessive Gas Pressure had been found provided for the said 1000 KVA transformer of DVB installed at Uphaar Cinema Complex, so as to automatically disconnect the supply under abnormal conditions as required under the provisions of Rule 64A(2) of the said rules.

2. The cable-end-sockets of B-phase of L.T. supply cables had not been fixed properly, as the same appeared to have been fixed by hammering & not by the crimping machine or any other proper system. Necessary tests such as testing of

protection system etc. as specified in the specification NO.13.3 (Table-2) of I.S.Code No.1886-1967 had not been carried out from time to time and as such the said transformer had not been found maintained in healthy condition as required under the provisions of Rules 65(5) of the said rules.

The effect of short circuiting of L.T. supply cable with the transformer & subsequently catching of fire by the transformer's oil, could have been avoided, had the fault (may be loose connection etc.) in the transformer which was detected in the morning of 13.6.97, been repaired properly & also the protection relays/system which were missing, been there (on the H.T. Breaker controlling the supply to transformer in question) to protect the transformer against Over-Current, Earth Fault & excessive Gas Pressure (Buchholtz Relay)."

72. The Executive Engineer (Electrical) of the Public Works Department (electrical division) also in his report submitted on 29th June, 1997 has observed that there was no oil except a little bit of oil at the bottom of the transformer tank; that all the cable connected to the LT terminal box of the transformer were damaged and insulation of cables was heavily burnt up to the wall of LT room; the transformer room was fully dark with black smoke particles deposited on its all walls and roof; The cubical LT panel was heavily burnt. It was also observed that when the socket of the cable melted because of intense heat and sparking it got away from the nuts and bolts and came sliding down from the fins of the radiator and caused sparking marks on the radiator fins and finally it struck to one of the radiator fins and since heavy current was flowing due to earth fault and temperature, the radiator sheet got damaged creating a hole in the fin resulting in the transformer oil coming out from this hole which caught fire due to arcing and sparking which was there due to touching of the current carrying conductor with the body of the transformer or possible burning of PVC cable insulation. He further observed that when oil was spreading, it must have taken the fire outside the transformer room also and the fire aggravated further by presence of the petrol/diesel carrying vehicles parked in front of the transformer room.

73. Mr.Naresh Kumar while inquiring into the incident had recorded the statement of certain eye witnesses. One of the witnesses Mr.Ajay Kapoor had stated that he worked in the office on the fourth floor of the Uphaaar Cinema building and at about 4.45 pm he had come out for getting his eye sight checked and when at about 5.00 pm he came back near the Uphaar main gate, he heard a loud blast in the car parking and when he went inside he saw fire coming out of the transformer room and the people in the parking lot were trying to remove the cars. Another eye witness

Mr.M.S.Chauhan also works in the same building and he was with Mr.Ajay Kapoor when he also noticed fire coming out of the transformer room. We have been told that the melting point of the mild steel is approximately 1500 degree celcius and the flash point of oil was about 158 degree celcius. It is not in doubt that the radiator fin made of mild steel had melted because of the intense sparking after the cable had come in contact with the fin. In case, the radiator fin can melt whose melting point is as high as 1500 degree celcius, we have no hesitation in coming to the conclusion that the oil which had a flash point of 158 degree celcius must have caught fire because of the intense sparking caused as a result of the naked cable coming into contact with the radiator fin. There cannot be any other cause of fire. We are not in agreement with learned counsel for the Delhi Vidyut Board that the flash point of the oil being very high and it being a quenching material, it could not catch fire and there must be some other cause of fire. We are not impressed with the argument of learned counsel for the Delhi Vidyut Board that within 0.3 seconds of the transformer tripping, all circuits had broken and there could not have been any sparking in the cable or that the radiator fin could not have melted because of the cable coming into contact with the radiator. Not only eye witnesses but even the experts have given their opinion that it was entirely because of the intense sparking caused by the cable coming into contact with the radiator fin that a hole was created in the fin after it had melted and the oil gushing out of the fin came into contact with the sparkings and thus caught fire. It is immaterial for the purposes of this case as to when the electricity had stopped coming to the transformer because of the circuit breaking at the AIIMS grid. We have, therefore, no hesitation in holding that the fire started from the Delhi Vidyut Board transformer and later on spread when the burning oil came in contact with the cars parked on the ground floor in vicinity of the transformer room.

74. Next question to be examined is as to how the fire spread and as to how the smoke reached the balcony floor of the building. From the photographs which have been placed on record and about which there is no dispute, it is clear that a white contessa car at the time of taking the photographs was parked next to the HT room which is adjacent to the transformer room. Whether or not the car was parked at the time of fire just in front of the transformer room and it had been removed after the fire is not very clear, however, it is the consistent stand of not only the eye witnesses but also of the experts that the hot burning oil had started flowing out from the transformer room to the car parking area has not only that the slope of the room was not such which could prevent oil from coming out but the rolling shutter provided in front of the transformer room was also not leak proof. There were about 50 cars

parked inside the car parking area and as already observed one of the white contessa car was parked very close to the transformer room. The gushing oil coming out of the transformer room came in contact with the contessa car and a Maruti Van which was parked in front of it and they both caught fire. From these cars, the fire spread to the remaining cars. As a result, the fumes and smoke generated by fire filled up the car parking area and then travelled up to the balcony area through the stairway. The parking of the vehicles near the transformer room has no doubt played a major role in spreading the fire. Though it is the contention of the owners of the cinema that they had not allowed parking of more cars than permitted in the parking lot, however, the case of the petitioners as well as of the Delhi Vidyut Board is that as against the parking provided for about 29 cars, the owners had permitted about 50 cars to have been parked in the parking lot. In our view, parking of more cars than provided in the parking lot may not be very relevant inasmuch as even if 29 cars were parked, the gushing oil would have still burnt some of these cars which were parked in front or near the transformer room. The moot question is whether at all any parking should have been allowed in proximity of the transformer room. In the first instance, the location of the transformer room in the parking area itself, according to us, was ill advised. As already mentioned above by us, the installation of the transformer in the parking lot is a non-natural user and is an hazardous activity. The authorities should have seen to it that either the parking was not permitted near the transformer room or the transformer should not have been installed in the parking lot. Location of the parking lot and the transformer in near proximity to each other has resulted in spreading fire and smoke inside the cinema building. Had there been no parking on the ground floor of the building in the vicinity of the transformer, in our view, neither the fire would have spread nor smoke would have travelled to the balcony area and the fire may have been confined only to the transformer room.

75. The scene of occurrence of fire at the Uphaar cinema complex was examined by the experts of the Central Forensic Science Laboratory. After inspection of the complex, the opinion of the Central Forensic Science Laboratory was that the fire had started from the Delhi Vidyut Board transformer which is situated in the western portion of the car parking hall situated in the ground floor of the cinema complex. The transformer oil coming out from this hall came in contact with the cars parked in the vicinity of the transformer as is evident from the statement of the witnesses. The cushion sheets, tyres, petrol/diesel of the cars besides other material like wood resulted in growth and spread of fire. Because of poor ventilation on the ground floor of the building and because of deficient oxygen supply, the fire resulted in generation of high smoke emanating toxic gases like carbon monoxide, Hydrochloric gas, Cozen

gas, etc. The Central Forensic Science Laboratory in its report about the spreading of fire has observed as under :-

" Thereafter, the smoke appears to have traveled in two directions i.e. Northward and southward. The northward bound smoke encountered collapsible gate and a staircase adjacent to it. The smoke has gushed through stairwell due to chimney effect. The doors next to the screen on either side has severe smoke effect. The doors on either side of screen are two plank doors. Both portions shown effect of smoke. One door opposite to this staircase was closed at the time of incident as smoke effect was observed only staircase side of the door. Another door was to the right of the above door and one plank of the door was open at the time of fire. This way the smoke has entered the auditorium through right door as one plank of the door was open at the time of fire incident.

The southward bound smoke traveled through ariel route towards the staircase situated to the south of the D.V.B. Transformer. The ariel route is exhibited by the fact that the concrete pillars of the building do not show any signs of smoke at the bottom portion and cable hanging overhead of Uphaar Cinema complex shows signs of heat and smoke. The smoke gushed through the stairwell due to chimney effect. The rear stall foyer/canteen was not effected by smoke as well as fire as the connecting door from this staircase was closed. This connecting door has strong blisters i.e. effect of smoke and temperature (Heat) on staircase side of door. Hence, the smoke has gone further up the staircase and reached the foot/lower portion of balcony of auditorium. The balcony has three entrances, they are, one entrance is next to this particular stairwell and one entrance is through foyer/canteen lobby and third entrance is one floor above. The smoke effect has been seen on the outside as well as inside of on one plank portion of door next to this stairwell leading to foot of the balcony. The smoke has entered the balcony through this half open door. The connecting door to the foyer/canteen from this staircase was closed. Hence, this door had effect of smoke and heat on outside portion. Further the smoke has gone up and effect of smoke was detected on entry door to the rear portion of balcony. The doors from the foyer/canteen side to the auditorium and balcony were closed at the time of incident. Out of four doors from rear staff side, three doors of double planks have been forcibly opened from the inner side of Cinema Hall."

76. It is thus clear that the smoke travelled through the opening from the bottom to top from the stairways and also through the stairways to the parking area to the auditorium side. Since the balcony was at a height and there was no opening on the ground floor from where the smoke could go outside the building, smoke from all

sources entered the balcony, mainly from western stairways of the building. It appears that because of the entrance to the parking lot being open, the air coming from that side prevented the smoke from entering the stairways on the right side for some time and the travel of the smoke towards the balcony was mainly from the left side stairways. As per report of Naresh Kumar, the design of the building enabled the noxious fumes and smoke to travel quickly through the stairways into the lobby into first and second floors in the hall. As already mentioned by us above, by the time the patrons became aware of the fire, the dense smoke had already entered the balcony floor and it had become almost impossible for the patrons to get out of the same. The escape of the patrons from the balcony area was also delayed and hampered because of inadequate number of exits, ill advised location of the gangways and absence of visible signs over the exit doors. Absence of public address system also lead to chaos and panic. It, therefore, becomes necessary for us to deal with the role of the cinema owners as well as the licensing authority to ascertain as to how the gangways were shortened in width, exists were made at places where they were not required, some of the exit doors were closed, all of which resulted in the delay in the patrons coming out of the balcony and by that time they were all surrounded by fumes and smoke, fresh air was not available because of dense smoke and because of darkness, they were not able to find way to get out of the building and it all resulted in number of deaths and injuries in the balcony area. In the hope that toilets were safe, many of the patrons entered the toilets but that also proved to be a death trap for them.

