CHAPTER - IX

CONCLUSION

After making a detailed study of Due Process of Law and after making a study of all aspects of the relevant rules with reference to the emerging situations the conclusions arrived at are submitted in this chapter breaking the contents into a summary of the thesis, the findings of the researcher and the recommendations that he considers to be necessary to improve the existing system:

I. Summary of the Thesis

The Theory of Due Process of Law had its origins in Magna Carta according to which there should be no deprivation of the life, liberty or property except after the authorities of the State are satisfied that such a measure is necessary against the individuals. In other words, the idea of Due Process was a safeguard guaranteed to the individuals against the arbitrary exercise of power. It was a safeguard which the officials of the State had to observe while enforcing the existing law of the state. By observing this method only the problem of crime arising from the conduct of an individual could be dealt with. The Due Process of Law theory had its support in the theory of Natural Law according to which the right of an individual to his life, liberty and property were the result of Natural Rights and they could not be taken away without observing the relevant rules and regulations which were established to protect the life, liberty and property of the individuals.

Though this theory had its origins in English Law very soon it became very popular in other countries. The particular country where it was given the status of a constitutional principle was the United States of America. The Fifth and the Eleventh Amendment to the Constitution enjoined upon the State not to deprive any person of his life, liberty and property except after observing the principle of Due Process of Law. Another thing of far reaching importance was that the theory of due process of law could be invoked not only against an Executive measure like an order or regulation; it could as well be invoked against an arbitrary legislation of the State. Further, there was division of due process into the two categories of Civil Due Process and Criminal Due Process. By expanding its scope the legal system added to the status of Due Process and improved in due course the role of Due Process of Law in the administration of the country.

When India was a colony of the Britishers the theory of Due Process was followed by the British Judges who administered justice to the people here. This is how Due Process had become a part of the legal
Like the legal system of India, several countries of the East and the West adopted the theory of Due Process and afforded protection to the rights of the people. In some countries the Constitution was amended to incorporate the theory of due process and in some other countries. The theory of Due Process is therefore part of the legal system in most of the foreign jurisdictions.

A few interesting developments that need to be mentioned that Due process is not used in contemporary English law, though two similar concepts are natural justice (which generally applies only to decisions of administrative agencies and some types of private bodies like trade unions) and the British constitutional principle which was articulated by Professor A. V. Dicey and others. However, none of the concept match up perfectly with the American theory of due process, which, as explained below, presently contains many implied rights which are not found in the ancient or modern concepts of due process in England.

The implications of this theory have far reaching significance in the legal world. The very concept of Judicial Review is the direct result of Due Process Theory; the theory of Rule of Law and the concept of Social Justice all are the result of the application of this theory to the social and economic problems of society.

While the theory of Due Process had its beginnings in the 13th century as a safeguard to protect the life, liberty and property of the individuals, there arose an opposite view because of which the theory of due process suffered a setback in the system of justice and the system of State Administration. And this was due to the advent of Crime Control Theory which through the institution of Star Chamber gave more importance to the problem of crime and ignores the requirement of due process. The intent of Crime Control Theory was that crime should be controlled at any cost and that there is no need to give more importance to due process against the problem of crime.

But then the Crime Control Theory could not supplant the theory of Due Process. It has not however totally vanished from the social scene; there is the observance of Due Process in most of the cases except where the legislature has adopted the Crime Control Theory and denied the safeguards to the individuals.

The two theories which have worked in their own way during the recent years shows that there is no fixed principle followed by the authorities of our country because of which there is criticism against the prevailing system of criminal justice.
II. Findings of Research

1) The study has shown that for a good system of due process a large number of important rules have to be complied with. Such compliance has to be done in a consistent way. In turn, such consistency has led to detailed analysis of the wording of the various standards.

2) In the course of the past decades the various supervisory mechanisms have provided for an adequate interpretation of various concepts such as: what are civil rights and obligations; what is suit at law; what is criminal; and what a court is. Such interpretation is important as can be explained by the following example.

3) As mentioned above, accused persons deserve, for understandable reasons, more protection than other parties participating in court cases. That can, however, induce a national legal order to erode such protection by introducing non-criminal legal norms and procedures. A government could then bring an action against someone for punitive damages instead of prosecuting the person concerned. Supervisory mechanisms have corrected such an approach by defining the concept of ‘criminal charge’ and giving it an autonomous meaning.

4) The system of Due Process has been operating under a different garb and that is in the garb of principles of natural justice;

5) The authorities of State have been subjected to the discipline of rule of law and principles of justice;

6) In India, there was a big controversy whether the courts have to follow the theory of due process or the rule is embodied in the Procedure established by law. At the commencement of the constitution the prevailing view was that the Constitution makers of our country adopted a restricted system of Procedure Established by Law instead of Due Processor of Law. This was what the Supreme Court had said when it heard the first important case of A. K. Gopalan v. State of Tamil Nadu, in 1951.