77. As already observed by us above, Uphaar cinema was started in 1973. A cinema house cannot be run without obtaining license from the licensing authority under the provisions of theCinematograph Act and the rules framed there under. Till the year 1977/78, the competent authority to issue license was the District Magistrate, however, after coming into force of the Commissioner of Police system in Delhi in 1978, the Commissioner of Police was notified as the licensing authority under the Act. Before a license is issued, the licensing authority is required to obtain necessary certificates/no objections from the Municipal Corporation of Delhi insofar as the health point of view was concerned, from the Public Works Department from the point of view of building and from the Chief Fire Officer in respect of the safety provisions existing in the cinema building. The licensing authority at the time of issue of the license is required to satisfy himself that all the provisions of the Act and the rules have been duly complied with by the licensee. As mentioned above, on 30th September, 1976 the Lieutenant Governor had issued a notification permitting the cinema halls in Delhi to add certain seats in the cinemas with a view to offset the loss allegedly caused to the licensees by the deduction of rates by 10% by the Government

in 1975. As a result of relaxation of rules, 43 seats were added by Uphaar cinema in the balcony and 57 seats were added in the main hall. These seats were allowed to be added despite objections by the Chief Fire Officer to the effect that even in normal circumstances the exit facilities are seriously hampered by people rushing out of the cinema hall and in case of panicky situation of a minor nature, the people would be put to great difficulty which might even result in stampede and it was, therefore, not advisable to allow extra seats in the cinema hall. However, since the Fire Officer was made to understand that the licensees have to be compensated for the loss caused to them by the restrictions imposed on the rights of admission to the cinema halls, the Chief Fire Officer then considered the case of individual cinemas and agreed to the increase of seats in some of the cinemas. On 27th July, 1979 the Lieutenant Governor issued another notification cancelling with immediate effect the earlier notification including the notification dated 30th September, 1976 as a result of which 43 seats were added in the balcony and 57 seats were added in the main hall by Uphaar Cinema. This notification was challenged by certain cinema owners including the owner of Uphaar cinema and the High Court by its judgment dated 27th November, 1979 upheld the right of the Lieutenant Governor to withdraw the relaxation, however, the Court further held that withdrawal of relaxation would not automatically mean that all the additional seats installed by the owners are contrary to rules and the licensing authority was, therefore, directed to apply his mind to the additional seats with a view to determine which of them had contravened which rule and to what extent keeping in mind that compliance to the rules was substantial and not rigid. On such direction being given, the D.C.P. (Licensing) by order dated 24th December, 1979 observed that of the 43 additional seats sanctioned in the balcony, six additional seats (i.e. seat No.9 in rows a to f) and all the 56 additional seats in the main hall were blocking the vertical gangways causing obstruction to fire egress of patrons from the hall. The remaining 37 additional seats in the balcony were found to be in accordance with the rules and were permitted to be retained. Despite the fact that by the addition of these 37 seats, the owners had closed the right side gangway by the side of the wall leading to the exit at the back, no observation was made in the order by the licensing authority whether the closing of that gangway along the wall leading to the exit on the right side was violation of the Cinematograph rules nor the licensing authority considered the question whether in the case of a panicky situation like fire the same would not result in difficulty for the patrons to come out of the cinema hall and could also result in stampede as the persons sitting in extreme right of the cinema hall would have to travel the entire width of the cinema to get out of the balcony from the exits which were available at the extreme left of the balcony area. The licensing authority also did not consider the question whether merely by

providing two exits only on the extreme left of the balcony was sufficient compliance of the rules. It may be true that the cinema hall had provided the required number of exits in proportion to the number of seats in the cinema hall in accordance with the Cinematograph rules, however, provision of all exits at one side of the cinema hall could not, in our opinion, be substantial compliance of the rules. It is not the number of exits but the location of the exits, which is important for the safety of the patrons visiting a crowded place like the cinema hall. The exits and the gangways have to be provided for easy egress of the patrons from the cinema hall not only in normal circumstances but also in a panicky situation at a time when some untoward incident like fire takes place in the cinema hall. When all the persons sitting in the balcony would move towards one direction as exits are only in that direction, the same would naturally result in stampede and it will also be difficult for all those persons to get out of the building within a reasonable time. In normal circumstances, such a situation may not create any problem, however, it is the duty of the licensing authority and the Chief Fire Officer to ensure that these exits and gangways, etc. are meant for easy egress not in normal circumstances but also in panicky situation of serious nature like fire, etc. Not only that the gangways leading to the exit on the right side was closed but even the rear exit on the right side was closed by providing an eight seater box by the management. The same also, as already observed above, resulted in closure of the exit on the right side of the balcony. No doubt, the management had opened an exit on the top left side of the balcony, however, as already observed above by us, creation of exits only on one side of the balcony may be compliance of the rule for providing sufficient exits proportionate to the seats in the balcony only on paper but the same could not be said to be substantial compliance of the rules as the exits are required to be provided on all sides of the balcony to ensure that the persons sitting in the hall and the balcony had easy egress there from.

78. After an inspection was carried out by the licensing authority in 1983, a notice was issued to the licensee of Uphaar cinema on 13th June, 1983 calling upon the licensee to show cause as to why the license should not be revoked for contravention of the Cinematograph rules. A reply was submitted by the licensee stating inter alia that they had not violated any of the provisions of theCinematograph Act. Another notice was, however, issued on 23rd June, 1983 informing the licensee that they had violated the safety regulations mentioned in the Cinematograph Rules and they were asked to show cause why the license should not be suspended. Reply to this show cause was filed by the licensee and by order dated 27th June, 1983 the licensing authority suspended the license of the Uphaar Cinema for a period of four days and the licensee was directed to remove the defects within that period failing which the

license was threatened to be revoked. This notice was challenged by the licensee by filing a writ petition in the Delhi High Court and by order dated 28th June, 1983 the High Court stayed the order of suspension of the license. Against the order of suspension of the license, the licensee also filed an appeal before the Lieutenant Governor under the rules. The Lieutenant Governor by its order dated 20th July, 1983 appointed a committee to inspect the cinema premises of the licensee with a view to verify the facts which were stated to be violation of the Cinematograph Rules in the order dated 27th June, 1983 passed by the licensing authority. The committee constituted by the Lieutenant Governor submitted its reply and observed as under :-

Alleged violations	Findings of the Committee
1. According to the sanctioned plan, the basement is to be used for parking of vehicles. A portion of the basement has been covered and let out to M/s.East Coast Breweries and Distillirees who are using some portion of the area let out to them as their office and the resent for storing crates of beer.	Some of the partition walls provided in the basement have removed and the basement was at present not in the occupation of M/s.East Coast Breweries and Distilleries. They are reported to have vacated it.
2. As per the sanctioned plan, the distance between the stilt floor and floor of the auditorium should be 17'6". An additional floor has been created between the stilt floor and the floor of the auditorium by providing a wooden plank flooring. A part of it has been let out to M/s.Naviers whereas the rest of it is lying vacant. The creation of additional space is in gross violation of the plan sanctioned by the M.C.D.	The wooden plank flooring has been removed and M/s.Naviers are reported to have vacated the space. The R.S. Joist have however, not been removed.

3.	3rd floor has been let out to various organisations. Tract Pumps Sales Pvt.Ltd., Public Construction Co. Kamal Const. Co., Basai Builders and Sarin Associates whereas the same was sanctioned for offices of the administration of the Cinema.	The Administration office shown on IIIrd floor in the sanctioned plan is let out to Track Pumps Sales Pvt.Ltd. Public construction Co. Kamal Construction Co. and Basai Builders. Only an application was made in 1974 to ETO but no sanction for letting out of office accommodation was obtained.
4.	Wooden Planks have been removed but steel posts and R.S. Joist are still intact.	This relates to item No.2.
5.	A Homeopathic dispensary has been set up between the stilts floor & the floor of auditorium which has been created by providing wooden planks flooring. This structure is not only unauthorised but is also a fire hazard.	The wooden planks have been removed but the RS joists are still fixed. The Homeopathic Dispensary has since been removed.
6.	A part of the basement made inaccessable from the basement level. It has access from the ground floor which was noticed to be in use as access of a printing press only a violations of building bye-laws but is also a big fire hazard.	The wall in the basement which segregated the area given to Printing press has been removed. Also the stair case built as portion from the ground floor has been Removed. However, the Printing press continues to be located in the pantry of the Restaurant at ground floor.

7.	Part of the basement for electric installation is being used for storage of combustible materials. This structure was also found to be highly objectionable from the safety point of view.	The combustible material has been removed.
8.	On the top floor, an office has been created from part of stair-case plus the loft-over it and extending to the portion above toilet shown in the sanctioned plan. Such structure cannot be allowed. In such fashion as per building bye-laws.	The loft over the stair-case has been removed. However, the toilet portion stands converted into an office.
9.	One room at IInd floor mentioned as store in completion certificates is being used as Office of M/s Anil Charnelic and Co.	The room at Iind floor is still being used by M/s Anil Charnalic & Co.
10.	Many offices were noticed on the top floor for which no permission seems to have been taken as required under condition No.17 of the license.	This is same as an item No.3 given above.
11.	The space marked for Restaurant has been let out to a Bank.	Sanction for sub-letting to Bank Accorded by Licencing Authority vide his letter No.F.2(48)/ETO/ 1052 dated 12.3.76 (Page 45 to 50).

79. The Lieutenant Governor on receipt of this report disposed of the appeal by its order dated 24th March, 1984 and directed as under :-

"1. The appellant shall remove the objections mentioned at Sl.Nos..3,6,9 & 10 by 31.8.1984.

2. The appellant shall make an application to the concerned local body i.e. MCD for regularisation/compounding of the objections mentioned at Sl.Nos.2,4,8 & 11 within a period of seven days from the date of this order and the said local body shall dispose off this application within a period of one month. Such objections which the local body is not willing to regularise, shall be removed by the appellant by 31.8.1984.

3. The appellant shall report compliance of the directions at Sl.No.1 & 2 above to the Licensing Authority on or before 1st Sep., 84.

4. The appellant shall also give an undertaking to the Licensing Authority, in the form and manner prescribed by it, that he shall not again indulge in any of the violations that he has removed on his own or in terms of this orders.

In case any one of the directions is not complied with, the order dated 27.6.83 of the Licensing Authorities shall come into the operation."

80. After the filing of the appeal before the Lieutenant Governor and in any case after the appeal against the order dated 27th June, 1983 was disposed of by the Lieutenant Governor, it appears to us that the writ petition filed by the licensee in the High Court challenging the suspension of license by four days had become infructuous. However, no steps were taken by the licensing authority to move application before

the High Court informing it about the disposal of the appeal by the Lieutenant Governor and for modification/vacation of stay granted on 28th June, 1983. Even the fire which had taken place in Uphaar Cinema in the year 1989 was not reported to the Court in spite of the fact that the High Court by its order dated 25th March, 1986 while confirming the stay had also observed that if there was any fire hazard or no proper fire fighting equipments were provided, the licensing authority would be at liberty to call upon the licensee to remove the fire hazards and to use proper and adequate fire fighting equipments and also called upon the licensee to remove serious irregularities, if any, and if the licensee failed to comply with the same, the licensing authority was given liberty to move the Court for obtaining appropriate directions in that behalf. As already observed, the fire which had broken out earlier in Uphaar Cinema on 6/7th July, 1989 was not only not reported to the Court but no steps appear to have been taken by the licensing authority to ensure that the fire fighting and safety equipments were adhered to by the licensee. First application filed by the licensing authority for vacation of stay was only on 19th April, 1993. It was stated in the application that the Parliament had passed the Delhi Fire (Prevention and Safety) Act, 1986 along with the Delhi Fire (Prevention and Safety) Rules, 1987 and the Central Government had appointed 1st March, 1987 as the date on which the provisions of the Act were to come into force. It was submitted that in its counter affidavit the licensing authority had pointed out various violations committed by the licensee. It was also stated in the application that on 28th June, 1983, the Court while confirming the stay had observed that the licensing authority had stated " that there is some fire hazard towards the cinema management. Fire fighting is not adequate which may effect the adequate safety. If there is any fire hazard or no proper fire fighting equipment and also respondent called upon various serious irregularities, if any, after the petitioner fails to comply with the same, the respondent will be at liberty to move the Court for vacation of the stay order and for obtaining the appropriate directions in this regard."

81. It was submitted in the application filed on June 28, 1993 for vacation of stay that in the counter affidavit filed by the licensing authority in that writ petition, various violations of the Cinematograph Rules had already been pointed out by the licensing authority and it was for that reason that the license was suspended for four days. It was submitted that despite the Delhi Fire (Prevention and Safety) Act having come into force with effect from 1st March, 1987 and despite several requests made by the licensing authority to remove the fire hazards, the licensee had not removed the violations though they were admitted by them in their reply dated 1st February, 1993. It was, therefore, prayed in the application that in the totality of the circumstances

and keeping in view the fire incidents in the city, the Administration could not take chance in allowing the cinema to function any further if the licensee did not adhere to the directives of the Court and the licensing authority. The licensing authority, therefore, prayed for vacation of the stay granted by the Court. It is not clear as to what happened to that application but in the affidavit filed by the D.C.P.(Licensing) in Court on 1st August, 1996 i.e. after the unfortunate incident of fire, it was pointed out that out of the original 11 objections raised, when the writ petition was filed, some of the objections still subsisted and they were as under :-

I) The basement, which was to be used as Car Parking only, was earlier let out to M/s East West Breweries and Distillaries, though has been vacated now but several partition walls are still in existence, which needs rectification.

ii) The wooden planks flooring between the stilt floor and the auditorium floor have been removed but RS joints, structure is still existing, which needs removal.

iii) The third floor of the premises is let out to various organisations, namely Tract Pumps Sales Pvt. Ltd. construction company, Bassi Builders and Sain and Associates, whereas the same were sanctioned for the office of the Cinema. The above offices still exist. Offices of these firms have been made with wooden partitions and number of loose wires have been made in order.

iv) The wooden planks have been removed but steel posts and RS joints are still intact.

v) A homeopathic dispensary was noticed between the stilts floor and the floor of the auditorium which has been created by providing wooden plank flooring. This structure is not only unauthorised but is also a fire-hazard. This objection has not been removed.

vi) On the top floor, an office has been created forming part of the stairs-case plus a loft over it and extending up to the portion above the toilet shown in the sanctioned plan. This office still exist which needs rectification.

vii) On the top floor the bank is still established which area was sanctioned for Restaurant. This is clearly in violation of the condition No.17 of the license.

viii) That, in the present inspection even some of the seats were found to be in reparable condition. As also the seat low light are out of order.

82. It is thus clear that most of the violations which existed in the cinema hall and due to which the license was suspended for a period of four days in 1983 existed even up to the date of unfortunate incident of fire. In these objections mentioned by the D.C.P. (Licensing) in his affidavit of 1st August, 1996 the violations about the closure of the vertical gangway by the side of the wall, reducing the width of the gangways, closure of the exit on the rear side of the balcony, etc. were not pointed out, perhaps for the reasons that they were approved by the D.C.P. (Licensing) himself. The authorities had closed their eyes to the violation of rules and regulations existing in the theatre. We are, therefore, clearly of the view that scant respect had been shown to the adherence of the safety regulations. Safety of the patrons appears to be the last item in the agenda of the management of the cinema and every effort was made by the owners of the cinema to add as many seats as possible so as to earn more profit. With a view not to influence the criminal trial going on against certain persons, we are not, at this stage, suggesting that there was any connivance or collusion between the owners of the cinema and the licensing authority permitting the owners to add those seats and close the rear right side exit of the balcony. However, it appears to us that the authorities were definitely not strict and vigilant in compliance of the regulations meant for the safety of the patrons. We are of the view that had the right side rear exit been open and the right side vertical gangway by the side of the wall was available to the patrons to get out of the cinema hall, there would not have been delay in these patrons coming out of the balcony and precious time would not have been lost and may be many of the persons who had died because of fresh oxygen being not available to them and due to asphyxiation, might have been saved. Since the criminal trial is going on against the owners of the cinema and certain other persons, we refrain ourselves from giving any opinion as to whether there was any negligence and connivance on the part of any of the authorities in adding these seats and in not providing the gangway and the exits at places where they are meant to be provided and whether the owners and other authorities were aware that by not providing the gangways and exits at the places where they are meant to be provided and by adding these seats, safety of the patrons was endangered.

83. Having thus held that there was clear deviation and violation of the rules and regulations prescribed by the authorities for providing gangways, exits, stairways, etc. we are next required to examine whether other basic facilities like emergency light, alarm signals, public address system, illumination, etc. of the exit signs which are required to be available in case of an emergent situation were provided by the management so as to assist the cinegoers in getting out of the theatre when the fire had broken out and the hall was filled with smoke. Though there is some difference

in the statement of the witnesses recorded by the police under Section 161 of the Code of Criminal Procedure and also by the Naresh Kumar Committee as to whether the management had continued to run the movie even after the fire had taken place and if so for how much time, however, for purposes of this case this Court is not required to go into the disputed questions of fact but one point on which there is no dispute is that when the smoke had started entering the cinema hall from the side of the screen, the movie was still on. If the theory of the Delhi Vidyut Board is accepted that the electricity was switched off immediately the cable was snapped from its socket and the circuit was broken, the movie must have been shown with the aid of generator and if the theory of the Delhi Vidyut Board is not correct about the circuit having broken within seconds of the cable having been snapped from its socket, the movie must have been continued to be shown with the aid of the electricity before it was completely shut out. Had timely warning being given to the patrons sitting in the hall by the management of the hall about the fire having taken place in the sub-station on the ground floor of the building in the parking area, the tragedy might not occurred. It is in evidence, which is not in dispute, that the movie was stopped by the operator from the operator room after some time of his being informed over the intercom and also by the staff Dayanand regarding the outbreak of fire. Immediately after the viewers were informed by the cinema staff, the lights went off and in the absence of any emergency light it became pitch dark in the hall. The presence of dense black smoke in the hall aggravated the panic situation. Though the viewers sitting in the main hall were able to go out of the theatre because of the opening of the exits, those sitting in the balcony found it difficult to go out as both the exits were on one side of the cinema hall and everybody rushed towards that side. Most of the patrons in the balcony were not able to find even these exits because of the darkness in the hall. Had emergency lights been provided in the theatre, the viewers would have been able to know the location of the exits and the position might not have aggravated to that extent. The public address system was not functioning and the management was, therefore, not in a position to inform the viewers as to how to get out of the theatre. As per the statement of witnesses recorded by Naresh Kumar as well as by the investigating officer under Section 161 of the Code of Criminal Procedure the public address system appear to have never been used and no one ever thought of putting the same to use as it was necessary for the safety of the patrons. The sidelights on the seats were also not working and we are informed and, as also supported by the material on record, that at least for the last one year the sidelights of the seats were not working. The battery used for emergency light was dry and as per the statement of the operator there was no arrangement for recharging the battery in the cinema. Viewers even after coming out of the balcony did not find way

to the staircase as it was completely dark because of the dense smoke and no assistance was provided to them by the staff. The balcony and the foyer outside thus became a gas chamber. People rushed into the toilets, some even tried to go upstairs but it appears that everyone was trapped. Even in normal circumstances, as is evident from the statement of the witnesses, it is not easy for a person, who is not conversant with the topography of the cinema to find the way to get out of the theatre but in the situation of chaos, invisibility and inhalation of poisonous fumes in which they were placed and in the absence of any assistance from the staff, the viewers tried to get out of the theatre from whichever way they found an opening. In the absence of sufficient oxygen and in the absence of the smoke going out of the theatre building, one can easily understand the plight of the viewers trapped in the balcony and the foyer outside the same. No doubt some of the members of the staff tried to help the viewers, however, the effort was not sufficient. As already mentioned above, poor ventilation and the burning of car seats, tyres, petrol, diesel, transformer oil and cable insulation, etc. were responsible for the growth and spread of fire and smoke. The absence of sufficient oxygen though helped in not spreading the fire, however, the same resulted in high smoke generation emanating toxic gases like carbon monoxide, Hydrochloric gas, Cozen gas, etc. and they in fact were the cause of fatality of the viewers in the balcony and the area outside the same because of asphyxiation. The staff of the theatre was not prepared nor trained for such an emergency. They were also not trained to meet such type of unprecedented situations and most of them, therefore, ran away from the place of incident for their own lives.

84. It is the contention of both Mr.Tulsi appearing on behalf of the petitioners as well as Dr.Dhawan on behalf of the owners of the cinema that the Delhi Fire Service had played a contributory role in aggravating the unfortunate tragedy. The contention of Dr.Dhawan is that the priority was given by the staff of the Delhi Fire Service to fire fighting rather than rescue the persons who were trapped inside the cinema hall. It is the argument of Mr.Tulsi as well as Dr.Dhawan that delay of even a few minutes in the rescue had proved fatal and it was, therefore, the duty of the staff of the fire service that they should have concentrated in rescue of the persons trapped in the building rather than fighting the fire. It is submitted that the fire tenders did not have the functioning suction pumps, warning lights were not functioning, sirens were also not functioning and the tenders were not equipped with masks with requisite oxygen supply. Hose pipes of the tenders were also leaking. They were not provided with long ladders and hydraulic platforms were either not available or non-functional. They had also not brought the jumping nets or jumping cushion so as to rescue the persons trapped inside the building. The Chief Fire Officer has admitted in

his affidavit that breathing apparatus could provide protection against smoke but the same was useless against extensive heat. It is submitted by the petitioners that even after receiving the first call about fire, the fire tenders reached the site after about 20 minutes and the delay has thus resulted in some deaths which could have been saved had the fire tenders reached the site within minutes of their being informed of the incident.

85. As per the log book of the Delhi Fire Service produced on record, the first information about the fire was received by the fire station at 5.10 pm and the first tender had reached the spot at 5.16 p.m. Though it is the contention of Dr.Dhawan that immediately at 5.00 p.m. the manager of the cinema had informed about the fire having taken place but no entry has been made in the log book about such information having been received by them. The Chief Fire Officer has filed his affidavit in response to the notice issued to him by this Court. It is stated by him in his affidavit that the fire fighting staff did not find any water tank in the building from which water could be taken for extinguishing the fire and the tank located at the ground level adjacent to the cinema hall had certain encroachments over the same. It is submitted by him that each fire engine carries its own water varying from 4500 liters to 22500 liters and to supplement the water requirement, the water tank of the Indian Oil Corporation building across the main road was utilised by the staff. The Chief Fire Officer in his affidavit has stated :-

"That after the first unit reached on the scene it may be clarified that this does not need suction pump. About 4500 liters water available in the fire engine is used immediately through centrifugal pump provided on each fire engine. No fire engine need a suction pump for using water available on fire engine. It is indicated that the subsequent equipments arrived at the site is as under:-

Time of dispatch	Name of equipment	Quantity
1711 hrs.	Water tenders	4
1716 hrs.	Motor pump	1
1716 hrs.	Water bouser	1
1716 hrs.	Ambulance	1
1726 hrs.	Water tender	5
1726 hrs.	Motor pump	2
1726 hrs.	Ambulance	2
1726 hrs.	Hydraulic platform	2

1732 hrs.	Water tenders	7
1732 hrs.	Water bousers	2
1732 hrs.	Light van	1
1732 hrs.	Control van	1
1732 hrs.	Hose tender	1
1732 hrs.	Motor pump	1
1732 hrs.	Mini busus	2
1751 hrs.	Water tenders	8
1751 hrs.	Ambulances	1
1751 hrs.	Motor pump	2
1751 hrs.	Hose tenders	1

It may be mentioned that times indicated are for dispatch of the equipment and not arrival of the equipment at the cinema hall.

That it is not correct to say that sirens and lights on almost all the fire tenders were inoperative. Every fire engine has got a brass fire bell which is standard fitting. The brass bell is the mandatory/standard fitting of the fire engine. The sirens are fixed for added advantage but they are not reliable, since due to water in the fire engine, the electric connection is liable to go out of order. The first unit reached within 10-11 minutes and the delay of 15-20 minutes as indicated is baseless.

That it is wrong to assume that full strength protection of fire fighting only began at 6 p.m. In fact, the fire was brought under control at 1820 hrs. after sustained fire fighting effors.

That as indicated in the foregoing paras it is wrong to say that considerable delay in launching the operation in fire control was caused due to location of underground tank not known to the fire officials. Indidentally, the fire official Station Officer, Surinder Dutt who also responded on first turnout was also involved in the inspection of cinema hall for issue of license and was aware of the location of the tank but the tank had some encroachments, therefore could not be used.

That there was no acute shortage of breathing apparatus sets and each fire engine carries breathing apparatus sets. The breathing apparatus set can provide protection against smoke but not against extensive heat. The fire has to be brought under control and the smoke/hot gases cooled down to bearable limits for using the breathing apparatus set. 5 nos. B.A. Sets were used by Delhi Fire Service Officers and men to ventilate the hot gases and smoke and for initial rescue of the persons trapped near the balcony area. The smoke extractor is not provided to each fireman. This equipment is part of the rescue tender which can be operated using pressure hose lines. It was not possible to use this equipment under the conditions of extensive heat and smoke in the balcony area and it was considered easier to ventilate staircases by breaking the ventilator glass panes.

That the rope ladders are not in use in any of the fire service in the world. The jumping cushion/net have also been found to be useless and during the practical demonstration one fireman of Delhi Fire Service and one at NationalFire Service College Nagpur sustained grievous injuries even while jpmping from height of about 6 meters. One such equipment is available with the fire service but it is not possible to respond this on each and every call. The equipment can be sent on demand but the situation on the fire incident was where both rescue as well as fire fighting were required to be conducted simultaneously, the priority was to be given to fire fighting and smoke from the fire at stilt/ground level was feeding the staircases thereby completely blocking the means of escape. Delhi Fire Service has taken the right action and saved many lives.