7) But the view changed in 1979 when the famous case of Maneka Gandhi v. Union of India had come before the Supreme Court and the Court expressed its profound view that the concept of Reasonableness empowers the court to examine the validity of the action of the authorities, not just on the basis of procedure established by law but by the concept of reasonableness which is part of Article 19 of the Constitution of India. It is by virtue of the Ruling in Maneka Gandhi’s case that there is now Due Process Theory relevant in the system of judicial review; the courts can examine the validity of the action of the authorities on the touchstone of reasonableness of a rule and not just on ground of any procedure established by law.
8) The view taken by the Supreme Court in Maneka Gandhi’s case has widened the scope of Judicial Review and strengthened the courts in extending their protection to the individuals in the matter of safeguards against the administrative and legislative action.

9) The American Supreme Court has of course drifted from the English Law and applied the doctrine to the review of legislative matters and has not confined itself to administrative or executive matters.

10) The concept of Due Process is not of the same status in all common law or civil law countries; on the other hand, there is variation in the fundamental attributes of the theory of due process.

11) But in most of the countries the Due Process Theory is applicable only to executive matters and not to legislative matters with the exception of United States which exercises its power of judicial review not only against the executive authority but against the legislative authority as well.

12) In almost every legal system including those of the most developed legal systems the theory of Due Process of Law suffered a setback.

13) When the causes of the setback were studied the researcher found that the most common among them were those of the anti-terrorism legislation by which the safeguards were cut down and the individuals were denied the availability of these safeguards under the anti terrorism laws.

14) Yet another reason for a set back to the theory of due process of law was the mistreatment of the individuals by the law enforcement officials while dealing with the problem of crimes in the ordinary situations.

15) The excesses committed on the individuals by the law enforcement officials resulted in diminishing the value of due process of law.

16) But in every country where the individuals were mistreated or the law enforcement officials indulged in excesses there was criticism against the state administration. The public criticism has chased the law enforcement officials so much that the legal system of the country was down in the view of civilized
17) In dealing with the problem of the law enforcement officials against the individuals the Human Rights organizations have played a very important role and have done their best in getting back the rights to the individuals.

18) The arbitrary legislation on the subject of crime control has created a serious problem for the innocent people.

19) The legislation which gave arbitrary powers to the law enforcement officials has in most of the cases resulted in the violation of individual rights.

20) The worst part of the legislation on the subject of anti-terrorism was that by which the courts were denied the jurisdiction to deal with the complaints brought before them. The authority denied to the courts to examine any administrative or legislative measure on the touchstone of reasonableness has proved to be inviting criticism and lowering the image of the legal system.

III. Recommendation of the Researcher

The divergent views expressed by the courts at various times have created confusion in the realm of legal system. **In view of the mess which has been created an**

**d the confusion which has arisen** It is necessary to entrust the matter to a responsible institution like the Law revision commission or committee to examine the matter and suggest which theory should be followed in a certain matter and what should be done to remove the confusion. The application of the theory of due process has raised a number of questions, such as the application of principles of natural law; principles of natural justice, the principles of Rule of Law and the abstract principles of justice in administrative and legislative matters.

The contribution which the Due Process Theory has made to the legal system should be appreciated and given its due recognition.

1. In its developed form the system of natural justice forms the cornerstone of the legal system.
Unfortunately the system of Natural Justice does not have well articulated elements but there are segments of the system which are inherent in the very nature of Natural Justice. These institutions lay down the minimum standard that an administrative agency has to follow in its procedure. Where the legal justice fails, the role of natural justice comes to play its role; hence there is need to maintain the institutions of natural justice. By doing so, we will be continuing the system of due process of law too.

2. The introduction of Tribunals to deal with specific cases of individual complaints is a sound proposition. But the tribunals should not have too any powers and they should not be free from the supervision of the courts.

3. Just as the legal systems maintain the traditional reputation of the other two institutions of State Administration, i.e., the legislature and the executive, it should allow the third institution, namely, the judiciary to maintain its reputation by exercising all the powers which it was exercising during the last so many years.

4. The Judiciary should be given back the powers which belonged to it in the past and should be allowed to exercise all those jurisdictions which belonged to them in the past.

5. The induction of Tribunals in the system of adjudication should be to help the individuals secure quick justice and not for the purpose of disturbing the traditional reputation of the courts.

6. The procedures which were introduced by denying to the courts their traditional authority to review the work of the Tribunals should be undone.

7. The courts should have the traditional responsibility of supervising the functioning of Tribunals and both the type of institutions belonging to the department of judiciary should be allowed to function under the umbrella of due process.

8. Crime Control theory which has the object of reducing crimes and maintaining order in the society is welcome but it should not be stretched too far to deny the basic rights to the individuals.
9. The greatness of a legal system is in respecting the rights of the individuals; therefore a situation should not be allowed to grow which may cause a setback to the theory of due process.