That it is incorrect to say that fire tenders arrived on the sport for extinguishing the fire caused by electric transformer with water instead of foam or other suitable extinguishers. Foam or other type of extinguishers are not used by any fire service. The fire extinguishers are only useful in the incipient stages when the fire is very small. When the fire becomes big, this cannot be extinguished by user of fire extinguishers. It may also be pointed out that each fire engine carries a foam making branch and foam drums concentrate for fighting oil fires, if required. However, it may be clarified that the flash point being very high transformer oil fire is normally extinguished by using water spray. The water spray system is standard accepted extinguishing media on the electric transformers containing oil all over the world. Moreover, foam is useful only on a two dimension fire and not three dimension fire like transformers and cars etc. That Delhi Fire Service has taken possible action to extinguish fire and rescued the persons who were trapped on the upper floors. It is further opined that perhaps things would not have happened in the manner it has if the information of the incident was given to fire service immediately after the fire

broke out. It is a known fact that the dimension of the fire increased in geometric proportion due to delay. The situation perhaps would not have become so bad if the information to the fire service was communicated immediately after the outbreak of fire i.e., around 5 p.m. Which is estimated time of outbreak of fire as per the report."

86. Though some of the witnesses in their statement before the Naresh Kumar Enquiry Committee had stated that the first PCR van had reached the spot at 5.25 p.m. and the first fire fighting vehicle reached the spot at 5.35 p.m. and that the report about the fire was made to the fire brigade at 5.00 p.m., however, we do not find any reason to disbelieve the log book produced on record by the Delhi Fire Service. We are also of the view that there may be shortcomings in the equipments provided to the Delhi Fire Service by the Government, however, the staff of the Delhi Fire Service with the available infrastructure had performed their duty commendably and satisfactorily. The question as to whether the fire fighting staff should have concentrated first in rescue work and then in fighting the fire, is not for this Court to decide. We are not experts in the subject. It is entirely for the fire fighting staff to decide in a situation as to how they have to meet with the same and we do not want to comment upon the same. In the present case, we do not find any deficiency in the performance of their duty by the staff of the Delhi Fire Service, however, with a view to make it more efficient with a view to meet the situation as had happened in the Uphaar Cinema on the fateful day, we have made certain recommendations in the later part of the judgment which in our view are necessary to be followed by the Government for making the Delhi Fire Service more efficient and effective to meet the emergent situation for which it is meant. It is to be hoped that there would be no administrative delays in implementing such recommendation which enhances fire safety.

87. It is the case of the owners of the theatre that the smoke did not spread due to any structural defect/deviation or violation in the cinema building. It is admitted case that at the time of sanction of the theatre only a 3 feet high parapet wall was sanctioned behind the transformer room along the ramp. Though it is the contention of the petitioners as also that of the Delhi Vidyut Board that the 3 feet high parapet wall was raised up to the ceiling level without any approval of the building plans from the Municipal Corporation of Delhi, however, the case of the theatre owners is that this 3 feet high parapet wall was raised up to the ceiling level only after the plans were sanctioned by the Municipal Corporation of Delhi. As already observed by us above, it is not for this Court to decide at this stage whether or not the plans were sanctioned for raising the height of 3 feet parapet wall to the ceiling height of 12 feet, however, the fact remains that with the raising of the height of the 3 feet high parapet

wall up to the ceiling level, the ground floor parking area was converted into an enclosed room with no provision for ingress of fresh air inside that area and egress of polluted air from the parking lot. Providing of the exhaust fan in the transformer room was of no use as the hot air being thrown out of the transformer room by the exhaust fan was circulated within the ground floor area as it could not go out of the same because of the height of the parapet wall being raised to 12 feet. Had the height of the wall not been raised, we are firmly of the opinion, the smoke emanating from the transformer room and from the parking lot because of burning of cars would have gone out of the ground floor and the parking lot, through the opening where the wall had been constructed later on up to the ceiling level. Because of the existence of wall, the smoke did not find any other way except to go to the upper floors through the stairways causing a chimney effect and resulted in concentration of the smoke in the balcony area. Existence of this wall to a large extent contributed in the spreading of smoke. Not only that the wall was constructed up to the ceiling height in place of 3 feet high parapet wall but the management of the theatre had also constructed a dispensary above the ramp which was also in clear violation of the building bye laws. Construction of inter-mediate floor with the aid of R S Joists was also in violation of the building bye laws. The Municipal Corporation of Delhi has not placed any material on record to show that it had taken any action against the theatre for violation of the bye laws. Even assuming that the wall was constructed after the plans were approved by the Municipal Corporation of Delhi, we are of the opinion that the Municipal Corporation of Delhi did not adopt a cautious approach while approving such a wall and did not at all consider whether the construction of wall would jeopardise the safety of the patrons vising the hall. The safety standards in places where large number of people gather, in our view, are required to be strictly complied with and there is no question of substantial compliance of rules in such places. There cannot be any compromise with the safety standards. If the authorities are to err they are to err in favor of safety and not otherwise. In the present case, we are of the opinion that if the plans were approved by the Municipal Corporation of Delhi, it was clearly an error on their part and the same was approved in violation of the rules and regulations not only under theElectricity Act but also under the building bye laws and other provisions of the Cinematograph Act. It is our experience that the authorities, including the Licensing Authority, the Delhi Vidyut Board, the health authorities and the municipal authorities adopt a casual approach in inspecting the cinemas and other places visited by large number of people keeping in view the safety aspect of the visitors. It is required of the Corporation and other authorities to approve the plans of a theatre and other buildings visited by large number of persons, keeping in view their safety and keeping in view the provisions of the Delhi

Fire (Prevention and Fire) Safety Act and other like provisions. The authorities are required to heavily come down upon the owners of the building visited by large number of people if the safety standards are not adhered to.

88. For all the above reasons, we are of the considered view that the Licensee of the Uphaar Cinema, the licensing branch of the Delhi Police, the Delhi Vidyut Board and the Municipal Corporation of Delhi were all responsible for having contributed to the spreading of fire and smoke by their acts of omission and commission and they are all jointly and severally liable for payment of compensation to the victims of the unfortunate incident. We have not been able to find any act of commission or omission on the part of the Delhi Fire Service or the other departments of Delhi Police to held them liable or responsible for the disaster.

89. Having thus held that all the persons/authorities mentioned above were responsible for the disaster that had taken place in the theatre on 13th June, 1996 and they are liable to pay compensation to the unfortunate victims/their relatives for the death and/or injuries sustained, the question for consideration is what should be the quantum of compensation and how the same can be assessed.

90. Having already held that the petition was maintainable and having held that no disputed question of fact being involved in the present case, we would not like to go into this question again and we are firmly of the view that the present petition for claiming damages in public law for the wrongful act of the respondents and/or for the violation of the rules and regulations will be maintainable in this Court. The undisputed and undisputable facts are sufficient to give rise to the liability of the respondents without further proof of negligence. The respondents, in our view, cannot be permitted to require proof of actual loss in a claim which arises in public law on the basis of strict liability. Once we have held that there was a breach of statutory duty on the part of some of the respondents and there was lack of proper care on the part of others, in our view, that itself is sufficient to hold the respondents liable for damages under public law. The Supreme Court in M.S.Grewal and Another Vs.Deep Chand Sood and Others, 2001 (5) Scale 610 has held that negligence in common parlance mean and imply failure to exercise due care, expected of a reasonable prudent person. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do (vide Black's Law

Dictionary). Though sometimes, the word `inadvertence' stands and used as a synonym to negligence, but in effect negligence represents a state of the mind which however is much serious in nature than mere inadvertence. There thus exists a differentiation between the two expressions - whereas inadvertence is a milder form of negligence, `negligence' by itself means and imply a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow. It was held that duty of care varies from situation to situation - whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field.

91. The facts in M.S.Grewal and Another Vs.Deep Chand Sood and Others (Supra) were that a picnic was organized for school children on the banks of the river Beas. Students were accompanied by five teachers. 14 children along with two teachers went into the river. All the 14 children drowned while the teacher survived. A Writ petition was filed in the High Court of Punjab and Haryana under Article 226 of the Constitution of India seeking inquiry by the C.B.I. and compensation from the school authorities. The High Court allowed the writ petition and directed the management of the school to pay compensation of Rs.5,00,000/- to each of the parents of the 14 students who died in the incident. The judgment of the High Court was challenged by way of appeal in the Supreme Court on the ground of maintainability for claiming compensation. The Supreme Court on these facts held that the law Courts exists for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. Relying upon the judgment of the Supreme Court in Nilabati Behara Vs.State of Orissa and others (Supra) and Rudal Sah Vs.State of Bihar and Another (Supra), the Court held that it was undoubtedly true that in the present context there was no infringement of State's obligation unless of course the State could also be termed to be a joint tort-feasor but since the case of the parties stood restricted and without imparting any liability on the State, the Supreme Court did not deem it expedient to deal with the issue any further except noting the aforesaid two decisions as above and without expression of any opinion in regard thereto, it was held by the Supreme Court that currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil Courts obligation to award damages. It was held that the law Courts will loose their efficacy if they cannot possibly respond to the need of

the society - technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice. The Court while delivering the judgment dealt with not only the question of negligence but also the maintainability of the writ petition in such cases and what should have normally been the amount of compensation awarded in such cases. The Court while dealing with this issue held as under :-

14. Negligence in common parlance means and imply `failure to exercise due care, expected of a reasonable prudent person'. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do (vide Black's Law Dictionary). Though sometimes, the work `inadvertence' stands and used as a synonym to negligence, but in effect negligence represents a state of the mind which however is much serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions - whereas inadvertence is a milder form of negligence, `negligence' by itself mean and imply a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow. Clerk & Lindsell on torts (18th Ed.) sets out four several requirements of the tort of negligence and the same read as below:

"(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable;

(2) breach of the duty of care by the defendant, i.e. that if failed to measure up to the standard set by law;

(3) a casual connection between the defendant's careless conduct and the damage;

(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."

15. While the parent owes his child, a duty of care in relation to the child's physical security, a teacher in a School is expected to show such are towards a child under his charge as would be exercised by a reasonably careful parent. In this context,

reference may be made to a decision of Tucker, J. in Recketts V. Erith Borough Council and Another (1943) (2) All ER 629) as also the decision of the Court of Appeal in Price and Another V. Gregory and Another (1959 (1) WLR 177).

16. Duty of care varies from situation to situation - whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation there from can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults: Children need much stricter care.

26. Next is the issue `maintainability of the writ petition' before the High Court under Article 226of the Constitution. The appellant though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the Civil Law and thus the Civil court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law courts exists for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context reference may be made to two decisions of this Court: The first in line, is the decision in Nilabati Behera (Smt.) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) V. Sate of Orissa and Others) wherein this court relying upon the decision in Rudal Sah (Rudal Sah Vs. Sate of Bihar & Anr. :) decried the illegality and impropriety in awarding compensation in a proceeding in which court's power under Articles 32 and 226 of the Constitution stand involved and thus observed that it was a clear case for award of compensation to the petition for custodial death of her son. It is undoubtedly true however that in the present context, there is no infringement of State's obligation unless of course the State can also be termed to be a joint tort-feasor, but since the case of the parties stand restricted and without imparting any liability on the State, we do not deem it expedient to deal with the

issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto.

27. The decision of this Court in D.K.Basu Vs. Sate of West Bengal comes next. This decision has opened up a new vesta (sic) in the jurisprudence of the country. The old doctrine of only relegating aggrieved to the remedies available in civil law limits stands extended since Anand J. (as His Lordhsip then was) in no uncertain terms observed:

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment o the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

28. Currently the judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system-affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing so as to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil courts proceedings to award damages. As a matter of fact the decision in D.K.Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of `justice oriented approach. Law Courts will lose their efficacy if it cannot possibly respond to the need of the society-technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

29. The only other issue, thus left outstanding in the matter under consideration pertains to the quantum of compensation. It is at this juncture that we record our appreciation for the gesture of Mr.Bahuguna who at the very commencement of the hearing submitted that while the figure of Rs.5 lacs compensation per child seem to be strangely absurd but he recommended a figure of Rs.2 lacs per child as monetary compensation for the events that had taken place; compensation there cannot be any, far less monetary compensation, for the unfortunate death of one's own child - it

cannot be termed to be a solarium. Unfortunately the situation in the facts of the matter does not warrant us to accept the same as a result of which we wish to deal with the matter in slightly more greater detail.

30. Mr.Bahuguna for the appellant with however strong vehemence contended that the High Court has totally misread and misapplied the principles of law in the matter of awarding compensation and in any event the quantum thereto has been fixed at an absurdly higher figure. The anguish of the High Court, Mr.Bahuguna contended, is understandable by reason of the factual import in the matter but that does not however mean and imply that a court of law would be guided by emotions and allow the sentiments to play a pivotal role in the matter of assessment of damages. It has been the contention of Mr.Bahuguna that there is not an iota of evidence as to the pecuniary loss for pecuniary benefit and as such the assessment of quantum has been totally arbitrary and in utter disregard of the known principles of law.

31. As noticed herein before six several judgments have been cited wherein the quantum of compensation varies between Rs.30,000/- to Rs.1,50,000/- but in every decision there was a factual basis for such an assessment and there is no denial of the same. But the adaptability of the multiply method and its acceptability without any exception cannot just be given a go by. This Court in a long catena of cases and without mixing word did apply the multiply method to decide the question of compensation in the cases arising out of Motor Vehicles Act. It is in this context the view of British Law Commission may be noticed and which indicates "the multiplier has been, remains and should continue to remain, the ordinary, the best and the only method of assessing the value of a number of future annual sums". The actuarial method of calculation strictly speaking may not have lost its relevance but its applicability cannot but be said to be extremely restricted - said the British Commission. Lord Denning's observations in Hodges Vs. Harland & Wolff Limited [(1965) 1 ALL ER 1089] also seem to be rather apposite. Lord Denning observed that multiplier method cannot but be termed to be of universal application as such it would meet the concept of justice in the event the same method is applied for determining the quantum of compensation Incidentally in a very recent decision of this Court (Civil Writ Petition No.232 of 1991 in the matter of Lata Wadhwa and Others Vs. State of Bihar & Others [of which one of us (U.C.Banerjeet. J.) was a party] wherein a three-Judge Bench of this Court has had the occasion to consider an award of a former Chief Justice pertaining to the assessment of compensation by reason of a huge accidental fire. Significantly a writ petition was filed in this Court and this Court though it expedient to have the claims examined by a former Chief Justice of the Country and the latter duly and upon adaptation of multiplier method

finalised the quantum of compensation which more or less barring some exceptions stands accepted by this Court in the decision noticed above. In Lata Wadhwa's decision factual score records that while 150th Birth Anniversary of Sir Jamshedji Tata, was being celebrated on 3rd March, 1989 within the factory premises at Jamshedpur and a large number of employees, their families including small children had been invited, a devastating fire suddenly engulfed the Pandal and the area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. The death toll reached 6-0 and the total number of persons injured were 113. The factual score in Lata Wadhwa's case further depicts that amongst the persons dead, there were 26 children, 25 women and 9 men and Srimati Lata Wadhwa the petitioner in the matter lost her two children, a boy and a girl as also her parents. It is on this score that the learned arbitrator fixed in the absence of any material a uniform amount of Rs.50,000/- to which again a conventional figure of Rs.25,000/- has been added for determining the total amount of compensation payable. While dealing with the matter this court (Pattanaik J. Speaking for the Bench) observed:

"So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15th December, 1993, this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and Ors. , exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of year's purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region

arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case , "it is the overall picture that matters", and the Court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:

" The multiplier method is logically sound and legally well-established method of ensuring a `just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."

32. In the decision of Susamma Thomas (supra), this court in paragraphs 7 & 8 of the report observed:

"7. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the father's death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies Vs. Powell Duffryn Associated Collieries Ltd. [1942 AC 617] which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. This "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accident Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. (Per Lord Macmillan in Davies Vs. Powell) Lord Wright in the same case said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefits, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death". These words of Lord Wright were adopted as the principle applicable also under the Indian

Act in Gobald Motor Service Ltd. Vs. R.M.K. Vehuswami where the Supreme Court stated that the genera; principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained."

33. Needless to say that the multiplier method stands accepted by this Court in the decision last noticed and on the acceptability of multiplier method this Court in para 16 had the following to state:

"It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage there from towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years - virtually adopting a multiplier of 45 - and even if one-third of one-fourth is deducted there from towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be `just', the statutory determination of a `just' compensation would unshackle the exercise from any-rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a `just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

34. In Lata Wadhwa's case, however, this Court came to a conclusion that upon acceptability of the multiplier method and depending upon the facts situation namely the involvement of TISCO in its tradition that every employee can get one of his child employed in the company and having regard to multiplier 15 the compensation was calculated at Rs.3.60 lacs with an additional sum of Rs.50,000/- as conventional figure making the total amount payable at Rs.4.10 lacs for each of the claimants of the deceased children.

35. The decision in Lata Wadhwa, thus, is definitely a guiding factor in the matter of award of compensation wherein children died under an unfortunate incident as noticed more fully herein before in this judgment.

36. Having considered the matter in its proper perspective and the applicability of multiplier method and without even any further material on record we do feel it expedient to note that though Mr.Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs.5 lacs can be attributed to be the resultant effect of either emotion or sentiments or the High Court's anguish over the incident. The High Court obviously considered the overall situation as regards social placements of the students. As stated hereinafter the school presently is one of the affluent school in the country and fee structure and other incidentals are so high that it would be a well nigh impossibility to think of admission in the school at even the upper middle class level. Obviously the school caters to the need of upper strata of the society and if the 2nd Schedule of Motor Vehicles Act, can be termed to be any guide, the compensation could have been am much larger sum. Thus in the factual situation award of compensation at Rs.5 lakhs cannot by any stretch be termed to be excessive. Another redeeming feature of Mr.Bahuguna submissions pertains to the theory of ability to pay: Audited accounts have been produced for the year 1995 depicting a situation, though not of having stringency but the situation truly cannot but be ascribed to be otherwise comfortable to pay as directed by the High Court. The matter, however, prolonged in the law courts in the usual manner and it took nearly six years for its final disposal before this Court - these six years however had rendered the financial stability of the school concerned in a much more stronger situation than what is was in the year 1995. The school as of date stands out to be one of the most affluent schools in the country as such ability to pay cannot be termed to be an issue in the matter and on the wake thereto we are not inclined to deal with the same in any further detail.

37. In the view have taken as above, we could have awarded a larger sum but judicial propriety deters us from doing so, since in the normal course of events appellate forum ought not to interfere with the award of compensation."

92. One other judgment which we need to mention at this stage is the judgment of the Supreme Court in Lata Wadhwa Vs.State of Bihar . The Supreme Court in M.S.Grewal Vs.Deep Chand Sood (Supra) has also relied upon this judgment. In this case, the 150th birth anniversary of Sir Jamshedji Tata was being celebrated on 3rd March, 1989 within the factory premises and a large number of employees, their families including small children had been invited, but the organisers had not taken adequate safety measures and on the other hand several provisions of the Factories Rules and Factories Act had been grossly violated. A devastating fire engulfed the VIP pandal and the area surrounding it and by the time the fire was extinguished, a number of persons lay lead and many were eft suffering with burn injuries. Some of the injured also died on the way to the hospital or while being treated at the hospital. The death toll reached 60 and the total number of persons injured was 113. Amongst the persons dead, there were 26 children, 25 women and 9 men. Out of the 60 persons who died, 55 were either employees or relations of employees of TISCO and similarly out of the 113 persons injured, 91 were either employees or their relations. Lata Wadhwa lost both her children a boy and a girl and her parents. Her husband was an employee of the company. It was alleged in the writ petition that the State of Bihar was colluding with the company and there was total inaction on its part in taking appropriate action against the negligent officers because of whose negligence the tragedy occurred. The State in its counter affidavit denied the allegations made in the writ petition. The company also filed a counter affidavit denying the charge of negligence and lack of care and sympathy for the injured as well as for the kith and kin of the deceased. The company in its counter affidavit indicated steps taken by several employees and how the doctors in the hospital worked round the clock. The writ petition was filed in the Supreme Court under Articles 21 and 32 of the Constitution of India for ordering prosecution of the officers of TISCO and their agents and servants for the alleged negligence in organising the function and for a direction to pay appropriate compensation to the victims by the State Government as well as by the Company. When the writ petition came up for hearing Mr.F.S.Nariman, learned Senior counsel appearing for the company stated that notwithstanding several objections raised in the counter affidavit, the company did not wish to treat the litigation as an adversarial one and the matter was left to the Court for determining what monetary compensation should be paid according to law after taking into consideration all the benefits and facilities already extending and

continuing as were summarised in the affidavit of the company. After hearing the parties, the Court requested Mr.Y.V.Chandrachud, former Chief Justice of India, to look into the matter and determine the compensation payable to the legal heirs of the deceased as well as compensation payable to the injured persons. Mr.Y.V.Chandrachud submitted his report granting compensation to the tune of Rs.1,19,58,320/- in favor of the dependents of the deceased persons and Rs.288 lacs as interim compensation in favor of the injured. Mr.Y.V.Chandrachud while submitting his report about the quantum of compensation payable to the dependents of the deceased as also the injured has applied the multiplier method and has kept into consideration the age of the deceased and the injured persons. After arriving at such compensation, Mr.Chandrachud had added a sum of Rs.25,000/- as conventional figure on the total amount of compensation so arrived at by applying the multiplier method. The Supreme Court while dealing with this report has observed as under :-

Mr. F.S.Nariman, the learned Senior Counsel appearing for the Company, on the other hand, contended that in a compendious public interest litigation, filed by three individuals onbehalf of all those who died and were injured in the tragic incident, the Company itself was of the view that whatever amount of compensation is determined to be reasonable, the Company will bear the same. It is in fact, he who came forward to make the offer and when thename of Shri Chandrachud was suggested, he had also agreed that the entire expenses could be borne by the Company. But according to Mr.Nariman, in the absence of any date and figures for different heads of claim made by the claimants, the only option that was left for determination was some broad principles and in arriving at his ultimate conclusion, Shri Chandrachud has relied upon those broad principles and consequently, no error an be said to have been committed in the determination in question. According to Mr.Nariman, the principles evolved in Khatoon case have beenduly analysed and applied and the contention of Ms Jethmalani that principles enunciated therein had not been followed, is not correct. Mr Nariman, on his own, agreed that the compensation amount determined for the children could be doubled by this Court. Mr Nariman, however, seriously objected for the matter being remitted for redetermination, essentially, on the ground that it would be against the interest of the dependents of those who are dead as well as the injured and urged that if this Court is of the opinion that compensation awarded in respect of any of the claimants of the deceased persons or the injured is inappropriate, then this Court may arrive at the same and it would be a travesty of justice, if the matter would be prolonged by directing a further inquiry into the matter for redetermination. Mr Nariman emphatically urged that

there has been no error committed by Sh. Chandrachud in applying the broad principles and in fact, he had no other option in the absence of any date being furnished by the claimants and the compensation awarded cannot be held to be arbitrary or meagre, requiring any further interference by this Court. He also suggested that the benefits already given by the Company itself could be taken into consideration, as was observed by the Court in its order dated 15.12.1993.

So far as the determination of compensation in death cases is concerned, apart from the three decisions of the Andhra Pradesh High Court which had been mentioned in the order of this Court dated 15.12.1993, this Court in the case of G.M., Kerela SRTC Vs. Susamma Thomas exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependents, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents and, thereafter, it should be capitalised by multiplying it by a figure representing the proper number of years' purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, 'it is the overall picture that matters', and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:

"The multiplier method is ligically sound and legally well-established method of ensuring a `just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.' The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability in the assessment of compensation.

The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way o annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. In view of the aforesaid authoritative pronouncement of this Court and having regard to the determination made in the Report by Sh. Justice Chandrachud, on the basis of the aforesaid multiplier method, it is difficult for us to accept the contention of Ms Rani Jethmalani that the settled principle for determination of compensation has not been followed in the present case. The further submission of the learned counsel that the determination made is arbitrary, is devoid of any substance, as Shri Justice Chandrachud has correctly applied the multiplier, on consideration of all the relevant factors. Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way as prospective loss of earnings. The basis figure, instead of being the net earnings, is the net contribution to the support of the dependents, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of of years' purchase), which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income. In the case of Mallett Vs. McMonagle Lord Diplock gave a full analysis of the uncertainties, which arise at various stages in the estimate and the practical ways of dealing with them. In the case of Davies Vs. Taylor it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright, in a passage which is frequently quoted, in Davies Vs. Powell Duffryn Associated Collieries Ltd. to the following effect:

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of this employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase."

It is not necessary for us to further delve into the matter, as in our opinion, Shri Justice Chandradhud, has correctly arrived at the basic figure as well as in applying the proper multiplier, so far as the employees of TISCO are concerned, but the addition of a conventional figures to th tune of Rs.25,000/- appears to us to be inadequate and instead, we think the conventional figure to be added should be Rs.50,000/-.

So far as the deceased housewives are concerned, in the absence of any date and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum inc ases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating th value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be recalculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72 , the value of services rendered has been taken at Rs.10,000/- per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs.20,000/- per annum and then after

applying the multiplier, as already applied and thereafter, adding Rs.50,000/- towards the conventional figure.

So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs.12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs.25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs.1,57,000/- each. In case of the death of an infant, there may have been no actual pecuniary benefits derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. Vs. Jenkins and Lord Atkinson said thus:

".....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them."

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not

adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, nor an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of Tata Iron and Steel Company, and on considering the submission of Mr.Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs, to which the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs.2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs.3.60 lakhs, to which an additional sum of Rs.50,000/- has to be added, thus making the total amount payable at Rs.4.10 lakhs for each of the claimants of the aforesaid deceased children.

So far as the eight other persons who died, belonging to the other category, Shri Justice Chandrchud had arrived at the compensation on the basis of dependency of 60% of the annual income and thereafter, has applied different multipliers, depending upon the age, and we see no infirmity with the determination thus made. In their case, however, we would enhance the conventional figure from Rs.25,000/- to Rs.50,000/-.

So far as the compensation to the injured persons are concerned, before Shri Justice Chandrachud, though on behalf of the claimants, compensation on several heads had been claimed, but unfortunately, no materials had been placed, which could have been placed. On the basis of meagre data available, the compensation has been

determined ranging from Rs.38 lakhs to Rs.5 lakhs. In arriving at this figure, the percentage of burn has been taken into account, daily expenses have been taken into account, as indicated in Table I, cost of medical treatment has been taken into account, as indicated in Table II, expenses for psychotherapy has been takeninto account, as indicated in Table III, effect on marriage prospects has been taken into account, as indicated in Table IV, non-pecuniary losses have been taking into account, as indicated in Table VII and even punitive damages have been taken into account, and finally the total amount of compensation has been arrived at. It may be stated that injured persons with burn injury of 10% and below have not been awarded any compensation. It may also be stated that while discussing the claim on daily expenses, cost of medical treatment and expenses for psychotherapy as well as punitive damages have been rejected, but in the ultimate tabular form, compensation has been awarded on that score also and since the Company has not raised any objection on that score, we do not intend to consider any nullify the said compensation amount, as indicated in the tabular form. It transpires from the Report of Shri Justice Chandrachud that in the statement of claim even there has been no indication as to the nature of burn injury suffered, the nature, duration and quality of treatment received, the requirement of future treatment prescribed by any doctor, the state or condition of burn injuries when the statement of claim was filed, the disability suffered by any burn victim until the statement of claim was filed ans last but not the least, the loss of earning capacity in any individual case. Shri Justice Chandrachud has also noted the statement of the counsel appearing for Tata Iron and Steel Company, that if any burn victim produces the advice of a burn-expert doctor for any further medical or surgical treatment in India, TISCO is prepared to bear the expenses of the said treatment. The materials produced indicate the anxiety and steps taken by the company officials in making available the services of doctors from Delhi, Bombay, the U.K., U.S.A. and Italy and the injured patients were referred to hospitals in Delhi, Bombay, Madras and Bangalore. Even some of the injured patients were sent to the U.K., U.S.A. and Paris for cosmetic surgery at the Company's expense. In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to

produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation. A bare perusal of the Report of Shri Justice Chandrachud, bears testimony to the fact that the claimants did not discharge their obligations by putting the relevant materials to enable Shri Justice Chandrachud to arrive at the quantum of compensation. Determination of compensation in such cases is an upheaval task, more so, when no material is produced at all. In such circumstances, we mast say that Shri Justice Chandrachud has shown maximum extent possible, which is also not objected to by the Company. We, therefore, do not find any justification for our interference with the quantum arrived at an enhancing the compensation, in respect of the injured persons, who suffered the burn injury on account of the tragic incident. It is true that prsons having burn injury to the extent of 10% and below, have not been awarded any compensation and, therefore, we, as a matter of compassion, award a lump sum of Rs. two lakhs in favor of each of those persons."

93. In the present case, as we have noticed above, there is not much of a dispute between the parties about the rules and regulations which are clear and unambiguous and everybody knows them and in any case should know them. It is also not in dispute that the Government is entrusted with the duty to ensure that the rules and regulations were to be complied with. It is also not in dispute that a theatre is a place where large number of people have to sit in an enclosed area for a long period of time and there is a potential threat to the life and safety if fire, leakage of gas, etc. takes place and this potential threat has to be guarded against. It cannot, therefore, be said that the authorities as well as the cinema owners and its employees are under no obligation to provide and maintain all standards of safety and if because of their negligence or lack of care in not observing those standards of safety, a loss is caused to a person, it cannot be said that the authorities and the individuals who are responsible for this lack of care and negligence will not be liable to compensate for losses. It, therefore, appears to us that under the doctrine of strict liability and public law, the liability would be there even if there was no negligence on the part of the respondents. We have already observed above that by this judgment we are not in any way holding any person or authority negligent or responsible for the fire which had taken place as the same is a matter which is required to be determined in the trial after evidence is recorded, however, we still feel that there were clearly a lack of care on the part of the authorities in providing and maintaining all standards of public safety and the approach on the part of everyone concerned was wholly casual and the safety standards were thrown to winds. Despite there being clear violations and deviations of the Cinematograph Act and the rules framed there under; despite

the transformer not being maintained in accordance with the standards fixed not only under the rules but also by the Delhi Vidyut Board and despite their being violation of the building bye-laws, the authorities ignored each one of these violations and showed scant respect to the safety of the persons visiting the theatre. The fact that safety standards were prescribed by the authorities clearly show that the disaster was foreseeable. We, therefore, hold that the respondents, namely, the licensees; the Delhi Vidyut Board; Municipal Corporation of Delhi; and the Licensing Authority are jointly and severally liable to compensate the victims of the unfortunate incidents and/or their relatives.

94. As we have already held that the respondents, namely, the licensees; the Delhi Vidyut Board; Municipal Corporation of Delhi; and the Licensing Authority were responsible for having contributed to the fire/spreading of fire by their acts of omission and commission, they are all jointly and severally liable for payment of compensation to the victims of the unfortunate incident. The question remains about the quantum of damages payable to each one of the victims of this unfortunate incident. In Annexure-B to the writ petition, the names of the persons who have died along with ages of some of them has been given while the names of the persons injured in the incident has been given in Annexure-C to the writ petition. Nothing has been brought on record to show as to what was the nature of injuries sustained by each of the persons injured in the incident nor it is brought to the notice of the Court as to whether all or any one of them was hospitalised and, if so, for what period and whether there was any disability of temporary or permanent nature suffered by any one of the persons injured in the incident. In the absence of these particulars, we are of the opinion that it may not be possible for the Court to quantify the amount of compensation payable to each of the injured persons, however, for the mental pain, shock and agony which they must have experienced at the time of fire and thereafter, in our view, they are entitled to be compensated. We, therefore, direct the aforesaid respondents to pay a sum of Rs.1,00,000/- (Rupees One Lac only) to each of the persons injured in the incident by way of compensation for the mental pain, shock and agony suffered by them.

95. In Lata Wadhwa and Ors. Vs. State of Bihar (Supra), the Supreme Court while assessing compensation to the relatives of the victims of the incident or who had died in the incident had held that as regards the housewives, on the basis of their age group, appropriate multiplier has to be applied. It was held that the estimation of the value of services rendered to the house by the housewives which has been arrived at cannot be less than Rs.3,000/- p.m. or Rs.36,000/- p.a. and the same would apply to all the housewives between age group of 34 to 59 namely those women who were

active in life and to this income arrived at appropriate multiplier has to be applied depending upon the age of the victim to arrive at just compensation. Insofar as the children of the age group of 10-15 were concerned, Justice Y.V.Chandrachud (Retd.) having found their contribution to their family @ Rs.12,000/- p.a. applied the multiplier of 11 depending upon the age of the father and adding conventional compensation of Rs.25,000/- to each case, granted compensation to the tune of Rs.1,57,000/- to each of them. However, in the case of an infant, the Court held that there might not have been any actual pecuniary benefit derived by its parents during the lifetime but that would not necessarily bar the parents' claim and prospective loss found a valid scheme provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. At the same time, the Court held that a mere speculative possibility of benefit was not sufficient. The question whether there existed a reasonable expectation of pecuniary advantage was held to be a mixed question of fact and law. Justice Chandrachud, therefore, had arrived at the just compensation in each case on approximation. While the matter was in the Supreme Court, the counsel appearing for TISCO on his own offered that the company would be willing to pay double the compensation arrived at by Justice Chandrachud for children of all age groups. This offer was found to be reasonable by the Supreme Court and it was held that children between the age group of 5-10 would be entitled to Rs.1.5 lacs to which a conventional figure of Rs.50,000/- should be added and thus the heirs of each those children would be entitled to compensation of Rs.2 lacs; for children between age group of 10-15 years the Supreme Court held that Rs.4.10 lacs would be reasonable compensation for each of the claims of the deceased children.

96. The Supreme Court in G.M. Kerala State Road Transport Corporation Trivandrum Vs.Susamma Thomas (Mrs) and Ors. (Supra), has held that the multiplier method of compensation was the logically sound and well established method for determining the compensation. It was held that a departure might be justified only in rare and extra ordinary circumstances and very exceptional cases. It has also been held by the Supreme Court in Sarla Dixit Vs.Balwant Yadav, etc. that unless there were special reasons, the Court should not deviate from the schedule of the Motor Vehicles Act in arriving at just compensation payable to the victims of the road accident. The principles laid down in the said judgment can also be applied in the present case. Though the actual income of none of the deceased is on record but having regard to the fact that all those persons who had either died or were injured were sitting in the balcony where the rate of admission was Rs.50/- per seat, it can safely be concluded that the victims of the fire incident belong to reasonably well

placed families and this Court will, therefore, not be in error in holding that the average income of each one of the victims above the age of 20 years was not less than Rs.15,000/- per month. Deducting 1/3rd for the personal expenses of the deceased, the dependency would not be less than Rs.10,000/- per month or say Rs.1,20,000/- per annum. Applying the multiplier 15 prescribed in the second schedule to the Motor Vehicles Act, in our view, relatives of each one of the victims would be entitled to compensation of Rs.18,00,000/- (Rupees Eighteen Lacs only). Insofar as the children mentioned in Annexure-B are concerned, in our view, the relatives of each one of the said child would be entitled to a lumpsum compensation of Rs.15,00,000/- (Rupees Fifteen Lacs only). We also direct that the relatives of the deceased as well as the persons injured in fire will also be entitled to interest at the rate of 9% per annum from the date of filing of the petition on the amount of compensation assessed by us. The respondents, above-named, are granted two months time to pay compensation with interest and till such time the compensation is paid, respondents 11 and 12 will have no right to transfer, assign or create third party rights in the cinema building. In case of non-payment of compensation within the period fixed by us, the amount can be recovered by execution as a decree by sale of the cinema building or in any other manner in accordance with law.

97. We have arrived at the compensation on the basis of our estimation of the income of the victims of the unfortunate incident as we had no means to know their exact income. We, therefore, leave it open to the injured as well as relatives of the deceased to claim compensation based on the exact income of the victims by filing a suit or any other proceeding as may be permissible in law and if a suit or any other proceedings claiming such compensation are initiated within one year of this judgment, the same shall not be dismissed only on the ground of limitation. The amount directed by us to be payable under this judgment shall be adjusted against the amount which may ultimately be granted in favor of such persons in the proceedings mentioned above.

98. Since we have held that the liability of the Delhi Vidyut Board, owners of the cinema, the licensing authority and the Municipal Corporation of Delhi is joint and several, in our view, each one of them would be jointly and severally liable for payment of compensation to the victims of the incident. Though each one of the said respondents is jointly and severally liable to pay compensation to the victims of the unfortunate incident, we feel that we will have to apportion the liability of each one of these respondents and it would be open to anyone of the respondents from whom the entire amount is recovered to claim the share of the other respondents in accordance with the apportionment made by us. Since the owners of the cinema were the largest beneficiaries of the addition of seats in the balcony and raising of 3 feet

high parapet wall to the ceiling level on the ground floor of the building and have earned profit from the same, we hold that respondents 11 and 12 shall be liable to pay compensation to the extent of 55% and taking into account the culpability and involvement of the government authorities in the non-observance of statutory requirements in the light of the findings recorded in this judgment, each of the other respondents, namely, Delhi Vidyut Board, respondent No.6, the licensing authority, respondent No.3 and Municipal Corporation of Delhi, respondent No.4 would be liable to pay 15% of the compensation.

99. In an affidavit filed on behalf of Ministry of Home Affairs, pursuant to a direction being given by the Court, it was stated that in the tragedy of Uphaar cinema, the Government of NCT of Delhi had announced ex gratia relief to the families of the deceased and to those who were injured in the incident, Rs.50,000/- each to the next of the kin of those who were died; Rs.20,000/- each to those who received grevous injuries and Rs.10,000/- to those who received simple injuries. It is further stated in the additional affidavit that while replying to a question in Rajya Sabha on 30th July, 1997, the Union Home Minister had assured the House that ex gratia payment in respect of those who lost their lives in the uphaar cinema incident would be increased to Rs.1 lac per head. The matter was, accordingly, taken up for release of the enhanced ex gratia amount payable to the victims from the Prime Minister Relief Fund. It is submitted that based on the proposal, the ex gratia amount was enhanced in the case of death from Rs.50,000/- to Rs.1 lac; from Rs.20,000/- to Rs.50,000/- in the case of grevous injuries and from Rs.10,000/- to Rs.25,000/- in the case of simple injuries and a sum of Rs.49.30 lacs was released to the Government of NCT of Delhi for disbursal to the victims of the incident. From the amount assessed by this Court for payment as compensation, the amount already paid by the Government, as mentioned above, shall be deducted.

100. Besides the compensation payable by the above named respondents for their failure to observe the statutory rules meant for safety of the persons visiting the cinema hall, in our view, respondents 11 and 12 will also be liable to pay punitive damages to the extent of the profit which they have earned by selling the extra seats unauthorisedly and illegally sanctioned by the authorities. We, therefore, direct the respondents to pay the aforesaid sum of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lacs only) assessed by us as the income earned by them by selling tickets for additional 52 seats between 1979 and 1996. This amount will be paid for setting up a Central Accident Trauma Service and will be recovered by the Government from respondents 11 and 12.

101. We have not examined in detail the question whether the directors and shareholders of respondents 11 and 12 are personally liable to pay damages/compensation to the victims of the unfortunate incident. In our opinion, there may be culpability of some of the directors in non-observance of statutory rules and orders which have resulted in the spreading of fire reducing the means of egress from the balcony because of addition of seats and closure of gangways and exits, causing death of large number of persons on the fateful day, however, as it is a disputed question of fact and without evidence it may not be possible for us to hold as to which of the directors can be held to be guilty and as the matter is already before the Sessions Court which is inquiring into the question as to which of these persons could be held liable, we have refrained ourselves from giving any opinion on the culpability of the said individuals.

102. The only other point remaining for consideration is as to what recommendations are to be made by this Court to avoid such incidents/accidents in future and though, in our view, there was no negligence either on the part of the All India Institute of Medical Sciences or on the part of the Delhi Police or Safdarjung Hospital in treating the patients, however, we feel that it is the duty of the Government to provide assistance to the victims of the road accident or similar incidents of fire, etc. and for this the Centralised Trauma Service need to be provided by the State. It is the duty of the State to provide timely assistance to such victims who at the time of the accident find themselves in a helpless position and there is no one to look after them. The Director, All India Institute of Medical Sciences, has filed an additional affidavit stating inter alia that keeping in view the advancement of medical science, the idea of establishing a well equipped centre for trauma care was mooted and with that end in view the Institute was given land near Raj Nagar, New Delhi measuring 14.34 acres at a cost of Rs.99 lacs which amount was paid in March, 1996 and possession thereof was taken on 29th January, 1986. It is stated that later on in the year 1988 on the recommendations of the then Lieutenant Governor of Delhi, the said project was handed over to Delhi Administration and the ambulance services were also started by them. In the year 1991 the then Health Minister took up the matter again with the then Lieutenant Governor wherein it emerged that it was not feasible for the Delhi Government to construct and equip the centre due to financial constraints. It was also felt that the apex centre should be part and parcel of the multi disciplinary hospital like AIIMS or Safdarjung and the land measuring 14.34 acres earlier handed over to AIIMS should be returned by the Delhi Administration to the Central Government for its utilisation. The land was ultimately stated to have been returned to AIIMS in December, 1992. The ambulance service

was, however, retained by the Delhi Government. In January, 1993 M/s.Hospital Consultancy Corporation, a Government of India undertaking, was engaged for architectural and structural designs of the trauma centre. The plans were prepared for the trauma centre and were approved by the Urban Arts Commission, Delhi Fire Services and New Delhi Municipal Council in February, 1995. It is further submitted in the affidavit that the budget projection for construction of the trauma centre was also made in the 9th Five Year Plan amounting to Rs.50 crores and the Ministry of Health and Family Welfare was to decide about the arrangement for the project management of the construction of trauma centre. Despite all the steps having been taken, the project has remained only on paper and could not be started.

103. The Government of NCT of Delhi in its affidavit had stated that the health department had been monitoring the improvement regarding the availability of the Central Accident Trauma services. It is stated that at the time of Uphaar tragedy, wireless sets were functioning in five police districts as well as police headquarter; 13 CATS ambulances along with 26 para-medicos reached the uphaar site between 50 to 55 minutes. It is further stated that currently the ambulances have been linked through Motorola Radio Trunking Wireless Communication Equipment which has reduced the response time to 10 to 15 minutes and arrangements have also been made through wireless communication to give advance information of the patient to the hospital to reduce waiting time in the event of an emergency. It is stated that all efforts were being made to increase awareness of CATS advertisements through hoardings, kiosks, radio spots, Times FM, etc. In his affidavit, the Additional Secretary of Health Services, Government of NCT of Delhi stated that the Central Trauma Services came into being as a registered society in 1989 and was put under the control of the Government of NCT of Delhi. It emerged as a project on 15th March, 1991 in the West Zone of Delhi and at present CATS had 35 ambulances which were put on 24 hours petrol at different locations all over the city. It is submitted that at the time of uphaar tragedy, the CATS were in existence and the police officers were aware of the telephone numbers of CATS and even wireless sets were functioning in five police districts as well as police headquarter; 13 CATS ambulances along with 26 para-medicos reached the uphaar site between 50 to 55 minutes. He reiterated about the ambulances being linked through Motorola Radio Trunking Wireless Communication Equipment, etc. It was stated that the hospitals under the Government of Delhi are fully equipped to provide basic facilities like Oxygen, etc. In his additional affidavit filed by the Additional Secretary Health, information was provided about the availability of services under CATS. It was stated that the CATS was an autonomous body providing 24 hours accident trauma and

medical services in all emergency cases brought to its notice and that the same functions under the overall control of Government of NCT of Delhi and provides the following services :-

i) It is a 24 hours accident and trauma service attending all kinds of accidents and medical emergency cases;

ii) At present CATS has 35 ambulances operating from 35 locations existing all over Delhi. In these 35 locations, there ambulances are stationed at "Location point" identified as accident prone site on the basis of the accident data of Delhi Traffic Police and CATS for total 6 hours in a day from 8.00 a.m. to 11.00 a.m. in the morning and 5 pm to 8 pm in the evening. For rest of the period the ambulances are stationed at their "Base Stations" located in the area.

iii) That CATS has 30 Nissan Urvan Ambulances and 5 Maruti Omni Vans converted into ambulance. The list of medical equipments available on Nissan ambulances is given in Annexure II attached to the affidavit. Maruti Omni ambulances also have all the life saving necessary first aid equipments which include two oxygen cylinders containing 150 pounds of oxygen gas each, stretcher trolley, medical anti shock trousers, first aid bag (containing BP instrument, pain relief sprays, cotton, bandages, antiseptics), cervical collor, different types of splints, ambu bag and suction pump. Each of 35 ambulances has wireless communications equipment and officers manning these ambulances also have one wireless hand set.

iv) Each CATS ambulance is manned by two Assistant Junior Ambulance Officer (AJAOs) each in two shifts of 12 hours duty every day. These officials have been trained in providing first aid, transportation of patient, wireless communications and driving of vehicle."

104. It was further stated that the control room of the CATS was situated at Sushrut Trauma Centre 2, Metcaf Road, Delhi and the control room receives calls from the public at two toll free numbers 102 and 1099 and that it had wireless link with police control room and Delhi Fire Service which also gives information regarding accident/medical emergency cases on wireless and as and when an information regarding accident/medical emergency is received from the public/police/fire services or from any other source, the same is communicated to the ambulance located in the area or to the nearest available ambulance for being attended to.

105. We find that Naresh Kumar Enquiry Committee had made certain recommendations in respect of each of the party involved in the incident. Some of

the recommendations made by Naresh Kumar Committee may be summed up as under :-

INSTALLATION OF INDOOR TRANSFORMER : While locating the transformer inside the building proper care should be taken with respect to

i) Proper ventilation I.e. free movement of air around all the four sides for the efficient cooling of the transformer. Their should be appropriately sized inlet and outlet opening for air calculation. If not practicable, then sufficient number of exhaust fans should be provided.

ii) The transformer should be kept well awy from the wall as per norms mentioned.

iii) The entrance to the room shall be provided with fire resisting doors of 2 hours fire rating.

iv) A curb (sill) of a suitable height shall be provided at the entrance of the room irrespective of the rating of the transformer and their location, in order to prevent the flow of oil from a ruptured transformer into other parts.

v) Direct access to the transformer room shall be provided from outside.

vi) The transformer shall be protected by an automatic high velocity water spray system or by CO2 or BCF or BTM fixed installation system or oil less transformer (Dry type) should be recommended for basement and even for sub-station located in the stilt or ground floor.

vii) The transformer room should be separate from the main building and if in the existing installation, if is not possible because of the space constraint the same should be shifted to the periphery of the building. This is all the more important in buildings where a large public gathers or visits. Considering the level of maintenance and sincerity of persons maintaining it, it would always be better not to take any chance.

PROTECTION SYSTEM :

All systems and circuits shall be so protected as to automatically disconnect the supply under abnormal conditions as per relevant of the provisions of Indian Electricity Rules, 1956. The DVB should carry out a thorough check of all the transformer installed indoor and ensure that all safety requirements are fully

complied with without any exception since it would directly risk human life and property as experience in the instant case. This would a long way in enforcing the required safety measures and also establishing sense of security in the minds of citizens of Delhi.

Before declaring any transformer as healthy it should be checked jointly by DVB, Fire Department, Electrical Inspector, so that the healthiness including the fire safety aspect could be ensured.

UPHAAR CINEMA

1. A short documentary film showing fire fighting preparedness in the cinema hall with reference to the particular hall where film is being screened should form a mandatory requirement before every film show. The film should include information regarding escape routes, exits signs and what the public should do inc ase of unfortunate incidents of fire in that cinema hall. This will not only educate the people about the theatre in which they have assembled but would also help the fire fighters in rescue operation. In fact general awareness regarding fire safety and prevention can be created through this and the message can go down to the masses very effectively.

2. False ceiling provided in any part of the building should have one houre fire resistant rating and all the materials used for the construction of A/C should be of class one quality. The material used in false ceiling should be certified by reputed laboratory.

3. The parking should be compartmentalised properly from other floors by providing fire resistant partion of appropriate rating between the staircase shaft and the parking area. Further any partition should have minimum fire rating of one hour.

4. The whole of the parking area should have the forced ventilation system covering the full area with the help of duct network arrangement and should be designed in such a way that the smoke/hot gases do not enter any part of the building.

5. Exist signs should be properly installed and should have separate system for illumination with battery backup as the dark smoke reduces the visibility and misguides the occupants during escape in case of fire.

6. The cables running through roof/wall should be protected by cable penetration seal system of appropriate rating as per the UL/ASTM/Specification.

7. The escape route should be pressurised to avoid any ingress of smoke/gases for the safe escape of people.

8. Ventilation duct provided for circulation of the conditioned air and returned air should have fire dempers at all the tactical locations, if possible the duct should be designed with one hour fire resistant rating.

9. The transformer should be separated from other rooms on the same floor by fire resisting wall having a fire resistant rating of one hour. Similarly the entry of the transformer should have a fire door of four hours rating and should generally open out of the building.

10. For the circulation of the air in the transformer room mechanical arrangements may also be made.

11. In side the building, in place of oil type transformer, dry type transformer should be used. These type should also be approved for their fire performance behavior as per the CENLEC specification, whose facilities are available at CBRI Roorkee.

12. Use solid bus bar instead of cable at least up to 30 mtrs. From the sub-station so as to avoid burning of PVC.

13. The mulsifier system should be provided for the protection of oil filled transformer.

14. The floor of the transformer room should be replaced by a depressed floor Along with a catchpit to collect any spillage of transformer oil.

15. Exit door opening directly into the spaces open to the sky such as varandah and an open staircase leading to ground level.

16. Totally enclose the existing staircases from inside the hall and provide openable windows on the outer wall of the staircase.

17. Collapsible ladders made of fire resistant material should be provided on each floor for emergency purposes.

18. There should be parallel public address system which can be operated from projector room as well as the manager's room.

19. Sprinkler system in the car parking basements and drencher system in the Hall and lobby should be made compulsory as there is as extensive use of combustible materials like wood, plyboard, prticle board, curtains etc. in these places.

20. Safety audit should be made mandatory for the building more than 15 mt. in height as prescribed for the industries. Suitable amendments may be made in the Delhi Fire Prevention and Fire Safety Act, 1986 to this effect.

21. On the fateful day a large number of people were watching the movie from the aisles. The practice of placing extra chairs in the aisles should be prohibited. This may be treated as an offence leading to closure.

22. Low level lighting for staircases and emergency exit lights with emergency power supply backup should be provided. Electro-fluorescent fixtures must be provided which glow even in the dark.

23. All the employees must be trained in using fire extinguishing devices for controlling fire at the incipient stage. The first person who notices the fire should immediately alert his colleagues, security staff and manager. One person should summon the fire brigade while others should make a combined effort to organise a quick but safe evacuation of all patrons without stampede.

DELHI FIRE SERVICE

1. As per provisions of Delhi Fire Prevention and Fire Safety Rules, 1987, following minimum standards for Fire Prevention and Fire Safety measures are to be observed for buildings more than 15 meters high otherwise, there is provision in the said Rules under which the Chief Fire Officer can seal the building in case of violation not being rectified.

1. Means of access.

2. Underground/Overhead water static tanks.

3. Automatic sprinkler system.

4. Firs Aid Hose Reels.

5. Fire Extinguishers of ISI Certification mark.

6. Compartmentations.

7. Automatic Fire detection and alarm system/mannually operated Electrical fire alarm system.

8. Public address System.

9. Illuminated exit way marking signes.

10. Alternate source of electric supply.

11. Fire lift with fire men switch.

12. Wet riser down comer system.

The Fire authorities are merely doing the annual inspection in a stereo type manner don't have the knowledge of the provisions of Delhi Fire Preventions and Fire Safety Act, 1986 and the Rules made their in. The Divisional Officer who conducted the last inspection of Uphaar Cinema in May, 1997 for granting the annual NOC failed to check the following fire safety provisions.

--Accessbility to the underground water tank (Enclosed by grill to convert the area for keeping the c rates of the cold drinks by the canteen contractor).

--Non functional Public Address System.

--Absence of alternate source of electric supply.

--Untrained staff in using the fire extinguishers.

--Non availability of fire extinguisher in the car parking area of ground floor.

Inspite of all these, the NOC was issued from the Fire safety point of view. The Fire Safety and Fire Preventive measures in the high rise buildings are highly technical subjects which need specialized expertise. Hence there is need for creating a special fire prevention wing. This wing will not only examine the plan for building before construction but also inspect all the buildings having more than 15 mtrs. Height, annually from the fire safety point of view.

2. It has been reported that recently some buildings have been declared fire hazardous by the DFS, but is really surprising that no building which has been declared fire hazardous was sealed by the competent authority for not complying with their directions. Now it is high time that irrespective of owners of high rised

building, in case fire safety measures are not complied prompt, strict action should be taken.

3. The upkeeping and maintenance of the fire vehicles is in a very bad shape. Even small things which matter a lot in affecting the response time of the fire service i.e. the siren, emergency lights are not in working condition. Therefore the system of regular inspection of the fire stations of the DFS should be introduced to check the preparedness of the men and machines of DFS by appropriate level officer of Home Department/District Administration.

4. Presently there is one Water Officer for the NCT of Delhi whose job is to make available the continuous supply of water at the place of Medium/Major Fire incident. Even in the instant case the Water Officer was at the site at 6.00 P.M. i.e. 44 minutes after arrival of fire brigade at the site. Most of the firemen stated that they didn't know thelocation of underground water tanks in their jurisdiction. While inquiring from the Water Officer he showed his inability due to limited resources. Keeping this in view, there is need for decentralization of the work being done at the moment by the Water Officer. This job can be entrusted to the Divisional Officer, who should be held responsible for awaring the firemen in knowing the locations of underground water tank in their territorial jurisdiction. Simultaneously ensuring the supply of water at the site of fire incident.

5. The fire in the building/premises resulted in the spread of a lot of smoke. The Delhi Fire Service do not have equipment to control it. They must be equipped with portable smoke extractors with long pipes for extraction of smoke and carbon monoxide.

6. High rise buildings which have become a common feature of modern society present inherent fire hazards as fire brigades are often helpless in the face of fires in such structures and are unable to save human lives and fight fires effectively with traditional methods. Therefore, there is need for overall upgradation of Delhi Fire Service with respect to modern equipments, communication facilities including voice recorder, increased manpower and training to fire personnel.

7. As mentioned earlier, most of the casualities in the fire incident took place due to noxious smoke rather than by direct burning. It has also been observed that rescue operation was affected by poor visibility due to smoke and limited availability of breathing apparatus. Therefore there is a need to provide one breathing apparatus per fireman so that rescue operation can be made more effective.

8. In the standard list of the equipments/implements to be present in all the fire fighting vehicles, we may also add the `rope ladder' and `jumping net' made of fire resistant material.

MUNICIPAL CORPORATION OF DELHI Towards recurrence of such incident and to ensure that the provisions of the building bye laws including the fire safety are maintained in working conditions in all the buildings including those which have come up prior to 1983 and the building more than 15 meters in height should be inspected in a time bound schedule so that the corrective measures can be taken well in time.

HEALTH SERVICES The National Capital Territory of Delhi is a city of more than 10 million people now and enjoys the dubious distinction of having the highest annual fatalities on its roads, among all the cities of the world. In accidents, like with all other medical emergencies, the critical factor is time taken to provide medical assistance to the injured. The Centralised Accident and Trauma Services have been introduced in the city around 1991 but the promised CATS Hospital was a non-starter due to lack of funds. There is definitely a need for such a specialized hospital in the city.

106. The Inquiry recommends creation of a City Health Service on the lines of the Delhi Fire Service consisting solely of medical and paramedical personnel, Ambulances and equipment. It should be designed to provide medical assistance to people immediately in situations of emergencies so that they can be attended to at the site itself and further, on way to hospitals.

107. The cost of creating such a service, to deal with any kind of emergency in the city, will be far less than the cost of lives that would be saved by having it. For, the loss of even one life, that could be saved, is an irreparable loss to the family and society and a moral stigma life, that could be saved, is an irreparable loss to the family and society and a moral stigma to any Govt. which is of the people, by the people and for the people.

108. The committee has also made recommendations regarding the insurance cover for victims of accident and made the following recommendations :-

"(i) The Delhi Fire Safety and Fire Prevention Act, 1986, may be suitably amended to provide public liability insurance for all buildings where a large number of people congregate or gather, for the purpose of providing immediate relief to the victims of accident occurring in these buildings.

(ii) The Govt. may also consider to establish a fund to be known as "Fire Safety Fund", to which owners of the building shall contribute a sum which may be a certain percentage to the premium payable to the insurer. This Fire Safety Fund may be used for Fire Safety awareness and Research and Development in the field of fire prevention and fire safety engineering. Therefore, to incorporate the said provisions of "Public Liability Insurance". Delhi Fire Prevention and Fire Safety Act, 1986, may be suitably amended.

Till such time provisions for compulsory public liability insurance are created, the building owners can be motivated to take Group Personal Accident Policy similar to that opted by Indian Railways for its passengers. It should be on the basis of the capacity of actual number of persons using/visiting that place. A claims tribunal on the lines of Railway Claims Tribunal can also be considered on a zonal level for speedy disposal of cases."

109. As already observed by us above, it is the duty of the Government to provide timely assistance to the victims of the road accident or similar other accidents including fire and steps have, therefore, to be taken by the Government to set up a Centralised Trauma Service to provide timely assistance to the victims of the accident at a time when they find themselves at a totally hopeless position. Despite the fact that provision of more than Rs.50 crores has been made by the Government for setting up the trauma service in the 9th Five Year Plan and despite the fact that land has been made available since about 1988, no steps have been taken by the Government to set up a centralised trauma service. As observed by the Naresh Kumar Committee, the National Capital Territory of Delhi has the dubious distinction of having the highest annual fatalities on its roads among all the cities in the world. In accidents the critical factor is the time taken to provide medical assistance to the injured. It is, therefore, the need of the day to immediately start a centralised trauma service to provide medical assistance to the people immediately in situations of emergencies so that they can be attended to at the site itself and further on way to the hospitals. Though the petitioners have submitted that the petitioners association be associated in setting up and augmenting the centralised trauma service and other allied services in the city of Delhi, however, in our view, it is entirely for the Government to decided as to who are the persons who can be associated with the said service. We in this petition will not like to make any recommendation nor we give any direction for associating the petitioners association in the setting up of the said service. Besides approving the recommendations of the Naresh Kumar Committee, we make the following recommendations:-

A) We were also informed that several requests by the fire authorities for adequate maintenance and timely upgradation of the equipment have floundered in the bureaucratic quagmire. When lives of citizens are involved the requirement of those dealing in public safety should be urgently processed and no such administration process of clearance in matters of public safety should take more than 90 days. We are not unmindful of the fact that entertainment tax generates sufficient revenue for the administration which can easily meet the financial requirements of bodies which are required to safeguard public health.

B) It is also necessary that considering the number of theatres and auditoria functioning in the city, sufficient staff to inspect and enforce statutory norms should be provided by the Delhi Administration.

C) We also recommend that the Delhi police should only be concerned with law and order and entrusting of responsibility of licensing on the police force is an additional burden upon the already over burdened city police force.

D) We also accordingly recommend that the inspection and enforcement of the statutory norms should be in the hands of one specialized multi disciplinary body which should deal with all aspects of the licensing of public places. It should contain experts in the field of (a) fire prevention (b) electric supply (c) law and order (d) municipal sanctions (e) urban planning (f) public health and (g) licensing. Such a single multidisciplinary body would ensure that the responsibility of public safety is in the hands of a body which could be then held squarely responsible for any lapse and these would lead to a situation which would avoid the passing of the back. Today we have a situation where different bodies look after various components of public safety. A single body would also ensure speedier processing of applications for licenses reducing red tape and avoidable complications and inevitable delay.

E) All necessary equipment should be provided to ambulances and the fire brigade including gas masks, search lights, map of water tanks located in the area including the existence of the location of the underground water tanks. Such water tank locations should be available to the firemen working in the area. The workshop for the fire tenders service and maintenance should also be fully equipped with all spares and other equipment and requisition made by the fire brigade should receive prompt and immediate attention. There should also be adequate training imparted to the policemen to control the crowd in the event of a disaster as it is found that onlookers are a hindrance to rescue operations. Similarly all ambulances dealing with disaster management should be fully equipped.

110. We hope and wish that all these recommendations are implemented in as short a time as possible.

111. Before parting, we must place on record our deep sense of appreciation for the assistance rendered by learned counsel for the parties by giving priority to this case by addressing arguments almost daily for over a year. Our special thanks are due to Mr.K.T.S.Tulsi, Senior Advocate, Mr.Sultan Singh, Advocate, Dr.Rajeev Dhawan, Senior Advocate, Mr.R.S.Suri, Advocate, Mr.Milon Banerjee, Mr.P.P.Malhotra, Senior Advocates and Mr.S.K.Dubey, Advocate, who took extra pains to present compilations meticulously compiling the facts and records without which it would have been difficult for us to reconstruct the events leading to the disaster.

112. With these observations, the petition stands disposed of.